Office of Disciplinary Counsel
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January 24, 2019

CONFIDENTIAL

Dexter K. Kaiama, Esq.
Law Off. of Dexter K. Kaiama
111 Hekili St., Ste. A1607
Kailua, HI 96734

Re: ODC 18-0339
James F. Evers, Complainant

Dear Mr. Kaiama:

This is to inform you that the Office of Disciplinary Counsel ("ODC") has received a complaint from Mr. Evers, alleging that you may have committed an ethical violation. A copy of the complaint is enclosed for your review.

Under the Disciplinary Board's Rules ("DBR"), we are required to "assume[] the facts to be true" and seek your response [DBR Rules 13 and 14]. Because the factual allegations have been made, we require your response before making any decision regarding possible early disposition, and at this stage of the investigation, we have likely formed no opinion.

Therefore, we ask that you provide our office with a detailed written response by **Monday, February 25, 2019**. If you are unable to respond in a timely manner, or have other questions, please contact me **prior** to above date by telephone at 808-469-4040 or by email at josiah.k.sewell@dbhawaii.org

It would also be helpful if you limited your response to a professional, factual recitation and provide supporting evidence

where available. Aspersions as to the complainant's character are generally unhelpful to our Board members, who make dispositional decisions, and who will be considering the extent of your cooperation and candor with ODC.

While we are sensitive to the disruption these inquiries may cause, your cooperation is anticipated and very much appreciated. We also need to remind you that Hawai'i licensed attorneys are required to cooperate and participate in disciplinary investigations and proceedings pursuant to Hawai'i Rules of Professional Conduct Rules ("HRPC") 8.1(b) and 8.4(g).

Additionally, rest assured that this complaint and your response, along with this entire inquiry, will remain confidential and sealed, barring one of the exceptions provided in the Rules of the Supreme Court of Hawai'i Rule 2.22(a).

Finally, per office policy, we have enclosed information concerning the Hawai'i Attorneys and Judges Assistance Program.

Sincerely,

JOSIAH K. SEWELL
INVESTIGATOR

JKS:uo:acs

enclosures

Bruce Kim

From: James F. Evers <jevers@dcca.hawaii.gov>
Sent: Thursday, March 01, 2018 2:25 PM
To: Bruce Kim
Subject: Dexter Kaiama

Bruce,

I would like you to consider opening an investigation into potential violations of the Rules of Professional Conduct based on Dexer Kaiama's apparent noncompliance with HRS 480E-15, which prohibits attorneys from representing distressed property owners without a written contract (480E-15(1)), from accepting money without putting it into their client trust accounts (480E-15(3)), and from taking the money without having fully performed (480E-15(4)). "Fully performed" is a defined term that means, in the case of litigation, that the attorney acting on behalf of the homeowner "obtains the desired relief from a court of law, which includes a favorable determination that the mortgage assistance relief service conferred a benefit upon the property owner and is therefore compensable." Any such violations of HRS Chapter 480E would constitute per se UDAPs.

OCP has a pending case involving Kaiama with a continued show cause hearing set for March 14, 2018. His only defense, to date, is based on sovereignty, an argument the court already rejected in denying the homeowners' motion to dismiss, which Kaiama argued.

By separate email I will be attaching the pertinent filings in that pending foreclosure case, involving consumers / homeowners Raymond Fonoti and Willadean Grace.

In what appears to be a pattern, distressed property consultants Rose Dradi and David Keanu Sai take advance payments from distressed property owners (a felony under HRS 480E-12) in preparing a motion to dismiss based on sovereignty grounds. Dradi then typically arranges for Kaiama to argue the motion by special appearance. Aside from not complying with HRS Chapter 480E, Kaiama's collaborating with Dradi and Kaiama may constitute one or more ethical violations. The declaration of John Tokunaga identifies a number of cases where Kaiama appeared, or was supposed to have appeared, and the motion to dismiss was denied. See Tokunaga Declaration bates-stamped pages 29, 38, 58, and 71. In some cases the motion is filed twice and denied each time. The case involving Mr. Fonoti and Ms. Grace is noteworthy because Kaiama's involvement was well after the enactment of HRS 480E-15, and the consumers' declaration testimony suggests Kaiama failed to comply with the law. Kaiama, in his declaration, does not state otherwise.

Thank you for your attention to this matter.

Jim

James F. Evers
Enforcement Attorney
STATE OF HAWAII
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Attorney for Movant and Intervening Petitioner
State of Hawai'i Office of Consumer Protection

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF8 MASTER PARTICIPATION TRUST, Plaintiff, vs. TALA RAYMOND FONOTI; WILLADEAN LEHUANANI GRACE; CAPITAL ONE BANK (USA), N.A.; JOHN DOES 1-50; JANE DOES 1-50; DOE PARTNERSHIPS 1-50; DOE CORPORATIONS 1-50; DOE ENTITIES 1-50; AND DOE GOVERNMENTAL UNITS 1-50, Defendants.	CIVIL NO. 15-1-0371-03 JPC (Foreclosure) STATE OF HAWAI'I OFFICE OF CONSUMER PROTECTION'S EX PARTE MOTION FOR ISSUANCE OF AN ORDER DIRECTING RESPONDENTS ROSE DRADI, DAVID KEANU SAI, AND DEXTER KAIAMA TO APPEAR AND SHOW CAUSE WHY THEY SHOULD NOT BE FOUND TO HAVE VIOLATED APPLICABLE CONSUMER PROTECTION LAWS; MEMORANDUM IN SUPPORT; DECLARATION OF TALA RAYMOND FONOTI; EXHIBITS "A" - "C"; DECLARATION OF WILLADEAN LEHUANANI GRACE; EXHIBITS "A" - "C"; DECLARATION OF COUNSEL; EXHIBITS "D" - "E"; ORDER DIRECTING RESPONDENTS ROSE DRADI, DAVID KEANU SAI, AND DEXTER KAIAMA TO APPEAR AND SHOW CAUSE WHY THEY SHOULD NOT BE FOUND TO HAVE VIOLATED APPLICABLE CONSUMER PROTECTION LAWS AND NOTICE OF HEARING Trial Date: none
STATE OF HAWAII, BY ITS OFFICE OF CONSUMER PROTECTION, Intervening Petitioner, vs. ROSE DRADI, DAVID KEANU SAI, AND DEXTER KAIAMA, Respondents.	

STATE OF HAWAI'I OFFICE OF CONSUMER PROTECTION'S
EX PARTE MOTION FOR ISSUANCE OF AN ORDER DIRECTING RESPONDENTS
ROSE DRADI, DAVID KEANU SAI, AND DEXTER KAIAMA
TO APPEAR AND SHOW CAUSE WHY THEY SHOULD NOT BE FOUND
TO HAVE VIOLATED APPLICABLE CONSUMER PROTECTION LAWS

Movant and Intervening Petitioner State of Hawai'i, by its Office of Consumer Protection ("OCP"), by and through its attorney James F. Evers, respectfully moves this Court, ex parte, for the issuance of an order directing Respondents Rose Dradi, David Keanu Sai, and Dexter Kaiama ("Respondents") to appear and show cause why they should not be found to have violated applicable consumer protection laws.

This motion is made on the grounds that: (i) in the course of OCP's ongoing investigation into the activities of Rose Dradi, OCP learned of the instant foreclosure proceeding, (ii) OCP interviewed the Defendant homeowners in this case and learned that Respondents have engaged in activity that violates applicable consumer laws enforced by OCP, (iii) the Defendant homeowners have provided OCP with declaration testimony as to having been induced by the Respondents to pay in advance for a foreclosure defense service that would terminate the foreclosure case and save the Defendants' home, (iv) OCP has reviewed the Defendant homeowners' documentation which corroborates the statements of the Defendant homeowners that the Respondents have received advance payment for their foreclosure defense services, and (v) Respondents appear to have violated applicable consumer protection laws. Accordingly, good cause exists for this Court to issue an order directing Respondents to show cause why they should not be found to have violated consumer protection laws.

In the event that Respondents fail to show cause, OCP seeks appropriate relief, which may include an award of restitution payable to Defendants Tala Raymond Fonoti and Willadean Lehuanani Grace, fines and penalties payable to OCP, entry of declaratory relief voiding the agreements between the Respondents and the Defendant homeowners, entry of permanent

injunctive relief prohibiting Respondents from contracting to provide services to any distressed property owner, and such additional relief as the Court may find warranted under the circumstances.

This motion is made pursuant to Rules 6, 7, and 65 of the Hawaii Rules of Civil Procedure, and Rules 7, 7.2 and 8 of the Rules of the Circuit Courts of the State of Hawaii, and is based upon HRS §§ 480-2, 480-13.5, 480-15, 480-15.1, 487-14, 487-15 and Chapter 480E and this Court's inherent authority. The motion is supported by the attached memorandum, declarations of Defendants Tala Raymond Fonoti and Willadean Lehuanani Grace, exhibits, and declaration of counsel, and upon the pleadings and record of the case, and upon such other evidence which may be discovered and presented, which OCP requests that it be allowed to submit for consideration at the requested hearing.

In proceeding in the proposed fashion, OCP hopes to expose, as early as possible, the extent to which Respondents have violated applicable consumer protection statutes. The entry of permanent injunctive relief may spare other homeowners from suffering the same fate as the Defendants in this case, who learned only after having paid the Respondents that the Respondents failed to save the Defendants' home, and violated the law by acting as they did and receiving their compensation in advance.

DATED: Honolulu, Hawai'i, 1/23/2018.

JAMES F. EVERS
Attorney for Movant
State of Hawai'i Office of Consumer Protection

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF8 MASTER PARTICIPATION TRUST, Plaintiff, vs. TALA RAYMOND FONOTI; WILLADEAN LEHUANANI GRACE; CAPITAL ONE BANK (USA), N.A.; JOHN DOES 1-50; JANE DOES 1-50; DOE PARTNERSHIPS 1-50; DOE CORPORATIONS 1-50; DOE ENTITIES 1-50; AND DOE GOVERNMENTAL UNITS 1-50, Defendants.	CIVIL NO. 15-1-0371-03 JPC (Foreclosure) MEMORANDUM IN SUPPORT
STATE OF HAWAII, BY ITS OFFICE OF CONSUMER PROTECTION, Intervening Petitioner, vs. ROSE DRADI, DAVID KEANU SAI, AND DEXTER KAIAMA, Respondents.	

MEMORANDUM IN SUPPORT

Movant and Intervening Petitioner State of Hawai'i, by its Office of Consumer Protection ("OCP"), submits this memorandum in support of its motion seeking the issuance of an order directing Rose Dradi, David Keanu Sai, and Dexter Kaiama (collectively "Respondents") to appear and show cause why they should not be found to have violated applicable consumer protection statutes.

I. INTRODUCTION.

The Defendant homeowners in this case were led to believe that if they paid for a foreclosure defense service – which amounted to the preparation of a motion to dismiss based upon an overused and oft-rejected Hawaiian sovereignty argument -- the instant foreclosure proceeding would be dismissed and they could retain the home where they have resided for the last 17 years. The homeowners were misled. The Court denied the motion to dismiss. Defendants' hurt stemming from the Respondents' failure to save the Defendants' home is made worse by the fact that Respondents collected their fees illegally, and are not entitled to be paid. The recovery by the Defendants of the monies they paid for the bogus foreclosure defense service would ease the transition they face in the event the Court orders their eviction from their home.

The Court witnessed firsthand the mortgage rescue fraud perpetrated by the Respondents, and OCP would like to seize this opportunity to not only help make things right for the Defendants, but to deter the Respondents from engaging in illegal behavior in the future. OCP is petitioning the Court to order appropriate relief against the Respondents in the absence of the Respondents satisfactorily showing their compliance with the law. Good cause exists for the Court to follow OCP's recommendation of issuing the requested order to show cause.

II. THE ROLE OF THE OFFICE OF CONSUMER PROTECTION.

OCP has acquired seemingly irrefutable facts indicating that the Defendant homeowners were taken advantage of by the Respondents, and OCP has a compelling interest in ensuring not only that the wrongdoing played out before the Court in this case gets rectified, but in ensuring that Respondents' unlawful practices in any other cases come to an abrupt end so that other distressed property owners are not similarly victimized. With respect to its right to seek relief in this case, in support of its position, OCP represents the following:

1. OCP is designated to serve as consumer counsel in the State of Hawaii. HRS § 487-5.

2. OCP is charged with investigating reported or suspected violations of laws enacted or rules adopted for the purpose of consumer protection, and OCP is charged with enforcing such laws and rules. HRS § 487-5(6)

3. OCP is authorized to seek relief from unfair or deceptive acts or practices declared unlawful by HRS § 480-2(a). HRS § 480-2(d).

4. Violations of HRS Chapter 480E are per se violations of HRS § 480-2(a). HRS § 480E-11.

5. OCP is the State's counterpart to the Federal Trade Commission, or FTC.

6. As the FTC is charged with, among other things, preventing and remedying unfair or deceptive acts or practices under 15 U.S.C. § 45(a), OCP is similarly charged with enforcement of the State's counterpart to that statute, being HRS § 480-2(a).

7. While OCP is authorized to pursue relief to benefit particular consumers, such as seeking restitution to have the homeowners in the instant case made whole, pursuant to HRS § 487-14, OCP is appearing in the case on behalf of the State, not on behalf of the homeowner Defendants or any other particular consumers. OCP serves a broader role in protecting the public.

III. RESPONDENTS' UNLAWFUL CONDUCT.

By virtue of the instant foreclosure action having been filed in March of 2015 against the Defendant homeowners, the homeowners were at all material times "distressed property owners" as that term is defined in HRS § 480E-2, the impact being that the conduct of those seeking to assist the homeowners is strictly regulated both state law and federal law.[1]

[1] The federal law at issue is the Mortgage Assistance Relief Services Rule ("MARS Rule" or Regulation O), 12 C.F.R. Part 1015, and OCP does have authority to enforce the MARS Rule, per

Based on the record developed to date, which includes the declaration testimony of the Defendant homeowners, corroborated by their bank statements and copies of their processed checks, in the absence of admissible evidence submitted by the Respondents, the Court may find and conclude that Respondents have acted unlawfully in the following respects:

1. Respondents Dradi and Sai have acted in violation of HRS § 480E-3 by failing to use a written contract to fully disclose all of the services they were to perform.

2. Respondents Dradi and Sai have acted in violation of HRS § 480E-3 by failing to provide the homeowners with written notification of their legal right to cancel the Respondents' services at any time.

3. Respondents Dradi and Sai have acted in violation of HRS § 480E-10(a)(9) by collecting money for their services in advance.

4. Respondents Dradi and Sai have acted in violation of HRS § 480E-10(a)(2)(A) by misrepresenting and overstating the benefits of their services, as Respondents failed to save the homeowners' home or have the case dismissed on jurisdictional grounds.

5. Respondents Dradi and Sai have acted in violation of HRS § 480E-10(a)(3) by having assisted the homeowners with the preparation, filing and/or presentation of a motion to dismiss the foreclosure based on Hawaiian sovereignty, representing both explicitly and implicitly that the Court lacked jurisdiction and the foreclosure case would be dismissed, without having competent and reliable evidence to substantiate those claims.

HRS§ 480E-14. While OCP is not seeking to have Respondents penalized under federal law in this forum, the fact that Respondents also violated federal law does reflect the egregiousness of Respondents' conduct, and those violations constitute additional violations of HRS § 480-2(a). Additionally, interpretations of the MARS Rule are instructive for purposes of interpreting state law.

6. Respondents Dradi and Sai have acted in violation of HRS § 480E-10(a)(4) by concealing from the homeowners the fact that the homeowners were paying for an oft-rejected Hawaiian sovereignty argument.

7. Respondents Dradi and Sai have acted in violation of HRS § 480E-10(a)(2)(G) by representing to the homeowners that they had completed their services.

8. Respondents Dradi and Sai have acted in violation of HRS § 480E-10(a)(2)(F) by concealing from the homeowners their entitlement to a refund of all of the money paid them by the homeowners.

9. Respondents Dradi and Sai have acted in violation of HRS § 480E-10(a)(2)(G) by representing to the homeowners that they had the right to retain the money paid them by the homeowners.

10. Respondent Dradi has acted in violation of HRS § 480E-10(a)(2)(K) by misrepresenting to the homeowners the total cost of the Respondents' services.

11. Respondents Dradi and Sai have acted in violation of HRS § 480E-9.5 by failing to create and retain requisite records.

12. Respondents Dradi and Sai have acted in violation of HRS § 480E-10(a)(10) by charging the homeowners fees in excess of the legal limit.[2]

13. Respondent Kaiama has acted in violation of HRS § 480E-15(1) by failing to use a written contract to fully disclose all of the services he was to perform.

14. Respondent Kaiama has acted in violation of HRS § 480E-15(4) by not having fully performed, as that term is defined in HRS § 480E-2, and at a time when he has clearly abandoned

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[2] Exhibit D to the attached Declaration of Counsel shows the homeowners' monthly mortgage payment during the applicable time period to be $2,146.69, and thus even legitimate distressed property consultants who sought compensation only after they had fully performed could not request more than $4,293.38.

making any further effort to save the homeowners' property from foreclosure, nevertheless retaining money that rightfully belongs to the homeowners, compounded by the fact that his services conferred no benefit upon the homeowners in the absence of a determination from this Court to the contrary.

15. Respondents Dradi and Sai have committed numerous violations of HRS § 480-2(a), by virtue of HRS § 480E-11, as each violation of HRS Chapter 480E constitutes a per se violation of HRS § 480-2(a).

16. Respondent Kaiama has violated HRS § 480-2(a), by virtue of HRS § 480E-11, as each violation of HRS Chapter 480E constitutes a per se violation of HRS § 480-2(a).

17. Respondent Kaiama has committed numerous additional violations of HRS § 480-2(a), by associating himself with distressed property consultants in providing assistance to the homeowners, when he knew or should have known that Dradi and Sai were violating HRS Chapter 480E by acting as they did, compounded by Kaiama's failure to disclose those violations of the Defendant homeowners.

IV. APPRORIATENESS AS TO THE ISSUANCE OF AN ORDER TO SHOW CAUSE.

There is good cause to believe the Respondents have engaged in and are likely to continue to engage in acts or practices that violate HRS § 480-2(a). The Court has seen firsthand the impact of Respondents' services on the Defendant homeowners. Respondents need to answer for their conduct without delay, and the issuance of an order to show has proven to be an effective means to accomplish this result. In support of its position, OCP represents the following:

1. In construing HRS § 480-2(a), "the courts and the office of consumer protection shall give due consideration to the rules, regulations, and decisions of the Federal Trade Commission and the federal courts interpreting section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)." HRS § 480-2(b).

2. In instances of mortgage rescue fraud, because of the public interest involved, the FTC routinely seeks to expedite getting to the heart of the matter through the issuance of an order to show cause. See, e.g., FTC v. Mortg. Relief Advocates LLC, No. CV-14-5434-MWF, 2014 WL 12479398 (C.D. Cal. July 25, 2014).

3. Most recently, a show cause order was issued at the request of the FTC in a mortgage rescue fraud case earlier this month in FTC v. Consumer Defense, LLC, No. 2:18-cv-00030 (D. Nev. Jan. 18, 2018) (an opinion too new to be picked up by Westlaw, but which is attached in its entirety as Exhibit E to the Declaration of counsel).

4. OCP is the State counterpart to the FTC. State of Hawaii Office of Consumer Protection v. Cabebe (In re Cabebe), No. 15–01446, 2015 WL 5844484, at *5 (Bankr.D.Haw. Oct. 5, 2016, as corrected Nov. 15, 2016).

5. Remedies available to the FTC are also available to OCP. See, e.g., State of Hawaii Office of Consumer Protection v. Cabebe (In re Cabebe), No. 15–01446, 2017 WL 2062850, at *14 (Bankr.D.Haw. May 11, 2017, as corrected May 15, 2017):

> As the FTC and OCP are government regulatory agencies created for the like purpose of protecting consumers from the same types of unlawful conduct (notably, unfair or deceptive acts or practices), and as both agencies have comparable statutory authority to obtain injunctive relief (the FTC under section 13(b) of the FTCA, codified at 15 U.S.C. § 53(b), and OCP under Haw. Rev. Stat. § 487–15), and as the rules, regulations and decisions of the FTC and the federal courts overseeing FTC actions serve as a guide to the enforcement of Haw. Rev. Stat. § 480–2,80 OCP is every bit as much entitled to seek disgorgement as the FTC.

6. OCP asks that the Court follow the show cause procedure used in FTC v. Consumer Defense, LLC, as set forth in Exhibit E, and set a show cause hearing, with notice to the

Respondents and other parties, and adopt the proposed briefing schedule as set forth in the proposed order attached hereto, with whatever modifications the Court may wish to make.[3]

7. In the event the Respondents fail or refuse to come forward and show their compliance with HRS Chapter 480E, OCP respectfully requests that the Court enter appropriate relief, as addressed below.

V. APPRORIATENESS AS TO THE REQUESTED RELIEF.

If the Respondents fail to satisfactorily show their compliance with the requirements and prohibitions imposed upon distressed property consultants and attorneys under HRS Chapter 480E, OCP respectfully requests that the Court enter appropriate relief, which may include disgorgement, restitution to the Defendant homeowners, fines and penalties payable to OCP, declaratory relief that the contracts between Respondents and Defendant homeowners are void, and permanent injunctive relief. OCP additionally asks that the Court retain jurisdiction of the case for purposes of construction, modification and enforcement of any order or judgment that may be rendered, and for all other purposes, particularly enforcement of any permanent injunction, although OCP asks that, if injunctive relief is ordered, the Court also authorize its orders and judgment to be enforced before any court where venue is proper, as the need may arise, based upon the alleged conduct in that venue which may enjoined by this Court.

In support of its position for relief, OCP represents the following:

1. There does not appear to be a genuine issue of material fact as to the Respondents' unlawful conduct. Once this action was commenced in March of 2015, according to the testimony

[3] OCP is not seeking the extent of the relief typically sought by the FTC, such as an asset freeze, appointment of a receiver, expedited discovery procedures, a temporary restraining order, or a preliminary injunction. Instead, the show cause procedure recommended by OCP is focused on notice -- notice to the Respondents of the evidence of their wrongdoing, notice to the Respondents of the consumer protection laws that have been violated, and notice of the remedial relief being sought.

of Tala Raymond Fonoti Willadean Lehuanani Grace, they relied upon Respondents to have the case dismissed. Respondents required the Defendant homeowners to pay for the Respondents' services in advance. The payments to the Respondents cleared in May and June of 2015 (Exhibits A, B, and C). The motion to dismiss was not filed until April 21, 2016, and was not argued by Mr. Kaiama until May 17, 2017, with the order denying the motion entered July 7, 2017.

2. Regardless of the other alleged unlawful conduct at issue, the consequences of taking advance payments are crystal clear. Once mortgage rescue fraud has been "sufficiently proven to the Court's satisfaction, ... all that remains is for the Court to fashion equitable remedies suited to meet the necessities of [the] case." State of Hawaii Office of Consumer Protection v. Cabebe (In re Cabebe), No. 15–01446, 2017 WL 2062850, at *8 (Bankr.D.Haw. May 11, 2017, as corrected May 15, 2017).

3. "Collection of advance fees from distressed property owners for mortgage assistance relief services is strictly prohibited under both state law [HRS § 480E-10(a)(9)] and federal law [MARS Rule § 1015.5(a)]." State of Hawaii Office of Consumer Protection v. Cabebe (In re Cabebe), No. 15–01446, 2017 WL 2062850, at *14 (Bankr.D.Haw. May 11, 2017, as corrected May 15, 2017) (the bracketed citations to the specific state and federal laws being violated appear in footnotes in the opinion).

4. Distressed property consultants aiming to circumvent HRS Chapter 480E commonly do so by requesting payment in advance so consumers part with their money before having the opportunity to discover something is amiss. State of Hawaii Office of Consumer Protection v. Cabebe (In re Cabebe), No. 15–01446, 2017 WL 2062850, at *4 (Bankr.D.Haw. May 11, 2017, as corrected May 15, 2017).

5. The mere fact the Respondents required payment in advance suggests the Respondents knew they would be unable to confer the promised benefits upon the Defendant homeowners:

> Of all the protections in place for consumers through Haw. Rev. Stat. Chapter 480E and the MARS Rule, none may be more important than the prohibition on collecting advance fees, because fraudsters are on notice of the futility in attempting to render services for which they will not be paid unless they are successful.

State of Hawaii Office of Consumer Protection v. Cabebe (In re Cabebe), No. 15–01446, 2017 WL 2062850, at *14 (Bankr.D.Haw. May 11, 2017, as corrected May 15, 2017).

6. That violation alone -- taking advance payment -- constitutes a per se violation of HRS § 480-2(a) (the so-called "UDAP" statute prohibiting unfair or deceptive acts or practices), pursuant to HRS § 480E-11.

7. Declaratory Relief. As a matter of law these violations of HRS § 480E-10(a)(9) and HRS § 480-2(a) render void and unenforceable any contracts between the parties, pursuant to HRS § 480-12, and the entry of declaratory relief to that effect is appropriate. See, e.g., State of Hawaii Office of Consumer Protection v. Cabebe (In re Cabebe), No. 15–01446, 2017 WL 2062850, at *10, 12 (Bankr.D.Haw. May 11, 2017, as corrected May 15, 2017) (finding (at *10) that "[l]aw and equity allow the Court to award declaratory relief to prevent or redress fraud or injustice or protect the rights of third persons."), and holding (at *12) that "[t]o further remedy the effects of the unlawful conduct carried out by or on behalf of [the violators of the statute], all contracts and agreements made by consumers with MEI or ME are declared void and unenforceable at law or in equity. See also Hawai'i Cmty. Fed. Credit Union v. Keka, 94 Hawai'i 213, 229, 11 P.3d 1, 17 (2000) ("Our consumer protection statute is remedial in nature and must be liberally construed in order to accomplish the purpose for which it was enacted.")(citations omitted).

8. The natural consequence of the contracts between the parties being void and unenforceable as a matter of law is that additional remedial relief is in order, notably restitution and injunctive relief of some sort.

9. "The exercise of broad equitable relief is generally appropriate in matters of consumer protection brought by a government agency to enforce a regulatory statute,[63] and in a case such as this the Court's equitable powers assume an even broader and more flexible character than when only a private controversy is at stake."[64] State of Hawaii Office of Consumer Protection v. Cabebe (In re Cabebe), No. 15–01446, 2017 WL 2062850, at *8 (Bankr.D.Haw. May 11, 2017, as corrected May 15, 2017).[4]

10. Restitution. Where mortgage rescue fraud has been perpetrated, courts have found that "consumers are entitled to the return of the money," i.e., restitution. See, e.g., State of Hawaii Office of Consumer Protection v. Malinay (In re Malinay), No. 15–00044, 2015 WL 5208985, at *5 (Bankr.D.Haw. Sept. 3, 2015); State of Hawaii Office of Consumer Protection v. Cabebe (In re Cabebe), No. 15–01446, 2015 WL 5844484, at *7 (Bankr.D.Haw. Oct. 5, 2016, as corrected Nov. 15, 2016).

11. Mandatory Fines and Penalties. The violation of HRS § 480E-10(a)(9), and the resulting violation of HRS § 480-2(a) (pursuant to HRS § 480E-11), subject the violators to mandatory fines and penalties under HRS § 480-3.1, in a sum of not less than $500 nor more than $10,000 for each violation, and continuing for each day of the violation. See, e.g., State of Hawaii

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[4] The endnotes to the original quoted passage have been left intact. Endnote 63 reads: *F.T.C. v. Commerce Planet, Inc.*, 815 F.3d 593, 599 (9th Cir. 2016), *cert. denied sub nom. Gugliuzza v. F.T.C.*, 137 S. Ct. 624 (2017), *and cert. denied sub nom. Gugliuzza v. F.T.C.*, 137 S. Ct. 624 (2017), citing *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946). Endnote 64 reads: *F.T.C. v. H.N. Singer, Inc.*, 668 F.2d 1107 (9th Cir.1982), citing *Virginian R. Co. v. System Federation*, 300 U.S. 515, 552 (1937); *F.T.C. v. Pantron I Corp.*, 33 F.3d 1088, 1102 (9th Cir.1994), *cert. denied*, 514 U.S. 1083; *F.T.C. v. Stefanchik*, 559 F.3d 924, 931 (9th Cir.2009).

Office of Consumer Protection v. Cabebe (In re Cabebe), No. 15–01446, 2017 WL 2062850, at *9 (Bankr.D.Haw. May 11, 2017, as corrected May 15, 2017):

> Under Haw. Rev. Stat. § 480–3.1, fines of not less than $500 nor more than $10,000, calculated per violation and per day, "shall" be imposed against any person, company, association or corporation for each violation of Haw. Rev. Stat. § 480–2, which sum is in addition to remedies or penalties under all other laws, such as restitution.

12. Payment of advance fees in violation of HRS § 480E-10(a)(9) is but one of no less than seventeen (17) violations, identified above, that appear to have been committed by the Respondents, which in turn mean that same number of additional violations of HRS § 480-2(a).

13. In the event Respondents fail to appear as directed, in lieu of its right and potential entitlement to greater sums using the per-violation-per-day formula, OCP recommends that fines and penalties be imposed as follows: (i) as against Respondent Rose Dradi, the sum of $100,000, (ii) as against Respondent David Keanu Sai, the sum of $50,000, and (iii) as against Respondent Dexter Kaiama, the sum of $25,000.

14. In the event Respondents appear as directed, OCP will makes its recommendation of fines and penalties through its reply memorandum.

15. Permanent injunctive relief. Permanent injunctive relief is a statutory remedy available to enjoin any violation of HRS § 480-2(a). HRS § 480-15.

16. In the instant case, nearly every aspect of Respondents' services ran afoul of an applicable requirement or prohibition, from the initial contracting stage, to the illegal receipt of advance compensation to the ultimate failure to fully perform. These business practices are horrific to attempt to correct after the fact, as seen in the instant case by the Defendant homeowners facing eviction, and the Respondents likely having spent the money collected illegally from the homeowners which conferred absolutely no benefit upon them.

17. In other instances where mortgage rescue fraud has been shown, permanent injunctive relief has routinely been awarded as a means to help prevent ongoing violations. See, e.g., State of Hawaii Office of Consumer Protection v. Malinay (In re Malinay), No. 15–00044, 2015 WL 5208985, at *6 (Bankr.D.Haw. Sept. 3, 2015); State of Hawaii Office of Consumer Protection v. Cabebe (In re Cabebe), No. 15–01446, 2015 WL 5844484, at *10 (Bankr.D.Haw. Oct. 5, 2016, as corrected Nov. 15, 2016); State of Hawaii Office of Consumer Protection v. Cabebe (In re Cabebe), No. 15–01446, 2017 WL 2062850, at *12 (Bankr.D.Haw. May 11, 2017, as corrected May 15, 2017).

18. Permanent injunctive relief is appropriate in this case because of the seriousness of the violations involving advance payments. See, e.g., HRS § 480E-12.

19. The Plaintiff's memorandum opposing the motion to dismiss, filed herein on December 19, 2016, makes clear that Mr. Sai's arguments about court jurisdiction based on Hawaiian sovereignty grounds have been soundly rejected as early as 2011 in Sai v. Clinton, 778 F. Supp. 2d 1 (D.D.C. 2011) affd sub nom. Sai v. Obama, 11-5142, 2011 WL 4917030 (D.C. Cir. Sept. 26, 2011). Plaintiff cites seven Hawaii cases where these arguments have previously been rejected. Based on this record, Respondents had no reason to believe they could have the instant case dismissed on jurisdictional grounds, which leads to the fair conclusion that Respondents schemed to take the Defendant homeowners' money knowing their services would confer no benefit upon their clients. Respondents are preying on desperate homeowners, and that is exactly what the legislature was hoping to remedy through HRS Chapter 480E. See HRS § 480E-1.

20. If the Court is reluctant to enter the requested permanently injunctive relief, OCP alternatively requests that Respondents Dradi and Sai be enjoined from acting as distressed property consultants, and Respondent Kaiama be enjoined from contracting with or otherwise

representing distressed property owners, until such time as each Respondent pays in full all restitution and fines and penalties awarded against him or her.

DATED: Honolulu, Hawai'i, 1/23/2018.

JAMES F. EVERS
Attorney for Movant
State of Hawai'i Office of Consumer Protection

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF8 MASTER PARTICIPATION TRUST, Plaintiff, vs. TALA RAYMOND FONOTI; WILLADEAN LEHUANANI GRACE; CAPITAL ONE BANK (USA), N.A.; JOHN DOES 1-50; JANE DOES 1-50; DOE PARTNERSHIPS 1-50; DOE CORPORATIONS 1-50; DOE ENTITIES 1-50; AND DOE GOVERNMENTAL UNITS 1-50, Defendants.	CIVIL NO. 15-1-0371-03 JPC (Foreclosure) DECLARATION OF TALA RAYMOND FONOTI; EXHIBITS "A" – "C"
STATE OF HAWAII, BY ITS OFFICE OF CONSUMER PROTECTION, Intervening Petitioner, vs. ROSE DRADI, DAVID KEANU SAI, AND DEXTER KAIAMA, Respondents.	

DECLARATION OF TALA RAYMOND FONOTI

I, Tala Raymond Fonoti, make the following statements based on my personal knowledge of these matters:

1. I am a resident of the City and County of Honolulu, State of Hawaii, as is my spouse. Any reference below to "we" or "our" refers to my wife and I.

2. Our residence is currently in foreclosure, and has been since March of 2015.

3. We first met Rose Dradi at a coffee shop next to Foodland, at a time when we were several years behind in our mortgage payments and had received demand letters threatening foreclosure. Ms. Dradi said she could help us save our home, but she would need to be paid for her services in advance.

4. In May of 2015, Ms. Dradi came to our house to review the foreclosure papers that had been served upon us. Ms. Dradi claimed she could help save our home from foreclosure.

5. Ms. Dradi claimed she could file a motion to end the foreclosure and have the case dismissed because the court lacked jurisdiction over the case.

6. Ms. Dradi indicated that these services were used in other foreclosure cases to successfully stop the foreclosure process from going forward because the Hawaii state courts lack jurisdiction over such cases.

7. Ms. Dradi indicated that she worked with David Keanu Sai, who was an expert in showing that because of Hawaii sovereignty issues, "international law" controlled the issues in our case, which Hawaii courts lack jurisdiction to enforce.

8. Ms. Dradi indicated that, with the assistance of Mr. Sai, she would prepare the papers necessary to prove to the court that it lacked jurisdiction, and have our case dismissed, in exchange for advance payment in the amount of $4,950.00 made payable to her.

9. Ms. Dradi indicated that the assistance of Mr. Sai would cost an additional $2,000.00, payable in advance.

10. Ms. Dradi indicated Mr. Sai's expert written testimony would prove to the court that it lacked jurisdiction and that the foreclosure case would have to be dismissed.

11. We told Ms. Dradi we did not have enough money to pay for these services in full, so she said we could pay half now, and give her two checks dated the following month for the balance.

12. Based on Ms. Dradi's representations, we gave her a check for $2,475.00, made payable to her, as she requested. The check later cleared and the funds left our account, as shown by our bank statement for May 2015. Attached hereto as Exhibit A is a true and correct copy of the pertinent page of our bank statement for May 2015 showing the funds paid to Ms. Dradi cleared our account.

13. Based on Ms. Dradi's representations, we gave her a check made payable to Mr. Sai for $1,000.00, as she requested. The check later cleared and the funds left our account. See Exhibit A.

14. The following month, we understood Ms. Dradi accepted payment on the second of the two checks we gave to her, because the second check made payable to Ms. Dradi, also in the amount of $2,475.00, cleared and the funds left our account in June of 2015. Attached hereto as Exhibit B is a true and correct copy of the pertinent page of our bank statement for June 2015 showing the funds paid to Ms. Dradi cleared our account.

15. The following month, we understood Mr. Sai also accepted payment made to him, because the second check made payable to Mr. Sai, also in the amount of $1,000.00, cleared and the funds left our account in June of 2015. See Exhibit B.

16. I have attempted to contact my bank for copies of the cancelled checks described above, and attached hereto as Exhibit C are true and correct copies of the cancelled checks which we have obtained as of this time.

17. After the papers were prepared, Ms. Dradi came to our home to show us what had been prepared, and said that an additional payment of $300.00 was necessary to actually file the papers with the court to have the foreclosure case dismissed. We paid Ms. Dradi $300 cash, as she requested, and she later provided us with the filed papers seeking dismissal of the case.

18. Ms. Dradi indicated that for an additional fee, to be paid to the attorney, she would arrange for an attorney to represent us and to argue on our behalf at the hearing, and we agreed.

19. As the hearing neared, Ms. Dradi indicated that we would be represented at the hearing by an attorney named Dexter Kaiama, and that we should be prepared to make a cash payment of $100.00 to Mr. Kaiama the morning of the hearing.

20. At the hearing, we showed up, but Mr. Kaiama did not, and the judge was kind enough to grant us a continuance of the hearing. Afterward, we called Mr. Kaiama, who indicated he had no idea who we were.

21. We then called Ms. Dradi, and she indicated she would get that resolved.

22. On the morning of the continued hearing, we met with Mr. Kaiama for the first time, and paid him $100.00 cash, as we had been instructed to do by Ms. Dradi.

23. We attended the hearing with Mr. Kaiama, and our motion was denied. The presiding judge seemed to feel strongly that our position lacked merit, and commented that if the position set forth in the motion was correct, then the judge would not be there, which we took to mean he would be out of a job, or something to that effect.

24. With the denial of the motion, we have been helpless to stop the foreclosure from proceeding, and we now face being ejected from our home.

25. The foreclosure defense services sold to us proved to be of no benefit to us, and the representations that our home we be saved have been proven to be false.

26. We have paid out at least $7,250.00 for having paid for services which Ms. Dradi described as enabling us to have the foreclosure case dismissed. We made payments of at least $5,250.00 to Ms. Dradi, and $2,000.00 to Mr. Sai, and $100.00 to Mr. Kaiama.

27. We have been contacted by the State of Hawaii Office of Consumer Protection for more details as to our involvement with Ms. Dradi, and have come to learn that we are the victims of mortgage rescue fraud for having paid for a bogus foreclosure defense service.

28. Ms. Dradi never provided us with a written contract describing the services that she was going to perform for us.

29. Keone Sai never provided us with a written contract describing the services that he was going to perform for us.

30. Dexter Kaiama never provided us with a written contract describing the services that he was going to perform for us.

31. We paid for the services of Ms. Dradi, Mr. Sai and Mr. Kaiama because we relied upon the advice given to us that these serices would enable us to to save our home from foreclosure, and yet our foreclosure case was not dismissed as we were told would happen. The services of Ms. Dradi, Mr. Sai and Mr. Kaiama did not work to end our foreclosure. We would like to have our money paid back to us.

32. To this day I have not spoken again to Mr. Kaiama, and I am not aware that he has performed any additional legal services on our behalf.

33. I think we have been misled and treated unfairly. The State of Hawaii Office of Consumer Protection has agreed to do what it can to get out money back.

I declare under penalty of law that the foregoing statements are true and correct.

Executed this 16th day of January, 2018, at Honolulu, Hawaii.

Tala Raymond Fonoti

CREDIT LINE LOAN 30 - Continued

Date	Description	Amount

INTEREST RATE DETAIL

BEGIN DATE	THROUGH DATE	ANNUAL PERCENTAGE RATE*	BALANCE SUBJECT TO INTEREST RATE
01MAY	01MAY	11.90%	$0.00
02MAY	03MAY	11.90%	$500.00
04MAY	06MAY	11.90%	$0.00
07MAY	11MAY	11.90%	$100.00
12MAY	31MAY	11.90%	$0.00

*YOUR ANNUAL PERCENTAGE RATE IS THE ANNUAL INTEREST RATE ON YOUR ACCOUNT

SHARE DRAFT SUFFIX 8

Date	Description	Credit/Debit	Balance
01MAY	No. XXXX96, Balance at the beginning of the period		$86.98
01MAY	Deposit-ACH-V732 DEPT OF LABOR (UI PAYMENT)	$544.00	$630.98
01MAY	Deposit Personal Credit Union Trace #731513373309 Transfer "STD" 350.00 from share 0	$350.00	$980.98
01MAY	Deposit		
04MAY*	Withdrawal FOODLAND EWA BE FOODLAND EWA BE EWA BEACH HIUS Trace #652631	$1,050.00 -$29.33	$2,030.98 $2,001.65
02MAY	Deposit Transfer 'LTS' 500.00 from acct: XXXX96-30	$500.00	$2,501.65
02MAY	Withdrawal #2129		
04MAY	Deposit-CASH	-$2,475.00	$26.65
05MAY*	Withdrawal CVS 07356 07356 91 919 FT WEAVEREWA BEACH HIUS Trace #57302	$1,301.67 -$81.47	$1,328.32 $1,246.85
05MAY*	Withdrawal CVS 07356 07356 91 919 FT WEAVEREWA BEACH HIUS Trace #20547	-$58.83	$1,188.02
06MAY	Withdrewal #2131		
07MAY*	Withdrawal BANK OF HAWAII MCDONALDS EWA BEAC EWA BEACH HIUS Trace #260058	-$1,000.00 -$200.00	$188.02 -$11.98
07MAY*	Deposit Overdraft transfer from XXXX96-L30		
07MAY	Deposit-ACH-V732 DEPT OF LABOR (UI PAYMENT)	$100.00 $544.00	$88.02 $632.02
08MAY*	Withdrawal CHEVRON 0090371 CHEVRON 0090371 EWA BEACH HIUS Trace #30752	-$66.60	$565.42
08MAY	Withdrawal		
11MAY*	Withdrawal CVS 07356 07356 91 919 FT WEAVEREWA BEACH HIUS Trace #29474	-$50.13	$515.29
11MAY*	Withdrawal BANK OF HAWAII MCDONALDS EWA BEAC EWA BEACH HIUS Trace #303664	-$200.00	$315.29
11MAY	Withdrawal BANK OF HAWAII 91 919 FORT WEAVER EWA BEACH HIUS Trace #322988	-$100.00	$215.29
11MAY	Withdrawal COSTCO WHSE #10 4589 KAPOLEI PARKWAY KAPOLEI HIUS Trace #640	-$193.14	$22.15
11MAY	Deposit		
12MAY	Withdrawal-CASH	$13,041.19	$13,063.34
12MAY	Withdrawal Transfer 'STL' 100.16 to acct: XXXX96-30	-$2,000.00 -$100.16	$11,063.34 $10,963.18
12MAY	Withdrawal Transfer 'STS' 1000.00 to acct: XXXX96-0	-$1,000.00	$9,963.18
12MAY	Withdrawal COSTCO GAS #103 COSTCO GAS #103 KAPOLEI HIUS Trace #38399	-$47.00	$9,916.18
13MAY	Withdrawal COSTCO WHSE #10 4589 KAPOLEI PARKWAY KAPOLEI HIUS Trace #2709	-$704.59	$9,211.59
14MAY	Withdrawal NETFLIX.COM NETFLIX.COM NETFLIX.COM CAUS Trace #20555	-$12.55	$9,199.04
	Withdrawal HAWAIIAN HAWAIIAN WEB SALES HIUS Trace #21811	-$277.00	$8,922.04

SHARE DRAFT SUFFIX 8 - Continued on page 3...

Direct All Inquiries To:

Hawaiian Tel Federal Credit Union
1138 North King Street • Honolulu HI 96817
1-800-272-5255•808-832-6700•www.haelfcu.com

[redacted]9996 2
01JUN15 30JUN15

MEMBER'S STATEMENT OF ACCOUNT
YOUR PERMANENT RECORD

WILLADEAN L GRACE
TALA R FONOTI
91-330 EWA BEACH RD
EWA BEACH HI 96706-2942

INTEREST RATE DETAIL

BEGIN DATE	THROUGH DATE	ANNUAL PERCENTAGE RATE*	BALANCE SUBJECT TO INTEREST RATE
01JUN	24JUN	11.90%	0.00
25JUN	25JUN	11.90%	500.00
26JUN	28JUN	11.90%	0.00
29JUN	29JUN	11.90%	200.00
30JUN	30JUN	11.90%	500.00

*YOUR ANNUAL PERCENTAGE RATE IS THE ANNUAL INTEREST RATE ON YOUR ACCOUNT

SHARE DRAFT Suffix 8

No. [redacted]9996. Balance at the beginning of the period.....$			3986.13
01JUN Withdrawal SAMS CLUB #6410 SAM'S Club PEARL CITY HIUS Trace #218773	-44.93 =		3943.20
01JUN Withdrawal PP*RACHELSLEIS PP*RACHELSLEIS WAIPAHU HIUS Trace #21875	-89.01 =		3854.19
01JUN Withdrawal CVS D7356 07356 91 919 FT WEAVEREWA BEACH HIUS Trace #18783	-43.29 =		3810.90
01JUN Withdrawal BANK OF HAWAII 91 919 FORT WEAVER EWA BEACH HIUS Trace #473824	-200.00 =		3610.90
01JUN Deposit-ACH-V732 DEPT OF LABOR (UI PAYMENT)	544.00 =		4154.90
01JUN Withdrawal OHANA DRIVE INN OHANA DRIVE INN HONOLULU HIUS Trace #602899	-36.01 =		4118.89
02JUN Withdrawal WAL-MART #2314 Wal Mart Store WAIPAHU HIUS Trace #890996	-216.76 =		3902.13
02JUN Deposit-EXP	2207.24 =		6109.37
02JUN Withdrawal #2130	-2475.00 =		3634.37
03JUN Withdrawal WAL-MART #2314 Wal Mart Store WAIPAHU HIUS Trace #348479	-65.47 =		3568.90
04JUN Deposit-ACH-V732 DEPT OF LABOR (UI PAYMENT)	418.00 =		3986.90
04JUN Withdrawal COSTCO GAS #103 COSTCO GAS #103 KAPOLEI HIUS Trace #757872	-61.60 =		3925.30
05JUN Withdrawal #2132	-1000.00 =		2925.30
08JUN* Withdrawal COSTCO WHSE #10 4589 KAPOLEI PARKWAY KAPOLEI HIUS Trace #7201	-338.32 =		2586.98
08JUN* Withdrawal BANK OF HAWAII MCDONALDS EWA BEAC EWA BEACH HIUS Trace #155453	-200.00 =		2386.98
08JUN* Withdrawal PIZZA HUT 12 EW PIZZA HUT 12 EWA BEACH EWA BEACH HIUS Trace #30553	-60.71 =		2326.27
08JUN Withdrawal BANK OF HAWAII MCDONALDS EWA BEAC EWA BEACH HIUS Trace #149997	-200.00 =		2126.27
09JUN Withdrawal BANK OF HAWAII 91 919 FORT WEAVER EWA BEACH HIUS Trace #238748	-200.00 =		1926.27
10JUN Withdrawal KAISER HOSPITAL KAISER HOSPITAL HONOLULU HIUS Trace #9016	-50.00 =		1876.27
10JUN Withdrawal MOANULUA HOSPIT MOANULUA HOSPITAL HONOLULU HIUS Trace #9017	-20.99 =		1855.28
10JUN Withdrawal	-46.20 =		1809.08

** Continued on page 3. Financial and Tax Summary on last page **

EXHIBIT B

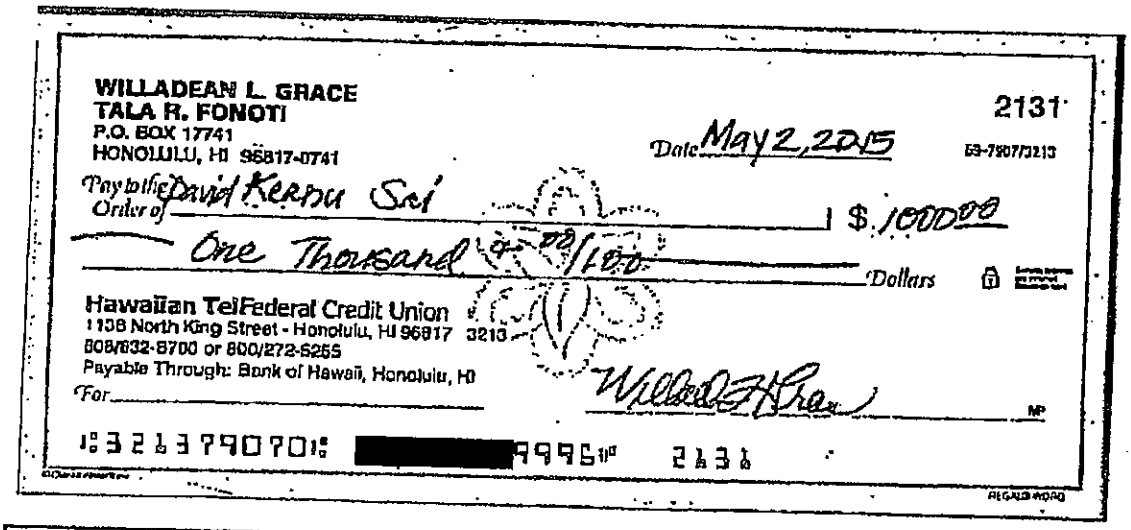
NCUA

EQUAL HOUSING LENDER

Bank of Hawaii

Current Date: January 12, 2018

Account Number: [redacted]
Capture Date: May 05, 2015
Item Number: 9992004902316
Posted Date: May 05, 2015
Posted Item Number: 3168333550
Amount: 1,000.00
Record Type: Debit



WILLADEAN L. GRACE
TALA R. FONOTI
P.O. BOX 17741
HONOLULU, HI 96817-0741

2131

Date May 2, 2015

63-7907/3213

Pay to the Order of David Kerpu Sr. $ 1000.00

One Thousand & 00/100 Dollars

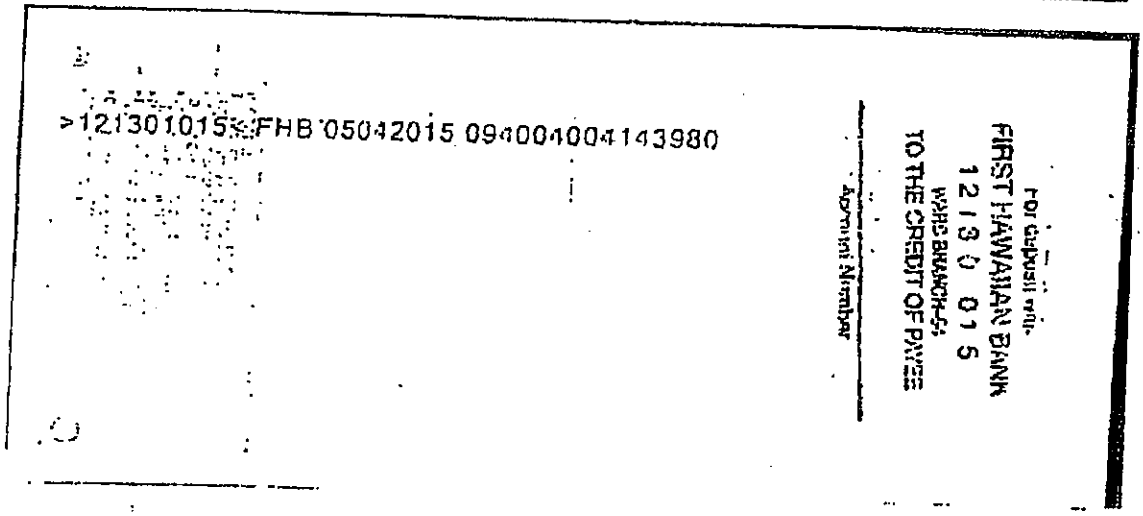
Hawaiian Tel Federal Credit Union
1136 North King Street - Honolulu, HI 96817 3213
808/832-5700 or 800/272-5255
Payable Through: Bank of Hawaii, Honolulu, HI

For

Willadean Grace

MP

⑈321379070⑈ [redacted] 9995⑈ 2131



>121301015<FHB 05042015 094001004143980

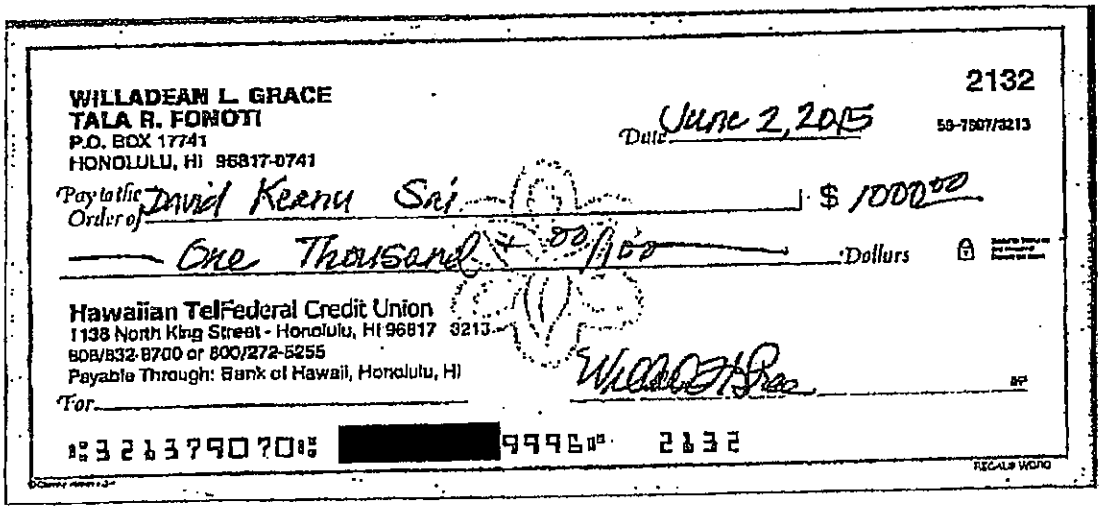
FOR DEPOSIT ONLY
FIRST HAWAIIAN BANK
12130015
WAIS BRANCH
TO THE CREDIT OF PAYEE

Account Number

EXHIBIT C

Bank of Hawaii

Current Date:	January 12, 2018
Account Number:	[redacted]
Capture Date:	June 04, 2015
Item Number:	9992008900996
Posted Date:	June 04, 2015
Posted Item Number:	3176984270
Amount:	1,000.00
Record Type:	Debit



WILLADEAN L. GRACE
TALA R. FONOTI
P.O. BOX 17741
HONOLULU, HI 96817-0741

2132

Date June 2, 2015 — 59-7507/3213

Pay to the Order of David Keanu Sai — $ 1000.00

One Thousand & 00/100 — Dollars

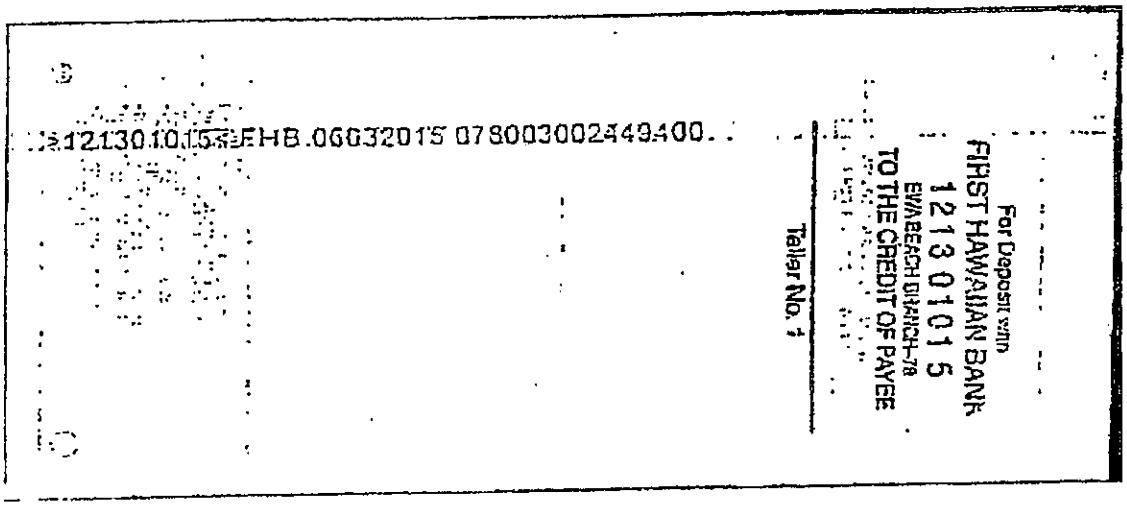
Hawaiian TelFederal Credit Union
1138 North King Street - Honolulu, HI 96817 3213
808/832-8700 or 800/272-5255
Payable Through: Bank of Hawaii, Honolulu, HI

For

Willadean Grace

⑈321379070⑈ [redacted] 9996⑈ 2132

RECALL WORD



⑆121301015⑆EHB.06032015 078003002449400..

For Deposit with
FIRST HAWAIIAN BANK
121301015
EWA BEACH BRANCH-78
TO THE CREDIT OF PAYEE

Teller No. 1

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF8 MASTER PARTICIPATION TRUST, Plaintiff, vs. TALA RAYMOND FONOTI; WILLADEAN LEHUANANI GRACE; CAPITAL ONE BANK (USA), N.A.; JOHN DOES 1-50; JANE DOES 1-50; DOE PARTNERSHIPS 1-50; DOE CORPORATIONS 1-50; DOE ENTITIES 1-50; AND DOE GOVERNMENTAL UNITS 1-50, Defendants. STATE OF HAWAII, BY ITS OFFICE OF CONSUMER PROTECTION, Intervening Petitioner, vs. ROSE DRADI, DAVID KEANU SAI, AND DEXTER KAIAMA, Respondents.	CIVIL NO. 15-1-0371-03 JPC (Foreclosure) DECLARATION OF WILLADEAN LEHUANANI GRACE; EXHIBITS "A" – "C

DECLARATION OF WILLADEAN LEHUANANI GRACE

I, Willadean Lehuanani Grace, make the following statements based on my personal knowledge of these matters:

1. I am a resident of the City and County of Honolulu, State of Hawaii, as is my spouse. Any reference below to "we" or "our" refers to my husband and I.

2. Our residence is currently in foreclosure, and has been since March of 2015.

3. We first met Rose Dradi at a coffee shop next to Foodland, at a time when we were several years behind in our mortgage payments and had received demand letters threatening foreclosure. Ms. Dradi said she could help us save our home, but she would need to be paid for her services in advance.

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29. Keone Sai never provided us with a written contract describing the services that he was going to perform for us.

30. Dexter Kaiama never provided us with a written contract describing the services that he was going to perform for us.

31. We paid for the services of Ms. Dradi, Mr. Sai and Mr. Kaiama because we relied upon the advice given to us that these serices would enable us to to save our home from foreclosure, and yet our foreclosure case was not dismissed as we were told would happen. The services of Ms. Dradi, Mr. Sai and Mr. Kaiama did not work to end our foreclosure. We would like to have our money paid back to us.

32. To this day I have not spoken again to Mr. Kaiama, and I am not aware that he has performed any additional legal services on our behalf.

33. I think we have been misled and treated unfairly. The State of Hawaii Office of Consumer Protection has agreed to do what it can to get out money back.

I declare under penalty of law that the foregoing statements are true and correct.

Executed this 16th day of January, 2018, at Honolulu, Hawaii.

Willadean Lehuanani Grace

CREDIT LINE LOAN 30 - Continued

Date	Description	Amount

INTEREST RATE DETAIL

BEGIN DATE	THROUGH DATE	ANNUAL PERCENTAGE RATE*	BALANCE SUBJECT TO INTEREST RATE
01MAY	01MAY	11.90%	$0.00
02MAY	03MAY	11.90%	$500.00
04MAY	06MAY	11.90%	$0.00
07MAY	11MAY	11.90%	$100.00
12MAY	31MAY	11.90%	$0.00

*YOUR ANNUAL PERCENTAGE RATE IS THE ANNUAL INTEREST RATE ON YOUR ACCOUNT

SHARE DRAFT SUFFIX 8

Date	Description	Credit/Debit	Balance
01MAY	No. XXXX96. Balance at the beginning of the period		$86.98
01MAY	Deposit-ACH-V732 DEPT OF LABOR (UI PAYMENT)	$544.00	$630.98
01MAY	Deposit Personal Credit Union Trace #731513373309 Transfer "STD" 350.00 from share 0	$350.00	$980.98
01MAY	Deposit	$1,050.00	$2,030.98
04MAY*	Withdrawal FOODLAND EWA BE FOODLAND EWA BE EWA BEACH HIUS Trace #652631	-$29.33	$2,001.65
02MAY	Deposit Transfer 'LTS' 500.00 from acct: XXXX96-30	$500.00	$2,501.65
02MAY	Withdrawal #2129	-$2,475.00	$26.65
04MAY	Deposit-CASH	$1,301.67	$1,328.32
05MAY*	Withdrawal CVS 07356 07356 91 919 FT WEAVEREWA BEACH HIUS Trace #57302	-$81.47	$1,246.85
05MAY*	Withdrawal CVS 07356 07356 91 919 FT WEAVEREWA BEACH HIUS Trace #20547	-$58.83	$1,188.02
06MAY	Withdrawal #2131	-$1,000.00	$188.02
07MAY*	Withdrawal BANK OF HAWAII MCDONALDS EWA BEAC EWA BEACH HIUS Trace #260058	-$200.00	-$11.98
07MAY*	Deposit Overdraft transfer from XXXX96-L30	$100.00	$88.02
07MAY	Deposit-ACH-V732 DEPT OF LABOR (UI PAYMENT)	$544.00	$632.02
08MAY*	Withdrawal CHEVRON 0090371 CHEVRON 0090371 EWA BEACH HIUS Trace #30752	-$66.60	$565.42
08MAY	Withdrawal CVS 07356 07356 91 919 FT WEAVEREWA BEACH HIUS Trace #29474	-$50.13	$515.29
11MAY*	Withdrawal BANK OF HAWAII MCDONALDS EWA BEAC EWA BEACH HIUS Trace #303664	-$200.00	$315.29
11MAY*	Withdrawal BANK OF HAWAII 91 919 FORT WEAVER EWA BEACH HIUS Trace #322988	-$100.00	$215.29
11MAY	Withdrawal COSTCO WHSE #10 4589 KAPOLEI PARKWAY KAPOLEI HIUS Trace #640	-$193.14	$22.15
11MAY	Deposit	$13,041.19	$13,063.34
12MAY	Withdrawal-CASH	-$2,000.00	$11,063.34
12MAY	Withdrawal Transfer 'STL' 100.16 to acct: XXXX96-30	-$100.16	$10,963.18
12MAY	Withdrawal Transfer 'STS' 1000.00 to acct: XXXX96-0	-$1,000.00	$9,963.18
12MAY	Withdrawal COSTCO GAS #103 COSTCO GAS #103 KAPOLEI HIUS Trace #38399	-$47.00	$9,916.18
12MAY	Withdrawal COSTCO WHSE #10 4589 KAPOLEI PARKWAY KAPOLEI HIUS Trace #2709	-$704.59	$9,211.59
13MAY	Withdrawal NETFLIX.COM NETFLIX.COM NETFLIX.COM CAUS Trace #20555	-$12.55	$9,199.04
14MAY	Withdrawal HAWAIIAN HAWAIIAN WEB SALES HIUS Trace #21811	-$277.00	$8,922.04

SHARE DRAFT SUFFIX 8 - Continued on page 3...

EXHIBIT A

Direct All Inquiries To:

Hawaiian Tel Federal Credit Union
1138 North King Street • Honolulu HI 96817
1-800-272-5255 • 808-832-6700 • www.hteltcu.com

[redacted]9996 2
01JUN15 30JUN15

MEMBER'S STATEMENT OF ACCOUNT
YOUR PERMANENT RECORD

WILLADEAN L GRACE
TALA R FONOTI
91-330 EWA BEACH RD
EWA BEACH HI 96706-2942

INTEREST RATE DETAIL

BEGIN DATE	THROUGH DATE	ANNUAL PERCENTAGE RATE*	BALANCE SUBJECT TO INTEREST RATE
01JUN	24JUN	11.90%	0.00
25JUN	25JUN	11.90%	500.00
26JUN	28JUN	11.90%	0.00
29JUN	29JUN	11.90%	200.00
30JUN	30JUN	11.90%	500.00

*YOUR ANNUAL PERCENTAGE RATE IS THE ANNUAL INTEREST RATE ON YOUR ACCOUNT

SHARE DRAFT Suffix 8

No. [redacted]9996. Balance at the beginning of the period.....		$	3988.13
01JUN Withdrawal SAMS CLUB #6410 SAM'S Club PEARL CITY HIUS Trace #218773	-44.93	=	3943.20
01JUN Withdrawal PP*RACHELSLEIS PP*RACHELSLEIS WAIPAHU HIUS Trace #21875	-89.01	=	3854.19
01JUN Withdrawal CVS 07356 07356 91 919 FT WEAVEREWA BEACH HIUS Trace #18783	-43.29	=	3810.90
01JUN Withdrawal BANK OF HAWAII 91 919 FORT WEAVER EWA BEACH HIUS Trace #473824	-200.00	=	3610.90
01JUN Deposit-ACH-V732 DEPT OF LABOR (UI PAYMENT)	544.00	=	4154.90
01JUN Withdrawal OHANA DRIVE INN OHANA DRIVE INN HONOLULU HIUS Trace #602899	-36.01	=	4118.89
02JUN Withdrawal WAL-MART #2314 Wal Mart Store WAIPAHU HIUS Trace #890996	-216.76	=	3902.13
02JUN Deposit-EXP	2207.24	=	6109.37
02JUN Withdrawal #2130	-2475.00	=	3634.37
03JUN Withdrawal WAL-MART #2314 Wal Mart Store WAIPAHU HIUS Trace #348479	-65.47	=	3568.90
04JUN Deposit-ACH-V732 DEPT OF LABOR (UI PAYMENT)	418.00	=	3986.90
04JUN Withdrawal COSTCO GAS #103 COSTCO GAS #103 KAPOLEI HIUS Trace #757872	-61.60	=	3925.30
05JUN Withdrawal #2132	-1000.00	=	2925.30
08JUN* Withdrawal COSTCO WHSE #10 4589 KAPOLEI PARKWAY KAPOLEI HIUS Trace #7201	-338.32	=	2586.98
08JUN* Withdrawal BANK OF HAWAII MCDONALDS EWA BEAC EWA BEACH HIUS Trace #155453	-200.00	=	2386.98
08JUN* Withdrawal PIZZA HUT 12 EW PIZZA HUT 12 EWA BEACH EWA BEACH HIUS Trace #30553	-60.71	=	2326.27
08JUN Withdrawal BANK OF HAWAII MCDONALDS EWA BEAC EWA BEACH HIUS Trace #149997	-200.00	=	2126.27
09JUN Withdrawal BANK OF HAWAII 91 919 FORT WEAVER EWA BEACH HIUS Trace #238748	-200.00	=	1926.27
10JUN Withdrawal KAISER HOSPITAL KAISER HOSPITAL HONOLULU HIUS Trace #9016	-50.00	=	1876.27
10JUN Withdrawal MOANULUA HOSPIT MOANULUA HOSPITAL HONOLULU HIUS Trace #9017	-20.99	=	1855.28
10JUN Withdrawal	-46.20	=	1809.08

Continued on page 3. Financial and Tax Summary on last page **

NCUA

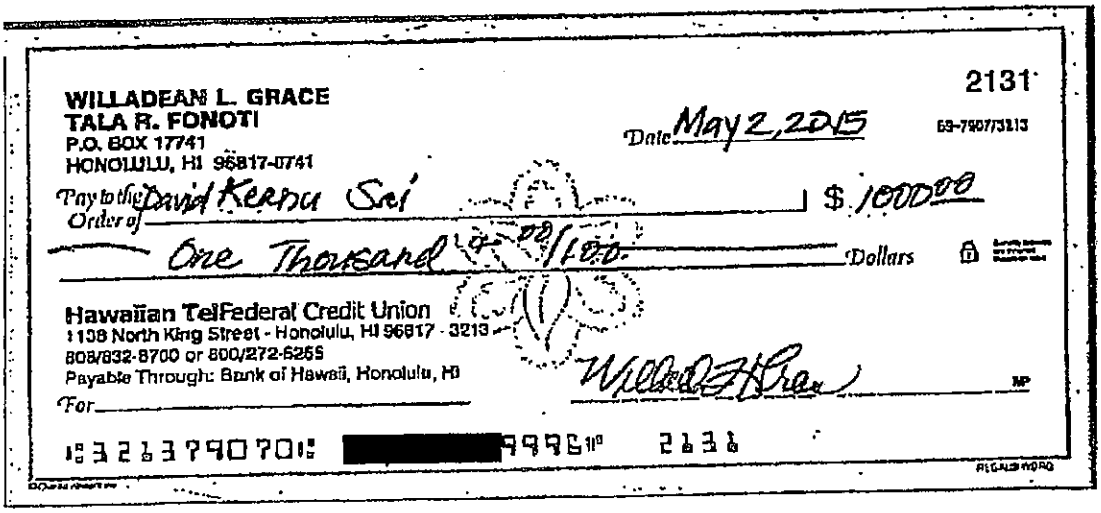
EXHIBIT B

EQUAL HOUSING LENDER

Bank of Hawaii

Current Date: January 12, 2018

Account Number: [redacted]
Capture Date: May 05, 2015
Item Number: 9992004902316
Posted Date: May 05, 2015
Posted Item Number: 3168333550
Amount: 1,000.00
Record Type: Debit



WILLADEAN L. GRACE
TALA R. FONOTI
P.O. BOX 17741
HONOLULU, HI 96817-0741

2131

Date May 2, 2015 69-7907/3313

Pay to the Order of David Keanu Sai $ 1000.00

One Thousand & 00/100 Dollars

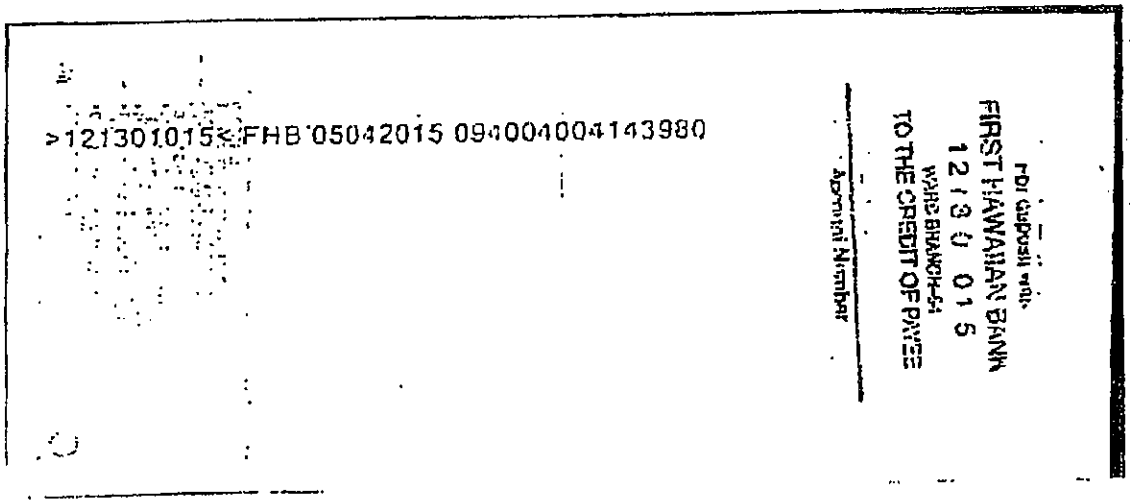
Hawaiian TelFederal Credit Union
1138 North King Street - Honolulu, HI 96817 - 3213
808/832-8700 or 800/272-6255
Payable Through: Bank of Hawaii, Honolulu, HI

For

Willadean Grace MP

⑈321379070⑈ [redacted] 9996⑈ 2131

REORDER FORM



>121301015<:FHB 05042015 094004004143980

FOR DEPOSIT ONLY
FIRST HAWAIIAN BANK
121301015
WAIKIKI BRANCH-61
TO THE CREDIT OF PAYEE

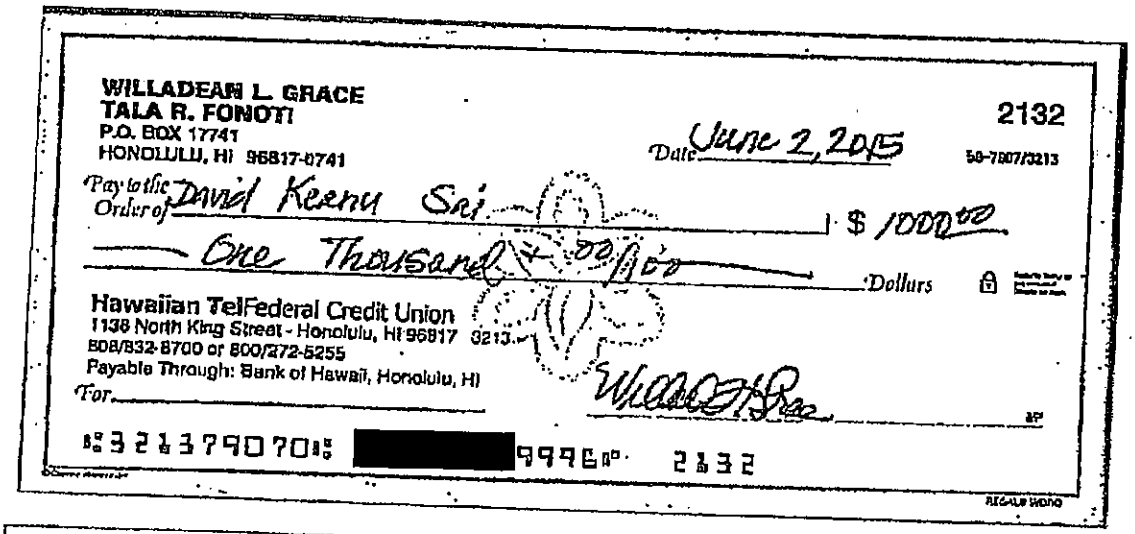
Account Number

EXHIBIT C

Bank of Hawaii

Current Date: January 12, 2018

Account Number: [redacted]
Capture Date: June 04, 2015
Item Number: 9992008900996
Posted Date: June 04, 2015
Posted Item Number: 3176984270
Amount: 1,000.00
Record Type: Debit



WILLADEAN L. GRACE
TALA R. FONOTI
P.O. BOX 17741
HONOLULU, HI 96817-0741

2132

Date June 2, 2015

58-7807/3213

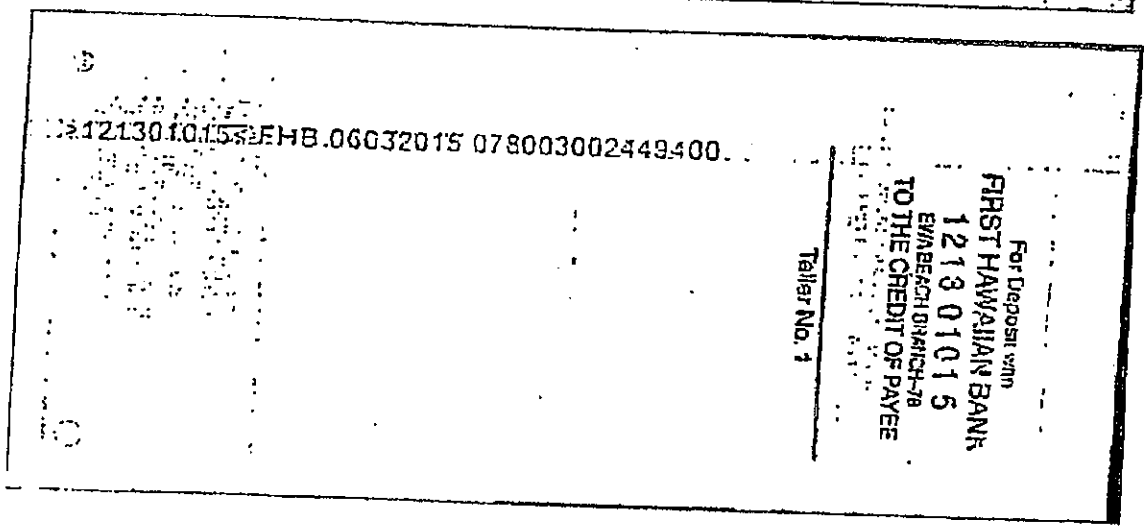
Pay to the Order of David Keenu Sai $ 1000.00

One Thousand + 00/100 Dollars

Hawaiian TelFederal Credit Union
1136 North King Street - Honolulu, HI 96817 3213
808/832-8700 or 800/272-5255
Payable Through: Bank of Hawaii, Honolulu, HI

For

⑈321379070⑈ [redacted] 9996⑈ 2132



⑆121301015⑆EHB.06032015 078003002449400⑈

For Deposit with
FIRST HAWAIIAN BANK
121301015
EWA BEACH BRANCH-78
TO THE CREDIT OF PAYEE

Teller No. 1

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF8 MASTER PARTICIPATION TRUST, Plaintiff, vs. TALA RAYMOND FONOTI; WILLADEAN LEHUANANI GRACE; CAPITAL ONE BANK (USA), N.A.; JOHN DOES 1-50; JANE DOES 1-50; DOE PARTNERSHIPS 1-50; DOE CORPORATIONS 1-50; DOE ENTITIES 1-50; AND DOE GOVERNMENTAL UNITS 1-50, Defendants.	CIVIL NO. 15-1-0371-03 JPC (Foreclosure) DECLARATION OF COUNSEL: EXHIBITS "D" – "E"
STATE OF HAWAII, BY ITS OFFICE OF CONSUMER PROTECTION, Intervening Petitioner, vs. ROSE DRADI, DAVID KEANU SAI, AND DEXTER KAIAMA, Respondents.	

DECLARATION OF COUNSEL

I, James F. Evers, make the following statements based on my personal knowledge of these matters:

1. I am an enforcement attorney with the State of Hawaii Office of Consumer Protection ("OCP").

2. This declaration is being submitted in support of OCP's ex parte motion seeking the issuance of an order directing Respondents Rose Dradi, David Keanu Sai, and Dexter Kaiama

to appear and show cause why they should not be found to have violated applicable consumer protection laws.

3. Pursuant to HRS Chapter 487-5, OCP is statutorily designated to serve as consumer counsel for the State of Hawaii, and as such, in accordance with HRS § 487-5(6), OCP regularly investigates reported or suspected violations of laws enacted and rules adopted for the purpose of consumer protection. That same section authorizes OCP to enforce such laws and rules by bringing civil actions or proceedings.

4. OCP is authorized to enforce the Mortgage Rescue Fraud Prevention Act, codified as HRS Chapter 480E.

5. As part of an ongoing OCP investigation, Tala Raymond Fonoti and Willadean Lehuanani Grace ("Defendants") were identified as potential victims of mortgage rescue fraud.

6. OCP has reason to believe that the Mortgage Rescue Fraud Prevention Act has been violated in the instant case, and the Court is in a position to make a determination as to the nature and extent of the alleged wrongdoing, and award appropriate relief to remedy the violative conduct.

7. Peter Stone, attorney for Plaintiff, has consented to OCP's proposed intervention for the purposes of seeking such relief.

8. The Defendants have also consented to OCP's proposed intervention for the purposes of seeking such relief.

9. Aside from Mr. Stone and the Defendants, I am not aware of any other parties that have appeared in the instant civil action.

10. This requested relief is being sought ex parte for several reasons, in part because: (i) all appearing parties have consented to OCP intervening in this case, adding the Respondents as parties, and seeking from Respondents the relief requested in the motion, and (ii) OCP seeks to enjoin Respondents' from engaging in such illegal conduct as the earliest opportunity.

11. On the date of submission of this ex parte motion to the Court, a full and complete copy of the ex parte motion was served on the same date to the appearing parties in the case at their respective addresses.

12. Attached hereto as Exhibit D is a true and correct copy of the pertinent pages (being pages one and two of seven) taken from Exhibit "1" attached to the Plaintiff's motion for summary judgment filed August 23, 2016, which was authenticated by the declaration testimony of Melinda Girardeau (at page 2, paragraph 5) also attached to that motion.

13. Attached hereto as Exhibit E is a true and correct copy of the show cause order issued at the request of the FTC earlier this month in FTC v. Consumer Defense, LLC, No. 2:18-cv-00030 (D. Nev. Jan. 18, 2018), but excluding the attachments referenced therein, which are merely forms which are of no relevance for purposes of the instant motion.

I declare under penalty of law that the foregoing statements are true and correct.

Executed this 23rd day of January, 2018, at Honolulu, Hawaii.

James F. Evers

[redacted]

LOAN AGREEMENT
Including Truth-In-Lending Disclosure

Lender: (Called "We", "Us", "Our") BENEFICIAL HAWAII INC. 826 FORT STREET MALL HONOLULU, HI 96813
Borrowers: (Called "You", "Your") TALA R. FONOTI WILLADEAN L. GRACE 91-330 EWA BEACH RD EWA BEACH, HI 96706
Date of Loan: 07/13/2006 — **Loan Number:** [redacted]

In this agreement, "you", "your" mean the Borrower(s) who signs this agreement. "We", "us" and "our" refer to the Lender. This agreement covers the terms and conditions of your loan. It is important to us that you clearly understand the features of your loan. Please read this agreement carefully, and ask us any questions you may have.

Truth-In-Lending Disclosure

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	Amount Financed The amount of credit provided to you or on your behalf.	Total of Payments The amount you will have paid after you have made all payments as scheduled.
7.593%	$454,567.01 ("e")	$318,948.91	$773,515.92 ("e")

Your payment schedule will be:

Number of Payments	Amount of Payments	When Payments are Due ("e")
1	$2,639.08	Day 13 of each month thereafter.
11	$2,639.08	Day 13 of each month thereafter.
12	$2,570.65	Day 13 of each month thereafter.
12	$2,503.99	Day 13 of each month thereafter.
12	$2,439.20	Day 13 of each month thereafter.
12	$2,376.39	Day 13 of each month thereafter.
12	$2,315.65	Day 13 of each month thereafter.
12	$2,257.07	Day 13 of each month thereafter.

[redacted]6 - CET - 7 - 000 - 0315LE - Z - 1 - O ** FONOTI ^ ORIGINAL

EXHIBIT D

12	$2,200.72	Day 13 of each month thereafter.
12	$2,146.69	Day 13 of each month thereafter.
12	$2,095.02	Day 13 of each month thereafter.
240	$2,045.76	Day 13 of each month thereafter.
"e" means an estimate		

YOU ARE GIVING US A SECURITY INTEREST IN THE REAL PROPERTY AS DESCRIBED IN THE MORTGAGE AND LOCATED AT:

91-330 EWA BEACH RD
EWA BEACH, HI 96706

Late Charge If your monthly installment is not paid in full within 10 day(s) after it is due, you will be charged a late charge equal to 5% of the unpaid amount of the monthly installment.

Prepayment Subject to the prepayment penalty described below, you may prepay your loan in full or in part at any time. In any event, if you fully pay before the final payment due date, the amount you owe will be reduced by unearned credit insurance charges, if any. If you pay off your loan early, you may have to pay a penalty and you will not be entitled to a refund of that part of the Finance Charge consisting of any prepaid finance charges.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

The Settlement Statement provides your disbursements and the itemization of the Amount Financed.

The figure disclosed in the Annual Percentage Rate box on page one is a composite Annual Percentage Rate which reflects the effect of the various interest rate reductions over the term of your loan. Your payment schedule assumes that all payments are received on the due date. See the "Adjustment to Contract Rate (Pay Right Rewards Program)" section of this agreement.

ABOUT THE SECURITY:

Your Obligation to Insure You shall keep the structures located on the real property securing your loan insured against damage caused by fire and other physical hazards, name us as a loss payee and deliver to us a loss payable endorsement. If insurance covering the real property is canceled or expires while your loan is outstanding and you do not reinstate the coverage, we may obtain, at our option, hazard insurance coverage protecting our interest in the real property as outlined below.

DAVID C. SHONKA
Acting General Counsel
ADAM M. WESOLOWSKI
GREGORY A. ASHE
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20850
Telephone: 202-326-3068 (Wesolowski)
Telephone: 202-326-3719 (Ashe)
Facsimile: 202-326-3768
Email: awesolowski@ftc.gov; gashe@ftc.gov

STEVEN W. MYHRE
Acting United States Attorney
BLAINE T. WELSH
Assistant United States Attorney
Nevada Bar No. 4790
333 Las Vegas Blvd. South, Suite 5000
Las Vegas, Nevada 89101
Phone: (702) 388-6336
Facsimile: (702) 388-6787

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

CONSUMER DEFENSE, LLC, *et al.*,

Defendants.

Case No. 2:18-cv-00030-JCM-PAL

***EX PARTE* TEMPORARY RESTRAINING ORDER WITH ASSET FREEZE, APPOINTMENT OF RECEIVER, AND OTHER EQUITABLE RELIEF, AND ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE**

FILED UNDER SEAL

Plaintiff, the Federal Trade Commission ("FTC"), has filed its Complaint for Permanent Injunction and Other Equitable Relief pursuant to Section 13(b) of the Federal Trade

EXHIBIT E

Commission Act ("FTC Act"), 15 U.S.C. § 53(b), and the 2009 Omnibus Appropriations Act, Public Law 111-8, Section 626, 123 Stat. 524, 678 (Mar. 11, 2009) ("Omnibus Act"), as clarified by the Credit Card Accountability Responsibility and Disclosure Act of 2009, Public Law 111-24, Section 511, 123 Stat. 1734, 1763-64 (May 22, 2009) ("Credit Card Act"), and amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, Section 1097, 124 Stat. 1376, 2102-03 (July 21, 2010) ("Dodd-Frank Act"), 12 U.S.C. § 5538, and has moved, pursuant to Fed. R. Civ. P. 65(b), for a temporary restraining order, asset freeze, other equitable relief, and an order to show cause why a preliminary injunction should not issue against Consumer Defense, LLC (Nevada); Consumer Link, Inc.; Preferred Law, PLLC; American Home Loan Counselors; American Home Loans, LLC; Consumer Defense Group, LLC; Consumer Defense, LLC (Utah); Brown Legal, Inc.; AM Property Management, LLC; FMG Partners, LLC; Zinly, LLC; Jonathan P. Hanley; Benjamin R. Horton; and Sandra X. Hanley.

FINDINGS OF FACT

The Court, having considered the Complaint, the *ex parte* Motion for a Temporary Restraining Order, declarations, exhibits, and the memorandum of points and authorities filed in support thereof, and being otherwise advised, finds that:

A. This Court has jurisdiction over the subject matter of this case, and there is good cause to believe that it will have jurisdiction over all parties hereto and that venue in this district is proper.

B. There is good cause to believe that Defendants have engaged in and are likely to engage in acts or practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the Mortgage Assistance Relief Services Rule ("MARS Rule" or Regulation O), 12 C.F.R. Part 1015, and that the FTC is therefore likely to prevail on the merits of this action.

C. There is good cause to believe that immediate and irreparable harm will result from Defendants' ongoing violations of the FTC Act and the MARS Rule unless Defendants are immediately restrained and enjoined by order of this Court.

D. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief for consumers – including monetary restitution, rescission, disgorgement or refunds – will occur from the sale, transfer, destruction or other disposition or concealment by Defendants of their assets or records, unless Defendants are immediately restrained and enjoined by order of this Court; and that, in accordance with Fed. R. Civ. P. 65(b), the interests of justice require that this Order be granted without prior notice to Defendants. Thus, there is good cause for relieving the FTC of the duty to provide Defendants with prior notice of its Motion for a Temporary Restraining Order.

E. Good cause exists for appointing a temporary receiver over the Receivership Entities, freezing Defendants' assets, permitting the FTC and the Receiver immediate access to the Defendants' business premises, and permitting the FTC and the Receiver to take expedited discovery.

F. Weighing the equities and considering the FTC's likelihood of ultimate success on the merits, a temporary restraining order with an asset freeze, the appointment of a temporary receiver, immediate access to business premises, expedited discovery, and other equitable relief is in the public interest.

G. This Court has authority to issue this Order pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b); Section 626 of the Omnibus Act, 12 U.S.C. § 5538; Federal Rule of Civil Procedure 65; and the All Writs Act, 28 U.S.C. § 1651.

H. No security is required of any agency of the United States for issuance of a temporary restraining order. Fed. R. Civ. P. 65(c).

DEFINITIONS

For the purpose of this Order, the following definitions shall apply:

A. "**Asset**" means any legal or equitable interest in, right to, or claim to, any property, wherever located and by whomever held.

B. "**Commercial communication**" means any written or oral statement, illustration, or depiction, whether in English or any other language, that is designed to affect a sale or create interest in purchasing any service, plan, or program, whether it appears on or in a label, package, package insert, radio, television, cable television, brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, free standing insert, letter, catalogue, poster, chart, billboard, public transit card, point of purchase display, film, slide, audio program transmitted over a telephone system, telemarketing script, on hold script, upsell script, training materials provided to telemarketing firms, program-length commercial ("infomercial"), the Internet, cellular network, or any other medium. Promotional materials and items and Web pages are included in the term "commercial communication."

C. "**Consumer**" means any person.

D. "**Consumer-specific commercial communication**" means a commercial communication that occurs prior to a consumer agreeing to permit the provider to seek offers of mortgage assistance relief on behalf of the consumer, or otherwise agreeing to use the mortgage assistance relief service, and that is directed at a specific consumer.

E. "**Corporate Defendants**" means Consumer Defense, LLC (a Nevada LLC); Consumer Link, Inc.; Preferred Law, PLLC; American Home Loan Counselors; American Home Loans, LLC; Consumer Defense Group, LLC; Consumer Defense, LLC (a Utah LLC); Brown Legal, Inc.; AM Property Management, LLC; FMG Partners, LLC; Zinly, LLC; and each of their subsidiaries, affiliates, successors, and assigns.

F. "**Defendants**" means the Corporate Defendants and the Individual Defendants, individually, collectively, or in any combination.

G. "**Document**" is synonymous in meaning and equal in scope to the usage of "document" and "electronically stored information" in Federal Rule of Civil Procedure 34(a),

Fed. R. Civ. P. 34(a), and includes writings, drawings, graphs, charts, photographs, sound and video recordings, images, Internet sites, web pages, websites, electronic correspondence, including e-mail and instant messages, contracts, accounting data, advertisements, FTP Logs, Server Access Logs, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, computer records, customer or sales databases and any other electronically stored information, including Documents located on remote servers or cloud computing systems, and other data or data compilations from which information can be obtained directly or, if necessary, after translation into a reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

H. "**Electronic Data Host**" means any person or entity in the business of storing, hosting, or otherwise maintaining electronically stored information. This includes, but is not limited to, any entity hosting a website or server, and any entity providing "cloud based" electronic storage.

I. "**General commercial communication**" means a commercial communication that occurs prior to the consumer agreeing to permit the provider to seek offers of mortgage assistance relief on behalf of the consumer, or otherwise agreeing to use the mortgage assistance relief service, and that is not directed at a specific consumer.

J. "**Individual Defendant(s)**" means Jonathan P. Hanley, Benjamin R. Horton, and Sandra X. Hanley, individually, collectively, or in any combination.

K. **Mortgage assistance relief service**" means any product, service, plan, or program, offered or provided to the consumer in exchange for consideration, that is represented, expressly or by implication, to assist or attempt to assist the consumer with any of the following:

1. stopping, preventing, or postponing any mortgage or deed of foreclosure sale for the consumer's dwelling, any repossession of the consumer's dwelling, or otherwise saving the consumer's dwelling from foreclosure or repossession;

2. negotiating, obtaining, or arranging a modification of any term of a dwelling loan, including a reduction in the amount of interest, principal, balance, monthly payments, or fees;

3. obtaining any forbearance or modification in the timing of payments from any dwelling loan holder or servicer on any dwelling loan;

4. negotiating, obtaining, or arranging any extension of the period of time within which the consumer may (i) cure his or her default on a dwelling loan, (ii) reinstate his or her dwelling loan, (iii) redeem a dwelling, or (iv) exercise any right to reinstate a dwelling loan or redeem a dwelling;

5. obtaining any waiver of an acceleration clause or balloon payment contained in any promissory note or contract secured by any dwelling; or

6. negotiating, obtaining, or arranging (i) a short sale of a dwelling, (ii) a deed-in-lieu of foreclosure, or (iii) any other disposition of a dwelling other than a sale to a third party who is not the dwelling loan holder.

The foregoing shall include any manner of claimed assistance, including auditing or examining a consumer's mortgage or home loan application.

L. "**Person**" means a natural person, an organization or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.

M. "**Receiver**" means the temporary receiver appointed in Section XIII of this Order and any deputy receivers that shall be named by the temporary receiver.

N. "**Receivership Entities**" means Corporate Defendants as well as any other entity that has conducted any business related to mortgage assistance relief services, including receipt of Assets derived from any activity that is the subject of the Complaint in this matter, and that the Receiver determines is controlled or owned by any Defendant.

ORDER

PROHIBITED BUSINESS ACTIVITIES

I. IT IS THEREFORE ORDERED that Defendants, Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or indirectly, in connection with the advertising, marketing, promoting, or offering for sale of any mortgage assistance relief services, are temporarily restrained and enjoined from:

A. misrepresenting or assisting others in misrepresenting, expressly or by implication:

1. that any person generally will obtain mortgage loan modifications for consumers that will make their payments substantially more affordable, substantially lower their interest rates, or help them avoid foreclosure;
2. that any person is affiliated with, endorsed or approved by, or are otherwise associated with the maker, holder, or servicer of a consumer's dwelling loan, including claiming that any person has a special relationship or special agreements with the maker, holder, or servicer of a consumer's dwelling loan;
3. that any person is part of or affiliated with, endorsed or approved by, or is otherwise associated with the federal government or federal government programs;
4. that a consumer is not obligated to, or should not, make scheduled periodic payments or any other payments pursuant to the terms of the consumer's dwelling loan; and
5. any other fact material to consumers concerning any mortgage assistance relief service, such as: the total costs; any material restrictions,

limitations, or conditions; or any material aspect of its performance, efficacy, nature, or central characteristics; and

B. making or assisting others in making, any representation, expressly or by implication, about the benefits, performance, or efficacy of any product or service, unless the representation is non-misleading and, at the time such representation is made, Defendants possess and rely upon competent and reliable evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant fields, when considered in light of the entire body of relevant and reliable evidence, to substantiate that the representation is true.

PROHIBITION ON COLLECTION OF ADVANCE FEES

II. IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or indirectly, in connection with the advertising, marketing, promoting, or offering for sale of any mortgage assistance relief services, are hereby temporarily restrained and enjoined from requesting or receiving payment of any fee or other consideration for any mortgage assistance relief service before the consumer has executed a written agreement with the consumer's dwelling loan holder or servicer incorporating the offer of mortgage assistance relief that a Defendant obtained from the consumer's dwelling loan holder or servicer on the consumer's behalf.

REQUIRED DISCLOSURES

III. IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or indirectly, in connection with the advertising, marketing, promoting, or offering for sale of any mortgage assistance relief services, are hereby temporarily restrained and enjoined from engaging in the following conduct:

A. Failing to disclose the following information in all general commercial communications:

1. "[Name of Company] is not associated with the government, and our service is not approved by the government or your lender;" and
2. "Even if you accept this offer and use our service, your lender may not agree to change your loan;"

B. Failing to disclose the following information in all consumer-specific commercial communications:

1. "You may stop doing business with us at any time. You may accept or reject the offer of mortgage assistance we obtain from your lender [or servicer]. If you reject the offer, you do not have to pay us. If you accept the offer, you will have to pay us [insert amount or method for calculating the amount] for our services." For the purposes of this section, the amount "you will have to pay" shall consist of the total amount the consumer must pay to purchase, receive, and use all of the mortgage assistance relief services that are the subject of the sales offer, including but not limited to, all fees and charges;
2. "[Name of company] is not associated with the government, and our service is not approved by the government or your lender;"
3. "Even if you accept this offer and use our service, your lender may not agree to change your loan;" and
4. "If you stop paying your mortgage, you could lose your home and damage your credit."

PROHIBITION ON RELEASE OF CUSTOMER INFORMATION

IV. IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, employees, and attorneys, and all other Persons in active concert or participation with any of them, who

receive actual notice of this Order, whether acting directly or indirectly, are hereby temporarily restrained and enjoined from:

A. Selling, renting, leasing, transferring, or otherwise disclosing, the name, address, birth date, telephone number, email address, credit card number, bank account number, Social Security number, or other financial or identifying information of any person that any Defendant obtained in connection with any activity that pertains to the subject matter of this Order; and

B. Benefitting from or using the name, address, birth date, telephone number, email address, credit card number, bank account number, Social Security number, or other financial or identifying information of any person that any Defendant obtained in connection with any activity that pertains to the subject matter of this Order.

Provided, however, that Defendants may disclose such identifying information to a law enforcement agency, to their attorneys as required for their defense, as required by any law, regulation, or court order, or in any filings, pleadings or discovery in this action in the manner required by the Federal Rules of Civil Procedure and by any protective order in the case.

ASSET FREEZE

V. IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, employees, and attorneys, and all other Persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are hereby temporarily restrained and enjoined from:

A. Transferring, liquidating, converting, encumbering, pledging, loaning, selling, concealing, dissipating, disbursing, assigning, relinquishing, spending, withdrawing, granting a lien or security interest or other interest in, or otherwise disposing of any Assets that are (1) owned or controlled, directly or indirectly, by any Defendant; (2) held, in part or in whole, for the benefit of any Defendant; (3) in the actual or constructive possession of any Defendant; or (4) owned or controlled by, in the actual or constructive possession of, or otherwise held for the

benefit of, any corporation, partnership, asset protection trust, or other entity that is directly or indirectly owned, managed or controlled by any Defendant.

B. Opening or causing to be opened any safe deposit boxes, commercial mail boxes, or storage facilities titled in the name of any Defendant or subject to access by any Defendant, except as necessary to comply with written requests from the Receiver acting pursuant to its authority under this Order;

C. Incurring charges or cash advances on any credit, debit, or ATM card issued in the name, individually or jointly, of any Corporate Defendant or any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by any Defendant or of which any Defendant is an officer, director, member, or manager. This includes any corporate bankcard or corporate credit card account for which any Defendant is, or was on the date that this Order was signed, an authorized signor; or

D. Cashing any checks or depositing any money orders or cash received from consumers, clients, or customers of any Defendant.

E. The Assets affected by this Section shall include: (1) all Assets of Defendants as of the time this Order is entered; and (2) Assets obtained by Defendants after this Order is entered if those Assets are derived from any activity that is the subject of the Complaint in this matter or that is prohibited by this Order. This Section does not prohibit any transfers to the Receiver or repatriation of foreign Assets specifically required by this order.

DUTIES OF ASSET HOLDERS AND OTHER THIRD PARTIES

VI. IT IS FURTHER ORDERED that any financial or brokerage institution, Electronic Data Host, credit card processor, payment processor, merchant bank, acquiring bank, independent sales organization, third party processor, payment gateway, insurance company, business entity, or person who receives actual notice of this Order (by service or otherwise) and that (a) holds, controls, or maintains custody, through an account or otherwise, of any Document on behalf of any Defendant or any Asset that is: owned or controlled, directly or indirectly, by

any Defendant; held, in part or in whole, for the benefit of any Defendant; in the actual or constructive possession of any Defendant; or owned or controlled by, in the actual or constructive possession of, or otherwise held for the benefit of, any corporation, partnership, asset protection trust, or other entity that is directly or indirectly owned, managed or controlled by any Defendant; (b) holds, controls, or maintains custody of any Document or Asset associated with credits, debits or charges made on behalf of any Defendant, including reserve funds held by payment processors, credit card processors, merchant banks, acquiring banks, independent sales organizations, third party processors, payment gateways, insurance companies, or other entities; or (c) has held, controlled, or maintained custody of any such Document, Asset, or account at any time since the date of entry of this Order shall:

A. Hold, preserve, and retain within its control and prohibit the withdrawal, removal, alteration, assignment, transfer, pledge, encumbrance, disbursement, dissipation, relinquishment, conversion, sale, or other disposal of any such Document or Asset, as well as all Documents or other property related to such Assets, except by further order of this Court;

B. Deny any Person, except the Receiver, access to any safe deposit box, commercial mail box, or storage facility that is titled in the name of any Defendant, either individually or jointly, or otherwise subject to access by any Defendant;

C. Provide FTC counsel and the Receiver, within three (3) days of receiving a copy of this Order, a sworn statement setting forth:

1. The identification number of each such account or Asset;
2. The balance of each such account, or a description of the nature and value of each such Asset as of the close of business on the day on which this Order is served, and, if the account or other Asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other Asset was remitted; and

3. The identification of any safe deposit box, commercial mail box, or storage facility that is either titled in the name, individually or jointly, of any Defendant, or is otherwise subject to access by any Defendant; and

D. Upon the request of FTC counsel or the Receiver, promptly provide FTC counsel and the Receiver with copies of all records or other Documents pertaining to such account or Asset, including originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, including wire transfers and wire transfer instructions, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and all logs and records pertaining to safe deposit boxes, commercial mail boxes, and storage facilities.

Provided, however, that this Section does not prohibit any transfers to the Receiver or repatriation of foreign Assets specifically required by this order.

FINANCIAL DISCLOSURES

VII. IT IS FURTHER ORDERED that each Defendant, within five (5) days of service of this Order upon them, shall prepare and deliver to FTC counsel and the Receiver:

A. completed financial statements on the forms attached to this Order as **Attachment A** (Financial Statement of Individual Defendant) for each Individual Defendant, and **Attachment B** (Financial Statement of Corporate Defendant) for each Corporate Defendant; and

B. completed **Attachment C** (IRS Form 4506, Request for Copy of a Tax Return) for each Individual and Corporate Defendant.

FOREIGN ASSET REPATRIATION

VIII. IT IS FURTHER ORDERED that within five (5) days following the service of this Order, each Defendant shall:

A. Provide FTC counsel and the Receiver with a full accounting, verified under oath and accurate as of the date of this Order, of all Assets, Documents, and accounts outside of the United States which are: (1) titled in the name, individually or jointly, of any Defendant; (2)

held by any person or entity for the benefit of any Defendant or for the benefit of, any corporation, partnership, asset protection trust, or other entity that is directly or indirectly owned, managed or controlled by any Defendant; or (3) under the direct or indirect control, whether jointly or singly, of any Defendant;

B. Take all steps necessary to provide FTC counsel and Receiver access to all Documents and records that may be held by third parties located outside of the territorial United States of America, including signing the Consent to Release of Financial Records appended to this Order as **Attachment D**.

C. Transfer to the territory of the United States all Documents and Assets located in foreign countries which are: (1) titled in the name, individually or jointly, of any Defendant; (2) held by any person or entity for the benefit of any Defendant or for the benefit of, any corporation, partnership, asset protection trust, or other entity that is directly or indirectly owned, managed or controlled by any Defendant; or (3) under the direct or indirect control, whether jointly or singly, of any Defendant; and

D. The same business day as any repatriation, (1) notify the Receiver and counsel for the FTC of the name and location of the financial institution or other entity that is the recipient of such Documents or Assets; and (2) serve this Order on any such financial institution or other entity.

NON-INTERFERENCE WITH REPATRIATION

IX. IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, employees, and attorneys, and all other Persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are hereby temporarily restrained and enjoined from taking any action, directly or indirectly, which may result in the encumbrance or dissipation of foreign Assets, or in the hindrance of the repatriation required by this Order, including, but not limited to:

A. Sending any communication or engaging in any other act, directly or indirectly, that results in a determination by a foreign trustee or other entity that a "duress" event has occurred under the terms of a foreign trust agreement until such time that all Defendants' Assets have been fully repatriated pursuant to this Order; or

B. Notifying any trustee, protector or other agent of any foreign trust or other related entities of either the existence of this Order, or of the fact that repatriation is required pursuant to a court order, until such time that all Defendants' Assets have been fully repatriated pursuant to this Order.

CONSUMER CREDIT REPORTS

X. IT IS FURTHER ORDERED that the FTC may obtain credit reports concerning any Defendants pursuant to Section 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. 1681b(a)(1), and that, upon written request, any credit reporting agency from which such reports are requested shall provide them to the FTC.

PRESERVATION OF RECORDS

XI. IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, employees, and attorneys, and all other Persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are hereby temporarily restrained and enjoined from:

A. Destroying, erasing, falsifying, writing over, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, Documents that relate to: (1) the business, business practices, Assets, or business or personal finances of any Defendant; (2) the business practices or finances of entities directly or indirectly under the control of any Defendant; or (3) the business practices or finances of entities directly or indirectly under common control with any other Defendant; and

B. Failing to create and maintain Documents that, in reasonable detail, accurately, fairly, and completely reflect Defendants' incomes, disbursements, transactions, and use of Defendants' Assets.

REPORT OF NEW BUSINESS ACTIVITY

XII. IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are hereby temporarily restrained and enjoined from creating, operating, or exercising any control over any business entity, whether newly formed or previously inactive, including any partnership, limited partnership, joint venture, sole proprietorship, or corporation, without first providing FTC counsel and the Receiver with a written statement disclosing: (1) the name of the business entity; (2) the address and telephone number of the business entity; (3) the names of the business entity's officers, directors, principals, managers, and employees; and (4) a detailed description of the business entity's intended activities.

APPOINTMENT OF TEMPORARY RECEIVER

XIII. IT IS FURTHER ORDERED that Thomas W. McNamara is appointed as temporary receiver of the Receivership Entities with full powers of an equity receiver. The Receiver shall be solely the agent of this Court in acting as Receiver under this Order.

DUTIES AND AUTHORITY OF RECEIVER

XIV. IT IS FURTHER ORDERED that the Receiver is directed and authorized to accomplish the following:

A. Assume full control of Receivership Entities by removing, as the Receiver deems necessary or advisable, any director, officer, independent contractor, employee, attorney, or agent of any Receivership Entity from control of, management of, or participation in, the affairs of the Receivership Entity;

B. Take exclusive custody, control, and possession of all Assets and Documents of, or in the possession, custody, or under the control of, any Receivership Entity, wherever situated;

C. Conserve, hold, manage, and prevent the loss of all Assets of the Receivership Entities, and perform all acts necessary or advisable to preserve the value of those Assets. The Receiver shall assume control over the income and profits therefrom and all sums of money now or hereafter due or owing to the Receivership Entities. The Receiver shall have full power to sue for, collect, and receive, all Assets of the Receivership Entities and of other persons or entities whose interests are now under the direction, possession, custody, or control of, the Receivership Entities. Provided, however, that the Receiver shall not attempt to collect any amount from a consumer if the Receiver believes the consumer's debt to the Receivership Entities has resulted from the deceptive acts or practices or other violations of law alleged in the Complaint in this matter, without prior Court approval;

D. Obtain, conserve, hold, manage, and prevent the loss of all Documents of the Receivership Entities, and perform all acts necessary or advisable to preserve such Documents. The Receiver shall: divert mail; preserve all Documents of the Receivership Entities that are accessible via electronic means such as online access to financial accounts and access to electronic documents held onsite or by Electronic Data Hosts, by changing usernames, passwords or other log-in credentials; take possession of all electronic Documents of the Receivership Entities stored onsite or remotely; take whatever steps necessary to preserve all such Documents; and obtain the assistance of the FTC's Digital Forensic Unit for the purpose of obtaining electronic documents stored onsite or remotely.

E. Choose, engage, and employ attorneys, accountants, appraisers, and other independent contractors and technical specialists, as the Receiver deems advisable or necessary in the performance of duties and responsibilities under the authority granted by this Order;

F. Make payments and disbursements from the receivership estate that are necessary or advisable for carrying out the directions of, or exercising the authority granted by, this Order,

and to incur, or authorize the making of, such agreements as may be necessary and advisable in discharging his or her duties as Receiver. The Receiver shall apply to the Court for prior approval of any payment of any debt or obligation incurred by the Receivership Entities prior to the date of entry of this Order, except payments that the Receiver deems necessary or advisable to secure Assets of the Receivership Entities, such as rental payments;

G. Take all steps necessary to secure and take exclusive custody of each location from which the Receivership Entities operate their businesses. Such steps may include, but are not limited to, any of the following, as the Receiver deems necessary or advisable: (1) securing the location by changing the locks and alarm codes and disconnecting any internet access or other means of access to the computers, servers, internal networks, or other records maintained at that location; and (2) requiring any persons present at the location to leave the premises, to provide the Receiver with proof of identification, and/or to demonstrate to the satisfaction of the Receiver that such persons are not removing from the premises Documents or Assets of the Receivership Entities. Law enforcement personnel, including, but not limited to, police or sheriffs, may assist the Receiver in implementing these provisions in order to keep the peace and maintain security. If requested by the Receiver, the United States Marshal will provide appropriate and necessary assistance to the Receiver to implement this Order and is authorized to use any necessary and reasonable force to do so;

H. Take all steps necessary to prevent the modification, destruction, or erasure of any web page or website registered to and operated, in whole or in part, by any Defendants, and to provide access to all such web page or websites to FTC representatives, agents, and assistants, as well as Defendants and their representatives;

I. Enter into and cancel contracts and purchase insurance as advisable or necessary;

J. Prevent the inequitable distribution of Assets and determine, adjust, and protect the interests of consumers who have transacted business with the Receivership Entities;

K. Make an accounting, as soon as practicable, of the Assets and financial condition of the receivership and file the accounting with the Court and deliver copies thereof to all parties;

L. Institute, compromise, adjust, appear in, intervene in, defend, dispose of, or otherwise become party to any legal action in state, federal or foreign courts or arbitration proceedings as the Receiver deems necessary and advisable to preserve or recover the Assets of the Receivership Entities, or to carry out the Receiver's mandate under this Order, including but not limited to, actions challenging fraudulent or voidable transfers;

M. Issue subpoenas to obtain Documents and records pertaining to the Receivership, and conduct discovery in this action on behalf of the receivership estate, in addition to obtaining other discovery as set forth in this Order;

N. Open one or more bank accounts at designated depositories for funds of the Receivership Entities. The Receiver shall deposit all funds of the Receivership Entities in such designated accounts and shall make all payments and disbursements from the receivership estate from such accounts. The Receiver shall serve copies of monthly account statements on all parties;

O. Maintain accurate records of all receipts and expenditures incurred as Receiver;

P. Allow the FTC's representatives, agents, and assistants, as well as Defendants' representatives and Defendants themselves, reasonable access to the premises of the Receivership Entities, or any other premises where the Receivership Entities conduct business. The purpose of this access shall be to inspect and copy any and all books, records, Documents, accounts, and other property owned by, or in the possession of, the Receivership Entities or their agents. The Receiver shall have the discretion to determine the time, manner, and reasonable conditions of such access;

Q. Allow the FTC's representatives, agents, and assistants, as well as Defendants and their representatives reasonable access to all Documents in the possession, custody, or control of the Receivership Entities;

R. Cooperate with reasonable requests for information or assistance from any state or federal civil or criminal law enforcement agency;

S. Suspend business operations of the Receivership Entities if in the judgment of the Receiver such operations cannot be continued legally and profitably;

T. If the Receiver identifies a nonparty entity as a Receivership Entity, promptly notify the entity as well as the parties, and inform the entity that it can challenge the Receiver's determination by filing a motion with the Court. Provided, however, that the Receiver may delay providing such notice until the Receiver has established control of the nonparty entity and its assets and records, if the Receiver determines that notice to the entity or the parties before the Receiver establishes control over the entity may result in the destruction of records, dissipation of assets, or any other obstruction of the Receiver's control of the entity; and

U. If in the Receiver's judgment the business operations cannot be continued legally and profitably, take all steps necessary to ensure that any of the Receivership Entities' web pages or websites relating to the activities alleged in the Complaint cannot be accessed by the public, or are modified for consumer education and/or informational purposes, and take all steps necessary to ensure that any telephone numbers associated with the Receivership Entities cannot be accessed by the public, or are answered solely to provide consumer education or information regarding the status of operations.

TRANSFER OF RECEIVERSHIP PROPERTY TO RECEIVER

XV. IT IS FURTHER ORDERED that Defendants and any other person, with possession, custody or control of property of, or records relating to, the Receivership Entities shall, upon notice of this Order by personal service or otherwise, fully cooperate with and assist the Receiver in taking and maintaining possession, custody, or control of the Assets and Documents of the Receivership Entities and immediately transfer or deliver to the Receiver possession, custody, and control of, the following:

A. All Assets held by or for the benefit of the Receivership Entities;

B. All Documents of or pertaining to the Receivership Entities;

C. All computers, electronic devices, mobile devices and machines used to conduct the business of the Receivership Entities;

D. All Assets and Documents belonging to other persons or entities whose interests are under the direction, possession, custody, or control of the Receivership Entities; and

E. All keys, codes, user names and passwords necessary to gain or to secure access to any Assets or Documents of or pertaining to the Receivership Entities, including access to their business premises, means of communication, accounts, computer systems (onsite and remote), Electronic Data Hosts, or other property.

In the event that any person or entity fails to deliver or transfer any Asset or Document, or otherwise fails to comply with any provision of this Section, the Receiver may file an Affidavit of Non-Compliance regarding the failure and a motion seeking compliance or a contempt citation.

PROVISION OF INFORMATION TO RECEIVER

XVI. IT IS FURTHER ORDERED that Defendants shall immediately provide to the Receiver:

A. A list of all Assets and accounts of the Receivership Entities that are held in any name other than the name of a Receivership Entity, or by any person or entity other than a Receivership Entity;

B. A list of all agents, employees, officers, attorneys, servants and those persons in active concert and participation with the Receivership Entities, or who have been associated or done business with the Receivership Entities; and

C. A description of any documents covered by attorney-client privilege or attorney work product, including files where such documents are likely to be located, authors or recipients of such documents, and search terms likely to identify such electronic documents.

COOPERATION WITH THE RECEIVER

XVII. IT IS FURTHER ORDERED that Defendants; Receivership Entities; Defendants' or Receivership Entities' officers, agents, employees, and attorneys, all other persons in active concert or participation with any of them, and any other person with possession, custody, or control of property of or records relating to the Receivership Entities who receive actual notice of this Order shall fully cooperate with and assist the Receiver. This cooperation and assistance shall include, but is not limited to, providing information to the Receiver that the Receiver deems necessary to exercise the authority and discharge the responsibilities of the Receiver under this Order; providing any keys, codes, user names and passwords required to access any computers, electronic devices, mobile devices, and machines (onsite or remotely) and any cloud account (including specific method to access account) or electronic file in any medium; advising all persons who owe money to any Receivership Entity that all debts should be paid directly to the Receiver; and transferring funds at the Receiver's direction and producing records related to the Assets and sales of the Receivership Entities.

NON-INTERFERENCE WITH THE RECEIVER

XVIII. IT IS FURTHER ORDERED that Defendants; Receivership Entities; Defendants' or Receivership Entities' officers, agents, employees, attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, and any other person served with a copy of this Order, are hereby restrained and enjoined from directly or indirectly:

A. Interfering with the Receiver's efforts to manage, or take custody, control, or possession of, the Assets or Documents subject to the receivership;

B. Transacting any of the business of the Receivership Entities;

C. Transferring, receiving, altering, selling, encumbering, pledging, assigning, liquidating, or otherwise disposing of any Assets owned, controlled, or in the possession or custody of, or in which an interest is held or claimed by, the Receivership Entities; or

D. Refusing to cooperate with the Receiver or the Receiver's duly authorized agents in the exercise of their duties or authority under any order of this Court.

STAY OF ACTIONS

XIX. IT IS FURTHER ORDERED that, except by leave of this Court, during the pendency of the receivership ordered herein, Defendants, Defendants' officers, agents, employees, attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, and their corporations, subsidiaries, divisions, or affiliates, and all investors, creditors, stockholders, lessors, customers and other persons seeking to establish or enforce any claim, right, or interest against or on behalf of Defendants, and all others acting for or on behalf of such persons, are hereby enjoined from taking action that would interfere with the exclusive jurisdiction of this Court over the Assets or Documents of the Receivership Entities, including, but not limited to:

A. Filing or assisting in the filing of a petition for relief under the Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, or of any similar insolvency proceeding on behalf of the Receivership Entities;

B. Commencing, prosecuting, or continuing a judicial, administrative, or other action or proceeding against the Receivership Entities, including the issuance or employment of process against the Receivership Entities, except that such actions may be commenced if necessary to toll any applicable statute of limitations;

C. Filing or enforcing any lien on any asset of the Receivership Entities, taking or attempting to take possession, custody, or control of any Asset of the Receivership Entities; or attempting to foreclose, forfeit, alter, or terminate any interest in any Asset of the Receivership Entities, whether such acts are part of a judicial proceeding, are acts of self-help, or otherwise;

Provided, however, that this Order does not stay: (1) the commencement or continuation of a criminal action or proceeding; (2) the commencement or continuation of an action or

proceeding by a governmental unit to enforce such governmental unit's police or regulatory power; or (3) the enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power.

COMPENSATION OF RECEIVER

XX. **IT IS FURTHER ORDERED** that the Receiver and all personnel hired by the Receiver as herein authorized, including counsel to the Receiver and accountants, are entitled to reasonable compensation for the performance of duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by them, from the Assets now held by, in the possession or control of, or which may be received by, the Receivership Entities. The Receiver shall file with the Court and serve on the parties periodic requests for the payment of such reasonable compensation, with the first such request filed no more than sixty (60) days after the date of entry of this Order. The Receiver shall not increase the hourly rates used as the bases for such fee applications without prior approval of the Court.

RECEIVER'S BOND

XXI. **IT IS FURTHER ORDERED** that the Receiver shall file with the Clerk of this Court a bond in the sum of $10,000 with sureties to be approved by the Court, conditioned that the Receiver will well and truly perform the duties of the office and abide by and perform all acts the Court directs. 28 U.S.C. § 754.

RECEIVER'S REPORTS

XXII. **IT IS FURTHER ORDERED** that the Receiver shall report to this Court on or before the date set for the hearing to Show Cause regarding the Preliminary Injunction, regarding (1) the steps taken by the Receiver to implement the terms of this Order; (2) the value of all liquidated and unliquidated assets of the Receivership Entities; (3) the sum of all liabilities of the Receivership Entities; (4) the steps the Receiver intends to take in the

future to (a) prevent any diminution in the value of assets of the Receivership Entities, (b) pursue receivership assets from third parties, and (c) adjust the liabilities of the Receivership Entities, if appropriate; (5) whether the business of the Receivership Entities can be operated lawfully and profitably; and (6) any other matters that the Receiver believes should be brought to the Court's attention. *Provided, however,* that if any of the required information would hinder the Receiver's ability to pursue receivership assets, the portions of the Receiver's report containing such information may be filed under seal and not served on the parties.

IMMEDIATE ACCESS TO BUSINESS PREMISES AND RECORDS

XIII. IT IS FURTHER ORDERED that:

A. In order to allow the FTC and the Receiver to preserve Assets and evidence relevant to this action and to expedite discovery, the FTC and the Receiver, and their representatives, agents, contractors, and assistants, shall have immediate access to the business premises and storage facilities, owned, controlled, or used by the Receivership Entities. Such locations include, but are not limited to: 41 W 9000 S, Sandy, UT 84070; 8180 S 700 E, Ste. 110, Sandy, UT 84070; and any offsite location or commercial mailbox used by the Receivership Entities. The Receiver may exclude Defendants, Receivership Entities, and their employees from the business premises during the immediate access.

B. The FTC and the Receiver, and their representatives, agents, contractors, and assistants, are authorized to remove Documents from the Receivership Entities' premises in order that they may be inspected, inventoried, and copied. The FTC shall return any removed materials to the Receiver within five (5) business days of completing inventorying and copying, or such time as is agreed upon by the FTC and the Receiver;

C. The FTC's access to the Receivership Entities' documents pursuant to this Section shall not provide grounds for any Defendant to object to any subsequent request for documents served by the FTC.

D. The FTC and the Receiver, and their representatives, agents, contractors, and assistants, are authorized to obtain the assistance of federal, state and local law enforcement officers as they deem necessary to effect service and to implement peacefully the provisions of this Order;

E. If any Documents, computers, or electronic storage devices containing information related to the business practices or finances of the Receivership Entities are at a location other than those listed herein, including personal residence(s) of any Defendant, then, immediately upon receiving notice of this order, Defendants and Receivership Entities shall produce to the Receiver all such Documents, computers, and electronic storage devices, along with any codes or passwords needed for access. In order to prevent the destruction of computer data, upon service of this Order, any such computers or electronic storage devices shall be powered down in the normal course of the operating system used on such devices and shall not be powered up or used until produced for copying and inspection; and

F. If any communications or records of any Receivership Entity are stored with an Electronic Data Host, such Entity shall, immediately upon receiving notice of this order, provide the Receiver with the username, passwords, and any other login credential needed to access the communications and records, and shall not attempt to access, or cause a third-party to attempt to access, the communications or records.

DISTRIBUTION OF ORDER BY DEFENDANTS

XXIV. IT IS FURTHER ORDERED that Defendants shall immediately provide a copy of this Order to each affiliate, telemarketer, marketer, sales entity, successor, assign, member, officer, director, employee, agent, independent contractor, client, attorney, spouse,

subsidiary, division, and representative of any Defendant, and shall, within ten (10) days from the date of entry of this Order, and provide the FTC and the Receiver with a sworn statement that this provision of the Order has been satisfied, which statement shall include the names, physical addresses, phone number, and email addresses of each such person or entity who received a copy of the Order. Furthermore, Defendants shall not take any action that would encourage officers, agents, members, directors, employees, salespersons, independent contractors, attorneys, subsidiaries, affiliates, successors, assigns or other persons or entities in active concert or participation with them to disregard this Order or believe that they are not bound by its provisions.

EXPEDITED DISCOVERY

XXV. **IT IS FURTHER ORDERED** that, notwithstanding the provisions of the Fed. R. Civ. P. 26(d) and (f) and 30(a)(2)(c), and pursuant to Fed. R. Civ. P. 30(a), 34, and 45, the FTC and the Receiver are granted leave, at any time after service of this Order, to conduct limited expedited discovery for the purpose of discovering: (1) the nature, location, status, and extent of Defendants' Assets; (2) the nature, location, and extent of Defendants' business transactions and operations; (3) Documents reflecting Defendants' business transactions and operations; or (4) compliance with this Order. The limited expedited discovery set forth in this Section shall proceed as follows:

A. The FTC and the Receiver may take the deposition of parties and non-parties. Forty-eight (48) hours' notice shall be sufficient notice for such depositions. The limitations and conditions set forth in Rules 30(a)(2)(B) and 31(a)(2)(B) of the Federal Rules of Civil Procedure regarding subsequent depositions of an individual shall not apply to depositions taken pursuant to this Section. Any such deposition taken pursuant to this Section shall not be counted towards the deposition limit set forth in Rules 30(a)(2)(A) and 31(a)(2)(A) and depositions may be taken by telephone or other remote electronic means;

B. The FTC and the Receiver may serve upon parties requests for production of Documents or inspection that require production or inspection within five (5) days of service, provided, however, that three (3) days of notice shall be deemed sufficient for the production of any such Documents that are maintained or stored only in an electronic format.

C. The FTC and the Receiver may serve upon parties interrogatories that require response within five (5) days after the FTC serves such interrogatories;

D. The FTC and the Receiver may serve subpoenas upon non-parties that direct production or inspection within five (5) days of service.

E. Service of discovery upon a party to this action, taken pursuant to this Section, shall be sufficient if made by facsimile, email, or by overnight delivery.

F. Any expedited discovery taken pursuant to this Section is in addition to, and is not subject to, the limits on discovery set forth in the Federal Rules of Civil Procedure and the Local Rules of this Court. The expedited discovery permitted by this Section does not require a meeting or conference of the parties, pursuant to Rules 26(d) & (f) of the Federal Rules of Civil Procedure.

G. The Parties are exempted from making initial disclosures under Fed. R. Civ. P. 26(a)(1) until further order of this Court.

SERVICE OF THIS ORDER

XVI. IT IS FURTHER ORDERED that copies of this Order as well as the Motion for Temporary Restraining Order and all other pleadings, Documents, and exhibits filed contemporaneously with that Motion (other than the complaint and summons), may be served by any means, including facsimile transmission, electronic mail or other electronic messaging, personal or overnight delivery, U.S. Mail or FedEx, by agents and employees of the FTC, by any law enforcement agency, or by private process server, upon any Defendant or any Person (including any financial institution) that may have possession,

custody or control of any Asset or Document of any Defendant, or that may be subject to any provision of this Order pursuant to Rule 65(d)(2) of the Federal Rules of Civil Procedure. For purposes of this Section, service upon any branch, subsidiary, affiliate or office of any entity shall effect service upon the entire entity.

CORRESPONDENCE AND SERVICE ON THE FTC

XXVII. IT IS FURTHER ORDERED that, for the purpose of this Order, all correspondence and service of pleadings on the FTC shall be addressed to:

Adam M. Wesolowski
Gregory A. Ashe
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20850
Telephone: 202-326-3068 (Wesolowski)
Telephone: 202-326-3719 (Ashe)
Facsimile: 202-326-3768
Email: awesolowski@ftc.gov; gashe@ftc.gov

PRELIMINARY INJUNCTION HEARING

XXVIII. IT IS FURTHER ORDERED that, pursuant to Fed. R. Civ. P. 65(b), Defendants shall appear before this Court on the 24th day of January, 2018, at 11:00 a.m. at the United States Courthouse, Courtroom 6A, Las Vegas, Nevada, to show cause, if there is any, why this Court should not enter a preliminary injunction, pending final ruling on the Complaint against Defendants, enjoining the violations of the law alleged in the Complaint, continuing the freeze of their Assets, continuing the receivership, and imposing such additional relief as may be appropriate.

BRIEFS AND AFFIDAVITS CONCERNING PRELIMINARY INJUNCTION

XXIX. IT IS FURTHER ORDERED that:

A. Defendants shall file with the Court and serve on FTC counsel any answering pleadings, affidavits, motions, expert reports or declarations, or legal memoranda no later than four (4) days prior to the order to show cause hearing scheduled pursuant to this Order. The FTC may file responsive or supplemental pleadings, materials,

affidavits, or memoranda with the Court and serve the same on counsel for Defendants no later than one (1) day prior to the order to show Cause hearing. Provided that such affidavits, pleadings, motions, expert reports, declarations, legal memoranda or oppositions must be served by personal or overnight delivery, facsimile or email, and be received by the other party or parties no later than 5:00 p.m. (PST) on the appropriate dates set forth in this Section.

B. An evidentiary hearing on the FTC's request for a preliminary injunction is not necessary unless Defendants demonstrate that they have, and intend to introduce, evidence that raises a genuine and material factual issue. The question of whether this Court should enter a preliminary injunction shall be resolved on the pleadings, declarations, exhibits, and memoranda filed by, and oral argument of, the parties. Live testimony shall be heard only on further order of this Court. Any motion to permit such testimony shall be filed with the Court and served on counsel for the other parties at least five (5) days prior to the preliminary injunction hearing in this matter. Such motion shall set forth the name, address, and telephone number of each proposed witness, a detailed summary or affidavit revealing the substance of each proposed witness's expected testimony, and an explanation of why the taking of live testimony would be helpful to this Court. Any papers opposing a timely motion to present live testimony or to present live testimony in response to another party's timely motion to present live testimony shall be filed with this Court and served on the other parties at least three (3) days prior to the order to show cause hearing.

C. Provided, however, that service shall be performed by personal or overnight delivery, facsimile or email, and Documents shall be delivered so that they shall be received by the other parties no later than 5:00 p.m. (PST) on the appropriate dates provided in this Section.

DURATION OF THE ORDER

XXX. **IT IS FURTHER ORDERED** that this Order shall expire fourteen (14) days from the date of entry noted below, unless within such time, the Order is extended for an additional period pursuant to Fed. R. Civ. P. 65(b)(2).

RETENTION OF JURISDICTION

XXXI. **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for all purposes.

IT IS SO ORDERED.

James C. Mahan

JAMES C. MAHAN
UNITED STATES DISTRICT JUDGE

Dated: January 10, 2018, at 11:35 a.m.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF8 MASTER PARTICIPATION TRUST, Plaintiff, vs. TALA RAYMOND FONOTI; WILLADEAN LEHUANANI GRACE; CAPITAL ONE BANK (USA), N.A.; JOHN DOES 1-50; JANE DOES 1-50; DOE PARTNERSHIPS 1-50; DOE CORPORATIONS 1-50; DOE ENTITIES 1-50; AND DOE GOVERNMENTAL UNITS 1-50, Defendants.	CIVIL NO. 15-1-0371-03 JPC (Foreclosure) ORDER DIRECTING RESPONDENTS ROSE DRADI, DAVID KEANU SAI, AND DEXTER KAIAMA TO APPEAR AND SHOW CAUSE WHY THEY SHOULD NOT BE FOUND TO HAVE VIOLATED APPLICABLE CONSUMER PROTECTION LAWS AND NOTICE OF HEARING Trial Date: none
STATE OF HAWAII, BY ITS OFFICE OF CONSUMER PROTECTION, Intervening Petitioner, vs. ROSE DRADI, DAVID KEANU SAI, AND DEXTER KAIAMA, Respondents.	

ORDER DIRECTING RESPONDENTS ROSE DRADI, DAVID KEANU SAI, AND DEXTER KAIAMA TO APPEAR AND SHOW CAUSE WHY THEY SHOULD NOT BE FOUND TO HAVE VIOLATED APPLICABLE CONSUMER PROTECTION LAWS AND NOTICE OF HEARING

TO: ROSE MARIE DRADI
429 N 43RD CT
RIDGEFIELD, WA 98642-8246
and
888 KAPIOLANI BLVD APT 3507,
HONOLULU, HI 96813-6049
Respondent

TO: DAVID KEANU SAI
47-605 PUAPOO PL
KANEOHE, HI 96744-5620
Respondent

TO: DEXTER K KAIAMA
111 HEKILI ST STE A1607
KAILUA, HI 96734-2800
Respondent

PLEASE TAKE NOTICE that the State of Hawaii Office of Consumer Protection ("OCP") has alleged that because Tala Raymond Fonoti and Willadean Lehuanani Grace (the "Defendant homeowners" in this foreclosure case) were "distressed property owners" by virtue of this foreclosure action, and as such. the Defendant homeowners were entitled to the protections of Hawaii Revised Statutes ("HRS") Chapter 480E.

OCP has further alleged that the three of you (collectively "Respondents") provided services to the Defendant homeowners in this foreclosure case.

OCP has further alleged that Respondent Rose Dradi ("Dradi") and Respondent David Keanu Sai ("Sai") were subject to the requirements and prohibitions applicable to distressed property consultants under HRS Chapter 480E.

OCP has further alleged that Respondent Dexter Kaiama ("Kaiama") was subject to the requirements and prohibitions applicable to attorneys under HRS Chapter 480E.

OCP has further alleged that the manner in which Respondents' services were provided to the Defendant homeowners violated applicable provisions of HRS Chapter 480E, as well as the prohibition of unfair or deceptive acts or practices set forth in HRS § 480--2(a). More particularly, OCP has alleged that:

1. Respondents Dradi and Sai have acted in violation of HRS § 480E-3 by failing to use a written contract to fully disclose all of the services they were to perform.

2. Respondents Dradi and Sai have acted in violation of HRS § 480E-3 by failing to provide the homeowners with written notification of their legal right to cancel the Respondents' services at any time.

3. Respondents Dradi and Sai have acted in violation of HRS § 480E-10(a)(9) by collecting money for their services in advance.

4. Respondents Dradi and Sai have acted in violation of HRS § 480E-10(a)(2)(A) by misrepresenting and overstating the benefits of their services, as Respondents failed to save the homeowners' home or have the case dismissed on jurisdictional grounds.

5. Respondents Dradi and Sai have acted in violation of HRS § 480E-10(a)(3) by having assisted the homeowners with the preparation, filing and/or presentation of a motion to dismiss the foreclosure based on Hawaiian sovereignty, representing both explicitly and implicitly that the Court lacked jurisdiction and the foreclosure case would be dismissed, without having competent and reliable evidence to substantiate those claims.

6. Respondents Dradi and Sai have acted in violation of HRS § 480E-10(a)(4) by concealing from the homeowners the fact that the homeowners were paying for an oft-rejected Hawaiian sovereignty argument.

7. Respondents Dradi and Sai have acted in violation of HRS § 480E-10(a)(2)(G) by representing to the homeowners that they had completed their services.

8. Respondents Dradi and Sai have acted in violation of HRS § 480E-10(a)(2)(F) by concealing from the homeowners their entitlement to a refund of all of the money paid them by the homeowners.

9. Respondents Dradi and Sai have acted in violation of HRS § 480E-10(a)(2)(G) by representing to the homeowners that they had the right to retain the money paid them by the homeowners.

10. Respondent Dradi has acted in violation of HRS § 480E-10(a)(2)(K) by misrepresenting to the homeowners the total cost of the Respondents' services.

11. Respondents Dradi and Sai have acted in violation of HRS § 480E-9.5 by failing to create and retain requisite records.

12. Respondents Dradi and Sai have acted in violation of HRS § 480E-10(a)(10) by charging the homeowners fees in excess of the legal limit.[5]

13. Respondent Kaiama has acted in violation of HRS § 480E-15(1) by failing to use a written contract to fully disclose all of the services he was to perform.

14. Respondent Kaiama has acted in violation of HRS § 480E-15(4) by not having fully performed, as that term is defined in HRS § 480E-2, and at a time when he has clearly abandoned making any further effort to save the homeowners' property from foreclosure, nevertheless retaining money that rightfully belongs to the homeowners, compounded by the fact that his services conferred no benefit upon the homeowners in the absence of a determination from this Court to the contrary.

15. Respondents Dradi and Sai have committed numerous violations of HRS § 480-2(a), by virtue of HRS § 480E-11, as each violation of HRS Chapter 480E constitutes a per se violation of HRS § 480-2(a).

16. Respondent Kaiama has violated HRS § 480-2(a), by virtue of HRS § 480E-11, as each violation of HRS Chapter 480E constitutes a per se violation of HRS § 480-2(a).

17. Respondent Kaiama has committed numerous additional violations of HRS § 480-2(a), by associating himself with distressed property consultants in providing assistance to the

[5] Exhibit D to the attached Declaration of Counsel shows the homeowners' monthly mortgage payment during the applicable time period to be $2,146.69, and thus even legitimate distressed property consultants who sought compensation only after they had fully performed could not request more than $4,293.38.

homeowners, when he knew or should have known that Dradi and Sai were violating HRS Chapter 480E by acting as they did, compounded by Kaiama's failure to disclose those violations of the Defendant homeowners.

Having reviewed OCPs Ex Parte Motion for Issuance of an Order Directing Respondents Rose Dradi, David Keanu Sai, and Dexter Kaiama to Appear and Show Cause Why Respondents Should Not Be Found to Have Violated the Consumer Protections Laws set forth above, and good appearing therefor;

IT IS HEREBY ORDERED that the Ex Parte Motion for Issuance of an Order Directing Respondents Rose Dradi, David Keanu Sai, and Dexter Kaiama to Appear and Show Cause Why Respondents Should Not Be Found to Have Violated the Consumer Protections Laws set forth above is GRANTED.

IT IS HEREBY FURTHER ORDERED that Respondents Rose Dradi, David Keanu Sai, and Dexter Kaiama shall appear for the scheduled hearing on the matter and show cause why the Respondents should not be found to have violated applicable consumer protection laws, as alleged by OCP. While OCP as Intervening Petitioner ultimately has the burden of proof to show that one or more of the Respondents have violated applicable consumer protection statutes, the Court may find that burden satisfied by what OCP has already filed with the Court, or by whatever additional evidence or argument OCP may timely file and serve in advance of the hearing.

IT IS HEREBY FURTHER ORDERED that the Ex Parte Motion filed herein, which includes this Order, shall be immediately served upon each of the Respondents.

PLEASE TAKE NOTICE that the matter of whether Respondents Rose Dradi, David Keanu Sai, and Dexter Kaiama violated applicable consumer protection laws, as alleged by OCP, shall be heard before the Honorable JEFFREY P. CRABTREE, Judge of the above-entitled Court, in his courtroom on the Fifth Floor of the Kauikeaouli Hale, 1111 Alakea Street, Honolulu, Hawaii

at 3:30 o'clock a .m., on Feb 28, 2018, or as soon thereafter as counsel can be heard.

PLEASE TAKE FURTHER NOTICE that in the event one or more of you fail to show cause why the Court should not find that one or more of the foregoing alleged violations have occurred, the Court may enter remedial relief against you without further notice and without further hearing, which relief may include declaratory relief, restitution, fines and penalties, permanent injunctive relief and disgorgement, and such additional relief as may the Court may determine to be appropriate.

PLEASE TAKE FURTHER NOTICE that in preparation for the hearing, the Court will adhere to the following briefing schedule.

Each Respondent shall file with the Court and serve on OCP's counsel, no later than eight (8) days before the date set for the hearing, any evidence or argument any Respondent may wish to have the Court consider at the hearing, in accordance with Rule 7 of the Rules of the Circuit Courts of the State of Hawaii, whether that be a legal memorandum, affidavit or declaration testimony, exhibits, all of these things, or anything else which any Respondent intends to rely upon to refute or disprove OCP's allegations.

OCP may file with the Court and serve on Respondents, no later than three (3) days before the date set for the hearing, additional evidence and argument, and file affidavit or declaration testimony, exhibits, or anything else which OCP intends to rely upon to meet its burden of proof in showing the Respondents violated applicable consumer protection statutes.

Nothing herein shall be construed to prejudice OCP from proceeding under the provisions of HRS Chapter 487 with its ongoing investigation of the Respondents and/or the alleged wrongdoing.

PLEASE TAKE FURTHER NOTICE that the filing of any such memorandum or other timely filing by or on behalf of any Respondent will not excuse any of the Respondents from personally appearing at the hearing.

PLEASE TAKE FURTHER NOTICE that any evidence or argument not timely filed and served in the manner called for in this Order may be disregarded by the Court on the objection of the adverse party.

PLEASE TAKE FURTHER NOTICE that an evidentiary hearing is not necessary unless Respondents demonstrate that they have, and intend to introduce, evidence that raises a genuine and material factual issue. The question of whether this Court should enter the requested remedial relief, or any such other relief as the Court may deem appropriate, shall be resolved on whatever evidence and argument is timely filed and served in accordance with the provisions of this Order, and the oral argument of the parties, provided that argument made for the first time at the hearing may be disregarded.

PLEASE TAKE FURTHER NOTICE that live testimony shall be heard only on further order of this Court. Any motion to permit such testimony shall be filed with the Court and served on counsel for the other parties at least fourteen (14) days prior to the hearing in this matter. Such motion shall set forth the name, address, and telephone number of each proposed witness, a detailed summary, declaration or affidavit revealing the substance of each proposed witness's expected testimony, and an explanation of why the taking of live testimony would be helpful to this Court. Any papers opposing a timely motion to present live testimony, or to present live testimony in response to another party's timely motion to present live testimony, shall be filed with this Court and served on the other parties at least seven (7) days prior to the order to show cause hearing.

PLEASE TAKE FURTHER NOTICE that this Court shall retain jurisdiction of this matter for all purposes.

DATED: Honolulu, Hawaii, 1-25-18.

FIRST CIRCUIT COURT SEAL STATE OF HAWAII

THE HONORABLE JEFFREY P. CRABTREE
Judge of the Above-Entitled Court

This order is without prejudice, pending a hearing or other process where Respondents can be heard.

Dexter K. Kaiama 4249-0
1111 Hekili Street, #A1607
Kailua, Hawai'i 96734
Tel. No. (808) 284-5675
Respondent

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

U.S BANK TRUST, N.A., AS TRUSTEE FOR LSF8 MASTER PARTICIPATION TRUST, Plaintiff, vs. TALA RAYMOND FONOTI; et al., Defendants.	CIVIL NO. 15-1-0371-03 JPC (Foreclosure) Response of Dexter Kaiama On Order To Show Cause Filed January 25, 2018; Declaration of Dexter Kaiama; Exhibits "1-3"; Certificate of Service
STATE OF HAWAII, BY ITS OFFICE OF CONSUMER PROTECTION, Intervening Petitioner, vs. Rose Dradi, David Keanu Sai, and Dexter Kaiama, Respondents.	**OSC Return Hearing:** **Date: February 28, 2018** **Time: 3:30 p.m.** **Judge: Jeffrey P. Crabtree**

RESPONSE OF DEXTER KAIAMA ON
ORDER TO SHOW CAUSE FILED JANUARY 25, 2018

On or about February 1, 2018, Respondent Dexter K. Kaiama (hereinafter "Respondent Kaiama") voluntarily appeared at Intervening Petitioner Office of Consumer Protection ("OCP") and received service of a filed marked copies of OCP's pleadings including the Order Directing Respondents Rose Dradi, David Keanu Sai and Dexter Kaiama to Appear and Show Cause Why They Should Not Be Found To Have Violated Applicable Consumer Protection Law filed January 25, 2018 (hereinafter "OSC") as it relates to the above-referenced civil action. Hearing

on the OSC is presently scheduled for Wednesday, February 28, 2018 at 3:30 p.m.

Respondent, by and through his declaration attached hereto, exhibits attached to said declaration, the pleadings and files herein, and his appearance and representations to be made at the February 28, 2018 OSC Hearing and respectfully submits his response(s) will result in the dismissal of Respondent Kaiama's OSC.

However, as a matter of first order, Respondent Kaiama respectfully submits that this court lacks subject matter jurisdiction and the requisite legal authority over OCP's pleadings, including, but not limited to the OSC filed herein on January 25, 2018 and is without subject matter jurisdiction to preside over the OCP proceedings. Respondent expects to file his Motion to Dismiss for Lack of Subject Matter Jurisdiction and requests an evidentiary hearing on said motion to dismiss. Though, as a courtesy to the Court, Respondent files his instant response, declaration and exhibits in support, Respondent ardently submits that this Honorable Court withhold and delay any such hearing on the OSC until the Court has conducted and concluded an evidentiary hearing on Respondent's related motion to dismiss for lack of subject matter jurisdiction.

DATED: Honolulu, Hawai'i, February 20, 2018.

Dexter K. Kaiama
Respondent on the January 25, 2018
Order to Show Cause

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

U.S BANK TRUST, N.A., AS TRUSTEE FOR LSF8 MASTER PARTICIPATION TRUST, Plaintiff, vs. TALA RAYMOND FONOTI; et al., Defendants.	CIVIL NO. 15-1-0371-03 JPC (Foreclosure) Declaration of Dexter Kaiama; Exhibits "1-3"
STATE OF HAWAII, BY ITS OFFICE OF CONSUMER PROTECTION, Intervening Petitioner, vs. Rose Dradi, David Keanu Sai, and Dexter Kaiama, Respondents.	

DECLARATION OF DEXTER KAIAMA

I, Dexter K. Kaiama, declare under penalty of law that the following is true and correct:

1. By this declaration, I am providing a response to the January 25, 2018 Order to Show Cause (Hereinafter "OSC") filed in the instant Civil action set for return hearing on **February 28, 2018 at 3:30 p.m.**, before the Honorable Jeffrey Crabtree.

2. I object to and oppose, in its entirety, OCP's Ex Parte Motion for Issuance of an Order Directing Respondents to Appear and Show Cause, and resulting OSC filed herein on January 25, 2018 on grounds of insufficient factual or legal basis.

3. As more fully set forth hereinbelow, I submit that the Case Information, pleadings filed herein, transcript of the proceedings on the Motion to Dismiss heard before the Court on May 18, 2017, matters that was clearly available to OCP and the Court supports a conclusion that OSC against me should be dismissed.

4. In addition to testimony and exhibits submitted in this declaration below, I fully intend to appear and respond to allegation(s) made in OCP's pleadings as it pertains to me.

5. First, on a clear examination of the Case Information, accessible through the Hawaii State Judiciary website (Ho'ohiki), under Party List, a true and correct copy of which is attached to this declaration as Exhibit "1" I am not listed as counsel for either of the Defendants Tala Raymond Fonoti ("Fonoti") or Willadean Lehuanani Grace ("Grace") in the instant related civil action, a case with an open date of March 3, 2015.

6. I am first listed a party following the filing of OCP's Ex Parte Motion and resulting Order to Show Cause filed herein on January 25, 2018.

7. Further a review of the website Document List, attached hereto as Exhibit "2", confirms that Defendant's Fonoti and Grace personally (pro se) filed their Answer to Complaint on April 28, 2015 as well as their Motion to Dismiss Complaint Pursuant to HRCP 12(B)(1) on April 21, 2016.

8. I had no contact and had never met either Mr. Fonoti or Ms. Grace prior to the filing of their Answer to Complaint (April 28, 2015) or their Motion to Dismiss Pursuant to HRCP 12(B)(1) (April 21, 2016). In fact, I never knew or had any knowledge of Mr. Fonoti, Ms. Grace or this civil action until sometime on or about April 26, 2017, over two (2) years after the filing the complaint in this civil action.

9. Paragraph 20, of the Declaration of Tala Raymond Fonoti, attached to OCP's Ex Parte

Motion for Issuance of OSC, filed January 25, 2018 supports my declaration that I did not know or had any contact with either Mr. Fonoti or Ms. Grace before April 26, 2017. In his declaration, Mr. Fonoti declares:

> "At the hearing we showed up, but Mr. Kaiama did not, and the judge was kind enough to grant us a continuance of the hearing. Afterward, we called Mr. Kaiama, who indicated he had no idea who we were."
>
> [on Defendant's Motion to Dismiss Pursuant to HRCP 12(B)(1) originally heard on or about April 26, 2017, See, Document List, attached hereto as Exhibit "2"]

10. In paragraph 22 of Mr. Fonoti's declaration, he confirms meeting me for the first time. I however, dispute the remainder of paragraph 22 of Mr. Fonoti's declaration.

11. Paragraphs 20 and 22, of the declaration of Ms. Grace (also attached to OCP's Ex Parte Motion) are identical to paragraphs 20 and 22 of Mr. Fonoti's declaration. My response to Ms. Grace's declaration is consistent with my response to paragraphs 20 and 22 of Mr. Fonoti's declaration. I will address this directly with the court at the return hearing on February 28, 2018 or when otherwise held by the court.

12. At the continued Hearing on Defendants' Motion to Dismiss Pursuant to HRCP 12(B)(1), held before Judge Crabtree on or about May 18, 2017, just before noon (See, Court Minute List, attached to the declaration as Exhibit "3"). I, for the first time, met Mr. Fonoti and Ms. Grace and agreed to make representations on their behalf, solely on the Defendants' Motion to Dismiss Pursuant to HRCP Rule 12(B)(1) for lack of subject matter jurisdiction and Plaintiff U.S. Bank's Motion for Summary Judgment as both motions were being heard together by the Court.

13. I made it clear to Mr. Fonoti and Ms. Grace that my representation would limited solely to hearing on their Motion to Dismiss and Plaintiff's Motion for Summary Judgment on

May 18, 2017 and that my appearance and representation would end with the court's ruling on Defendants' Motion to Dismiss and that I would not serve as counsel on the underlying foreclosure proceeding.

14. At the May 18, 2017 hearing on Defendants' Motion to Dismiss and Plaintiff's Motion for Summary Judgment, the following representations were made to and by the Court:

> THE CLERK: Calling case 3 on the calendar. 1CC15-1-0371, US Bank Trust N.A. v. Tala Fonoti for 1) plaintiff's motion for summary judgment ... and 2) defendant Fonoti and Fonoti's motion to dismiss complaint.
>
> Counsel, appearances please.
>
> Mr. Lucas: Good morning your Honor. Skylar Lucas for the Plaintiff.
>
> THE COURT: Good morning.
>
> MR. KAIAMA: Good morning, your Honor. Dexter Kaiama. I'm making a special appearance on behalf of Mr. and Mrs. Fonoti who are present in the courtroom.
>
> THE COURT: Okay. When you say "special appearance", what are we talking about?
>
> MR. KAIAMA: It is essentially for the purposes of this motion Today and the Fonoti's motion to dismiss and since the motion for summary judgment is also scheduled for purposes of participating in this hearing and the motions this morning. Following the conclusion of the Court's order, either granting our motion to dismiss or denying and granting or denying the motion for summary judgment, my appearance or my representations of the Fonoti's will have come to a conclusion.
>
> THE COURT: Okay. I might have missed something. Let me make sure I'm clear. Are you only appearing for purposes of the motion to dismiss?
>
> MR. KAIAMA: That is correct --

THE COURT: Okay.

MR. KAIAMA: - - well, since the motion for summary judgment is being heard concurrently, I'm also making representations on their behalf on the motion for summary judgment. Well your honor essentially relying on the motion to dismiss.

THE COURT: Okay. I think I understand.

MR. KAIAMA: Yes.

THE COURT: All right. Counsel, do you have any issue with - -

MR. LUCAS: No objection.

THE COURT: - - Mr. Kaiama's statements? Okay. All right. So we'll go forward with that.

[Transcript of Proceedings, Thursday May 18, 2017, in the above-entitled matter: Page 2, lines 2-25 and Page 3, lines 1-18]

15. I have obtained an original transcript of the May 18, 2017 and will make it available to the Court for inspection upon the Court's request. I respectfully submit that transcripts of these proceedings were readily available and easily accessible to OCP and the Court.

16. Nevertheless, the court transcripts of the May 18, 2017 proceedings affirm and is consistent with representations I made to Mr. Fonoti and Ms. Grace (who I referred to as Mrs. Fonoti at the hearing) that my representation would be solely for and limited to legal argument and representations made at the May 18, 2017 hearing.

17. In further support of my response to the OSC, I respectfully submit the following pertinent transcript from the May 18, 2017 hearing on the above-referenced motions:

THE COURT: All right. All right. So let's do the motion to dismiss first. I mean, I have read it. I'm aware that the issue's been, you know, raised and an important issue that's been raised in many courts over a significant period of time. But I'm also aware there's precedent out there basically requiring me to deny the motion.

****

MR. KAIAMA: And respectfully, I think that the precedent that is being cited actually is not applicable to the motion that's being brought today and here's why. Your Honor, we believe that the actual precedent that is applicable to this case is *State of Hawaii versus Lorenzo.* It is in that case ...

... the court said that Mr. Lorenzo had filed to provide facts in [and] evidence to conclude that Hawaiian Kingdom continues to exist with the attributes of a state sovereign nature. Okay. And that case actually - - that has been the precedent case since that time, and I think it was 1993. And there have been 43 or more decisions – appellate decisions that have relied on *State of Hawaii versus Lorenzo.* And in each of those cases, they essentially said that the person challenging jurisdiction had filed to provide the fact in evidence to conclude that the Hawaiian Kingdom continues to exist with those actions [attributes]. The case precedent that most parties like the bank, the plaintiffs rely on is *State v. Kaulia.* And it is that case that ... the Hawaii Supreme Court said, and I'm kind of summarizing, is that "Despite the lawfulness of its origins, today we are the state of Hawaii." Now, that's essentially the entirety of the Supreme Court's holding. So they haven't - - in the *State of Hawaii versus Kaulia,* there's two things that I'd like the Court to think about and its our position Kaulia was challenging personal jurisdiction. What we're doing, Your Honor, is we're asking the predicate question, the question that comes before, whether the Court actually has subject matter jurisdiction. And if the Court of course doesn't have subject matter jurisdiction, it does not need to address the personal jurisdiction issues. And of course we believe that's in line with *State of Hawaii versus Lorenzo.*

Mr. Fonoti and Mrs. Fonoti ... it's their position based on the - - their motion and the exhibits attached to their motion that they have now provided the Court with ample evidence for the Court to conclude - - this court to conclude that the - - that there is [are] facts in evidence to conclude that the Hawaiian Kingdom continues to exist.

Another important consideration for the Court and I think the Court is aware that is always the initial burden of the plaintiffs to show that the Court does have subject matter jurisdiction. And I think that's been affirmed in the case of *Nishitani versus Baker*.

So the motion that was brought by the Fonotis actually anticipates the plaintiff's obligation, initial obligation. And by presenting this evidence, we believe it negates their ability to meet that initial obligation. We believe not only do we establish that the Hawaiian Kingdom continues to exist - - and we provide facts in evidence to reach that conclusion - - but, by doing so, we believe it also prevents the plaintiffs from meeting their initial burden.

****

If the Court makes a determination that we have not provided sufficient facts in evidence, then of course one of my request on behalf of the Fonoti would be to make a request to conduct an Evidentiary Hearing so that the Fonotis can provide what we believe would be sufficient facts in evidence for this court to make the conclusion - - to reach that conclusion.

[Transcript of Proceedings, Thursday May 18, 2017, in the above-entitled matter: Page 3-7]

18. Also, as part of May 18, 2017 hearing, I presented argument and evidence concerning the expert witness testimony of Dr. Keanu Sai in the cases of State vs. Kaiula English and State vs. Robin Dudoit. The expert witness testimony of Dr. Sai supported Defendants Fonoti and Grace's legal position that the Hawaiian Kingdom continued to exist and the courts did not have the legal authority to entertain these kinds of complaints. Pertinent parts of the court transcript are provided as follows:

THE COURT: Okay. Just as an aside, I was interested by that When I was reading it because it's always been my understanding that experts aren't allowed to offer legal conclusions. That's for the Court to figure out. But apparently he was allowed to.

MR. KAIAMA: Yes. And, generally speaking, that - -

THE COURT: Interesting.

MR. KAIAMA: - - would be the case, but and I think perhaps because this is an issue that's not necessarily well known in the community ... I think the judge allowed him to testify for his own consideration and provide that opinion. ***But what is***, I think, ***significant is that he provided that expert opinion without any objection by the prosecutor, neither as to his qualifications or to the substance of his testimony. So essentially how can I say this? It was undisputed expert testimony.*** What's also important is the court in that case also took judicial notice of many [all] the documents we submitted, including Dr. Sai's expert opinion ... and I'd like to submit that the taking of judicial notice has a significant and profound effect on the courts. My feeling is and ***my argument has been*** if ***you cannot take judicial notice of something, and then turn around and render a decision which is contrary to what you took judicial notice of***, and I do believe that the courts have been doing that. But, Your Honor - - and so that's the Fonoti's position. And we respectfully submit that if the Court lacks subject Matter jurisdiction, that it cannot entertain this complaint and that it should grant the motion and dismiss the complaint. Thank you, Your Honor.

[Transcript of Proceedings, Thursday May 18, 2017, in the above-entitled matter: Page 9-10]

19. At my initial meeting with Mr. Fonoti and Ms. Grace, but prior to my representations and oral argument at the May 18, 2017 hearing, I did explicitly advise Mr. Fonoti and Ms. Grace that, while believing the facts and legal argument of their motion to be undisputed and one that should prevail, it was very possible that the Court would, contrary to applicable law and fact, deny the Defendants' Motion to Dismiss and grant Plaintiff's Motion for Summary Judgment for foreclosure and that they should retain separate legal counsel for the underlying foreclosure action.

20. I also advised Mr. Fonoti and Ms. Grace that I would not enter a special appearance on their behalf unless they clearly understood the limit of my representation. Both Mr. Fonoti and Ms. Grace understood and agreed to my limited representation for the May 18, 2017 hearing.

21. To be filed separately, but nonetheless a part of my response to the OSC, I will be filing my own Motion to Dismiss Pursuant to HRCP 12(b)(1) for Lack of Subject Matter Jurisdiction to this proceeding and respectfully request the convening of an evidentiary hearing and for the submission of additional evidence as well as the calling of expert witness testimony in support of my motion to dismiss for lack of subject matter jurisdiction. In connection with the filing of said motion to dismiss for lack of subject matter jurisdiction and request for evidentiary hearing, I respectfully request that this Court continue the present return hearing on the OSC, from February 28, 2018, to be heard concurrently or at the time hearing is scheduled with filing of said motion to dismiss for lack of subject matter jurisdiction.

22. Finally, I respectfully reserve all additional responses and intend to address the Court at the scheduled February 28, 2018 return hearing on the Order to Show Cause or such other time should this return hearing be continued by the Court.

DATED: Honolulu, Hawai'i, February 20, 2018.

Dexter K. Kaiama

EXHIBIT "1"

Non-Criminal Case Information

Case ID	1CC151000371	Case Title	US BANK TRUST NA VS TALA RAYMOND FONOTI ETAL		
Initiation Type	P	Initiation Date	03/03/2015	Initiator I.D.	A7124
Conf. Code	N	Division	1C06	Court	C

Case Info **Party List** Document List Court Minutes List

Seq	Name	Party Type	Open Date	Party Status
1	US BANK TRUST, NA	PL	03/03/2015	
2	FONOTI, TALA RAYMOND	DF	03/03/2015	
3	GRACE, WILLADEAN LEHUANANI	DF	03/03/2015	
4	CAPITAL ONE BANK (USA) NA	DF	03/03/2015	
5	STATE OF HAWAII BY ITS OFC OF CONSUMER PROTECTION	VC	01/25/2018	AC
6	DRADI, ROSE	DI	01/25/2018	AC
7	SAI, DAVID KEANU	DI	01/25/2018	AC
8	KAIAMA, DEXTER	DI	01/25/2018	AC

Amt Pr For		Attorney's Fee		Amt. Awarded	
Attrny Comm		Interest		Sheriff's Fee	
Notary Fee		Court Costs		Mileage Fee	
Comments					

EXHIBIT "2"

Non-Criminal Case Information

Case ID	1CC151000371	Case Title	US BANK TRUST NA VS TALA RAYMOND FONOTI ETAL		
Initiation Type	P	Initiation Date	03/03/2015	Initiator I.D.	A7124
Conf. Code	N	Division	1C06	Court	C

Case Info | Party List | **Document List** | Court Minutes List

Seq	Doc Type	Document Title	Date/Time	Filing Party
1	CIS	CIVIL INFORMATION SHEET	03/03/2015 13:00	KAANEHE, BLUE
2	CMPS	VERIFIED COMPLAINT FOR FORECLOSURE; EXH 1; VERIFICATION OF COMPLAINT FOR FORECLOSURE, EXHS A-F; SUMMONS (JUDGE B I AYABE)	03/03/2015 13:01	KAANEHE, BLUE
3	NPA	NOTICE OF PENDENCY OF ACTION; EXHIBIT A (AFFECTING LAND COURT DOCUMENT NO 3454256 AND NOTED ON TCT NO 591,293)	03/03/2015 13:01	KAANEHE, BLUE
4	AFA	AFFIRMATION OF ATTORNEY	03/03/2015 13:01	KAANEHE, BLUE
5	RAS	RETURN AND ACKNOWLEDGMENT OF SERVICE (SRVD VERIFIED COMPLAINT;ETC ON TALA RAYMOND FONOTI ON 4/22/2015)	04/28/2015 11:12	MILLER, ROBIN L.
6	RAS	RETURN AND ACKNOWLEDGMENT OF SERVICE (SRVD VERIFIED COMPLAINT;ETC ON LANELLE FONOTI ON 4/22/2015)	04/28/2015 11:12	MILLER, ROBIN L.
7	RAS	RETURN AND ACKNOWLEDGMENT OF SERVICE (SRVD COMPLAINT;ETC ON WILLADEAN L GRACE ON 4/22/2015)	04/28/2015 11:12	TELLIO, ANDREW R
8		DEFTS' ANSWER TO COMPLAINT; C/S	04/28/2015 10:32	PRO SE
9	RAS	RETURN AND ACKNOWLEDGMENT OF SERVICE (SRVD VERIFIED COMPLAINT;ETC ON CAPITAL ONE BANK (USA) NA ON 4/23/15)	04/30/2015 11:29	MILLER, ROBIN L.
10		W/DRAWAL & SUBSTITUTION OF PLTF'S COUNSEL & ORDER;C/S	07/22/2015 13:45	STONE, PETER T
11	EPR	(RECEIVED) COPY OF PLTFS EX PARTE MOTION FOR FIRST EXTENSION OF TIME TO FILE PRETRIAL STATEMENTDEC/COUNSEL; ORDER ETC	10/29/2015 13:46	STONE, PETER T

➤ 12	EP	PLTF'S EX PARTE MOTION FOR FIRST EXTENSION OF TIME TO FILE PRETRIAL STATEMENT; DEC/COUNSEL; ORDER GRANTING PLTF'S EX PARTE MOTION ETC	11/02/2015 14:21	STONE, PETER T
➤ 13		(RECEIVED) PLTF'S EX PARTE MOTION FOR SECOND EXTENSION OF TIME TO FILE PRETRIAL STATEMENT; DEC/ COUNSEL; ORDER GRANTING PLTF'S EX PARTE MOTION FOR SECOND EXTENSION OF TIME TO FILE PRETRIAL STATEMENT	04/13/2016 11:19	COTTON, JASON L
➤ 14		PLTF'S MOTION FOR SUMMARY JUDGMENT FOR FORECLOSURE AGAINST ALL DEFTS AND FOR INTERLOCUTORY DECREE OF FORECLOSURE; MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT; EXHIBIT A; DEC/ INDEBTEDNESS AND ON PRIOR BUSINESS RECORDS; EXHIBITS 1-5; DEC/ COUNSEL; EXHIBITS 6-8; HRS 667-17 AFFIRMATION; N/H; C/S	04/13/2016 14:10	WONG, DEREK W. C.
➤ 15		PLTF'S EX PARTE MOTION FOR SECOND EXTENSION OF TIME TO FILE PRETRIAL STATEMENT; DEC/ COUNSEL; ORDER GRANTING PLTF'S EX PARTE MOTION FOR SECOND EXTENSION OF TIME TO FILE PRETRIAL STATEMENT	04/14/2016 15:17	COTTON, JASON L
➤ 16		DEFTS TALA RAYMOND FONOTI & WILLADEAN LEHUANANI FONOTI'S MOTION TO DISMISS COMPLAINT PURSUANT TO HRCP 12(B)(1); MEMORANDUM IN SUPPORT OF MOTION TO DISMISS; DEC/ DEFTS; EXHIBITS 1-4; N/H; C/S	04/21/2016 12:14	PRO SE
➤ 17	WDW	WITHDRAWAL OF PLTF'S MOTION FOR SUMMARY JUDGMENT FOR FORECLOSURE AGAINST ALL DEFTS & FOR INTERLOCUTORY DECREE OF FORECLOSURE FILED 04/13/16C/S	07/07/2016 11:51	STONE, PETER T
➤ 18	MSJ	PLTF'S MOTION FOR SUMMARY JUDGMENT FOR FORECLOSURE AGAINST ALL DEFTS AND FOR INTERLOCUTORY DECREE OF FORECLOSURE; MEMO/SUPP OF MOTION FOR SUMMARY JUDGMENT; EXH A; DEC/INDEBTEDNESS & ON PRIOR BUSINESS RECORDS; EXHS 1-8; DEC/COUNSEL;EXH 9; HRS 667-17 AFFIRMATION; N/H & C/S	08/23/2016 14:05	STONE, PETER T
➤ 19	OCR	ORDER OF CASE REASSIGNMENT (CASE REASSIGNED FROM JUDGE AYABE, 21ST DIVISION TO JUDGE CASTAGNETTI, 5TH DIVISION)	09/15/2016 16:20	FILED BY COURT, COURT
➤ 20	ANH	AMENDED NOTICE OF HEARING AND C/S	10/25/2016 11:00	FILED BY COURT, COURT
➤ 21	NPSOC			

		NOTICE TO ALL PARTIES REGARDING THE STANDARD OF CONDUCT FOR SELF-REPRESENTED OR PRO SE PARTIES IN THE FIRST CIRCUIT OF THE STATE OF HAWAII, FIFTH DIVISION	10/25/2016 11:00	FILED BY COURT, COURT
22	ANH	AMENDED NOTICE OF HEARING ON 1) PLTF'S MOTION FOR SUMMARY JUDGMENT FOR FORECLOSURE AGAINST ALL DEFTS& FOR INTERLOCUTORY DECREE OF FORECLOSURE FILED 08/23/2016; & 2) DEFT TALA RAYMOND FONOTI ETALS MOTION TO DISMISS, FILED 04/21/2016; C/S	11/10/2016 14:25	STONE, PETER T
23	MOPP	PLTF'S MEMORANDUM IN OPPOSITION TO DEFTS TALA RAYMOND FONOTI & WILLADEAN LEHUALNANI FONOTI'S MOTION TO DISMISS COMPLAINT PURSUANT TO HRCP 12(B)(1) FILED 04/21/2016; C/S	12/19/2016 11:09	STONE, PETER T
24	REAS	REASSIGNMENT OF CASE TO THE HONORABLE JEANNETTE H CASTAGNETTI	01/04/2017 09:45	FILED BY COURT, COURT
25	REAS	REASSIGNMENT OF CASE TO THE HONORABLE JEANNETTE H CASTAGNETTI (CAPITAL ONE BANK (USA) NA - RULE 5 HRCP)	01/13/2017 13:15	FILED BY COURT, COURT
26	ANH	SECOND AMENDED NOTICE OF HEARING ON (1) PLTF'S MOTION FOR SUMMARY JGMT FOR FORECLOSURE AGAINST ALL DEFTS & FOR INTERLOCUTORY DECREE OF FORECLOSURE FILED 08/23/2016; & (2) DEFT TALA RAYMOND FONOTI & WILLADEAN LEHUANANI FONOTI'S MOTION TO DISMISS, FILED 04/21/2016; C/S	01/17/2017 12:29	STONE, PETER T
27	REAS	REASSIGNMENT OF CASE TO THE HONORABLE JEFFREY P CRABTREE	04/07/2017 09:36	FILED BY COURT, COURT
28	ANH	THIRD AMENDED NOTICE OF HEARING ON (1) PLTF'S MOTION FOR SUMMARY JUDGMENT FOR FORECLOSURE AGAINST ALL DEFTS AND FOR INTERLOCUTORY DECREE OF FORECLOSURE FILED 08/23/2016; AND (2) DEFT TALA RAYMOND FONOTI & WILLADEAN LEHUANANI FONOTI'S MOTION TO DISMISS, FILED 04/21/2016; C/S	05/01/2017 13:43	STONE, PETER T
29		PLAINTIFF'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT FOR FORECLOSURE AGAINST ALL DEFTS & FOR INTERLOCUTORY DECREE OF FORECLOSURE FILE 8/23/16; C/S	05/01/2017 11:11	STONE, PETER T
30		NOTICE OF SUBMISSION OF JUDGMENT; EXH 1 C/S	05/24/2017 15:42	STONE, PETER T
31	ODE			

		ORDER DENYING DEFTS TALA RAYMOND FONOTI & WILLA-DEAN LEHUANANI FONOTI'S MOTION TO DISMISS COMPLAINT PURSUANT TO HRCP 112(B) (1) FILED 04/21/2016	07/07/2017 11:09	STONE, PETER T
➤ 32	FOF	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING PLTF'S MOTION FOR SUMMARY JUDGMENT FOR FORECLOSURE AGAINST ALL DEFTS & FOR INTERLOCUTORY DECREE OF FORECLOSURE; EXH A	07/07/2017 11:10	STONE, PETER T
➤ 33	J	JUDGMENT	07/07/2017 11:10	STONE, PETER T
➤ 34	NEJ	NOTICE OF ENTRY OF JUDGMENT	07/07/2017 11:14	STONE, PETER T
➤ 35	CS	CERTIFICATE OF SERVICE	07/21/2017 11:03	STONE, PETER T
➤ 36	DEC	DECLARATION OF SANFORD UJIMORI; EXH A; C/S	08/11/2017 11:26	OTHER
➤ 37	M	PLTF'S MOTION FOR AN ORDER PERMITTING SALE OF THE PROPERTY WITHOUT OPEN HOUSES; DEC/COUNSEL; EXH A; N/H; C/S	08/15/2017 15:37	STONE, PETER T
➤ 38	OG	ORDER GRANTING PLTF'S MOTION FOR AN ORDER PERMITTING SALE OF THE PROPERTY WITHOUT OPEN HOUSES	09/29/2017 14:04	STONE, PETER T
➤ 39	CS	CERTIFICATE OF SERVICE	10/12/2017 10:52	STONE, PETER T
➤ 40	COMR	COMMISSIONER'S REPORT; DEC/S UJIMORI; EXH A-C; C/S	12/06/2017 14:57	OTHER
➤ 41	MCS	PLTF'S MOTION FOR ORDER CONFIRMING FORECLOSURE SALE APPROVING COMMISSIONER'S REPORT ALLOWANCE OF COMMISSIONER'S FEES ATTORNEYS FEES COSTS DIRECTING CONVEYANCE & FOR WRIT OF EJECTMENT; DEC/COUNSEL; EXH A; N/H; C/S	01/09/2018 11:26	STONE, PETER T
➤ 42	ANH	AMENDED NOTICE OF HEARING ON PLTF'S MOTION FOR ORDER CONFIRMING FORECLOSURE SALE, APPROVING COMMISSIONER'S REPORT ALLOWANCE OF COMMISSIONER'S FEES ATTORNEYS' FEES, COSTS DIRECTING CONVEYANCE & FOR WRIT OF EJECTMENT FILED 01/09/2018; C/S	01/16/2018 15:34	STONE, PETER T
➤ 43	EP	STATE OF HAWAII OFFICE OF CONSUMER PROTECTION'S EX PARTE MOTION FOR LEAVE TO INTERVENE & TO ADD ROSE DRADI, DAVID KEANU SAI & DEXTER KAIAMA AS PARTIES; MEMO/SUPP; DEC/COUNSEL; ORDER GRANTING STATE OF HAWAII OFFICE OF SONSUMER PROTECTION LEAVE TO INTERVENE ETC	01/25/2018 14:14	EVERS, JAMES FREDERICK

44	EP	STATE OF HAWAII OFFICE OF CONSUMER PROTECTION'S EX PARTE MOTION FOR ISSUANCE OF AN ORDER DIRECTINGRESPS ROSE DRADI, DAVID KEANU SAI & DEXTER KAIAMA TO APPEAR & SHOW CAUSE WHY THEY SHOULD NOT BE FOUND TO HAVE VIOLATED APPLICABLE CONSUMER PROTEC-TION LAWS; MEMO/SUPP; DEC/TR FONOTI; EXHS A-C; DEC/WL GRACE; EXHS A-C; DEC/COUNSEL; EXHS D-E; ORDER ETC & N/H	01/25/2018 14:16	EVERS, JAMES FREDERICK

EXHIBIT "3"

Non-Criminal Case Information

Case ID	1CC151000371	Case Title	US BANK TRUST NA VS TALA RAYMOND FONOTI ETAL		
Initiation Type	P	Initiation Date	03/03/2015	Initiator I.D.	A7124
Conf. Code	N	Division	1C06	Court	C

Case Info | Party List | Document List | **Court Minutes List**

	App Type	Loc	Type	Date/Time	Phase	App Desc	App Disp
➤ 1	ACC	1C06	AC	03/03/2015		ASSIGNED CIVIL CALENDAR ORDER OF CASE REASSIGNMENT FILED 9/15/16 (21ST DIV TO 5TH DIV/BIA TO JHC) (3/23/17-CASE REASSIGNED FR 1C05 (CASTAGNETTI) TO 1C06 (CRABTREE) (04/07/2017; REASSIGN TO J CRABTREE)	
➤ 2	MSJ	1C21	CM	07/06/2016 09:00		PLTF'S MOTION FOR SUMMARY JUDGMENT FOR FORECLOSURE AGAINST ALL DEFTS AND FOR INTERLOCUTORY DECREE OF FORECLOSURE (P. STONE)	WDW
➤ 3	MOT	1C21	CM	10/18/2016 09:30		DEFTS TALA RAYMOND FONOTI ETALS MOTION TO DISMISS COMPLAINT PURSUANT TO HRCP 12(B)(1) (PRO SE)	TAD
➤ 5	DSM	1C05	CM	12/28/2016 09:00		1.DEFENDANT TALA RAYMOND FONOTI & WILLADEAN LEHUANANI FONOTI'S MOTION TO DISMISS COMPLAINT PURSUANT TO HRCP 12(B)(1) (T.FONOTI/W.FONOTI, DEFTS PRO SE)(RSC FM 10/18/16) 2.PLTF'S MSJ FOR FORECLOSURE AGAINST ALL DEFTS AND FOR INTERLOCUTORY DECREE OF FORECLOSURE (P STONE) (ORDER OF CASE REASSIGNMENT FROM J/AYABE	RSC

						9/15/16)	
➤ 4	MSJ	1C21	CM	12/28/2016 09:00	*	PLTF'S MSJ FOR FORECLOSURE AGAINST ALL DEFTS AND FOR INTERLOCUTORY DECREE OF FORECLOSURE (P STONE)	TAD
➤ 6	DSM	1C06	CM	04/26/2017 09:00		1.DEFENDANT TALA RAYMOND FONOTI & WILLADEAN LEHUANANI FONOTI'S MOTION TO DISMISS COMPLAINT PURSUANT TO HRCP 12(B)(1) (T.FONOTI/W.FONOTI, DEFTS PRO SE)(RSC FM 10/18/16) 2.PLTF'S MSJ FOR FORECLOSURE AGAINST ALL DEFTS AND FOR INTERLOCUTORY DECREE OF FORECLOSURE (P STONE)	CON
➤ 7	DSM	1C05	CM	04/26/2017 09:00	*	1.DEFENDANT TALA RAYMOND FONOTI & WILLADEAN LEHUANANI FONOTI'S MOTION TO DISMISS COMPLAINT PURSUANT TO HRCP 12(B)(1) (T.FONOTI/W.FONOTI, DEFTS PRO SE)(RSC FM 10/18/16) 2.PLTF'S MSJ FOR FORECLOSURE AGAINST ALL DEFTS AND FOR INTERLOCUTORY DECREE OF FORECLOSURE (P STONE) (ORDER OF CASE REASSIGNMENT FROM J/AYABE 9/15/16)	TAD
➤ 8	MOT	1C06	CM	05/18/2017 11:30		1) PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT FOR FORECLOSURE AGAINST ALL DEFENDANTS AND FOR INTERLOCUTORY DECREE OF FORECLOSURE FILED 8/23/16 {MVT PETER STONE} RSC FR: 4/26/17 2) DEFENDANT TALA RAYMOND FONOTI & WILLADEAN LEHUANANI FONOTI'S MOTION TO DISMISS COMPLAINT PURSUANT TO HRCP 12(B)(1) {MVT T. FONOTI/W. FONOTI, PRO SE} RSC FR: 10/18/16; 4/26/17	GRT

CTRM [ ] Cal. Type [CM] Priority [0]

Judge I.D.	JJCRABTREE	Video No.	Audio No.

Minutes: PRESENT: N. KAI - CLERK J. AKITA - COURT REPORTER 11:53AM - 12:07PM THE CASE WAS CALLED AND APPEARANCES MADE. THE COURT REVIEWED THE MOTIONS FOR HEARING AND CHOSE TO ADDRESS ACCORDINGLY: MOTION #2 - THE COURT HEARD ARGUMENTS, AS NOTED ONRECORD. AFTER CAREFUL CONSIDERATION,THE COURT DENIED THE MOTION. MOTION #1 - THE COURT IS GRANTING THE MOTION FOR SUMMARY JUDGMENT. MOVANT TO PREPARE THE ORDER. 12:07PM HEARING CONCLUDED.

❯ 9	MOT	1C06	CM	09/08/2017 10:30	X	PLAINTIFF'S MOTION FOR AN ORDER PERMITTING SALE OF THE PROPERTY WITHOUT OPEN HOUSES {MVT. S. LUCAS}	GRT
❯ 10	MOT	1C06	CM	01/26/2018 11:00		PLTF'S MOTION FOR ORDER CONFIRMING FORECLOSURE SALE, APPROVING COMMISSIONER'S REPORT, ALLOWANCE OF COMMISSIONER'S FEES, ATTORNEY'S FEES, COSTS, DIRECTING CONVEYANCE AND FOR WRIT OF EJCCTMENT (S LUCAS)	RSC
❯ 11	MOT	1C06	CM	02/07/2018 10:30		PLTF'S MTN FOR ORDER CONFIRMING FORECLOSURE SALEAPPROVING COMMISSIONER'S REPORT, ALLOWANCE OF COMMISSIONER'S FEES, ATTYS FEES, COSTS, DIRECTING CONVEYANCE AND FOR WRIT OF EJECTMENT (S. LUCAS)(RSC FR 1/26/18 AT REQT OF PLTF ATTY)	
❯ 12	MOT	1C06	CM	02/28/2018 15:30		STATE OF HAWAII OFFICE OF CONSUMER PROTECTION'S EX PARTE MOTION FOR ISSUANCE OF AN ORDER DIRECTINGRESPONDANTS ROSE DRADI, DAVID KEANU SAI, AND DEXTER KAIAMA TO APPEAR AND SHOW CAUSE WHY THEY SHOULD NOT BE FOUND TO HAVE VIOLATED APPLICABLE CONSUMER PROTECTION LAWS (J EVERS)	

CTRM		Cal. Type	CM	Priority	0
Judge I.D.	JJCRABTREE	Video No.		Audio No.	

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

U.S BANK TRUST, N.A., AS TRUSTEE FOR LSF8 MASTER PARTICIPATION TRUST, Plaintiff, vs. TALA RAYMOND FONOTI; et al., Defendants.	CIVIL NO. 15-1-0371-03 JPC (Foreclosure) Certificate of Service
STATE OF HAWAII, BY ITS OFFICE OF CONSUMER PROTECTION, Intervening Petitioner, vs. Rose Dradi, David Keanu Sai, and Dexter Kaiama, Respondents.	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was duly served on the following parties by hand delivery, electronic delivery of U.S. Mail, postage prepaid at their last known address:

STATE OF HAWAII,
OFFICE OF CONSUMER PROTECTION
James F. Evers, Esq.
235 South Beretania Street, Room 801
Honolulu, Hawaii 96813
Attorney for Movant and Intervening Petitioner

Rose Marie Dradi
429 N. 43rd Ct.
Ridgefield, WA 98642-8246
And
888 Kapiolani Blvd., Apt. 3507
Honolulu, HI 96813-6049
RESPONDENT

David Keanu Sai
47-605 Puapoo Pl.
Kaneohe, HI 96744-5620
RESPONDENT

Tala Raymond Fonoti
91-330 Ewa Beach Road
Ewa Beach, HI 96706
Defendant

Willadean Lehuanani Grace
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Defendant

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Attorneys for Plaintiff

Capital One Bank (USA), N.A.
1111 East Main Street, 16th Floor
Richmond, VA 23219
Defendant

DATED: Honolulu, Hawai'i, February 20, 2018.

Dexter K. Kaiama
Respondent on the January 25, 2018
Order to Show Cause

Dexter K. Kaiama 4249-0
1111 Hekili Street, #A1607
Kailua, Hawai'i 96734
Tel. No. (808) 284-5675
Respondent

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

U.S BANK TRUST, N.A., AS TRUSTEE FOR LSF8 MASTER PARTICIPATION TRUST,

Plaintiff,

vs.

TALA RAYMOND FONOTI; et al.,

Defendants.

STATE OF HAWAII, BY ITS OFFICE OF CONSUMER PROTECTION,

Intervening Petitioner,

vs.

Rose Dradi, David Keanu Sai, and Dexter Kaiama,

Respondents.

CIVIL NO. 15-1-0371-03 JPC
(Foreclosure)

Respondent Dexter Kaiama's Motion to Dismiss for Lack of Subject Matter Jurisdiction, Pursuant to HRCP Rule 12(b)(1); Memorandum in Support of Motion; Declaration of Dexter Kaiama; Exhibit "1"; Notice of Hearing Motion; Certificate of Service

Hearing:

Date: March 14, 2018
Time: 9:30 a.m.
Judge: **Jeffrey P. Crabtree**

RESPONDENT DEXTER KAIAMA'S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION PURSUANT TO HRCP RULE 12(b)(1)

Comes Now Respondent Dexter Kaiama (hereinafter "Respondent Kaiama"), and hereby moves this Court for an Order Dismissing Intervening Petitioner Office of Consumer Protection's ("OCP") pleadings, including but not limited to OCP's Order Directing Respondents Rose Dradi, David Keanu Sai and Dexter Kaiama to Appear and Show Cause Why They Should Not Be Found To Have Violated Applicable Consumer Protection Law filed January 25, 2018

(hereinafter referred to as "OSC") for lack of subject matter jurisdiction.

In conjunction with the instant motion to dismiss for lack of subject matter jurisdiction, Respondent Kaiama respectfully requests that this Honorable Court convene an evidentiary hearing to permit the introduction of evidence and/or the Court's taking of formal judicial notice of exhibits, testimony, including expert witness testimony, historical and official government records/documents, and applicable legal precedent.

Additionally, as the Court's subject matter jurisdiction, over these OCP pleadings and/or proceedings, is a matter of initial inquiry of the Court, can be raised at any time, can never be waived and the lack of which would invalidate any order and/or judgment of the Court, Respondent Kaiama respectfully submits that the instant motion to dismiss and convening of an evidentiary hearing on said motion to dismiss be the first matter/issue to be addressed, considered and completed prior to addressing any such return hearing on OCP's January 25, 2018 OSC. Accordingly, Respondent Kaiama would respectfully request the postponement or continuance of the OSC return hearing, presently scheduled for February 28, 2018 at 3:30 p.m. until such time after Respondent Kaiama's motion to dismiss and evidentiary hearing has been convened and concluded by this Court.

Respondent Kaiama's instant motion is brought pursuant to Rule 12(b)(1) of the Hawai'i Rules of Civil Procedures and is supported by the attached memorandum, declaration, exhibits, evidentiary hearing testimony and the records and files in this case. A Return Hearing on the OSC is presently scheduled for Wednesday, February 28, 2018 at 3:30 p.m.

DATED: Honolulu, Hawai'i, February 20, 2018.

Dexter K. Kaiama
Respondent

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

U.S BANK TRUST, N.A., AS TRUSTEE FOR LSF8 MASTER PARTICIPATION TRUST, Plaintiff, vs. TALA RAYMOND FONOTI; et al., Defendants. STATE OF HAWAII, BY ITS OFFICE OF CONSUMER PROTECTION, Intervening Petitioner, vs. Rose Dradi, David Keanu Sai, and Dexter Kaiama, Respondents.	CIVIL NO. 15-1-0371-03 JPC (Foreclosure) Memorandum in Support of Motion

MEMORADUM IN SUJPPORT OF MOTION

I. BACKGROUND

On January 25, 2018 Intervening Petitioner State of Hawai'i Office of Consumer Protection (hereinafter "OCP") filed its Ex Parte Motion for Issuance of an Order Directing Respondents Rose Dradi, David Keanu Sai and Dexter Kaiama to Appear and Show Cause Why They Should Not Be Found to Have Violated Applicable Consumer Protection Law filed January 25, 2018 (hereinafter referred to as "OSC"). The Court did grant OCP's Ex Parte Motion and issued the OSC on January 25, 2018. Presently, a return hearing on the OSC is scheduled for February 28, 2018 at 3:30 p.m. before the Honorable Judge Jeffrey P. Crabtree.

However, the OCP's instant pleadings, including the OSC is void, because the court lacks

subject matter jurisdiction. "If a court lacks jurisdiction over the subject matter of a proceeding, any judgment rendered in that proceeding is invalid." See Bush v. Hawaiian Homes Comm'n, 76 Haw. 128, 133, 870 P.2d 1272, 1277 (1994) (citation, internal quotation marks and brackets omitted).

For purposes of judicial economy Respondent Kaiama adopts and incorporate by reference, as though fully set forth herein, Defendant Tala Raymond Fonoti & Willadean Lehuanani Fonoti's Motion to Dismiss Complaint Pursuant to HRCP 12(B)(1) filed in civil foreclosure action in Civil No. 15-1-0371-03 on or about April 21, 2016.

Through the instant pleading and by the convening of an evidentiary hearing, Respondent Kaiama seeks to present additional information, including but not limited to, documentation, testimony, including expert witness testimony, other evidence and applicable legal precedent.

II. STANDARD OF REVIEW

> Rule 12(b)(1) of the Hawaii Rules of Civil Procedure reads in pertinent part:
>
> **Rule 12. Defenses and Objections - - When and How Presented - - By Pleading or Motion - - Motion for Judgment on the Pleadings.**
>
> **(b) How presented.** Every defense, in law or fact, to a claim for relief in any pleading, ... except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter.

III. RESPONDENT'S WITNESSES

For purposes of the Court's convening an evidentiary hearing on the instant motion to dismiss for lack of subject matter jurisdiction, Respondent Kaiama identifies the following potential witnesses:

1. Dr. David Keanu Sai (Respondent);
2. Respondent Dexter Kaiama

Respondent Kaiama, hereby reserves it right to supplement his evidentiary hearing witness list.

IV. ARGUMENT

The Permanent Court of Arbitration, in *Larsen v. Hawaiian Kingdom*,1 declared "in the nineteenth century the Hawaiian Kingdom existed as an independent State recognized as such by the United States of America, the United Kingdom and various other States, including by exchanges of diplomatic or consular representatives and the conclusion of treaties."[2]

As an independent State, the Hawaiian Kingdom entered into extensive treaty relations with a variety of States establishing diplomatic relations and trade agreements.[3] On 1 January 1882, it joined the Universal Postal Union, and sat as a member of the Union's Congress at Lisbon that adopted, on 21 March 1885, the Additional Act to the Convention concluded at Paris on the 1st of June 1878.

By 1893, the Hawaiian Kingdom maintained over ninety Legations and Consulates throughout the world. Hawaiian Legations were established in Washington, D.C., London, Paris, and Tokyo, while diplomatic representatives accredited to the Hawaiian Court in Honolulu were from the United States, Portugal, Great Britain, France and Japan. There were thirty-three Hawaiian consulates in Great Britain and her colonies; five in France and her colonies; five in Germany; one in Austria; eight in Spain and her colonies; five in Portugal and her colonies; three in Italy; two in the Netherlands; four in Belgium; four in Sweden and Norway; one in Denmark; and two in Japan.[4] Foreign Consulates in the Hawaiian Kingdom were from the United States, Italy, Chile, Germany, Sweden and Norway, Denmark, Peru, Belgium, the Netherlands, Spain, Austria and Hungary, Russia, Great Britain, Mexico, Japan, and China.[5]

On 16 January 1893, United States troops invaded the Hawaiian Kingdom without just cause, which led to a conditional surrender by the Hawaiian Kingdom's executive monarch, Her Majesty Queen Lili'uokalani, the following day. Her conditional surrender read:

> "I, Liliuokalani, by the grace of God and under the constitution of the Hawaiian Kingdom, Queen, do hereby solemnly protest against any and all acts done

1 Larsen v. Hawaiian Kingdom, 119 *International Law Reports* (2001) 566, at n. 1.
2 *Id.*, at 581.
3 The Hawaiian Kingdom entered into treaties with Austria-Hungary (now separate states), 18 June 1875; Belgium, 4 October 1862; Bremen (succeeded by Germany), 27 March 1854; Denmark, 19 October 1846; France, 8 September 1858; French Tahiti, 24 November 1853; Germany, 25 March 1879; New South Wales (now Australia), 10 March 1874; Hamburg (succeeded by Germany), 8 January 1848; Italy, 22 July 1863; Japan, 19 August 1871, 28 January 1886; Netherlands & Luxembourg, 16 October 1862 (William III was also Grand Duke of Luxembourg); Portugal, 5 May 1882; Russia, 19 June 1869; Samoa, 20 March 1887; Spain, 9 October 1863; Sweden-Norway (now separate states), 5 April 1855; and Switzerland, 20 July 1864; the United Kingdom of Great Britain and Northern Ireland, 26 March 1846; and the United States of America, 20 December 1849, 13 January 1875, 11 September 1883, and 6 December 1884.
4 Thomas Thrum, *Hawaiian Register and Directory for 1893, in* Hawaiian Almanac and Annual (1892), at 140-141.
5 *Id.*

against myself and the constitutional Government of the Hawaiian Kingdom by certain persons claiming to have established a provisional government of and for this Kingdom. That I yield to the superior force of the United States of America, whose minister plenipotentiary, His Excellency John L. Stevens, has caused United States troops to be landed at Honolulu and declared that he would support the said provisional government. Now, to avoid any collision of armed forces and perhaps the loss of life, I do, under this protest, and impelled by said force, yield my authority until such time as the Government of the United States shall, upon the facts being presented to it, undo the action of its representatives and reinstate me in the authority which I claim as the constitutional sovereign of the Hawaiian Islands."[6]

In response to the Queen's conditional surrender, President Grover Cleveland initiated an investigation on 11 March 1893 with the appointment of Special Commissioner James Blount whose duty was to "investigate and fully report to the President all the facts [he] can learn respecting the condition of affairs in the Hawaiian Islands, the causes of the revolution by which the Queen's Government was overthrown, the sentiment of the people toward existing authority, and, in general, all that can fully enlighten the President touching the subjects of [his] mission."[7] After arriving in the Hawaiian Islands, he began his investigation on 1 April, and by 17 July, the fact-finding investigation was complete. Secretary of State Walter Gresham was receiving periodic reports from Special Commissioner Blount and was preparing a final report to the President.

On 18 October 1893, Secretary of State Gresham reported to the President, the "Provisional Government was established by the action of the American minister and the presence of the troops landed from the Boston, and its continued existence is due to the belief of the Hawaiians that if they made an effort to overthrow it, they would encounter the armed forces of the United States."[8] He further stated that the "Government of Hawaii surrendered its authority under a threat of war, until such time only as the Government of the United States, upon the facts being presented to it, should reinstate the constitutional sovereign, and the Provisional Government was created 'to exist until terms of union with the United States of America have been negotiated and agreed upon.'"[9] Gresham then concluded, "Should not the great wrong done to a feeble but independent State by an abuse of the authority of the United

6 Larsen case, Annexure 2, *supra* note 1, at 612.
7 *Mr. Gresham to Mr. Blount*, United States House of Representatives, 53rd Congress, Executive Documents on Affairs in Hawai'i: 1894-95, (Government Printing Office 1895), at 1185.
8 *Id.*, *Mr. Gresham to President*, at 462.
9 *Id.*

States be undone by restoring the legitimate government? Anything short of that will not, I respectfully submit, satisfy the demands of justice."[10]

One month later, on 18 December 1893, the President proclaimed by *manifesto*, in a message to the United States Congress, the circumstances for committing acts of war against the Hawaiian Kingdom that transformed a state of peace to a state of war on 16 January 1893.

Addressing the unauthorized landing of United States troops in the capital city of the Hawaiian Kingdom, President Cleveland stated, "on the 16th day of January, 1893, between four and five o'clock in the afternoon, a detachment of marines from the United States steamer Boston, with two pieces of artillery, landed at Honolulu. The men, upwards of 160 in all, were supplied with double cartridge belts filled with ammunition and with haversacks and canteens, and were accompanied by a hospital corps with stretchers and medical supplies."[11]

President Cleveland ascertained that this "military demonstration upon the soil of Honolulu was of itself an act of war, unless made either with the consent of the Government of Hawaii or for the bona fide purpose of protecting the imperiled lives and property of citizens of the United States. But there is no pretense of any such consent on the part of the Government of the Queen, which at that time was undisputed and was both the *de facto* and the *de jure* government. In point of fact the existing government instead of requesting the presence of an armed force protested against it."[12] "War begins," says Wright, "when any state of the world manifests its intention to make war by some overt act, which may take the form of an act of war."[13] According to Hall, the "date of the commencement of a war can be perfectly defined by the first act of hostility."[14]

The President also determined that when "our Minister recognized the provisional government the only basis upon which it rested was the fact that the Committee of Safety had in the manner above stated declared it to exist. It was neither a government *de facto* nor *de jure*."[15] He unequivocally referred to members of the so-called Provisional Government as insurgents, whereby he stated, and "if the Queen could have dealt with the insurgents alone her course would have been plain and the result unmistakable. But the United States had allied itself with her

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10 *Id.*, at 463.
11 Larsen case, Annexure 1, *supra* note 1, at 604.
12 *Id.*
13 Quincy Wright, "Changes in the Conception of War," 18 *American Journal of International* Law (1924) 755, at 758.
14 W.E. Hall, *A Treatise on International Law*, 4th ed. (1895), at 391.
15 *Id.*, at 605.

enemies, had recognized them as the true Government of Hawaii, and had put her and her adherents in the position of opposition against lawful authority. She knew that she could not withstand the power of the United States, but she believed that she might safely trust to its justice."[16] He then concluded that by "an act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress, the Government of a feeble but friendly and confiding people has been overthrown."[17]

"Act of hostility unless it be done in the urgency of self-preservation or by way of reprisals," according to Hall, "is in itself a full declaration of intent [to wage war]."[18] According to Wright, "the moment legal war begins...statutes of limitation cease to operate."[19] He also states that war "in the legal sense means a period of time during which the extraordinary laws of war and neutrality have superseded the normal law of peace in the relations of states."[20]

Unbeknownst to the President at the time he delivered his message to the Congress, a settlement, through executive mediation, was reached between the Queen and United States Minister Albert Willis in Honolulu.[21] The agreement of restoration, however, was never implemented. Nevertheless, President Cleveland's manifesto was a political determination under international law of the existence of a state of war, of which there is no treaty of peace. More importantly, the President's manifesto is paramount and serves as actual notice to all States of the conduct and course of action of the United States. These actions led to the unlawful overthrow of the government of an independent and sovereign State. When the United States commits acts of hostilities, the President "possesses sole authority, and is charged with sole responsibility, and Congress is excluded from any direct interference."[22]

According to Marshall, the "president is the sole organ of the nation in its external relations, and its sole representative with foreign nations. Of consequence, the demand of a foreign nation can only be made of him."[23] In 1897, the United States Senate Foreign Relations Committee reported, the "Executive is the sole mouthpiece of the nation in communication with

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16 *Id.*, at 606.
17 *Id.*, at 608.
18 Hall, *supra* note 16, at 391.
19 Quincy Wright, "When does War Exist," 26(2) *American Journal of International* Law (Apr., 1932) 362, at 363.
20 *Id.*
21 David Keanu Sai, "A Slippery Path Towards Hawaiian Indigeneity: An Analysis and Comparison between Hawaiian State Sovereignty and Hawaiian Indigeneity and Its Use and Practice Today," 10 *Journal of Law & Social Challenges* (2008) 68, at 119-127.
22 George Sutherland, *Constitutional Power and World Affairs* (1919), at 75.
23 Thomas Hart Benton, *Abridgment of the Debates of Congress, from 1789 to 1856*, vol. 2 (1857), at 466.

foreign sovereignties."[24] Wright goes further and explains that foreign States "have accepted the President's interpretation of the responsibilities [under international law] as the voice of the nation and the United States has acquiesced."[25] Thus, Corwin concluded: "There is no more securely established principle of constitutional practice than the exclusive right of the President to be the nation's intermediary in its dealing with other nations."[26]

While the Hawaiian government was unlawfully overthrown by the United States, the Hawaiian State continues to exist in a state of war, and for the past 125 years, the United States administration has protected the insurgents, illegally implemented a policy in 1906 of denationalization—*Americanization* throughout the public and private schools, unlawfully imposed its domestic legislation throughout Hawaiian territory, and established 118 military sites throughout the islands, all in violation of the laws of war and the rules of *jus in bello*. Despite the unprecedented prolonged nature of the illegal occupation of the Hawaiian Kingdom by the United States, the Hawaiian State, as a subject of international law, is afforded all the protection that international law provides. "Belligerent occupation," concludes Crawford, "does not affect the continuity of the State, even where there exists no government claiming to represent the occupied State."[27]

Respondent Kaiama, in support of his arguments above, attaches as Exhibit "1" *The Larsen v. Hawaiian Kingdom Case at the Permanent Court of Arbitration and Why There is An Ongoing Illegal State of War with the United States of America Since 16 January 1893* brief prepared by David Keanu Sai, Ph.D., Ambassador-at-Large and dated 16 October 2017 (See, Exhibit "1" to the Declaration of Dexter Kaiama attached hereto). Additionally, seeks to call Dr. Sai to provide expert witness testimony and personal testimony at the evidentiary hearing, affirming acknowledgment of the continuity of the Hawaiian Kingdom as a state and subject under international law.

If necessary, Respondent Kaiama reserves his right to supplement, by further argument or the submission of additional exhibits, and prior to the convening of a hearing and evidentiary hearing, his instant motion to dismiss.

V. CONCLUSION

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24 54th Cong., 2d Sess., Sen. Doc., No. 56, at 21.
25 Quincy Wright, *The Control of American Foreign Relations* (1922), at 25.
26 Edward S. Corwin, *The President: Office and Powers* (4th ed., 1957), at 184.
27 James Crawford, *The Creation of States in International Law* (2nd ed., 2006), at 34.

Based upon the foregoing and following the Court's convening of an evidentiary hearing on the instant motion to dismiss, Respondent strongly submits that it has met its requisite burden which mandates this Honorable Court Grant Respondent's motion and issue and Order dismissing OCP's Ex Parte Petition and related OSC (Order to Show Cause) for lack of subject matter jurisdiction.

DATED: Honolulu, Hawai'i, February 20, 2018.

Dexter K. Kaiama
Respondent

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

U.S BANK TRUST, N.A., AS TRUSTEE FOR LSF8 MASTER PARTICIPATION TRUST, Plaintiff, vs. TALA RAYMOND FONOTI; et al., Defendants.	CIVIL NO. 15-1-0371-03 JPC (Foreclosure) Declaration of Dexter Kaiama; Exhibit "1"
STATE OF HAWAII, BY ITS OFFICE OF CONSUMER PROTECTION, Intervening Petitioner, vs. Rose Dradi, David Keanu Sai, and Dexter Kaiama, Respondents.	

DECLARATION OF DEXTER KAIAMA

I, Dexter K. Kaiama, declare under penalty of law that the following is true and correct:

1. I am a respondent to the January 25, 2018 Order to Show Cause (Hereinafter "OSC") filed in the instant Civil action set for return hearing on **February 28, 2018 at 3:30 p.m.**, before the Honorable Jeffrey Crabtree.

2. As part of my instant motion to dismiss for lack of subject matter jurisdiction, I have and do request this Court convene an evidentiary hearing which would provide me the opportunity to provide evidence, including testimony and expert witness testimony

evidence to support and mandate the Court's granting of my said motion to dismiss. At such evidentiary hearing, I expect to call Dr. Keanu Sai, Ph.D. to provide testimony and expert witness testimony.

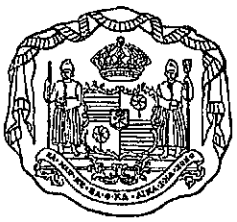
3. To that end, attached hereto as Exhibit "1" is a true and correct copy of the brief entitled *The Larsen v. Hawaiian Kingdom Case at the Permanent Court of Arbitration and Why There is An Ongoing Illegal State of War with the United States of America Since 16 January 1893* prepared by David Keanu Sai, Ph.D., Ambassador-at-Large and dated 16 October 2017.

4. I respectfully reserve all rights to supplement my motion to dismiss and my instant declaration, as needed, so as to support the Honorable Court's granting of the instant motion and dismiss the OCP pleadings, including the OSC, for lack of subject matter jurisdiction.

DATED: Honolulu, Hawai'i, February 20, 2018.

Dexter K. Kaiama

EXHIBIT "1"



OFFICE OF THE
HAWAIIAN AMBASSADOR-AT-LARGE

The *Larsen v. Hawaiian Kingdom* Case at the Permanent Court of Arbitration and Why There Is An Ongoing Illegal State of War with the United States of America Since 16 January 1893

David Keanu Sai, Ph.D.
Ambassador-at-Large

16 October 2017

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PREPARED FOR THE PUBLIC

Abstract

When the *South China Sea* Tribunal cited in its award on jurisdiction the *Larsen v. Hawaiian Kingdom* case held at the Permanent Court of Arbitration, it should have garnered international attention, especially after the Court acknowledged the Hawaiian Kingdom as a state and Larsen a private entity. The *Larsen* case was a dispute between a Hawaiian national and his government, who he alleged was negligent for allowing the unlawful imposition of American laws over Hawaiian territory that led to the alleged war crimes of unfair trial, unlawful confinement and pillaging. Larsen sought to have the Tribunal adjudge that the United States of America violated his rights, after which he sought the Tribunal to adjudge that the Hawaiian government was liable for those violations. Although the United States was formally invited it chose not to join in the arbitration thus raising the indispensable third party rule for Larsen to overcome. What is almost completely unknown today is Hawai'i's international status as an independent and sovereign state, called the Hawaiian Kingdom, that has been in an illegal state of war with the United States of America since 16 January 1893. The purpose of this article will be to make manifest, in the light of international law, the current illegal state of war that has gone on for well over a century and its profound impact on the international community today.

Contents

Introduction—The emergence of the case of the United States illegal occupation of Hawai'i in the Permanent Court of Arbitration

The first allegations of war crimes committed in Hawai'i, being unfair trial, unlawful confinement and pillaging,[1] were made the subject of an arbitral dispute in *Lance Larsen vs. Hawaiian Kingdom* at the Permanent Court of Arbitration (hereafter "PCA").[2] Oral hearings were held at the PCA on 7, 8 and 11 December 2000. As an intergovernmental organization, the PCA must possess institutional jurisdiction before it can form *ad hoc* tribunals. The jurisdiction of the PCA is distinguished from the subject-matter jurisdiction of the *ad hoc* tribunal over the dispute between the parties. Disputes capable of being accepted under the PCA's institutional jurisdiction include disputes between: any two or more states; a state and an international organization (i.e. an intergovernmental organization); two or more international organizations; a state and a private party; and an international organization and a private entity.[3] The PCA accepted the case as a dispute between a state and a private party, and acknowledged the Hawaiian Kingdom as a non-Contracting Power under Article 47 of the 1907 Hague Convention, I (hereafter "1907 HC I").[4] As stated on the PCA's website:

> "Lance Paul Larsen, a resident of Hawaii, brought a claim against the Hawaiian Kingdom by its Council of Regency ("Hawaiian Kingdom") on the grounds that the Government of the Hawaiian Kingdom is in continual violation of: (a) its 1849 Treaty of Friendship, Commerce and Navigation with the United States of America, as well as the principles of international law laid down in the Vienna Convention on the Law of Treaties, 1969 and (b) the principles of international comity, for allowing the unlawful imposition of

[1] Memorial of Lance Paul Larsen (May 22, 2000), *Larsen v. Hawaiian Kingdom*, Permanent Court of Arbitration, at para. 62-64, "Despite Mr. Larsen's efforts to assert his nationality and to protest the prolonged occupation of his nation, [on] 4 October 1999, Mr. Larsen was illegally imprisoned for his refusal to abide by the laws of the State of Hawaii by State of Hawaii. At this point, Mr. Larsen became a political prisoner, imprisoned for standing up for his rights as a Hawaiian subject against the United States of America, the occupying power in the prolonged occupation of the Hawaiian islands.... While in prison, Mr. Larsen did continue to assert his nationality as a Hawaiian subject, and to protest the unlawful imposition of American laws over his person by filing a Writ of Habeus [sic] Corpus with the Circuit Court of the Third Circuit, Hilo Division, State of Hawaii.... Upon release from incarceration, Mr. Larsen was forced to pay additional fines to the State of Hawaii in order to avoid further imprisonment for asserting his rights as a Hawaiian subject," available at http://www.alohaquest.com/arbitration/memorial_larsen.htm. Article 33, 1949 Geneva Convention, IV, "Pillage is prohibited. Reprisals against protected persons and their property are prohibited;" Article 147, 1949 Geneva Convention, IV, "Grave breaches [...] shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: ...unlawful confinement of a protected person,... wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention;" see also International Criminal Court, *Elements of War Crimes* (2011), at 16 (Article 8 (2) (a) (vi)—War crime of denying a fair trial), 17 (Article 8 (2) (a) (vii)-2—War Crime of unlawful confinement), and 26 (Article 8 (2) (b) (xvi)—War Crime of pillaging).

[2] Permanent Court of Arbitration Case Repository, *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01, available at https://pca-cpa.org/en/cases/35/.

[3] United Nations, *United Nations Conference on Trade and Development: Dispute Settlement* (United Nations New York and Geneva, 2003), at 15.

[4] PCA Annual Report, Annex 2 (2011), at 51, n. 2.

> American municipal laws over the claimant's person within the territorial jurisdiction of the Hawaiian Kingdom."[5]

The Government of the Hawaiian Kingdom, as it stood on 17 January 1893, was restored in 1995, *in situ* and not *in exile*.[6] An *acting* Council of Regency comprised of four Ministers—Interior, Foreign Affairs, Finance and the Attorney General—was established in accordance with the Hawaiian constitution and the doctrine of necessity to serve in the absence of the executive monarch. By virtue of this process a provisional government, (hereafter "Hawaiian government"), comprised of officers *de facto,* was established.[7] According to U.S. constitutional scholar Thomas Cooley,

> "A provisional government is supposed to be a government de facto for the time being; a government that in some emergency is set up to preserve order; to continue the relations of the people it acts for with foreign nations until there shall be time and opportunity for the creation of a permanent government. It is not in general supposed to have authority beyond that of a mere temporary nature resulting from some great necessity, and its authority is limited to the necessity."[8]

Like other governments formed in exile during foreign occupations, the Hawaiian government did not receive its mandate from the Hawaiian citizenry, but rather by virtue of Hawaiian constitutional law, and therefore represents the Hawaiian state.[9] As in 2001, Bederman and Hilbert reported in the *American Journal of International Law*,

> "[a]t the center of the PCA proceedings was ... that the Hawaiian Kingdom continues to exist and that the Hawaiian Council of Regency (representing the Hawaiian Kingdom) is legally responsible under international law for the protection of Hawaiian subjects, including the claimant. In other words, the Hawaiian Kingdom was legally obligated to protect Larsen from the United States' "unlawful imposition [over him] of [its] municipal laws" through its political subdivision, the State of Hawaii. As a result of this

[5] *Larsen v. Hawaiian Kingdom*, Cases, Permanent Court of Arbitration, available at https://pca-cpa.org/en/cases/35/ (last visited 16 October 2017).

[6] David Keanu Sai, *Brief—The Continuity of the Hawaiian State and the Legitimacy of the acting Government of the Hawaiian Kingdom*, 25-51 (4 August 2013), *available at* http://hawaiiankingdom.org/pdf/Continuity_Brief.pdf (last visited 16 October 2017).

[7] *Id.*, at 40-48. On 3 April 2014, the Directorate of International Law, Swiss Federal Department of Foreign Affairs, in Bern, accepted the *acting* Government's letter of credence for its Envoy whose mission was to initiate negotiations with the Swiss Confederation to serve as a Protecting Power in accordance with the 1949 Geneva Convention, IV. The negotiations are ongoing.

[8] Thomas M. Cooley, "Grave Obstacles to Hawaiian Annexation," *The Forum* (1893), 389, at 390.

[9] The policy of the Hawaiian government is threefold: first, exposure of the prolonged occupation; second, ensure that the United States complies with international humanitarian law; and, third, prepare for an effective transition to a de jure government when the occupation ends. The Strategic Plan of the Hawaiian government is available at http://hawaiiankingdom.org/pdf/HK_Strategic_Plan.pdf (last visited 16 October 2017).

> responsibility, Larsen submitted, the Hawaiian Council of Regency should be liable for any international law violations that the United States had committed against him."[10]

The Tribunal concluded that it did not possess subject matter jurisdiction in the case because of the indispensible third party rule. The Tribunal explained:

> "[i]t follows that the Tribunal cannot determine whether the respondent [the Hawaiian Kingdom] has failed to discharge its obligations towards the claimant [Larsen] without ruling on the legality of the acts of the United States of America. Yet that is precisely what the *Monetary Gold* principle precludes the Tribunal from doing. As the International Court of Justice explained in the *East Timor* case, "the Court could not rule on the lawfulness of the conduct of a State when its judgment would imply an evaluation of the lawfulness of the conduct of another State which is not a party to the case.'"[11]

The Tribunal, however, acknowledged that the parties to the arbitration could pursue fact-finding. The Tribunal stated, "[a]t one stage of the proceedings the question was raised whether some of the issues which the parties wished to present might not be dealt with by way of a fact-finding process. In addition to its role as a facilitator of international arbitration and conciliation, the Permanent Court of Arbitration has various procedures for fact-finding, both as between States and otherwise."[12] The Tribunal noted "that the interstate fact-finding commissions so far held under the auspices of the Permanent Court of Arbitration have not confined themselves to pure questions of fact but have gone on, expressly or by clear implication, to deal with issues of responsibility for those facts."[13] The Tribunal pointed out that "Part III of each of the Hague Conventions of 1899 and 1907 provide for International Commissions of Inquiry. The PCA has also adopted Optional Rules for Fact-finding Commissions of Inquiry."[14]

To date, there have only been five international commissions of inquiry held under the auspices of the PCA—the first in 1905, *The Dogger Bank Case* (Great Britain – Russia), and the last in 1962, *"Red Crusader" Incident* (Great Britain – Denmark). These commissions of inquiry have been employed in cases "in which 'honor' and 'essential interests' were unquestionably involved, for the determination of legal as well as factual issues, and by tribunals whose composition and proceedings more closely resembled courts than commission of inquiry as originally conceived [under the 1907 HC I]."[15]

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[10] David Bederman & Kurt Hilbert, "Arbitration—UNCITRAL Rules—justiciability and indispensible third parties—legal status of Hawaii," 95 *American Journal of International Law* (2001) 927, at 928.
[11] Larsen v. Hawaiian Kingdom, 119 *International Law Reports* (2001) 566, at 596 (hereafter "Larsen case").
[12] *Id.*, at 597.
[13] *Id.*
[14] *Id.*, at n. 28.
[15] J.G. Merrills, *International Dispute Settlement* (4th ed., 2005), at 59.

On 19 January 2017, the Hawaiian government and Lance Larsen entered into a Special Agreement to form an international commission of inquiry. As proposed by the Tribunal, both Parties agreed to the rules provided under Part III—*International Commissions of Inquiry* (Articles 9-36), 1907 HC I. After the Commission is formed they will select a Secretary General to serve as a registry and the location for its sitting.[16] According to Article III of the Special Agreement:

> "[t]he Commission is requested to determine: *First*, what is the function and role of the Government of the Hawaiian Kingdom in accordance with the basic norms and framework of international humanitarian law; *Second*, what are the duties and obligations of the Government of the Hawaiian Kingdom toward Lance Paul Larsen, and, by extension, toward all Hawaiian subjects domiciled in Hawaiian territory and abroad in accordance with the basic norms and framework of international humanitarian law; and, *Third*, what are the duties and obligations of the Government of the Hawaiian Kingdom toward Protected Persons who are domiciled in Hawaiian territory and those Protected Persons who are transient in accordance with the basic norms and framework of international humanitarian law."[17]

Since humanitarian law is a set of rules that seek to limit the effects of war on persons who are not participating in the armed conflict, such as civilians of an occupied state, the *Larsen* case and the fact-finding proceedings must stem from an actual state of war—a war not in theory but a war in fact. More importantly, the application of the principle of *intertemporal law* is critical to understanding the arbitral dispute between Larsen and the Hawaiian Kingdom. The dispute stemmed from the illegal state of war with the United States that began in 1893. Judge Huber famously stated that "a juridical fact must be appreciated in the light of the law contemporary with it, and not of the law in force at the time when a dispute in regard to it arises or falls to be settled."[18]

The Hawaiian Kingdom as a Subject of International Law

To quote the *dictum* of the *Larsen v. Hawaiian Kingdom* Tribunal, "in the nineteenth century the Hawaiian Kingdom existed as an independent State recognized as such by the United States of America, the United Kingdom and various other States, including by exchanges of diplomatic or consular representatives and the conclusion of treaties."[19] As an independent state, the Hawaiian Kingdom entered into extensive treaty relations with a variety of states establishing diplomatic

[16] Amendment to Special Agreement (26 March 2017), available at http://hawaiiankingdom.org/pdf/Amend_Agmt_3_26_17.pdf (last visited 16 October 2017).
[17] Special Agreement (January 19, 2017), available at http://hawaiiankingdom.org/pdf/ICI_Agmt_1_19_17(amended).pdf (last visited 16 October 2017).
[18] *Island of Palmas* arbitration case (Netherlands and the United States of America), R.I.A.A., vol. II, 829 (1949).
[19] Larsen case, *supra* note 11, at 581.

relations and trade agreements.[20] According to Westlake in 1894, the *Family of Nations* comprised, "First, all European States.... Secondly, all American States.... Thirdly, a few Christian States in other parts of the world, as the Hawaiian Islands, Liberia and the Orange Free State."[21]

To preserve its political independence should there be war, the Hawaiian Kingdom sought to ensure that its neutrality would be recognized beforehand. Provisions recognizing Hawaiian neutrality were incorporated in the treaties with Sweden-Norway, Spain and Germany. "A nation that wishes to secure her own peace," says Vattel, "cannot more successfully attain that object than by concluding treaties [of] neutrality."[22]

Under customary international law in force in the nineteenth century, the territory of a neutral State could not be violated. This principle was codified by Article 1 of the 1907 Hague Convention, V, stating that the "territory of neutral Powers is inviolable." According to Politis, "[t]he law of neutrality, fashioned as it had been by custom and a closely woven network of contractual agreements, was to a great extent codified by the beginning of the [20th] century."[23] As such, the Hawaiian Kingdom's territory could not be trespassed or dishonored, and its neutrality "constituted a guaranty of independence and peaceful existence."[24]

From a State of Peace to an Unjust State of War

"Traditional international law was based upon a rigid distinction between the state of peace and the state of war," says Judge Greenwood.[25] "Countries were either in a state of peace or a state of

[20] The Hawaiian Kingdom entered into treaties with Austria-Hungary (now separate states), 18 June 1875; Belgium, 4 October 1862; Bremen (succeeded by Germany), 27 March 1854; Denmark, 19 October 1846; France, 8 September 1858; French Tahiti, 24 November 1853; Germany, 25 March 1879; New South Wales (now Australia), 10 March 1874; Hamburg (succeeded by Germany), 8 January 1848); Italy, 22 July 1863; Japan, 19 August 1871, 28 January 1886; Netherlands & Luxembourg, 16 October 1862 (William III was also Grand Duke of Luxembourg); Portugal, 5 May 1882; Russia, 19 June 1869; Samoa, 20 March 1887; Spain, 9 October 1863; Sweden-Norway (now separate states), 5 April 1855; and Switzerland, 20 July 1864; the United Kingdom of Great Britain and Northern Ireland) 26 March 1846; and the United States of America, 20 December 1849, 13 January 1875, 11 September 1883, and 6 December 1884.

[21] John Westlake, *Chapters on the Principles of International Law* (1894), at 81. In 1893, there were 44 other independent and sovereign states in the *Family of Nations*: Argentina, Austria-Hungary, Belgium, Bolivia, Brazil, Bulgaria, Chili, Colombia, Costa Rica, Denmark, Ecuador, France, Germany, Great Britain, Greece, Guatemala, Hawaiian Kingdom, Haiti, Honduras, Italy, Liberia, Liechtenstein, Luxembourg, Netherlands, Mexico, Monaco, Montenegro, Nicaragua, Orange Free State that was later annexed by Great Britain in 1900, Paraguay, Peru, Portugal, Romania, Russia, San Domingo, San Salvador, Serbia, Spain, Sweden-Norway, Switzerland, Turkey, United States of America, Uruguay, and Venezuela. In 1945, there were 45, and today there are 193.

[22] Emerich De Vattel, *The Law of Nations* (6th ed., 1844), at 333.

[23] Nicolas Politis, *Neutrality and Peace* (1935), at 27.

[24] *Id.*, at 31.

[25] Christopher Greenwood, "Scope of Application of Humanitarian Law," in Dieter Fleck (ed.), *The Handbook of the International Law of Military Operations* (2nd ed., 2008), at 45.

war; there was no intermediate state."[26] This is also reflected by the fact that the renowned jurist of international law, Lassa Oppenheim, separated his treatise on *International Law* into two volumes, Vol. I—*Peace,* and Vol. II—*War and Neutrality*. In the nineteenth century, war was recognized as lawful, but it had to be justified under *jus ad bellum*. War could only be waged to redress a State's injury. As Vattel stated, "[w]hatever strikes at [a sovereign state's] rights is an injury, and a just cause of war."[27]

The Hawaiian Kingdom enjoyed a state of peace with all states. This state of affairs, however, was violently interrupted by the United States when the state of peace was transformed to a state of war that began on 16 January 1893 when United States troops invaded the kingdom. The following day, Queen Lili'uokalani, as the executive monarch of a constitutional government, made the following protest and a conditional surrender of her authority to the United States in response to military action taken against the Hawaiian government. The Queen's protest stated:

> "I, Liliuokalani, by the grace of God and under the constitution of the Hawaiian Kingdom, Queen, do hereby solemnly protest against any and all acts done against myself and the constitutional Government of the Hawaiian Kingdom by certain persons claiming to have established a provisional government of and for this Kingdom. That I yield to the superior force of the United States of America, whose minister plenipotentiary, His Excellency John L. Stevens, has caused United States troops to be landed at Honolulu and declared that he would support the said provisional government. Now, to avoid any collision of armed forces and perhaps the loss of life, I do, under this protest, and impelled by said force, yield my authority until such time as the Government of the United States shall, upon the facts being presented to it, undo the action of its representatives and reinstate me in the authority which I claim as the constitutional sovereign of the Hawaiian Islands."[28]

Under international law, the landing of United States troops without the consent of the Hawaiian government was an act of war. But in order for an act of war not to transform the state of affairs to a state of war, the act must be justified or lawful under international law, e.g. the necessity of landing troops to secure the protection of the lives and property of United States citizens in the Hawaiian Kingdom. According to Wright, "[a]n act of war is an invasion of territory ... and so normally illegal. Such an act if not followed by war gives grounds for a claim which can be legally avoided only by proof of some special treaty or necessity justifying the act."[29] The quintessential question is whether or not the United States troops were landed to protect American lives or were they landed to wage war against the Hawaiian Kingdom.

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[26] *Id.*
[27] Vattel, *supra* note 22, at 301.
[28] Larsen case, Annexure 2; *supra* note 10, at 612.
[29] Quincy Wright, "Changes in the Concept of War," 18 *American Journal of International Law* (1924) 755, at 756.

According to Brownlie, "[t]he right of war, as an aspect of sovereignty, which existed in the period before 1914, subject to the doctrine that war was a means of last resort in the enforcement of legal rights, was very rarely asserted either by statesmen or works of authority without some stereotyped plea to a right of self-preservation, and of self-defence, or to necessity or protection of vital interests, or merely alleged injury to rights or national honour and dignity."[30] The United States had no dispute with the Hawaiian Kingdom that would have warranted an invasion and overthrow of the Hawaiian government of a neutral and independent state.

In 1993, the United States Congress enacted a joint resolution offering an apology for the overthrow.[31] Of significance in the resolution was a particular preamble clause, which stated: "[w]hereas, in a message to Congress on December 18, 1893, President Grover Cleveland reportedly fully and accurately on the illegal acts of the conspirators, described such acts as an 'act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress,' and acknowledged that by such acts the government of a peaceful and friendly people was overthrown."[32] At first read, however, it would appear that the "conspirators" were the subjects that committed the "act of war," but this is misleading. First, under international law, only a state can commit an "act of war," whether through its military and/or its diplomat; and, second, conspirators within a country could only commit the high crime of treason, not "acts of war." These two concepts are reflected in the terms coup *de main* and *coup d'état.* The former is a successful invasion by a foreign state's military force, while the latter is a successful internal revolt, which was also referred to in the nineteenth century as a revolution.

In a petition to President Cleveland from the Hawaiian Patriotic League, its leadership, comprised of Hawaiian statesmen and lawyers, clearly articulated the difference between a "*coup de main*" and a "revolution." The petition read:

> "[l]ast January [1893], a political crime was committed, not only against the legitimate Sovereign of the Hawaiian Kingdom, but also against the whole of the Hawaiian nation, a nation who, for the past sixty years, had enjoyed free and happy constitutional self-government. This was done by a *coup de main* of U.S. Minister Stevens, in collusion with a cabal of conspirators, mainly faithless sons of missionaries and local politicians angered by continuous political defeat, who, as revenge for being a hopeless minority in the country, resolved to "rule or ruin" through foreign help. The facts of this "revolution," as it is improperly called, are now a matter of history."[33]

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[30] Ian Brownlie, *International Law and the Use of Force by States* (1963), at 41.
[31] Larsen case, Annexure 2, *supra* note 11, at 611-15.
[32] *Id.*, at 612.
[33] United States House of Representatives, 53rd Congress, Executive Documents on Affairs in Hawai'i: 1894-95, (Government Printing Office 1895), 1295, (hereafter "Executive Documents"), available at http://hawaiiankingdom.org/pdf/HPL_Petition_12_27_1893.pdf (last visited 16 October 2017).

Whether by chance or design, the 1993 Congressional apology resolution did not accurately reflect what President Cleveland stated in his message to the Congress in 1893. When Cleveland stated the "military demonstration upon the soil of Honolulu was of itself an act of war," he was referring to United States armed forces and not to any of the conspirators.[34] Cleveland noted "that on the 16th day of January, 1893, between four and five o'clock in the afternoon, a detachment of marines from the United States steamer Boston, with two pieces of artillery, landed at Honolulu. The men, upwards of 160 in all, were supplied with double cartridge belts filled with ammunition and with haversacks and canteens, and were accompanied by a hospital corps with stretchers and medical supplies."[35] This *act of war* was the initial stage of a *coup de main*.

As part of the plan, the U.S. diplomat, John Stevens, would prematurely recognize the small group of insurgents on January 17th as if they were successful revolutionaries thereby giving it a veil of *de facto* status. In a private note to Sanford Dole, head of the insurgency, and written under the letterhead of the United States legation on 17 January 1893, Stevens wrote: "Judge Dole: I would advise not to make known of my recognition of the de facto Provisional Government until said Government is in possession of the police station."[36] A government created through intervention is a puppet regime of the intervening State, and, as such, has no lawful authority. "Puppet governments," according to Marek, "are organs of the occupant and, as such form part of his legal order. The agreements concluded by them with the occupant are not genuine international agreements [because] such agreements are merely decrees of the occupant disguised as agreements which the occupant in fact concludes with himself. Their measures and laws are those of the occupant."[37]

Customary international law recognizes a successful revolution when insurgents secure complete control of all governmental machinery and have the acquiescence of the population. U.S. Secretary of State Foster acknowledged this rule in a dispatch to Stevens on 28 January 1893: "[y]our course in recognizing an unopposed *de facto* government appears to have been discreet and in accordance with the facts. The rule of this government has uniformly been to recognize and enter into relation with any actual government in full possession of effective power with the assent of the people."[38] According to Lauterpacht, "[s]o long as the revolution has not been successful, and so long as the lawful government ... remains within national territory and asserts its authority, it is presumed to represent the State as a whole."[39] With full knowledge of what constituted a successful revolution, Cleveland provided a blistering indictment in his message to the Congress:

[34] Larsen case, Annexure 1, *supra* note 11, at 604.
[35] *Id.*
[36] Letter from United States Minister, John L. Stevens, to Sanford B. Dole, 17 January 1893, W. O. Smith Collection, HEA Archives, HMCS, Honolulu, available at http://hmha.missionhouses.org/items/show/889.
[37] Krystyna Marek, *Identity and Continuity of States in Public International Law* (2nd ed., 1968), at 114.
[38] Executive Documents, *supra* note 33, at 1179.
[39] E. Lauterpacht, *Recognition in International Law* (1947), at 93.

> "[w]hen our Minister recognized the provisional government the only basis upon which it rested was the fact that the Committee of Safety ... declared it to exist. It was neither a government *de facto* nor *de jure*. That it was not in such possession of the Government property and agencies as entitled it to recognition is conclusively proved by a note found in the files of the Legation at Honolulu, addressed by the declared head of the provisional government to Minister Stevens, dated January 17, 1893, in which he acknowledges with expressions of appreciation the Minister's recognition of the provisional government, and states that it is not yet in the possession of the station house (the place where a large number of the Queen's troops were quartered), though the same had been demanded of the Queen's officers in charge."[40]

"Premature recognition is a tortious act against the lawful government," explains Lauterpacht, which "is a breach of international law."[41] And according to Stowell, a "foreign state which intervenes in support of [insurgents] commits an act of war against the state to which it belongs, and steps outside the law of nations in time of peace."[42] Furthermore, Stapleton concludes, "[o]f all the principles in the code of international law, the most important—the one which the independent existence of all weaker States must depend—is this: no State has a right FORCIBLY to interfere in the internal concerns of another State."[43]

Cleveland then explained to the Congress the egregious effects of war that led to the Queen's conditional surrender to the United States:

> "[n]evertheless, this wrongful recognition by our Minister placed the Government of the Queen in a position of most perilous perplexity. On the one hand she had possession of the palace, of the barracks, and of the police station, and had at her command at least five hundred fully armed men and several pieces of artillery. Indeed, the whole military force of her kingdom was on her side and at her disposal.... In this state of things if the Queen could have dealt with the insurgents alone her course would have been plain and the result unmistakable. But the United States had allied itself with her enemies, had recognized them as the true Government of Hawaii, and had put her and her adherents in the position of opposition against lawful authority. She knew that she could not withstand the power of the United States, but she believed that she might safely trust to its justice."[44]

The President's finding that the United States embarked upon a war with the Hawaiian Kingdom in violation of the law unequivocally acknowledged a state of war in fact existed since 16

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[40] Larsen case, Annexure 1, *supra* note 11, at 605.
[41] E. Lauterpacht, *supra* note 39, at 95.
[42] Ellery C. Stowell, *Intervention in International Law* (1921) at 349, n. 75.
[43] Augustus Granville Stapleton, *Intervention and Non-Intervention* (1866), at 6. It appears that Stapleton uses all capitals in his use of the word 'forcibly' to draw attention to the reader.
[44] Larsen case, Annexure 1, *supra* note 11, at 606.

January 1893. According to Lauterpact, an illegal war is "a war of aggression undertaken by one belligerent side in violation of a basic international obligation prohibiting recourse to war as an instrument of national policy."[45] However, despite the President's admittance that the acts of war were not in compliance with *jus ad bellum*—justifying war—the United States was still obligated to comply with *jus in bello*—the rules of war—when it occupied Hawaiian territory. In the *Hostages Trial* (the case of *Wilhelm List and Others*), the Tribunal rejected the prosecutor's view that, since the German occupation arose out of an unlawful use of force, Germany could not invoke the rules of belligerent occupation. The Tribunal explained:

> "[t]he Prosecution advances the contention that since Germany's war against Yugoslavia and Greece were aggressive wars, the German occupant troops were there unlawfully and gained no rights whatever as an occupant.... [W]e accept the statement as true that the wars against Yugoslavia and Greece were in direct violation of the Kellogg-Briand Pact and were therefore criminal in character. But it does not follow that every act by the German occupation forces against person or property is a crime.... At the outset, we desire to point out that international law makes no distinction between a lawful and unlawful occupant in dealing with the respective duties of occupant and population in the occupied territory."[46]

As such, the United States remained obligated to comply with the laws of occupation despite it being an illegal war. As the Tribunal further stated, "whatever may be the cause of a war that has broken out, and whether or not the cause be a so-called just cause, the same rules of international law are valid as to what must not be done, [and what] may be done."[47] According to Wright, "[w]ar begins when any state of the world manifests its intention to make war by some overt act, which may take the form of an act of war."[48] In his review of customary international law in the nineteenth century, Brownlie found "that in so far a 'state of war' had any generally accepted meaning it was a situation regarded by one or both parties to a conflict as constituting a 'state of war'".[49] Cleveland's determination that by an "act of war ... the Government of a feeble but friendly and confiding people has been overthrown," the action was not justified.[50]

What is of particular significance is that Cleveland referred to the Hawaiian people as "friendly and confiding," not "hostile." This is a classical case of where the United States President admits an unjust war not justified by *jus ad bellum*, but a state of war nevertheless for international law purposes. According to United States constitutional law, the President is the sole representative of the United States in foreign relations. In the words of U.S. Justice Marshall, "[t]he President is

[45] H. Lauterpacht, "The Limits of the Operation of the Law of War," 30 *British Yearbook of International Law* (1953) 206.
[46] *USA v. William List et al.* (Case No. 7), Trials of War Criminals before the Nuremburg Military Tribunals (hereafter 'Hostages Trial'), Vol. XI (1950), 1247.
[47] *Id.*
[48] Quincy Wright, "Changes in the Concept of War," 18 *American Journal of International Law* (1924) 755, at 758.
[49] Brownlie, *supra* note 30, at 38.
[50] Larsen case, Annexure 1, *supra* note 11, at 608.

the sole organ of the nation in its external relations, and its sole representative with foreign nations."[51] Therefore, the President's political determination that by an act of war the government of a friendly and confiding people was unlawfully overthrown would not have only produced resonance with the members of the Congress, but to the international community as well, and the duty of third states to invoke neutrality.

Furthermore, in a state of war, the principle of effectiveness that you would otherwise have during a state of peace is reversed because of the existence of two legal orders in one and the same territory. Marek explains, "[i]n the first place: of these two legal orders, that of the occupied State is regular and 'normal,' while that of the occupying power is exceptional and limited. At the same time, the legal order of the occupant is, as has been strictly subject to the principle of effectiveness, while the legal order of the occupied State continues to exist notwithstanding the absence of effectiveness."[52] Therefore, "[b]elligerent occupation is thus the classical case in which the requirement of effectiveness as a condition of validity of a legal order is abandoned."[53]

Cleveland told the Congress that he initiated negotiations with the Queen "to aid in the restoration of the status existing before the lawless landing of the United States forces at Honolulu on the 16th of January last, if such restoration could be effected upon terms providing for clemency as well as justice to all parties concerned."[54] What Cleveland did not know at the time of his message to the Congress was that the Queen, on the very same day in Honolulu, accepted the conditions for settlement in an attempt to return the state of affairs to a state of peace. The executive mediation began on 13 November 1893 between the Queen and U.S. diplomat Albert Willis and an agreement was reached on 18 December.[55] The President was not aware of the agreement until after he delivered his message.[56] Despite being unaware, President Cleveland's political determination in his message to the Congress was nonetheless conclusive that the United States was in a state of war with the Hawaiian Kingdom and was directly responsible for the unlawful overthrow of its government. Oppenheim defines war as "a contention between States for the purpose of overpowering each other."[57]

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[51] 10 Annals of Cong. 613 (1800).
[52] Marek, *supra* note 37, at 102.
[53] *Id.*
[54] Larsen case, Annexure 1, *supra* note 11, at 610.
[55] David Keanu Sai, "A Slippery Path Towards Hawaiian Indigeneity: An Analysis and Comparison between Hawaiian State Sovereignty and Hawaiian Indigeneity and Its Use and Practice Today," 10 *Journal of Law & Social Challenges* (2008) 68, at 119-127.
[56] Executive Documents, *supra* note 33, at 1283. In this dispatch to U.S. Diplomat Albert Willis from Secretary of State Gresham on January 12, 1894, he stated, "Your reports show that on further reflection the Queen gave her unqualified assent in writing to the conditions suggested, but that the Provisional Government refuses to acquiesce in the President's decision. The matter now being in the hands of the Congress the President will keep that body fully advised of the situation, and will lay before it from time to time the reports received from you." The state of war ensued.
[57] L. Oppenheim, *International Law*, vol. II—War and Neutrality (3rd ed., 1921), at 74.

Once a state of war ensued between the Hawaiian Kingdom and the United States, "the law of peace ceased to apply between them and their relations with one another became subject to the laws of war, while their relations with other states not party to the conflict became governed by the law of neutrality."[58] This outbreak of a state of war between the Hawaiian Kingdom and the United States would "lead to many rules of the ordinary law of peace being superseded...by rules of humanitarian law," e.g. acquisitive prescription.[59] A state of war "automatically brings about the full operation of all the rules of war and neutrality."[60] And, according to Venturini, "[i]f an armed conflict occurs, the law of armed conflict must be applied from the beginning until the end, when the law of peace resumes in full effect."[61] "For the laws of war ... continue to apply in the occupied territory even after the achievement of military victory, until either the occupant withdraws or a treaty of peace is concluded which transfers sovereignty to the occupant."[62] In the *Tadić* case, the ICTY indicated that the laws of war—international humanitarian law—applies from "the initiation of ... armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached."[63] Only by an agreement between the Hawaiian Kingdom and the United States could a state of peace be restored, without which a state of war ensues.[64] An attempt to transform the state of war to a state of peace was made by executive agreement on 18 December 1893. Cleveland, however, was unable to carry out his duties and obligations under the agreement to restore the situation that existed before the unlawful landing of American troops due to political wrangling in the Congress.[65] Hence, the state of war continued.

International law distinguishes between a "declaration of war" and a "state of war." According to McNair and Watts, "the absence of a declaration ... will not of itself render the ensuing conflict

[58] Greenwood, *supra* note 25, at 45.
[59] *Id.*, at 46. As opposed to belligerent occupation during a state of war, peaceful occupation during a state of peace over territory of another state could rise to a title of sovereignty under acquisitive prescription if there was a continuous and peaceful display of territorial sovereignty by the encroaching state without any objection by the encroached state. In this regard, effectiveness in the display of sovereign authority over territory of another state must be peaceful and not belligerent. *Jus in bello* proscribes acquisitive prescription.
[60] Myers S. McDougal and Florentino P. Feliciano, "The Initiation of Coercion: A Multi-temporal Analysis," 52 *American Journal of International Law* (1958) 241, at 247.
[61] Gabriella Venturini, "The Temporal Scope of Application of the Conventions," in Andrew Clapham, Paola Gaeta, and Marco Sassòli (eds), *The 1949 Geneva Conventions: A Commentary* (2015), at 52.
[62] Sharon Koman, *The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice* (1996), at 224.
[63] ICTY, *Prosecutor v. Tadić*, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction (Appeals Chamber), 2 October 1995, at §70.
[64] Under United States municipal laws, there are two procedures by which an international agreement can bind the United States. The first is by a treaty whose entry into force can only take place after two-thirds of the United States Senate has given its advice and consent under Article II, section 2, Clause 2 of the U.S. Constitution. The second is by way of an executive agreement entered into by the President that does not require ratification by the Senate. *See United States v. Belmont*, 301 U.S. 324, 326 (1937); *United States v. Pink*, 315 U.S. 203, 223 (1942); *American Insurance Association v. Garamendi*, 539 U.S. 396, 415 (2003).
[65] Sai, Slippery Path, *supra* note 55, at 125-127.

any less a war."[66] In other words, since a state of war is based upon concrete facts of military action, there is no requirement for a formal declaration of war to be made other than providing formal notice of a State's "intention either in relation to existing hostilities or as a warning of imminent hostilities."[67] In 1946, a United States Court had to determine whether a naval captain's life insurance policy, which excluded coverage if death came about as a result of war, covered his demise during the Japanese attack of Pearl Harbor on 7 December 1945. It was argued that the United States was not at war at the time of his death because the Congress did not formally declare war against Japan until the following day.

The Court denied this argument and explained that "the formal declaration by the Congress on December 8th was not an essential prerequisite to a political determination of the existence of a state of war commencing with the attack on Pearl Harbor."[68] Therefore, the conclusion reached by President Cleveland that by "an act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress, the Government of a feeble but friendly and confiding people has been overthrown,"[69] was a "political determination of the existence of a state of war," and that a formal declaration of war by the Congress was not essential. The "political determination" by President Cleveland, regarding the actions taken by the military forces of the United States since 16 January 1893, was the same as the "political determination" by President Roosevelt regarding actions taken by the military forces of Japan on 7 December 1945. Both political determinations of acts of war by these Presidents created a state of war for the United States under international law.

Foremost, the overthrow of the Hawaiian government did not affect, in the least, the continuity of the Hawaiian state, being the subject of international law. Wright asserts that "international law distinguishes between a government and the state it governs."[70] Cohen also posits that "[t]he state must be distinguished from the government. The state, not the government, is the major player, the legal person, in international law."[71] As Judge Crawford explains, "[t]here is a presumption that the State continues to exist, with its rights and obligations ... despite a period in which there is ... no effective, government."[72] He further concludes that "[b]elligerent

[66] Lord McNair and A.D. Watts, *The Legal Effects of War* (1966), at 7.
[67] Brownlie, *supra* note 30, at 40.
[68] *New York Life Ins. Co. v. Bennion*, 158 F.2d 260 (C.C.A. 10th, 1946), 41(3) *American Journal of International Law* (1947) 680, at 682.
[69] Larsen case, Annexure 1, *supra* note 11, at 608.
[70] Quincy Wright, "The Status of Germany and the Peace Proclamation," 46(2) *American Journal of International Law* (Apr. 1952) 299, at 307.
[71] Sheldon M. Cohen, *Arms and Judgment: Law, Morality, and the Conduct of War in the Twentieth Century* (1989), at 17.
[72] James Crawford, *The Creation of States in International Law* (2nd ed., 2006), at 34. If one were to speak about a presumption of continuity, one would suppose that an obligation would lie upon the party opposing that continuity to establish the facts substantiating its rebuttal. The continuity of the Hawaiian Kingdom, in other words, may be refuted only by reference to a valid demonstration of legal title, or sovereignty, on the part of the United States, absent of which the presumption remains.

occupation does not affect the continuity of the State, even where there exists no government claiming to represent the occupied State."[73] Commenting on the occupation of the Hawaiian Kingdom, Dumberry states,

> "the 1907 Hague Convention protects the international personality of the occupied State, even in the absence of effectiveness. Furthermore, the legal order of the occupied State remains intact, although its effectiveness is greatly diminished by the fact of occupation. As such, Article 43 of the 1907 Hague Convention IV provides for the co-existence of two distinct legal orders, that of the occupier and the occupied."[74]

The Beginning of the Prolonged Occupation

What was the Hawaiian Kingdom's status after the unlawful overthrow of its government for international law purposes? In the absence of an agreement that would have transformed the state of affairs back to a state of peace, the state of war prevails over what *jus in bello* would call belligerent occupation. Article 41 of the 1880 Institute of International Law's *Manual on the Laws of War on Land* declared that a "territory is regarded as occupied when, as the consequence of invasion by hostile forces, the State to which it belongs has ceased, in fact, to exercise its ordinary authority therein, and the invading State is alone in a position to maintain order there." This definition was later codified under Article 42 of the 1899 Hague Convention, II, and then superseded by Article 42 of the 1907 Hague Convention, IV (hereafter "HC IV"), which provides that "[t]erritory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised." Effectiveness is at the core of belligerent occupation.

The hostile army, in this case, included not only United States armed forces, but also its puppet regime that was disguising itself as a "provisional government." As an entity created through intervention it existed as an armed militia that worked in tandem with the United States armed forces under the direction of the U.S. diplomat John Stevens. Under the rules of *jus in bello*, the occupant does not possess the sovereignty of the occupied state and therefore cannot compel allegiance.[75] To do so would imply that the occupied state, as the subject of international law and

[73] *Ibid.* Crawford also stated, the "occupation of Iraq in 2003 illustrated the difference between 'government' and 'State'; when Members of the Security Council, after adopting SC res 1511, 16 October 2003, called for the rapid 'restoration of Iraq's sovereignty', they did not imply that Iraq had ceased to exist as a State but that normal governmental arrangements should be restore." *Ibid*, n. 157.

[74] Patrick Dumberry, "*The Hawaiian Kingdom Arbitration Case and the Unsettled Question of the Hawaiian Kingdom's Claim to Continue as an Independent State under International Law*," 2(1) Chinese Journal of International Law (2002) 655, at 682.

[75] Article 45, 1899 Hague Convention, II, "Any pressure on the population of occupied territory to take the oath to the hostile Power is prohibited;" see also Article 45, 1907 Hague Convention, IV, "It is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile Power." On 24 January 1895, the puppet regime calling itself the Republic of Hawai'i coerced Queen Lili'uokalani to abdicate the throne and to sign her allegiance to the regime in order to "save many Royalists from being shot" (William Adam Russ, Jr., *The Hawaiian Republic*

whom allegiance is owed, was cancelled and its territory unilaterally annexed into the territory of the occupying state. International law would allow this under the doctrine of *debellatio*. *Debellatio*, however, could not apply to the Hawaiian situation as a result of the President's determination that the overthrow of the Hawaiian government was unlawful and, therefore, did not meet the test of *jus ad bellum*. As an unjust war, the doctrine of *debellatio* was precluded from arising. That is to say, *debellatio* is conditioned on a legal war. According to Schwarzenberger, "[i]f, as a result of legal, as distinct from illegal, war, the international personality of one of the belligerents is totally destroyed, victorious Powers may ... annex the territory of the defeated State or hand over portions of it to other States."[76]

After United States troops were removed from Hawaiian territory on 1 April 1893, by order of President Cleveland's special investigator, James Blount, he was not aware that the provisional government was a puppet regime. As such, they remained in full power where, according to the Hawaiian Patriotic League, the "public funds have been outrageously squandered for the maintenance of an unnecessary large army, fed in luxury, and composed *entirely* of aliens, mainly recruited from the most disreputable classes of San Francisco."[77] After the President determined the illegality of the situation and entered into an agreement to reinstate the executive monarch, the puppet regime refused to give up its power. Despite the President's failure to carry out the agreement of reinstatement and to ultimately transform the state of affairs to a state of peace, the situation remained a state of war and the rules of *jus in bello* continued to apply to the Hawaiian situation.

When the provisional government was formed through intervention, it merely replaced the executive monarch and her cabinet with insurgents calling themselves an executive and advisory councils. All Hawaiian government officials remained in place and were coerced into signing oaths of allegiance to the new regime with the oversight of United States troops.[78] This continued when the American puppet changed its name to the so-called republic of Hawai'i on 4 July 1894 with alien mercenaries replacing American troops.

Under the guise of a Congressional joint resolution of annexation, United States armed forces physically reoccupied the Hawaiian Kingdom on 12 August 1898, during the Spanish-American

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(1894-98) And Its Struggle to Win Annexation (1992), at 71). As the rule of *jus in bello* prohibits inhabitants of occupied territory to swear allegiance to the hostile Power, the Queen's oath of allegiance is therefore unlawful and void.

[76] Georg Schwarzenberger, *International Law as applied by International Courts and Tribunals*. Vol. II: The Law of Armed Conflict (1968), at 167.

[77] Executive Documents, *supra* note 33, at 1296.

[78] *Ibid*, at 211, "All officers under the existing Government are hereby requested to continue to exercise their functions and perform the duties of their respective offices, with the exception of the following named person: Queen Liliuokalani, Charles B. Wilson, Marshal, Samuel Parker, Minister of Foreign Affairs, W.H. Cornwell, Minister of Finance, John F. Colburn, Minister of the Interior, Arthur P. Peterson, Attorney-General, who are hereby removed from office. All Hawaiian Laws and Constitutional principles not inconsistent herewith shall continue in force until further order of the Executive and Advisory Councils."

War. According to the United States Supreme Court, "[t]hough the [annexation] resolution was passed July 7, [1898] the formal transfer was not made until August 12, when, at noon of that day, the American flag was raised over the government house, and the islands ceded with appropriate ceremonies to a representative of the United States."[79] Patriotic societies and many of the Hawaiian citizenry boycotted the ceremony and "they protested annexation occurring without the consent of the governed."[80] Marek asserts that, "a disguised annexation aimed at destroying the independence of the occupied State, represents a clear violation of the rule preserving the continuity of the occupied State."[81] Even the U.S. Department of Justice in 1988, opined, it is "unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution."[82]

In 1900, the Congress renamed the republic of Hawai'i to the Territory of Hawai'i under *An Act To provide a government for the Territory of Hawai'i*,[83] commonly known as the "Organic Act." Shortly thereafter, the Territory of Hawai'i intentionally sought to "Americanize" the school children throughout the Hawaiian Islands. To accomplish this, they instituted a policy of denationalization in 1906, titled "Programme for Patriotic Exercises in the Public Schools," where the national language of Hawaiian was banned and replaced with the American language of English.[84] One of the leading newspapers for the insurgents, who were now officials in the territorial regime, printed a story on the plan of denationalization. The Hawaiian Gazette reported:

> "[a]s a means of *inculcating* patriotism in the schools, the Board of Education [of the territorial government] has agreed upon a plan of patriotic observance to be followed in the celebration of notable days in American history, this plan being a composite drawn from the several submitted by teachers in the department for the consideration of the Board. It will be remembered that at the time of the celebration of the birthday of Benjamin Franklin, an agitation was begun looking to a better observance of these notable national days in the schools, as tending to inculcate patriotism in a school

[79] *Territory of Hawai'i v. Mankichi*, 190 U.S. 197, 212 (1903).
[80] Tom Coffman, *Nation Within: The History of the American Occupation of Hawai'i* (2016), at 322. Coffman initially published this book in 1998 titled *Nation Within: The Story of the American Annexation of the Nation of Hawai'i*. Coffman explained, "In the book's subtitle, the word *Annexation* has been replaced by the word *Occupation*, referring to America's occupation of Hawai'i. Where annexation connotes legality by mutual agreement, the act was not mutual and therefore not legal. Since by definition of international law there was no annexation, we are left then with the word *occupation*," at xvi.
[81] Marek, *supra* note 37, at 110.
[82] Douglas Kmiec, Department of Justice, "Legal Issues Raised by Proposed Presidential Proclamation to Extend the Territorial Sea," 12 *Opinions of the Office of Legal Counsel* (1988) 238, at 262.
[83] 31 U.S. Stat. 141.
[84] Programme for Patriotic Exercises in the Public Schools, Territory of Hawai'i, adopted by the Department of Public (1906), available at http://hawaiiankingdom.org/pdf/1906_Patriotic_Exercises.pdf (last visited 16 October 2017).

> population that needed that kind of teaching, perhaps, more than the mainland children do [emphasis added]."[85]

It is important here to draw attention to the use of the word "inculcate." As a verb, the term imports force such as to convince, implant, and indoctrinate. Brainwashing is its colloquial term. When a reporter from the American news magazine, *Harper's Weekly,* visited the Ka'iulani Public School in Honolulu, he reported:

> "[a]t the suggestion of Mr. Babbitt, the principal, Mrs. Fraser, gave an order, and within ten seconds all of the 614 pupils of the school began to march out upon the great green lawn which surrounds the building.... Out upon the lawn marched the children, two by two, just as precise and orderly as you find them at home. With the ease that comes of long practice the classes marched and counter-marched until all were drawn up in a compact array facing a large American flag that was dancing in the northeast trade-wind forty feet above their heads.... 'Attention!' Mrs. Fraser commanded. The little regiment stood fast, arms at side, shoulders back, chests out, heads up, and every eye fixed upon the red, white and blue emblem that waived protectingly over them. 'Salute!' was the principal's next command. Every right hand was raised, forefinger extended, and the six hundred and fourteen fresh, childish voices chanted as one voice: 'We give our heads and our hearts to God and our Country! One Country! One Language! One Flag!'"[86]

Further usurping Hawaiian sovereignty, the Congress, in 1959, renamed the Territory of Hawai'i to the State of Hawai'i under *An Act To provide for the admission of the State of Hawai'i into the Union.*[87] These Congressional laws, which have no extraterritorial effect, did not, in the least, transform the puppet regime into a military government recognizable under the rules of *jus in bello*. The maintenance of the puppet also stands in direct violation of the customary international law in 1893, the 1907 HC IV, and the 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War, IV (hereafter "1949 GC IV"). It is important to note for the purposes of *jus in bello* that the United States never made an international claim to the Hawaiian Islands through *debellatio*. Instead, the United States in 1959 reported to the United Nations Secretary General that "Hawaii has been administered by the United States since 1898. As early as 1900, Congress passed an Organic Act, establishing Hawaii as an incorporated territory in which the Constitution and laws of the United States, which were not locally inapplicable, would have full force and effect."[88] This extraterritorial application of American

[85] Patriotic Program for School Observance, *Hawaiian Gazette* (3 Apr. 1906), at 5, available at http://hawaiiankingdom.org/pdf/Patriotic_Program_Article.pdf (last visited 16 October 2017).
[86] William Inglis, *Hawai'i's Lesson to Headstrong California: How the Island Territory has solved the problem of dealing with its four thousand Japanese Public School children*, Harper's Weekly (16 Feb. 1907), at 227.
[87] 73 U.S. Stat. 4.
[88] United Nations, "Cessation of the transmission of information under Article 73e of the Charter: communication from the Government of the United States of America" (24 September 1959), Document no. A/4226, Annex 1, at 2.

laws are not only in violation of *The Lotus* case principle,[89] but is prohibited by the rules of *jus in bello*.

As an occupying state, the United States was obligated to establish a military government, whose purpose would be to provisionally administer the laws of the occupied state—the Hawaiian Kingdom—until a treaty of peace or agreement to terminate the occupation has been done. "Military government is the form of administration by which an occupying power exercises governmental authority over occupied territory."[90] The administration of occupied territory is set forth in the Hague Regulations, being Section III of the 1907 HC IV. According to Schwarzenberger, "Section III of the Hague Regulations ... was declaratory of international customary law."[91] Also, consistent with what was generally considered the international law of occupation in force at the time of the Spanish-American War, the "military governments established in the territories occupied by the armies of the United States were instructed to apply, as far as possible, the local laws and to utilize, as far as seemed wise, the services of the local Spanish officials."[92] Many other authorities also viewed the Hague Regulations as mere codification of customary international law, which was applicable at the time of the overthrow of the Hawaiian government and subsequent occupation.[93]

Since 1893, there was no military government established by the United States under the rules of *jus in bello* to administer the laws of the Hawaiian Kingdom as it stood prior to the overthrow. Instead, what occurred was the unlawful seizure of the apparatus of Hawaiian governance, its infrastructure, and its properties—both real and personal. It was a theft of an independent state's self-government.

The Duty of Neutrality by Third States

When the state of peace was transformed to a state of war, all other states were under a duty of neutrality. "Since neutrality is an attitude of impartiality, it excludes such assistance and succour to one of the belligerents as is detrimental to the other, and, further such injuries to the one as benefit the other."[94] The duty of a neutral state, not a party to the conflict, "obliges him, in the first instance, to prevent with the means at his disposal the belligerent concerned from

[89] *Lotus*, 1927 PCIJ Series A, No. 10, at 18.
[90] United States Army Field Manual 27-10 (1956), at sec. 362.
[91] Georg Schwarzenberger, "The Law of Belligerent Occupation: Basic Issues," 30 *Nordisk Tidsskrift Int'l Ret* (1960), 11.
[92] Munroe Smith, "Record of Political Events," 13(4) *Political Science Quarterly* (1898), 745, at 748.
[93] Gerhard von Glahn, *The Occupation of Enemy Territory: A Commentary on the Law and Practice of Belligerent Occupation* (1957), 95; David Kretzmer, *The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories* (2002), 57; Ludwig von Kohler, *The Administration of the Occupied Territories*, vol. I, (1942) 2; United States Judge Advocate General's School Tex No. 11, Law of Belligerent Occupation (1944), 2 (stating that "Section III of the Hague Regulations is in substance a codification of customary law and its principles are binding signatories and non-signatories alike").
[94] Oppenheim, *supra* note 57, at 401.

committing such a violation," e.g. to deny recognition of a puppet regime unlawfully created by an act of war.[95]

Twenty states violated their obligation of impartiality by recognizing the so-called republic of Hawai'i and consequently became parties to the conflict.[96] These states include: Austria-Hungary (1 January 1895);[97] Belgium (17 October 1894);[98] Brazil (29 September 1894);[99] Chile (26 September 1894);[100] China (22 October 1894);[101] France (31 August 1894);[102] Germany (4 October 1894);[103] Guatemala (30 September 1894);[104] Italy (23 September 1894);[105] Japan (6 April 1897);[106] Mexico (8 August 1894);[107] Netherlands (2 November 1894);[108] Norway-Sweden (17 December 1894);[109] Peru (10 September 1894);[110] Portugal (17 December

[95] *Id.*, at 496.
[96] Greenwood, *supra* note 25, at 45.
[97] Austria-Hungary's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-austro-hungary/ (last visited 16 October 2017).
[98] Belgium's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-belgium/ (last visited 16 October 2017).
[99] Brazil's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-brazil/ (last visited 16 October 2017).
[100] Chile's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-chile/ (last visited 16 October 2017).
[101] China's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-china/ (last visited 16 October 2017).
[102] France's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-france/ (last visited 16 October 2017).
[103] Germany's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-germanyprussia/ (last visited 16 October 2017).
[104] Guatemala's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-guatemala/ (last visited 16 October 2017).
[105] Italy's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-italy/ (last visited 16 October 2017).
[106] Japan's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/05/27/recognition-of-the-republic-of-hawaii-japan/ (last visited 16 October 2017).
[107] Mexico's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-mexico/ (last visited 16 October 2017).
[108] The Netherlands' recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-netherlands/ (last visited 16 October 2017).
[109] Norway-Sweden's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-swedennorway/ (last visited 16 October 2017).

1894);[111] Russia (26 August 1894);[112] Spain (26 November 1894);[113] Switzerland (18 September 1894);[114] and the United Kingdom (19 September 1894).[115]

"If a neutral neglects this obligation," states Oppenheim, "he himself thereby commits a violation of neutrality, for which he may be made responsible by a belligerent who has suffered through the violation of neutrality committed by the other belligerent and acquiesced in by him."[116] The recognition of the so-called republic of Hawai'i did not create any legality or lawfulness of the puppet regime, but rather is the indisputable evidence that these states' violated their obligation to be neutral. Diplomatic recognition of governments occurs during a state of peace and not during a state of war, unless providing recognition of belligerent status. These recognitions were not recognizing the republic as a belligerent in a civil war with the Hawaiian Kingdom, but rather under the false pretense that the republic succeeded in a so-called revolution and therefore was the new government of Hawai'i during a state of peace.

The State of Hawai'i: Not a Government but a Private Armed Force

When the United States assumed control of its installed puppet regime under the new heading of Territory of Hawai'i in 1900, and later the State of Hawai'i in 1959, it surpassed "its limits under international law through extraterritorial prescriptions emanating from its national institutions: the legislature, government, and courts."[117] The legislation of every state, including the United States of America and its Congress, are not sources of international law. In *The Lotus* case, the Permanent Court of International Justice stated that "[n]ow the first and foremost restriction imposed by international law upon a State is that—failing the existence of a permissive rule to

[110] Peru's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-peru/ (last visited 16 October 2017).
[111] Portugal's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-portugal/ (last visited 16 October 2017).
[112] Russia's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-russia/ (last visited 16 October 2017).
[113] Spain's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-spain/ (last visited 16 October 2017).
[114] Switzerland's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-switzerland/ (last visited 16 October 2017).
[115] The United Kingdom's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-britain/ (last visited 16 October 2017).
[116] Oppenheim, *supra* note 57, at 497.
[117] Eyal Benvenisti, *The International Law of Occupation* (1993), at 19.

the contrary—it may not exercise its power in any form in the territory of another State."[118] According to Judge Crawford, derogation of this principle will not be presumed.[119]

Since Congressional legislation has no extraterritorial effect, it cannot unilaterally establish governments in the territory of a foreign state. According to the U.S. Supreme Court, "[n]either the Constitution nor the laws passed in pursuance of it have any force in foreign territory unless in respect of our own citizens, and operations of the nation in such territory must be governed by treaties, international understandings and compacts, and the principles of international law."[120] The Court also concluded that "[t]he laws of no nation can justly extend beyond its own territories except so far as regards its own citizens. They can have no force to control the sovereignty or rights of any other nation within its own jurisdiction."[121] Therefore, the State of Hawai'i cannot claim to be a government as its only claim to authority derives from Congressional legislation that has no extraterritorial effect. As such, *jus in bello* defines it as an organized armed group.[122]

"[O]rganized armed groups ... are under a command responsible to that party for the conduct of its subordinates."[123] According to Henckaerts and Doswald-Beck, "this definition of armed forces covers all persons who fight on behalf of a party to a conflict and who subordinate themselves to its command,"[124] and that this "definition of armed forces builds upon earlier definitions contained in the Hague Regulations and the Third Geneva Convention which sought to determine who are combatants entitled to prisoner-of-war status."[125] Article 1 of the 1907 HC IV, provides that

> "[t]he laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions: (1) To be commanded by a person responsible for his subordinates; (2) To have a fixed distinctive emblem recognizable at a distance; (3) To carry arms openly; and (4) To conduct their operations in accordance with the laws and customs of war."

Since the *Larsen* case, defendants that have come before courts of this armed group have begun to deny the courts' jurisdiction based on the narrative in this article. In a contemptible attempt to quash this defense, the Supreme Court of the State of Hawai'i in 2013 responded to a defendant who "contends that the courts of the State of Hawai'i lacked subject matter jurisdiction over his

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[118] *Lotus, supra* note 89.
[119] Crawford, *supra* note 72, at 41.
[120] United States v. Curtiss Wright Export Corp., 299 U.S. 304, 318 (1936).
[121] The Apollon, 22 U.S. 362, 370 (1824).
[122] Article 1, 1899 Hague Convention, II, and Article 1, 1907 Hague Convention, IV.
[123] Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Vol. I (2009), at 14.
[124] *Id.*, at 15.
[125] *Id.*

criminal prosecution because the defense proved the existence of the Hawaiian Kingdom and the illegitimacy of the State of Hawai'i government,[126] with *"whatever may be said regarding the lawfulness" of its origins, "the State of Hawai'i ... is now, a lawful government* [emphasis added]."[127] Unable to rebut the factual evidence being presented by defendants, the highest so-called court of the State of Hawai'i could only resort to power and not legal reason, whose decision has been used to allow prosecutors and plaintiffs to dispense with these legal arguments. On this note, Marek explains that an occupier without title or sovereignty "must rely heavily, if not exclusively, on full and complete effectiveness."[128]

The laws and customs of war during occupation applies only to territories that come under the authority of either the occupier's military and/or an occupier's armed force such as the State of Hawai'i, and that the "occupation extends only to the territory where such authority has been established and can be exercised."[129] According to Ferraro, "occupation—as a species of international armed conflict—must be determined solely on the basis of the prevailing facts."[130]

Commission of War Crimes in the Hawaiian Kingdom

The Rome Statute of the International Criminal Court defines war crimes as "serious violations of the laws and customs applicable in international armed conflict."[131] The United States Army Field Manual 27-10 expands the definition of a war crime, which is applied in armed conflicts that involve United States troops, to be "the technical expression for a violation of the law of war by any person or persons, military or civilian. Every violation of the law of war is a war crime."[132] In the *Larsen* case, the alleged war crimes included deliberate acts as well as omissions. The latter include the failure to administer the laws of the occupied state (Article 43, 1907 HC IV), while the former were actions denying a fair and regular trial, unlawful confinement (Article 147, 1949 GC IV), and pillaging (Article 47, 1907 HC IV, and Article 33, 1907 GC IV).

International case law indicates that there must be a mental element of intent for the prosecution of war crimes, whereby war crimes must be committed willfully, either intentionally—*dolus directus*, or recklessly—*dolus eventualis*. According to Article 30(1) of the Rome Statute, an alleged war criminal is "criminally responsible and liable for punishment ... only if the material elements [of the war crime] are committed with intent and knowledge." Therefore, in order for prosecution of the responsible person(s) to be possible there must be a mental element that

[126] *State of Hawai'i v. Dennis Kaulia*, 128 Hawai'i 479, 486 (2013).
[127] *Id.*, at 487.
[128] Marek, *supra* note 37, at 102.
[129] 1907 Hague Convention, IV, Article 42.
[130] Tristan Ferraro, "Determining the beginning and end of an occupation under international humanitarian law," 94 (885) *International Review of the Red Cross* (Spring 2012) 133, at 134.
[131] International Criminal Court, *Elements of a War Crime*, Article 8(2)(b).
[132] U.S. Army Field Manual 27-10, sec. 499 (July 1956).

includes a volitional component (intent) as well as a cognitive component (knowledge). Article 30(2) further clarifies that "a person has intent where: (a) In relation to conduct, that person means to engage in the conduct; [and] (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events." Furthermore, the International Criminal Court's *Elements of a War Crime*, states that "[t]here is no requirement for a legal evaluation by the perpetrator as to the existence of an armed conflict."[133]

Is there a particular time or event that could serve as a definitive point of knowledge for purposes of prosecution? In other words, where can there be "awareness that a circumstance exists or a consequence will occur in the ordinary course of events" stemming from the illegality of the overthrow of the Hawaiian government on 17 January 1893? For the United States and other foreign governments in existence in 1893, that definitive point would be 18 December 1893, when President Cleveland notified the Congress of the illegality of the overthrow of the Hawaiian government.

For the private sector and foreign governments that were not in existence in 1893, however, the United States' 1993 apology for the illegal overthrow of the Hawaiian government should be considered as serving as that definitive point of knowledge. In the form of a Congressional joint resolution enacted into United States law, the law specifically states that the Congress "on the occasion of the 100th anniversary of the illegal overthrow of the Kingdom of Hawai'i on January 17, 1893 acknowledges the historical significance of this event."[134] Additionally, the Congress urged "the President of the United States to also acknowledge the ramifications of the overthrow of the Kingdom of Hawai'i."[135]

Despite the mistake of facts and law riddled throughout the apology resolution, it nevertheless serves as a specific point of knowledge and the ramifications that stem from that knowledge. Evidence that the United States knew of such ramifications was clearly displayed in the apology law's disclaimer, "[n]othing in this Joint Resolution is intended to serve as a settlement of any claims against the United States."[136] It is a presumption that everyone knows the law, which stems from the legal maxim *ignorantia legis neminem excusat*—ignorance of the law excuses no one. Unlike the United States government, being a public body, the State of Hawai'i cannot claim to be a government at all, and therefore is merely a private organization. Therefore, awareness and knowledge for members of the State of Hawai'i would have begun with the enactment of the apology resolution in 1993.

[133] ICC Elements of a War Crime, Article 8.
[134] Larsen case, Annexure 2, *supra* note 11, at 614.
[135] *Id.*, at 615
[136] *Id.*

International law today criminalizes an unjust war as a "crime of aggression." Under Article 8 *bis* of the Rome Statute, a war is criminal if a state aggressively utilizes its military force "against the sovereignty, territorial integrity or political independence of another State."[137] There can be no doubt that the American invasion and overthrow of the government of a "friendly and confiding people" was an aggressive war waged with malicious intent that violated the Hawaiian Kingdom's right of self-determination—duty of non-intervention, its territorial integrity and political independence.

The installation of the puppet regime also violated the rights of the Hawaiian people. The installed puppet in 1893, together with their organs, according to the Hawaiian Patriotic League, "have repeatedly threatened murder, violence, and deportation against all those not in sympathy with the present state of things, and the police being in their control, intimidation is a common weapon, under various forms, even that of nocturnal searches in the residences of peaceful citizens."[138] These criminal acts would not have occurred if the United States complied with the law of occupation. Customary international law at the time mandated an occupying state to provisionally administer the laws of the occupied state. Article 43 of the 1907 HC IV provides that "[t]he authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country." The "text of Article 43," according to Benvenisti, "was accepted by scholars as mere reiteration of the older law, and subsequently the article was generally recognized as expressing customary international law."[139] Graber also states, that "nothing distinguishes the writing of the period following the 1899 Hague code from the writing prior to that code."[140]

In similar fashion to the Hawaiian situation, Germany, when it occupied Croatia during the Second World War, established a puppet regime in violation of international law to serve as its surrogate. On this matter, the Nuremberg Tribunal, in the *Hostages Trial*, pronounced:

> "[o]ther than the rights of occupation conferred by international law, no lawful authority could be exercised by the Germans. Hence, they had no legal right to create an independent sovereign state during the progress of the war. They could set up such a provisional [military] government as was necessary to accomplish the purposes of the occupation but further than that they could not legally go. We are of the view that Croatia was at all times here involved an occupied country and that all acts performed by it were those for which [Germany] the occupying power was responsible."[141]

[137] Rome Statute, art. 8 *bis* (2).
[138] Executive Documents, *supra* note 33, at 1297.
[139] Benvenisti, *supra* note 117, at 8.
[140] Doris Graber, *The Development of the Law of Belligerent Occupation: 1863-1914* (1949), at 143.
[141] Hostages Trial, *supra* note 46, at 1302.

The United States failure to form a military government throughout the duration of the prolonged occupation since 17 January 1893 has rendered all acts by the puppet regimes—provisional government (1893 – 94), republic of Hawai'i (1894 – 1900), Territory of Hawai'i (1900 – 1959), and the State of Hawai'i (1959 – present)—which would have otherwise emanated from a *bona fide* military government, unlawful and void. As the occupying power, the United States is responsible for the acts of the State of Hawai'i just as the Germans were responsible for the acts of the so-called State of Croatia during the Second World War, which, in these proceedings of an international commission of inquiry, includes the alleged war crimes committed against Lance Larsen.[142]

Conclusion

Fundamental to deciphering the Hawaiian situation is to discern between a state of peace and a state of war. This parting of the seas provides the proper context by which the application of certain rules of international law would or would not apply. The laws of war—*jus in bello*, otherwise known today as international humanitarian law, are not applicable in a state of peace. Inherent in the rules of *jus in bello* is the co-existence of two legal orders, being that of the occupying state and that of the occupied state. As an occupied state, the continuity of the Hawaiian Kingdom has been maintained for the past 124 years by the positive rules of international law, notwithstanding the absence of effectiveness that would otherwise be required during a state of peace.[143]

The failure of the United States to comply with international humanitarian law for over a century has created a humanitarian crisis of unimaginable proportions where war crimes has since risen to a level of *jus cogens*—compelling law. At the same time, the obligations, in point, have *erga omnes* characteristics—flowing to all states. The international community's failure to intercede, as a matter of *obligatio erga omnes,* can only be explained by the United States deceptive portrayal of Hawai'i as an incorporated territory. As an international wrongful act, states have an obligation to not "recognize as lawful a situation created by a serious breach ... nor render aid or assistance in maintaining that situation,"[144] and states "shall cooperate to bring to an end through lawful means any serious breach [by a state of an obligation arising under a peremptory norm of general international law]."[145]

The gravity of the Hawaiian situation has been heightened by North Korea's announcement that "all of its strategic rocket and long range artillery units 'are assigned to strike bases of the U.S. imperialist aggressor troops in the U.S. mainland and on Hawaii," which is an existential

[142] Memorial of Lance Paul Larsen, *supra* note 1.
[143] Crawford, *supra* note 72, at 34; Marek, *supra* note 37, at 102.
[144] Responsibility of States for International Wrongful Acts (2001), Article 41(2).
[145] *Id.*, Article 41(1).

threat.[146] The United States crime of aggression since 1893 is in fact *a priori*, and underscores Judge Greenwood's statement, "[c]ountries were either in a state of peace or a state of war; there was no intermediate state."[147] The Hawaiian Kingdom, a neutral and independent state, has been in an illegal war with the United States for the past 124 years without a peace treaty, and must begin to comply with the rules of *jus in bello*.

[146] Choe Sang-Hun, North Korea Calls Hawaii and U.S. Mainland Targets, New York Times (26 March 2013), available at http://www.nytimes.com/2013/03/27/world/asia/north-korea-calls-hawaii-and-us-mainland-targets.html (last visited 16 Octoher 2017). Legally speaking, the armistice agreement of 27 July 1953 did not bring the state of war to an end between North Korea and South Korea because a peace treaty is still pending. The significance of North Korea's declaration of war of March 30, 2013, however, has specifically drawn the Hawaiian Islands into the region of war because it has been targeted as a result of the United States prolonged occupation.

[147] Greenwood, *supra* note 25.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

U.S BANK TRUST, N.A., AS TRUSTEE FOR LSF8 MASTER PARTICIPATION TRUST, Plaintiff, vs. TALA RAYMOND FONOTI; et al., Defendants.	CIVIL NO. 15-1-0371-03 JPC (Foreclosure) Notice of Hearing Motion
STATE OF HAWAII, BY ITS OFFICE OF CONSUMER PROTECTION, Intervening Petitioner, vs. Rose Dradi, David Keanu Sai, and Dexter Kaiama, Respondents.	

NOTICE OF HEARING MOTION

NOTICE IS HEREBY GIVEN that Respondent Kaiama's Motion to Dismiss for Lack of Subject Matter Jurisdiction, Pursuant to HRCP Rule 12(b)(1) shall come on for hearing before the Honorable Jeffrey P. Crabtree, Presiding Judge of the above-entitled Court, in his courtroom located at Kaulkeaouli Hale, 1111 Alakea St., Courtroom 5C, Honolulu, Hawaii on March 14, 2018, at 9:30 a.m./p.m. or as soon

thereafter as counsel and parties can be heard.

DATED: Honolulu, Hawai'i, February 20, 2018.

Dexter K. Kaiama
Respondent

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

U.S BANK TRUST, N.A., AS TRUSTEE FOR LSF8 MASTER PARTICIPATION TRUST, Plaintiff, vs. TALA RAYMOND FONOTI; et al., Defendants.	CIVIL NO. 15-1-0371-03 JPC (Foreclosure) Certificate of Service
STATE OF HAWAII, BY ITS OFFICE OF CONSUMER PROTECTION, Intervening Petitioner, vs. Rose Dradi, David Keanu Sai, and Dexter Kaiama, Respondents.	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was duly served on the following parties by hand delivery, electronic delivery of U.S. Mail, postage prepaid at their last known address:

STATE OF HAWAII,
OFFICE OF CONSUMER PROTECTION
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And
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RESPONDENT

David Keanu Sai
47-605 Puapoo Pl.
Kaneohe, HI 96744-5620
RESPONDENT

Tala Raymond Fonoti
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Ewa Beach, HI 96706
Defendant

Willadean Lehuanani Grace
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Defendant

Peter Stone, Esq.
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Attorneys for Plaintiff

Capital One Bank (USA), N.A.
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Richmond, VA 23219
Defendant

DATED: Honolulu, Hawai'i, February 20, 2018.

Dexter K. Kaiama
Respondent on the January 25, 2018
Order to Show Cause

Jane. E
235 S. Beretania 801

WILLIAM FENTON SINK #3546
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DEXTER K. KAIAMA

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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF8 MASTER PARTICIPATION TRUST,

Plaintiff,

vs.

TALA RAYMOND FONOTI, WILLADEAN LEHUANANI GRACE, CAPITAL ONE BANK (USA) N.A. ,

Defendants.

STATE OF HAWAII, BY ITS OFFICE OF CONSUMER PROTECTION,

Intervening Petitioner,

vs.

ROSE DRADI, DAVID KEANU SAI, DEXTER KAIAMA,

Respondents.

CIVIL NO.: 15-1-0371-03 (JPC)
(Foreclosure)

RESPONDENT DEXTER KAIAMA'S SUPPLEMENTAL BRIEF IN SUPPORT OF RESPONDENT DEXTER KAIAMA'S RESPONSE ON ORDER TO SHOW CAUSE FILED JANUARY 25, 2018; DECLARATION OF DEXTER KAIAMA; CERTIFICATE OF SERVICE

Hearing:
Date: March 14, 2018
Time: 9:30 a.m.
Judge: The Honorable Jeffrey P. Crabtree

RESPONDENT DEXTER KAIAMA'S SUPPLEMENTAL BRIEF IN SUPPORT OF RESPONDENT DEXTER KAIAMA'S RESPONSE ON ORDER TO SHOW CAUSE FILED JANUARY 25, 2018

Dexter Kaiama (hereinafter "Mr. Kaiama") should not be punished for bringing a motion. Jurisdiction is never presumed.

Hawai'i Rules of Civil Procedure Rule 12(b)(1) states:

> (b) How presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter . . .

Mr. Kaiama should not be punished for his taking a position that the State disagrees with. The Office of Consumer Protection ("OCP") is an agency of the State of Hawai'i. Mr. Kaiama is merely advancing a moral principle.

Hawai'i Rules of Professional Conduct, Rule 2.1 states:

> In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

There is justification for Mr. Kaiama's position. Back in 1994, the ICA observed in a footnote in State v. Lorenzo, 77 Hawai'i 219, 883 P.2d 641, fn 2 at 221.

> A state has an obligation not to recognize or treat as a state an entity that has attained the qualifications for statehood as a result of a threat or use of force in violation of the United Nations Charter. Restatement (Third) of the Foreign Relations Law of the United States § 202(2).

There is nothing improper about advancing a unique legal theory, provided it is done in an upfront fashion.

Hawai'i Rules of Professional Conduct, 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 for doing so that is not frivolous, which includes a good faith argument for an **extension, modification,** or **reversal of existing law**. . . . (Emphasis added).

Comment [2] to the Hawai'i Rules of Professional Conduct, Rule 3.1 states:

> [2]The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. . . .

William Fenton Sink just came into the case on March 2, 2018. This supplemental brief should be permitted and testimony should be allowed, and, if necessary, the OSC continued.

The Guidelines of Professional Courtesy and Civility for Hawai'i Lawyers, § 2 states:

> Consistent with existing law and court orders, a lawyer should agree to reasonable requests for extensions of time when the legitimate interests of his or her client will not be adversely affected.
>
> Specifically, a lawyer who manifests professional courtesy and civility:
>
> (a) Agrees to reasonable requests for extensions of time or continuances without requiring motions or other formalities.
>
> (b) Considers any reasonable request for extensions of time in light of the need for prompt resolution of matters, the consideration that should be extended to an opponent's professional and personal schedule, the opponent's willingness to grant reciprocal extensions, the time actually needed for the task, and whether it is likely a court would grant the extension if asked to do so.
>
> (c) Does not engage in the strategy of not agreeing to reasonable requests for time extensions simply to appear "tough."

. . .

(f) Agrees to reasonable requests for extensions of time when new counsel is substituted in for prior counsel.

The State seems to feel that any further pleadings or testimony should be disallowed. New counsel is appearing purely on the matter related to the Order to Show Cause.

It is certainly possible that an **agreement can be made** to resolve the dispute regarding Mr. Kaiama. William Fenton Sink proposes to a settlement conference before this motion is heard.

Mr. Kaiama should not be punished for his moral principles. This pleading, as well as testimony, should be permitted or the OSC should be denied.

Dated: Honolulu, Hawai'i, MAR 0 7 2018.

WILLIAM FENTON SINK
Attorney for Respondent
DEXTER KAIAMA

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF8 MASTER PARTICIPATION TRUST, Plaintiff, vs. TALA RAYMOND FONOTI, WILLADEAN LEHUANANI GRACE, CAPITAL ONE BANK (USA) N.A. , Defendants. STATE OF HAWAII, BY ITS OFFICE OF CONSUMER PROTECTION, Intervening Petitioner, vs. ROSE DRADI, DAVID KEANU SAI, DEXTER KAIAMA, Respondents.	CIVIL NO.: 15-1-0371-03 (JPC) (Foreclosure) **DECLARATION OF DEXTER KAIAMA**

DECLARATION OF DEXTER KAIAMA

1. I, DEXTER KAIAMA, declare under penalty of law that the following is true and correct:

2. I was not paid anything by Defendants Tala Raymond Fonoti ("Fonoti") and/or Willadean Lehuanani Grace ("Grace") to represent them in the underlying matter or any other legal matters.

3. I told the Defendants I was only representing them at the hearing and for no other matters.

4. I first learned of the case and hearing on the motion to dismiss directly from Mr. Fonoti and Ms. Grace when they called me on or about April 26, 2017.

5. I do not recall ever speaking with Dr. Sai or Ms. Dradi about the Fonoti case.

6. I did not prepare the original motion.

7. I received no money from Dr. Sai nor did I ever pay Dr. Sai any money.

8. I never received any money from Rose Dradi nor did I ever pay Ms. Dradi any money.

9. I do declare under penalty of law that the foregoing is true and correct.

Dated: Honolulu, Hawai'i, 3/6/2018.

DEXTER KAIAMA
Declarant

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF8 MASTER PARTICIPATION TRUST, Plaintiff, vs. TALA RAYMOND FONOTI, WILLADEAN LEHUANANI GRACE, CAPITAL ONE BANK (USA) N.A., Defendants.	CIVIL NO.: 15-1-0371-03 (JPC) (Foreclosure) **CERTIFICATE OF SERVICE**
STATE OF HAWAII, BY ITS OFFICE OF CONSUMER PROTECTION, Intervening Petitioner, vs. ROSE DRADI, DAVID KEANU SAI, DEXTER KAIAMA, Respondents.	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on MAR 07 2018, a copy of the foregoing document was duly served on the counsel of record and/or parties as noted below, addressed as set forth below:

TO: STATE OF HAWAII, *(Via Hand Delivery)*
OFFICE OF CONSUMER PROTECTION
James F. Evers, Esq.
235 S. Beretania Street, Rm. 801
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STATE OF HAWAII, BY ITS OFFICE OF CONSUMER PROTECTION

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Respondent

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Defendant

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Ewa Beach, Hawai'i 96706

Defendant

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Richmond, Virginia 23219

Defendant

Dated: Honolulu, Hawai'i, MAR 0 7 2018.

WILLIAM FENTON SINK
Appearing Co-Counsel

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DEXTER KAIAMA

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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF8 MASTER PARTICIPATION TRUST,

Plaintiff,

vs.

TALA RAYMOND FONOTI, WILLADEAN LEHUANANI GRACE, CAPITAL ONE BANK (USA) N.A. ,

Defendants.

STATE OF HAWAII, BY ITS OFFICE OF CONSUMER PROTECTION,

Intervening Petitioner,

vs.

ROSE DRADI, DAVID KEANU SAI, DEXTER KAIAMA,

Respondents.

CIVIL NO.: 15-1-0371-03 (JPC)
(Foreclosure)

RESPONDENT DEXTER KAIAMA'S REPLY BRIEF IN RESPONSE TO: 1) STATE OF HAWAI'I OFFICE OF CONSUMER PROTECTION'S MEMORANDUM IN OPPOSITION TO RESPONDENT DEXTER KAIAMA'S MOTION TO DISMISS FILED FEBRUARY 21, 2018 AND 2) STATE OF HAWAI'I OFFICE OF CONSUMER PROTECTION'S SUPPLEMENTAL MEMORANDUM AS TO WHETHER RESPONDENTS ROSE DRADI, DAVID DEANU SAI, AND DEXTER KAIAMA HAVE VIOLATED APPLICABLE CONSUMER PROTECTION LAWS; DECLARATION OF DEXTER KAIAMA; EXHIBITS 1-2; CERTIFICATE OF SERVICE

Continued Hearing:
Date: March 14, 2018
Time: 9:30 a.m.
Judge: The Honorable Jeffrey P. Crabtree

RESPONDENT DEXTER KAIAMA'S REPLY BRIEF IN RESPONSE TO: 1) STATE OF HAWAI'I OFFICE OF CONSUMER PROTECTION'S MEMORANDUM IN OPPOSITION TO RESPONDENT DEXTER KAIAMA'S MOTION TO DISMISS FILED FEBRUARY 21, 2018 AND 2) STATE OF HAWAI'I OFFICE OF CONSUMER PROTECTION'S SUPPLEMENTAL MEMORANDUM AS TO WHETHER RESPONDENTS ROSE DRADI, DAVID DEANU SAI, AND DEXTER KAIAMA HAVE VIOLATED APPLICABLE CONSUMER PROTECTION LAWS

1. Respondent DEXTER KAIAMA (hereinafter "Mr. Kaiama") is more than willing to testify, under oath and/or with the support of a lie detector, that he did not receive a penny in compensation from the Fonoti complainants.

2. It is Mr. Kaiama's position that there was no "mortgage relief assistance" on his part. As to Mr. Kaiama, his special appearances only went to the Hawai'i Rules of Civil Procedure Rule 12(b)(1) issue.

3. Mr. Kaiama further challenges the Agent of the State of Hawai'i to show even **one** time where Mr. Kaiama's position was found to be frivolous. "The Hawai'i Supreme Court has defined a frivolous claim as one that is 'so manifestly and palpably without merit, so as to indicate bad faith on the pleader's part such that argument to the court was not required.' " Coll v. McCarthy, 72 Haw. 20, 29, 804 P.2d 881, 887 (1991). Holi v. AIG Haw. Ins. Co., 113 Hawai'i 196, 207, 150 P.3d 845 (2007). All the judges have found Mr. Kaiama's arguments to be unique or that the arguments push the legal packet, but **no** judge has found Mr. Kaiama to have violated any rule.

4. Mr. Kaiama further challenges the OCP to find so much as **one** case where a court has found Mr. Kaiama's argument under HRCP Rule 12(b)(1) to be "meritless." This is simply sophistry by the OCP to put Mr. Kaiama in a bad light.

Dated: Honolulu, Hawai'i, MAR 1 2 2018.

WILLIAM FENTON SINK
Attorney for Respondent
DEXTER KAIAMA

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF8 MASTER PARTICIPATION TRUST, Plaintiff, vs. TALA RAYMOND FONOTI, WILLADEAN LEHUANANI GRACE, CAPITAL ONE BANK (USA) N.A. , Defendants.	CIVIL NO.: 15-1-0371-03 (JPC) (Foreclosure) **DECLARATION OF DEXTER KAIAMA**
STATE OF HAWAII, BY ITS OFFICE OF CONSUMER PROTECTION, Intervening Petitioner, vs. ROSE DRADI, DAVID KEANU SAI, DEXTER KAIAMA, Respondents.	

DECLARATION OF DEXTER KAIAMA

1. I, DEXTER KAIAMA, declare under penalty of law that the following is true and correct:

2. Attached hereto as Exhibit 1 is a true and correct copy of portions of the Transcript of Proceedings in Wells Fargo Bank, N.A. v. Kawaksaki; Civil No.: 11-1-106.

3. Attached hereto as Exhibit 2 is a true and correct copy of portions of the Transcript of Proceedings in Bank of America, N.A. v. Lindsey; Civil No.: 12-1-091.

4. No judge has ever said my arguments regarding jurisdiction were "meritless" or "frivolous."

5. I do declare under penalty of law that the foregoing is true and correct.

Dated: Honolulu, Hawai'i, 3/12/08.

DEXTER KAIAMA
Declarant

Exhibit 1

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

WELLS FARGO BANK, N.A., Plaintiff,	)	
vs.	)	CIVIL NO. 11-1-106
ELAINE E. KAWASAKI, et al., Defendant.	)	

TRANSCRIPT OF PROCEEDINGS

before the HONORABLE, GLENN S. HARA, Judge presiding, Second Division, on Friday, June 15, 2012.

HEARING ON MOTION TO DISMISS COMPLAINT

APPEARANCES:

For the plaintiff: SOFIA M. HIROSANE, ESQ.
RCO HAWAII LLLC
900 Fort Street Mall
Suite 800
Honolulu, Hawaii 96813

For Defendant ELAINE E. KAWASAKI (Special Appearance):
DEXTER K. KAIAMA, ESQ.
AGARD & KAIAMA
500 Ala Moana Boulevard
Suite 400
Honolulu, Hawaii 96813

Reported by: JENNIFER WHETSTONE, CSR 421, RMR
Official Court Reporter
Third Circuit Court, State of Hawaii

Friday, June 15, 2012 9:13 A.M.

--oOo--

THE CLERK: Civil number 11-1-106, Wells Fargo Bank versus Elaine Kawasaki. Defendant Elaine E. Kawasaki's motion to dismiss complaint pursuant to HRCP 12(b)(1).

MS. HIROSANE: Good morning, Your Honor; Sofia Hirosane on behalf of the plaintiff.

MR. KAIAMA: Good morning, Your Honor; Dexter Kaiama making a special appearance on behalf of Ms. Kawasaki. Ms. Kawasaki is present in the courtroom.

THE COURT: Okay, what's the scope of your special appearance?

MR. KAIAMA: The scope of my special appearance, Your Honor, is to make argument and presentation with respect to Ms. Kawasaki's 12(b)(1) motion to dismiss challenging the subject matter jurisdiction of this court, Your Honor.

THE COURT: And how far does that extend?

MR. KAIAMA: If I understand your question correctly, Your Honor, I'm making argument today, um, and after I make argument I -- my appearance would -- that -- that terminates my appearance at the end of argument. So if the court were, for example, to deny the motion to dismiss an order from Ms. Hirosane to go directly to Ms. Kawasaki for her review, or if Ms. Hirosane were to submit it

pursuant to rule 23, correspondence would go directly to Ms. Kawasaki.

THE COURT: Okay, so it's just for today, and then your -- your engagement ends.

MR. KAIAMA: That is correct, Your Honor.

THE COURT: And Mister -- I just want, Mr. Kaiama, I just wanna make that clear, because it may, as you indicated, I mean there are other things that's going to fall out of this hearing that may require, you know, counsel to act on it, if you were still counsel. And I wanna make sure that it's clear, after today, after you leave the courtroom today, you're not counsel of record.

MR. KAIAMA: That is correct, Your Honor. Now, if Ms. Kawasaki wishes to engage me for additional services then she would engage me at that time. But my term, my -- my appearance and my representation as counsel ends as I walk out of the courtroom.

THE COURT: Okay. Well, that kind of representation makes it very difficult for the court sometimes to --

MR. KAIAMA: I can only speak to my representation today, I cannot speculate as to what might happen tomorrow or the next day as to whether she wishes to engage my services or not, Your Honor.

THE COURT: Yeah. But that kind of unbundling,

ex parte motion, at least until today's hearing.

MR. KAIAMA: That is my understanding, Your Honor.

THE COURT: Okay.

MS. HIROSANE: That's my understanding. And, Your Honor, just for the record, we were only served with a copy of, uh, Ms. Kawasaki's ex parte motion yesterday.

THE COURT: Okay. I think the court instructed the staff to call your firm to let 'em know that I did sign the ex parte motion, 'cause it didn't look like you had been provided a copy.

MS. HIROSANE: That's correct, Your Honor. We -- we did appreciate that.

THE COURT: Okay. So here's the court's inclination, Mr. Kaiama. And in answer to the plaintiff's comment that maybe the motion may be delayed, it looks like the motion is one that challenges the subject matter jurisdiction. At least on its face. But -- and any time there is a jurisdictional challenge, it can be made at any time. That's my understanding. Because if the court has no jurisdiction then whatever the court does is void. Um, so I'm treating this as a motion to dismiss for the court's lack of subject matter jurisdiction for the reasons stated. And that is that the argument is that the Kingdom of Hawaii still exists, and therefore, in essence, this court has no

jurisdiction, it's the courts of the Kingdom of Hawaii. That's how I'm taking the motion. Mr. Kaiama?

MR. KAIAMA: And that is essentially Ms. Kawasaki's motion and our argument.

THE COURT: Okay. So the court would -- is inclined to deny the motion. I think the Hawaii case law is pretty clear that, um, the jury is still out as to whether or not the Kingdom of Hawaii still exists. That's number one.

Number two, even if it existed, there has been no definitive ruling that says that the existence of the kingdom itself would divest the court's of this state of jurisdiction.

And it is also clear -- I don't think that Ms. Kawasaki claims to be a citizen of the Kingdom of Hawaii? I didn't see that alleged in her, um, memorandum. And there have been at least three or four cases, either at the supreme court or the intermediate court of appeals, that have held that even if you claim to be a king -- subject of the Kingdom of Hawaii, if you violate laws within the territorial jurisdiction of the State of Hawaii, the criminal laws would still apply to you.

I would assume that that same principle would apply even if you don't claim to be a subject of the Kingdom of Hawaii. And if the kingdom did exist, um, that the civil

him, because Mr. Lorenzo failed to provide the court with a factual legal basis that the Kingdom of Hawaii continues to exist with the state's -- in accordance with the state's sovereign nature.

What we're doing here, Your Honor, and recently, and really for the first time, is we are presenting the court with that evidence. And those evidence are the executive agreements. That is the Liliuokulani Assignment, which mandates the President of the United States, or the office of the President of the United States to administer Hawaiian Kingdom law. And the agreement of the res -- and the agreement of restoration, which is an executive agreement which mandates the President of the United States and the office of the President to restore the Kingdom of Hawaii. That is attached as Ms. Kawasaki's -- I believe it's exhibit 4A and 4B, which is attached to the expert memorandum of Dr. Keanu Sai.

Your Honor, in the -- essentially the argument or -- or the court's inclination is undeniably intertwined with the presumption that -- that if the Kingdom of Hawaii continues to exist, this state court does not have jurisdiction, or no state court has jurisdiction. And there is a presumption that allows the court and the -- and the plaintiff to argue that there is state statute which confers jurisdiction upon this court.

Page four of Ms. Kawasaki's reply memorandum speaks to the Restatement, Third, Foreign Relation Laws of the United States. Essentially, Your Honor, what those foreign relation laws of the United States says is that an international agreement, which an executive agreement is, is an agreement between two or more states. And we're talking states in terms of their international relations. The executive agreements could not have occurred between President Grover Cleveland and Queen Liliuokulani unless they were states. Those agreements --

THE COURT: Mr. Kaiama, let me just interrupt for a minute. Which of the decisions is the one that I think, um, was an ICA decision? I'm trying to think of the judge who wrote it.

MR. KAIAMA: Judge Walter Heen?

THE COURT: Judge Heen's decision.

MR. KAIAMA: In State of Hawaii versus Lorenzo.

THE COURT: Lorenzo.

MR. KAIAMA: Yes.

THE COURT: And he makes the comment basically that, um, you know, what -- the -- in essence, I mean, it kinda left the door open by saying something to the effect that, you know, there may be other facts or laws out there in the future that might change this.

Now, I take his comments to mean -- and all a

queen back into its position, and the queen grants amnesty. Those are in the papers.

Now, Your Honor, what we're asking the court to do is not make a determination in its ruling that the Kingdom of Hawaii is to be restored, but what we're asking is what Lorenzo says, is that once we have met our burden, the court cannot have no other, we believe, no other recourse but to dismiss the complaint.

THE COURT: No, but, Mr. Kaiama, I think you failed -- in my mind, what you're asking the court to do is commit suicide, because once I adopt your argument, I have no jurisdiction over anything. Not only these kinds of cases where you may claim either being part of -- being the Hawaii, um, a citizen of the kingdom, but jurisdiction of the courts evaporate. All of the courts across the state, from the supreme court down, and we have no judiciary. I can't do that.

MR. KAIAMA: Your Honor --

THE COURT: I can't make that kind of a finding that basically it's, you know, like the atomic bomb for the judiciary.

MR. KAIAMA: I understand the contemplation of the consequences of the court's ruling. However, the contemplation of the consequences of the court's ruling is beyond the authority of the courts. What is in -- within

Constitution and under article six of the supreme law of the land. And those cases, Your Honor, supreme court cases, stand for the proposition that any state law which is contrary to the executive agreements are preempted.

Also in the, um, Foreign Relations Restatement of Third that I presented to the court, Your Honor, again, as international agreements, these international agreements are binding on the United States to faithful execution. And, again, any municipal or state law to the contrary would be preempted as well.

THE COURT: Okay, thank you. Ms. Hirosane, any arguments?

MS. HIROSANE: Your Honor, just -- just really briefly. Just to add to what we've already briefed, uh, Ms. Kawasaki admittedly is not claiming that she's a citizen of this -- ~~of the Kingdom of Hawaii, if it does exist.~~ And as you stated from the outset of this hearing, we're still in -- it's an evolving issue within the court system. But our position remains if Ms. Kawasaki is admittedly not a citizen then how can she raise these arguments to defeat this court's subject matter jurisdiction in these proceedings?

THE COURT: I think what he's saying is that if -- the argument is that if, in fact, I buy into his arguments then this court has no jurisdiction over any

matter, because it's illegal. That's his analysis, I think.

MS. HIROSANE: And that's -- that's my understanding of it too, Your Honor.

THE COURT: Okay. So the court will deny the motion to dismiss the complaint pursuant to Hawaii Rules of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction.

Having reviewed the matters and the prior court decisions, the court is of the opinion and decides that the court does have subject jurisdiction over the matter of the ejectment case and that the arguments raised by Mr. Kaiama, in essence, have been resolved by the prior appellate court decisions, and the raising of the executive agreements, in my mind, is not persuasive. Those matters were in existence at the time of the prior court decisions, they were available to the court, they were available to attorneys, and I'm not convinced that it's now something new or provides new law or new facts that would cause the prior appellate decisions to be overturned. Okay? So --

MR. KAIAMA: Your Honor, thank you. I know she's to prepare the order. Your Honor, respectfully, I would just preserve Ms. Kawasaki's right to take exception to the court's decision today.

THE COURT: Yeah, that's not necessary.

MR. KAIAMA: And reserve her rights to file an

Exhibit 2

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

THIRD DIVISION

STATE OF HAWAII

BANK OF AMERICA, N.A., Plaintiff, vs. STEVEN LINDSEY, ET AL., Defendants.	CIV. NO. 12-1-091K

ORIGINAL

TRANSCRIPT OF PROCEEDINGS

Before the Honorable Ronald Ibarra, Judge, Third Division, presiding, on Wednesday, August 1, 2012.

--oOo--

MOTION TO DISMISS COMPLAINT

APPEARANCES

For the Plaintiff:

MANMEET RANA, ESQ.
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For the Defendant:

DEXTER K. KAIAMA, ESQ.
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Transcript prepared from electronic media by:

KURT T. FAUT, CSR #418
Official Court Reporter
State of Hawaii

Wednesday, August 1, 2012

--oOo--

THE CLERK: Civil Number 12-1-091K, Bank of America versus Steven L. Lindsey, et al. Defendant Steven L. Lindsey and Tiffany Lindsey's motion to dismiss complaint pursuant to Hawaii Rules of Civil Procedure 12(b)(1).

MR. RANA: Good morning, your Honor. Manmeet Rana on behalf of the plaintiff, Bank of America.

MR. KAIAMA: Good morning, your Honor. Dexter Kaiama. I'm making a special appearance on behalf of Steven Lindsey, the defendant. Mr. Lindsey is present in the courtroom.

THE COURT: Regarding the motion to dismiss?

MR. KAIAMA: Yes, your Honor. Thank you very much. As the first order of business, your Honor, and if I may for the Court to expedite matters, on the motion to dismiss, on pages 17 through 20, if I may direct the Court's attention to those pages of Mr. Lindsey's motion, that is a request for judicial notice, your Honor. Mr. Lindsey, in his moving papers, has provided the Court with the authority for taking of judicial notice, specifically Hawaii Rules of Evidence 201(d).

Your Honor, Mr. Lindsey's moving papers also cite 29 Am. Jur. 2d of Evidence, Sections 83, 123 and 126. Essentially, your Honor, those treatises provide authority

evidence of lack of subject matter jurisdiction. I think you have the burden to show that the court has jurisdiction.

MR. RANA: And that's what we generally argued, your Honor, in our argument that the property is located in Kailua-Kona, that the breach likely occurred in Kailua-Kona, and that was our reply to the motion to dismiss.

THE COURT: But you didn't address the argument he's making that the Court should take judicial notice of fact, though. That's the issue I look at. There's the Liliuokalani Assignment that mandates the president to administer the Hawaiian Kingdom law until the Hawaiian Kingdom government can be restored pursuant to the Agreement of Restoration under the exclusive authority of the president by virtue of Article 2 of the U.S. Constitution.

MR. RANA: We addressed the subject matter jurisdiction. We didn't address that in particular in our memo.

THE COURT: Well, you just seemed to ignore their argument. It's like you think they don't have any -- by just ignoring it, you don't think -- when you ignore an argument, as you know, counsel, it means that you waive the argument, that you agree with it. You don't think the Court looks at the argument? You just think --

MR. RANA: Oh, no, no.

THE COURT: -- it doesn't have any weight,

that, right? Their argument goes to the Hawaiian Kingdom, which it exists no matter where the property is located, and that's why I wonder if you're just taking their argument so lightly that you think it's a so-called slam dunk, that you just ignore it.

MR. RANA: No, your Honor. There's no such thing as a slam dunk outside of basketball.

THE COURT: Well, why didn't you address it?

MR. RANA: I thought we -- I reserved it, I guess, for oral arguments, your Honor. We didn't ignore it.

THE COURT: Oral arguments? You go to other courts that you don't raise it in your written memo --

MR. RANA: No, your Honor.

THE COURT: -- and you're allowed to argue new things?

MR. RANA: I believe that when we addressed that, we applied the law and put in our motion that it's going -- directly conflicting with their motion.

THE COURT: Well, I see that, you know, the statutes talk about foreclosure as far as jurisdiction, but their argument goes before the statute. You just assume that the kingdom does not exist, but they're saying that the kingdom does, and if it does, then the statute comes after the kingdom.

MR. RANA: What we're arguing, your Honor, is

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF8 MASTER PARTICIPATION TRUST, Plaintiff, vs. TALA RAYMOND FONOTI, WILLADEAN LEHUANANI GRACE, CAPITAL ONE BANK (USA) N.A., Defendants.	CIVIL NO.: 15-1-0371-03 (JPC) (Foreclosure) **CERTIFICATE OF SERVICE**
STATE OF HAWAII, BY ITS OFFICE OF CONSUMER PROTECTION, Intervening Petitioner, vs. ROSE DRADI, DAVID KEANU SAI, DEXTER KAIAMA, Respondents.	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on MAR 1 2 2018, a copy of the foregoing document was duly served on the counsel of record and/or parties as noted below, addressed as set forth below:

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Respondent

Dated: Honolulu, Hawai'i, MAR 1 2 2018.

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February 5, 2018

James F. Evers
Enforcement Attorney
State of Hawai'i
Department of Commerce and Consumer Affairs
Office of Consumer Protection
235 S. Beretania Street #801
Honolulu, HI 96813

Re: Notice of Violation of International Humanitarian Law

Dear Mr. Evers,

The purpose of this letter is to provide you with notice that you are about to violate international humanitarian law, in particular, Article 147 of the 1949 Fourth Geneva Convention. Article 147 provides that a violation of humanitarian law is "wilfully depriving a protected person of the rights of fair and regular trial." As an intervenor in the *U.S. Bank Trust, N.A., as Trustee for LSF8 Master Participation Trust v. Tala Raymond Fonoti* proceedings you are aiding in the unlawful and extra-judicial proceedings against myself, Dexter Kaiama, Rose Dradi, as well as Tala and Willa Fonoti.

The Circuit Court of the First Circuit of the State of Hawai'i is an unlawful court and its proceedings are extra-judicial. This fact is more fully explained in the attached brief titled "The *Larsen v. Hawaiian Kingdom* Case at the Permanent Court of Arbitration and Why There Is An Ongoing Illegal State of War with the United States of America Since 16 January 1893." I highly recommend that you carefully read, with an open mind, the attached brief in order to enlighten yourself as to the legal status of the Hawaiian Kingdom. I can also assume that international law is not your area of practice, and, in light of this, you should seek advice from someone with that expertise, *i.e.* the United States Department of State, who is willing, by name, to stand by their opinion under international humanitarian law.

The Hawaiian Kingdom is an internationally recognized independent state and a subject of international law. These facts were evidenced in the *Larsen v. Hawaiian Kingdom* arbitration case, held from 1999-2001, at the Permanent Court of Arbitration (PCA) in

The Hague, Netherlands.[1] The PCA recognized the continued existence of the Hawaiian Kingdom as an independent state, and that the Provisional Government (Council of Regency) represented the Hawaiian state in these proceedings. If the State of Hawai'i, to include your office, was a legal entity exercising sovereignty over the Hawaiian Islands, as the so-called 50th State of the Federal Union, and the Hawaiian Kingdom did not exist as a matter of law, then the international arbitration would not have taken place. The PCA allowed the arbitration to proceed to judgment because the Hawaiian Kingdom does continue to exist with the Council of Regency serving as its Provisional Government. As a member of the Council of Regency, I served as Agent for the Hawaiian Kingdom in these arbitral proceedings.[2] I am also currently serving as Agent for the Hawaiian Kingdom, in international fact-finding proceedings stemming from the *Larsen* case, as well as the Hawaiian Ambassador-at-Large.

There is no evidence that the United States extinguished the existence of the Hawaiian Kingdom as a state under international law. It is through ignorance of international law and historical facts that allows individuals to deny the Hawaiian Kingdom's existence.

The Hawaiian Kingdom as an Internationally Recognized Independent State

In the *Larsen* case arbitration award, the international tribunal stated, that "in the nineteenth century the Hawaiian Kingdom existed as an independent State recognized as such by the United States of America, the United Kingdom and various other States, including by exchanges of diplomatic or consular representatives and the conclusion of treaties."[3] As an independent state, the Hawaiian Kingdom entered into extensive treaty relations with a variety of states, which included establishing diplomatic relations and trade agreements.[4] According to Westlake, in his 1894 treatise, the *Family of Nations* comprised, "First, all European States.... Secondly, all American States.... Thirdly, a few Christian States in other parts of the world, as the Hawaiian Islands, Liberia and the

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[1] *Larsen v. Hawaiian Kingdom*, Permanent Court of Arbitration, at: https://pca-cpa.org/en/cases/35/.
[2] *Id.* You will see my name listed next to "Representatives of the claimant(s)."
[3] Larsen v. Hawaiian Kingdom, 119 *International Law Reports* (2001) 566, at 581.
[4] The Hawaiian Kingdom entered into treaties with Austria-Hungary (now separate states), June 18, 1875; Belgium, October 4, 1862; Bremen (succeeded by Germany), March 27, 1854; Denmark, October 19, 1846; France, September 8, 1858; French Tahiti, November 24, 1853; Germany, March 25, 1879; New South Wales (now Australia), March 10, 1874; Hamburg (succeeded by Germany), January 8, 1848; Italy, July 22, 1863; Japan, August 19, 1871, January 28, 1886; Netherlands & Luxembourg, October 16, 1862 (William III was also Grand Duke of Luxembourg); Portugal, May 5, 1882; Russia, June 19, 1869; Samoa, March 20, 1887; Spain, October 9, 1863; Sweden-Norway (now separate states), April 5, 1855; Switzerland, July 20, 1864; the United Kingdom of Great Britain and Northern Ireland, March 26, 1846; and the United States of America, December 20, 1849, January 13, 1875, September 11, 1883, December 6, 1884.

Orange Free State."[5] On January 1, 1882, the Hawaiian Kingdom became a member of the Universal Postal Union, which, today, is a specialized agency of the United Nations.

By 1893, the Hawaiian Kingdom maintained over ninety Legations and Consulates throughout the world. Hawaiian Legations were established in Washington, D.C., London, Paris, and Tokyo. There were diplomatic representatives accredited to the Hawaiian Court in Honolulu from the United States, Portugal, Great Britain, France and Japan. There were thirty-three Hawaiian Consulates in Great Britain and her colonies; five in France and her colonies; five in Germany; one in Austria; eight in Spain and her colonies; five in Portugal and her colonies; three in Italy; two in the Netherlands; four in Belgium; four in Sweden and Norway; one in Denmark; and two in Japan.[6] There were foreign consulates in the Hawaiian Kingdom from the United States, Italy, Chile, Germany, Sweden and Norway, Denmark, Peru, Belgium, the Netherlands, Spain, Austria and Hungary, Russia, Great Britain, Mexico, Japan, and China.[7]

Despite the fact that the territory of the Hawaiian Kingdom has been militarily occupied by the United States troops since January 16, 1893, and unilaterally annexed by the United States of America in 1898, the Hawaiian Kingdom remains today an independent state recognized by the international community. Hence, according to international law, the American occupation has never been legal and has never produced the effect of terminating the status of the Hawaiian Kingdom as a state.

It is indisputable that the Hawaiian Kingdom was an independent state and recognized by the international community before the U.S. invasion. In light of the illegality of the American invasion and subsequent occupation, as pronounced by President Grover Cleveland in his message to the Congress on December 18, 1893, the Hawaiian Kingdom has never lost such an independent state status. The official acts of recognition of the Hawaiian Kingdom as an independent state, expressed by numerous states before the U.S. invasion, are "incapable of withdrawal,"[8] and in no way can these recognizing states be

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[5] John Westlake, *Chapters on the Principles of International Law* (1894), at 81. In 1893, there were 44 independent and sovereign states in the *Family of Nations*: Argentina, Austria-Hungary, Belgium, Bolivia, Brazil, Bulgaria, Chili, Colombia, Costa Rica, Denmark, Ecuador, France, Germany, Great Britain, Greece, Guatemala, Hawaiian Kingdom, Haiti, Honduras, Italy, Liberia, Liechtenstein, Luxembourg, Netherlands, Mexico, Monaco, Montenegro, Nicaragua, Orange Free State (that was later annexed by Great Britain in 1900), Paraguay, Peru, Portugal, Romania, Russia, San Domingo, San Salvador, Serbia, Spain, Sweden-Norway, Switzerland, Turkey, United States of America, Uruguay, and Venezuela. In 1945, there were 45 independent and sovereign states, and today there are 193.

[6] Thomas Thrum, *Hawaiian Register and Directory for 1893,* in Hawaiian Almanac and Annual (1892), at 140-141.

[7] *Id.*

[8] Lassa Oppenheim, *International Law* (3rd ed. 1920). See also Georg Schwarzenberger, *Title to Territory: Response to a Challenge*, 51(2) American Journal of International Law (1957) 308, 316, who states that

considered as having extinguished the Hawaiian state in accordance with applicable rules of international law. Therefore, it is unquestionable that the Hawaiian Kingdom continues to exist today as an independent state recognized by the international community, despite its territory being illegally occupied by the United States since January 17, 1893.

The Hawaiian Kingdom is the same today as it was in the nineteenth century. The *Larsen v. Hawaiian Kingdom* case at the PCA reinforces this continuity and international recognition. On its website, the PCA specifically acknowledged the Hawaiian Kingdom as a "State," and in its 2011 Annual Report, the PCA also recognized the Hawaiian Kingdom as a "Non-Contracting Power" to the 1907 Hague Convention, I, and this Convention established the PCA.[9] The 1907 Hague Convention, I, provides that the PCA is open to both "Contracting Powers" that have approved the Convention and to "Non-Contracting Powers" that have not approved the Convention. The term "Power" is an international term for an independent state.

The Government of the Hawaiian Kingdom, as it stood on January 17, 1893, was restored in 1995, and represented the Hawaiian Kingdom at the PCA.[10] This government was formed as the legal successor of the last recognized government *in situ*, in an acting capacity, and does not require diplomatic recognition, but rather it operates as the successor to the diplomatic recognition already afforded to the last recognized government before the 1893 invasion. An acting Council of Regency, comprised of four Ministers—Interior, Foreign Affairs, Finance and the Attorney General—was established, in accordance with the Hawaiian constitution.[11] As noted in 2001, by Bederman and Hilbert, in the *American Journal of International Law*: "the Hawaiian Kingdom continues to exist and...the Hawaiian Council of Regency (representing the Hawaiian Kingdom) is legally responsible under international law for the protection of Hawaiian subjects."[12] Mr. Dexter Kaiama currently serves as the acting Attorney General.

Another contemporary piece of evidence, that the Hawaiian Kingdom continues to exist, is its current membership in the Universal Postal Union (UPU). The only way to cancel the Hawaiian Kingdom's membership in the UPU, would be for the Hawaiian Kingdom government, on behalf of the Hawaiian state, to explicitly announce that it no longer recognizes the UPU Convention and its Regulations. The illegal overthrow of the

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"recognition estops [precludes] the State which has recognized the title from contesting its validity at any future time."

[9] PCA Annual Report, Annex 2 (2011), at 51, n. 2.

[10] David Bederman & Kurt Hilbert, "Arbitration—UNCITRAL Rules—justiciability and indispensible third parties—legal status of Hawaii," 95 American Journal of International Law (2001) 927, at 928.

[11] David Keanu Sai, Brief—The Continuity of the Hawaiian State and the Legitimacy of the acting Government of the Hawaiian Kingdom , 25-51 (4 August 2013), available at http://hawaiiankingdom.org/pdf/Continuity_Brief.pdf (last visited 15 October 2017).

[12] Bederman & Hilbert, at 928.

Hawaiian Government in 1893 did not, in itself, result in this explicit cancelation. In other words, lacking a government to withdraw from membership, the Hawaiian Kingdom's membership in the UPU persists, is intact, and has not changed to date.

Professional Relationship to Tala and Willa Fonoti

I am a political scientist that specializes in international relations and public law. I received my Ph.D. from the University of Hawai'i at Manoa, Political Science Department, in 2008. The focus of my doctoral research and published law articles centered on the continuity of the Hawaiian Kingdom, as an independent state, that has been under an illegal and prolonged occupation by the United States since 1893. Professor Aviam Soifer, Dean of the Richardson School of Law, as well as Professor Mathew Craven, Ph.D., former Dean of the University of London SOAS Department of Law, both served on my doctoral committee. I am also an adjunct faculty member at the University of Hawai'i at Manoa College of Education, graduate division, as well as a faculty member at the University of Hawai'i Windward Community College Hawaiian Studies Department.

Walter Heen, former justice on the Intermediate Court of Appeals (ICA), served as an informal member of my doctoral committee. In my dissertation, I addressed *State of Hawai'i v. Lorenzo*, 77 Haw. 219 (1994), where the defendant claimed to be a citizen of the Hawaiian Kingdom and that the State of Hawai'i courts did not have jurisdiction over him. In 1994, the case came before the ICA and Judge Heen delivered the decision. Judge Heen affirmed the lower court's decision denying Lorenzo's motion to dismiss, but explained that "Lorenzo [had] presented no factual (or legal) basis for concluding that the Kingdom exists as a state in accordance with recognized attributes of a state's sovereign nature (p. 221)." The ICA further stated, "the court's rationale is open to question in light of international law (Id.)," and that a "state has an obligation not to recognize or treat as a state an entity that has attained the qualifications for statehood as a result of a threat or use of armed force (Id., n. 2)."

In 2009, I consulted with Judge Heen over lunch at Zippy's in Kahala and asked him if he were given a copy of my doctoral dissertation by Lorenzo's appellate attorney would he have denied the motion to dismiss. He stated to me that he would have granted the motion because my dissertation had the evidence that the Hawaiian Kingdom "exists as a state." I then explained to Judge Heen that I will be working with two attorneys, one of them being Mr. Kaiama, to work on motions to dismiss to be argued in the courts of the State of Hawai'i. It was the *Lorenzo* case that opened the door. He told me, this would be very interesting.

I became an expert consultant to Tala and Willa Fonoti on April 25, 2015, through Rose Dradi that was serving, from my understanding, as the Fonoti's intermediary. The purpose of the consulting, as stated in the agreement, was "to procure the services of the consultant in relation to the client's property at 91-330 Ewa Beach Road, Ewa Beach, HI 96706." I was not retained to consult on the mortgage and promissory note or any other debt owed by the Fonoti's, but in this case, to advise on the judicial proceeding instituted against their property. Although the Fonoti's have not sent me a copy of the agreement with their signatures, my conduct and relations with the Fonoti's had me to believe they are in agreement for me to serve as their consultant.

Because I am not an attorney, I could not represent the Fonoti's in these proceedings, but I could advise them on drafting an answer to the complaint and on filing a motion to dismiss on subject matter grounds. These filings, after approval by the Fonoti's, evidenced by their signatures, would be done in *pro se*. Because the Fonoti's did not feel comfortable representing themselves in the subject matter jurisdiction hearing, I recommended they could enter into an agreement with Mr. Kaiama, who is an attorney and extremely familiar with this argument, to represent them through special appearance. Throughout this process Ms. Dradi served as the Fonoti's intermediary.

The presiding judge in these proceedings denied the motion to dismiss after the attorneys for the plaintiff provided no evidence rebutting the evidence provided for in the Fonoti's motion to dismiss. This denial constituted an international crime, committed against the Fonoti's and the pillaging of their property, by a court without any lawful existence in Hawai'i. Any action or judgment stemming from an illegal proceeding is illegal.

This unfair trial and pillaging was the same offense that was committed, by the County of Hawai'i Prosecutor and Judge of the State of Hawai'i District Court for the Third Circuit in Kea'au, against Lance Larsen. Any and all individuals who participated in the international crimes against Mr. Larsen are now the subject of an international commission of inquiry. This commission, under international law, functions and serves in a similar fashion to a grand jury. This commission will determine, through an examination of the facts of the case, whether or not certain individuals are liable to be criminally prosecuted by a national or international court of competent jurisdiction.

Fonoti's have Title Insurance to Cover their Debt owed to the Lender

If your office is truly representing the interests of the Fonoti's, then you must be aware that the Fonoti's purchased title insurance that covers their debt to the bank. Before the lender accepted the Fonoti's real property as collateral under the mortgage agreement, this agreement being a security instrument to ensure the repayment of the loan under the

promissory note, the Fonoti's, were required by the lender while in escrow, to purchase a lender's title insurance policy in the amount of the money they borrowed. Without securing a loan policy of title insurance, the lender would not accept the mortgage, and the escrow would not close.

The evidence that the Fonoti's purchased a lender's title insurance policy can be found in their Escrow Settlement Statement of costs under section #1100—Escrow and Title Charges. You will find that the Fonoti's purchased an ALTA Loan Policy in the amount that they borrowed, and as a result of the defective notary public for their deed and mortgage, their loan is unsecured, and thus, have this title insurance to cover their debt. The Fonoti's should not be in foreclosure proceedings because their mortgage is void as a result of the title to their property being defective.

According to Black's Law Dictionary, 6th ed., title insurance is a "policy issued by a title company after searching the title, representing the state of that title and insuring the accuracy of its search against claims of title defects." As an indemnity contract the insurance policy does not guarantee the state of the title but covers loss incurred from a defect in title that would arise from an inaccurate title report done by the escrow company. One of the covered risks in the title insurance policy is a defective notary public.

Any and all notaries public in Hawai'i since 1893, other than the notaries public of the Hawaiian Kingdom commissioned in accordance with §1266, Article LII, Chapter XXVI, Title 4, Hawaiian Civil Code (1884 Compiled Laws of the Hawaiian Kingdom), are illegal. Legal title to all real estate throughout Hawai'i, to include the Fonoti's claim to their real property, could not be transferred to any person since the Hawaiian Government was illegally overthrown by the United States on January 17, 1893. The United States has taken no steps to resolve this illegality under international law. Instead, the United States has embarked on an effort to conceal its prolonged occupation. This was done through denationalization—*Americanization* and the unlawful imposition of United States laws over the territory of the Hawaiian Kingdom including the 1959 Statehood Act enacted by the Congress.

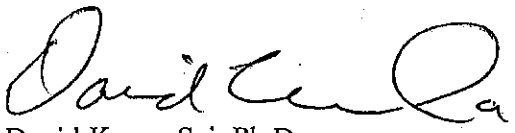
"American courts, commentators, and other authorities," according to Born, "understood international law as imposing strict territorial limits on national assertions of legislative jurisdiction."[13] And according to the United States Supreme Court, "Neither the [U.S.] Constitution nor the laws passed in pursuance of it have any force in foreign territory unless in respect of our own citizens..., and operations of the nation in such territory

[13] Gary Born, International Civil Litigation in United States Courts (3rd ed. 1996), 493.

must be governed by treaties, international understandings and compacts, and the principles of international law. As a member of the family of nations, the right and power of the United States in that field are equal to the right and power of the other members of the international family. Otherwise, the United States is not completely sovereign."[14] Like the United States, the Hawaiian Kingdom is also "a member of the family of nations."

I respectfully advise that you not take this notice lightly and be sure to do your due diligence on this matter. And do not confuse these efforts with the antics of those individuals in the so-called sovereignty movement. This is an international law matter with international law consequences as evidenced in the *Larsen* case.

Sincerely,



David Keanu Sai, Ph.D.

enclosures

cc: Dexter Kaiama
Rose Dradi
Tala and Willa Fonoti

[14] *United States v. Curtiss Wright Export Corp.*, 299 U.S. 304, 318 (1936).

Annie Sakurai

From:	James F. Evers <jevers@dcca.hawaii.gov>
Sent:	Tuesday, November 27, 2018 11:55 AM
To:	Bradley R. Tamm
Cc:	Rebecca Salwin
Subject:	RE: Dexter Kaiama
Attachments:	#44 OCP ex parte motion for order to show cause 2018.1.25.pdf; #52 Kaiama's OSC Response (Filed 2018-02-20).pdf; #53 2018.2.21 Kaiama's motion to dismiss for lack of subject matter jurisdiction.pdf; #65 2018.3.7 Kaiama's supplemental brief re OSC issues.pdf; #66 2018.3.12 Resp. Dexter Kaiama's Reply to OCP Pleadings - Filed Copy.pdf; US Bank Trust NA v. Fonoti, 2018 WL 3433295 (USDC HI 2018)(Magistrate's Am.F&R).pdf; 2018.2.5 letter from D.K.Sai to OCP re alleged violation of law.pdf

Brad,

The alleged wrongdoing as to Dexter Kaiama is as follows:

In representing homeowners in foreclosure (i.e., distressed property owners), Kaiama failed to use a written contract identifying each mortgage relief service to be provided, in violation of Haw. Rev. Stat. Ch. 480E-13(1).

Kaiama failed to deposit client funds into his client trust account pending the performance of mortgage relief services on behalf of his clients, in violation of Haw. Rev. Stat. Ch. 480E-13(3).

Kaiama sought dismissal of his clients' foreclosure cases on jurisdictional grounds, arguing motions filed with the court. These motions were, without exception, denied. Because Kaiama was never successful in obtaining the relief he was seeking, he was not entitled to payment for his services. By failing to fully perform his services and yet treating payments from his foreclosure clients as having been earned, Kaiama acted in violation of Haw. Rev. Stat. Ch. 480E-13(4).

Pursuant to Haw. Rev. Stat. § 480E-11, each of these violations of Haw. Rev. Stat. § 480E-13 constitute per se violations of Haw. Rev. Stat. § 480-2.

If these allegations are proven, then arguably, pursuant to Haw. Rev. Stat. § 480-12, any agreements between Kaiama and distressed property owners, including but not limited to Defendants Tala Fonoti and Willadean Grace, should be declared void and unenforceable at law or in equity, and may require that Kaiama disgorge the money he has received from his clients.

At a time when it was unclear whether Dexter was going to deny being paid, OCP subpoenaed his IOLTA account at the Bank of Hawaii. Interestingly, the balance in the account has not changed between December 31, 2013 and February 28, 2018 (the period covered by the subpoena). During that time the balance has remain unchanged at $22,909.65, a large red flag. Whether Dexter can justify how that much money has remained in his client trust account for so long is another issue, but a potentially troublesome one.

Attached are some of the documents at issue, including the moving papers by which OCP intervened in the foreclosure case, adding Rose Dradi, David Keanu Sai and Dexter Kaiama as Respondents. Sai and Kaiama have both acknowledged Rose Dradi's role in bringing in the clients. Once the motions to dismiss fail, Dradi has continued her representation of the consumers, are what has transpired is outrageous. She provides a bogus tax refund service that creates bogus

1099s, which are used by the consumers to seek tax refunds. The Department of the Treasury has paid out millions, and the IRS is investigating Dradi and her clients. Several of the clients have filed bankruptcy, and we learned a lot of information through those proceedings. Dradi would then have the clients sign their house to her via quitclaim deed. These are recorded. The deed reserved in the homeowner a life estate, but Dradi then arranges to record a lease indicating the homeowner is liable to pay rent. Homeowners are clueless as to how any of this helps them save their home from foreclosure, and they now face criminal charges for the bogus tax returns.

Also attached is the Westlaw decision of the federal court remanding the case, finding the removal without merit (which Kaiama joined). Kaiama at various times has been held out to be the attorney general of the Kingdom of Hawaii.

By taking payments in advance, Dradi and Sai were committing felonies. Dexter presumably knows these people require payment in advance, and thus the appearance of aiding and abetting.

If you need anything more, please ask.

This is more, but I'd need a little time to put it together.

Thanks, Jim

James F. Evers
Enforcement Attorney
STATE OF HAWAII
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
Office of Consumer Protection
235 S. Beretania St. # 801
Honolulu, HI 96813
(808) 586-5980 (direct)
(808) 586-2636 (legal)

From: Bradley R. Tamm [mailto:Bradley.R.Tamm@dbhawaii.org]
Sent: Tuesday, November 27, 2018 10:36 AM
To: James F. Evers <jevers@dcca.hawaii.gov>
Cc: Rebecca Salwin <Rebecca.M.Salwin@dbhawaii.org>
Subject: FW: Dexter Kaiama

2018 WL 3433295
Only the Westlaw citation is currently available.
United States District Court, D. Hawai'i.

U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF8 MASTER PARTICIPATION TRUST, Plaintiff,
v.
TALA RAYMOND FONOTI; et al., Defendants.

Civil No. 18-00118 SOM-KJM
|
Filed 06/29/2018

(1) ORDER ON REMOVING PARTIES' MOTION TO RECONSIDER MAGISTRATE JUDGE'S FINDINGS AND RECOMMENDATIONS; AND (2) AMENDED FINDINGS AND RECOMMENDATION TO GRANT: (A) STATE OF HAWAI'I OFFICE OF CONSUMER PROTECTION'S MOTION FOR ORDER REMANDING ACTION TO STATE COURT; AND (B) PLAINTIFF U.S. BANK TRUST, N.A.'S SUBSTANTIVE JOINDER TO STATE OF HAWAI'I OFFICE OF CONSUMER PROTECTION'S MOTION FOR ORDER REMANDING ACTION TO STATE COURT FILED APRIL 5, 2018

Kenneth J. Mansfield United States Magistrate Judge

*1 Respondent David Keanu Sai ("Sai") filed his Notice of Removal of the instant action on March 27, 2018. *See* ECF No. 1. On April 2, 2018, Sai filed an Amended Notice of Removal. *See* ECF No. 6. Based on the original March 27, 2018 Notice of Removal, the State of Hawai'i Office of Consumer Protection ("State") filed its Motion for Order Remanding Action to State Court on April 5, 2018 ("Motion to Remand"). *See* ECF No. 7. On April 12, 2018, U.S. Bank Trust, N.A., as Trustee for LSF8 Master Participation Trust ("U.S. Bank Trust") filed "Plaintiff's Substantive Joinder to State Of Hawaii Office of Consumer Protection's Motion for Order Remanding Action to State Court Filed April 5, 2018" ("Joinder"). *See* ECF No. 13. On April 27, 2018, Sai and Respondent Dexter Kaiama ("Kaiama") (collectively, "Respondents") filed "Respondents Sai and Kaiama's Memorandum in Opposition to Motion for Order Remanding Action to State Court Filed April 5, 2018" ("Opposition"). *See* ECF No. 33.

The Court elected to decide the Motion to Remand 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. On May 8, 2018, this Court issued its Findings and Recommendations to Grant: (1) the Motion to Remand; and (2) the Joinder (May 8, 2018 F & R). On May 11, 2018, the State filed Objections to the May 8, 2018 F & R. *See* ECF No. 37. On May 16, 2018, Respondents filed "Removing Parties' Submission of Newly Discovered Expert Opinion Evidence on the Issue of the Continuing Existence of the Hawaiian Kingdom as a Subject of International Law Under Illegal Military Occupation by the United States Government and Its Fraudulent Annexation" ("Supplemental Brief").

On May 17, 2018, the State filed a Reply to Respondents' Supplemental Brief. *See* ECF No. 41. On May 20, 2018, Respondents filed Removing Parties' Motion to Reconsider Magistrate Judge's Findings and Recommendations pursuant to Local Rule 60.1 ("Motion to Reconsider"), seeking reconsideration of the May 8, 2018 F & R. Respondents contend that there are new material facts not previously available to the Respondents, and that the May 8, 2018 F & R fails to make any findings and recommendations regarding the basis for their removal in their Amended Notice of Removal. Respondents' "new information" is a memorandum authored by a Dr. Alfred M. deZayas ("deZayas Memorandum"), who Respondents represent is a "United Nations Independent Expert on the promotion of a democratic and equitable international order under the Office of the High Commissioner for Human Rights." *See* ECF No. 40 at 2.

Accordingly, Respondents ask this Court to reconsider its May 8, 2018 F & R. The State filed its Opposition to the Motion to Reconsider on June 7, 2018. ECF No. 48. Respondents filed their Reply on June 21, 2018. ECF No. 50.

First, the Court notes that the State's position is that this case is properly with the district judge assigned to this case because the State filed a limited objection to this Court's May 8, 2018 F & R. As such, the State argues in its Opposition to the Motion to Reconsider that the Motion to Reconsider should be properly construed as an objection to this Court's May 8, 2018 F & R. This Court disagrees.

*2 Pursuant to Local Rule 72.4, a district judge may designate a magistrate judge to hear and determine a motion to remand, and to submit to a district judge of the court, related to the motion to remand, "proposed findings of fact and recommendations for disposition by a district judge." LR72.4(a)(9). The district court assigned to this action submitted to this Court the Motion to Remand, to propose findings of fact and recommendations to the district judge for disposition of the Motion to Remand. Upon this Court's issuance of the May 8, 2018 F & R, the parties had fourteen (14) days after service to object to the May 8, 2018 F & R. LR74.2. The Local Rules also permit the parties to move for reconsideration before the magistrate judge pursuant to Local Rule 60.1. *Id.* These actions are not mutually exclusive. Indeed, a reconsideration tolls the time in which objection must be filed to a magistrate judge's findings or recommendations. *Id.*

The State does not provide any legal basis for its contention that the filing of its limited objection to the May 8, 2018, "triggered de novo review" by district judge assigned to this case, thus presenting jurisdictional barriers to this Court's consideration of Respondent's Motion for Reconsideration. Nor will this Court construe what is titled and presented as a motion for reconsideration by Respondents as an objection. Accordingly, this Court rejects the State's contention that its objection to this Court's May 8, 2018 F & R "had the effect" of "moving this case" to the district judge assigned to this case.

Second, Respondents argue in their Reply that the State's Motion to Reconsider Opposition is untimely. *See* ECF No. 50 at 2. Respondents contend that the State filed its Motion to Reconsider Opposition 18 days after the Motion to Reconsider, and thus, pursuant to Local Rule 7.4, the Court should disregard or strike the Opposition from the record. *Id.* As a general rule, parties must file their oppositions and replies pursuant to the deadlines set in Local Rule 7.4. Local Rule 7.4 provides that an opposition to a non-hearing motion shall be served and filed not more than 14 days after service of the motion. In this case, however, the Court set the Opposition and Reply deadline. Pursuant to the Entering Order issued by this Court on May 21, 2018, the Court set the State's deadline to file its Opposition to the Motion to Reconsider for June 7, 2018. *See* ECF No. 46. The State timely filed its Opposition on June 7, 2018. Accordingly, Respondents' argument is unavailing.

Finally, Respondents request reconsideration of this Court's May 8, 2018 F & R based on "newly-discovered evidence," namely, the deZayas Memorandum Respondents contend they obtained on May 10, 2018. *See* ECF No. 40 at 2. Motions for reconsideration may be brought only upon the following grounds pursuant to Local Rule 60.1: "(a) Discovery of new material facts not previously available; (b) Intervening change in law; [and] (c) Manifest error of law or fact." LR60.1. Respondents contend that the deZayas Memorandum is "newly-discovered evidence on the issue of the continuing existence of the Hawaiian Kingdom as a subject of international law under an illegal military occupation by the United States government and its fraudulent annexation." ECF No. 40 at 2. The Court finds that the deZayas Memorandum does not provide a sufficient basis for this Court's reconsideration of its May 8, 2018 F & R.

The Court found in its May 8, 2018 that Sai's March 27, 2018 Notice of Removal was untimely. The Court is unable to discern how the deZayas Memorandum constitutes any of the grounds listed in Local Rule 60.1. The deZayas Memorandum does not contain any information related to the timeliness of the Notice of Removal, and thus, does not have any bearing on the reasons this Court provided for recommending that the district court remand this action. In addition, the memorandum is not "material," does not demonstrate a relevant intervening change in law, nor does it evince that this Court made a manifest error of law or fact regarding the timeliness of the original Notice of Removal. Accordingly, the Court finds that the deZayas Memorandum does not provide a sufficient basis for this Court to reconsider its May 8, 2018 F & R.

*3 The Court recognizes, however, that Respondent Sai filed an Amended Notice of Removal after the original Notice of Removal, containing a different basis for removal than that asserted in the original Notice of Removal. Neither the State nor this Court addressed the merits of Sai's assertions in the Amended Notice of Removal. Accordingly, the Court finds it proper to consider Respondents' request to reconsider its May 8, 2018 F & R so that the Court may include a discussion of the Amended Notice of Removal.

In the interest of judicial economy pursuant to Federal Rule of Civil Procedure 1, however, instead of granting Respondents' motion to reconsider its May 8, 2018 F & R, the Court issues the following Amended Findings and Recommendation, which supersedes this Court's May 8, 2018 F & R. Any objections to or motions to reconsider the Amended Findings and Recommendations may be filed in accordance with the Local Rules.

The Court also advises the parties that any objections to or motions to reconsider the Amended Findings and Recommendations may not refer or incorporate by reference any previous filings, including, but not limited to, any previously filed objections or motions to reconsider. Any objections or motions for reconsideration must solely concern the following Amended Findings and Recommendations, and not the superseded May 8, 2018 F & R.

AMENDED FINDINGS AND RECOMMENDATION TO GRANT: (1) STATE OF HAWAI'I OFFICE OF CONSUMER PROTECTION'S MOTION FOR ORDER REMANDING ACTION TO STATE COURT; AND (2) PLAINTIFF U.S. BANK TRUST, N.A.'S SUBSTANTIVE JOINDER TO STATE OF HAWAI'I OFFICE OF CONSUMER PROTECTION'S MOTION FOR ORDER REMANDING ACTION TO STATE COURT FILED APRIL 5, 2018

Respondent David Keanu Sai ("Sai") removed the instant action on March 27, 2018. *See* ECF No. 1. On April 2, 2018, Sai filed an Amended Notice of Removal. *See* ECF No. 6. The State of Hawai'i Office of Consumer Protection ("State of Hawai'i") filed its Motion for Order Remanding Action to State Court on April 5, 2018 ("Motion to Remand"). *See* ECF No. 7. On April 12, 2018, U.S. Bank Trust, N.A., as Trustee for LSF8 Master Participation Trust ("U.S. Bank Trust") filed "Plaintiff's Substantive Joinder to State Of Hawaii Office of Consumer Protection's Motion for Order Remanding Action to State Court Filed April 5, 2018" ("Joinder"). *See* ECF No. 13. On April 27, 2018, Sai and Respondent Dexter Kaiama ("Kaiama") (collectively, "Respondents") filed "Respondents Sai and Kaiama's Memorandum in Opposition to Motion for Order Remanding Action to State Court Filed April 5, 2018" ("Opposition"). *See* ECF No. 33.

The Court elected to decide the Motion to Remand 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. The Court has carefully reviewed the State of Hawaii's Motion to Remand, U.S. Bank Trust's Joinder, and Respondents' Opposition. Based on the memoranda, the record in this case, and applicable case law, the Court FINDS and RECOMMENDS that the district court remand this action.

BACKGROUND

On January 23, 2018, the State of Hawai'i filed a motion seeking leave to intervene in a foreclosure action ("Motion to Intervene") in the Circuit Court of the First Circuit State of Hawai'i ("State Court") initiated by U.S. Bank Trust against Tala Raymond Fonoti and Willadean Lehuanani Grace (collectively, "Defendant homeowners"). *See* ECF No. 1-1 at 5. The State of Hawai'i also sought leave to add Rose Dradi ("Dradi") and Respondents as parties to the foregoing foreclosure action in State Court ("Foreclosure Action"). *Id.* at 6. The State of Hawai'i alleged in its Motion to Intervene that the purpose of petitioning the State Court for leave in the Foreclosure Action was to seek relief for "the unlawful and deceptive conduct, including but not limited to engaging in mortgage rescue [sic] fraud, of said new parties done in connection with the instant foreclosure action to the detriment of the Defendant homeowners." *Id.*

*4 The State of Hawai'i also filed an Ex Parte Motion for Issuance of an Order Directing Respondents Rose Dradi, David Keanu Sai, and Dexter Kaiama to Appear and Show Cause Why They Should Not Be Found to Have Violated Applicable Consumer Protection Laws on January 23, 2018 ("Motion to Issue Show Cause Order"). *See* ECF No. 7-2. The State Court granted the State of Hawaii's Motion to Intervene and Motion to Issue Show Cause Order on January 25, 2018. *See* ECF No. 1-1 at 20-21; ECF No. 7-3 at 37. On that same day, the State Court issued its "Order Directing Respondents Rose Dradi, David Keanu Sai, and Dexter Kalama to Appear and Show Cause Why They Should Not Be Found to Have Violated Applicable Consumer Protection Laws and Notice of Hearing" ("Order to Show Cause"). *See* ECF No. 7-3 at 37.

The State of Hawai'i served Kaiama the Motion to Intervene, the Motion to Issue Show Cause Order, and the Order to Show Cause on February 1, 2018. The State of Hawai'i served Sai the same documents on February 6, 2018. *See* ECF Nos. 7-4 to 7-5. The State of Hawai'i contends that the State Court granted the State of Hawai'i authority to serve Dradi by publication because, despite its efforts, the State of Hawai'i has been unable to personally serve Dradi. ECF No. 7-1 at 10.

On February 21, 2018, Kaiama filed a "Motion to Dismiss for Lack of Subject Matter Jurisdiction, Pursuant to HRCP Rule 12(B)(1)" in State Court ("Motion to Dismiss"). *See* ECF No. 1-1 at 23. On March 5, 2018, Sai filed a Memorandum in Support of Kaiama's Motion to Dismiss ("Memo in Support"). *See id.* at 71. Sai subsequently filed a "Supplemental Memorandum to Deny Joinder and in Support of Motion to Dismiss for Lack of Subject Matter Jurisdiction, Pursuant to HRCP Rule 12(B)(1)" on March 27, 2018 ("Supplemental Memo"). *See* ECF No. 1-1 at 147.

Later on March 27, 2018, Sai removed the action to this district court. *See* ECF No. 1. On April 2, 2018, Sai filed his Amended Notice of Removal. *See* ECF No. 6.

A. The March 27, 2018 Notice of Removal

Sai contends in his March 27, 2018 Notice of Removal that the district court has federal jurisdiction over this action under 28 U.S.C. § 1331 "because the State of Hawai'i seeks remedies involving Sai who [is] a foreign diplomat." *Id.* at 3. Sai asserts that his status as a foreign diplomat is established by a treaty between the Hawaiian Kingdom and the United States:

> There is a treaty created by exchange of *notes verbales* between Sai, who served as Minister of the Interior and Agent for the Hawaiian Kingdom and the United States Department of State in March of 2000, creating a treaty whereby the United States afforded *de facto* recognition of the Hawaiian Kingdom Government in regards to an international arbitration proceeding held under the auspices of the Permanent Court of Arbitration in *Lance Larsen v. Hawaiian Kingdom*, case no. 1999-01.

Id. (emphasis in original).

Sai contends that because his Memo in Support and Supplemental Memo raise federal questions pursuant to § 1331, this action is subject to removal pursuant to 28 U.S.C. § 1441(c). *Id.* Sai also contends that pursuant to 28 U.S.C. § 1446(b), the Notice of Removal is timely filed within thirty days from the date of service of the Memo in Support, "which raised for the first time the federal questions." *Id.* at 4. The State of Hawai'i filed its Motion to Remand in response to the March 27, 2018 Notice of Removal on April 5, 2018. *See* ECF No. 7-1 at 21 ("The Notice of Removal indicates Sai is a 'foreign diplomat' by virtue of having 'served as Minister of the Interior and Agent for the Hawaiian Kingdom.' " (quoting ECF No.1-1, p. 3, ¶6)). U.S. Bank Trust subsequently filed its Joinder on April 12, 2018.

B. The April 2, 2018 Amended Notice of Removal

Respondent Sai filed an Amended Notice of Removal pursuant to Federal Rule of Civil Procedure 15(a)(1)(A). *See* ECF No. 6 at 2. First, Sai contends in his Amended Notice of Removal that this district court has federal jurisdiction pursuant to 28 U.S.C. § 1603(b)(2) because Sai is a "diplomat of a foreign state." *Id.* at 4. Sai contends that the United States Government and the Hawaiian Kingdom government negotiated and created a treaty in March of 2000, resulting in the United States Government affording *de facto* recognition of the Hawai'i Kingdom Government. *Id.* Second, Sai asserts that his Memo in Support and Supplemental Memo "provide[ ] sufficient evidence on the issue of a foreign state making the action removable pursuant to 28 U.S.C. § 1441(d)." *Id.* at 5. Finally, Sai contends that he has state immunity from jurisdiction pursuant to 28 U.S.C. § 1604.

DISCUSSION

A. Removal Based on Respondents' March 27, 2018 Notice of Removal

***5** "Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute .... It is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing

the contrary rests upon the party asserting jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citations omitted). Courts in this circuit must "strictly construe the removal statute against removal jurisdiction." *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). "Federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance." *Id.*; *see* 28 U.S.C. § 1447(c) ("If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded."). The Court finds that this case must be remanded.

Section 1446 of Title 28 of the United States Code sets forth the procedure for the removal of a civil action from state to federal court. *See* 28 U.S.C. § 1446. The statute provides two periods during which a case can be removed.

"The first thirty-day requirement 'only applies if the case stated by the initial pleading is removable on its face,' " *Rossetto v. Oaktree Capital Mgmt., LLC*, 664 F. Supp. 2d 1122, 1128 (D. Haw. 2009) (quoting *Harris v. Bankers Life & Cas. Co.*, 425 F.3d 689, 694 (9th Cir.2005)):

> The notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

28 U.S.C. § 1446(b). The second thirty-day period is triggered if removal was not apparent from the initial pleading, but is later apparent from a "paper" received by the defendant after the initial pleading is received by the defendant:

> [I]f the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.

Id. § 1446(b)(3).

"Thus, the first thirty-day period for removal in 28 U.S.C. § 1446(b) only applies if the case stated by the initial pleading is removable on its face." *Harris*, 425 F.3d at 694. "The second thirty-day period for removal, however, applies when 'the case stated by the initial pleading is not removable.' " *Id.* (quoting 28 U.S.C. § 1446(b)). Under this second thirty-day period, if there has been a change in the parties or other circumstances revealed in a newly-filed "copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case" is removable, the case must be removed within thirty days after receipt by the defendant of the newly-filed "paper." *Id.*; 28 U.S.C. § 1446(b)(3).

In addition, the Ninth Circuit has held that a defendant can remove "outside the two thirty-day periods on the basis of its own information, provided that it has not run afoul of either of the thirty-day deadlines." *Roth v. CHA Hollywood Med. Ctr., L.P.*, 720 F.3d 1121, 1126 (9th Cir. 2013). Here, it appears that Sai seeks removal based on his own information, "that the United States District Court for the District of Hawai'i has federal jurisdiction over [this action] under 28 U.S.C. § 1331 because the State of Hawai'i seeks remedies involving Sai who a foreign diplomat." ECF No. 1 at 3.

***6** Sai contends in his Notice of Removal that the second thirty-day period for removal applies, and was triggered by his own filings –the Memo in Support and Supplemental Memo. ECF No. 1 at 4. This directly contravenes existing case law in this district. In this district, "[t]he document that triggers the thirty-day removal period cannot be one created by the defendant." *Rossetto*, 664 F. Supp. 2d at 1129. The " 'amended pleading, motion, order or other paper' must derive from 'either the voluntary act of the plaintiff in the state court, or other acts or events not the product of the removing defendant's activity.' " *Id.* (quoting *Smith v. Int'l Harvester Co.*, 621 F. Supp. 1005, 1007 (D. Nev.1985)); *see also Addo v. Globe Life & Accident Ins. Co.*, 230 F.3d 759, 762 (5th Cir. 2000) ("[T]he 'other paper' must result from the voluntary act of a plaintiff which gives the defendant

notice of the changes circumstances which now support federal jurisdiction.").

In this case, the Memo in Support and Supplemental Memo were not voluntarily submitted by the State of Hawai'i; rather, they were documents created by Sai. Accordingly, these documents cannot serve as the basis for removal. *Roth*, 720 F.3d at 1126 ("[A] defendant's subjective knowledge cannot convert a non-removable action into a removable one ....").

If there was any document that created the basis for removal, this Court concludes such document was the State of Hawaii's Motion to Issue Show Cause Order, which the State of Hawai'i served on Sai on February 6, 2018, along with the Motion to Intervene, and the Order to Show Cause. *See* ECF No. 7-5. The Motion to Issue Show Cause Order specifically and repeatedly raises the issue of Sai's alleged sovereignty and his claimed ability to divest the State Court of jurisdiction—the very bases of Sai's Notice of Removal. *See, e.g.*, ECF No. 7-2 at 7 (alleging that Dradi and Sai had violated Hawaii Revised Statutes section 480E-10(a)(3) when it assisted the Defendant homeowners with preparing, filing, and/or presenting a motion to dismiss the Foreclosure Action "based on Hawaiian sovereignty, representing both explicitly and implicitly that the Court lacked jurisdiction and the foreclosure case would be dismissed"); *Id.* at 8 ("Respondents Dradi and Sai have acted in violation of HRS § 480E-10(a)(4) by concealing from the homeowners the fact that the homeowners were paying for an oft-rejected Hawaiian sovereignty argument."); ECF No. 7-2 at 19 (alleging that Drai had indicated that she worked with Sai, who was an expert in showing that because of Hawaii sovereignty issues, "international law" controlled the issues in the Foreclosure Action, "which Hawaii courts lack jurisdiction to enforce").

Accordingly, Sai had this information at the time the State of Hawai'i served the Motion to Issue Show Cause Order on Sai—February 6, 2018. *See* ECF No. 7-5. Sai removed this action on March 27, 2018. *See* ECF No. 1. Sai's removal thus runs "afoul" of the thirty-day deadline proscribed in § 1446(b)(3) because the Motion to Issue Show Cause Order triggered the removal period, not the Memo in Support or the Supplemental Memo. *Roth*, 720 F.3d at 1125 ("A defendant should not be able to ignore pleadings or other documents from which removability may be ascertained and seek removal only when it becomes strategically advantageous for it to do so.").

In sum, the State of Hawai'i served Sai a "paper" on February 6, 2018, from which Sai could have ascertained that the case was one which was or would become removable, not only from "his own information," but also from the Motion to Issue Show Cause Order. Sai thus had thirty-days from February 6, 2018, to remove the action. Sai filed his Notice of Removal on March 27, 2018. As such, his Notice of Removal was untimely, and this Court must remand this action. *See Bell v. Arvin Meritor, Inc.*, No. 12-00131-SC, 2012 WL 1110001, at *1 (N.D. Cal. Apr. 2, 2012) (" 'Federal courts strictly observe the thirty-day deadline for filing motions to remand.' ") (quoting *Alter v. Bell Helicopter Textron, Inc.*, 944 F. Supp. 531, 535 (S.D. Tex. 1996)).

*7 The Court thus RECOMMENDS that the district court GRANT both the State of Hawaii's Motion to Remand and U.S. Bank Trust's Joinder.

B. Removal Based on Respondents' April 2, 2018 Amended Notice of Removal

Six days after filing the Notice of Removal, Sai filed an Amended Notice of Removal on April 2, 2018, changing his original basis for removal, removal pursuant to 28 U.S.C. § 1441(c), to removal pursuant to 28 U.S.C. § 1441(d)—actions against foreign States. The Court finds that the Amended Notice of Removal is an improper filing.

First, Federal Rule of Civil Procedure 15 permits a party to amend its *pleading* once as a matter of course within 21 days after serving it. Rule 7 defines pleadings as follows: (1) a complaint; (2) an answer to a complaint; (3) an answer to a counterclaim designated as a counterclaim; (4) an answer to a crossclaim; (5) a third-party complaint; (6) an answer to a third-party complaint; and (7) if the court orders one, a reply to an answer." Fed. R. Civ. P. 7(a). Rule 7 does not provide that a removal petition is a "pleading" such that a removing party could avail himself to Rule 15 to amend his notice of removal "once as a matter of course." Indeed, although courts in this district have recognized notices of removal may be considered a pleading in certain instances, *e.g.* to cure a technical defect in jurisdictional allegations, this district has not accepted the blanket proposition that a notice of removal constitutes a "pleading" under Rule

15. *See Hawaii v. Abbott Labs., Inc.*, 469 F. Supp. 2d 842, 847 (D. Haw. 2006) (listing cases that permitted parties to amend notices of removal under Rule 15 to illustrate that notices of removal were considered "pleadings" under Rule 15 only to cure a technical defect in the jurisdictional allegation); *id.* ("[T]hose cases do not stand for the blanket proposition that all amendments to removal notices constitute amendments to 'pleadings' under Rule 15(c). Here, [the defendant] seeks to allege new grounds for removal, not to cure existing grounds that were alleged defectively.[ ] This distinction is significant."). Sai's Amended Notice of Removal does not seek to simply cure a technical defect; rather, Sai alleges new grounds for removal. The Court finds that Sai fails to provide a legally sufficient basis for amending his notice of removal "as a matter of course" under Rule 15.

28 U.S.C. § 1446(b) requires the notice of removal of a civil action or proceeding to be filed within 30 days after receipt of a copy of initial pleading. 28 U.S.C. § 1446(b)(1). If the case stated by the initial pleading is not removable, a defendant may file the notice of removal within 30 days after receipt of "a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case" is removable. 28 U.S.C. § 1446(b)(1) & (3). "Ordinarily, 'the notice of removal required by [28 U.S.C. §] 1446(b) may be amended freely by the defendant prior to the expiration of the thirty-day period for seeking removal.' " *Hester v. Horowitz*, No. CV 17-00014 LEK-KSC, 2017 WL 1536401, at *3 (D. Haw. Apr. 28, 2017) (other citation omitted) (quoting 14C Charles Alan Wright, Arthur R. Miller, Edward H. Cooper, Pocket Part by the Late Charles Alan Wright, Arthur R. Miller, Edward H. Cooper, Joan E. Steinman, Fed. Prac. & Proc. Juris. § 3733) (alterations in *Hester*).

***8** The Notice of Removal cannot, however, " 'be amended to add a separate basis for removal jurisdiction after the thirty day period.' " *ARCO Envtl. Remediation, L.L.C. v. Dep't of Health & Envtl. Quality of Montana*, 213 F.3d 1108, 1117 (9th Cir. 2000) (quoting *O'Halloran v. Univ. of Wash.*, 856 F.2d 1375, 1381 (9th Cir. 1988)). "After the 30-day period for seeking removal has passed ... 'the notice may be amended only to set out more specifically the grounds for removal that already have been stated, albeit imperfectly, in the original notice.' " *Id.* (quoting 14C Fed. Prac. & Proc. Juris. § 3733 (4th ed.); *see also Barrow Dev. Co. v. Fulton Ins. Co.*, 418 F.2d 316, 317 (9th Cir. 1969) (holding that after the thirty-day period lapses, the defendant may not amend a notice of removal "to add allegations of substance but solely to clarify 'defective' allegations of jurisdiction previously made"). "That is, an amendment to a removal notice 'may not add completely new grounds for removal or furnish missing allegations, even if the court rejects the first proffered basis of removal.' " *Ross v. Haw. Nurses' Ass'n Office & Prof'l Emps. Int'l Union Local 50*, 290 F. Supp. 3d 1136, 1147 (D. Haw. 2018) (quoting 14C Federal Practice & Procedure § 3733 at 655-56 (citing cases)).

As explained in the section discussing the original Notice of Removal, assuming that the "other papers" the State of Hawai'i served Sai on February 6, 2018—Motion to Issue Show Cause Order, Motion to Intervene, the Motion to Issue Show Cause Order, and the Order to Show Cause—evinced information from which it could "first be ascertained" that the case had become removable, Sai had thirty days from February 6, 2018, to file a notice of removal or amended notice of removal. Sai did neither. Sai filed his Notice of Removal on March 27, 2018, and his Amended Notice of Removal on April 2, 2018, both of which were filed over thirty days after the State of Hawai'i served him the "other papers." Because the thirty-day period for Respondents to remove the action has already passed, Sai cannot amend his Notice of Removal to add a new basis for removal. *See Hester*, 2017 WL 1536401, at *4 ("[S]ince the thirty-day removal period has passed, Defendant cannot amend his Notice of Removal to add diversity jurisdiction as a new basis for removal."); *see also Abbott Labs., Inc.*, 469 F. Supp. 2d at 839 (denying defendant's attempt to supplement its notice of removal because the requirements of § 1446(b) were not met).

The Court recognizes, however, that the Amended Notice of Removal seeks removal based on § 1441(d). Where removal is based upon § 1441(d), the time limitations of § 1446(b) "may be enlarged at any time for cause shown." 28 U.S.C. § 1441(d). Sai's Amended Notice of Removal does not, however, provide any cause to enlarge the time under § 1446(b).

Nothing in the Amended Notice of Removal indicates that Sai was not aware of the information contained in his Amended Notice of Removal at the time he filed his original Notice of Removal. Nor does Sai provide any other reasons why this Court should enlarge the time limitations of § 1446(b). Accordingly, even if § 1441(d) permits this Court to enlarge the time limitations of §

1446(b) for removals based on this subsection, the Court finds insufficient cause to enlarge the time limitations of § 1446(b). The 30-day period for seeking removal had passed when Sai filed his Amended Notice of Removal; thus, Sai cannot amend his removal petition to add a separate or new basis for removal jurisdiction.

Notwithstanding the foregoing findings, the Court finds that even if Sai had timely filed his Amended Notice of Removal, or even if there was cause to enlarge the time limitations of § 1446(b) to consider the arguments in the Amended Notice of Removal, this Court nonetheless lacks jurisdiction over this action under § 1441(d).

C. The State's Action Against Sai is Not an Action Against a Foreign State

***9** Sai contends that this district court has jurisdiction over this action pursuant to § 1441(d), which provides that "[a]ny civil action brought in a State court against a foreign state as defined in section 1603(a) of this title may be removed by the foreign state to the district court of the United States for the district and division embracing the place where such action is pending." The Court disagrees.

First, only "civil actions brought in a State Court against a foreign state" may be removed by the foreign state to this Court. *Id.* Pursuant to Federal Rule of Civil Procedure 3, "a civil action is commenced by filing a complaint with the court." *See also* Fed. R. Civ. P. 2 ("There is one form of action—the civil action."). The only "civil action" in this case is the Foreclosure Action U.S. Bank Trust filed against the Defendant homeowners. The Defendant homeowners did not remove this action; Sai did. The "civil action" Sai seeks to remove is not against him. Accordingly, § 1441(d) cannot be a basis for Sai to remove this action, even if he is indeed a "foreign state" as defined in 28 U.S.C. § 1603(a).

Second, this Court concludes that Sai is not a "foreign state" within the meaning of § 1603(a). Pursuant to § 1603(a), a "foreign state" is "a political subdivision of a foreign state or an agency or instrumentality of a foreign state" as defined in 28 U.S.C. § 1603(b). An "agency or instrumentality of a foreign state" under § 1603(b) means any entity which: "is a separate legal person, corporate or otherwise"; (2) "is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof"; and (3) is neither a citizen of a State of the United States ... nor created under the laws of any third country."

Sai does not explain in his Amended Notice of Removal how he qualifies as a "foreign state." After describing an alleged treaty between the United States Government and the Hawaiian Kingdom negotiated in March of 2000, Sai recites the text of § 1603(b), which defines "foreign state." Sai next points to 28 U.S.C. § 1604, which provides that, "[s]ubject to existing international agreements to which the United States is a party at the time of enactment of [the Foreign Sovereign Immunities Act,] a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States except as provided in sections 1605 to 1607 of [chapter 28]." ECF No. 6 at 4 (citing 28 U.S.C. § 1604). Sai summarily states that none of the exceptions in §§ 1605 to 1607 apply to him. Without any further explanation, Sai next states, "Minister Sai's Memo in Support and Supplemental Memo provides sufficient evidence on the issue of a foreign state making the action removable pursuant to 28 U.S.C. § 1441(d)." ECF No. 6 at 5.

Based on these arguments, the Court surmises that Sai seeks to remove this action pursuant to § 1441(d) so that a United States court may make the determination that Sai is immune from the jurisdiction of United States courts based on the alleged March 2000 treaty. *See* 28 U.S.C. § 1602 ("The Congress finds that the determination by United States courts of the claims of foreign states to immunity from the jurisdiction of such courts would serve the interests of justice and would protect the rights of both foreign states and litigants in United States courts."). Sai's arguments are without merit.

***10** "To state the obvious, Hawaii is a state of the United States" such that Respondent's assertions regarding his immunity from Hawai'i state courts and United States courts is "untenable." *Kingdom v. United States*, No. CV 11-00657 JMS-KSC, 2013 WL 12184696, at *2 (D. Haw. Nov. 15, 2013). " '[W]hatever may be said regarding the lawfulness' of its origins, 'the State of Hawai'i ... is now, a lawful government.' " *State v. Kaulia*, 128 Haw. 479, 487, 291 P.3d 377, 385 (2013) (quoting *State v. Fergerstrom*, 106 Haw. 43, 55, 101 P.3d 652, 664 (Ct. App. 2004), *aff'd*, 106 Hawai'i 41, 101 P.3d 225 (2004)); *see also Nguyen v. Yanagi*, 142 Haw. 149, 414 P.3d 201 (Ct. App. 2018), *cert. dismissed*, No. SCWC-15-0000030, 2018 WL 1778564 (Haw. Apr. 13, 2018) ("Hawai'i appellate courts have held

that claims regarding state courts lacking subject matter jurisdiction over the case premised upon the continuing existence of the Hawaiian Kingdom are without merit."); *Moniz v. Hawaii*, No. CIV. 13-00086 DKW, 2013 WL 2897788, at *2 (D. Haw. June 13, 2013) ("[T]he Ninth Circuit, this district court, and Hawai'i state courts have all held that the laws of the United States and the State of Hawai'i apply to all individuals in this State."). As stated by the Hawai'i Intermediate Court of Appeals ("ICA"), a statement that is as true now as it was when the ICA stated it in 1994, "presently there is no factual (or legal) basis for concluding that the [Hawaiian] Kingdom exists as a state in accordance with recognized attributes of a state's sovereign nature." *Hawaii v. French*, 77 Haw. 222, 228, 883 P.2d 644, 650 (Ct. App. 1994) (quotations omitted).

Moreover, the issue of the legality of the State of Hawaii's inclusion as part of the United States is a political question that is not within the power of the judicial branch of government to decide. *Algal Partners, L.P. v. Santos*, No. CIV. 13-00562 LEK-BMK, 2014 WL 7420442, at *2 (D. Haw. Dec. 31, 2014) ("Courts have consistently held that [the argument that the State of Hawai'i is an illegal entity] presents a political question that must be decided by the legislative and executive branches of government, not by the courts."). Any issues regarding the legality of Hawaii's statehood, including the lawfulness of events leading to statehood, are non-justiciable political questions that have been constitutionally committed to Congress. *Williams v. United States*, Civ. No. 08-00547 SOM-KSC, 2008 WL 5225870, at *3 (D. Haw. Dec. 15, 2008). Sai's basis for jurisdiction squarely involves the legality of Hawaii's statehood as evidenced by his filings in this action. Accordingly, any exercise of jurisdiction over this action would require this Court to adjudicate issues not within the grasp of the judiciary. *See Baker v. Carr*, 369 U.S. 186 (1962) ("[I]t is the executive that determines a person's status as representative of a foreign government."); *Sai v. Clinton*, 778 F. Supp. 2d 1, 7 (D.D.C. 2011), *aff'd sub nom. Sai v. Obama*, No. 11-5142, 2011 WL 4917030 (D.C. Cir. Sept. 26, 2011) (concluding that any argument challenging the legality of the State of Hawai'i would require the court to decide a political question that the court did not have the power to decide); *Lin v. United States*, 561 F.3d 502, 506 (D.C. Cir. 2009) ("Because deciding sovereignty is a political task, Appellants' case is nonjusticiable.").

This Court concludes, therefore, that even if: (1) the Amended Notice of Removal was a pleading within the meaning of Rule 15 such that Sai could amend his notice of removal; (2) the Court accepted the basis for removal in Sai's Amended Notice of Removal, untimeliness notwithstanding; (3) the State Court's inclusion of the Respondents and its subsequent issuance of the Order to Show Cause in the Foreclosure Action between U.S. Bank Trust and Defendant homeowners, somehow made this action a "civil action" within the meaning of § 1441(d); and (4) this civil action could be liberally construed to be against Sai, the Court nonetheless concludes that Respondents have not presented any basis for federal jurisdiction in this action. This Court thus FINDS that this action must be remanded and RECOMMENDS that the district court remand this action to State Court.

C. Attorneys' Fees

***11** "When a federal court remands a case, it 'may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal.' " *Rossetto*, 664 F. Supp. 2d at 1130 (quoting 28 U.S.C. § 1447(c)). "If, however, there is an objectively reasonable basis [for removal], fees should be denied." *Id.* "Bad faith on the part of the removing party is not required[.]" *Id.*

Sai explicitly asserts that his Notice of Removal was filed within thirty days "from the date of service of the Memo in Support which raised for the first time federal questions." ECF No. 3-4. The Court finds that Sai did not have an objectively reasonable basis to seek removal in this case because: (1) the unequivocal language of § 1446(b)(3) requires that the notice of removal be filed within thirty days after the defendant *receives* a paper from which it may be first ascertained that a case is removable; (2) case law in this district explicitly provides that the document triggering the second thirty-day removal period cannot be one created by the defendant; (3) the only document that could have triggered the thirty-day period in this case was the Motion to Issue Show Cause Order, and Sai filed his Notice of Removal more than thirty days after the State of Hawai'i served the Motion to Issue Show Cause Order on Sai; (4) this action is not a "civil action" within the meaning of § 1441(d); and (5) Sai is not a "foreign state" pursuant to § 1603, nor does this federal court have the jurisdiction to conclude that he is "foreign state" absent executive or legislative action. In addition, the Court finds that the filing of the Amended Notice of Removal was improper and failed to provide a sufficient basis for federal

court jurisdiction. Accordingly, the Court finds that Sai had no objectively reasonable basis for removing this case.

The Court thus recommends that the district court award: (1) the State of Hawai'i its costs incurred in connection with Sai's improper removals; and (2) U.S. Bank Trust its attorneys' fees and costs incurred as a result of Sai's original removal, as requested by U.S. Bank Trust in its Joinder.

D. Rule 11 Sanctions

The State of Hawai'i argues in its Motion for Remand that the removal was "was not done in accordance with" Federal Rule of Civil Procedure 11. ECF No. 7-1 at 31. Rule 11 provides that, by presenting a paper to the Court, an attorney or unrepresented party certifies that the papers are not being used for improper or frivolous purposes:

> By presenting to the court a pleading, written motion, or other paper--whether by signing, filing, submitting, or later advocating it--an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
>
> (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
>
> (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
>
> ***12** (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

Fed. R. Civ. P. 11(b). The State of Hawai'i contends that an "attorney licensed to practice law in Hawai'i cannot make a claim that the Kingdom of Hawai'i continues to exist, and that the State of Hawai'i does not exist, and satisfy Rule 11." ECF No. 7-1 at 31. The State of Hawai'i argues that there is no basis for anyone to believe Sai is entitled to diplomatic immunity under the circumstances of this case. *Id.*

Although unclear, it appears that the State of Hawai'i asks this Court to find that removal was not sought in accordance with Rule 11. The Court declines to makes such a finding. First, under Rule 11, "[i]f, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation." Fed. R. Civ. P. 11(c)(1). In addition, a party may file a motion for sanctions "separately from any other motion" that describes "the specific conduct that allegedly violates Rule 11(b)." *Id.* 11(c)(2). Finally, "[t]he motion must be served under Rule 5, but it must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets." *Id.*

Here, the State of Hawai'i neither requests that this Court impose sanctions nor does it separately motion for Rule 11 sanctions against Respondents. Instead, the State of Hawai'i simply asks this Court to "find" that removal was not sought in accordance with Rule 11. The State of Hawai'i did not file a separate motion, did not explain which provision of Rule 11 Respondents violated, nor did the State of Hawai'i propose an appropriate sanction for the Court to impose. The State of Hawai'i argues only that the finding would permit it to "recoup the costs of publishing the notice of continued hearing on the Show Cause Order as to Respondent Dradi in the event jurisdiction over the case is not returned to the state court in time for the hearing now scheduled for June 6, 2018." ECF No. 7-1 at 33.

The Court notes that it cannot impose monetary sanctions against a represented party for violating Rule 11(b)(2), nor can it impose monetary sanctions on its own, unless it issues a show cause order pursuant to Federal Rule of Civil Procedure 11(c)(3). Fed. R. Civ. P. 11 (c)(5) (providing limitations on monetary sanctions). Nothing in Rule 11 establishes a basis for this Court to simply "find" that Respondents have violated Rule 11. The State of Hawaii's argument that removal was not done in accordance with Rule 11 alone is insufficient for this Court to impose sanctions under Rule 11, let alone a "finding"

that Respondents violated Rule 11. Accordingly, the Court will not make a finding regarding the removal's compliance with Rule 11. The Court finds that awarding costs pursuant to § 1447(c) is sufficient for the State of Hawai'i to recoup any costs.

CONCLUSION

***13** The Court FINDS and RECOMMENDS that the district court (1) GRANT the State of Hawai'i Office of Consumer Protections' Motion for Order Remanding Action to State Court filed on April 5, 2018 (ECF No. 7), (2) GRANT Plaintiff U.S. Bank Trust's Substantive Joinder to State Of Hawaii Office of Consumer Protection's Motion for Order Remanding Action to State Court Filed April 5, 2018 (ECF No. 13), (3) remand this case to the Circuit Court of the First Circuit, State of Hawai'i, (4) award the State of Hawai'i its costs expended as a result of Respondents' improper removals, and (5) award U.S. Bank Trust its attorneys' fees and costs incurred as a result of Sai's original improper removal.

If this Court's recommendations should be adopted, then this Court further RECOMMENDS that a deadline be given for counsel to submit a declaration in conformance with Local Rules 54.2 and 54.3(d) to support the State of Hawaii's and U.S. Bank Trust's respective requests for fees and/or costs.

IT IS SO ORDERED AND SO FOUND AND RECOMMENDED.

DATED: Honolulu, Hawai'i, June 29, 2018.

(1) ORDER GRANTING REMOVING PARTIES' MOTION TO RECONSIDER MAGISTRATE JUDGE'S FINDINGS AND RECOMMENDATIONS AND (2) AMENDED FINDINGS AND RECOMMENDATION TO GRANT: (A) STATE OF HAWAI'I OFFICE OF CONSUMER PROTECTION'S MOTION FOR ORDER REMANDING ACTION TO STATE COURT; AND (B) PLAINTIFF U.S. BANK TRUST, N.A.'S SUBSTANTIVE JOINDER TO STATE OF HAWAI'I OFFICE OF CONSUMER PROTECTION'S MOTION FOR ORDER REMANDING ACTION TO STATE COURT FILED APRIL 5, 2018

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February 22, 2019

Via Hand Delivery Only

Josiah K. Sewell
ODC
201 Merchant Street, Ste. 1600
Honolulu, Hawai'i 96813

Re: ODC 18-0339
James F. Evers, Complainant

Dear Mr. Sewell:

I represent Dexter Kaiama in the above-referenced ODC matter.

The ethical claim by James F. Evers is frivolous.

While I agree aspersions to Mr. Evers' character may not be helpful, I would ask you to consider the fact that Mr. Evers is an attorney who is suing Mr. Kaiama in a civil matter in his role with the State and had his filing stricken by Judge Jeffrey P. Crabtree, although with a right to refile his civil complaint against Mr. Kaiama.

The Scope of the Rules of Professional Conduct [7], observes: "Furthermore, the purpose of the Rules can be **subverted** when they are invoked by opposing parties as procedural weapons."

Mr. Evers is upset that his case got dismissed and he needs to refile if he seriously intends to proceed against Mr. Kaiama in a weak case.

Please note that allegations of HRS § 480E-13 violations (initially incorrectly asserted and plead by Mr. Evers as HRS §480E-15 violations) were challenged in Mr. Evers' civil action as being an unconstitutional legislative enactment. Though Mr. Evers' civil action was dismissed, the unconstitutional challenge to the statute remains.

Additionally, consideration should be given to the fact that Mr. Evers' civil action was initiated in January 2018 and alleges conduct on the part of Mr. Kaiama which occurred in May 2017, seven (7) months before start of the civil action. No such or similar conduct has been alleged by Mr. Evers after May 2017 (as no such or similar alleged conduct has occurred).

Mr. Kaiama has done nothing ethically improper. He represented his clients, largely *pro bono*, and only for the specific purpose of advancing a claim that Hawai'i state law was inapplicable under international law (lack of subject matter jurisdiction pursuant to HRCP 12(b)(1)). While the "sovereignty" argument has not been accepted by the courts, Mr. Kaiama was well within his right to be a "zealous advocate" Preamble, Hawai'i Rules of Professional Conduct ("HRPC") [8], and to pursue the assertion that the Kingdom of Hawai'i is a viable entity. HRPC Rules 3.1 states an argument is proper if it is in "good faith" for an "extension, modification or reversal of existing law."

All Mr. Kaiama did was argue for a unique interpretation of the law.

In the few cases where the clients voluntarily gave Mr. Kaiama money for his arguing their case, this was always **after** Mr. Kaiama's representation and appearance. Had Mr. Kaiama deposited earned fees into his Trust Account, he would have been in violation of Hawai'i Rules of Civil Procedure ("HRCP") Rule 1.15; i.e., fees must be withdrawn as earned.

Ms. Dradi and Dr. Sai are not attorneys and their actions are not those of Mr. Kaiama.

This is simply a civil action about which the Complainant is irritated at having to relitigate the case he attempted to proceed with using a procedural short cut. There was no ethical breach by Mr. Kaiama. The referral to the ODC was originally made in March of 2018 and then again in November 2018, only after Mr. Evers' civil action was dismissed by the Court.

Confidential

If you have any questions, please don't hesitate to give me a call, and I am,

Very truly yours,

William Fenton Sink
WFS:jmi

cc: Dexter Kaiama

Bruce Kim

From: James F. Evers <jevers@dcca.hawaii.gov>
Sent: Thursday, March 01, 2018 2:25 PM
To: Bruce Kim
Subject: Dexter Kaiama

Bruce,

I would like you to consider opening an investigation into potential violations of the Rules of Professional Conduct based on Dexer Kaiama's apparent noncompliance with HRS 480E-15, which prohibits attorneys from representing distressed property owners without a written contract (480E-15(1)), from accepting money without putting it into their client trust accounts (480E-15(3)), and from taking the money without having fully performed (480E-15(4)). "Fully performed" is a defined term that means, in the case of litigation, that the attorney acting on behalf of the homeowner "obtains the desired relief from a court of law, which includes a favorable determination that the mortgage assistance relief service conferred a benefit upon the property owner and is therefore compensable." Any such violations of HRS Chapter 480E would constitute per se UDAPs.

OCP has a pending case involving Kaiama with a continued show cause hearing set for March 14, 2018. His only defense, to date, is based on sovereignty, an argument the court already rejected in denying the homeowners' motion to dismiss, which Kaiama argued.

By separate email I will be attaching the pertinent filings in that pending foreclosure case, involving consumers / homeowners Raymond Fonoti and Willadean Grace.

In what appears to be a pattern, distressed property consultants Rose Dradi and David Keanu Sai take advance payments from distressed property owners (a felony under HRS 480E-12) in preparing a motion to dismiss based on sovereignty grounds. Dradi then typically arranges for Kaiama to argue the motion by special appearance. Aside from not complying with HRS Chapter 480E, Kaiama's collaborating with Dradi and Kaiama may constitute one or more ethical violations. The declaration of John Tokunaga identifies a number of cases where Kaiama appeared, or was supposed to have appeared, and the motion to dismiss was denied. See Tokunaga Declaration bates-stamped pages 29, 38, 58, and 71. In some cases the motion is filed twice and denied each time. The case involving Mr. Fonoti and Ms. Grace is noteworthy because Kaiama's involvement was well after the enactment of HRS 480E-15, and the consumers' declaration testimony suggests Kaiama failed to comply with the law. Kaiama, in his declaration, does not state otherwise.

Thank you for your attention to this matter.

Jim

James F. Evers
Enforcement Attorney
STATE OF HAWAII
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
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June 12, 2019 CONFIDENTIAL

William F. Sink
735 Bishop St., Ste 400
Honolulu, HI 96813

Re: ODC 18-0339
James F. Evers, Complainant

Dear Mr. Sink:

I am in receipt of your response dated February 22, 2019. While the overview you provided was of some help, there are several elements to this matter that we wish to discuss with your client in more detail. I have included below a number of specific questions that require Mr. Kaiama's response in conjunction with our investigation.

Given the depth and detail of the underlying subject matter, I am open to obtaining Mr. Kaiama's answers via an in-person interview if he so chooses.

Therefore, I am requesting that as Mr. Kaiama's representative counsel, you **contact me by telephone by 4pm on Friday, June 21, 2019** to inform me whether Mr. Kaiama will answer our supplemental questions by either:

a.) scheduling an in-person interview of Mr. Kaiama at the Office of Disciplinary Counsel at a mutually convenient time (NOTE: interview questions may include but are not limited to the questions included in this letter),

or

b.) by providing a detailed written response to the questions included below by **Wednesday, July 10, 2019**.

Supplemental Questions for Respondent Dexter Kaiama

For reference, at all times the terms "distressed property", "distressed property owner", and "distressed property consultant" refer to their definitions in *HRS 480-E2* and *480-E2(d)*.

1. How many distressed property cases has Mr. Kaiama argued and/or made a special appearance in since 2014?
   a. Of those distressed property cases, how many involved the use of the "Sovereignty Argument?" by Mr. Kaiama?
   b. Of those cases where Mr. Kaiama employed the "Sovereignty Argument," how many times was the argument successful on behalf of the distressed property owner?
   c. Did Mr. Kaiama inform clients/prospective clients of that success rate? If so, when and how?

2. When Mr. Kaiama made special appearances in distressed property cases, whether pro bono or for a special appearance fee, please explain the following:
   a. How was Mr. Kaiama notified of the location and time of the hearing in which he was to appear?
   b. How did Mr. Kaiama obtain relevant pleadings in the matters in which he was to appear?
   c. How did Mr. Kaiama perform a conflict check prior to accepting representation/making the special appearance?
   d. How was his fee, if any, determined? How was his fee, or decision to appear pro bono, conveyed to the client?
   e. How did Mr. Kaiama identify, explain, and convey to his clients/prospective clients the scope of service/s to be provided?
   f. How did Mr. Kaiama prepare for each special appearance in a distressed property case? How did he determine his strategy for each case?

3. Referring to Mr. Kaiama's distressed property cases, you stated to ODC that "in a few cases" clients gave Mr. Kaiama money for his appearance.
   a. Which clients were represented pro bono?
   b. Which clients paid for his services?
   c. How much did each pay?
   d. How did each pay?

e. Please provide proof of payment (e.g. deposit slips, copies of checks (front and back), receipts, etc.) for each distressed property case in which payment was received
f. Did Mr. Kaiama ever refuse a referral/special appearance in a distressed property case? If yes, when and how often did this occur?

4. Please provide copies of the following for each distressed property owner Mr. Kaiama represented or made a special appearance for since January 2014:
   a. Signed contracts, legal agreements, retainer agreements, or any other document describing the attorney-client relationship and the service/s Mr. Kaiama was to provide in the distressed property case.
   b. Mr. Kaiama's invoices to clients
   c. Mr. Kaiama's client subsidiary ledgers for clients

5. What is Mr. Kaiama's relationship with Dr. Sai? With Ms. Dradi? When did Mr. Kaiama first meet them?
   a. How did Dr. Sai and Ms. Dradi refer distressed property cases/owners to Mr. Kaiama?
   b. From 2014 to present, how often did Mr. Kaiama communicate with Dr. Sai about distressed property cases? With Ms. Dradi?
   c. From 2014 to present, by which method/s does Mr. Kaiama communicate with Dr. Sai about distressed property cases? With Ms. Dradi?

6. From January 2014 through January 2018 the balance of Mr. Kaiama's Bank of Hawaii ("BOH") IOLTA remained static, less minor interest transactions, at $22,909.65, with three exceptions.
   a. Does Mr. Kaiama have any other IOLTA or Client Trust Accounts? If so, please provide the financial institution/s and account number/s
   b. Why were these funds ($22,909.65) held in trust in Mr. Kaiama's BOH IOLTA?
   c. To which client/s or individual/s do these funds belong? Please provide supporting documentation
   d. During this period, for each distressed property owner from whom Mr. Kaiama received a fee for making a special appearance in a distressed property case, why did he fail to deposit said fees in his BOH IOLTA, pursuant to HRS 480E-13(4)?
   e. On September 19, 2014, Check No. 106 was drawn on Mr. Kaiama's BOH IOLTA in the amount of $12,000. Please provide an explanation and a copy of this check (front

and back).

f. On September 22, 2014, a deposit of $18,000 was made to Mr. Kaiama's BOH IOLTA. What was the source of these funds? What was the purpose of the deposit? Please provide supporting documentation (i.e. deposit slip, check (front and back), etc.)

g. On October 1, 2014, Check No. 107 was drawn on Mr. Kaiama's BOH IOLTA in the amount of $6,000. Please provide an explanation and a copy of this check (front and back).

If you have other questions, please contact me **prior** to June 21, 2019, by telephone at 808-469-4040 or by email at josiah.k.sewell@dbhawaii.org

While I am sensitive to the disruption these inquiries may cause, I must remind you that Hawai'i licensed attorneys are required to cooperate and participate in disciplinary investigations and proceedings pursuant to Hawai'i Rules of Professional Conduct Rules ("HRPC") 8.1(b) and 8.4(g).

Sincerely,

JOSIAH K. SEWELL
INVESTIGATOR

JKS:uo

From:	Steve Laudig
To:	Josiah Sewell; Dexter Kaiama
Cc:	William Fenton Sink
Subject:	ODC 18-0339
Date:	Wednesday, July 10, 2019 3:14:05 PM
Attachments:	01 Laudig to ODC 20190709 at 1430.pdf

Aloha Mr. Sewell:

My name is Stephen Laudig.

Attached please find my letter of 10 July which I hope is responsive enough to yours of 12 June that we will be able to chart out a process.

By way of CC, I am alerting Mr. Sink about this communication.

--

Stephen Laudig
1914 University Avenue, #103
Honolulu, Hawaiian Islands, 96822
Tel. 808-232-1935

On three things does the world stand: on justice, truth, and peace (Pirkei Avot, 1:18)

Ignoring a low standard of performance sets a new standard of performance.

"Na kakou no!"

Stephen Laudig, Attorney, HBN #8038
1914 University Avenue #103 •
Honolulu, HI 96822 •
Phone: 808-232-1935 • Email: SteveLaudig@gmail.com •

State of Hawaii, Supreme Court, Office of Disciplinary Counsel
Mr. Josiah Sewell, Investigator
201 Merchant Street, Suite 1600
Honolulu, HI 96813

Tel: 808-521-4951
Direct Number 808-469-4040
Direct Email: josiah.k.sewell@dbhawaii.org

RE: ODC 18-0339
My file number: 54733

Wednesday, July 10, 2019 at 3:11 PM Via email only as a PDF attachment

Aloha Mr. Sewell:

My name is Stephen Laudig.

I am now representing "Respondent" Mr. Dexter K. Kaiʻama in ODC 18-0339. My representation was agreed to only this last Friday. I am not yet in receipt of the complete file on this matter. So if I inadvertently mis-state something please advise. I do not have, as yet, a copy of any of your prior correspondence with Mr. Sink, who I am advised informed your office this last Monday of the change of counsel. He telephoned me Monday to that effect. Monday, there was a death in my family, my mother-in-law, which though not unexpected, still has delayed matters. I have not had the chance to meet with Mr. Kaiʻama, in person, since last Friday and I have just this afternoon been provided a copy of Mr. Sink's letter to you of 22 February mentioned in yours of 12 June, which I do have a copy of and which I make reference to in this letter.

I have had only a few hours to read, and consider, the matters raised in yours of 12 June. But I want to place on record at this, my first opportunity, notice of some objections and some brief, incomplete, arguments. Further argument will have to await more investigation and research.

Bear with me as I frame what I see are some very important, indeed constitutional issues, that are implicated in this situation.

Initially, I am concerned, as an citizen, an attorney, and as Mr. Kaiʻama's attorney, and as the State of Hawaii, Supreme Court, Office of Disciplinary Counsel should be, that the Office of Disciplinary Counsel process is being used by the State of Hawaii, Office of Consumer Protection, acting through its employee, and lawyer, James F. Evers for the improper purpose of advantaging the State's litigation.

One legal proceeding brought by the State of Hawaiʻi, which appears to be alleging identical grounds as those referred to in Items 1-5 of yours of 12 June, has already been dismissed. A second, and nearly duplicative, proceeding was filed several weeks after it was clear that the State's first proceeding was dismissed due to Evers's failure to follow the rules of procedure. The language in your letter is virtually identical to the language that Evers uses in his filings. The Office of Disciplinary Counsel occupies the position of Caesar's wife and should be above suspicion of being used for litigation advantage.

Here are my objections in no particular order of importance.

First Objection. We object to having to "cooperate" in an investigation when there is no "bill of particulars". We would like to know which rule, or rules, of the Hawaiʻi Rules of Professional Conduct State of Hawaiʻi Office of Consumer Protection's attorney, James E. Evers, is alleging that Mr. Kaiʻama has violated. The State of Hawaii, Supreme Court, Office of Disciplinary Counsel, in its 12 June 2019 letter, describes Mr. Kaiʻama as a "Respondent". Evers has a record of making allegations that are unsupported by facts. We know he has submitted, and believe he has prepared, at least one declaration that had a demonstrably and material falsehood. So, we are concerned about his veracity. Evers makes allegations and we are to respond. But what precisely are we "responding" to? I doubt, though perhaps research will prove otherwise, that the State of Hawaii, Supreme Court, Office of Disciplinary Counsel, can constitutionally perform a "general investigation" of an attorney, not inform him of the specific 'charges' being investigated, and compel his cooperation in such a broad, sweeping, and possibly boundless investigation.

This is more powerfully true when, as appears below, The State of Hawaii, Office of Consumer Protection, has made a "criminal referral" and is suing the person being investigated. Until we know the 'charges', how can we assist in an investigation without risking inadvertently not being fully cooperative. Cooperative in what? The ODC definition of "assistance" may be different from our definition of "assistance" since what is being "assisted in" is unbeknownst to us. So, I ask, "what are the specific allegations of misconduct?"

Second Objection. The materials you seek are, in many instances, again I need time to investigate, what may be fairly characterized as privileged client information. I can't advise my Mr. Kai'ama to disclose what may be privileged client communications he has had, without that client's consent and authorization. Since we have no details of what the allegations are, or who, with particularity, the clients are, other than what we can 'infer' from the questions you ask and how you ask them and relying on inferences in such a matter is unsound, we don't know which client to contact to obtain consent and authorization. Evers in his litigation [described in more detail below], somewhere, claims there are 200 individuals that Mr. Kai'ama is supposed to have 'harmed', yet Evers names not a single one. A Mr. and Mrs. Fonoti were involved in the matter that was dismissed due to Evers failure to follow the rules of civil procedure, but they were not identified in the recent complaint he filed on behalf of the State of Hawaii.

Third Objection. My cursory, and hurried read, of what your "Supplemental Questions for Respondent Dexter Kai'ama" fits 'hand-in-glove' with discovery requests that I would not be surprised to find coming from Evers in the new case --assuming it gets past a motion to dismiss based, in part on the issue that the statute Mr. Evers is relying on: 1. Does not speak to Mr. Kai'ama's actions in entering only a limited appearance for the narrow purpose of only contesting the jurisdiction of the court to hear a matter; and, 2. If the statute does address #1, it is an unconstitutional legislative invasion of the judicial branch's constitutional authority to regulate the practice of law by lawyers in the courts.

So, you see until Mr. Kai'ama knows what the 'charges' are we are not in any position to be of assistance without, possibly, waiving some constitutional protections such as the right against self-incrimination. [See below]

Fourth Objection: You may not be aware that Mr. Evers has made what he calls a "criminal referral" involving Mr. Kai'ama and a qualified expert witness, Dr. Sai. You may not be aware that Evers filed a civil action against Mr. Kai'ama after Evers's first "legal process" was dismissed. As of the time of this writing I do not know the date that Mr. Evers filed his 'complaint' with the State of Hawaii, Supreme Court, Office of Disciplinary Counsel. I infer from its number that it was sometime in 2018. Perhaps around the time it became clear to Evers that he was going to lose. I ask you to place yourself in my Mr. Kai'ama's position. The State of Hawai'i has since January 2018 brought one failed legal process, made a criminal referral, filed a disciplinary complaint, and sued him. All of these actions were taken by the State's attorney James E. Evers. We are not aware that any individual client has complained of Mr. Kai'ama's actions.

It seems deeply unfair for the State of Hawai'i to simultaneously pursue civil, criminal, and disciplinary matters all at the same time. You might respond, "Oh, but we have no control over what Evers does!" That makes my point for staying the ODC proceedings, since there is no statute of limitation on disciplinary matters. The State of Hawai'i, Supreme Court Office of Disciplinary Counsel could, and should, stay all of its 'investigation' and suffer no prejudice. If the State of Hawai'i Office of Consumer Protection and the State of Hawai'i, Supreme Court, Office of Disciplinary Counsel proceeds and say the unnamed State of Hawai'i office to which the criminal referral was made takes legal action then three organs of the State of Hawai'i will be attacking Mr. Kai'ama at the same time.

That is unconscionable, especially in light of the fact that the 'real' issue here is a 'political' one, "What is the status of the Hawaiian Islands under international law?" We contend Evers is using legal process, including the Office of Disciplinary Counsel in pursuit of a political agenda. Because of these multiple actual, and potential, proceedings, the ODC should stay its investigation. The only possible exception to such a stay is outlined below and relates to the non-12(b)(6) aspects of escrow. The pending civil and potential criminal proceedings prevent Mr. Kai'ama from assisting the ODC unless some form of immunity and confidentiality are agreed upon.

I apologize for going on so long, but these matters are important and Mr. Kai'ama wishes to cooperate to the extent that he can without having his rights violated.

SUGGESTION: I suggest that we adopt following "theoretical" view of what I think The State of Hawaii, Supreme Court, Office of Disciplinary Counsel, is 'investigating'. It has two fundamentally discrete parts.

The first, is what you call --using the very same language and punctuation as Evers does-- the "Sovereignty Argument" [yours of 12 June 2019, page 2]. I think the ODC should not adopt Evers's view, or phrasing, for a couple of reasons. The first being it is demonstrably incorrect and misleading. I will argue this more completely in a later communication if necessary. I think a more accurate, less laden, less partisan term would be, the "jurisdiction argument" or, "the argument over jurisdiction" or if you wish the "limited appearance 12(b)(1) motions" that Mr. Kai'ama presented on behalf of clients in many types of cases. It is absolutely fundamental to a clear understanding of why HRS 480 et seq, does not apply to Mr. Kai'ama's limited appearance 12(b)(1) motions. A 12(b)(1) motion speaks to the jurisdiction, power, or authority, of a court to hear a claim, any claim, and does not implicate any aspect of the merits of the claim the party seeking relief from the court wishes the court to decide. The relief sought could be criminal, civil, admiralty, or probate. A party seeking relief from a court must establish the court has

jurisdiction. The party claiming a court does have jurisdiction must "allege and prove" it, then the claim, as a claim, is irrelevant to establishing a court's authority except to the extent that the existence one "fact" may have relevance to proving jurisdiction and the claim. But that is a mere accident or coincidence.

The second aspect is what I would call "escrow keeping" which is also in two parts, escrow keeping for the 12(b)(1) cases and escrow keeping for the non-12(b)(1) cases. I can represent that we will provide evidence that the two types of cases lent themselves to distinctly different record and escrow keeping requirements. Both of which, I believe will, upon a closer understanding to be in compliance with certainly the spirit of the regulations regarding escrow and also the letter.

The escrow aspects of the 12(b)(1) cases would seem to be part of the civil litigation and criminal referral and, as urged above, the ODC should stay action pending the outcome of the civil litigation and criminal referral. Compelling Mr. Kaiʻama to engage in all three at the same time is deeply unfair and a violation of the due process of law he is entitled to in this country. The ODC loses nothing in letting the civil and criminal processes proceed as we will preserve the evidence you request. But if Mr. Kaiʻama must assist in this investigation then, in light of the criminal referral, the right against potential self-incrimination arises and we can't answer any questions that might form part of the criminal investigation. Surely that is obvious.

Directing your attention to page 3 of yours of 12 June, question 6 and its subparts. Apparently, courtesy of what we contend is Mr. Evers abuse of the legal process, your office appears to have copies of some of Mr. Kaiʻama's escrow account bank statements. Since your questions appear to be based on documents, we'd like to see the documents. That seems fair. I can, and will, advise Mr. Kaiʻama to provide specific answers, within the limits of any privileges and rights to non-12(b)(1) matters subject to privileges and rights. But fairness demands that we see what you have if you are asking questions based on them. If you won't provide copies, then at least identify the documents so we can obtain our own.

Without disclosing the client's identities, I can represent these were all settlements of bodily injury claims. These are unrelated to the inquiry on the 12(b)(1) issues as described above and should be protected by attorney/client privilege unless, and until, we can have a judicial confirmation that such disclosure would not be a violation of that privilege. It would be very unfair for the ODC to place Mr. Kaiʻama in the position of either being seen as cooperative only if he violates a confidence.

CONCLUSION:

Specifically, I am requesting that this matter, in all of its parts, be stayed until the civil proceedings, which it effectively duplicates, are concluded to final appeal. Please advise if this is, or is not, acceptable.

If you have a counter proposal that would protect my client's legitimate legal rights and interests, assure that none of his, now former, client's confidences are breached and prevents the State of Hawaiʻi, acting through whatever organ, from oppressing him with the "triplicative" processes of civil, criminal, and disciplinary proceedings then tell me and we might be able to make some progress.

In the mean time I will be assembling the materials that I believe are responsive to the questions asked in Item 6, page 3 of yours of 12 June.

This letter became much longer than originally envisioned, but that is because we take this matter seriously and there are serious issues involved. There are international law issues, constitutional law issues, statutory interpretation issues, separation of powers issues, attorney-client privilege issues, freedom of expression issues, abuses of power by the State of Hawaiʻi acting through Evers issues, and escrow management issues.

I suggest the non-12(b)(1) escrow management issues are the most tractable, so let's get those solved.

If you feel that I have in some way unfairly represented ODC in this letter please advise, it was not my intent. Sometimes emailing is the best way to get in touch. Stevelaudig@gmail.com is my address.

Mahalo,

Sincerely,

Stephen Laudig
No attachments or enclosures

Office of Disciplinary Counsel
201 Merchant Street, Suite 1600
Honolulu, Hawai‘i 96813
Telephone (808) 521-4591
www.dbhawaii.org

July 17, 2019 CONFIDENTIAL

DELIVERY VIA EMAIL

Re: ODC 18-0339
James F. Evers, Complainant

Mr. Laudig:

This is in response to your letter dated July 10, 2019, in which you object to ODC's questions to your client Dexter Kaiama.

On January 24, 2019**,** ODC informed Mr. Kaiama that a disciplinary complaint had been filed against him, provided a copy of that complaint, and asked for a response. In that letter, ODC explained that under the *Rules of the Supreme Court of Hawai'i, Rule 2.12A*, his cooperation with disciplinary investigations was required.

On February 22, 2019, ODC received a letter from Dexter Kaiama, through counsel William Sink, that did not respond to the complaint. On June 12, 2019, ODC sent Mr. Sink a follow-up letter, again explaining that his client's cooperation was required by *Rule 2.12A*, and providing a list of specific questions to answer in response to the complaint.

On July 10, 2019, ODC received its second letter from Mr. Kaiama, this time through you as counsel. That letter again does not provide a response to the complaint, nor does it answer any of the specific questions that were asked. Instead, it lists four (4) objections to the investigation, and one (1) section titled "suggestion" that details how you suggest that ODC proceed with its investigation.

ODC again reminds you that under both the Rules of the Supreme Court and the Hawai'i Rules of Professional Conduct, Mr. Kaiama's cooperation is required. Failure to cooperate is not without consequence: it can lead to an interim suspension of his law license, under *RSCH Rule 2.12A*, and as independent grounds for discipline, under *HRPC Rule 8.1(b)* and *Rule 8.4*.

However, ODC would prefer to proceed with your client's cooperation. If you have any objections to any particular questions, then please raise them with specificity. Additionally, ODC can provide you with the following information to help aid your response:

First, regarding your desire for a "bill of particulars," ODC reminds you that this case is still in investigation and no formal petition has been filed[1]. At this preliminary juncture, there simply is no full or final list – rather ODC is seeking to understand Mr. Kaiama's version of the events.

However, to give you some helpful context, ODC notes the following areas of initial concern, which you should review before drafting your response:

1.) the duty to provide clients with meaningful consultation and communication regarding legal services and strategy (*HPRC Rules 1.2, 1.4*);
2.) the duty to charge fees that are reasonable in manner and amount (*HRPC Rule 1.5*);
3.) the duty to remain loyal to the client when compensated by another (*HRPC Rule 1.8(f)*); and
4.) the duties regarding proper trust accounting (*HRPC Rule 1.15*, the *Rules Governing Trust Accounts*, and *RSCH Rule 11*).

Please also review *HRPC Rule 1.6(b)(4)*, which explains that client confidentiality is waived in this context, and *RSCH Rule 2.10* which addresses your request to defer or abate this disciplinary investigation while Mr. Kaiama faces civil action/s.

Second, you state that you have generalized Fifth Amendment concerns, but also state that you are not aware of what, if any, criminal charges could be brought. ODC is not aware of any *criminal* cases naming Mr. Kaiama as a defendant. A review of the *civil* filings that you reference indicate that the Mortgage Rescue Fraud Prevention Act specifically *excludes* attorneys from criminal liability. *See* HRS §§ 480E-12, 480E-10, and 480E-2 (together stating that criminal liability is limited to consultants, but attorneys are affirmatively excluded from the definition of consultant).

Third, any documents referred to have either been previously provided (i.e. with the complaint) or should be readily available to Mr. Kaiama (i.e. his IOLTA statements).

Therefore, in closing, ODC once again asks that you please provide a written response to the list of questions that were asked in the June 12, 2019 letter. We request that this response be provided to our office no later than the end of day on **Friday, August 9, 2019**. Delivery via email is acceptable.

For ease of reference, the questions are reproduced here:

[1] Please see *RSCH Rule 2.7(a) and (b)*

Copied, with minor revisions, from ODC's 2nd letter to Respondent Dexter Kaiama, dated June 12, 2019:

For reference, at all times the terms "distressed property", "distressed property owner", and "distressed property consultant" refer to their definitions in *HRS §§ 480-E2* and *480-E2(d).*

1. How many distressed property cases has Mr. Kaiama argued and/or made a special appearance in since 2014?
    a. Of those distressed property cases, how many involved the use of the "Sovereignty Argument" by Mr. Kaiama?
    b. Of those cases where Mr. Kaiama employed the "Sovereignty Argument," how many times was the argument successful in obtaining relief on behalf of the distressed property owner?
    c. Did Mr. Kaiama inform clients/prospective clients of that success rate? If so, when and how?

2. When Mr. Kaiama made special appearances in distressed property cases, whether pro bono or for a special appearance fee, please explain the following:
    a. How was Mr. Kaiama notified of the location and time of the hearing in which he was to appear?
    b. How did Mr. Kaiama obtain relevant pleadings in the matters in which he was to appear?
    c. How did Mr. Kaiama perform a conflict check prior to accepting representation/making the special appearance?
    d. How was his fee, if any, determined? How was his fee, or decision to appear pro bono, conveyed to the client?
    e. How did Mr. Kaiama identify, explain, and convey to his clients/prospective clients the scope of service/s to be provided?
    f. How did Mr. Kaiama prepare for each special appearance in a distressed property case? How did he determine his strategy for each case?

3. Referring to Mr. Kaiama's distressed property cases, you stated to ODC that "in a few cases" clients gave Mr. Kaiama money for his appearance.
    a. Which clients were represented pro bono?
    b. Which clients paid for his services?
    c. How much did each pay?
    d. How did each pay?
    e. Please provide proof of payment (e.g. deposit slips, copies of checks - front and back -, receipts, etc.) for each distressed property case in which payment was received
    f. Did Mr. Kaiama ever refuse a referral/special appearance in a distressed property case? If yes, when and how often did this occur?

4. Please provide copies of the following for each distressed property owner Mr. Kaiama represented or made a special appearance for since January 2014:
    a. Signed contracts, legal agreements, retainer agreements, or any other document describing the attorney-client relationship and the service/s Mr. Kaiama was to provide in the distressed property case
    b. Mr. Kaiama's invoices to clients
    c. Mr. Kaiama's client subsidiary ledgers for clients

5. What is Mr. Kaiama's relationship with Dr. Sai? With Ms. Dradi? When did Mr. Kaiama first meet them?
    a. How did Dr. Sai and Ms. Dradi refer distressed property cases/owners to Mr. Kaiama?
    b. From 2014 to present, how often did Mr. Kaiama communicate with Dr. Sai about distressed property cases? With Ms. Dradi?
    c. From 2014 to present, by which method/s does Mr. Kaiama communicate with Dr. Sai about distressed property cases? With Ms. Dradi?

6. From January 2014 through January 2018 the balance of Mr. Kaiama's Bank of Hawaii ("BOH") IOLTA remained static, less minor interest transactions, at $22,909.65, with three exceptions.
    a. Does Mr. Kaiama have any other IOLTA or Client Trust Accounts? If so, please provide the financial institution/s and account number/s
    b. Why were these funds ($22,909.65) held in trust in Mr. Kaiama's BOH IOLTA?
    c. To which client/s or individual/s do these funds belong? Please provide supporting documentation
    d. During this period, for each distressed property owner from whom Mr. Kaiama received a fee for making a special appearance in a distressed property case, why did he fail to deposit said fees in his BOH IOLTA, pursuant to HRS 480E-13(4)?
    e. On September 19, 2014, Check No. 106 was drawn on Mr. Kaiama's BOH IOLTA in the amount of $12,000. Please provide an explanation **and** a copy of this check (front and back).
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    g. On October 1, 2014, Check No. 107 was drawn on Mr. Kaiama's BOH IOLTA in the amount of $6,000. Please provide an explanation **and** a copy of this check (front and back).

If you have other questions, please contact me **prior** to August 9, 2019, either by telephone at 808-469-4040 or by email at josiah.k.sewell@dbhawaii.org

Sincerely,

JOSIAH K. SEWELL
DISCIPLINARY INVESTIGATOR

JKS:email to SLaudig 7/17/19

Stephen Laudig, Attorney, HBN #8038
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Honolulu, HI 96822 •
Phone: 808-232-1935 • Email: SteveLaudig@gmail.com •

Monday, August 12, 2019

State of Hawaii, Supreme Court
Office of Disciplinary Counsel
Mr. Josiah Sewell, Investigator
201 Merchant Street, Suite 1600
Honolulu, HI 96813

Tel: 808-521-4951

Via email only as an attachment

Direct Number 808-469-4040
Direct Email: josiah.k.sewell@dbhawaii.org

RE: ODC 18-0339; ODC's of 17 July 2019
My file number: 54733

Aloha Mr. Sewell:

Thank you for the extension of time until 9 August to respond. I am tendering this letter on the 12th rather than the 9th because while preparing it a some very serious issues of came to light requiring more consideration and thought. I believed it to better to take the additional time the weekend afforded to flesh out the arguments so that they can be addressed more fully. I apologize for any inconvenience this mild delay may have caused.

This letter serves as our response to Items 6 (a)-(g) as they appear in the ODC's of 17 July. It is our understanding that the requests contained in the 17 July letter moot and/or supersede and/or replace all prior requests which may have been contained in the ODC letters of 24 January and 12 June. If this perception is in error, please advise.

Mr. Ka'iama's desires to cooperate to the extent both allowed by, and required by law. We reassert all possible defenses and arguments contained in mine of 19 July and waive nothing, either explicitly, or implicitly, and will be adding to them herein.

The lack of formality in this process complicates setting up constitutional and statutory defenses that we believe we are entitled to even at this stage of the proceedings. We would not want 'cooperation' at the informal stage to somehow be deemed waiver at a more formal stage.

The ODC received "a complaint" from a lawyer employed by the State of Hawai'i doing work for the State of Hawai'i who, apparently on his own authority, brought a civil action against Mr. Ka'iama' and using the power of the State of Hawai'i perform searches and seizures of Mr. Ka'iama's property to obtain evidence which this State of Hawai'i lawyer then gave to the ODC in support of his 'complaint' which involves the subject matter of the litigation.

This State of Hawai'i lawyer may have been looking for a litigative advantage. He is certainly not a neutral party nor were his actions in searching and seizing information done pursuant to a warrant. We are not yet fully aware of the facts surrounding the way and manner in which Mr. Ka'iama's property was searched and seized. Until we are here are serious Fourth and Fifth Amendment and analogous State of Hawai'i constitutional protections that Mr. Ka'iama is entitled to because even in disciplinary proceedings Constitutions apply.

The ODC states that its "rules" require it to "assume the facts to be true". That may be true, but there is no requirement allowing the ODC, which is also exercising state power, to assume the materials it was given by the State of Hawai'i were seized lawfully by the State of Hawaii.

Evers obtained documents and information but were they obtained lawfully? Based upon what we know at this moment we do not concede so.

Mr. Ka'iama is in an ODC-designed procedure and ***demands***, a word I rarely use but must here, let's say ***requires*** that he be given the opportunity to test the legality of the seizure of any of his records by the State of Hawai'i acting through its lawyer Evers before answering questions based upon the "fruits" of what we are not yet convinced is not a poisoned tree. Stated with fewer negatives, we are not convinced of the lawfulness of the State's search and seizure of Mr. Ka'iama's property by Mr. Evers and due process of law requires we be allowed to test the lawfulness of this search and seizure and also by what authority Mr. Evers is empowered to transfer this material to the ODC.

There is the additional matter that the statutes the ODC is relying upon, both on its face and as applied is unconstitutional and, again, ***require*** the opportunity to test its constitutionality before having to answer up.

That is only fair and reasonable. No one who agrees with the notion of "rule of law" could oppose us being allowed to test the law before being required to defend against the purported violation of it.

Legislatures have no constitutional power to enact legislation regulating the practice of law. We acknowledge that the Hawai'i Supreme Court, and only the Supreme Court, does have the constitutional authority to regulate the practice of law. Evers's email of 1 March 2018 to "Bruce" references 'only' HRS 480E-15(1) and (3) and (4); HRS 480E(12) and (15) as the basis for his "complaint". So, if I understand this correctly the ODC is claiming alleged violations of a legislative enactment regulating the practice of law "somehow" gives it jurisdiction to pursue an investigation of how a lawyer practiced law as if the State of Hawaii Supreme Court had adopted these provisions as rules of conduct for lawyers.

Evers' reference to 480E-15 and sub-parts to 480E-15 are mystifying. Perhaps the ODC can clarify what is meant because in this March 2018 email the referenced the violation of a statute was never enacted and does not exist. We think we know what was intended but prefer to not guess. In Evers' November 2018 email to "Brad", he did correctly reference 480E-13 and its sub-parts as the statute "regulating" attorney conduct with respect to fees earned "under/pursuant" to 480E.

So, if I understand this correctly the ODC is claiming that allegation of violations of a legislative enactment regulating the practice of law "somehow" gives ODC jurisdiction to pursue an investigation of how a lawyer practiced law. That is a proposition which is not to be accepted without challenge.

We require that we be provided the opportunity to determine the constitutional authority of a judicial branch organ to investigate the violation of a legislative branch enactment which purports to regulate the practice of law and which also accounts for the proposition that ***only*** the Supreme Court is constitutionally authorized to regulate the practice of law. The Supreme Court hasn't delegated this authority to the legislature that we are aware of.

The fact that the ODC-a judicial department office-is investigating the alleged violation of statute, as if it were a Supreme Court Rule for attorney conduct, proves our point. The ODC is investigating an alleged statutory violation and it is a statute which we assert is unconstitutional. The Supreme Court could have, but hasn't yet, exercised its authority to impose the provisions of the statutes upon lawyers.

It is in Mr. Kaʻiamaʻs interests, the ODC's interests, and judicial economy to reach an understanding about how to clarify these issues, prior to proceeding. It is to be kept in mind that shortly a state court proceeding will revive and these identical issues will be raised in the Circuit Court, so the State risks having two proceedings on identical issues being battled out in two different venues with possibly different outcomes.

That is both very unsound from the point of view of judicial economy and very unfair to Mr. Kaʻiama to force him to fight a two-front war against the same entity.

What does the ODC propose as the vehicles to test these issues? I am unaware of any instance in which the ODC has had to deal with constitutionality of statutes or the lawfulness of searches and seizures while at this stage of a proceedings. Is there institutional history that can guide us?

We move the ODC to stay of the unconstitutional portion of the proceedings, those encompassed by Questions 1-5 until its authority to investigate statutory violations is made clear and the lawfulness of its possession of Mr. Kaʻiamaʻs materials that have been searched and seized is determined.

Since we claim that the ODC lacks constitutional authority over the matters referred to in Questions 1-5 we object to answering.

There are a few points in those questions that, setting aside but not waiving, the constitutional defenses, will require clarification after the constitutional issues are resolved.

The 12 June letter presents 6 numbered questions. Questions 1, 2, and 3 are what ODC labels "distressed property matter" with a reference in 1(a), (b), and (c) to something the ODC calls a "Sovereignty Argument" which we find a confused, confusing, and ultimately unhelpful label. It is also precisely the same label that Evers uses so we conclude that ODC means what Evers means but since Evers meaning isn't clear we can't answer without clarification.

What is meant by "distressed property matter"?

What is meant by "Sovereignty Argument"?

We think we may know but decline to answer until we are certain of the question. In matters of law definitions are central so we are asking for some definition.

This letter speaks directly only to Item #6. We will cooperate as fully as we can while assertion protections we are entitled to.

Question number 6, which is by far the simplest and most tractable, has taken longer than expected to answer. This information is tendered without any waiver as a show of cooperation.

It was only last Thursday that the bank supplied us with the complete records we had asked for. It had previously provided a partial response that included the fronts, but not the backs of the checks the ODC, so we had to make a second request.

The questions contained in items 6 (a)-(g), in our estimation, are appropriately narrow and specific and we can, and are, cooperating in what we understand to be an appropriately and narrowly targetted inquiry into how Mr. Kaʻiama 'handled" the Bank of Hawaii IOLTA account. But so that we are clear our answers to the questions in Item 6 are believed accurate as of this date but since we do not have all the records, and in fairness that we don't have all the records isn't the ODC's doing, nevertheless it is a fact that we have to deal with so we reserve the right to amend and/or supplement what follows to accord with what may result once these records are obtained or determined to be unobtainable.

Accordingly, to the questions contained in items 6(a)-(g) we respond as follows:

Item 6 states: "From January 2014 through January 2018 the balance of Mr. Kaiama's Bank of Hawaii ("BOH") IOLTA remained static, less minor interest transactions, at $22,909.65, with three exceptions."

Though this is not a question, Mr. Kaʻiama states that at no time during this period did he deposit any fees earned from his legal representation of clients for having argued HRCP Rule 12(b)(1) Motion to Dismiss for lack of subject matter jurisdiction and non-complying funds in the IOLTA

account. It is his position that he only accepted funds after the 12(b)(1) representation was completed and his representation over.

In reserving all objections previously raised, including, but not limited to, the unconstitutional legislative enactments and the search and seizure issues, but specifically HRS Section 480E and specifically 480E-13, regulation of attorney conduct, Mr. Kaʻiama responds that said fees were paid after the full performance of legal services.

Question 6(a) asks: "Does Mr. Kaiama have any other IOLTA or Client Trust Accounts? If so, please provide the financial institution/s and account number/s"

The answer to 6(a) is "No".

Mr. Kaʻiama presently has no other IOLTA or Client Trust Accounts. The question is phrased in the present tense "does", but to save ODC the trouble of asking a logical follow up question along the lines of "did he ever during this period", Mr. Kaʻiama states that he had no other IOLTA or Client Trust Accounts between 1 January 2014 and 31 January 2018.

Question 6(b) asks "Why were these funds ($22,909.65) held in trust in Mr. Kaiama's BOH IOLTA?" Our answer is that the question contains a faulty, incomplete factual premise. The premise is that these funds ($22,909.65) were "held in trust".

Mr. Kaʻiama's has, as a result of this matter, realized that he has been inattentive to, and misunderstanding of, one of the requirements of RSCH Rule 11(c)(1)(A)(i). He failed to realize the call of RSCH Rule 11(c)(1)(A)(i) which states: "No funds belonging to the attorney or law firm shall be deposited into a Trust Account except: (i) … (ii) Funds belonging in part to a client and in part presently or potentially to the attorney or law firm must be deposited therein but ***the portion belonging to the attorney or law firm shall be withdrawn when due*** unless the right of the attorney or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved." I add the emphasis.

Reserving all rights and objections available to him, Mr. Ka'iama responds as follows: [a][A]t this moment Mr. Kaʻiama states that he has inadvertently allowed funds due to him to remain in the trust account since, since 1 January 2014. In a continuing effort to cooperate, he is presently making efforts to locate the files and records that would enable him to state the facts with greater certainty and clarity.

At this moment the passage of time and the loss of records impair him from comfortably answering. He believes that none of these funds are due a client as it was his practice to give the client all proceeds when they were due at the first opportunity. He knows of no instance where a client has either claimed, or suggested, that there were any funds due and owing the client in his possession.

If asked, why the inordinate delay in withdrawing these funds Mr. Kaʻiama's response is that it is to be kept in mind that these funds are not from one, or two or three cases, but from an array of

cases of most involving modest amounts which had added up without his noticing, or realizing. This was his inattention. In the course of his practice he moved offices and files were misplaced, client's claims were resolved, and their portion of settlements were promptly tendered to them. He believes that all the amounts left the account are fees and expense reimbursement.

Mr. Kaʻiama states that at no point in time has he had a client that he knows of who has not received the entire proceeds of their settlements.

Question 6(c) asks: "To which client/s or individual/s do these funds belong? Please provide supporting documentation" By "these" we assume the ODC is referring to the "$22,905.65" The answer is "no client" or "individual" that Mr. Kaʻiama is aware of. In order to be absolutely certain, he would have to attempt to locate and contact many former clients, search for client files that may no longer be available and request an extended period of records from his IOLTA account. If so required, Mr. Ka'iama would request an extended period of time to conduct and attempt to complete an such an exhaustive search. Mr. Kaʻiama believes these are earned fees, though he concedes there exists a possibility that they may include reimbursed expenses.

Question 6(d) asks "During this period, for each distressed property owner from whom Mr. Kaʻiama received a fee for making a special appearance in a distressed property case, why did he fail to deposit said fees in his BOH IOLTA, pursuant to HRS 480E-13(4)?"

We repeat our previously stated objections to the constitutionality and we contend, this is an ill-formed question.

HRS [§480E-13] states, in its pertinent parts, that

> Requirements for attorneys licensed in Hawaii. An attorney licensed in the State engaged in the practice of law who performs or provides, or attempts to perform or provide, or who arranges for others to perform or provide, or who assists others to perform or provide, or who makes any solicitation, representation, or offer to perform or provide, any mortgage assistance relief service shall: …
>
> (4) Keep and maintain all moneys received in deposit in the client trust account until such time as the attorney has fully performed each service the attorney contracted to perform or represented would be performed. [L 2016, c 142, pt of §1]

First, by "this period", we understand the ODC to mean the "period beginning 1 January 2014 and ending 31 January 2018". It is our understanding that 480E-13(4) became effective on, or about, 29 June 2016. [6/30/2016- Act 142, 06/29/2016 (Gov. Msg. No. 1244).]

Are we mistaken on this point? If so, please instruct us.

As the question states a false factual premise, as it could be read as meaning the false factual premise that HRS 480E-13(4) was in force prior to 29 June 2016. We decline to answer questions containing false factual premises.

Now if the question were to be rephrased to change the meaning of "this period" to be from "29 June 2016 through 31 January 2018" our objection would have been addressed and we could answer the question except for other objections.

We have asked for a bill of particulars which is a request for particularity and specificity as these particulars and specifics which would enable Mr. Kaʻiama to understand precisely what the ODC is asking and also whether it is lawfully entitled to have to do.

The ODC's of 17 July, top of page 2, lists four (4) areas of concern which does assist us and we thank you, even if does not do so completely.

It is vast improvement on the breathless ramblings and wild false accusations claimed by James Evers's in his 1 March 2018 email to Bruce Kim which begins with the salutation "Bruce". The 1 March email charges Mr. Kaʻiama with "representing distressed property owners". This is a false or, at best, misleading phrasing which I will analyze more later.

Mr. Kaʻiama did in fact represent individuals who, for the sake of argument, we will concede, were "owners of distressed property" but, to the best of his recollection, he did not represent them in their capacity as "distressed property owners" nor did he represent their "distressed property ownership interests". Nor did he intend to. This non-representation of these interests was made clear to the clients and is obvious in the context since 12(b)(1) motions do not speak to the underlying issue be it civil, or criminal. The causes of action is 'irrelevant', to the motions Mr. Kaʻiama argued.

There is another problem and that the that ODC is asking Mr. Kaʻiama, in a sense, perform its investigation for it by asking one question that, we assume, refers to every client. That is objectionable. Let's just say that Mr. Kaʻiama, argued 12(b)(1) in a hundred cases. The ODC's question is a "compound" question consisting of 100 questions and we object.

Mr. Kaʻiama did not perform any "foreclosure interests" or any "consumer interests." Nor did he provide any MARS services. Nor was it his intent to and these limitations were explained to the clients who, universally, indicated comprehension and agreement.

Stated another way is that Mr. Kaʻiama never proceeded with his limited 12(b)(1) representation if he perceived the client didn't understand the limits, why would he? He only proceeded when he was satisfied that the client understood the limits. He had no reason to. It must also be kept in mind that no client, no opposing counsel, or judge ***ever*** appeared to not understand the limits of the representation and no client, opposing party, or judge ever objected to the limited appearance.

The ODC writes, at page 2 of its of 17 July, that it is "seeking to understand Mr. Kaiama's version of events." Mr. Kaiama doesn't have "version" of events. The events occurred as he describes them not as the fevered imagination of Mr. Evers imagines.

A second objection to (d) relates to another false factual premise present in the question. That false premise is along the lines that making a limited appearance for purposes of arguing a 12(b)(1) motion challenging jurisdiction is behavior regulated by HRS 480E-13(4). To Mr. Kaʻiama's best recollection he, in every instance, consciously and consistently limited his legal representation to the issue of jurisdiction and provided no representation in any 'mortgage' 'or distressed property issues" or "consumer" matter and that this limitation was explained to each client.

Evers is the only person complaining. No judge ever did. That no judge objected, that no counsel for opposing party ever objected is reasonably understood as meaning there was "no ethical problem" or that a reasonable person would not conclude there was. Mr. Kaʻiama had no notice of any problem until Evers, for non-innocent reasons, claimed so. Evers' motives and motivations warrant closer examination and will be raised when appropriate which would be after the constitutionality and search and seizure issues are settled.

Thus, by definition, Mr. Kaʻiama's has not provided any legal services related to any issue of the "property" or how it was "distressed" or how to have it cease being "distressed" or a "consumer's rights". If there is a former client making a claim that Mr. Kaʻiama provided what I'll call for ease of reference "MARS" representation, we are unaware of it and contend that claim is mistaken. The open-ended sprawling nature of the question leads to traps that we find unacceptable.

A third false factual premise in (d) is that Mr. Kaʻiama received a fee for "making a special appearance in a distressed property case". The fees were for arguing a 12(b)(1) motion contesting jurisdiction, not for "making a special appearance in a distressed property case" or a "consumer" case or provide a "MARS" service.

Any issues regarding the property, and whether it was or was not, distressed, were explicitly excluded from his representation, just as they had been in the case before Judge Nakamura that the Supreme Court commented upon. This limitation was explained in each instance to the client.

How a client understood this would be an individualized fact determination which is not what question (d) calls for and which is why the form of (d) is objectionable. The case type (foreclosure, traffic ticket, and/or criminal) is purely incidental and not part of the legal representation. The 12(b)(1) challenge to jurisdiction "was" the representation. Mr. Kaʻiama had nothing to do with the "status of the property" or the "status of the mortgage" or the "status of the foreclosure". That Evers implies the Fonotis may have question is probably due more to Evers' or, at Evers' instigation, his investigator's malicious prompting.

Mr. Kaʻiama was concerned, explicitly, and only concerned, with the jurisdictional issue. Mr. Kaʻiama represented the clients only in a challenge to the court's authority to hear the case. No

argument was made as to the "property" or "whether it was or was not distressed" or "whether or how it could cease to be distressed" or how "MARS applied" or what the client, "as a consumer", should or could do.

He didn't "lawyer" a distressed property case. He "lawyered" an objection to jurisdiction and when that objection was ruled on Mr. Kaʻiama, the clients, and the judges all, uniformly, understood that Mr. Kaʻiama's responsibilities ended.

No client, opposing party or judge ever objected. The only person who seems to not fathom this is James F. Evers and he is either doesn't understand the international law issues or is feigning incomprehension in pursuit of his improperly-motivated crusade against those who do not share Evers's opinion regarding the legal status of the Hawaiian Kingdom, in terms of international law. Mr. Kaʻiama's position on this point has support in international law, Evers's doesn't.

Mr. Kaʻiama did not 'lawyer" any MARS services. There's nothing in the MARS definitions that includes arguing 12(b)(1) motions to dismiss for lack of jurisdiction that I find. If I am missing something, please advise.

As Mr. Kaʻiama took no actions that met the statutory definition, the statute doesn't cover his actions and the fees are not MARS fees and not subject to MARS-style escrow.

As previously raised, we reserve a defense here that the legislature does not have the power to regulate any such attorney behavior, that power is a judicial branch power, not a legislative branch power.

Mr. Kaʻiama would argue that both Evers and the ODC are here attempting to enforce a statute of dubious constitutionality. Of course, the Supreme Court could of its own authority, as it has the constitutional authority to regulate the practice of law, regulate legal representation in MARS, consumer or distressed property cases, or special appearances or 12(b)(i) matters in foreclosure, MARS, or a consumer case setting, but it has not, to our knowledge.

ODC is a creature of the Supreme Court seeking to enforce a legislative enactment which is unconstitutional in several respects and that issue will be dealt with at the appropriate time.

If there is a specific allegation that Mr. Kaʻiama did perform a "MARS-defined" service, then Mr. Kaʻiama requests that the ODC ask that specific question rather than question (d) which is overbroad and unclear.

Question (d) asks: "During this period, for each distressed property owner from whom Mr. Kaʻiama received a fee for making a special appearance in a distressed property case, why did he fail to deposit said fees in his BOH IOLTA, pursuant to HRS 480E-13(4)?" Mr. Kaʻiama's answer would be that this too is a false factual premise in that HRS 480E-13(4) requires escrowing of fees paid for arguing 12(b)(1) motions. It is clearly inapplicable, if payment is made after, rather than before, the 12(b)(1) argument is made. So, HRS 480E-13(4) does not apply to 12(b)(1) representation in two ways: first, legally; and, second, factually as Mr. Kaʻiama's

recollection is he, in every instance, performed first, and received payment second. If, by chance he was paid immediately prior to the hearing at which he earned the fee then escrowing it would be a waste of time, his, and the banks. But he has no recollection of that occurring. If the ODC is aware of such an instance it should tell us so.

It should also be kept in mind that this statute, in June 2016, was a "new" statute and even now it is a relatively new statute so perhaps understandings of it, particularly on what many might consider a relative fine legal point, can reasonably disagree.

Third objection. Evers's threat of criminal referral raises not just Fifth Amendment concerns, whether they are 'general' or 'specific' is irrelevant because the Fifth Amendment applies to any questioning by the State and the ODC is an organ of the State. [p. 2] That lawyers may be excluded from the statute regarding criminal prosecution doesn't address what Evers is apparently arguing which is that Mr. Kaʻiama may have "accomplice" liability.

I think it would be legal malpractice for me to advise Mr. Kaʻiama to answer questions simply because an ODC representative "thinks" he should because I only have a "generalized" Fifth Amendment concern [p. 2]. We may need to have the Supreme Court give us advise on this issue after it is sharpened with a more rifled question and briefed.

Fourth objection. The vast and limitless scope of the question is objectionable as it asserts "things" happened "in all cases" which didn't. This is not a "specific question calling for a specific answer." It places too great a burden on Mr. Kaʻiama to "figure" out what the question is. The question states "d. During this period, for each distressed property owner from whom Mr. Kaiama received a fee for making a special appearance in a distressed property case, why did he fail to deposit said fees in his BOH IOLTA, pursuant to HRS 480E-13(4)?" It does not "raise particular questions with specificity" and is objectionable as to that form.

I see great differences between cooperating "with a disciplinary investigation" [p. 1] and "performing" a disciplinary investigation in order to be able to answer an ODC question.

Questions 6(a)(b)(c)(e)(f) and (g) appear are specific, narrowly-focused, and allow, indeed, require a brief succinct answer. Question 6(d) is of a completely different nature. It is an "open-ended" question calling for a sprawling narrative, a story-like answer, not a discrete answer. I am providing a copy of the 16 April 2019 complaint filed by James F. Evers on behalf of the State of Hawaiʻi filed 6 weeks after the first proceeding was dismissed. One wonders why even though Ms. Dradi and D. Keanu Sai are referenced scores of times in the 16 April complaint they are not named. No "consumers" or "owners of distressed property" or "MARS" clients are named and only one date, the effective date of the statute is provided. One also wonders whether the statute even applies to litigation that was ongoing as of the date it became effective. The "Motion to Dismiss" filed by the Fonotis that Mr. Kaʻiama argued appears to have been filed on 21 April 2016 before the effective date of the statue according to Ho'ohiki for the case. Document 16.

[Attachment 01A, 190416, SOH v Kaiama Complaint.
Attachment 01B, 190306 Dismissal Fonoti Dismissal Order]

Question 6(d) reads like a deposition question Evers would ask during that litigation. It is a "total in scope" question calling 'for each' as in "each and every". It is a "discovery question" that evidences that the ODC has adopted Mr. Evers's view voiced in his cozy sounding "Bruce" and "Brad" emails of 1 March 2018 and 27 November 2018 respectively. It is "not a narrow and specific request for a discrete piece of information". We contend it is objectionable and inappropriate to have the Supreme Court ODC even ***appear*** to be performing discovery on Evers's behalf.

The question is unspecific as it does not identify a single client, case, or date. In order to "answer" Mr. Kaʻiama would have to have "perfect recall" or spend vast amounts of time searching. That isn't requiring "cooperation in an investigation" it is requiring "performing an investigation" and it endangers Mr. Kaʻiama by, in a sense, setting him up to fail.

We object to the attempt to recruit Mr. Kaʻiama to perform an investigation of himself for the ODC. If the ODC has particular specific questions we shall answer them.

Let's assume that after the several dozens of hours Mr. Kaʻiama would spent identifying and locating and attempting to recall "each and every" "distressed property owner" or "consumer" or "MARS client" that he only argued a 12(b)(1) motion on behalf of and he 'misses' a case or two, will the ODC then claim he's lying during the investigation because of an oversight.

It is unfair to place this trick-bag before Mr. Kaʻiama and require him to step in. We object.

We will answer specific questions such as those in 6(a)(b)(c)(e)(f) and (g) but we will not weigh anchor to "afishing go", unless after our objections are heard we are ordered to.

James Evers at one time claimed more than 200 'victims' yet only ever named the Fonotis and after that case ran aground, in his new filing he identifies precisely…. none.

So, to sum up our objections to 6(d) we will answer specific questions about specifically identified matters but object to having to answer an open-ended "tell all" question as it is now framed unless required to do so.

Now despite these objections and without waiving them and with an eye towards Rule 2.12A, Mr. Ka'iama states that it was his conscious uniform practice when being employed to argue 12(b)(1) motions contending the Courts lacked of subject matter jurisdiction, to not accept any fees for such legal services, until after he had ''fully performed each service the attorney contracted to perform or represented would be performed" which was the arguing of the motion and nothing else.

It was, and is, his understanding that escrowing payment for services already performed is not required. If this understanding is incorrect, then he would be both surprised and desirous of being shown authority for that proposition. So, the answer to question (d) is "no."

Question 6(e) asks "On September 19, 2014, Check No. 106 was drawn on Mr. Kaiama's BOH IOLTA in the amount of $12,000. Please provide an explanation and a copy of this check (front and back)."

[Attachment 2. Checks 104, 05, 06, 07, 08, and 09, fronts and backs.

104. Client Sam Sayavong, portion of settlement
105. Attorney fees and costs portion of Sayavong
106. Client Roy Vantrease portion of settlement
107. Attorney fees and costs portion of Vantrease personal injury matter
108. Client Jacob Quiling portion of settlement minus only costs, see #109.
109. Mr. Ka'iama reimbursement for costs in minor personal injury matter. No fees charged in light of modesty of the matter.

Check No. 106, drawn on said account, was as payment of settlement proceeds to Client Rory Van Trease arising out of his bodily injury accident.
[Attachment 2.]

Question 6(f) asks: "On September 22, 2014, a deposit of $18,000 was made to Mr. Kaiama's BOH IOLTA. What was the source of these funds? What was the purpose of the deposit? Please provide supporting documentation (i.e. deposit slip, check -front and back-, etc.)"

[Attachment 3. 20140922 Van Trease Proceeds and Deposit]

Deposit in the amount of $18,000.00 was paid by Insurance Carrier National State Insurance Company as settlement of Client Rory Van Trease's bodily injury accident.

Question 6(g) asks: "On October 1, 2014, Check No. 107 was drawn on Mr. Kaiama's BOH IOLTA in the amount of $6,000. Please provide an explanation and a copy of this check (front and back)."

Check No. 107 drawn on said IOLTA account, was as payment of attorney's fees, and GET arising out of the bodily injury claim of Rory Van Trease.

Here is a narrative explaining describing the checks:

Attachment 3. 20140922 Vantrease proceeds check and deposit slip.
Attachment 4. Quiling proceeds check and deposit slip.

Future Attachment 5. Sayavong proceeds check and deposit slip. We requested documents back to January 2014. Sayavong's proceeds check and deposit slip were not provided by the Bank. What's the ODC's pleasure on this?

All checks deposited or withdrawn, as described in response are from settlements arising out of bodily injury claims.

This concludes our response to the matters in Question (6) and so that there is no uncertainty. If we have missed something it is not because we meant to.

We are not "finally and firmly" refusing to either answer or cooperate.

Mr. Ka'iama has answered as much as he can within the confines of objections that we have made as clear as possible.

If we have mis-stated any matter of fact, or law, it is inadvertent and if ODC points it out we are glad to take instruction.

Sincerely,

Stephen Laudig
Attachments as noted in text:
01A. 190416 SOH v Kaiama Complaint
01B. 190306 Dismissal Order
02. Checks 104, 05, 06, 07, 08, and 09, fronts and backs
03. 20140922 Van Trease Proceeds and Deposit
04. 20150518 Quililng Check and Deposit

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State of Hawaii Office of Consumer Protection

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII, by its Office of Consumer Protection, Plaintiff, vs. DEXTER K. KAIAMA, Defendant.	CIVIL NO. 19-1-0609-04 09th Div. (Other Civil Action) COMPLAINT AND SUMMONS

COMPLAINT

Plaintiff State of Hawaii, by its Office of Consumer Protection ("Plaintiff"), for its complaint against Defendant DEXTER K. KAIAMA ("Defendant"), alleges and avers:

ALLEGATIONS COMMON TO ALL COUNTS

1. This action is brought by Plaintiff pursuant to Chapters 480, 480E, and 487 of the Hawaii Revised Statutes ("HRS"), seeking declaratory and injunctive relief, restitution and/or disgorgement, mandatory non-compensatory civil fines and penalties, and any additional equitable relief against the above-named Defendant as the court finds appropriate.

2. This court has jurisdiction over this case pursuant to HRS §§ 480-21 and 603-21.5.

3. Venue for this action is proper because Defendant is alleged to have committed violations of law within the City and County of Honolulu, State of Hawaii at all times material to this complaint.

4. Plaintiff is a Hawaii civil law enforcement agency, whose Director is designated as consumer counsel for the State of Hawaii pursuant to HRS § 487-5.

5. Plaintiff is authorized by HRS § 487-5 to investigate reported or suspected violations of laws enacted and rules adopted for the purposes of consumer protection, and to enforce such laws and rules by bringing civil actions or proceedings.

6. Plaintiff has authority under HRS §§ 480-2(d), 480-15, 480-15.1, 487-5(6), 487-13, 487-14 and 487-15, to enjoin violations of HRS Chapters 480 and 480E and obtain legal, equitable, or other appropriate relief.

7. Defendant is or was at all times material to this complaint a resident of the City and County of Honolulu, State of Hawaii, and an attorney licensed to practice law in the State of Hawaii, who has provided legal services to his clients.

8. Defendant obtained his license to practice law in the State of Hawaii in 1986.

9. Defendant has engaged in the practice law in the State of Hawaii from 1986 to the present.

10. "Distressed property owner" ("distressed property owner") is a term defined in HRS § 480E-2(d), and "means the owner of any distressed property."

11. "Distressed property" is a term defined in HRS § 480E-2(d), and "means any residential real property that:

(1) Is in foreclosure or at risk of foreclosure because payment of any loan that is secured by the residential real property is more than sixty days delinquent;

(2) Had a lien or encumbrance charged against it because of nonpayment of any taxes, lease assessments, association fees, or maintenance fees;

(3) Is at risk of having a lien or encumbrance charged against it because the payments of any taxes, lease assessments, association fees, or maintenance fees are more than ninety days delinquent;

(4) Secures a loan for which a notice of default has been given;

(5) Secures a loan that has been accelerated; or

(6) Is the subject of any solicitation, representation, offer, agreement, promise, or contract to perform any mortgage assistance relief service."

12. "Consumer" ("consumer") is a term defined in HRS § 480-1, and "means a natural person who, primarily for personal, family, or household purposes, purchases, attempts to purchase, or is solicited to purchase goods or services or who commits money, property, or services in a personal investment."

13. During the course of his legal practice, Defendant has engaged in the business of providing legal services in Hawaii to distressed property owners.

14. In those matters for which Defendant has provided legal services in Hawaii to distressed property owners, Defendant has represented consumers.

15. In many of the foreclosure cases in which Defendant has provided legal services in Hawaii to consumers, Defendant has made what Defendant refers to as a "special appearance."

16. In many of the foreclosure cases in which Defendant has made a special appearance to provided legal services in Hawaii to consumers, David Keanu Sai ("Sai") has been involved.

17. In many of the foreclosure cases in which Defendant has made a special appearance to provided legal services in Hawaii to consumers, Rose Dradi ("Dradi") has been involved.

18. "Distressed property consultant" ("consultant") is a term defined in HRS § 480E-2, and "means any person who performs or provides, or attempts to perform or provide, or who

arranges for others to perform or provide, or who assists others to perform or provide, or who makes any solicitation, representation, or offer to perform or provide, any mortgage assistance relief service."

19. "Mortgage assistance relief service" ("mortgage assistance relief service") is a term defined in HRS § 480E-2, and "means any service, plan, or program that is offered or provided to the consumer in exchange for consideration and is represented, expressly or by implication, to assist or attempt to assist the consumer with any of the following:

(1) Stopping, preventing, or postponing the loss of any residential real property, whether by mortgage or deed or trust foreclosure sale or repossession, or otherwise saving any consumer's residential real property from foreclosure or repossession;

(2) Stopping, preventing, or postponing the charging of any lien or encumbrance against any residential real property or reducing or eliminating any lien or encumbrance charged against any residential real property for the nonpayment of any taxes, lease assessments, association fees, or maintenance fees;

(3) Saving the owner's property from foreclosure or loss of home due to nonpayment of taxes;

(4) Negotiating, obtaining, or arranging any modification of any term of a residential loan, including a reduction in the amount of interest, principal balance, monthly payments, or fees;

(5) Negotiating, obtaining, or arranging any extension of the period of time within which the consumer may:

(A) Cure the default on a residential loan;

(B) Reinstate the residential loan;

(C) Redeem any residential real property; or

(D) Exercise any right to reinstate a residential loan or redeem a residential real property;

(6) Negotiating, obtaining, or arranging, with respect to any residential real property:

(A) A short sale;

(B) A deed-in-lieu of foreclosure; or

(C) Any other disposition of the property other than a sale to a third party who is not the residential loan holder;

(7) Obtaining any forbearance or modification in the timing of payments from any residential loan holder or servicer;

(8) Obtaining any forbearance from any beneficiary or mortgagee, or any relief with respect to a tax sale of any residential real property;

(9) Obtaining any waiver of an acceleration clause or balloon payment contained in any promissory note or other contract secured by a mortgage on any residential real property or contained in the mortgage;

(10) Obtaining any extension of the period within which the owner may reinstate the owner's rights with respect to the owner's property;

(11) Obtaining a loan or advance of funds while the consumer is in foreclosure or at risk of foreclosure due to nonpayment of any obligation related to a residential real property, including but not limited to one or more loans, taxes, lease assessments, association fees, or maintenance fees;

(12) Obtaining a loan or advance of funds during any post-tax sale redemption period;

(13) Considering or deciding whether a consumer should continue making payments on any loan, taxes, lease assessments, association fees, or maintenance fees or any other obligation related to a residential real property;

(14) Exercising any cure of default;

(15) Avoiding or ameliorating the impairment of the property owner's credit resulting from the recording or filing of a notice of default or the conduct of a foreclosure sale or tax sale;

(16) Drafting, preparing, performing, creating, or otherwise obtaining a forensic loan audit, a forensic securitization audit, or any other type of audit, report, summary, affidavit, or declaration involving an opinion, determination, or analysis of whether a lending party has an enforceable mortgage or lien, predicated upon claims that a lending party that is a party to a pooling and service agreement failed to adhere to the terms of that agreement, or that errors occurred after the signing of the mortgage loan, or disputing whether the lending party is the holder of the promissory note, or any argument that the lending party has failed to comply with federal or state mortgage lending laws;

(17) Drafting, preparing, performing, creating, or otherwise obtaining any documentation used or intended to be used to advance any legal theory in defense of a foreclosure or ejectment action, regardless of any disclaimer as to providing legal advice; or

(18) Understanding any legal theory that may be used in defense of a foreclosure or ejectment action, regardless of any disclaimer as to providing legal advice."

20. At all times material to this complaint, Sai contracted with distressed property owners to serve as their consultant.

21. Sai provided his clients with mortgage assistance relief services.

22. At all times material to this complaint, Dradi contracted with distressed property owners to serve as their consultant.

23. Dradi provided her clients with mortgage assistance relief services.

24. In those matters for which Sai has served as a consultant in Hawaii to distressed property owners, Sai has represented consumers.

25. In those matters for which Dradi has served as a consultant in Hawaii to distressed property owners, Dradi has represented consumers.

26. In those matters for which Dradi has served as a consultant in Hawaii to Sai's clients, Dradi has served as Sai's assistant.

27. In many of the foreclosure cases in which Defendant has made a special appearance to provided legal services in Hawaii to consumers, a motion to dismiss has already been filed in the consumer's foreclosure case by the consumer, supposedly acting pro se.

28. In many of the foreclosure cases in which Defendant has made a special appearance to provide legal services in Hawaii to consumers, the motion to dismiss was prepared by Sai and/or Dradi.

29. In the foreclosure cases in which Defendant has made a special appearance to provide legal services in Hawaii to consumers, Defendant did not prepare the motion to dismiss.

30. Arrangements were made by Sai and/or Dradi for the filings of these motions to dismiss.

31. The motions to dismiss filed in the consumers' foreclosure cases were substantially similar in form and content.

32. Sai purports to have a doctorate degree in Hawaiian history.

33. Sai purports to have authored numerous articles, essays and papers embracing the position that the Kingdom of Hawaii continues to exist today because the government for the Kingdom of Hawaii was illegally overthrown in 1893 (the "sovereignty theory").

34. Sai has offered to provide consultation services to consumers so that they might use the sovereignty theory to their advantage in lawsuits pending in state or federal courts in Hawaii.

35. For consumers to obtain assistance with their foreclosure cases from Sai, Sai used a standard form of written contract, which required consumers to pay for Sai's services in advance.

36. In the purported capacity as Sai's assistant, Dradi used a standard form of written contract for consumers seeking to obtain assistance with their foreclosure cases, which required consumers to pay for Dradi's services in advance.

37. Dradi oftentimes served as the primary point of contact between consumers and Sai.

38. Sai's strategy to assist consumers named as defendants to foreclosure actions filed in Hawaii was to contest the court's jurisdiction by filing motions to dismiss.

39. Consumers who retained Dradi and/or Sai for foreclosure assistance would be presented, for the consumer's signature, with an answer to the foreclosure complaint and/or a motion to dismiss, to be filed with the court pro se.

40. Consumers who retained Dradi and/or Sai for foreclosure assistance have been told that because the government for the Kingdom of Hawaii was illegally overthrown in 1893, the State of Hawaii is illegal, the State of Hawaii is without authority to act as it does, the laws passed

by the State of Hawaii are unenforceable, the courts in Hawaii are without judicial authority to act, and the courts in Hawaii lack jurisdiction to hear foreclosure cases.

41. In many cases where Sai has been retained to assist distressed property owners, Sai provided declaration testimony in support of the motion to dismiss to expound upon the sovereignty theory.

42. On behalf of consumers, in expounding upon the sovereignty theory, and in support of consumers' motions to dismiss their foreclosure cases, Sai has taken the position that the State of Hawaii is illegal, the State of Hawaii is without authority to act as it does, the laws passed by the State of Hawaii are unenforceable, the courts in Hawaii are without judicial authority to act, and the courts in Hawaii lack jurisdiction to hear foreclosure cases.

43. On behalf of consumers, in expounding upon the sovereignty theory, and in support of consumers' motions to dismiss their foreclosure cases, Sai has taken the position that the mortgages recorded in the Bureau of Conveyances for the State of Hawaii do not affect legal title to land.

44. On behalf of consumers, in expounding upon the sovereignty theory, and in support of consumers' motions to dismiss their foreclosure cases, Sai has taken the position that the Bureau of Conveyances for the State of Hawaii is illegal, and its records do not control matters such as property ownership, transfer of title, lien validity or lien priority.

45. The motions to dismiss filed in consumers' foreclosure cases were typically set for hearing, which entailed an appearance in court by or on behalf of consumers.

46. Neither Sai nor Dradi is an attorney licensed to practice law in Hawaii, and accordingly, neither Sai nor Dradi is authorized to appear in a court of law in a representative capacity on behalf of consumers.

47. For representation at the hearings on the motions to dismiss their foreclosure cases, Defendant's services were oftentimes recommended to consumers by Dradi or Sai.

48. Upon information and belief, Sai made it his practice to associate with Defendant for Defendant's assistance in contesting the jurisdiction of the courts in Hawaii to hear foreclosure cases.

49. Defendant believes that the Kingdom of Hawaii continues to exist today because the government for the Kingdom of Hawaii was illegally overthrown in 1893.

50. Defendant agreed to provide legal services to many of the consumers referred to him by Sai or Dradi.

51. Upon information and belief, during the course of his legal practice, Defendant has appeared in court, whether by general appearance or special appearance, in no less than 200 foreclosure cases to assist consumers named as defendants to foreclosure actions filed in Hawaii.

52. Upon information and belief, during the course of his legal practice, Defendant has appeared in court in no less than 100 foreclosure cases to argue that a Hawaii court lacked subject matter jurisdiction based upon the sovereignty theory.

53. Upon information and belief, during the course of his legal practice, Defendant made a special appearance in court in no less than 100 foreclosure cases on behalf of consumers to argue that the court lacked subject matter jurisdiction based upon the sovereignty theory.

54. Upon information and belief, during the course of his legal practice, Defendant made a special appearance in court in no less than 100 foreclosure cases involving motions to dismiss that Defendant did not sign.

55. In foreclosure cases where Defendant makes a special appearance, the consumers do not typically meet with Defendant to review the options by which they might appear and defend, or otherwise respond to, their foreclosure cases.

56. In foreclosure cases where Defendant makes a special appearance, in advance of Defendant doing anything to represent the consumer's interests, Sai or Dradi will have already arranged with the consumers to have filed, pro se, an answer to the foreclosure complaint or a motion to dismiss, or in some instances both an answer and a motion to dismiss.

57. In foreclosure cases where Defendant makes a special appearance, by the time Defendant has agreed to represent the consumer, the motion to dismiss has already been filed and set for hearing.

58. In foreclosure cases where Defendant makes a special appearance, the consumers do not typically meet with Defendant before Defendant's retention to discuss such things as the facts of the case, the terms of Defendant's retention, or Defendant's opinion or advice as to whether to proceed with the hearing based on the sovereignty theory described in the motion to dismiss.

59. In foreclosure cases where Defendant makes a special appearance, the consumers typically learn about the sovereignty theory to be advanced on their behalf from Dradi and/or Sai.

60. Defendant would oftentimes rely upon Sai or Dradi to communicate with the consumers about the terms and scope of Defendant's representation, the payment of Defendant's fees, and the date, time and location of any court hearing scheduled in their foreclosure cases.

61. Defendant's clients would oftentimes be instructed by Sai or Dradi to attend their foreclosure hearings and bring cash with which to pay for Defendant's services.

62. Defendant's services were generally intended to stop the foreclosure action filed against a consumer's residential real property from proceeding.

63. In foreclosure cases where Defendant makes a special appearance, the scope of Defendant's services generally consisted of making a special appearance in court for purposes of arguing the motion to dismiss and attempting to convince the presiding judge that the court lacked subject matter jurisdiction.

64. In foreclosure cases where Defendant makes a special appearance, once the motion to dismiss had been denied, the consumers did not typically meet with Defendant to review alternative options for defending or otherwise dealing with their foreclosure cases, and Defendant was not typically hired to provide advice or additional legal services for the consumers, other than possibly moving for reconsideration of the denial of the motion to dismiss, or, after the passage of time, filing another motion to dismiss.

65. Sai and Dradi were at all times material to this complaint subject to the requirements and prohibitions applicable to consultants, pursuant to HRS Chapter 480E.

66. The homeowners who entered into contracts with Defendant as described herein were at all times material to this complaint distressed property owners and consumers.

67. As an attorney duly licensed in the State of Hawaii to provide legal services, Defendant was not a consultant under HRS § 480E-2, but Defendant is and was at all times material to this complaint subject to the requirements and prohibitions set forth in HRS Chapter 480E-13 applicable to attorneys.

68. Dradi misrepresented to consumers, both explicitly and implicitly, that the services being offered to consumers based on the sovereignty theory would enable consumers to protect their residential real properties from foreclosure.

69. Dradi misrepresented to consumers, both explicitly and implicitly, that the services being offered to consumers based on the sovereignty theory would be great value and benefit to consumers.

70. Sai misrepresented to consumers, both explicitly and implicitly, that the services being offered to consumers based on the sovereignty theory would enable consumers to protect their residential real properties from foreclosure.

71. Sai misrepresented to consumers, both explicitly and implicitly, that the services being offered to consumers based on the sovereignty theory would be great value and benefit to consumers.

72. Dradi did not inform consumers of the failure of Dradi, Sai, or Defendant to ever successfully have a motion to dismiss a consumer's foreclosure case granted based on the sovereignty theory.

73. Sai did not inform consumers of the failure of Sai, Dradi, or Defendant to ever successfully have a motion to dismiss a consumer's foreclosure case granted based on the sovereignty theory.

74. Sai entered contracts to provide services to distressed property owners without regard to complying with the requirements and prohibitions of HRS Chapter 480E or 12 C.F.R. part 1015 ("MARS Rule").

75. Dradi entered contracts to provide services to distressed property owners without regard to complying with the requirements and prohibitions of HRS Chapter 480E or the MARS Rule.

76. When Defendant was retained to argue the motions to dismiss filed in consumers' foreclosure cases, Defendant knew, or at least could have discovered, that the motions to dismiss

had been prepared and filed by Dradi and/or Sai, particularly because of the volume of case referrals made to Defendant and the pattern of conduct.

77. When Defendant was retained to argue the motions to dismiss filed in consumers' foreclosure cases, Defendant knew, or at least could have discovered, that the consumers had paid in advance for the preparation and filing of the motions to dismiss.

78. Upon information and belief, at no time did Defendant ever inform his clients who were distressed property owners that they were being charged advance fees by consultants in violation of applicable consumer protection laws.

79. At no time did Defendant ever inform Plaintiff that consultants had collected advanced fees from his clients who were distressed property owners.

80. For Defendant to represent distressed property owners, Defendant was required by law to use a written contract which contained a complete description identifying all of the services to be performed by Defendant, and identify the terms and conditions on which those services were to be performed.

81. Dradi represented to consumers in cases where Defendant was to make a special appearance that the fees for Defendant's services would be four hundred dollars per case.

82. The amounts charged to consumers for Defendant's services were in addition to the amounts charged by Sai.

83. The amounts charged to consumers for Defendant's services were in addition to the amounts charged by Dradi.

84. Dradi arranged for and collected monies from consumers as payment for her services.

85. On occasion, Dradi arranged for and/or collected monies from consumers on behalf of Sai as payment for Sai's services.

86. On occasion, Dradi arranged for and/or collected monies from consumers on behalf of Defendant as payment for Defendant's services.

87. "Fully performed" ("fully performed") is a term defined in HRS § 480E-2, and "means:

(1) In the case of relief requiring the consent of any lending party, the distressed property consultant or attorney has:

(A) Carried out and provided all of the services the distressed property consultant or attorney contracted to perform or represented would be performed; and

(B) Obtained from the lending party a written offer for mortgage assistance relief that the consumer has accepted by executing the written contract.

(2) In the case of relief requiring the consent of any non-lending party, including any person that may hold a lien or encumbrance against any residential real property, the distressed property consultant or attorney has:

(A) Carried out and provided all of the services the distressed property consultant or attorney contracted to perform or represented would be performed; and

(B) Obtained from the non-lending party a written offer for mortgage assistance relief that the consumer has accepted by executing the written contract.

(3) In all other cases, being instances where consent is not obtained as the result of a mortgage assistance relief service, the property owner obtains the desired relief from a court of law, which includes a favorable determination that the mortgage assistance relief service conferred a benefit upon the property owner and is therefore compensable."

88. Consumers using the services of Dradi and/or Sai to pursue the dismissal of their foreclosure cases based upon the sovereignty theory failed to obtain the desired "relief from a court of law."

89. Consumers using the services of Defendant to pursue the dismissal of their foreclosure cases based upon the sovereignty theory failed to obtain the desired "relief from a court of law."

90. When consumers were asked to pay the contract amounts for Dradi's services, Dradi had not fully performed each service she had contracted to perform or represented would be performed.

91. When consumers were asked to pay the contract amounts for Sai's services, Sai had not fully performed each service he had contracted to perform or represented would be performed.

92. At the time consumers were asked to pay the contract amounts for Defendant's services, Defendant had not fully performed each service he contracted to perform or represented would be performed.

93. At the time consumers made full or partial payment of the contract amount for Dradi's services, Dradi had not fully performed each service she had contracted to perform or represented would be performed.

94. At the time consumers made full or partial payment of the contract amount for Sai's services, Sai had not fully performed each service Sai had contracted to perform or represented would be performed.

95. At the time consumers made full or partial payment of the contract amount for Defendant's services, Defendant had not fully performed each service Defendant was to perform.

96. In foreclosure cases where Defendant made a special appearance, Defendant typically met his client(s) for the first time at the courthouse on the day of the hearing.

97. In foreclosure cases where Defendant made a special appearance, Defendant was typically paid in cash by his client(s) on the day of the hearing.

98. Upon receipt of funds paid from consumers in foreclosure cases where Defendant made a special appearance, Defendant did not deposit those funds into a client trust account.

99. Upon receipt of funds paid from consumers in foreclosure cases where Defendant made a special appearance, instead of Defendant depositing those funds into a client trust account, Defendant treated those funds as having been earned.

100. In foreclosure cases where Defendant made a special appearance, following the Court's ruling on the motion to dismiss argued by Defendant, Defendant typically considered his representation of the consumer as having concluded.

101. Upon information and belief, in foreclosure cases where Defendant made a special appearance, every motion to dismiss argued by Defendant was denied by the court. In other words, in foreclosure cases where Defendant made a special appearance, Defendant has never persuaded a court to grant a motion to dismiss based on the sovereignty theory.

102. While the novelty of the sovereignty theory may have given hope to consumers when the sovereignty theory was first used to contest the jurisdiction of courts in Hawaii to hear foreclosure cases, the sovereignty theory has been repeatedly and resoundingly rejected by courts in Hawaii when used as the basis to contest the jurisdiction of courts in Hawaii.

103. Despite the lack of any benefit to distressed property owners attributable to services provided by Dradi, Sai or Defendant based upon the sovereignty theory, consumers have repeatedly been advised to pursue dismissal of their foreclosure actions based on the sovereignty theory, using the alleged expertise of Dradi and/or Sai and Defendant.

104. The repeated sale of services using the sovereignty theory as a basis to provide some kind of meaningful relief to distressed property owners, when such services have shown to

be of no benefit, suggests that consumers are being misled about the efficacy of the mortgage assistance relief services being offered.

105. Based upon the length of time during which courts in Hawaii have been asked to consider the sovereignty theory advocated on behalf of consumers, and based on the repeated rejection of the sovereignty theory when used as the basis to contest the jurisdiction of courts in Hawaii, the only fair conclusion is that consumers are not being told that these same services used by distressed property owners in the past have provide little or no meaningful assistance.

106. In reality, the continued sale of such services to distressed property owners based upon the sovereignty theory is a scam.

107. Plaintiff has authority to enforce applicable consumer protections laws which govern unfair or deceptive acts or practices.

108. Consultants like Dradi and Sai should not be allowed to violate federal and state laws in the process of recruiting consumers to pay advance fees for services which, history shows, are of no benefit to homeowners.

109. Defendant knew or should have known that Dradi and Sai were violating federal and state laws by collecting advance fees for services provided to distressed property owners.

110. Defendant's practice of making special appearances in foreclosure cases on behalf of distressed property owners referred to Defendant by Dradi and/or Sai had the effect of perpetuating the unlawful conduct of Dradi and Sai, since the consultants could continue to do their part on the front end, soliciting new clients and collecting advance fees to prepare and file the motions to dismiss, knowing that Defendant would do his part on the back end, and argue the motions to dismiss in court.

111. In foreclosure cases where Defendant made a special appearance, and the court denied the motion to dismiss argued by Defendant, no benefit was conferred upon the consumers by the services of Sai or Dradi in preparing or filing the motion to dismiss.

112. In foreclosure cases where Defendant made a special appearance, and the court denied the motion to dismiss argued by Defendant, no benefit was conferred upon the consumers by the services of Defendant.

113. In foreclosure cases where Defendant made a special appearance, and the court denied the motion to dismiss argued by Defendant, neither Sai nor Dradi fully performed.

114. In foreclosure cases where Defendant made a special appearance, and the court denied the motion to dismiss argued by Defendant, the services within the scope of Defendant's representation were not fully performed.

115. In foreclosure cases where Defendant made a special appearance, following the Court's ruling on the motion to dismiss argued by Defendant, Defendant typically did not refund to the consumers the money paid for Defendants' services.

116. In foreclosure cases where Defendant made a special appearance, and the court denied the motion to dismiss argued by Defendant, no benefit was conferred upon the consumers by the services of Defendant.

117. In foreclosure cases where Defendant made a special appearance, following the Court's ruling on the motion to dismiss argued by Defendant, Defendant deferred to Sai and Dradi to advise the consumers as to their options in dealing with their foreclosure cases.

118. Defendant did not inform consumers, either verbally or in writing, that Sai and Dradi were prohibited from taking, asking for, claiming, demanding, charging, collecting, and/or

receiving compensation from consumers before having fully performed the services they had contracted to perform or represented would be performed.

119. Defendant did not inform consumers, either verbally or in writing, that Sai and Dradi were prohibited from requesting or receiving any fees that exceeded the two most recent monthly mortgage installments of principal and interest on the loan first secured by the consumer's residential real property or the most recent annual real property tax charged against the consumer's residential real property.

120. Defendant did not inform consumers, either verbally or in writing, that each consumer was entitled to cancel the consumer's contracts with Sai and Dradi, without penalty or obligation, at any time before Sai and Dradi had fully performed each and every service they had contracted to perform or represented would be performed.

121. Defendant did not inform his distressed property owner clients, either verbally or in writing, that Defendant was required to retain all of their payments in Defendant's client trust account until such time as he had fully performed.

122. Defendant did not inform his distressed property owner clients, either verbally or in writing, that the services contracted to be performed by Defendant were not fully performed.

123. Defendant did not inform his distressed property owner clients, either verbally or in writing, that Defendant had treated their payments as if they had been earned, even though the services contracted to be performed by Defendant were not fully performed.

124. Through Defendant's acts and omissions, Defendant has committed numerous violations of HRS § 480E-13.

125. Violations of HRS § 480E-13 constitute per se violations of HRS §480-2.

126. Defendant's conduct offends established public policy and is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers, and constitutes unfair or deceptive acts or practices in the conduct of any trade or commerce in violation of HRS §480-2(a).

COUNT I
Failure to Use Written Contracts
(in Violation of HRS § 480E-13(1)

127. Plaintiff repeats and realleges each and every allegation contained in the preceding paragraphs as though set forth fully herein.

128. In the course of acting as an attorney licensed to practice law in the State of Hawaii willing to perform or provide services to assist consumers with their foreclosure actions pending in Hawaii, Defendant failed, on or after June 29, 2016, to use written contracts that identified each of the services that Defendant was to provide.

129. Each and every instance in which Defendant represented a consumer in foreclosure, on or after June 29, 2016, without using a written contract, constitutes a violation of HRS § 480E-13(1).

130. Each and every instance in which Defendant, on or after June 29, 2016, failed to use a written contract identifying each mortgage assistance relief service to be provided to consumers constitutes a violation of HRS § 480E-13(1).

131. Each and every instance in which Defendant failed to use a written contract in violation of HRS § 480E-13(1), or failed to use a written contract identifying each mortgage assistance relief service to be provided to consumers, constitutes a separate and independent violation of HRS § 480-2(a).

COUNT II
Failure to Deposit Client Funds in a Client Trust Account
(in Violation of HRS § 480E-13(3)

132. Plaintiff repeats and realleges each and every allegation contained in the preceding paragraphs as though set forth fully herein.

133. In the course of acting as an attorney licensed to practice law in the State of Hawaii willing to perform or provide services to assist consumers with their foreclosure actions pending in Hawaii, Defendant failed, on or after June 29, 2016, to deposit into the attorney's client trust account all moneys paid by or on behalf of consumers.

134. Each and every instance in which Defendant failed, on or after June 29, 2016, to deposit into the attorney's client trust account all moneys paid by or on behalf of consumers constitutes a violation of HRS § 480E-13(3).

135. Each and every instance in which Defendant failed to deposit into the attorney's client trust account all moneys paid by or on behalf of the consumer in violation of HRS § 480E-13(3) constitutes a separate and independent violation of HRS § 480-2(a).

COUNT III
Failure to Maintain Client Funds in Trust Before Having Fully Performed
(in Violation of HRS § 480E-13(4)

136. Plaintiff repeats and realleges each and every allegation contained in the preceding paragraphs as though set forth fully herein.

137. In the course of acting as an attorney licensed to practice law in the State of Hawaii willing to perform or provide services to assist consumers with their foreclosure actions pending in Hawaii, upon receiving client funds from consumers on or after June 29, 2016, Defendant did not deposit those funds into the attorney's client trust account, but instead treated said client funds

as having been earned, without regard to whether Defendant had fully performed each service Defendant contracted to perform or represented would be performed.

138. Defendant sought the dismissal of consumers' foreclosure cases on jurisdictional grounds, based on the sovereignty theory, but those motions to dismiss were, without exception, denied.

139. Defendant's failure to obtain the desired relief from a court of law means that Defendant's services have not been fully performed for Defendant's distressed property owner clients.

140. Any monies which Defendant was required to deposit into his client trust account, on or after June 29, 2016, on behalf of Defendant's distressed property owner clients were either wrongfully not deposited, or wrongfully withdrawn.

141. Plaintiff has subpoenaed the bank records for Defendant's client trust account and determined that from and after June 29, 2016, Defendant failed to deposit into his client trust account monies paid to him by or on behalf of Defendant's distressed property owner clients.

142. Each and every instance in which Defendant failed, on or after June 29, 2016, to maintain in his client trust account all moneys paid by or on behalf of Defendant's distressed property owner clients, until Defendant had fully performed each service Defendant contracted to perform or represented would be performed, constitutes a violation of HRS § 480E-13(4).

143. Each and every instance in which Defendant failed to deposit into the attorney's client trust account all moneys paid by or on behalf of consumers in violation of HRS § 480E-13(3) constitutes a separate and independent violation of HRS § 480-2(a).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this court, pursuant to applicable laws and the Court's inherent authority:

1. Find, order, adjudge, and declare that Defendant's conduct as alleged herein violates the statutory provisions of HRS Chapters 480E and 480, and enter judgment in favor of Plaintiff accordingly.

2. Issue an order pursuant to HRS §§ 480-15 and 487-15, and enter judgment in favor of Plaintiff accordingly, permanently enjoining Defendant, his agents, servants, employees, successors, and assigns, directly or indirectly, individually or in concert with others, or through any corporate or other device, from either:

a. All further and future representation of distressed property owners, meaning that Defendant shall be permanently restrained and enjoined, both directly or indirectly through any corporation, partnership, limited liability company or other device, from taking any of the following actions either in Hawaii and/or on behalf of a Hawaii consumer or Hawaii resident: (i) acting as attorney for, or otherwise assisting or advising, someone in foreclosure; (ii) acting as attorney for, or otherwise assisting or advising, someone in default to a mortgagee, condominium association or homeowners' association; and (iii) advising, expressly or by implication, any homeowner to stop paying the homeowner's mortgage, provided however, that nothing herein would preclude Defendant from appearing on behalf of himself in a foreclosure suit filed against Defendant's personal residence; or

b. All further and future representation of distressed property owners represented by one or more consultants, meaning that, for any distressed property owners

represented by one or more consultants, Defendant shall be permanently restrained and enjoined, both directly or indirectly through any corporation, partnership, limited liability company or other device, from taking any of the following actions either in Hawaii and/or on behalf of a Hawaii consumer or Hawaii resident: (i) acting as attorney for, or otherwise assisting or advising, someone in foreclosure; (ii) acting as attorney for, or otherwise assisting or advising, someone in default to a mortgagee, condominium association or homeowners' association; and (iii) advising, expressly or by implication, any homeowner to stop paying the homeowner's mortgage, provided however, that nothing herein would preclude Defendant from appearing on behalf of himself in a foreclosure suit filed against Defendant's personal residence; or

c. Violating HRS Chapters 480E and 480, the MARS Rule, or any other applicable federal or state consumer protection laws pertaining to the representation of distressed property owners, meaning Defendant may continue to represent distressed property owners, provided that Defendant not work with David Keanu Sai and/or Rose Dradi, and provided that Defendant not take cases where Defendant appears by special appearance, and provided further than Defendant strictly adhere to complying with applicable federal or state consumer protection laws, including but not limited to: (i) using written contracts with his clients which fully identify and describe all of the services which Defendant agrees to perform on behalf of the client(s); (ii) fairly and honestly disclosing to the client(s) how the services will be provided, along with the estimated time and cost entailed before the services have been fully performed; (iii) fairly and honestly disclosing to the client(s) the attorney's historical record for success or failure in obtaining the desired relief for other distressed property owner clients; (iv) depositing all funds paid by or on

behalf of distressed property owner clients into the attorney's client trust account; (v) leaving in the attorney's client trust account all funds paid by or on behalf of distressed property owner clients until such time as the attorney's services for the client have been "fully performed" as that term is defined in HRS § 480E-2; and (vi) complying in all respects with HRS Chapters 480E and 480 and 481A, and the MARS Rule.

3. Assess non-compensatory civil fines and penalties payable to Plaintiff and against Defendant, pursuant to HRS § 480-3.1, in the amount of $10,000.00 for each and every violation of HRS Chapters 480 and 480E as described above in Counts I through III, and enter judgment in favor of Plaintiff accordingly.

4. Assess additional non-compensatory civil fines and penalties payable to Plaintiff and against Defendant, pursuant to HRS § 480-13.5, in the amount of $10,000.00 for each and every violation of HRS Chapters 480 and 480E as described above in Counts I through III involving clients aged sixty-two years or older at the time of Defendant's representation, and enter judgment in favor of Plaintiff accordingly.

5. Find, order, adjudge, and declare that each and every one of Defendant's contracts involving Defendant's representation of distressed property owner clients since June 29, 2016, is void and unenforceable at law or equity, pursuant to HRS § 480-12, and enter judgment in favor of Plaintiff accordingly.

6. Order Defendant to identify all of Defendant's distressed property owner clients that Defendant has represented since June 29, 2016, and order Defendant to provide an accounting of all funds paid by or on behalf of those clients.

7. Order Defendant to pay full restitution to each of the Defendant's distressed property owner clients that Defendant has represented since June 29, 2016, pursuant to HRS § 487-14, and enter judgment in favor of Plaintiff accordingly.

8. Order the disgorgement, via payment to Plaintiff, of all monies and assets obtained by Defendant as a result of any of the wrongful acts referenced in this Complaint or any other act in violation of HRS Chapters 480 or 480E, and enter judgment in favor of Plaintiff accordingly, at least to the extent said monies and assets have not already been paid as restitution to Defendant's distressed property owner clients.

9. Assess and award judgment in favor of Plaintiff and against the Defendant for Plaintiff's costs of its investigation, and its costs of bringing this action.

10. Award Plaintiff such other and additional relief as the Court may determine to be just and equitable under the circumstances.

DATED: Honolulu, Hawaii, April 16, 2019.

JAMES F. EVERS
Attorney for Plaintiff

STATE OF HAWAI'I CIRCUIT COURT OF THE FIRST CIRCUIT	SUMMONS TO ANSWER CIVIL COMPLAINT	CASE NUMBER 19-1-0609-04

PLAINTIFF, STATE OF HAWAII, by its Office of Consumer Protection,	VS.	DEFENDANT. DEXTER K. KAIAMA,

PLAINTIFF'S ADDRESS (NAME, ADDRESS, TEL. NO.)

State of Hawaii Office of Consumer Protection,
Attn. James F. Evers, Esq.
235 South Beretania Street, Room 801
Honolulu, Hawaii 96813-2419
Telephone: (808) 586-5980

TO THE ABOVE-NAMED DEFENDANT(S)

You are hereby summoned and required to file with the court and serve upon

James F. Evers, Esq.,

plaintiff's attorney, whose address is stated above, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

THIS SUMMONS SHALL NOT BE PERSONALLY DELIVERED BETWEEN 10:00 P.M. AND 6:00 A.M. ON PREMISES NOT OPEN TO THE GENERAL PUBLIC, UNLESS A JUDGE OF THE ABOVE-ENTITLED COURT PERMITS, IN WRITING ON THIS SUMMONS, PERSONAL DELIVERY DURING THOSE HOURS.

A FAILURE TO OBEY THIS SUMMONS MAY RESULT IN AN ENTRY OF DEFAULT AND DEFAULT JUDGMENT AGAINST THE DISOBEYING PERSON OR PARTY.

DATE ISSUED	CLERK	
APR 16 2019	N. MIYATA	FIRST CIRCUIT COURT STATE OF HAWAII SEAL

I do hereby certify that this is full, true, and correct copy of the original on file in this office

Circuit Court Clerk

In accordance with the Americans with Disabilities Act and other applicable state and federal laws, if you require a reasonable accommodation for a disability, please contact the ADA Coordinator at the First Circuit Court Administration Office at PHONE NO. 539-4333, FAX 539-4322, or TTY 539-4853, at least ten (10) working days prior to your hearing or appointment date.

[redacted] #5304
[redacted] SANCHEZ #6613
State of Hawai'i
Office of Consumer Protection
235 South Beretania Street, Room 801
Honolulu, Hawai'i 96813-2419
Telephone: (808) 586-5980

Attorneys for Intervening Petitioner
State of Hawai'i Office of Consumer Protection

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF8 MASTER PARTICIPATION TRUST, Plaintiff, vs. TALA RAYMOND FONOTI; WILLADEAN LEHUANANI GRACE; CAPITAL ONE BANK (USA), N.A.; JOHN DOES 1-50; JANE DOES 1-50; DOE PARTNERSHIPS 1-50; DOE CORPORATIONS 1-50; DOE ENTITIES 1-50; AND DOE GOVERNMENTAL UNITS 1-50, Defendants.	CIVIL NO. 15-1-0371-03 JPC (Foreclosure) ORDER GRANTING IN PART AND DENYING IN PART RESPONDENT DAVID KEANU SAI'S MOTION FOR RECONSIDERATION PURSUANT TO RULES 59 AND 60, FILED DECEMBER 31, 2018 NON-HEARING MOTION Judge: Honorable Jeffrey P. Crabtree
STATE OF HAWAII, BY ITS OFFICE OF CONSUMER PROTECTION, Intervening Petitioner, vs. ROSE DRADI, DAVID KEANU SAI, AND DEXTER KAIAMA, Respondents.	

ORDER GRANTING IN PART AND DENYING IN PART RESPONDENT DAVID KEANU SAI'S MOTION FOR RECONSIDERATION PURSUANT TO RULES 59 AND 60, FILED DECEMBER 31, 2018

Having reviewed and fully considered Respondent David Keanu Sai's non-hearing Motion For Reconsideration Pursuant to Rules 59 and 60, filed December 31, 2018 ("Motion"), and having reviewed the opposition filed by the Office of Consumer Protection ("OCP") on January 2, 2019, as well as the reply brief filed by Respondent David Keanu Sai on January 7, 2019, and upon consideration of the record and files in the case, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The Motion is Granted in Part and Denied in Part.

2. The Motion is denied insofar as it asks the Court to dismiss OCP's claims with prejudice.

3. The Motion is granted in part to allow for the entry of a "First Amended Order Granting Respondent David Keanu Sai's Motion To Dismiss, Filed November 5, 2018, And Respondent Dexter Kaiama's Joinder, Filed November 19, 2018, Without Prejudice," which vacates and replaces the Court's "Order Granting Respondent David Keanu Sai's Motion To Dismiss, Filed November 5, 2018, And Respondent Dexter Kaiama's Joinder, Filed November 19, 2018, Without Prejudice," entered December 19, 2018.

DATED: Honolulu, Hawaii, MAR - 4 2019.

Jeffrey P. Crabtree

FIRST CIRCUIT COURT STATE OF HAWAII SEAL

THE HONORABLE JEFFREY P. CRABTREE
JUDGE OF THE ABOVE-ENTITLED COURT

[signature lines for appearing counsel appear on the next page]

JAMES F. EVERS #5304
MELINA D. SANCHEZ #6613
State of Hawai'i
Office of Consumer Protection
235 South Beretania Street, Room 801
Honolulu, Hawai'i 96813-2419
Telephone: (808) 586-5980

Attorneys for Intervening Petitioner
State of Hawai'i Office of Consumer Protection

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF8 MASTER PARTICIPATION TRUST,

Plaintiff,

vs.

TALA RAYMOND FONOTI; WILLADEAN LEHUANANI GRACE; CAPITAL ONE BANK (USA), N.A.; JOHN DOES 1-50; JANE DOES 1-50; DOE PARTNERSHIPS 1-50; DOE CORPORATIONS 1-50; DOE ENTITIES 1-50; AND DOE GOVERNMENTAL UNITS 1-50,

Defendants.

STATE OF HAWAII, BY ITS OFFICE OF CONSUMER PROTECTION,

Intervening Petitioner,

vs.

ROSE DRADI, DAVID KEANU SAI, AND DEXTER KAIAMA,

Respondents.

CIVIL NO. 15-1-0371-03 JPC
(Foreclosure)

FIRST AMENDED ORDER GRANTING RESPONDENT DAVID KEANU SAI'S MOTION TO DISMISS, FILED NOVEMBER 5, 2018, AND RESPONDENT DEXTER KAIAMA'S JOINDER, FILED NOVEMBER 19, 2018, WITHOUT PREJUDICE

HEARING:
Date: November 28, 2018
Time: 2:00 p.m.
Judge: Honorable Jeffrey P. Crabtree

FIRST AMENDED ORDER GRANTING RESPONDENT DAVID KEANU SAI'S MOTION TO DISMISS, FILED NOVEMBER 5, 2018, AND RESPONDENT DEXTER KAIAMA'S JOINDER, FILED NOVEMBER 19, 2018, WITHOUT PREJUDICE

Respondent David Keanu's Sai Motion to Dismiss, filed November 5, 2018 ("Motion"), and Respondent Dexter Kaiama's Joinder, filed November 19, 2018 ("Joinder"), came on for hearing before the Honorable Jeffrey P. Crabtree on November 28, 2018 at 2:00 p.m. Stephen Laudig appeared for Respondent David Keanu Sai, William F. Sink appeared for Respondent Dexter Kaiama, who was also in attendance, and James F. Evers and Melina D. Sanchez appeared for Intervening Petitioner State of Hawai'i Office of Consumer Protection ("OCP").

The Court having reviewed and considered the Motion and Joinder, and the memoranda filed both in support of and in opposition thereto, and having reviewed the record and files herein, and having heard and considered the arguments of counsel, and good cause appearing therefor,

THE COURT HEREBY FINDS that OCP's allegations, as expressed in its Motion to Intervene and/or Motion for Order to Show Cause, were detailed and comprehensive. OCP's allegations provided more specific and comprehensive allegations than are required by a complaint, which is generally subject only to broad and general rules of "notice pleading." Therefore, upon service of OCP's allegations, Respondents were actually informed, in detail, of the claims against them. However, the Court agrees with Respondents that OCP's intervention, without a complaint or other recognized pleading under the Hawaii Rules of Civil Procedure, was procedurally improper and should not have been granted by this Court.

THE COURT HEREBY FURTHER FINDS no concrete prejudice to Respondents resulting from OCP's intervention. There has been some delay (much of it due to the unsuccessful removal to federal court), inconvenience, and cost, but the Court sees no actual loss of rights, loss of evidence, or other substantial or irreparable damage or harm that impairs Respondents' ability to defend themselves should OCP assert the same allegations in a complaint in the future.

THE COURT HEREBY FURTHER FINDS no evidence of improper motive by OCP, which asserted consumer protection claims on behalf of arguably vulnerable consumers. At most, the Court finds that OCP attempted to take a procedural short-cut while trying to move too far too fast. This Court erred in not initially denying OCP's request to take the short-cut.

THE COURT HEREBY FURTHER FINDS that OCP's Motion to Intervene and/or Motion for Order to Show Cause alleged serious violations. OCP's allegations concern important issues of consumer protection which are in the public interest. Respondents strenuously assert the allegations are flawed or false. OCP disagrees. Consistent with the strong public policy in favor of deciding cases on their merits, OCP's claims should be determined on their merits, not through a procedural error which did not cause concrete prejudice.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The Motion and Joinder are Granted, without prejudice to OCP asserting its claims against Respondents in the future.

2. This First Amended Order Granting Respondent David Keanu Sai's Motion To Dismiss, Filed November 5, 2018, And Respondent Dexter Kaiama's Joinder, Filed November 19, 2018, Without Prejudice vacates and replaces the Court's prior "Order Granting Respondent David Keanu Sai's Motion To Dismiss, Filed November 5, 2018, And Respondent Dexter Kaiama's Joinder, Filed November 19, 2018, Without Prejudice," entered December 19, 2018.

DATED: Honolulu, Hawaii, MAR - 4 2019

Jeffrey P. Crabtree

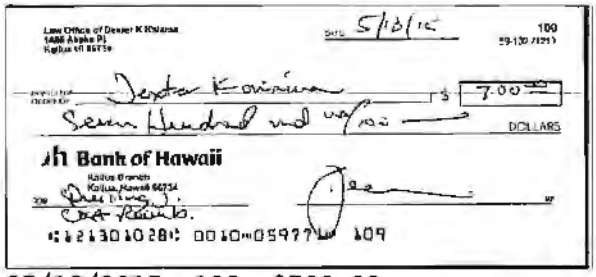
FIRST CIRCUIT COURT STATE OF HAWAII SEAL

MAR - 4 2019

THE HONORABLE JEFFREY P. CRABTREE
JUDGE OF THE ABOVE-ENTITLED COURT

[signature lines for appearing counsel appear on the next page]

Bank of Hawaii



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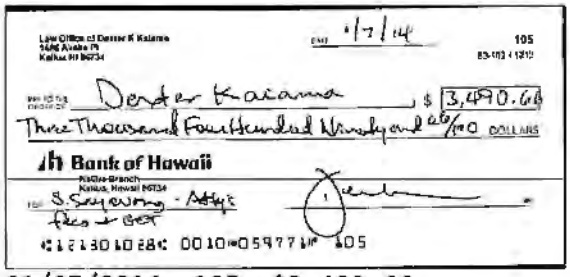

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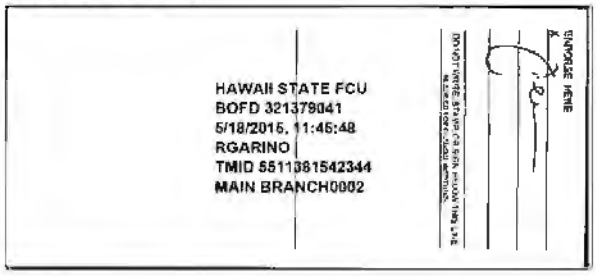

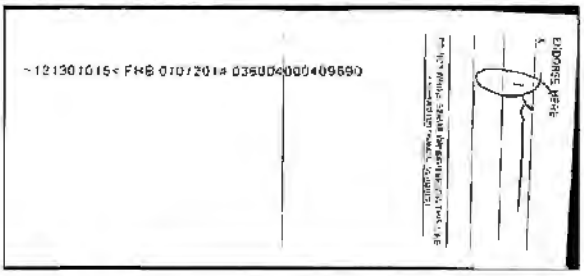

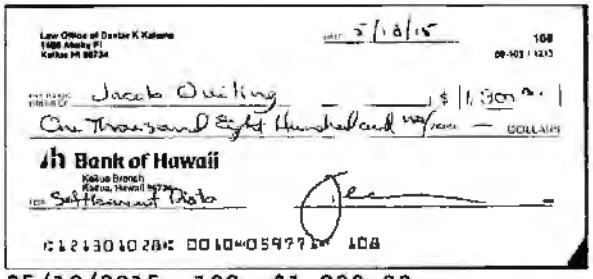

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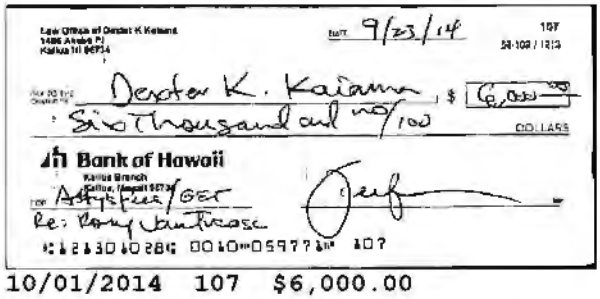

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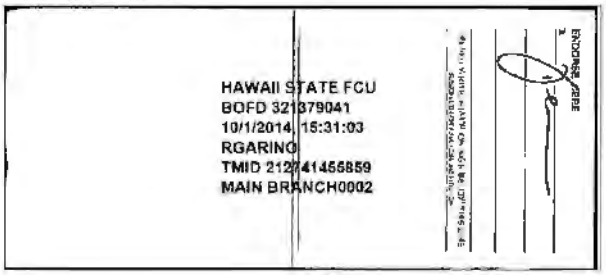

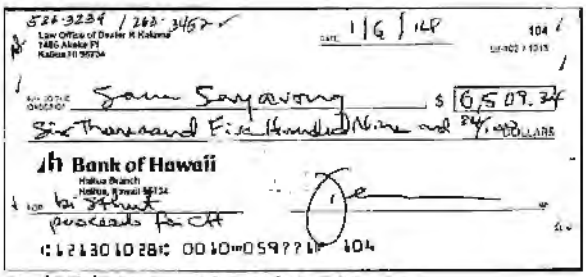

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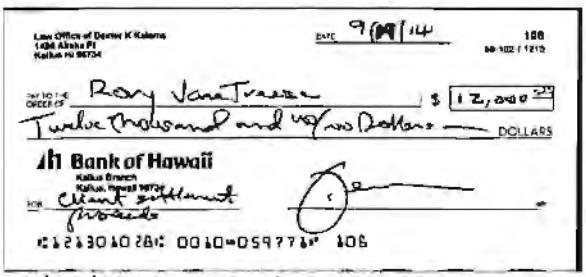

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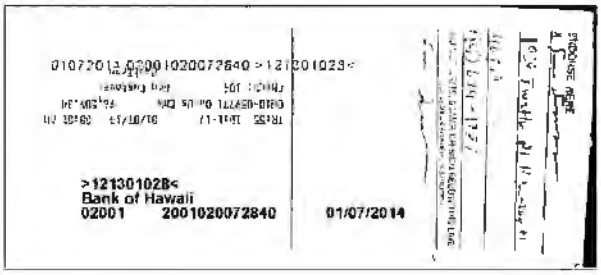

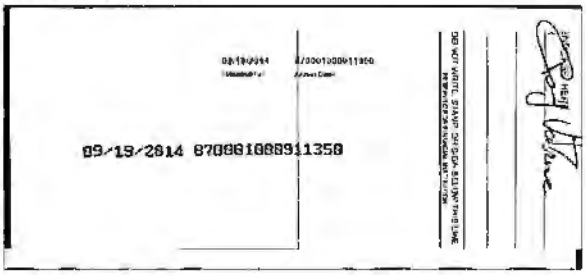

DEPOSIT TICKET

Law Office of Dexter K Kaiama
1486 Akeke Pl
Kailua HI 96734

DATE 9/22/14

NOTICE: DEPOSITS MAY NOT BE AVAILABLE FOR IMMEDIATE WITHDRAWAL.

SIGN HERE FOR CASH RECEIVED FROM DEPOSIT

Bank of Hawaii
Kailua Branch
Kailua, Hawaii 96734

CURRENCY	0 0
COIN	
TOTAL CHECKS (LIST ON REVERSE)	1800000
SUBTOTAL	
LESS CASH RECEIVED	
NET DEPOSIT	1800000

⑆514011116⑆ 0010⑈0597710⑈

09/22/2014 $18,000.00
9994049922523

NATIONAL INTERSTATE INSURANCE COMPANY
3250 INTERSTATE DRIVE
RICHFIELD, OHIO 44286
(330) 659-8900

Fifth Third Bank
Newport, KY
73-27/421

05000217279

DATE: AUG 13, 2014

PAY: EIGHTEEN THOUSAND DOLLARS & 00/100

$*****18,000.00

TO THE ORDER OF:

DEXTER K. KAIAMA, ESQ.
RORY A VANTREASE
111 HEKILI STREET, SUITE A-160
KAILUA, HI 96734

gary m. monda

⑈5000217279⑈ ⑆042100272⑆ 7481615446⑈

09/22/2014 5000217279 $18,000.00
9994049922524

Bank of Hawaii

Bank of Hawaii DATE:_____ DEPOSIT

Deposits may not be available for immediate withdrawal.

ACCOUNT NAME: Law Office of Dexter K. Kaiama

ADDRESS, CITY, STATE, ZIP

RECEIVED CASH BACK - SIGNATURE

DA-1 (Rev 4-2012)

CASH ▶ 1609538078 2500.00

SUBTOTAL ▶

LESS CASH ▶

ACCOUNT NO. 0010059771

NET DEPOSIT $ 2600.06

⑆5140111116⑆

05/18/2015 $2,500.00
9992006530365

FARMERS INSURANCE

02-20/311

FARMERS INSURANCE HAWAII, INC
POCATELLO SERVICE CENTER
NATIONAL DOCUMENT CENTER PO BOX268994
OKLAHOMA CITY OK 73126

Claim Unit # 3000860435-1-3

Check No. 1609538078
Date: 05/14/2015

PAY Two Thousand Five Hundred Dollars And No Cents $2,500.00****

NOT GOOD AFTER SIX MONTHS

To the order of Jacob Quiling And His Attorney
Dexter K Kaiama
111 HEKILI ST, STE A1607
KAILUA, HI, 96734

Citibank N.A. - One Penns Way - New Castle, DE 19720

THE ORIGINAL DOCUMENT HAS A REFLECTIVE WATERMARK ON THE BACK. HOLD AT AN ANGLE TO VIEW WHEN CHECKING THE ENDORSEMENT.

⑈1609538078⑈ ⑆031100209⑆ 3886362 9⑈

05/18/2015 1609538078 $2,500.00
9992006530366

Office of Disciplinary Counsel
201 Merchant Street, Suite 1600
Honolulu, Hawai'i 96813
Telephone (808) 521-4591
www.dbhawaii.org

August 15, 2019

CONFIDENTIAL

Stephen Laudig, Esq.
1914 University Avenue #103
Honolulu, HI 96822

Re: ODC No. 18-0339
Dexter Kaiama, Respondent

Dear Mr. Laudig,

I am one of the ODC attorneys assigned to Mr. Kaiama's pending ODC case, No. 18-0339. I have reviewed your letter that was addressed to our investigator, Josiah Sewell and dated **August 12, 2019**, in which you state your client's objection to answering ODC's questions about his conduct in this pending matter.

If you are disputing the information sought, then please adhere to the procedure for filing a Motion for Protective Order, as outlined in Rule 12(c) of the Rules of the Disciplinary Board. Otherwise, please amend your response to answer the questions that were asked.

Please do so no later than **August 30, 2019**, or ODC will construe the inaction as a failure to adhere to the duty to cooperate with disciplinary proceedings, as required by RSCH Rule 2.12A and HRPC Rule 8.4(g).

If you have any questions regarding this letter, please contact me.

Respectfully,

REBECCA M. SALWIN
DEPUTY CHIEF DISCIPLINARY COUNSEL

RMS:uo

LP Wednesday, August 28, 2019 7:27:00 PM LM 2019/08/28

Stephen Laudig, Attorney, HBN #8038
1914 University Avenue #103 •
Honolulu, HI 96822 •
Phone: 808-232-1935 • Email: SteveLaudig@gmail.com •

Wednesday, August 28, 2019

Supreme Court-Office of Disciplinary Counsel
Ms. Rebecca M. Salwin
Deputy Chief Disciplinary Counsel
201 Merchant Street, Suite 1600
Honolulu, HI 96813

Tel: 808-521-4951

Via email only as an attachment to: rebecca.m.salwin@dbhawaii.org

RE: ODC 18-0339;
ODC's of 15 August 2019
My file number: 54733

Aloha Ms. Salwin:

Thank you for the extension of time until 30 August to respond. I am asking for a few more days until Tuesday 3 September 2019 in which respond or seek a Protective Order.

Since the ODC has not addressed any of our objections I don't see how our answers can change.

If the ODC were to engage the objections then perhaps progress could be made. We would like to proceed but if we raise objections and the objections are not responded to, then any progress is thwarted by ODC's failure to counter the objections. I would suggest it is in ODC's interest to engage the objections before we are compelled to seek the Supreme Court's protection. It seems unfair to my client to force him to do this rather than attempting to narrow the issues.

I do need some clarification as to what is meant by a sentence in yours of the 15th that I don't understand. In the second paragraph, you wrote:

"If you are disputing the information sought, then please…"

Could this be stated differently way? What is meant by the phrase "disputing the information" is not clear to me. What is meant by "information"? And what is meant by 'dispute'?

If you meant to say: "If you are disputing ***having to provide*** the information sought, …." Which I take to mean, do we object to having to answer certain questions, I would say that I hope our objections were clear. They were as clear as could make them given the questions asked and the time and circumstances allowed for response.

We see three separate and conceptually distinct areas of this ODC inquiry: 1. My client's arguing of 12(b)(1) motions; 2. The $22,909.65; and, 3. The checks numbered 104-109, inclusive. But do note, we contend the ODC was called in for something other than innocent purposes by the State of Hawai'i acting in the person of Mr. Evers.

In order for me to ask for a protective order I'd like to be able to inform the court as to what, is actually, in issue. We contend with regard to #1 the statute is unconstitutional on its face and as the State of Hawai'i via its organs the Office of Consumer Protection and the Office of Disciplinary Counsel are seeking to apply it. We state that there was never any duty to place funds in escrow as the fees were all earned prior to being tendered to my client by his clients. The ODC has not stated a position as to whether the statute is constitutional either on its face or as it seeks to apply it.

Does the ODC contend the statutes involved are facially constitutional and as the State of Hawai'i is seeking to apply them?

With regard to #2 due to the time period involved, we are working on and unable, yet, to provide answers, but do not object to providing answers. We need more time and more than just a few days. The period of time being asked about is several years ago and any records have been lost or at least are not readily available and my client will have to reconstruct.

If it would satisfy the ODC we would agree to give it regular reports of our efforts and progress, but this is very disruptive and would note that no client has complained only a losing opposing counsel who has triggered this and not for innocent reasons.

With regard to #3, I believe we have complied except for a transaction that is associated with the checks but that was outside the time period specified in the question. Is the ODC satisfied with our answers to #3, the checks identified in my 12 August response?

I would note that the ODC has not engaged any of our constitutional objections, merely dismissed them without response and insisted that my client answer or be forced to move for a protective order. I suggest that the ODC has a duty, in the same sense that a prosecutor has a duty to determine, independently whether the statute is constitutional, both facially and as it is seeking to apply it.

If the ODC were to engage our evidentiary and constitutional objections perhaps they could resolved, or at least narrowed, without troubling the Court and at least there'd be a clearer factual record for the Court and we could represent to the court that the parties have attempted to narrow the issues. They will be narrowed either before the Supreme Court is involved or after. I'd prefer before.

Until the constitutionality of the statute is judicially established it seems premature to investigate any allegations of a violation of it. We deny it applies and also deny intent to violate it if it does and state that my client had an intent to ***not*** provide any non-jurisdiction-related legal services.

His only intent was to contest jurisdiction and he provided, as noted in the Motion to Dismiss I am providing, only representation on the issue of jurisdiction. I am also providing an unsigned but agreed to stipulation setting the motion for hearing on December 10, 2019 at 10:00 a.m. before Judge Ashford.

These questions as to the statute's constitutionality are as to its face and as applied. We are very troubled by and believe that the evidence will show that Mr. Evers is using the ODC as a cat's paw as part of his selective prosecution of an attorney for making lack of jurisdiction arguments which Evers', and those who control his work, object to on political or First Amendment grounds.

We acknowledge our duties under the rules, but the rules are subordinate to constitutional protections my client is entitled to. Mr. Kaʻiama has answered as much as he can within the confines of objections that we have made as clear as possible.

If we have mis-stated any matter of fact, or law, it is inadvertent and if ODC points it out we are glad to take instruction.

If the ODC thinks a meeting to discuss these issues would be useful I am available.

Sincerely,

Stephen Laudig

Attachments as noted in text:

1. Motion to Dismiss
2. Unsigned but agreed to stipulation setting the motion for hearing on December 10, 2019 at 10:00 a.m. before Judge Ashford.

Rebecca Salwin

From: Rebecca Salwin
Sent: Wednesday, August 28, 2019 3:39 PM
To: Steve Laudig
Subject: RE: ODC 18-0339

Mr. Laudig,

I have received the PDF of your letter, via email, dated August 28, 2019. In this email, I will seek to address all points that you have raised.

First, I am amenable to your request that you have until Tuesday, September 3, 2019, to either respond to ODC's investigator or seek a Protective Order. I will adjust that deadline accordingly.

Second, as to your concerns about the procedures for resolving objections, and your concerns about the language that I used (i.e., "disputing the information sought" vs. "disputing having to provide the information sought"), I would again refer you Rule 12(c) of the Disciplinary Board Rules. I am using both the procedure and the language from that Rule.

Third, you request to have a more substantive discussion of ODC's scope of investigation and Mr. Kaiama's objections, before you either file a motion or respond to ODC's investigator. I would note that I have already conferred with prior counsel, William Sink, regarding both the scope of ODC's investigation and Mr. Kaiama's objections, in early July. I believe we made significant progress and reached an understanding about what Mr. Kaiama would and would not answer. Then, on July 10, 2019, ODC received your letter which re-raised all objections, added new ones, and did not answer ODC's questions.

That said, I would be amenable to conferring with you and reiterating what I discussed with prior counsel. I hope we are able to reach a similar understanding. Would you be available to meet or discuss by phone tomorrow morning or Friday morning? I believe this would be more fruitful than an email exchange.

If you have any questions regarding this email, please contact me.

-Rebecca

Office of Disciplinary Counsel
201 Merchant Street, Suite 1600
Honolulu, HI 96813

Rebecca M. Salwin, Deputy Chief Disciplinary Counsel
(808) 521-4591 (main) | (808) 469-4030 (direct)
www.dbhawaii.org | rebecca.m.salwin@dbhawaii.org

From: Steve Laudig <stevelaudig@gmail.com>
Sent: Wednesday, August 28, 2019 9:30 AM
To: Rebecca Salwin <Rebecca.M.Salwin@dbhawaii.org>
Subject: Re: ODC 18-0339

Please see attached. I look forward to your presentation today.

On Tue, Aug 27, 2019 at 3:29 PM Rebecca Salwin <Rebecca.M.Salwin@dbhawaii.org> wrote:

> Aloha Mr. Laudig-
>
> I received a message that you were seeking my email address regarding this matter. For future reference, you can search for any Hawai'i attorney's contact info at hsba.org
>
> -Rebecca
>
> **Rebecca M. Salwin, Deputy Chief Disciplinary Counsel**
>
> (808) 521-4591 (main) | (808) 469-4030 (direct)
>
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>
>

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Stephen Laudig
1914 University Avenue, #103
Honolulu, Hawaiian Islands, 96822
Tel. 808-232-1935

The world stands on three things: justice, truth, and peace (*Pirkei Avot*, 1:18)
Ignoring a low standard of performance sets a new standard of performance.
If they get you asking the wrong questions, they don't have to worry about answers.
Gravity's Rainbow, Pynchon, 251.
"Na kākou nō!"
"'A'ohe po'e ikaika mau e like me ka po'e kipi kū'ē!"

From:	Rebecca Salwin
To:	Steve Laudig
Cc:	Josiah Sewell
Subject:	ODC 18-0339 - Please Respond by 9/27/19
Date:	Thursday, September 5, 2019 4:02:07 PM

Mr. Laudig,

Thank you for meeting with us yesterday. I believe that this is where we left things:

You indicated that Mr. Kaiama has ceased taking on clients in the mortgage-relief arena. You also indicated that he is working on gathering his accounting documents for ODC, and that you would advise him to obtain records both from his IOLTA and GBA.

ODC indicated three broad categories of inquiry: 1) IOLTA and record-keeping; 2) sufficiently consulting with clients; and 3) adherence to the HRS § 480E statutes. We agreed to hold off on the third category for now, particularly due to his ongoing litigation. However, you agreed to cooperate with the inquiries regarding IOLTA and client consulting.

We agreed that you would provide answers to ODC's questions in those two areas to the fullest extent possible; but to the extent you have objections, you would raise the objections with specificity for any aspect of the question that is being objected to.

With that in mind, below are the questions ODC would seek an answer to. Please provide your answer by **9/27/2019** in an email or letter addressed to myself and cc'ing Disciplinary Investigator Josiah Sewell. Please provide the IOLTA and GBA records. If there is any document you cannot provide or question you cannot answer, please state that in your response and explain why not.

Thank you

Questions Regarding Client Consults

1. How many distressed property cases has Mr. Kaiama argued and/or made a special appearance in since 2014?
    a. Of those distressed property cases, how many involved the use of the "Sovereignty Argument" by Mr. Kaiama? How many succeeded in obtaining relief on behalf of the distressed property owner?
    b. Did Mr. Kaiama inform clients/prospective clients of that success rate? If not, did Mr. Kaiama discuss the strengths and weaknesses of the case with clients in some other way? Please explain how, when, and by what means.

2. When Mr. Kaiama made special appearances in distressed property cases, please explain the following:

a. How was Mr. Kaiama notified of the location and time of the hearing in which he was to appear?

b. How did Mr. Kaiama obtain relevant legal documents in the matters in which he was to appear?

c. How did Mr. Kaiama perform a conflict check prior to accepting representation/making the special appearance?

d. How was his fee, if any, determined? How was his fee, or decision to appear pro bono, conveyed to the client? If there was a written fee agreement, please provide it. If not, please state so.

e. How did Mr. Kaiama identify, explain, and convey to his clients/prospective clients the scope of service/s to be provided?

f. How did Mr. Kaiama prepare for each special appearance in a distressed property case? How did he determine his strategy for each case?

3. How did Mr. Kaiama prepare for his court appearances and otherwise become familiar with the facts and legal issues in the distressed property cases?

a. Did Mr. Kaiama learn material information about the cases or otherwise prepare for his court appearances by learning about the cases from Dr. Sai? From Ms. Dradi? If so, please explain how this enabled him to better prepare for court. If not, please explain any other methods that he used

b. From 2014 to present, how often did Mr. Kaiama communicate with Dr. Sai about distressed property cases? With Ms. Dradi?

c. From 2014 to present, by which method/s does Mr. Kaiama communicate with Dr. Sai about distressed property cases? With Ms. Dradi?

Questions Regarding IOLTA and Record-Keeping

4. Referring to Mr. Kaiama's distressed property cases, you stated that some, but not all, clients gave Mr. Kaiama money for his appearance.

a. Which clients were represented pro bono?

b. Which clients paid for his services?

c. How much did each pay?

d. How did each pay?

e. Please provide proof of payment (e.g. deposit slips, copies of checks - front and back -, receipts, etc.) for each distressed property case in which payment was received

f. Did Mr. Kaiama ever refuse a referral/special appearance in a distressed property case? If yes, when and how often did this occur?

5. Please provide copies of the following for each distressed property owner Mr. Kaiama represented or made a special appearance for since January 2014:

a. Signed contracts, legal agreements, retainer agreements, or any other document

describing the attorney-client relationship and the service/s Mr. Kaiama was to provide in the distressed property case

b. Mr. Kaiama's invoices to clients

c. Mr. Kaiama's client subsidiary ledgers for clients

6. From January 2014 through January 2018 the balance of Mr. Kaiama's Bank of Hawaii ("BOH") IOLTA remained static, less minor interest transactions, at $22,909.65, with three exceptions.

a. Does Mr. Kaiama have any other IOLTA or Client Trust Accounts? If so, please provide the financial institution/s and account number/s

b. Why were these funds ($22,909.65) held in trust in Mr. Kaiama's BOH IOLTA?

c. To which client/s or individual/s do these funds belong? Please provide supporting documentation

d. During this period, for each distressed property owner from whom Mr. Kaiama received a fee for making a special appearance in a distressed property case, did he deposit said fees in his BOH IOLTA? If not, what did he do with the funds?

e. On September 19, 2014, Check No. 106 was drawn on Mr. Kaiama's BOH IOLTA in the amount of $12,000. Please provide an explanation **and** a copy of this check (front and back).

f. On September 22, 2014, a deposit of $18,000 was made to Mr. Kaiama's BOH IOLTA. What was the source of these funds? What was the purpose of the deposit? Please provide supporting documentation (i.e. deposit slip, check -front and back-, etc.)

g. On October 1, 2014, Check No. 107 was drawn on Mr. Kaiama's BOH IOLTA in the amount of $6,000. Please provide an explanation **and** a copy of this check (front and back).

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Friday, September 27, 2019

Supreme Court-Office of Disciplinary Counsel
Ms. Rebecca M. Salwin
Deputy Chief Disciplinary Counsel
201 Merchant Street, Suite 1600
Honolulu, HI 96813

Tel: 808-521-4951

Via email only as an attachment to: rebecca.m.salwin@dbhawaii.org

RE: ODC 18-0339;
ODC's email of 05 September 2019
My file number: 54733

Aloha Ms. Salwin:

1. Thank you for the extension of time until 27 September to respond.
2. On 26 September I was informed, and must believe until it is established otherwise, that the State of Hawai'i Attorney General [SOHAG] has contacted, and is in the process of contacting, individuals that Mr. Ka'iama may have represented in his 12(b)(1) limited appearances. The individual's name appeared in a Witness and Exhibit list filing dated 27 March 2018 in U.S. Bank Trust v. Fonoti, (that was James Evers' failed interpleader against Ka'iama). I am reluctant to identify the individual who was contacted, but I am not reluctant to identify the SOHAG employee, one William Albright, a "Special Agent", Albright's contact information is Investigations Division, 465 South King Street, B-2, Honolulu, HI 96813, Tel: (808) 587-4238; Cell (808) 780-3532. Albright appears to have contacted her and at least two other individuals whom we cannot be sure that Mr. Ka'iama did not make a limited 12(b)(1) appearance on behalf of. Until we receive an authoritative and binding representation on behalf of the State of Hawai'i that there is not a criminal investigation of him going on we must, as a reasonable and necessary precaution, exert our constitutional rights which limits our ability to answer questions as the answers may end up as part of a criminal prosecution of Mr. Ka'iama. This has been a concern of mine from the very beginning as I made clear and now it has arisen.
3. The State of Hawai'i, acting through at least three of its organs: the Department of the Attorney General [SOHAG], the Office of Consumer Protection [SOHOCP], and the State of Hawai'i Supreme Court's Office of Disciplinary Counsel [SOHODC] which represent two of the State of Hawai'i's three branches of government, the Executive Branch and the Judicial Branch, is now bringing its weight to bear against my client, an solitary individual, by investigating conduct that, for the most part was done in full public view in open court representation of clients, a long time ago. There was no objection from plaintiffs in those proceedings, from the Court or from the individuals that Mr. Ka'iama's had entered his limited appearance for purposes of arguing their pro se-filed motions to dismiss for lack of jurisdiction pursuant to 12(b)(1).
4. Just to place his representation in context, the last 12(b)(1) argument Mr. Ka'iama made in support of a pro se-filed motion to dismiss in a foreclosure case was in May 2017 before Judge Crabtree. This is the same Judge Crabtree that dismissed SOHOCP's James F. Evers' action against all respondents including Mr. Ka'iama. It was against this dismissal that Evers took steps to revive his complaint against Mr. Ka'iama. He filed with the SOHODC about the same time as the interpleader was first filed. Then when the matter was dismissed Mr. Evers

took steps to revive his complaint with the SOHODC. On a least one occasion Evers represented to the Court that he had initiated a "criminal investigation".

5. The SOHODC designates the cases that Mr. Ka'iama provided legal services in as "distressed property" cases and labels his presentation the "Sovereignty Argument". We do not agree to these labels for a couple of reasons. They are not accurate and serve no useful purposes.

6. Mr. Ka'iama provided no legal services related to any "distressed property" issues. All the evidence establishes that he entered limited appearances for the sole purpose of contesting jurisdiction which had been raised by pro se motions filed by the persons he appeared on behalf who were defendants in foreclosure proceedings. For Mr. Ka'iama, the legal issue was jurisdiction, not "distressed property". So it is more accurate, and fairer, to label them "special appearance for the sole purpose of challenging jurisdiction cases" not "distressed property" cases. They were not so much "cases" as that term suggests a greater representation than what a special appearance for purposes of arguing a pro se-filed motion to dismiss for lack of subject matter jurisdiction is. What you label the "Sovereignty Argument", isn't about sovereignty but rather, again about jurisdiction. The argument speaks for itself and needs no labelling. If it were to be given a name it would be "The jurisdictional argument".

7. In the interests of clarity in our response I am replicating the text of your 5 September email in a table form with your text in the left hand column #2 and our response in the right hand column #3. I specifically incorporate all prior objections and see no need to repeat them here. I may however, so there is no uncertainty, restate them in the following table. We object to be compelled be a witness in these proceedings because of the ongoing criminal investigation that we have not been assured we are not a target of. We contend that the nature of all non-IOLTA questions put to Mr. Ka'iama to be improper "fishing" questions unsupported by any reasonable factual basis provided by a reliable source. It appears that SOHODC has adopted, en toto, James F. Evers's "theory" without any independent factual basis other than his unsupported bare allegations. A lawyer that lost a case is not, by himself, a reliable source against the party he lost to.

8. We contend that due process of law requires SOHODC to have something more than bare, unsupported and unconfirmed allegations by a sore-loser lawyer before bringing the coercive power of the state against Mr. Ka'iama. We do not contest its authority to examine IOLTA accounts.

9. As a preliminary matter in order for us to better understand please provide what well-stated facts there are in the complaint which if assumed to be true, are sufficient to raise the potential for a finding of ethical misconduct by Mr. Ka'iama. Aside from the IOLTA issue, it seems that Mr. Ka'iama is being investigated for making a politically unpopular yet powerfully-supported in law and fact, argument. This investigation so far as it goes into anything other than Mr. Ka'iama's handling of his IOLTA account has no apparent basis other than James Evers's malice-driven speculation.

=== Beginning of replicated text

1	2	3
01	I believe that this is where we left things:	
02	You indicated that Mr. Kaiama has ceased taking on clients in the mortgage-relief arena. You also indicated that he is working on gathering his accounting documents for ODC, and that you would advise him to obtain records both from his IOLTA and GBA.	We object for the reasons stated in paragraphs 5 and 6 above. We don't understand what is meant by "mortgage-relief arena" and thus object to the use of the term. That being said, and assuming we understand what SOHODC intends by the phrase "mortgage-relief arena" we state that Mr. Ka'iama did not take "on clients in the mortgage-relief arena" whatever that phrase means. He only "took on" special appearances in cases for purposes of arguing pro-se filed motions which raised the 12(b)(1) jurisdiction issue. I stated that he was no longer arguing pro se-prepared and filed 12(b)(1) motions in any litigation and hadn't for quite some time.

		He provided no "mortgage relief" services during the period being inquired of. Mr. Kaʻiama has contacted BOH his escrow account bank and requested all available records. We are informed the escrow account records only go back seven years. We were expecting more years, but since that isn't possible we will now, in the next few days make a similar request for Mr. Kaʻiama's GBA which is with the Hawaiʻi State Employee's Federal Credit Union. That account is a joint account with his wife thus is likely to require additional time to segregate out her separate items from whatever is provided by the FCU in response to our request. I am attaching copies of all emails to and from Mr. Kaʻiama and his bank BOH, regarding his requests for records. There is some duplication within the emails due to how emails are structured: BOH 01 Kaiama to and from of July 2, Aug 7, and Sep 17 BOH 02 Kaiama to and from of July 2, Aug 7, Sep 17, Sep 18 @ 1007a, and Sep 18 at 422p BOH 03 Kaiama to and from BOH 03 of July 2, Aug 7, Sep 17, Sep 18 @ 1007a, and Sep 18 at 422p, and Sep 19 What we have obtained on the BOH escrow as of this date and which is in addition to those records provided as part of our August 12 response are as follows: BOH Kaiama Escrow 201211-201312 BOH Kaiama Forse 20130207, 20,000, Forse proceeds from Ins BOH Kaiama Forse 20130219 Forse Fees BOH Kaiama Gabriel 20130812 Gabriel Proceeds to Gabriel BOH Kaiama Gabriel 20130813, 17,500, Gabriel proceeds to Gabriel and to Kaiama BOH Kaiama Gabriel 20130903 Gabriel Fees BOH Kaiama Quilong 20130813 Quilong Proceeds from Ins BOH Kaiama Quilong 20130813 Quilong Proceeds to Quilong BOH Kaiama Quilong 20130904 Quilong Fees, GET, and Exp We are informed and believe that these are all the BOH records that are available. As Mr. Kaʻiama has no personal recollection of any escrow matters he will have to search physical records to refresh his recollection. There maybe 30-50 shelf feet of records in his possession that will have to be gone through. He has begun the process and hopes, but cannot promise, to have reviewed all his paper records by mid-October. He will try.
03	ODC indicated three broad categories of inquiry: 1) IOLTA and record-keeping; 2) sufficiently consulting with clients; and 3) adherence to the HRS § 480E statutes. We agreed	This fairly and accurately describes the discussion and my understanding of what we could agree to then given our knowledge at the time and the State of Hawaiʻiʻs actions towards Mr. Kaʻiama at the time that we knew of. The situation, or at least our knowledge and understanding of it, has changed as described above in

	to hold off on the third category for now, particularly due to his ongoing litigation. However, you agreed to cooperate with the inquiries regarding IOLTA and client consulting.	that we are newly aware of a criminal investigation in which, because of kinds of individuals being sought out and interrogated by the SOHAG "special agent", Mr. Mr. Kaʻiama cannot be sure he is not, or will not become, a target. And in light of this new understanding, the State of Hawaiʻi and the United States Constitutions allow us to change the level and extent of cooperation to protect our constitutional rights. If the State of Hawaiʻi creates new facts, we have the right to respond to them in a new way. The SOHODC might argue that it seems ʻunfairʻ to ʻchange the dealʻ but the SOHODC is a subset of the State of Hawaiʻi and thus its interests, as are ours, are affected by its deeds over which neither of us have any control, though I suspect SOHODC may have more influence. We understand this language "3) adherence to the HRS § 480E statutes. We agreed to hold off on the third category for now, particularly due to his ongoing litigation. However, you agreed to cooperate with the inquiries regarding IOLTA and client consulting" to mean that questions using the language present in 480E or related to 480E or "MARS"-type matters are "on hold." We were greatly surprised when, in the very first question, see Table line/row,7, is asked: "How many distressed property cases has Mr. Kaiama argued and/or made a special appearance in since 2014?" To us, "distressed property cases" is language directly implicating 480E or related to it or related to MARS. So it looks like to us there was an agreement to place these issue on hold which appears to be violated in the first question. Or are we misunderstanding something. We object see paragraphs 5 and 6 above. We take all questions using the phrase "distressed property to be relating to "adherence the HRS § 480E statutes and won't be answering them because of the litigation and because of the newly-discovered criminal investigation which Mr. Kaʻiama can't be sure he isn't a target of.
04	We agreed that you would provide answers to ODC's questions in those two areas to the fullest extent possible; but to the extent you have objections, you would raise the objections with specificity for any aspect of the question that is being objected to.	At that time it was our intent, based upon what we knew at that time, to do so. We will still do so, but I fear that the State of Hawaiʻi's criminal investigation shrinks the areas we can safely cooperate in. It is still our intent to fully assist in the trust account issues.
05	With that in mind, below are the questions ODC would seek an answer to. Please provide your answer by 9/27/2019 in an email or letter addressed to myself and cc'ing Disciplinary Investigator Josiah Sewell. Please	This letter seeks to do so.

	provide the IOLTA and GBA records. If there is any document you cannot provide or question you cannot answer, please state that in your response and explain why not.	
06	Questions Regarding Client Consults	NA
07	1. How many distressed property cases has Mr. Kaiama argued and/or made a special appearance in since 2014?	We object. See paragraphs 5 and 6 above and table line/row 3 above. We object to the form of the question specifically the phrase "distressed property cases" for the reasons stated above. If the question calls for an exact number Mr. Kaʻiama does not recall specifically "how many" legal proceedings he has made a 12(b)(1) argument in support of a pro se-filed motion to dismiss in a foreclosure, or any other type of, case.
08	a. Of those distressed property cases, how many involved the use of the "Sovereignty Argument" by Mr. Kaiama? How many succeeded in obtaining relief on behalf of the distressed property owner?	We object. See paragraphs 5 and 6 above and table line/row 3 and 7 above. We also object because we do not know what you mean by the "Sovereignty Argument". The term "Sovereignty Argument" is a term that James F. Evers has used in oral, and in written argument, and always with pejorative intent and we objected to that use in the Fonoti and the newly-filed matter in which we are challenging the constitutionality of the statute as legislative over-reach. We contend that this phrasing "Sovereignty Argument" shows a fundamental misunderstanding of the undisputed legal and factual bases of the 12(b)(1) motion. Continuing to use the term is dismissive in a way that suggests, to us, a bias and something other than SOHODC neutrality or a scholarly objectivity towards the argument and the facts underpinning it. The argument speaks for itself. We are providing a transcript of what we think SOHODC means when it uses the term "Sovereignty Argument". Transcript (June 15, 2012), Wells Fargo Bank, N.A., v. Kawasaki, Third Circuit Court, civil no. 111-1-107, p. 13; Document name: Kaiama, Wells Fargo v Kawasaki, Transcript of Hearing on MTD, 20120615.pdf This transcript is being provided to provide evidence that Mr. Kaʻiama was consistent in all of his limited appearance representations in terms of the argument made and that a fair reading of the transcript could be that a judge denied the motion for reasons not based on its merits, but upon something other than proper considerations. We are also providing a copy of the transcript of a hearing on the Motion to Dismiss in State v. English and State v. Dudoit from 2015. The argument regarding jurisdiction is the same. See, Document: Kaiama, State v. English and Dudoit, Transcript of Motion to Dismiss, 37063.pdf

		We object to the second question as it assumes facts not in evidence that motions "succeed". They are either granted or denied, wholly or in part. We object in that the issue was not a "distressed property owner" issue but a jurisdictional issue. Finally, we will not answer for constitutional reasons stated above until we are certain we are not a target of a criminal investigation by the State of Hawai'i.
09	b. Did Mr. Kaiama inform clients/prospective clients of that success rate? If not, did Mr. Kaiama discuss the strengths and weaknesses of the case with clients in some other way? Please explain how, when, and by what means.	We object to all three questions for the reasons stated in above Table line 08. We object to all three questions as they call for the contents of privileged communications. Since this investigation was triggered by the State of Hawai'i acting through one of its attorneys and not by a client, we do not understand how this client held privilege is waived. If this were a complaint by a specific client then we would understand that the privilege was effectively waived by the filing of the complaint. With regard to the second question, Mr. Ka'iama objects because his representation was limited as described above and did not extend to any part of the "case" other than jurisdiction. We object because this question conflates the jurisdiction argument with MARS issues. As long as the SOHODC persists in this conflation and there is an ongoing criminal investigation that we are not sure we are not a, or the, target of, we assert our constitutional privilege to not answer.
10	2. When Mr. Kaiama made special appearances in distressed property cases, please explain the following:	We object. See paragraphs 5 and 6 above and table line/row 3 and 7 above. We object to the form of the statement for the reasons stated in Table line 7 which characterizes the "cases" as "distressed property cases" when, in fact, Mr. Ka'iama made special appearances on the issue of jurisdiction raised in the pro se-filed motions to dismiss for lack of jurisdiction.
11	a. How was Mr. Kaiama notified of the location and time of the hearing in which he was to appear?	Mr. Ka'iama recollection is that this occurred only by telephone calls from the client or someone passing on a message for the purpose of providing the time and location of the hearing.
12	b. How did Mr. Kaiama obtain relevant legal documents in the matters in which he was to appear?	Objection to the form of the question. "Relevant" here is used as an adjective to modify the noun phrase "legal documents". What we object to is "relevant" because we don't understand what the "legal documents" are to be "relevant" to. An additional objection is what is meant by "legal documents". What the ODC thinks is "relevant" and what Mr. Ka'iama thinks is relevant may differ. What the ODC thinks are "legal documents" and what Mr. Ka'iama thinks are "legal documents" may differ. Without clarification we cannot answer the question. We object for reasons stated in above Table line 08.
13	c. How did Mr. Kaiama perform a conflict check prior to	Mr. Ka'iama knew who he had represented and he had never represented party that was a plaintiff in a

	accepting representation/making the special appearance?	foreclosure proceeding that he made a special appearance in.
14	d. How was his fee, if any, determined? How was his fee, or decision to appear pro bono, conveyed to the client? If there was a written fee agreement, please provide it. If not, please state so.	We fail to see the relevance to this question as it seems to simply be a general inquiry unsupported by any allegation of misconduct.
15	e. How did Mr. Kaiama identify, explain, and convey to his clients/prospective clients the scope of service/s to be provided?	Objection see line 9 above.
16	f. How did Mr. Kaiama prepare for each special appearance in a distressed property case? How did he determine his strategy for each case?	We object. See paragraphs 5 and 6 above and table line/row 3 and 7 above. We do not see the sense of such a question in this context where Mr. Kaʻiama presented argument in support of a pro se-prepared motion to dismiss for lack of jurisdiction. Without waving Mr. Kaʻiama remained familiar with the argument as it was presented in the Kawasaki and English and Dudoit cases described. Not a case a motion an issue
17	3. How did Mr. Kaiama prepare for his court appearances and otherwise become familiar with the facts and legal issues in the distressed property cases?	We object. See paragraphs 5 and 6 above and table line/row 3 and 7 above. Mr. Kaʻiama did not provide representation on "distressed property" facts and legal issues. Not a case a motion an issue
18	a. Did Mr. Kaiama learn material information about the cases or otherwise prepare for his court appearances by learning about the cases from Dr. Sai? From Ms. Dradi? If so, please explain how this enabled him to better prepare for court. If not, please explain any other methods that he used	Objection to the first question, compound. "Learning about" is vague. Does it mean learning of the existence of the litigation or learning about the substance of the cases. We don't understand what SOHODC means by the adjective "material". Nor do we understand what is ODC means by the noun phrase "material information". Nor do we understand what is meant by the phrase "learn material information about the cases or otherwise prepare for his court appearances by learning about the cases from Dr. Sai." We object to the word "otherwise". We do not understand the phrase "learning about". Learning "what" about? What the ODC believes is "material" may be different from what Mr. Kaʻiama understands as "material".
19	b. From 2014 to present, how often did Mr. Kaiama communicate with Dr. Sai about distressed property cases? With Ms. Dradi?	We object. See paragraphs 5 and 6 above and table line/row 3 and 7 above. Mr. Kaʻiama did not provide representation on "distressed property" cases.
20	c. From 2014 to present, by which method/s does Mr. Kaiama communicate with Dr. Sai about distressed property cases? With Ms. Dradi?	We object. See paragraphs 5 and 6 above and table line/row 3 and 7 above. Mr. Kaʻiama did not provide representation on "distressed property" cases.

21	Questions Regarding IOLTA and Record-Keeping	
22	4. Referring to Mr. Kaiama's distressed property cases, you stated that some, but not all, clients gave Mr. Kaiama money for his appearance.	We object. See paragraphs 5 and 6 above and table line/row 3 and 7 above.
23	a. Which clients were represented pro bono?	We object. See paragraphs 5 and 6 above and table line/row 3 and 7 above. Mr. Ka'iama does not recall any specific clients.
24	b. Which clients paid for his services?	We object. See paragraphs 5 and 6 above and table line/row 3 and 7 above. Mr. Ka'iama does not recall.
25	c. How much did each pay?	We object. See paragraphs 5 and 6 above and table line/row 3 and 7 above. Mr. Ka'iama does not recall.
26	d. How did each pay?	We object. See paragraphs 5 and 6 above and table line/row 3 and 7 above. Mr. Ka'iama does not recall. Without waiving, the amounts varied between $0 and $300 some in check some in cash. Always on the day of the hearing.
27	e. Please provide proof of payment (e.g. deposit slips, copies of checks - front and back -, receipts, etc.) for each distressed property case in which payment was received	We object. See paragraphs 5 and 6 above and table line/row 3 and 7 above. Without waving, Mr. Ka'iama may, or may not, any longer have such records. We have contacted his bank and requested records which have not been provided yet. A request will be made to the bank in the next few days. We will forward a copy of the request when it is made.
28	f. Did Mr. Kaiama ever refuse a referral/special appearance in a distressed property case? If yes, when and how often did this occur?	We object. See paragraphs 5 and 6 above and table line/row 3 and 7 above. Yes, he declined "referral/special appearance" declined to make appearances.
29	5. Please provide copies of the following for each distressed property owner Mr. Kaiama represented or made a special appearance for since January 2014:	We object. See paragraphs 5 and 6 above and table line/row 3 and 7 above.
30	a. Signed contracts, legal agreements, retainer agreements, or any other document describing the attorney-client relationship and the service/s Mr. Kaiama was to provide in the distressed property case	We object. See paragraphs 5 and 6 above and table line/row 3 and 7 above. He recalls no written contracts.
31	b. Mr. Kaiama's invoices to clients	Unreasonable to ask for five years of invoices to "clients" without being more specific. Recalls no invoices at this time.
32	c. Mr. Kaiama's client subsidiary ledgers for clients	We don't understand what you mean by "client subsidiary ledgers".

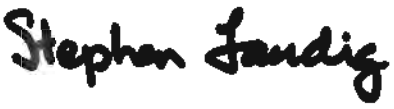
33	6. From January 2014 through January 2018 the balance of Mr. Kaiama's Bank of Hawaii ("BOH") IOLTA remained static, less minor interest transactions, at $22,909.65, with three exceptions.	Did you intend to re-ask these questions? They were answered to the extent possible in ours of 12 August. Please refer to our prior letters for the answers to these questions. There is one document from pre-January 2014 that needs to be provided to complete the response to this series of questions. We have requested the bank to provide it and it said it would, but it has not yet.
34	a. Does Mr. Kaiama have any other IOLTA or Client Trust Accounts? If so, please provide the financial institution/s and account number/s	Answered in 12 August 2019 letter, line 185.
35	b. Why were these funds ($22,909.65) held in trust in Mr. Kaiama's BOH IOLTA?	Answered in 12 August 2019 letter, line 195 and following.
36	c. To which client/s or individual/s do these funds belong? Please provide supporting documentation	Answered to the extent possible 12 August 2019 letter, line 195 thru 238. We are still seeking bank records and reviewing what may be as many as 50 bank archive boxes worth of written records to locate information regarding the $22,909.65.
37	d. During this period, for each distressed property owner from whom Mr. Kaiama received a fee for making a special appearance in a distressed property case, did he deposit said fees in his BOH IOLTA? If not, what did he do with the funds?	We object. See paragraphs 5 and 6 above and table line/row 3 and 7 above. As I suggested at our conference Mr. Ka'iama, when he was paid, was paid either in cash or via check on the day of the hearing so his representation began and ended before he was paid and thus his fees were earned before he was paid triggering no IOLTA responsibilities that he was, or is, aware of. We object to the second question as there is no basis for asking it in that no allegation has been made that Mr. Ka'iama in anyway engaged in any misconduct with regard to the funds he earned and we contend that Mr. Mr. Ka'iama has no duty to answer SOHODC questions unless there is a factual basis of some kind for asking the question. SOHODC has not presented any factual basis for any inquiry outside of the IOLTA questions.
38	e. On September 19, 2014, Check No. 106 was drawn on Mr. Kaiama's BOH IOLTA in the amount of $12,000. Please provide an explanation and a copy of this check (front and back).	Answered to the extent possible 12 August 2019 letter, beginning line 488.
39	f. On September 22, 2014, a deposit of $18,000 was made to Mr. Kaiama's BOH IOLTA. What was the source of these funds? What was the purpose of the deposit? Please provide supporting documentation (i.e. deposit slip, check -front and back-, etc.)	Answered to the extent possible 12 August 2019 letter, beginning line 505.
40	g. On October 1, 2014, Check No. 107 was drawn on Mr.	Answered to the extent possible 12 August 2019 letter, beginning line 514.

	Kaiama's BOH IOLTA in the amount of $6,000. Please provide an explanation and a copy of this check (front and back).	

We believe that the Trial court should be made aware that the SOHODC has an investigation involving the same subject matter as the litigation.

We waive any confidentiality of the matter and seek SOHODC's advice on how to proceed to inform the trial court.

Sincerely,



Stephen Laudig
Accompanying Documents as noted in text:

1. BOH 01 Kaiama to and from of July 2, Aug 7, and Sep 17.docx
2. BOH 02 Kaiama to and from of July 2, Aug 7, Sep 17, Sep 18 @ 1007a, and Sep 18 at 422p.docx
3. BOH 03 Kaiama to and from BOH 03 of July 2, Aug 7, Sep 17, Sep 18 @ 1007a, and Sep 18 at 422p, and Sep 19.docx
4. BOH Kaiama Escrow 201211-201312.pdf
5. BOH Kaiama Forse 20130207, 20,000, Forse proceeds from Ins.pdf
6. BOH Kaiama Forse 20130219 Forse Fees.pdf
7. BOH Kaiama Gabriel 20130812 Gabriel Proceeds to Gabriel.pdf
8. BOH Kaiama Gabriel 20130813, 17,500, Gabriel proceeds to Gabriel and to Kaiama.pdf
9. BOH Kaiama Gabriel 20130903 Gabriel Fees.pdf
10. BOH Kaiama Quilong 20130813 Quilong Proceeds from Ins.pdf
11. BOH Kaiama Quilong 20130813 Quilong Proceeds to Quilong.pdf
12. BOH Kaiama Quilong 20130904 Quilong Fees, GET, and Exp.pdf
13. Transcript (June 15, 2012), Wells Fargo Bank, N.A., v. Kawasaki, Third Circuit Court, civil no. 111-1-107, p. 13; Document name: Kaiama, Wells Fargo v Kawasaki, Transcript of Hearing on MTD, 20120615.pdf
14. Document: Kaiama, State v. English and Dudoit, Transcript of Motion to Dismiss, 37063.pdf

Stephen Laudig, Attorney, HBN #8038
1914 University Avenue #103 •
Honolulu, HI 96822 •
Phone: 808-232-1935 • Email: SteveLaudig@gmail.com •

Friday, November 8, 2019

Supreme Court-Office of Disciplinary Counsel
Ms. Rebecca M. Salwin
Deputy Chief Disciplinary Counsel
201 Merchant Street, Suite 1600
Honolulu, HI 96813

Tel: 808-521-4951

Via email only as an attachment to: rebecca.m.salwin@dbhawaii.org

CC to: Josiah.K.Sewell@dbhawaii.org

RE: ODC 18-0339;
Continuing followup and status along the lines of our 11 October 2019 letter.

My file number: 54733

Aloha Ms. Salwin:

This is followup and status note on our attempts to locate, retrieve, and identify records that would assist in clarifying the status of the funds in the escrow account.

Boilerplate in emails removed.

Date.Time	Email Text
191014.1035	From: Karen R. Owan Sent: Monday, October 14, 2019 10:35 AM To: 'Dexter Kaiama' <cdexk@hotmail.com> Subject: RE: Request for HSFCU Bank Record Hello Mr. Kaiama, I also just left you a voice message on phone (808) 284-5675. I received an email this morning from our Records Department and they wished for me to verify that you want only the front and back copy of any check that was deposited to the account – not the different accounts that the original deposit was transferred into. (ie) Check deposited to Joint Savings. Part of the deposit was then transferred into the Joint Checking. My response to them was that you wished to have copies of all checks. Using the example above, since the deposit to the joint checking is a transfer and not a check then you will not need a copy of the transfer. If I may ask for your help to verify that it is only copies of checks that were deposited and not the subsequent transfers of that deposit into your other deposit accounts. Thank you! Karen R. Owan
191016.1116	From: Karen R. Owan <KarenO@HSFCU.COM>

Date.Time	Email Text
	Sent: Wednesday, October 16, 2019 11:16 AM To: Dexter Kaiama <cdexk@hotmail.com> Subject: RE: Request for HSFCU Bank Records Hello Mr. Kaiama, Just following up on the email I sent on 10/14/2019. I also left a voice message on your home phone number (808) 263-3452. If I may ask for your help to verify the information you needed it would be most appreciated. Thank you! Karen Owan
191016.1414	From: Dexter Kaiama <cdexk@hotmail.com> Sent: Wednesday, October 16, 2019 2:14 PM To: Karen R. Owan <KarenO@HSFCU.COM> Subject: Re: Request for HSFCU Bank Records Hi Ms. Owan, Just saw your email now. My apologies for the delay. Please let me think about your question and get back to you tomorrow. I am at the airport and getting on a flight to New York with transfer to North Carolina tomorrow morning. I will try to answer your question by tomorrow afternoon at the latest. Thank you for your patience. Mahalo, Dexter K. Kaiama
191016.1429	From: Karen R. Owan Sent: Wednesday, October 16, 2019 2:49 PM To: 'Dexter Kaiama' <cdexk@hotmail.com> Subject: RE: Request for HSFCU Bank Records Hello Mr. Kaiama, Appreciate the update. Look forward to hearing from you. Thank you! Karen Owan
191022.1407	From: Karen R. Owan <KarenO@HSFCU.COM> Sent: Tuesday, October 22, 2019 2:07 PM To: Dexter Kaiama <cdexk@hotmail.com> Subject: RE: Request for HSFCU Bank Records Hello Mr. Kaiama, Hope things are going well. Just wished to follow up with you regarding your response to my question. I will be leaving on vacation from Tuesday, 10/29, and returning on Thursday, 11/07. Please contact (808) 792-4000 for assistance during my absence. Thank you. Karen Owan
191028.0621	Dexter Kaiama Mon, Oct 28, 6:21 AM (8 days ago)

Date.Time	Email Text
	to Karen Aloha Karen, In response to your initial inquiry: Hello Mr. Kaiama, I also just left you a voice message on phone (808) 284-5675. I received an email this morning from our Records Department and they wished for me to verify that you want only the front and back copy of any check that was deposited to the account – not the different accounts that the original deposit was transferred into. (ie) Check deposited to Joint Savings. Part of the deposit was then transferred into the Joint Checking. My response to them was that you wished to have copies of all checks. Using the example above, since the deposit to the joint checking is a transfer and not a check then you will not need a copy of the transfer. If I may ask for your help to verify that it is only copies of checks that were deposited and not the subsequent transfers of that deposit into your other deposit accounts. Thank you! Yes, only need copies of the front and back of checks deposited - do not need copy of the transfer(s). Thank you for your assistance and patience on this matter. Mahalo, Dexter K. Kaiama

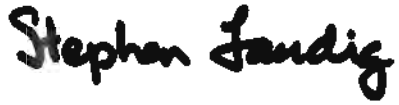
The physical search for documents was interrupted due to travel, court appearances, and filing deadlines in what I will designate as the "Mauna Kea Protectors Cases" which he is of counsel for 8 and as am I. These matters have a series of deadlines and trial dates beginning in mid-November and stretch out through at least January and these will slow us both down more than a little bit. The schedule is, of course, subject to change.

He is about 1/3rd done going through the bank archive boxes of closed files.

In our efforts to track down the source of the funds in the trust account we are getting records from what I would call 'collateral accounts' under the theory that a recollection might be triggered by association upon viewing these records. However, these records include a joint account with his spouse so if these records they will have to be parsed for her privacy.

The bank has provided around 100 pages of records some of which we are examining now should be able to produce in a week or so.

Sincerely,



Stephen Laudig
Accompanying Documents none:

Stephen Laudig, Attorney, HBN #8038
1914 University Avenue #103 •
Honolulu, HI 96822 •
Phone: 808-232-1935 • Email: SteveLaudig@gmail.com •

Thursday, 3 October, 2019

Supreme Court-Office of Disciplinary Counsel
Ms. Rebecca M. Salwin
Deputy Chief Disciplinary Counsel
201 Merchant Street, Suite 1600
Honolulu, HI 96813

Tel: 808-521-4951

Via email only as an attachment to: rebecca.m.salwin@dbhawaii.org

RE: ODC 18-0339; My file number: 54733

Aloha Ms. Salwin:

Dexter has requested all banking records available. Here are the contents of the email confirming his 30 September meeting with the bank's representation and his followup. I omitted the email 'boilerplate' language.

> Wed, Oct 2, 5:06 PM (13 hours ago)
> "kareno@hsfcu.com" <kareno@hsfcu.com>
> to
> Aloha Ms. Owan,
>
> I wish to follow-up on my meeting with you on Monday (9/30) concerning my request for bank records on my: (1) law office business checking; (2) joint checking and (3) joint savings account with my wife Cathy Manu Kaiama. I did show you my license and provide you with my email address at the time and asked for your business card so I could make a written request for bank records.
>
> First please confirm that bank records exists only back seven (7) years. Once confirmed, please provide copies, front and back (to show endorsement of checks) of all checks deposited into my law office business checking account, the joint savings and the joint checking account with my wife from 2012 to the present.
>
> The request need not include the employment pay-roll checks for my wife if that helps reduce the search request for your office.
>
> Please let me know when the reseach is completed and the cost incurred and I will come in to make payment or make other arrangements with you to remit payment for the cost. If I need to provide the account number (I did at our meeting) or any additional information to research and respond to my request, please let me know.
>
> Thank you kindly for your prompt assistance on this matter.
>
> Dexter Kaiama
> (808) 284-5675

Kindly confirm receipt of this message.

Sincerely,

Stephen Laudig

Stephen Laudig

Stephen Laudig, Attorney, HBN #8038
1914 University Avenue #103 •
Honolulu, HI 96822 •
Phone: 808-232-1935 • Email: SteveLaudig@gmail.com •

Friday, 11 October 2019

Supreme Court-Office of Disciplinary Counsel
Ms. Rebecca M. Salwin
Deputy Chief Disciplinary Counsel
201 Merchant Street, Suite 1600
Honolulu, HI 96813

Tel: 808-521-4951

Via email only as an attachment to: rebecca.m.salwin@dbhawaii.org

RE: ODC 18-0339; My file number: 54733

Aloha Ms. Salwin:

Here are the contents of a response received by him on Wednesday, and by me yesterday, which indicates the extent of his request for records and that there may be some delay due to the bank in receiving the records but that the request is in process.

On another matter, I am presenting at the National Lawyers Guild National Conference in Durham next week. Mr. Kai'ama be presenting along with myself on the "Legal Consequences of the US Occupation of Hawai'I". [https://law4thepeople.sched.com/]

Afterwards I will be visiting my sister in Indianapolis for a week. I leave on 16 October and return 28 October.

I will be mostly unavailable from 16-20 with convention business and offline for an undetermined number days beginning the 21st as my sister and I will be travelling by car through the Smokies from Durham to Indianapolis.

So there may be some delay in responding to any messages.

From: Karen R. Owan <KarenO@HSFCU.COM>
Sent: Wednesday, October 9, 2019 5:19:55 PM
To: Dexter Kaiama <cdexk@hotmail.com>
Subject: RE: Request for HSFCU Bank Records

Hello Mr. Kaiama,

I apologize for my delayed response. My work schedule has been irregular as I have had to take care of a medical issue.

I confirmed that we do only have 7 years worth of records. A requisition has been sent down today for copies of checks (front and back) deposited to the 3 accounts you have listed in your email to me.

I will let you know when I receive these copies.

Please let me know if you have any questions.

Thank you.

_____

Karen Owan

Senior Financial Services Specialist

Hawaii State Federal Credit Union
46-047 Kamehameha Hwy., #7

Kaneohe, HI 96744
Direct Line: (808) 426-4403

Fax Line: (808) 247-5191

Email: kareno@hsfcu.com

www.HawaiiStateFCU.com
facebook.com/hawaiistatefcu

NMLS# 459358

The 'boilerplate' language in the Bank's email was removed.

Kindly confirm receipt of this message.

Sincerely,

Stephen Laudig

Stephen Laudig

Office of Disciplinary Counsel
201 Merchant Street, Suite 1600
Honolulu, Hawai'i 96813
Telephone (808) 521-4591
www.dbhawaii.org

November 13, 2019 CONFIDENTIAL

Dexter K. Kaiama, Esq.
c/o Stephen Laudig, Esq.
1914 University Ave. #103
Honolulu, HI 96822

Re: ODC No. 18-0339
James F. Evers, Complainant

Dear Mr. Kaiama,

You have been issued a subpoena in connection with the above Disciplinary Investigation, a copy of which is provided with this letter. The subpoena commands you to appear on December 18, 2019, at the Office of Disciplinary Counsel in Honolulu, Hawai'i, and to produce specified documents. In lieu of appearing personally, you may deliver the requested documents and signed, written answers to the list of questions that are attached to the subpoena as **Attachment A**. Each question must be answered separately and fully in writing under oath, unless it is objected to, in which event you must state the reasons for the objection and must answer to the extent the question is not objectionable. The documents and written answers must be delivered by the time and date provided in the subpoena, to:

Josiah Sewell, Disciplinary Investigator
Office of Disciplinary Counsel
201 Merchant St., Suite 1600
Honolulu, HI 96813
(808) 521-4591 ext. 240
Josiah.K.Sewell@dbhawaii.org

Electronic delivery to the above email address is acceptable.

Additionally, if you intend to appear in person but cannot appear at the time and date listed in the subpoena, or if you have any other questions, then please contact me, no less than ten (10) days before you're commanded to appear.

Sincerely,

Rebecca M. Salwin
Deputy Chief Disciplinary Counsel
(808) 521-4591 ext. 230

RMS:uo

IN THE SUPREME COURT OF THE
STATE OF HAWAI'I

A confidential pending investigation and/or proceeding under Rule 2 of the Supreme Court of the State of Hawai'i, and Rules of the Disciplinary Board of the Hawai'i Supreme Court, regarding a matter of attorney discipline.	)	CONFIDENTIAL SUBPOENA AND SUBPOENA DUCES TECUM

TO: Dexter K. Kaiama
111 Hekili Street, Suite A1607
Kailua, HI 96734

1. **WE COMMAND YOU,** that all business and excuses being set aside, to appear in person and attend before:
Josiah K. Sewell, Disciplinary Investigator

2. At the place of Office of Disciplinary Counsel, 201 Merchant Street, Suite 1600, Honolulu, Hawai'i 96813.

3. On the 18th day of December, 2019 (Wednesday), at 10:00 o'clock A.M. (and at any recessed or adjourned date);

4. And to testify as a witness in the matter of Office of Disciplinary Counsel v. ~~a confidential nature identified as~~ 18-0339.

5. **AND WE FURTHER COMMAND YOU** to bring and produce at the time and place aforesaid, the following which you have in your custody or power, concerning the matter:

Produce answers to the written questions, copies of specified documentation as requested in the document attached as **Attachment A**

6. **FOR FAILURE TO APPEAR AND TESTIFY OR PRODUCE** as herein required, you will be deemed to be in contempt of the Supreme Court of Hawai'i.

BY AUTHORITY OF THE SUPREME COURT OF HAWAI'I.

DATED: Honolulu, Hawai'i, November 13, 2019.

Joshua A. Kuiokalani
Clerk

SUPREME COURT
STATE OF HAWAI'I

RETURN TO: Office of Disciplinary Counsel
Supreme Court of the State of Hawai'i
201 Merchant Street, Suite 1600
Honolulu, Hawai'i 96813

SERVED this Subpoena and Subpoena Duces Tecum to the within named

_____

at _____

this _____ day of _____, _____.

_____
Serving Officer

DENNIS H. NAKATA
Process Server, authorized by
Department of Public Safety,
State of Hawai'i

ATTACHMENT A

Terms

"Jurisdictional Argument" is the term you have previously defined as your argument that a case should be dismissed under HRCP Rule 12(b)(1) or FRCP Rule 12(b)(1), predicated on the alleged illegal annexation of the Hawaiian Kingdom by the United States.[1]

"Special Appearance" is the term you have previously used to reference your limited role as an advocate for the sole purpose of challenging jurisdiction in a given case.[2]

Please specifically answer the following:

Area of Inquiry #1: Consulting with Clients

1. Since January 1, 2014, name each client for whom have you made a Special Appearance as an advocate.

2. Since January 1, 2014, in how many of your Special Appearances did you present the Jurisdictional Argument?

3. Since January 1, 2014, of your Special Appearances in which you made the Jurisdictional Argument, how many times was the motion for dismissal granted?

4. Since January 1, 2014, for each motion based on your Jurisdictional Argument that was granted, provide the court order, court record or court minutes showing that it was granted.

5. Since January 1, 2014, for each motion based on your Jurisdictional Argument that was denied, provide the court order, court record or court minutes showing that it was denied.

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[1] Stated in your letter to ODC, dated 9/27/19, pg. 2, ¶6.
[2] Stated in your letter to ODC, dated 9/27/19, pg. 2, ¶6.

6. Identify the full name of each client for whom you entered a Special Appearance to make the Jurisdictional Argument since January 1, 2014.

7. For each client you identified in your answer to Question #6 above, provide the substance of your disclosure to that client of the number of times that a court granted, versus denied, your motion for dismissal based on the Jurisdictional Argument.

8. For each client you identified in your answer to Question #6 above, provide the substance of any consultation with the client about the means by which the client's objectives were to be accomplished, including, but not limited to, advising the client of your independent professional judgment about the strengths and weaknesses of the Jurisdictional Argument.

9. For each Special Appearance that you made since January 1, 2014, state how and by whom were you notified or informed of the location and time of the hearings in which you were to appear.

10. For each Special Appearances that you made since January 1, 2014, state how you checked for conflicts of interest prior to accepting the representation of each client?

11. For each Special Appearance that you made since January 1, 2014, state how the amount of your fee, or decision to appear *pro bono*, was conveyed to the client.

12. For each Special Appearance you made from January 1, 2014 to present, provide copies of each written fee agreement. If a written agreement does not exist or cannot be produced, state so with specificity.

13. For each Special Appearances that you made since January 1, 2014, state how you identified, explained, and conveyed to each client the scope of services you would provide?

14. For each Special Appearances that you made since January 1, 2014, describe how you prepared for each hearing.

15. State with particularity how you obtained any relevant legal documents and learned of the relevant facts for each case in which you made Special Appearance since January 1, 2014.

16. State how you determined your strategy for each Special Appearance that you made since January 1, 2014.

17. Describe what role, if any, Dr. David Keanu Sai had in your Special Appearances.

18. Describe what role, if any, Ms. Rose Dradi had in your Special Appearances.

19. From January 1, 2014 to present, detail by what means and frequency you communicated with Dr. Sai regarding your Special Appearances in which you made the Jurisdictional Argument.

20. From January 1, 2014 to present, detail by what means and frequency you communicated with Ms. Rose Dradi regarding your Special Appearances in which you made the Jurisdictional Argument.

Area of Inquiry #2: With regard to IOLTA and Record Keeping

21. From January 1, 2014 to present, state how many of your Special Appearances in which you made a Jurisdictional Argument were made *pro bono*?

22. From January 1, 2014 to present, identify which clients paid for your services and/or Special Appearances in which you made a Jurisdictional Argument.

23. For each client identified in your answer to Question #22 above, identify the bank account (by bank name and account number), date of deposit, and amount of each deposit.

24. For each client identified in your answer to Question #22 above, state how you determined your fee.

25. For each client identified in your answer to Question #22 above, state how much each client paid you.

26. For each client identified in your answer to Question #22 above, state the means or method by which each client paid? (*E.g.*, cash, check, credit card, etc.).

27. For each client identified in your answer to Question #22 above, provide proof of payment for each client. (*E.g.*, deposit slips, copies of checks, receipts, etc.).

28. From January 1, 2014 to present, for each client for whom you made a Special Appearance and presented a Jurisdictional Argument, provide copies of all signed contracts, legal agreements, retainer agreements, or any other document describing the scope of the attorney-client relationship and the services you were to provide. If no documents exist for a particular client, identify the client and identify the absence of documents.

29. From January 1, 2014 to present, for each client for whom you made a Special Appearance and presented a Jurisdictional Argument, provide copies of all invoices sent to clients for Special Appearances. If no documents exist for a particular client, identify the client and identify the absence of documents.

30. From January 1, 2014 to present, for each client for whom you made a Special Appearance and presented a Jurisdictional Argument, provide copies of all ledger records for each separate trust client for which you made Special Appearances, showing that information required by the Hawai'i Rules Governing Trust Accounting, Rule 4(c)(2). If no documents exist for a particular client, identify the client and identify the absence of documents.

From:	Steve Laudig
To:	Rebecca Salwin; Dexter Kaiama
Cc:	Josiah Sewell
Subject:	Cover letter and Response, Email 1 of 5
Date:	Wednesday, December 18, 2019 11:53:59 AM
Attachments:	00 191218.1 Laudig to ODC Response Cover letter.pdf 00 191218.2 Kaiama Response to Subpoena, 86667, submitted.pdf

---

Aloha please find the attached cover letter and response.

--

Stephen Laudig
1914 University Avenue, #103
Honolulu, Hawaiian Islands, 96822
Tel. 808-232-1935

Stephen Laudig, Attorney, HBN #8038
1914 University Avenue #103 •
Honolulu, HI 96822 •
Phone: 808-232-1935 • Email: SteveLaudig@gmail.com •

Wednesday, December 18, 2019 at around 11:40

Supreme Court-Office of Disciplinary Counsel
TO:
Ms. Rebecca M. Salwin
Mr. Josiah K Sewell
Deputy Chief Disciplinary Counsel
201 Merchant Street, Suite 1600
Honolulu, HI 96813

Tel: 808-521-4951

Via email only as an attachment to: rebecca.m.salwin@dbhawaii.org;
Josiah.K.Sewell@dbhawaii.org

RE: ODC 18-0339; My file number: 54733

Aloha Ms. Salwin and Mr. Sewell:

1. Thank you for the additional time. Accompanying this letter is Mr. Ka'iama's responses to the 30 questions and Attachments. It has been my experience that the State of Hawai'i's email system balks when faced with a certain number of attachments or attachments of a certain size. I will be emailing all documents as pdfs as attachments to emails. There is always the possibility that something may either go astray or be rejected. To make it easier to keep track I'll number the emails in the subject line "1 of " for all but the last one which will be "X of X" say 6 of 6. The order will be as follows: Cover letter, response, Attachments sent in numerical.
2. I find it helpful for purposes of reference to have line numbering if paragraphs are not numbered, however not all readers share this feeling. If you'd prefer an unnumbered PDF version, I can accommodate that easily.
3. This is a list of the attachments to the response:

Attachment #1 OCP v Kaiama, Motion
Attachment #2 OCP v Kaiama Opposition
Attachment #3 Email from James F. Evers of 27 November 2018 at around 11:55 a.m.
Attachment #4 Kmiec, Legal Issues Raised by Proposed Presidential Proclamation To Extend the Territorial Sea
Attachment #5 Dr. Schabas Legal opinion on war crimes related to the United States occupation of the Hawaiian Kingdom since 17 January 1893
Attachment #6 Permanent Court of Award Arbitration
Attachment #7 Dr. Craven Continuity of the Hawaiian Kingdom
Attachment #8 Dr. Sai United States Belligerent Occupation of the Hawaiian Kingdom

Attachment #9 Lenzerini Legal Opinion on International Human Rights Law and Self-Determination of Peoples Related to the United States Occupation of the Hawaiian Kingdom since 17 January 1893
Attachment #10 Dezayas Opinion
Attachments #11: Copies of checks: Date/Client Name/ Amount, in five parts.
150323 Tynanes $300.pdf
150526 O'Kelly $300.pdf
150526 Vaiaoga $300.pdf
151117 Grigory $300.pdf
170627 Loando $400.pdf

Please acknowledge receipt once all are there. And should there be a question or problem please let me know as Mr. Ka'iama and I both would like to end this and are assisting as much as we can in light of the perils that we have reason to belief are out there.

Sincerely,

Stephen Laudig
Accompanying Documents as stated:

RESPONSE TO SUBPOENA

I. AN HRE 408 PROPOSAL TO RESOLVE THE MATTER OF FUNDS IN THE ESCROW ACCOUNT:

This is in the nature of an HRE 408 offer of settlement with regard to the investigation into Mr. Ka'iama's trust account. We want to negotiate a resolution without having what is said during the negotiations become evidence to be used against Mr. Ka'iama.

For the record, we contend that the State of Hawai'i acting through James F. Evers's accessing of Mr. Ka'iama's trust account records was an abuse of process. It was an unlawful search and seizure, an abuse of office, an ultra vires act, and likely a civil rights violation. This extral legal act resulted in that information being obtained improperly which he, in turn, delivered to the Office of Disciplinary Council [ODC]. So in a very real sense the ODC is using tainted evidence and, were this a criminal proceeding, that evidence any any evidence discovered as a result of having it would be subject to a motion to supress.

But setting aside any discussion of the lawfulness of the State of Hawai'i's actions in obtaining Mr. Ka'iama's bank records for purposes of this attempt at settlement, Mr. Ka'iama requests ODC's assistance in identifying and locating the owners of the funds in his trust account. Mr. Ka'iama would rather work with ODC in the search for the owners than resist this inquiry into the account. It is a better expenditure of resources to have ODC and Mr. Ka'iama work jointly to identify the owners than to litigate it as is being done now. The ODC's interest is determining whose funds they are and that is what he wishes also. Mr. Ka'iama has exhausted his memory and is currently unable to recall or determine whose funds they are.

That the funds have remained in the account is should be viewed in the most charitable light as evidencing his honesty towards those funds even if it may allow for other inferences.

If he were dishonest, the funds would have been gone long ago.

Mr. Ka'iama has reviewed many records in his possession or available to him in the hopes that it might shine light on the issue of the owners of the funds. He has not reviewed all of them, but what he has reviewed has not refreshed his recollection. If we can reach an agreement to cease litigating over this Mr. Ka'iama would cooperate with the person ODC might task with identifying and locating the owners.

I have studied Rule 2 looking for a vehicle to accomplish this joint goal of accomplishing this. Would an audit, as identified in 2.24 be such a vehicle? The auditor's specific assignment being to identify and the owners? Mr. Ka'iama wants to bring this issue an end. He recognizes it as his doing but needs assistance that ODC seems to be in a position to provide. The same time and effort that is being devoted to protecting his legal rights could be devoted to solving this self-made problem.

Costs are a concern and the goal of any auditor should be to identify the owners with the least expense possible. We do not want to litigate the funds issue but the ODC keeps trying to link what is not linked. Mr. Ka'iama's "limited representation for purposes of challenging jurisdiction" is not linked, in any factual way, to the funds that have been in the account for so long. We are confident that any audit will establish what we have said consistently which is that no payments for his "limited representation for purposes of challenging jurisdiction" were ever deposited in the escrow account.

Mr. Ka'iama has limited resources. Auditors can be very expensive unless instructed and monitored. The narrow purpose of the audit would to be find the owners or find the source of the money.

If ODC and Mr. Ka'iama settle this issue all that would remain are the unconnected, relatively narrow, and purely legal issues related whether fees tendered to him ***after*** being earned for his "limited representation for purposes of challenging jurisdiction" are required to be escrowed; and, whether Mr. Ka'iama's "limited representation for purposes of challenging jurisdiction" is subject to legislative regulation. These matters are pending before Judge Ashcroft. We have moved to dismiss, the State of Hawai'i has opposed and we will be filling our reply shortly. Attachment 1: OCP v Kaiama, Motion; Attachment 2 Opposition to Motion.

Surely there's a way to resolve both matters based upon what I've suggested above.

They need to be separated and dealt with individually. And this proposal to settle, I hope, will begin that process.

I invite a response.

II. GENERAL RESPONSE AND STATEMENT OF OBJECTIONS to ITEMS 1-30 CONTAINED IN THE ATTACHMENT TO THE SUBPOENA DUCES TECUM:

Mr. Ka'iama objects to how this "investigation" is being carried out. The ODC has not specifically identified what Mr. Ka'iama is suspected of having done and how that conduct violates any specific provision of the rules. The investigation is a general wide-ranging "investigation" into nearly aspects of his practice. Until the ODC specifies precisely what it suspects him of or intends to charge him with, Mr. Ka'iama is left in the dark in his attempt to cooperation since he doesn't know what precisely what is suspected. Despite this Mr. Ka'iama is cooperating to the extent he can while trying to preserve his rights.

Mr. Ka'iama restates all objections raised in all prior communications with the ODC. He continues to object to the conflation of what are two, factually and legally, distinct and separate matters. Mr. Ka'iama, admits that in a number of civil cases over longer than five-year period being inquired of he provided "limited representation for purposes of challenging jurisdiction". What he did could also be described as making "special appearances for the purpose of contesting jurisdiction".

Mr. Ka'iama performed his special appearances made for the purpose of contesting jurisdiction contemporaneously with payment for them. By "contemporaneously" Mr. Ka'iama means within a few or several minutes of being paid. The compensation was almost always paid after the motion had been argued though it is not impossible that on an occasion or two the client tendered payment to Mr. Ka'iama immediately before the hearing and argument.

We contend that, thus, no duty to deposit unearned compensation was ever triggered because there was none and no purpose would be served by depositing because it had already been earned.

Although the ODC has never specifically identified what disciplinary offense it thinks Mr. Ka'iama may have committed, it appears, based upon what it has done, to share James F. Evers's speculations contained in his 27 November 2018 email. Those speculations are premised on a number of false factual conclusions that which suppose that Mr. Ka'iama performed "mortgage relief services" [Attachment 3. James F. Evers email of 27 November 2018].

One main concern is that Mr. Ka'iama has reasons to believe Evers has instigated more than one criminal investigation alleging Mr. Ka'iama's involvement in criminal activities based upon Evers' manufactured false narrative.

We have some reason to believe that at least one, and perhaps, two of the criminal investigations involving Mr. Ka'iama, Evers had instigated against have terminated with no

action. Evers's malice, bias and desire to do harm know no bounds. Mr. Ka'iama can reasonably assume that Evers, using his office as a state official is persisting in his attempts to have criminal charges brought against Mr. Ka'iama. That being said Mr. Ka'iama must assert his constitutional rights until it becomes clear that the promised confidentiality of ODC's proceedings are confirmed by written assurances that what Mr. Ka'iama provides to ODC is not, as we fear might, or could be, based upon the rather chummy tone of Evers's 27 November 2018 email, be being given to Evers or another state agency.

This fear explains why we have been resistant.

Mr. Ka'iama's representation did not include any "mortgage relief services". The Hawai'i Supreme Court's understanding of his argument is the correct one.

It wrote, in its Censure, that:

> We also emphasize Respondent Kaiama faces discipline for the allegations made in the Notice of Protest, not for his arguments in the underlying litigation that the court lacked jurisdiction because of the continued existence of the Kingdom of Hawai`i, an argument which, if successful, could achieve an articulable objective for his client, i.e., dismissal of the litigation.

Among the other things that Mr. Ka'iama relied upon is a ruling made 22 August 2012, by Judge Ibarra. He ruled the that Mr. Ka'iama's special appearance for purposes of contesting subject matter jurisdiction was appropriate. This is the entry.

> "KAIAMA--JUDGE IBARRA HAS RULED THAT SPECIAL APPEARANCE FOR PURPOSES OF CONTESTING SUBJECT MATTER JURISDICTION HAS BEEN FOUND TO BE APPROPRIATE;"
>
> Source: BONY Mellon v. Sapla, et al, 3CC1210000344, entry of that date.

Mr. Ka'iama recalls a few instances where opposing counsel objected, in court, to his making a special appearance for purposes of contesting jurisdiction, but that no judge ever granted the objection.

In our prior communications Mr. Ka'iama has answered specific questions about specific clients. We incorporate those responses here.

He has reviewed paper records, previously described, in his possession. As a result of that review of the paper records he has identified some additional clients.

III. THE SUBPOENA OF 13 NOVEMBER 2019

On 13 November 2019, a signed, but unsealed, document labelled "Confidential Subpoena and Subpoena Duces Tecum" was issued ordering Mr. Ka'iama's appearance at 10:00 a.m. on 18 December 2019. It commands that Mr. Ka'iama "bring and produce at the time and place aforesaid, the following which [he has] in [his] custody or power."

We understand the term "custody" to mean "something in our possession". However, the term "power" presents a possible problem of interpretation and dispute between us.

We understand that something "in his power" is something of his that is not currently in his custody or possession, but that is in another's custody that he, Mr. Ka'iama, has the "power" to take, or resume, custody of. We will use that meaning. If our understanding of the term "power" differs from ODC's please advise so that if there is a disagreement over

what ODC thinks Mr. Ka'iama should have produced this morning it can be sorted out.

Attachment A to the subpoena has 30 numbered items. Some are in a form that could be characterized as "commands" such as #1 which reads:

> 1. Since January 1, 2014, ***name*** each client for whom have you made a Special Appearance as an advocate.

Mr. Ka'iama understands this to be a 'command' that he name each [and every] client etc.

Others are in the form of a question, such as #2:

> 2. Since January 1, 2014, ***in how many*** of your Special Appearances did you present the Jurisdictional Argument?

This calls for a response that includes a number.

Still others sound like a "motion to produce", such as #4:

> 4. Since January 1, 2014, for each motion based on your Jurisdictional Argument that was granted, ***provide*** the court order, court record or court minutes showing that it was granted.

We understand "provide" to be, if Mr. Ka'iama possesses, or has it in his power, to bring, or deliver, a document.

Our understanding is that we are only required to produce what we have in our "custody or power". If it is in our power and its production is not objectionable, it is being provided.

We originally did not have "custody" of certain bank records which could contain the information requested or meet the description of a document requested or assist Mr. Ka'iama in his attempts to refresh his recollection in order to cooperate. It was in our "power" to obtain them and we did for the period inquired of.

Mr. Ka'iama has cooperated previously by providing these records, at no small cost of time and expense to himself. This was done despite our objections to answering questions that came into existence as fruits of an Evers' unlawful search and was done without waving any objection on that or any other basis.

Likewise, today we are providing some records Mr. Ka'iama possesses or had the power to obtain.

For example, Mr. Ka'iama has searched records in his custody for any "court order, court record or court minutes showing that it was granted" and has located none. We do not understand ourselves to be under any affirmative duty to go to a court, and obtain something, such as an "order, record or minutes". So he didn't. Compelling such a servitude would entail great time and expense and we see no relevance as we don't claim any such motion was granted.

Thus, we believe ourselves to be in compliance with ¶6 of the subpoena which states "FOR FAILURE TO APPEAR AND TESTIFY OR PRODUCE as herein required, you will be deemed to be in contempt of the Supreme Court of Hawai'i'."

We read this paragraph to give us the option to:

> 1. "appear and testify"; or,
> 2. "produce".

"Produce" would include "object" or respond, or both.

We opt to "produce" and will not be personally present which we read as permitted by this

portion of the 13 November 2019 letter which accompanied the subpoena: "In lieu of appearing personally, you may deliver the requested documents and signed, written answers to the list of questions that are attached to the subpoena as Attachment A. Each question must be answered separately and fully in writing under oath, unless it is objected to, in which event you must state the reasons for the objection and must answer to the extent the question is not objectionable."

If the ODC finds this approach objectionable, let me explain the circumstances in play this week. Mr. Ka'iama and I are co-counsel representing 8 of the 38 Mauna Kea Defenders. The cases of the 38 defendants have, over our objections, been "consolidated for trial" into 8 trials. Our 8 clients are sprinkled among 5 of the "consolidated for trial" cases. The 8 consolidated trials are all set for 20 December 2019.

So, as you might imagine this is a busy week as these are all Rule 48 settings. Every day brings multiple filings. For example, while preparing over the last several days I have received more than 50 notices which required being checked.

IV. OBJECTIONS APPLICABLE TO ALL QUESTIONS:

We contend that Evers filed his complaint as part of a project existing among some State of Hawai'i officials, and others, to discriminate against and oppress--there are no other words that come to mind presently to describe it- persons exercising their protected rights. These state actors are taking action and inducing others such as the ODC to take actions against individuals involved in free speech activities concerning the Hawaiian Kingdom and the United States Government belligerent occupation of it. This project targets individuals for their beliefs while pretextually pretending to be about actions.

Mr. Ka'iama was selected and targeted by Evers, working with these others in the State of Hawai'i government because of "his arguments in … underlying litigation [were] that the court lacked jurisdiction because of the continued existence of the Kingdom of Hawai`i, an argument which, if successful, could achieve an articulable objective for his client, i.e., dismissal of the litigation." Well-founded arguments to courts, even ones that have always lost, is protected activity. Separate but equal arguments lost for more than half a century in United States Government courts until they won in Brown v. Board of Education.

Evers, and others, knew could have known that Mr. Ka'iama did not perform "mortgage relief services" [See, email from James F. Evers to Bradley R. Tamm; cc: Rebecca Salwin of 27 November 2018 at around 11:55 a.m.] Evers, and others, are attempting to stretch beyond reasonable recognition, the meaning of the term "mortgage relief services" to include entering a limited appearance and providing "limited representation for purposes of challenging jurisdiction." Other details of this project needn't be presented here as Mr. Ka'iama's objection is to having the ODC be used by these others to accomplish an improper purpose.

Nevertheless Mr. Ka'iama recognizes that the ODC, as an organ of the Hawaii Supreme Court, does have effective power and Mr. Ka'iama intends to cooperate while not waiving rights he possesses.

What follows is an abbreviated summary of the international and domestic United States law background for the special appearances made for the purposes of contesting only jurisdiction.

It is for purposes of preserving objections and describing the ideas for which Mr. Ka'iama, and others, are being subjected to official harassment.

It is beyond argument that:

> This [the United States Government] government is acknowledged by all, to be one of enumerated powers. The principle, that it can exercise only the powers granted to it, would seem too apparent, to have required to be enforced by all those arguments, which its enlightened friends, while it was depending before the people, found it necessary to urge; that principle is now universally admitted...Among the enumerated powers, we do not find that of establishing a bank or creating a corporation. But there is no phrase in the instrument which, like the articles of confederation, excludes incidental or implied powers; and which requires that everything granted shall be expressly and minutely described. Even the 10th amendment, which was framed for the purpose of quieting the excessive jealousies which had been excited, omits the word 'expressly,' and declares only, that the powers 'not delegated to the United States, nor prohibited to the states, are reserved to the states or to the people;' thus leaving the question, whether the particular power which may become the subject of contest, has been delegated to the one government, or prohibited to the other, to depend on a fair construction of the whole instrument.
>
> M'culloch v. State of Maryland, 17 U.S. 316, 4 L. Ed. 579, 4 Wheat. 316, 1819 U.S. LEXIS 320 (1819)

Among the enumerated powers given to Congress, or the President, one does not find a power given to annex a foreign country, nor to admit a foreign country as a state.

This lack of delegated power makes the United States Government presence in the Hawaiian Islands, in addition to being lawless as measured by international law, extra-constitutional, unconstitutional or non-constitutional, under its own municipal law.

No United States Government court of last resort has addressed the issue of enumerated powers. This lack of constitutional authority to annex, or, a fortiori, admit a foreign State it was occupying belligerently, as a member of the union, by either resolution or legislation was conceded by the U.S. Attorney General's Office, in a 1988 legal opinion, from its Office of Legal Counsel which addressed the purported "annexation" of the Hawaiian Islands by joint resolution. Douglas Kmiec, Acting Assistant Attorney General, authored the memorandum for Abraham D. Sofaer, legal advisor to the U.S. State Department. After covering the limitation of Congressional authority and the objections made by members of the Congress, Kmiec concluded,

> Notwithstanding these constitutional objections, Congress approved the joint resolution and President McKinley signed the measure in 1898. Nevertheless, whether this action demonstrates the constitutional power of Congress to acquire territory is certainly questionable. … It is therefore unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution. Accordingly, it is doubtful that the acquisition of Hawaii can serve as an appropriate precedent for a congressional assertion of sovereignty over an extended territorial sea (Douglas W. Kmiec, Legal Issues Raised by Proposed Presidential Proclamation To Extend the Territorial Sea, 12 Opinions of the Office of Legal Counsel 238, 252 (1988).
>
> https://www.justice.gov/sites/default/files/olc/opinions/1988/10/31/op-olc-v012-p0238.pdf

Attachment #4- Kmiec, Legal Issues Raised by Proposed Presidential Proclamation To Extend the Territorial Sea

The first allegation of the war crime of usurpation of sovereignty, was made the subject of an arbitral dispute in Lance Larsen vs. Hawaiian Kingdom at the Permanent Court of Arbitration ("PCA"), whereby the claimant alleged that the Council of Regency was legally liable "for allowing the unlawful imposition of American municipal laws" over him within Hawaiian territory. According to Professor Schabas, the war crime of usurpation of sovereignty consists of the "imposition of legislation or administrative measures by the occupying power that go beyond those required by what is necessary for military purposes of the occupation (available online at https://hawaiiankingdom.org/pdf/Opinion_War-Crimes_Schabas_RCI.pdf)."

Attachment #5 Dr. Schabas Legal opinion on war crimes related to the United States occupation of the Hawaiian Kingdom since 17 January 1893

In order to ensure that the dispute is international, the PCA, as an institution, must possess jurisdiction first, before it can form ad hoc tribunals. The jurisdiction of the PCA is distinguished from the subject-matter jurisdiction of the ad hoc tribunal presiding over the dispute between the parties. International disputes, capable of being accepted under the PCA's institutional jurisdiction, include disputes between: any two or more States; a State and an international organization (i.e. an intergovernmental organization); two or more international organizations; a State and a private party; and an international organization and a private entity. The PCA accepted the case as a dispute between a State and a private party, and acknowledged the Hawaiian Kingdom to be a non-Contracting Power under Article 47 of the Hague Convention, I. Oral hearings were held at the PCA on December 7, 8 and 11, 2000.

The PCA accepted the case as a dispute between a state and a private party. This acknowledged the Hawaiian Kingdom as a non-Contracting Power under Article 47 of the 1907 Hague Convention for the Pacific Settlement of International Disputes. As stated on the PCA's website:

> Lance Paul Larsen, a resident of Hawaii, brought a claim against the Hawaiian Kingdom by its Council of Regency ("Hawaiian Kingdom") on the grounds that the Government of the Hawaiian Kingdom is in continual violation of: (a) its 1849 Treaty of Friendship, Commerce and Navigation with the United States of America, as well as the principles of international law laid down in the Vienna Convention on the Law of Treaties, 1969 and (b) the principles of international comity, for allowing the unlawful imposition of American municipal laws over the claimant's person within the territorial jurisdiction of the Hawaiian Kingdom.
>
> In determining whether to accept or decline to exercise jurisdiction, the Tribunal considered the questions of whether there was a legal dispute between the parties to the proceeding, and whether the tribunal could make a decision regarding that dispute, if the very subject matter of the decision would be the rights or obligations of a State not party to the proceedings.
>
> The Tribunal underlined the many points of agreement between the parties, particularly with respect to the propositions that Hawaii was never lawfully incorporated into the United States, and that it continued to exist as a matter of international law. The Tribunal noted that if there existed a dispute, it concerned whether the respondent has fulfilled what both parties maintain is its duty to protect the Claimant, not in the abstract but against the acts of the United States of America as the occupant of the Hawaiian Islands. Moreover, the United States' actions would not give rise to a duty of protection in international law unless they were themselves unlawful in international law. The Tribunal concluded that it could

> not determine whether the Respondent has failed to discharge its obligations towards the Claimant without ruling on the legality of the acts of the United States of America – something the Tribunal was precluded from doing as the United States was not party to the case.

https://pca-cpa.org/en/cases/35/

Attachment 6 is the Permanent Court of Arbitration Award.

It is contended that this award establishes, as a matter of fact in international law that the Hawaiian Kingdom exists under international law by a body competent to do so. "International law…consists of rules and principles of general application dealing with the conduct of states and of international organizations and with their relations inter se, as well as with some of their relations with persons, whether natural or juridical." Restatement (Third) of Foreign Relations Law §101 (Am. Law Inst. 1987) ("Restatement Third"). Sources of international law come "(a) in the form of customary law; (b) by international agreement; or (c) by derivation from general principles common to the major legal systems of the world." Id., §102. In determining whether a "rule has become international law, substantial weight is accorded to (a) judgments and opinions of international judicial and arbitral tribunals; (b) judgments and opinions of national judicial tribunals; (c) the writings of scholars; [and] (d) pronouncements by states that undertake to state a rule of international law, when such pronouncements are not seriously challenged by other states." Id., §103(2).

Thus any argument Mr. Ka'iama might make regarding the existence of the Hawaiian Kingdom is based upon "judgments and opinions of international judicial and arbitral tribunals" which are to be "accorded" "substantial weight".

The "writings of scholars" are also to be accorded substantial weight. Here Mr. Ka'iama, and others against whom State of Hawai'i officials, employees, and agents, are targeting, rely upon the following:

Attachment 7 is Dr. Craven's article, Continuity of the Hawaiian Kingdom.
Attachment 8 Dr. Sai's article, United States Belligerent Occupation of the Hawaiian Kingdom
Attachment 9 Dr. Lenzerini's article, Legal Opinion on International Human Rights Law and Self-Determination of Peoples Related to the United States Occupation of the Hawaiian Kingdom since 17 January 1893

On February 25, 2018, Dr. deZayas, in his capacity as a United Nations Independent Expert with the Office of the High Commissioner for Human Rights authored a memorandum titled "Re: The case of Mme Routh Bolomet" in response to a complaint submitted to the Council by Mrs. Bolomet in 2017. Without getting into the particulars of Mrs. Bolomet's complaint, the Independent Expert addressed the broader issue of the military occupation of the Hawaiian Kingdom and the requirement of the United States, as the occupying State, to administer the laws of the occupied State, being the Hawaiian Kingdom.

He stated,

> I have come to understand that the lawful political status of ***the Hawaiian Islands is that of a sovereign nation-state in continuity; but a nation-state that is under a strange form of occupation by the United States resulting from an illegal military occupation and a fraudulent annexation***. As such, international laws (the Hague and Geneva Conventions) require that governance and legal matters within the occupied territory of the Hawaiian Islands must be administered by the application of the laws of the occupied state (in

> this case the Hawaiian Kingdom), not the domestic laws of the occupier (the United States).

Attachment 10 is Dr. deZayas Opinion Letter.

Mr. Ka'iama sees no purpose in any more discussion of these scholars' writings as Dr. deZayas' opinion succinctly states the international law situation of the Hawaiian Islands.

I would only note that I have not found any scholar of equal qualifications who counter their writings. Should the ODC find one I would appreciate being informed.

Should the ODC find such a scholarly writing I would welcome begin provided a copy or a citation.

So international law is clear on the issue of the existence of the Hawaiian Islands, or Hawai'i, as a state and the Hawaiian Kingdom as its lawful government.

The next question would be what is United States law regarding international law?

Mr. Ka'iama contends that:

> International law is part of our law, and must be ascertained and administered by the courts of justice or appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination." The Paquete Habana, 175 U.S. 677, 700 (1900).

Aside from treaties, whether self-executing or not, customary international law is "incorporated into United States law" and ""is self-executing' and is applied by courts in the United States without any need for it to be enacted or implemented by Congress." Louis Henkin, International Law as U.S. Law, 82 Mich. Law Rev. 1555, 1561 (1984). "Since it is law not enacted by Congress, and the principles of that law are determined by judges for application in cases before them, customary international law has often been characterized as 'federal common law.'" Id.

So in making special appearances made for the purposes of contesting only jurisdiction Mr. Ka'iama relies upon these clear pronouncements of international and United States law.

It is to be recalled that Evers' complaint, which the ODC is investigating, contends that Mr. Ka'iama was performing "mortgage relief services". There is no overlap between special appearances made for the purposes of contesting only jurisdiction and "mortgage relief services". None. To seek to establish there is perverts the meaning of these terms. Yet that is Evers' goal.

As of October 2017, the International Commission of Inquiry in Incidents of War Crimes in the Hawaiian Islands—The Larsen Case that stems from the Larsen v. Hawaiian Kingdom arbitration held at the Permanent Court of Arbitration from 1999-2001, was scheduled to be holding its first hearing on the grounds of 'Iolani Palace at the Kana'ina Building on January 16 and 17, 2018.

The hearing was to be closed to the public, but the proceedings were to be live-streamed on the Internet. The Proceedings were to center around the unlawful imposition of United States laws that led to the unfair trial, unlawful confinement, and pillaging of Lance Paul Larsen who is a Hawaiian subject and victim of war crimes committed against him by the United States through its armed force—the State of Hawai'i. These war crimes were committed in 1999.

At some time during autumn and winter of 2017, the existence of these planned proceedings became known to a person, or persons, unknown in the United States Government State Department and in State of Hawai'i. These individuals purposed to prevent the proceedings and/or bring public disrepute upon individuals associated with pursuing the International Commission of Inquiry in Incidents of War Crimes in the Hawaiian Islands in order to suppress the information that would come out as a result of the proceedings.

Evers' initiated his fatally-flawed pleading on 25 January 2018. We contend that this was done as part of a planned political operation against individuals involved in making certain arguments in State of Hawai'i courts to the effect that the presence of the United States Government in the Hawaiian Islands was not lawful under either international law or United States domestic law.

We further contend that once a fuller investigation is performed that the legal proceedings initiated by these State of Hawai'i employees is investigated it will turn out to have been done for improper political purposes to bring disrepute upon the individuals associated with pursuing the PCA proceedings that were scheduled to begin on 17 and 18 January 2018. Mr. Ka'iama is one such individual.

V. OBJECTION TO ODC'S ATTEMPT TO BESTOW LIMITED DEFINITIONS ON CERTAIN TERMS

Mr. Ka'iama objects to the ODC's attempts to limit definitions to the terms "jurisdictional argument" and "special appearance". These terms "jurisdictional argument" and "special appearance" were not invented by Mr. Ka'iama. They are terms of art in law that are commonly used and well understood in the courts and the profession and there is little debate over what is meant when they are used. We would note that no party successfully objected to Mr. Ka'iama's appearances for the limited purpose of contesting jurisdiction.

We certain object to the ODC's attempt to limit the meaning to one possible description of the jurisdictional argument described in our 27 September 2019 letter written in a different context. Likewise any attempt to give some idiosyncratic meaning to the term special appearance is objectionable. We use these terms as they are commonly used and understood in the profession and resist any attempt by the ODC to restrict the meaning.

We contend that Mr. Ka'iama's banking records were obtained lawlessly and in violation of the protections of the United States Constitution, the State of Hawai'i Constitution and protections against unreasonable governmental searches and seizures.

In December 2018, a Mr. Levins, Evers, and a Mr. Tokunaga obtained Mr. Ka'iama's banking records unlawfully and using information obtained from the unlawfully obtained banking records forwarded that information to the Office of Disciplinary Counsel [ODC] under the pretext of Evers being a complainant. Information contained in the lawlessly obtained Mr. Ka'iama's banking records was provided by Evers to the ODC and was used to prepare some or all of the items appearing in Attachment A of the 13 November 2019 "Subpoena and Subpoena Duces Tecum".

We object to answering any of the questions or responding to any of the statements numbered 1-30 as they came into existence as the result of lawless government conduct done in furtherance of violating Mr. Ka'iama's civil rights, and others, for their constitutionally protected activities.

At this point it should be noted that we are not aware of any client complaints against Mr. Ka'iama, only a Evers' complaint. Evers has presented false factual statements, at least, once to a court in an attempt to obtain relief.

In summation, Mr. Ka'iama incorporates by reference all prior objections contained in all prior communications with the ODC.

VI. QUESTIONS AND ANSWERS

Mr. Ka'iama reserves the right to supplement any answer provided herein should such a supplement be warranted.

Entitled: Area of Inquiry #1: Consulting with Clients

Attachments provided and referred to in the answers:

Mr. Ka'iama has located the followed checks for payment for his "limited representation for purposes of challenging jurisdiction."

150323 Tynanes $300.pdf
150526 O'Kelly $300.pdf
150526 Vaiaoga $300.pdf
151117 Grigory $300.pdf
170627 Loando $400.pdf

Attached as Exhibit 11.

1. Since January 1, 2014, name each client for whom have you made a Special Appearance as an advocate.

RESPONSE:

Objection to the term "advocate". I have not made any "Special Appearance as an advocate." This is vague and ambiguous as the phrase "name each client" is unclear. It could mean "name each and every client" which I am unable do. I do not understand what the ODC means by the term "advocate." I did not "advocate". I entered a limited appearance and provided "limited representation for purposes of challenging jurisdiction." I am unable, from unassisted memory, name each and every client I have "made a Special Appearance as an advocate" for since January 1, 2014.

My unassisted recall is, that without consulting any documents of any kind, I recall following. I am not sure of the spellings: the Fonotis. The Fonotis are known to the ODC because James F. Evers included their names in his complaint.

My assisted recall, after consulting JEFs and other documents in my possession, are the following:

Jurisdictional Case List showing Client names beginning January 1, 2014

1. William Alisna Lucas WFB v. Lucas, 1CC141002623
1st Circuit Mtd Hrng: 08/23/2016

2. Rosalie M. Lastimado BOA v. Lastimado, 1CC121000750
1st Circuit (Post Just) Mtd Hrng: 09/01/2015

3. Jason Kaleonalani Phillips Deutsche Bank v Phillips, 3CC081000323
Pakalana Onalani Chandler 2nd Circuit
Phillips (Post Judt) MTD Hrng: 06/07/2016

4. Susan C. Vickery WFB v. Vickery, 2CC141000481
2nd Circuit (Post Judt) MTD Hrng: 12/29/16

5. Mark Loando BOH v. Loando, 3CC16100200K
3rd Circuit *MTD Hrng: 06/27/17 * Unable to discern from jfes if special Appearance actually made (though payment for services rendered 6/27/17 received)

6. Alice S. Maes First Horizon Home Loans v. Alice Maes 2CC131000699
2nd Circuit (Post Judt) MTD Hrng: 05/21/2015

7. Marie Bayudan-Drury BOA v. Bayudan-Drury, 2CC13100021
William C. Drury 2nd Circuit (Post Judt) MTD Hrng: 06/02/15

8. Troy Kealii Seguirant JPMorgan Chase Bank v. Seguirant 1CC121003055
1st Circuit (Post Judt) MTD Hrng: 03/10/2015

9. Robert Joseph Roppolo, Jr. Deutsche Bank v. Roppolo, 12-1-0641(3)
2nd Circuit MTD Hrng: 06/10/2014

10. Terence W. O'Kelly BOA v. Terence William OKelley, Ramona Renea Jones 1CC131000229
1st Circuit Mtn for Relief from Judt: 05/26/2015

11. Maurice S. Vaiaoga Bank of NY Mellon v. Vaiaoga, 1CC121000718
Sinira F. Vaiaoga
1st Circuit MTD Hrng: 05/26/2015 & 08/11/2015

12. Jerry Grigory Bank of NY v. Jerry Lee Grigory, 2CC141000394
2nd Circuit Mtd Hrng: 09/09/2015

13. Michael Tynanes US Bank NA v. Tynanes, Jr., 1CC121000838
1st Circuit (Post Judt) Mtn Relief: 03/30/2015 (Post Judt) MTD Hrng: 08/26/2015

14. Floyd Keala Werner FHB v. Michael Tynanes, 1CC141001810
1ST Circuit (Post Judt) Mtd Hrng: 08/04/2015

15. Pilagio Bufil US Bank Nat'l Ass'n v. Bufil, 3CC121000133
3rd Circuit (Post Judt) Mtd Hrng: 05/19/2016

16. Jennifer W. Kealoha WFB v. Kealoha, 3CC141000292K
3rd Circuit MTD Hrng: 08/10/2015

17. Robert R. Jose Citibank v. Robert R. Jose, 2CC121000189
Adela P. Jose
2nd Circuit MTD Hrng: 07/16/2014 & 08/20/2014

18. Rosaline M. Lastimado BOA v. Rosaline M. Lastimado, 1CC121000750
1st Circuit Mtn Hrng: 05/28/2014 & 09/01/2015

19. Coreen Uilani Aldosa BOA v. Aldosa, 1CC121001220
1st Circuit Mtn for Relief from Judt: 05/20/2014

20. Rosalie Oasay Libanag US Bank NA v. Libanag, 1CC141000348
1st Circuit MTD Hrng: 08/04/2015 & 08/25/2015

21. Hingano Vi Koli USB NA v. Koli, 1CC121001597
1st Circuit Mtd Hrng: 08/25/2015

22. Vincent D. Labasan Wilmington Savings Fund v. Labasan, 1CC131002569
Hrng: 10/07/2014 & 08/04/2015

23. Herman P. Kunewa Roman Catholic Church v. Kunewa, 3CC08100276K
3rd Circuit Hrng: 01/15/2014, 02/18/2014 & 0/26/2014

24. Millard M. Semitara Wilmington Savings v. Semitara,
Fredelyn Fuentes Semitara 1CC131001058
1st Circuit Hrng: 04/23/2014 & 01/05/2016

25. Adrian Cabral JP Morgan Chase v. Adrian Wade Cabral, Denise Mahealani
Paauhau 1CC131001823
Cabral
1st Circuit Hrng: 04/29/2014

26. Duffy WKA Chang JPMorgan Chase Bank v. Duffy WKA Chang, 1CC131001345
1st Circuit Hrng: 05/14/2014

27. Priscilla Heluilani Kaapana BOA v. Bates, 1CC121000298
Bates 1st Circuit
Zaid Bates Hrng: 10/07/2014

28. Mark Samson Damas WFB v. Damas, 1CC111002347
Shea K. Damas
1st Circuit Hrng: 06/10/2014

END OF LIST
======

2. Since January 1, 2014, in how many of your Special Appearances did you present the Jurisdictional Argument?

Objection. This is vague and ambiguous as the term "present" is unclear. Does it mean "present" in writing or "present" verbally? If the term means "present in writing", that information is equally available to the ODC as it is to Mr. Ka'iama and although we agree that we must not "fail to cooperate during the course of an ethics investigation or disciplinary proceeding" HRPC, Rule 8.4. This role does not require Mr. Ka'iama to "perform an investigation" and then provide the results of our investigation to the ODC.

I cannot, from unassisted memory, recall how many times in "Special Appearances" I made oral argument of what you are calling the "Jurisdictional Argument" since January 1, 2014. Without waiving any objection, in every "limited representation for purposes of challenging jurisdiction." I don't know "how many times". See list above in Answer #2.

3. Since January 1, 2014, of your Special Appearances in which you made the Jurisdictional Argument, how many times was the motion for dismissal granted?

Objection. Relevance. Attorney makes a motion that is denied? Objection this information is equally available to the ODC. Without waiving objection, these motions were not granted.

4. Since January 1, 2014, for each motion based on your Jurisdictional Argument that was granted, provide the court order, court record or court minutes showing that it was granted.

NA. See #3.

5. Since January 1, 2014, for each motion based on your Jurisdictional Argument that was denied, provide the court order, court record or court minutes showing that it was denied.

See #3. No court order, court record, or court minutes meeting this description are in my custody or power. These are public records probably available to the ODC more easily than it is to me who does not have the "power" to order the court or clerk to produce such records without cost.

Objection fail to see the utility of such records to this matter in light of the answer to #3.

6. Identify the full name of each client for whom you entered a Special Appearance to make the Jurisdictional Argument since January 1, 2014.

Objection redundant. See answer to #1.

7. For each client you identified in your answer to Question #6 above, provide the substance of your disclosure to that client of the number of times that a court granted, versus denied, your motion for dismissal based on the Jurisdictional Argument.

Objection. Demanding that I "provide the substance of" disclosures to a client clearly calls for privileged attorney-client communications, in my opinion.

8. For each client you identified in your answer to Question #6 above, provide the substance of any consultation with the client about the means by which the client's objectives were to be accomplished, including, but not limited to, advising the client of your independent professional judgment about the strengths and weaknesses of the Jurisdictional Argument.

Objection. Attorney-client privilege. Redundant to #7. See response to #7.

9. For each Special Appearance that you made since January 1, 2014, state how and by whom were you notified or informed of the location and time of the hearings in which you were to appear.

Objection. See response to #7. I don't recall precisely. My recollection is that the clients notified or otherwise informed me.

10. For each Special Appearances [sic] that you made since January 1, 2014, state how you checked for conflicts of interest prior to accepting the representation of each client?

Objection. See response to #7. I don't understand the question as to "conflicts of interest" as to "who or what" the conflicts would be with. I "checked for conflicts of interest" by consulting my memory and recalling that I had never represented any plaintiff in any litigation in which I made "Special Appearances". I had never represented any bank or financial or lending institution. Given that my special appearance was limited only to questions of jurisdiction that knowledge and my consulting my memory were sufficient checks.

11. For each Special Appearance that you made since January 1, 2014, state how the amount of your fee, or decision to appear pro bono, was conveyed to the client.

Objection. See response to #7. Without waiving, verbally.

12. For each Special Appearance you made from January 1, 2014 to present, provide copies of each written fee agreement. If a written agreement does not exist or cannot be produced, state so with specificity.

Objection. See response to #7. Without waiving, there were no written fee agreements.

13. For each Special Appearances [sic] that you made since January 1, 2014, state how you identified, explained, and conveyed to each client the scope of services you would provide?

Objection. See response to #7. Without waiving, verbally.

14. For each Special Appearances [sic] that you made since January 1, 2014, describe how you prepared for each hearing.

Objection. See response to #7. I reviewed pleadings pertinent to the jurisdictional argument including the Motions to Dismiss and any attachments and any oppositions and any attachments.

15. State with particularity how you obtained any relevant legal documents and learned of the relevant facts for each case in which you made Special Appearance [sic] since January 1, 2014.

Objection. Compound question. Vague. See response to #7. I don't understand what the ODC means by the term "relevant legal documents". "Relevant to what"? It calls upon me to make a judgement as to what the ODC means by "relevant" which I am unwilling to risk doing. Without waiving objection. The clients would generally provide me with the motion to dismiss, opposition, and reply when there was one.

16. State how you determined your strategy for each Special Appearance that you made since January 1, 2014.

Objection. See response to #7. Since my representation was limited to a challenge to jurisdiction the "strategy" was determined by the motion to dismiss and the exhibits.

17. Describe what role, if any, Dr. David Keanu Sai had in your Special Appearances.

Objection. See response to #7. The term "role… in your Special Appearances" is too vague to answer. I don't understand what the ODC intends by using the term "role in Special Appearances". Fifth Amendment.

18. Describe what role, if any, Ms. Rose Dradi had in your Special Appearances.

Objection. See response to #7 and #17.

19. From January 1, 2014 to present, detail by what means and frequency you communicated with Dr. Sai regarding your Special Appearances in which you made the Jurisdictional Argument.

Objection. See response to #7 and #17.

20. From January 1, 2014 to present, detail by what means and frequency you communicated with Ms. Rose Dradi regarding your Special Appearances in which you made the Jurisdictional Argument.

Objection. See response to #7 and #17.

Entitled: Area of Inquiry #2: With regard to IOLTA and Record Keeping

Answers to the questions in this section we deem part of our HRE 408 negotiation.

21. From January 1, 2014 to present, state how many of your Special Appearances in which you made a Jurisdictional Argument were made pro bono?

Objection. Questions 21 through 30 are in a section titled "Area of Inquiry #2: With Regard to IOLTA and Record Keeping." I do not see the relevance of the number of "pro bono appearances" I made to IOLTA and record keeping." In addition, I don't recall "how many of [my] Special Appearances" were pro bono. Without waiving. It happened a few times.

22. From January 1, 2014 to present, identify which clients paid for your services and/or Special Appearances in which you made a Jurisdictional Argument.

Objection to the form of the question "and/or". Since no fees for special appearances related to contesting jurisdiction were ever required to or actually deposited in my IOLTA. All fees for special appearances for the purposes of challenging jurisdiction were earned and therefore not required to be deposited in an IOLTA account. I recall no specific clients that paid me for making the jurisdictional argument, other than those whose checks are attached. Many, but all of those clients appearing on the list above may have but I cannot be sure which paid and which were pro bono.

23. For each client identified in your answer to Question #22 above, identify the bank account (by bank name and account number), date of deposit, and amount of each deposit.

See #22. In addition, these records indicate deposit but not in my IOLTA as these fees had been earned prior to being received.

24. For each client identified in your answer to Question #22 above, state how you determined your fee.

See #22. Objection. Three hundred dollars for what was likely to be as much three hours and no less than two hours of attorney time seemed a fair and reasonable fee for the time and effort involved. Sometimes travel to neighboring islands was required No client objected or tried to negotiate me down.

25. For each client identified in your answer to Question #22 above, state how much each client paid you.

See #22. I don't recall how much "each client paid. The documents provided give the answers.

26. For each client identified in your answer to Question #22 above, state the means or method by which each client paid? (E.g., cash, check, credit card, etc.).

See #22. I don't recall the "means or method by which each client paid". The documents provided give the answers that I know. I do recall that none paid by credit card. Those that paid, paid by cash or check.

27. For each client identified in your answer to Question #22 above, provide proof of payment for each client. (E.g., deposit slips, copies of checks, receipts, etc.).

See #22. See documents provided.

28. From January 1, 2014 to present, for each client for whom you made a Special Appearance and presented a Jurisdictional Argument, provide copies of all signed contracts, legal agreements, retainer agreements, or any other document describing the scope of the attorney-client relationship and the services you were to provide. If no documents exist for a particular client, identify the client and identify the absence of documents.

Objection. All payments were made either immediately before, at, or after performance. When I say "immediately pre-performance" I mean it was impractical to go to the bank and deposit the check, or cash, before performance because the payment was handed to me in the courthouse moments before argument was scheduled to begin.

29. From January 1, 2014 to present, for each client for whom you made a Special Appearance and presented a Jurisdictional Argument, provide copies of all invoices sent to

clients for Special Appearances. If no documents exist for a particular client, identify the client and identify the absence of documents.

Objection. I don't understand what is meant by "identify the absence of documents." "Identify" makes no sense. Without waiving, no such invoices were sent.

30. From January 1, 2014 to present, for each client for whom you made a Special Appearance and presented a Jurisdictional Argument, provide copies of all ledger records for each separate trust client for which you made Special Appearances, showing that information required by the Hawai'i Rules Governing Trust Accounting, Rule 4(c)(2). If no documents exist for a particular client, identify the client and identify the absence of documents.

Since all fees were earned before being paid no trust account was required for cases in which I entered a special appearance for purposes of contesting jurisdiction.

List of accompanying documents

Attachment #1 OCP v Kaiama, Motion
Attachment #2 OCP v Kaiama Opposition
Attachment #3 Email from James F. Evers of 27 November 2018 at around 11:55 a.m.
Attachment #4 Kmiec, Legal Issues Raised by Proposed Presidential Proclamation To Extend the Territorial Sea
Attachment #5 Dr. Schabas Legal opinion on war crimes related to the United States occupation of the Hawaiian Kingdom since 17 January 1893
Attachment #6 Permanent Court of Award Arbitration
Attachment #7 Dr. Craven Continuity of the Hawaiian Kingdom
Attachment #8 Dr. Sai United States Belligerent Occupation of the Hawaiian Kingdom
Attachment #9 Lenzerini Legal Opinion on International Human Rights Law and Self-Determination of Peoples Related to the United States Occupation of the Hawaiian Kingdom since 17 January 1893
Attachment #10 Dezayas Opinion
Attachments #11: Copies of checks: Date/Client Name/ Amount, in five parts.
    150323 Tynanes $300.pdf
    150526 O'Kelly $300.pdf
    150526 Vaiaoga $300.pdf
    151117 Grigory $300.pdf
    170627 Loando $400.pdf

Dated 18 December 2019

As to objections:
/Stephen Laudig/
_____

As to answers and objections:
/Dexter K. Ka'iama/
_____

==== End of Document

From:	Steve Laudig
To:	Rebecca Salwin; Dexter Kaiama
Cc:	Josiah Sewell
Subject:	2 of 5
Date:	Wednesday, December 18, 2019 11:54:18 AM
Attachments:	01 Kaiama, OCP v Kaiama, Motion to Dismiss 12b1.pdf 02 Kaiama, OCP v Kaiama, Motion to Dismiss 12b1 Oppo.pdf 03 181127 Evers email.pdf

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Aloha please find the attached
01 Kaiama, OCP v Kaiama, Motion to Dismiss 12b1.pdf
02 Kaiama, OCP v Kaiama, Motion to Dismiss 12b1 Oppo.pdf
03 181127 Evers email.pdf

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Stephen Laudig
1914 University Avenue, #103
Honolulu, Hawaiian Islands, 96822
Tel. 808-232-1935

From:	Steve Laudig
To:	Rebecca Salwin; Dexter Kaiama
Cc:	Josiah Sewell
Subject:	3 of 5
Date:	Wednesday, December 18, 2019 11:54:45 AM
Attachments:	06 PCA LHK Award.pdf 04 Kmiec Legal Issues Raise, Kmiec, 1988, op-olc-v012-p0238_0.pdf 05 Schabas Opinion.pdf

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Aloha please find the attached
04 Kmiec Legal Issues Raise, Kmiec, 1988, op-olc-v012-p0238_0.pdf
05 Schabas Opinion.pdf
06 PCA LHK Award.pdf

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Stephen Laudig
1914 University Avenue, #103
Honolulu, Hawaiian Islands, 96822
Tel. 808-232-1935

From:	Steve Laudig
To:	Rebecca Salwin; Dexter Kaiama
Cc:	Josiah Sewell
Subject:	4 of 5
Date:	Wednesday, December 18, 2019 11:55:34 AM
Attachments:	10 Dr_deZayas_Memo_2_25_2018.pdf 07 Dr. Craven Article.pdf 08, Sai UNITED STATES BELLIGERENT OCCUPATION OF THE HAWAIIAN KINGDOM.pdf 09 Dr Lenzerini Article.pdf

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Aloha please find the attached
07 Dr. Craven Article.pdf
08, Sai UNITED STATES BELLIGERENT OCCUPATION OF THE HAWAIIAN KINGDOM.pdf
09 Dr Lenzerini Article.pdf
10 Dr_deZayas_Memo_2_25_2018.pdf
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Stephen Laudig
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Tel. 808-232-1935

From:	Steve Laudig
To:	Rebecca Salwin; Dexter Kaiama
Cc:	Josiah Sewell
Subject:	5 of 5
Date:	Wednesday, December 18, 2019 11:55:42 AM
Attachments:	11 151117 Grigory $300.pdf 11 150526 O"Kelly $300.pdf 11 150526 Vaiaoga $300.pdf 11 170627 Loando $400.pdf 11 150323 Tynanes $300.pdf

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Please find attached:

11 150323 Tynanes $300.pdf
11 150526 O'Kelly $300.pdf
11 150526 Vaiaoga $300.pdf
11 151117 Grigory $300.pdf
11 170627 Loando $400.pdf

--
Stephen Laudig
1914 University Avenue, #103
Honolulu, Hawaiian Islands, 96822
Tel. 808-232-1935

JAMES F. EVERS #5304
State of Hawaii
Office of Consumer Protection
235 South Beretania Street, Room 801
Honolulu, Hawaii 96813-2419
Telephone: (808) 586-5980
Email: jevers@dcca.hawaii.gov

Attorney for Plaintiff
State of Hawaii Office of Consumer Protection

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII, by its Office of Consumer Protection, Plaintiff, vs. DEXTER K. KAIAMA, Defendant.	CIVIL NO. 19-1-0609-04 (JHA) (Other Civil Action) FINAL JUDGMENT AND STIPULATED PERMANENT INJUNCTION (No trial date set)

FINAL JUDGMENT AND STIPULATED PERMANENT INJUNCTION

Plaintiff STATE OF HAWAII, BY ITS OFFICE OF CONSUMER PROTECTION and Defendant DEXTER K. KAIAMA (collectively the "Parties") agree that:

A. Plaintiff is a Hawaii civil law enforcement agency charged with investigating reported or suspected violations of laws enacted and rules adopted for the purpose of consumer protection, and enforcing such laws and rules by bringing civil actions or proceedings.

B. Defendant DEXTER K. KAIAMA is and was at all times relevant herein a resident of the City and County of Honolulu, State of Hawaii, and an attorney licensed to practice law in the State of Hawaii.

C. On April 16, 2019, Plaintiff filed its Complaint against Defendant, alleging specific violations of HRS Chapters 480 and 480E, and seeking appropriate remedial relief, including but not limited to permanent injunctive relief with respect to alleged violations of Hawaii Revised Statutes (hereinafter "HRS") Chapters 480, 480E and 481A.

D. Defendant was served with the Complaint on April 17, 2019.

E. Without admitting to any wrongdoing, in order to resolve the pending action Defendant is willing to consent to the entry of judgment against him on the terms set forth below.

F. Defendant warrants and represents that: (i) Defendant is not presently serving as counsel of record on behalf of any homeowner in a pending foreclosure action, and (ii) Defendant is not otherwise presently working on any foreclosure cases for any homeowner named as a defendant in a pending foreclosure action.

G. In agreeing to this judgment, Defendant warrants and represents that Defendant: (i) has been given a reasonable and sufficient opportunity to consult with independent legal counsel of Defendant's choosing to meaningfully review the judgment and advise Defendant as to its effect; (ii) has reached his decision to stipulate to this judgment with the benefit of having conferred with legal counsel; (iii) has fully read and understands the terms and provisions of this judgment, (iv) has not been induced to consent to this judgment other than as expressly set forth in this judgment; and (v) acknowledges that Plaintiff is going to rely upon this judgment, and accordingly, Defendant waives all right to assert any defense he may have to the validity or enforceability of this judgment.

H. In agreeing to this judgment, Defendant warrants and represents that Plaintiff has made no representations or warranties to Defendant, either express or implied, with respect to any legal consequences in connection with any aspect of this judgment, and Defendant has instead

relied entirely upon his own determination and that of his legal counsel with respect to the impact of this judgment.

I. In agreeing to this judgment, Defendant warrants and represents that Defendant is entering this judgment with full knowledge and understanding of the nature of the proceedings and the obligations and duties imposed by this judgment, and the risks and consequences which may result.

J. In agreeing to this judgment, Defendant warrants and represents that nothing in this judgment shall be deemed to constitute permission, by or on the part of Plaintiff, for Defendant to engage in any acts or practices prohibited by any applicable laws, rules or regulations, and nothing in this judgment shall be deemed to waive, compromise or limit Plaintiff's ability to exercise its statutory powers set forth in HRS Chapter 487 to enforce HRS Chapters 480, 480E, and 481A, and the MARS Rule, with respect to Defendant's conduct.

Accordingly, pursuant to the Stipulation of the Parties to fully and finally dispose of this matter on the terms set forth herein,

IT IS HEREBY ORDERED ADJUDGED AND DECREED:

1. This Court has jurisdiction over this case pursuant to HRS §§ 480-21 and 603-21.5.

2. Venue for this action is proper in the City and County of Honolulu, State of Hawaii.

I. FULL AND FINAL RESOLUTION OF ALL CLAIMS

3. With respect to Counts I, II and III of OCP's Complaint filed April 16, 2019 (the "Complaint") commencing the instant action, being all of the counts in the Complaint, Final Judgment and Permanent Injunction is entered in favor of Plaintiff State of Hawaii Office of Consumer Protection ("OCP"), and against Defendant DEXTER K. KAIAMA ("Defendant"), pursuant to Rule 58 of the Hawaii Rules of Civil Procedure, for the relief specifically set forth below.

4. Both parties agree to bear their own fees and costs incurred to date in connection with this pending action.

5. Nothing herein settles or resolves the claims former clients may have for restitution based upon a violation of HRS § 480E-13.

6. For any foreclosure case in which the Defendant made an appearance in court from or after June 29, 2016, Defendant shall offer the consumer $250.00 as full restitution of the consumer's claim. In accordance with HRS §487-14, any consumer offered restitution need not accept restitution, but the consumer's acceptance, coupled with full performance part of Defendant by making the restitution payment, shall bar recovery by the person of any other damages in any action on account of the same acts or practices against the person making restitution.

II. DEFINED TERMS

7. **"Consumer."** The term consumer as used in this judgment refers to that term as defined in HRS § 480-1, and refers to any person who obtained or may seek to obtain Defendant's services primarily for personal, family or household purposes.

8. **"Distressed property owner."** The term distressed property owner as used in this judgment refers to that term as defined in HRS § 480E-2(d), and "means the owner of any distressed property."

9. **"Distressed property."** The term distressed property as used in this judgment refers to that term as defined in HRS § 480E-2(d), and "means any residential real property that:

(1) Is in foreclosure or at risk of foreclosure because payment of any loan that is secured by the residential real property is more than sixty days delinquent;

(2) Had a lien or encumbrance charged against it because of nonpayment of any taxes, lease assessments, association fees, or maintenance fees;

(3) Is at risk of having a lien or encumbrance charged against it because the payments of any taxes, lease assessments, association fees, or maintenance fees are more than ninety days

delinquent;

(4) Secures a loan for which a notice of default has been given;

(5) Secures a loan that has been accelerated; or

(6) Is the subject of any solicitation, representation, offer, agreement, promise, or contract to perform any mortgage assistance relief service."

10. **"Mortgage assistance relief service."** The term mortgage assistance relief service ("mortgage assistance relief service") as used in this judgment refers to that term as defined in HRS § 480E-2, and "means any service, plan, or program that is offered or provided to the consumer in exchange for consideration and is represented, expressly or by implication, to assist or attempt to assist the consumer with any of the following:

(1) Stopping, preventing, or postponing the loss of any residential real property, whether by mortgage or deed or trust foreclosure sale or repossession, or otherwise saving any consumer's residential real property from foreclosure or repossession;

(2) Stopping, preventing, or postponing the charging of any lien or encumbrance against any residential real property or reducing or eliminating any lien or encumbrance charged against any residential real property for the nonpayment of any taxes, lease assessments, association fees, or maintenance fees;

(3) Saving the owner's property from foreclosure or loss of home due to nonpayment of taxes;

(4) Negotiating, obtaining, or arranging any modification of any term of a residential loan, including a reduction in the amount of interest, principal balance, monthly payments, or fees;

(5) Negotiating, obtaining, or arranging any extension of the period of time within which the consumer may:

(A) Cure the default on a residential loan;

(B) Reinstate the residential loan;

(C) Redeem any residential real property; or

(D) Exercise any right to reinstate a residential loan or redeem a residential real property;

(6) Negotiating, obtaining, or arranging, with respect to any residential real property:

(A) A short sale;

(B) A deed-in-lieu of foreclosure; or

(C) Any other disposition of the property other than a sale to a third party who is not the residential loan holder;

(7) Obtaining any forbearance or modification in the timing of payments from any residential loan holder or servicer;

(8) Obtaining any forbearance from any beneficiary or mortgagee, or any relief with respect to a tax sale of any residential real property;

(9) Obtaining any waiver of an acceleration clause or balloon payment contained in any promissory note or other contract secured by a mortgage on any residential real property or contained in the mortgage;

(10) Obtaining any extension of the period within which the owner may reinstate the owner's rights with respect to the owner's property;

(11) Obtaining a loan or advance of funds while the consumer is in foreclosure or at risk of foreclosure due to nonpayment of any obligation related to a residential real property, including but not limited to one or more loans, taxes, lease assessments, association fees, or maintenance fees;

(12) Obtaining a loan or advance of funds during any post-tax sale redemption period;

(13) Considering or deciding whether a consumer should continue making payments on any loan, taxes, lease assessments, association fees, or maintenance fees or any other obligation related to a residential real property;

(14) Exercising any cure of default;

(15) Avoiding or ameliorating the impairment of the property owner's credit resulting from the recording or filing of a notice of default or the conduct of a foreclosure sale or tax sale;

(16) Drafting, preparing, performing, creating, or otherwise obtaining a forensic loan audit, a forensic securitization audit, or any other type of audit, report, summary, affidavit, or declaration involving an opinion, determination, or analysis of whether a lending party has an enforceable mortgage or lien, predicated upon claims that a lending party that is a party to a pooling and service agreement failed to adhere to the terms of that agreement, or that errors occurred after the signing of the mortgage loan, or disputing whether the lending party is the holder of the promissory note, or any argument that the lending party has failed to comply with federal or state mortgage lending laws;

(17) Drafting, preparing, performing, creating, or otherwise obtaining any documentation used or intended to be used to advance any legal theory in defense of a foreclosure or ejectment action, regardless of any disclaimer as to providing legal advice; or

(18) Understanding any legal theory that may be used in defense of a foreclosure or ejectment action, regardless of any disclaimer as to providing legal advice."

III. PERMANENT INJUNCTIVE RELIEF

11. Defendant, and his agents, successors, assigns and all other persons acting in concert or in participation with him in his law practice, are permanently enjoined from:

a. Providing legal services or other assistance to any "distressed property owner" as that term is defined in HRS Section 480E-2.

b. Advising any homeowner with regard to a foreclosure lawsuit filed or threatened to be filed against the homeowner.

c. Appearing as an attorney on behalf of a homeowner whose property is the subject of a foreclosure complaint filed against the homeowner.

d. Advising or assisting a homeowner, whose property is the subject of a foreclosure complaint filed or threatened to be filed against the homeowner, to file documents in the case pro se.

e. Advising a homeowner, whose property is the subject of a foreclosure complaint filed or threatened to be filed against the homeowner, as to what to say or do in connection with any such filed or threatened civil action.

f. Engaging in any activity that violates HRS Chapters 480E, or 481A, or the Mortgage Assistance Relief Services Rule (12 C.F.R. Part 1015) (the "MARS Rule").

g. Taking, asking for, claiming, demanding, charging, collecting, and/or receiving monies from consumers for Defendant's services beyond what Defendant has already collected.

IV. ENFORCEABILITY

12. This judgment fully adjudicates all claims pled by all parties, there are no remaining unresolved claims by any party hereto, and this judgment is immediately enforceable upon entry. Pursuant to and in accordance with Rule 58 of the Hawaii Rules of Civil Procedure, this Judgment shall be final for all purposes, including appeal.

13. This Court shall retain jurisdiction of this matter for purposes of construction, modification and enforcement of this judgment and for all other purposes, particularly enforcement of the permanent injunction, although as the need may arise the permanent injunction may also be enforced before any court where venue is proper based upon alleged conduct in that venue which is enjoined by the terms of this permanent injunction.

SO STIPULATED AND AGREED:

/s/ Dexter K. Kaiama
DEXTER K. KAIAMA
Defendant

/s/ James F. Evers
JAMES F. EVERS
Attorney for Plaintiff

State of Hawaii
Office of Consumer Protection

APPROVED AS TO FORM:

/s/ Stephen Laudig
STEPHEN LAUDIG
Attorney for Defendant
Dexter K. Kaiama

APPROVED AND SO ORDERED

DATED: Honolulu, Hawaii, June 4, 2020.

/s/ James H. Ashford

JUDGE OF THE ABOVE-ENTITLED COURT

Office of Disciplinary Counsel
Hawai'i Supreme Court
201 Merchant Street, Suite 1600
Honolulu, Hawai'i 96813
Telephone (808) 521-4591
www.dbhawaii.org

CONFIDENTIAL
TRANSMITTAL MEMO

TO: Dexter Kaiama, Esq.
c/o William F. Sink, Esq.
Dillingham Transportation Bldg.
735 Bishop Street, Suite 400
Honolulu, HI 96813

DATE: July 27, 2022

RE: ODC 18-0339

We are sending you the following enclosure(s):

Copies	Date	Description
1	7/27/2022	OFFICE OF DISCIPLINARY COUNSEL'S **FIRST AMENDED NOTICE** OF DEPOSITION UPON ORAL EXAMINATION OF RESPONDENT DEXTER K. KAIAMA

Remarks: For your information and file. Thank you.

cc: (XX)w/enclosure

UILANI OKAMOTO
MANAGER, OFFICE ADMINISTRATION

BRADLEY R. TAMM 7841
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Attorneys for Office of Disciplinary Counsel,

DISCIPLINARY BOARD OF THE HAWAII SUPREME COURT

In Re: DEXTER K. KAIAMA, HI Bar No. 4249, Respondent.	ODC No. 18-0339 ***Examination Date/Time*** DATE: August 26, 2022 TIME: 9:30 a.m.

OFFICE OF DISCIPLINARY COUNSEL'S FIRST AMENDED NOTICE OF DEPOSITION UPON ORAL EXAMINATION OF RESPONDENT DEXTER K. KAIAMA

PLEASE TAKE NOTICE of the deposition of Respondent DEXTER K. KAIAMA.

The deponent will be sworn in by a notary public, and the deposition will be electronically recorded by videographic means, on **Friday, August 26, 2022,** beginning at **9:30 a.m.**, at the multipurpose room of the Office of Disciplinary Counsel, 201 Merchant Street, Suite 1600, Honolulu, Hawaii 96813.

This examination will be subject to continuance from time to time and place to place until completed.

DATED: July 27, 2022

OFFICE OF DISCIPLINARY COUNSEL

_____

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In Re: DEXTER K. KAIAMA, HI Bar No. 4249, Respondent.	ODC No. 18-0339 ***Examination Date/Time*** DATE: August 26, 2022 TIME: 9:30 a.m.

CERTIFICATE OF SERVICE RE:

1. OFFICE OF DISCIPLINARY COUNSEL'S FIRST AMENDED NOTICE OF DEPOSITION UPON ORAL EXAMINATION OF RESPONDENT DEXTER K. KAIAMA.

The undersigned hereby certifies that a true and correct copy of the foregoing documents were duly served by First Class Mail upon:

William F. Sink, Esq.
c/o Dexter Kaiama
Dillingham Transportation Bldg.
735 Bishop Street, Suite 400
Honolulu, Hawaii 96813

DATED: July 27, 2022

OFFICE OF DISCIPLINARY COUNSEL

BRADLEY R. TAMM
ALANA L. BRYANT

IN THE SUPREME COURT OF THE STATE OF HAWAIʻI

◯ ODC v. or, ◉ A confidential pending investigation and/or proceeding under the Rules of the Supreme Court of the State of Hawaiʻi and its Disciplinary Board, regarding a matter of attorney discipline.	**CONFIDENTIAL** Case No. 18-0339 ◉ SUBPOENA or ◯ SUBPOENA DUCES TECUM

TO: **Dexter K. Kaiama**
c/o William F. Sink, Esq.
735 Bishop Street, Suite 400
Honolulu, Hawaii 96813

1. **WE COMMAND YOU,** that all business and excuses being set aside, to appear in person and attend before:

   Alana L. Bryant , Disciplinary ◉ Counsel ◯ Investigator

2. At the place of the **Office of Disciplinary Counsel, 201 Merchant Street, Suite 1600, Honolulu, Hawaiʻi 96813.**

3. On the **26th** day of **August , 2022** (**Friday**) at **9:30** o'clock **a** .m. (and at any recessed or adjourned date);

4. Testify as a witness, or custodian, in the attorney disciplinary matter ◯ captioned above, or ◉ a confidential matter per RSCH Rule 2.22(a) identified by the case number captioned above.

5. **AND WE FURTHER COMMAND YOU** to bring and produce at the time and place aforesaid, the following which you have in your custody or power, concerning the matter:

   ◉
   ◯ or as set forth on **Attachment(s)** appended hereto.

6. **FOR FAILURE TO APPEAR AND TESTIFY OR PRODUCE** as herein require, you will be deemed to be in contempt of the Supreme Court of the State of Hawaiʻi.

BY AUTHORITY OF THE SUPREME COURT OF THE STATE OF HAWAIʻI.

DATED: August 22, 2022 **Honolulu, Hawaiʻi**

Disciplinary Board Officer

Clifford L. Nakea

Clerk, Supreme Court of the State of Hawaiʻi

/s/ Elizabeth Zack

From: William Fenton Sink
To: Alana Bryant
Subject: Re: CONFIDENTIAL - ODC No. 18-0339 (Kaiama)
Date: Tuesday, August 23, 2022 1:03:39 PM

Yes, Mr. Sink has accepted service of the subpoena on behalf of Dexter Kaiama. Thank you!

Sincerely,
Jennifer M. Inouye, Paralegal

Law Offices of William Fenton Sink
735 Bishop Street, Ste. 400
Honolulu, Hawaii 96813

Office: (808) 531-7162
Facsimile: (808) 524-2055
Email: jennifer@wfsinklaw.com

MR. SINK DOES NOT USE EMAIL; PLEASE INCLUDE YOUR PHONE NUMBER ON ALL EMAILS TO ENSURE A QUICKER RESPONSE.

From: Alana Bryant <Alana.L.Bryant@dbhawaii.org>
Sent: Tuesday, August 23, 2022 11:47 AM
To: William Fenton Sink <jennifer@wfsinklaw.com>
Cc: Bradley R. Tamm <Bradley.R.Tamm@dbhawaii.org>
Subject: CONFIDENTIAL - ODC No. 18-0339 (Kaiama)

Mr. Sink,

I am writing to confirm, per our telephone conversation this morning, that your office has accepted service of the 8/22/22 subpoena of Dexter Kaiama on Mr. Kaiama's behalf. If this is not an accurate representation of our conversation, please respond to this email with any corrections as soon as possible.

Thank you,
Alana

Alana L. Bryant
Assistant Disciplinary Counsel
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IN THE SUPREME COURT OF THE
STATE OF HAWAI'I

ODC v.
or,
A confidential pending investigation and/or Proceeding under the Rules of the Supreme Court of the State of Hawai'i and its Disciplinary Board, regarding a matter of Attorney discipline.

CONFIDENTIAL

Case No. 18-0339

MOTION TO DISMISS SUBPOENA DATED AUGUST 22, 2022, PURSUANT TO HRCP 12(B)(2) AND THE *LORENZO* PRINCIPLE, AND TO SCHEDULE AN EVIDENTIARY HEARING, OR IN THE ALTERNATIVE, MOTION FOR PROTECTIVE ORDER; DECLARATION OF DEXTER K. KAIAMA; EXHIBITS "A-D"; CERTIFICATE OF SERVICE

Dexter K. Ka'iama 4249
1486 Akeke Place
Kailua, HI 96734
Respondent

MOTION TO DISMISS SUBPOENA DATED AUGUST 22, 2022, PURSUANT TO HRCP 12(B)(2) AND THE *LORENZO* PRINCIPLE, AND TO SCHEDULE AN EVIDENTIARY HEARING, OR IN THE ALTERNATIVE, MOTION FOR PROTECTIVE ORDER

Respondent DEXTER K. KA'IAMA (hereafter "Respondent") respectfully moves the Disciplinary Board to schedule an evidentiary hearing for the ODC to provide rebuttable evidence, whether factual or legal, that the Hawaiian Kingdom ceases to exist as a State in light of the evidence and law in the instant motion. If the ODC is unable to proffer rebuttable evidence, the Respondent respectfully requests that this Disciplinary Board dismiss the subpoena pursuant to the HRCP 12(b)(2) and the *Lorenzo* principle. The reasons are set forth in the attached memorandum.

Respondent respectfully asserts that the Board Chairman is mandated to dismiss the instant proceedings, under the *Lorenzo* principle, unless the ODC is able to provide rebuttable evidence, whether factual or legal, that the Hawaiian Kingdom ceases to exist as a State. Should the ODC prevail by providing rebuttable evidence under international law, Respondent will move for a protective order pursuant to Rule 12(c)(i) of the Rules of the Disciplinary Board of the Hawai'i Supreme Court.

DATED: Honolulu, Hawai'i, August 24, 2022.

Respectfully submitted,

/s/ Dexter K. Ka'iama

DEXTER K. KA'IAMA (Bar No. 4249)

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ODC v. or, A confidential pending investigation and/or Proceeding under the Rules of the Supreme Court of the State of Hawai`i and its Disciplinary Board, regarding a matter of Attorney discipline.	**CONFIDENTIAL** Case No. 18-0339

MEMORANDUM OF POINTS AND AUTHORITIES

Respondent moves the Disciplinary Board to schedule an evidentiary hearing in order to dismiss subpoena dated August 22, 2022, pursuant to HRCP 12(b)(2) and the *Lorenzo* principle.

I. INTRODUCTION

One year after the United States Congress passed the *Joint Resolution To acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, and to offer an apology to Native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaii*,[1] an appeal, was heard by the State of Hawai'i Intermediate Court of Appeals, that centered on a claim that the Hawaiian Kingdom continues to exist as a State. In *State of Hawai'i v. Lorenzo* ("*Lorenzo* court"),[2] the Intermediate Court of Appeals ("ICA") stated:

> Lorenzo appeals, arguing that the lower court erred in denying his pretrial motion (Motion) to dismiss the indictment. The essence of the Motion is that the [Hawaiian Kingdom] (Kingdom) was recognized as an independent sovereign nation by the United States in numerous bilateral treaties; the Kingdom was illegally overthrown in 1893 with the assistance of the United States; the Kingdom still exists as a sovereign nation; he is a citizen of the Kingdom; therefore, the courts of the State

[1] 107 Stat. 1510 (1993).
[2] *State of Hawai'i v. Lorenzo*, 77 Hawai'i 219; 883 P.2d 641 (Ct. App. 1994).

> of Hawai'i have no jurisdiction over him. Lorenzo makes the same argument on appeal. For the reasons set forth below, we conclude that the lower court correctly denied the Motion.[3]

The *Lorenzo* Court based its denial of the motion to dismiss the indictment on personal jurisdictional grounds based on an evidentiary burden as described by the Ninth Circuit in its 1993 decision, in *United States v. Lorenzo*, that "[t]he appellants have presented no evidence that the Sovereign Kingdom of Hawaii is currently recognized by the federal government."[4] As a result, the *Lorenzo* court stated, it "was incumbent on Defendant to present evidence supporting his claim. *United States v. Lorenzo*. Lorenzo has presented no factual (or legal) basis for concluding that the Kingdom exists as a state in accordance with recognized attributes of a state's sovereign nature."[5] Neither the Ninth Circuit Court nor the *Lorenzo* Court foreclosed the question but rather provided, what it saw at the time, instruction for the courts to arrive at the conclusion that the Hawaiian Kingdom, from an evidentiary basis, exists as a State. This is evidenced in a subsequent decision by the ICA in 2004, in *State of Hawai'i v. Araujo*, that made it clear, "[b]ecause Araujo has not, either below or on appeal, 'presented [any] factual (or legal) basis for concluding that the Kingdom exists as a state in accordance with recognized attributes of a state's sovereign nature,' [...] his point of error on appeal must fail."[6]

The *Lorenzo* court used the word "presently" because it is an open legal question and not a political question. The ICA stated in a subsequent case, *State of Hawai'i v. Lee*, that the *Lorenzo* court "suggested that it is an open legal question whether the "[Hawaiian Kingdom]" **still exists** (emphasis added)."[7] The operative word here is "still exists," which means the *Lorenzo* court was

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[3] *Id.*, 220, 642.
[4] *United States v. Lorenzo*, 995 F.2d 1448, 1456; 1993 U.S. App. LEXIS 10548.
[5] *State of Hawai'i v. Lorenzo*, 221; 643.
[6] *State of Hawai'i v. Araujo*, 103 Haw. 508 (Haw. App. 2004).
[7] *State of Hawai'i v. Lee*, 90 Haw. 130, 142; 976 P.2d 444, 456 (Haw. App. 1999).

referring to the Hawaiian Kingdom from the nineteenth century and not the so-called native kingdom(s) or nations, which are a part of the political sovereignty movement of today.

Lorenzo also separates the Native Hawaiian sovereignty movement and nation building from the continued existence of the Hawaiian Kingdom as a State. The Hawai'i Supreme Court, in *State of Hawai'i v. Armitage*,[8] not only clarified this evidentiary burden but also discerned between a new Native Hawaiian nation brought about through nation-building, and the Hawaiian Kingdom that existed as a State in the nineteenth century. The Hawai'i Supreme Court explained:

> Petitioners' theory of nation-building as a fundamental right under the ICA's decision in Lorenzo does not appear viable. Lorenzo held that, for jurisdictional purposes, should a defendant demonstrate a factual or legal basis that the [Hawaiian Kingdom] "exists as a state in accordance with recognized attributes of a state's sovereign nature[,]" and that he or she is a citizen of that sovereign state, a defendant may be able to argue that the courts of the State of Hawai'i lack jurisdiction over him or her. Thus, Lorenzo does not recognize a fundamental right to build a sovereign Hawaiian nation.[9]

However, the *Lorenzo* court did acknowledge that it may have misplaced the burden of proof and what needs to be proven. It stated, "[a]lthough the court's rationale is open to question in light of international law, the record indicates that the decision was correct because Lorenzo did not meet his burden of proving his defense of lack of jurisdiction."[10] Because international law provides for the presumption of the continuity of the State despite the overthrow of its government by another State, it shifts the burden of proof and what is to be proven. According to Judge Crawford, there "is a presumption that the State continues to exist, with its rights and obligations [...] despite a period in which there is no, or no effective, government,"[11] and belligerent

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[8] *State of Hawai'i v. Armitage*, 132 Haw. 36, 57; 319 P.3d 1044, 1065 (2014).
[9] *Id.*, 57; 1065.
[10] *State of Hawai'i v. Lorenzo*, 221, 643.
[11] James Crawford, *The Creation of States in International Law* 34 (2nd ed. 2006).

occupation "does not affect the continuity of the State, even where there exists no government claiming to represent the occupied State."[12] Addressing the presumption of German State continuity after the overthrow of the Nazi government during the Second World War, Professor Brownlie explains:

> Thus, after the defeat of Nazi Germany in the Second World War the four major Allied powers assumed supreme power in Germany. The legal competence of the German state [its independence and sovereignty] did not, however, disappear. What occurred is akin to legal representation or agency of necessity. The German state continued to exist, and, indeed, the legal basis of the occupation depended on its continued existence.[13]

"If one were to speak about a presumption of continuity," explains Professor Craven, "one would suppose that an obligation would lie upon the party opposing that continuity to establish the facts substantiating its rebuttal. The continuity of the Hawaiian Kingdom, in other words, may be refuted only by reference to a valid demonstration of legal title, or sovereignty, on the part of the United States, absent of which the presumption remains."[14] Evidence of "a valid demonstration of legal title, or sovereignty, on the part of the United States" would be an international treaty, particularly a peace treaty, whereby the Hawaiian Kingdom would have ceded its territory and sovereignty to the United States. Examples of foreign States ceding sovereign territory to the United States by a peace treaty include the 1848 *Treaty of Peace, Friendship, Limits, and Settlement with the Republic of Mexico*[15] and the 1898 *Treaty of Peace between the United States of America and the Kingdom of Spain.*[16]

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[12] *Id.*
[13] Ian Brownlie, *Principles of Public International Law* 109 (4th ed. 1990).
[14] Matthew Craven, "Continuity of the Hawaiian Kingdom as a State under International Law," in David Keanu Sai, ed., *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 128 (2020).
[15] 9 Stat. 922 (1848).
[16] 30 Stat. 1754 (1898).

The *Joint Resolution To provide for annexing the Hawaiian Islands to the United States*,[17] is a municipal law of the United States without extraterritorial effect. It is not an international treaty. Annex "is to tie or bind[,] [t]o attach."[18] Under international law, to annex territory of another State is a unilateral act, as opposed to cession, which is a bilateral act between States. Under international law, annexation of an occupied State is unlawful. According to *The Handbook of Humanitarian Law in Armed Conflicts*:

> The international law of belligerent occupation must therefore be understood as meaning that the occupying power is not sovereign, but exercises provisional and temporary control over foreign territory. The legal situation of the territory can be altered only through a peace treaty or *debellatio*.[19] International law does not permit annexation of territory of another state.[20]

Furthermore, in 1988, the Department of Justice's Office of Legal Counsel ("OLC") published a legal opinion regarding the annexation of Hawai'i. The OLC's memorandum opinion was written for the Legal Advisor for the Department of State regarding legal issues raised by the proposed Presidential proclamation to extend the territorial sea from a three-mile limit to twelve.[21] The OLC concluded that only the President and not the Congress possesses "the constitutional authority to assert either sovereignty over an extended territorial sea or jurisdiction over it under international law on behalf of the United States."[22] As Justice Marshall stated, "[t]he President is the sole organ of the nation in its external relations, and its sole representative with foreign

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[17] 30 Stat. 750 (1898).
[18] *Black's Law Dictionary* (6th ed. 1990), 88.
[19] There was no extinction of the Hawaiian State by *debellatio* because the Permanent Court of Arbitration acknowledged the continued existence of the Hawaiian Kingdom as a State in *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01.
[20] Dieter Fleck (ed.), *The Handbook of Humanitarian Law in Armed Conflicts*, Section 525, 242 (1995).
[21] Douglas Kmiec, "Legal Issues Raised by Proposed Presidential Proclamation to Extend the Territorial Sea," 12 *Opinions of the Office of Legal Counsel* 238 (1988).
[22] *Id.*, 242.

nations,"[23] and not the Congress. The OLC further stated, "we doubt that Congress has constitutional authority to assert either sovereignty over an extended territorial sea or jurisdiction over it under international law on behalf of the United States."[24] Therefore, he stated it is "unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution. Accordingly, it is doubtful that the acquisition of Hawaii can serve as an appropriate precedent for a congressional assertion of sovereignty over an extended territorial sea."[25] That territorial sea was to be extended from three to twelve miles under the United Nations Law of the Sea Convention. In other words, the Congress could not extend the territorial sea an additional nine miles by statute because its authority was limited up to the three-mile limit. Furthermore, the United States Supreme Court, in *The Apollon*, concluded that the "laws of no nation can justly extend beyond its own territories."[26]

Arriving at this conclusion, the OLC cited constitutional scholar Professor Willoughby, "[t]he constitutionality of the annexation of Hawaii, by a simple legislative act, was strenuously contested at the time both in Congress and by the press. The right to annex by treaty was not denied, but it was denied that this might be done by a simple legislative act. ...Only by means of treaties, it was asserted, can the relations between States be governed, for a legislative act is necessarily without extraterritorial force—confined in its operation to the territory of the State by whose legislature enacted it."[27] Professor Willoughby also stated, "The incorporation of one sovereign State, such as was Hawaii prior to annexation, in the territory of another, is...essentially

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[23] *Id.*, 242.
[24] *Id.*
[25] *Id.*, 262.
[26] *The Apollon*, 22 U.S. 362, 370 (1824).
[27] Kmiec, 252.

a matter falling within the domain of international relations, and, therefore, beyond the reach of legislative acts."[28]

The instant motion is filed under the international rule of the presumption of continuity of the Hawaiian Kingdom as a State.

II. THE *LORENZO* PRINCIPLE

Lorenzo became a precedent case on the subject of the Hawaiian Kingdom's existence as a State in State of Hawai'i courts, and is known in the federal court, in *United States v. Goo*, as the *Lorenzo* principle.

> Since the Intermediate Court of Appeals for the State of Hawaii's decision in *Hawaii v. Lorenzo*, the courts in Hawaii have consistently adhered to the *Lorenzo* court's statements that the Kingdom of Hawaii is not recognized as a sovereign state [*4] by either the United States or the State of Hawaii. *See Lorenzo*, 77 Haw. 219, 883 P.2d 641, 643 (Haw. App. 1994); *see also State of Hawaii v. French*, 77 Haw. 222, 883 P.2d 644, 649 (Haw. App. 1994) (stating that "presently there is no factual (or legal) basis for concluding that the [Hawaiian] Kingdom exists as a state in accordance with recognizing attributes of a state's sovereign nature") (quoting *Lorenzo*, 883 P.2d at 643). This court sees no reason why it should not adhere to the *Lorenzo* principle (emphasis added).[29]

The *Lorenzo* principle should not be confused with a final decision. A principle is "a comprehensive rule or doctrine which furnishes a basis or origin for others; a settled rule of action, procedure or legal determination."[30] *Lorenzo*, as a principle, was cited by the Hawai'i Supreme Court in 8 cases, and by the ICA in 45 cases. The latest Hawai'i Supreme Court's citation of *Lorenzo* was in 2020 in *State of Hawai'i v. Malave*.[31] The most recent citation of *Lorenzo* by the

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[28] Westel Woodbury Willoughby, *The Constitutional Law of the United States*, vol. 1, 345 (1910).
[29] *Goo*, *3.
[30] Black's Law, 1193.
[31] *State of Hawai'i v. Malave*, 146 Haw. 341, 463 P.3d 998, 2020 Haw. LEXIS 80.

ICA was in 2021 in *Bank of N.Y. Mellon v. Cummings*.[32] Since 1994, *Lorenzo* had risen to precedent, and, therefore, is common law.

Whether or not the Hawaiian Kingdom "exists as a state in accordance with recognized attributes of a state's sovereign nature," it is governed by international law, not State of Hawai'i or United States laws. While the existence of a State is a fact, a "State is not a fact in the sense that a chair is a fact; it is a fact in the sense in which it may be said a treaty is a fact; that is, a legal status attaching to a certain state of affairs by virtue of certain [international] rules or practices."[33] The civilian law refers to this type of a fact to be a *juridical fact*. According to Professor Lenzerini:

> In the civil law tradition, a juridical fact (or legal fact) is a fact (or event)—determined either by natural occurrences or by humans—which produces consequences that are relevant according to law. Such consequences are defined juridical effects (or legal effects), and consist in the establishment, modification or extinction of rights, legal situations or juridical (or legal) relationships (privity). Reversing the order of the reasoning, among the multifaceted natural or social facts occurring in the world a fact is juridical when it is legally relevant, i.e. determines the production of legal effects per effect of a legal (juridical) rule (provision). In technical terms, it is actually the legal rule which produces legal effects, while the juridical fact is to be considered as the condition for the production of the effects. In practical terms, however, it is the juridical fact which activates a reaction by the law and makes the production of the effects concretely possible. At the same time, no fact can be considered as "juridical" without a legal rule attributing this quality to it.[34]

In *Larsen v. Hawaiian Kingdom*, the arbitral tribunal acknowledged the Hawaiian Kingdom as a *juridical fact* when it stated that in "the nineteenth century the Hawaiian Kingdom existed as an independent State recognized as such by the United States of America, the United

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[32] *Bank of N.Y. Mellon v. Cummings*, 149 Haw. 173, 484 P.3d 186, 2021 Haw. App. LEXIS 102, 2021 WL 1345675.
[33] Crawford, 5.
[34] See Exhibit A, Federico Lenzerini, *Civil Law on Juridical Fact of the Hawaiian State and the Consequential Juridical Act by the Permanent Court of Arbitration* [ECF 174-1], 1.

Kingdom and various other States, including by exchanges of diplomatic or consular representatives and the conclusion of treaties."[35]

a. Distinguishing Between Recognition of a State and Recognition of its Government

When the *Lorenzo* court stated that the "United States Government recently recognized the illegality of the overthrow of the Kingdom and the role of the United States in that event. P.L. 103-150, 107 Stat. 1510 (1993) [but] that recognition does not appear to be tantamount to a recognition that the Kingdom continues to exist,"[36] the Court implied that the United States "derecognized" the Hawaiian Kingdom, which it had previously recognized in the nineteenth century. It would appear that the *Lorenzo* court was confusing the recognition of government with the recognition of a State. Since the United States recognized the Hawaiian Kingdom as a State in the nineteenth century, the United States is precluded from derecognizing it.

According to Professor Oppenheim, once recognition of a State is granted, it "is incapable of withdrawal"[37] by the recognizing State, and that "recognition estops the State which has recognized the title from contesting its validity at any future time."[38] *Restatement (Third) of the Foreign Relations Law of the United States*, "[t]he duty to treat a qualified entity as a state also implies that so long as the entity continues to meet those qualifications its statehood **may not be 'derecognized.'** If the entity ceases to meet those requirements, it ceases to be a state and derecognition is not necessary (emphasis added)."[39] By applying international law, the *Lorenzo*

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[35] *Larsen v. Hawaiian Kingdom*, 119 International Law Reports 566, 581 (2001).
[36] *State of Hawai'i v. Lorenzo*, 221, 643.
[37] Lassa Oppenheim, *International Law* 137 (3rd ed. 1920).
[38] Georg Schwarzenberger, "Title to Territory: Response to a Challenge," 51(2) *American Journal of International Law* 308, 316 (1957).
[39] *Restatement (Third)*, §202, comment g.

principle places the burden on the ODC to provide any factual (or legal) basis for concluding that the Kingdom "ceases to be a state," and not that it derecognized it.

The government of a State, however, may be de-recognized depending on factual or legal circumstances. Such was the case when President Jimmy Carter terminated the defense treaty with Taiwan after the government of Taiwan was de-recognized as the government of China.[40] In *Goldwater v. Carter*, the Supreme Court explained, "[a]brogation of the defense treaty with Taiwan was a necessary incident to Executive recognition of the Peking Government, because the defense treaty was predicated upon the now-abandoned view that the Taiwan Government was the only legitimate authority in China."[41] In the case of the non-recognition of the government of Cuba, the Supreme Court, in *Banco Nacional de Cuba v. Sabbatino*, stated:

> It is perhaps true that nonrecognition of a government in certain circumstances may reflect no greater unfriendliness than the severance of diplomatic relations with a recognized government, but the refusal to recognize has a unique legal aspect. It signifies this country's unwillingness to acknowledge that the government in question speaks as the sovereign authority for the territory it purports to control [citation omitted].[42]

The *Lorenzo* principle is NOT a matter of recognition of government but rather the recognition of the Hawaiian State as evidenced by the Hawaiian-American Treaty of Friendship, Commerce and Navigation.[43] There is no evidence that the Executive branch de-recognized the government of the Hawaiian Kingdom. Rather, President Grover Cleveland, head of the Executive branch, admitted to an illegal overthrow of the Hawaiian government by the United States military

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[40] *Goldwater v. Carter*, 444 U.S. 996 (1979).
[41] *Id.*, 1007.
[42] *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 411 (1964).
[43] 9 Stat. 977 (1841-1851).

and vowed to restore that government. Therefore, as a *juridical fact*, the United States cannot simply derecognize the Hawaiian State.

b. United States Explicit Recognition of the Continued Existence of the Hawaiian Kingdom and the Council of Regency as its Government

The status of the Hawaiian Kingdom came to the attention of the United States in a complaint for injunctive relief filed with the United States District Court for the District of Hawai'i on August 4, 1999 in *Larsen v. United Nations, et al.*[44] The United States and the Council of Regency representing the Hawaiian Kingdom were named as defendants in the complaint.

On October 13, 1999, a notice of voluntary dismissal without prejudice was filed as to the United States and nominal defendants [United Nations, France, Denmark, Sweden, Norway, United Kingdom, Belgium, Netherlands, Italy, Spain, Switzerland, Russia, Japan, Germany, Portugal and Samoa] by the plaintiff.[45] On October 29, 1999, the remaining parties, Larsen and the Hawaiian Kingdom, entered into a stipulated settlement agreement dismissing the entire case without prejudice as to all parties and all issues and submitting all issues to binding arbitration. An agreement was reached to submit the dispute to final and binding arbitration at the Permanent Court of Arbitration at the The Hague, the Netherlands was entered into on October 30, 1999.[46] The stipulated settlement agreement was filed with the court by the plaintiff on November 5, 1999.[47] On November 8, 1999, a notice of arbitration was filed with the International Bureau of

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[44] *Larsen v. United Nations et al.*, case #1:99-cv-00546-SPK, document #1.
[45] *Id.*, document #6.
[46] Agreement between plaintiff Lance Paul Larsen and defendant Hawaiian Kingdom to submit the dispute to final and binding arbitration at the Permanent Court of Arbitration at The Hague, the Netherlands (October 30, 1999), https://www.alohaquest.com/arbitration/pdf/Arbitration_Agreement.pdf.
[47] *Larsen v. United Nations et al.*, document #8.

the Permanent Court of Arbitration ("PCA")—*Lance Paul Larsen v. Hawaiian Kingdom*.[48] An order dismissing the case by District Court Judge Samuel P. King, on behalf of the plaintiff, was entered on November 11, 1999.

Distinct from the subject matter jurisdiction of the *Larsen v. Hawaiian Kingdom* ad hoc arbitral tribunal, which was formed on June 9, 2000, the PCA had to first possess "institutional jurisdiction" by virtue of Article 47 of the 1907 Hague Convention for the Pacific Settlement of International Disputes, I (1907 PCA Convention), before it could establish the ad hoc tribunal in the first place ("The **jurisdiction of the Permanent Court** may, within the conditions laid down in the regulation, be extended to disputes [with] non-Contracting [States] [emphasis added].").[49] According to UNCTAD, there are three types of jurisdictions at the PCA, "Jurisdiction of the Institution," "Jurisdiction of the Arbitral Tribunal," and "Contentious/Advisory Jurisdiction."[50] Article 47 of the Convention provides for the jurisdiction of the PCA as an institution. Before the PCA could establish an ad hoc arbitral tribunal for the *Larsen* dispute it needed to possess institutional jurisdiction beforehand by ensuring that the Hawaiian Kingdom is a State, thus bringing the international dispute within the auspices of the PCA.

Evidence of the PCA's recognition of the continuity of the Hawaiian Kingdom as a State and its government is found in Annex 2—*Cases Conducted Under the Auspices of the PCA or with the Cooperation of the International Bureau* of the PCA Administrative Council's annual reports from 2000 through 2011. Annex 2 of these annual reports stated that the *Larsen* arbitral tribunal

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[48] Notice of Arbitration (November 8, 1999), https://www.alohaquest.com/arbitration/pdf/Notice_of_Arbitration.pdf.

[49] 36 Stat. 2199. The Senate ratified the 1907 PCA Convention on April 2, 1898 and entered into force on January 26, 1910.

[50] United Nations Conference on Trade and Development (UNCTAD), *Dispute Settlement: General Topics—1.3 Permanent Court of Arbitration* 15-16 (2003) (online at https://unctad.org/system/files/official-document/edmmisc232add26_en.pdf).

was established "[p]ursuant to article 47 of the 1907 Convention."[51] Since 2012, the annual reports ceased to include all past cases conducted under the auspices of the PCA but rather only cases on the docket for that year. Past cases became accessible at the PCA's case repository on its website at https://pca-cpa.org/en/cases/.

In determining the continued existence of the Hawaiian Kingdom as a non-Contracting State to the 1907 PCA Convention, the relevant rules of international law that apply to established States must be considered, and not those rules of international law that would apply to new States. Professor Lenzerini concluded that, "according to a plain and correct interpretation of the relevant rules, the Hawaiian Kingdom cannot be considered, by virtue of the prolonged US occupation, as extinguished as an independent State and subject of international law. In fact, in the event of illegal annexation, 'the legal existence of [...] States [is] preserved from extinction,' since 'illegal occupation cannot of itself terminate statehood.'"[52]

The PCA Administrative Council that published the annual reports did not "recognize" the Hawaiian Kingdom as a new State, but merely "acknowledged" its continuity since the nineteenth century for purposes of the PCA's institutional jurisdiction. If the United States objected to the PCA Administrative Council's annual reports, which it is a member of the Council, that the Hawaiian Kingdom is a non-Contracting State to the 1907 PCA Convention, it would have filed a declaration with the Dutch Foreign Ministry as it did when it objected to Palestine's accession to the 1907 PCA Convention on December 28, 2015. Palestine was seeking to become a Contracting State to the 1907 PCA Convention and submitted its accession to the Dutch government on

[51] Permanent Court of Arbitration, *Annual Reports*, Annex 2 (online at https://pca-cpa.org/en/about/annual-reports/).
[52] See Exhibit B, Declaration of Professor Federico Lenzerini, *Legal Opinion on the Authority of the Council of Regency of the Hawaiian Kingdom* [ECF 55-2], para. 5.

October 30, 2015. In its declaration, which the Dutch Foreign Ministry translated into French, the United States explicitly stated, *inter alia*, "the government of the United States considers that 'the State of Palestine' does not answer to the definition of a sovereign State and does not recognize it as such (translation)."[53] The Administrative Council, however, did acknowledge, by vote of 54 in favor and 25 abstentions, that Palestine is a Contracting State to the 1907 PCA Convention in March of 2016.

Because the State is a juristic person, it requires a government to speak on its behalf, without which the State is silent, and, therefore, there could be no arbitral tribunal to be established by the PCA. On the contrary, the PCA did form a tribunal after confirming the existence of the Hawaiian State and its government, the Council of Regency, pursuant to Article 47. In international intercourse, which includes arbitration at the PCA, the Permanent Court of International Justice, in *German Settlers in Poland*, explained that "States can act only by and through their agents and representatives."[54] As Professor Talmon states, "[t]he government, consequently, possesses the *jus repraesentationis omnimodae*, i.e. plenary and exclusive competence in international law to represent its State in the international sphere. [Professor Talmon submits] that this is the case irrespective of whether the government is *in situ* or in exile."[55]

After the PCA verified the continued existence of the Hawaiian State, as a juristic person, it also simultaneously ascertained that the Hawaiian State was represented by its government—the Council of Regency.[56] The PCA identified the international dispute in *Larsen* as between a "State"

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[53] Ministry of Foreign Affairs of the Kingdom of the Netherlands, *Notification of the Declaration of the United States translated into French* (January 29, 2016) (online at https://repository.overheid.nl/frbr/vd/003316/1/pdf/003316_Notificaties_11.pdf).
[54] *German Settlers in Poland,* 1923, *PCIJ, Series B, No. 6*, 22.
[55] Stefan Talmon, *Recognition of Governments in International Law: With Particular Reference to Governments in Exile* 115 (1998).
[56] See Exhibit B.

and a "private entity" in its case repository.[57] Furthermore, the PCA described the dispute between the Council of Regency and Larsen as between a government and a resident of Hawai'i.

> Lance Paul Larsen, a resident of Hawaii, brought a claim against the Hawaiian Kingdom by its Council of Regency ("Hawaiian Kingdom") on the grounds that the Government of the Hawaiian Kingdom is in continual violation of: (a) its 1849 Treaty of Friendship, Commerce and Navigation with the United States of America, as well as the principles of international law laid down in the Vienna Convention on the Law of Treaties, 1969 and (b) the principles of international comity, for allowing the unlawful imposition of American municipal laws over the claimant's person within the territorial jurisdiction of the Hawaiian Kingdom (emphasis added)."[58]

Furthermore, the United States, by its embassy in The Hague, entered into an agreement with the Hawaiian Kingdom to have access to the pleadings of the arbitration. This agreement was brokered by Deputy Secretary General Phyllis Hamilton of the Permanent Court of Arbitration prior to the formation of the arbitral tribunal on June 9, 2000.[59]

Furthermore, there is no legal requirement for the Council of Regency, being the successor in office to Queen Lili'uokalani under the constitution and laws of the Hawaiian Kingdom, to get recognition from the United States as the government of the Hawaiian Kingdom. The United States recognition of the Hawaiian Kingdom as an independent State on July 6, 1844,[60] was also the recognition of its government—a constitutional monarchy, as its agent. Successors in office to King Kamehameha III, who at the time of international recognition was King of the Hawaiian Kingdom, did not require diplomatic recognition. These successors included King Kamehameha IV in 1854, King Kamehameha V in 1863, King Lunalilo in 1873, King Kalākaua in 1874, Queen

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[57] Permanent Court of Arbitration Case Repository, *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01 (online at https://pca-cpa.org/en/cases/35/).
[58] *Id.*
[59] See Exhibit C, Declaration of David Keanu Sai, Ph.D. [ECF 55-1].
[60] U.S. Secretary of State Calhoun to Hawaiian Commissioners (July 6, 1844) (online at: https://hawaiiankingdom.org/pdf/US_Recognition.pdf).

Lili'uokalani in 1891, the Council of Regency in 1997. The legal doctrines of recognition of new governments only arise "with extra-legal changes in government" of an existing State.[61] Successors to King Kamehameha III were not established through "extra-legal changes," but rather under the constitution and laws of the Hawaiian Kingdom. According to the *Restatement (Third) of the Foreign Relations Law of the United States*:

> *Recognition in cases of constitutional succession.* Where a new administration succeeds to power in accordance with a state's constitutional processes, no issue of recognition or acceptance arises; **continued recognition is assumed** (emphasis added).[62]

The Respondent is an aboriginal Hawaiian subject and was appointed by the Council of Regency as acting Attorney General for the Hawaiian Kingdom on August 11, 2013, and, therefore, meets the requirement set by the Supreme Court in *Armitage* "that he...is a citizen of that sovereign state, a defendant may be able to argue that the courts of the State of Hawai'i lack jurisdiction over him."[63]

c. Shifting the Burden of Proof in the *Lorenzo* principle

Because international law provides for the presumption of the continuity of the State despite the overthrow of its government by another State, it shifts the burden on the party opposing the presumption, the ODC, to provide rebuttable evidence that the Hawaiian Kingdom does not continue to exist as a State under international law. When the *Lorenzo* court acknowledged that Lorenzo pled in his motion to dismiss the indictment that the Hawaiian Kingdom "was recognized as an independent sovereign nation by the United States in numerous bilateral treaties,"[64] it set the

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[61] M.J. Peterson, *Recognition of Governments: Legal Doctrines and State Practice, 1815-1995* 26 (1997).
[62] *Restatement (Third)*, §203, comment c.
[63] See Exhibit D, Commission of Dexter Ke'eaumoku Ka'iama as Attorney General.
[64] *State of Hawai'i v. Lorenzo*, 220; 642.

presumption to be the Hawaiian Kingdom's existence as a State under international law. This would have resulted in placing the burden "on the party opposing that continuity to establish the facts substantiating its rebuttal." Under international law, it was not the burden of Lorenzo to provide evidence that the Hawaiian Kingdom "exists" when the *Lorenzo* court already acknowledged its existence and recognition by the United States. Rather, it was the burden of the prosecution to provide rebuttable evidence that the Hawaiian Kingdom "does not exist" as a State.

d. Conclusion

For these reasons, Respondent respectfully requests that the Disciplinary Board schedule an evidentiary hearing for the ODC to provide rebuttable evidence, whether factual or legal, that the Hawaiian Kingdom ceases to exist as a State in light of the evidence and law in the instant motion. If the ODC is unable to proffer rebuttable evidence, the Respondent respectfully requests that this Disciplinary Board dismiss the instant proceedings (18-0339) in its entirety, including the August 22, 2022 subpoena pursuant to the HRCP 12(b)(2) and the *Lorenzo* principle.

III. MOTION FOR PROTECTIVE ORDER

Respondent respectfully asserts that the Board Chairman is mandated to dismiss the instant proceedings, under the *Lorenzo* principle, unless the ODC is able to provide rebuttable evidence, whether factual or legal, that the Hawaiian Kingdom ceases to exist as a State. Should the ODC prevail by providing rebuttable evidence under international law, Respondent will move for a protective order pursuant to Rule 12(c)(i) of the Rules of the Disciplinary Board of the Hawai'i Supreme Court.

An examination of the records in this case will show that Respondent, through his counsel, has provided correspondence and an extensive submission of documents in response to inquiries from the ODC. Respondent's cooperation with ODC's (over 3 years old) investigation has not

been the subject of dispute requiring action on the part of the Board Chairman and should be taken into account as a mitigating factor in this proceeding.

The records will further confirm that ODC's inquiry, in large part, involves alleged violations of HRS Section 480E and 480E-13. Violations of this section can result in criminal incarceration as well as a fine of $10,000. However, despite requests from Respondent (through counsel) ODC has, as of this time, refused and/or rejected Respondent's request for transactional immunity. The matter of transactional immunity is consequential to Respondent's respectful objection and refusal of the ODC oral deposition.

DATED: Honolulu, Hawai'i, August 24, 2022.

Respectfully submitted,

/s/ Dexter K. Ka'iama

DEXTER K. KA'IAMA (Bar No. 4249)
Respondent

IN THE SUPREME COURT OF THE
STATE OF HAWAI'I

ODC v. or, A confidential pending investigation and/or Proceeding under the Rules of the Supreme Court of the State of Hawai'i and its Disciplinary Board, regarding a matter of Attorney discipline.	**CONFIDENTIAL** Case No. 18-0339 Declaration of Dexter K. Ka'iama; Exhibits "A-D"

DECLARATION OF DEXTER K. KA'IAMA

I, Dexter K. Ka'iama, declare the following:

1. I am an aboriginal Hawaiian Kingdom subject, the Respondent in ODC Case No. 18-0339, and make this declaration from my personal knowledge, unless otherwise so indicated.

2. I am also *Acting* Attorney General and legal counsel for Plaintiff in the matter of the *Hawaiian Kingdom v. Joseph Robinette Biden, Jr., et al.*, Civil No. 1:21:cv-00243-LEK-RT in the United States District Court for the District of Hawai'i (hereinafter referred to as "*Hawaiian Kingdom v. Biden*").

3. That attached to this declaration as Exhibit "A" is a true and correct copy of the Declaration of Professor Federico Lenzerini; Exhibit "1" that I filed as Document 174-1 in *Hawaiian Kingdom v. Biden* on December 6, 2021;

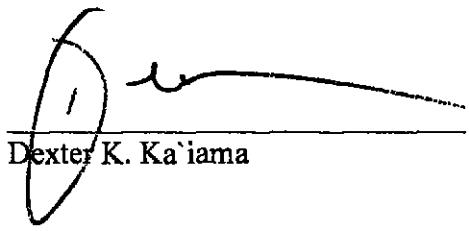
4. That attached to this declaration as Exhibit "B" is a true and correct copy of the Declaration of Professor Federico Lenzerini; Exhibit "2" that I filed as Document 55-2 in *Hawaiian Kingdom v. Biden* on August 11, 2021;

5. That attached to this declaration as Exhibit "C" is a true and correct copy of the Declaration of David Keanu Sai, Ph.D.; Exhibit "1" that I filed as Document 55-1 in *Hawaiian Kingdom v. Biden* on August 11, 2021;

6. That attached to this declaration as Exhibit "D" is a true and correct copy of my appointment as the *Acting* Attorney General, by the Council of Regency for the Hawaiian Kingdom on August 11, 2013. The appointment affirms my standing as an aboriginal Hawaiian Kingdom subject.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Kailua, Hawai'i, August 24, 2022.



Dexter K. Ka`iama

Exhibit "A"

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI'I

HAWAIIAN KINGDOM, Plaintiff, v. JOSEPH ROBINETTE BIDEN JR., in his official capacity as President of the United States; KAMALA HARRIS, in her official capacity as Vice-President and President of the United States Senate; ADMIRAL JOHN AQUILINO, in his official capacity as Commander, U.S. Indo-Pacific Command; CHARLES P. RETTIG, in his official capacity as Commissioner of the Internal Revenue Service; et al., Defendants.	Civil No. 1:21:cv-00243-LEK-RT DECLARATION OF PROFESSOR FEDERICO LENZERINI; EXHIBIT "1"

DECLARATION OF PROFESSOR FEDERICO LENZERINI

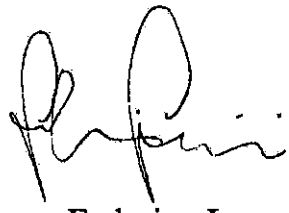
I, Federico Lenzerini, declare the following:

1. I am an Italian citizen residing in Poggibonsi, Italy. I am the author of the legal opinion on the civil law on juridical fact of the Hawaiian State and the consequential juridical act by the Permanent Court of Arbitration, which a true and correct copy of the same is attached hereto as Exhibit "1".

2. I have a Ph.D. in international law and I am a Professor of International Law, University of Siena, Italy, Department of Political and International Sciences. For further information see https://docenti.unisi.it/it/lenzerini. I can be contacted at federico.lenzerini@unisi.it.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Siena, Italy, 5 December 2021.



Professor Federico Lenzerini

Exhibit "1"

CIVIL LAW ON JURIDICAL FACT OF THE HAWAIIAN STATE AND THE CONSEQUENTIAL JURIDICAL ACT BY THE PERMANENT COURT OF ARBITRATION

FEDERICO LENZERINI*

5 December 2021

Juridical Facts

In the civil law tradition, a *juridical fact* (or *legal fact*) is a fact (or event) – determined either by natural occurrences or by humans – which produces consequences that are relevant according to law. Such consequences are defined *juridical effects* (or *legal effects*), and consist in the establishment, modification or extinction of rights, legal situations or *juridical* (or *legal*) *relationships* (*privity*). Reversing the order of the reasoning, among the multifaceted natural or social facts occurring in the world a fact is *juridical* when it is *legally relevant*, i.e. determines the production of *legal effects* per effect of a *legal* (*juridical*) *rule* (*provision*). In technical terms, it is actually the legal rule which produces legal effects, while the juridical fact is to be considered as the *condition* for the production of the effects. In practical terms, however, it is the juridical fact which activates a reaction by the law and makes the production of the effects concretely possible. At the same time, no fact can be considered as "juridical" without a legal rule attributing this quality to it.[1]

Both *rights*, *powers* or *obligations* – held by/binding a person or another subject of law (in international law, a State, an international organization, a people, or any other entity to which international law attributes legal personality) – may arise from a juridical fact.

Sometimes a juridical fact determines the production of legal effects irrespective of the action of a person or another subject of law. In other terms, in some cases legal effects are automatically produced by a(n *inactive*) juridical fact – only by virtue of the mere existence of the latter – without any need of an action by a legal subject. "Inactive juridical facts are events which occur more or less spontaneously, but still have legal effects because a certain reaction is regarded to be necessary to deal with the newly arisen circumstances".[2] Inactive juridical facts may be based on an occasional situation, a quality of a person or a thing, or the course of time.[3]

Juridical Acts

In other cases, however, the legal effects arising from a juridical fact only exist *potentially*, and, in order to concretely come into existence they need to be activated through a behaviour by a subject of law, which may consist of either an action or a passive behaviour. The legal effects may arise from either an *operational act* – i.e. a behaviour to which the law attributes legally-relevant effects for the sole ground of its existence, "although the acting [subject] had no intention to create this legal

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* Professor of International Law and Human Rights, University of Siena (Italy), Department of Political and International Sciences. Professor at the LL.M. Program on Intercultural Human Rights, St. Thomas University School of Law, Miami, FL, USA.

[1] See Lech Morawski, "Law, Fact and Legal Language", (1999) 18 *Law and Philosophy* 461, at 463.

[2] See "Legal System of Civil Law in the Netherlands", available at <http://www.dutchcivillaw.com/content/legalsystem022aa.htm> (accessed on 4 December 2021).

[3] Ibidem.

effect"[4] – or an act that a subject of law performs intentionally, "because he[/she/it] knows that the law will respond to it by acknowledging the conception of a particular legal effect. The act is explicitly [and voluntarily] chosen to let this legal effect arise".[5] In order to better comprehend this line of reasoning, one may consider the example of adverse possession,[6] which is determined by the juridical fact that a given span of time has passed during which the thing has continuously been in the possession without being claimed by its owner. However, in order for the possessor to effectively acquire the right to property, it is usually necessary to activate a legal action before the competent authority aimed at obtaining its legal recognition. In this and other similar cases a subject of law intentionally performs an act "to set the law in motion" with the purpose of producing a desired juridical effect. The legal subject concerned knows that, through performing such an act, the wanted juridical effect will be produced as a consequence of the existence of a juridical fact. Acts that are intentionally performed by a subject of law with the purpose of producing a desired legal effect are defined as *juridical acts* (or *legal acts*). It follows that an act consequential to a juridical fact (i.e. having the purpose of producing a given juridical effect in consequence of the existence of a juridical fact) is called *juridical* (or *legal*) *act*. The entitlement to perform a *juridical act* is the effect of a *power* attributed by the *juridical fact* to the legal subject concerned. The most evident difference between *juridical facts* and *juridical acts* is that, while the former "produce legal consequences regardless of a [person]'s will and capacity", the latter "are licit volitional acts – in the form of a manifestation of will – that are intended to produce legal consequences".[7]

Effects of Juridical Acts on Third Parties

One legal subject may only perform a juridical act unilaterally when it falls within her/his/its own legal sphere, but an unilateral juridical act may produce effects for other legal subjects as well. For instance, in private law unilateral juridical acts exist which produce juridical effects on third parties – for instance a will or a promise to donate a sum of money. Usually, unilateral juridical acts start to produce their effects from the moment when they are known by the beneficiary, and from that moment their withdrawal is precluded, unless otherwise provided for by applicable law (depending on the specific act concerned).

Similarly, bilateral or plurilateral juridical acts influencing the life of third parties are also provided by law – e.g. a contract in favour of third parties or a trust, typical of the common law tradition. Then, of course, the beneficiary of such acts may decide to refuse the benefits (if any) arising from them; however, if such benefits are not refused, said acts will definitely produce their effects, and may only be withdrawn within the limits established by law. Juridical acts also include the laws and regulations adopted by national parliaments, administrative acts, and, more in general, all acts determining – i.e. creating, modifying or abrogating – legal effects. *Acts of the judiciary* (judgments, orders, decrees, etc.) are also included in the concept of juridical acts. For instance, a judgment recognizing natural filiation produces the effects of filiation – with *retroactive effects* – "transform[ing] the [juridical] fact of procreation (in itself insufficient to create a legal relationship)

[4] Ibidem.

[5] Ibidem.

[6] Adverse possession refers to a legal principle – in force in many countries, especially of civil law – according to which a subject of law is granted property title over another subject's property by keeping continuous possession of it for a given (legally defined) period of time, on the condition that the title over the property is not claimed by the owner throughout the whole duration of that period of time.

[7] See Nikolaos A. Davrados, "A Louisiana Theory of Juridical Acts" (2020) 80 *Louisiana Law Review* 1119, at 1273.

into a state of filiation (recognized child) that is relevant to the law".[8] In this case, a juridical act of the judge actually leads to the recognition of a legal state – productive of a number of juridical effects, including *ex tunc* – arising from the juridical fact of the natural filiation. This is a perfect example of a juridical fact (exactly the natural filiation) whose legal effects exist *potentially*, and are activated by the juridical act represented by the judge's decision.

The Juridical Act of the Permanent Court of Arbitration (PCA) Recognizing the Juridical Fact of the Statehood of the Hawaiian Kingdom and the Council of Regency as its government

According to the *PCA Arbitration Rules*,[9] disputes included within the competence of the PCA include the following instances:

- disputes between two or more States;
- disputes between two parties of which only one is a State (i.e., disputes between a State and a private entity);
- disputes between a State and an international organization;
- disputes between two or more international organizations;
- disputes between an international organization and a private entity.

It is evident that, in order for a dispute to fall within the competence of the PCA, it is *always* necessary that either a State or an international organization are involved in the controversy. The case of *Larsen v. Hawaiian Kingdom*[10] was qualified by the PCA as a dispute between a State (The Hawaiian Kingdom) and a Private entity (Lance Paul Larsen).[11] In particular, the Hawaiian Kingdom was qualified as a non-Contracting Power under Article 47 of the 1907 Convention for the Pacific Settlement of International Disputes.[12] In addition, since the PCA allowed the Council of Regency to represent the Hawaiian Kingdom in the arbitration, it also implicitly recognized the former as the government of the latter.[13]

According to a civil law perspective, the juridical act of the International Bureau of the PCA instituting the arbitration in the case of *Larsen v. Hawaiian Kingdom* may be compared – *mutatis mutandis* – to a juridical act of a domestic judge recognizing a juridical fact (e.g. *filiation*) which is productive of certain legal effects arising from it according to law. Said legal effects may include, depending on applicable law, the power to stand before a court with the purpose of invoking certain rights. In the context of the *Larsen* arbitration, the juridical fact recognized by the PCA in favour of the Hawaiian Kingdom was its quality of *State* under international law. Among the legal effects produced by such a juridical fact, the entitlement of the Hawaiian Kingdom to be part of an international arbitration under the auspices of the PCA was included, since the existence of said juridical fact actually represented an indispensable condition for the Hawaiian Kingdom to be admitted in the *Larsen* arbitration, *vis-à-vis* a private entity (Lance Paul Larsen). Consequently, the

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[8] See Armando Cecatiello, "Recognition of the natural child", available at <https://www.cecatiello.it/en/riconoscimento-del-figlio-naturale-2/> (accessed on 4 December 2021).

[9] The *PCA Arbitration Rules 2012* (available at <https://docs.pca-cpa.org/2015/11/PCA-Arbitration-Rules-2012.pdf>, accessed on 5 December 2021) constitute a consolidation of the following set of PCA procedural rules: the *Optional Rules for Arbitrating Disputes between Two States (1992)*; the *Optional Rules for Arbitrating Disputes between Two Parties of Which Only One is a State* (1993); the *Optional Rules for Arbitration Between International Organizations and States* (1996); and *the Optional Rules for Arbitration Between International Organizations and Private Parties (1996)*.

[10] Case number 1999-01.

[11] See <https://pca-cpa.org/en/cases/35/> (accessed on 5 December 2021).

[12] Available at <https://docs.pca-cpa.org/2016/01/1907-Convention-for-the-Pacific-Settlement-of-International-Disputes.pdf> (accessed on 5 December 2021).

[13] See Declaration of Professor Federico Lenzerini [ECF 55-2].

International Bureau of the PCA carried out the juridical act consisting in establishing the arbitral tribunal as an effect of the recognition of the juridical fact in point. Likewise, e.g., the recognition of the juridical fact of filiation by a domestic judge, also the recognition of the Hawaiian Kingdom as a State had in principle retroactive effects, in the sense that the Hawaiian Kingdom did *not* acquire the condition of State per effect of the PCA's juridical act. Rather, the Hawaiian Kingdom's Statehood was a juridical fact that the PCA recognized as *pre-existing* to its juridical act.

The Effects of the Juridical Act of the PCA Recognizing the Juridical Fact of the Continued Existence of the Hawaiian Kingdom as a State and the Council of Regency as its government

At the time of the establishment of the *Larsen* arbitral tribunal by the PCA, the latter had 88 contracting parties.[14] One may safely assume that the PCA's juridical act consisting in the recognition of the juridical fact of the Hawaiian Kingdom as a State, through the institution of the *Larsen* arbitration, reflected a view shared by all such parties, on account of the fact that the decision of the International Bureau of the PCA was not followed by any complaints by any of them. In particular, it is especially meaningful that there was "no evidence that the United States, being a Contracting State [indirectly concerned by the *Larsen* arbitration], protested the International Bureau's recognition of the Hawaiian Kingdom as a State in accordance with Article 47".[15] On the contrary, the United States appeared to provide its acquiescence to the establishment of the arbitration, as it entered into an agreement with the Council of Regency of the Hawaiian Kingdom to access all records and pleadings of the dispute.

Under international law, the juridical act of the PCA recognizing the juridical fact of the Hawaiian Kingdom as a State may reasonably be considered as an important manifestation of – contextually – State practice and *opinio juris*, in support of the assumption according to which the Hawaiian Kingdom is actually – and has never ceased to be – a sovereign and independent State pursuant to customary international law. As noted a few lines above, it may be convincingly held that the PCA contracting parties actually agreed with the recognition of the juridical fact of the Hawaiian Kingdom as a State carried out by the International Bureau. In fact, in international law, *acquiescence* "concerns a consent tacitly conveyed by a State, unilaterally, through silence or inaction, in circumstances such that a response expressing disagreement or objection in relation to the conduct of another State [or an international institution] would be called for".[16] The case in discussion is evidently a situation in the context of which, in the event that any of the PCA contracting parties would have disagreed with the recognition of the continued existence of the Hawaiian Kingdom as a State by the International Bureau through its juridical act, an explicit reaction would have been necessary. Since they "did not do so [...] thereby must be held to have acquiesced. *Qui tacet consentire videtur si loqui debuisset ac potuisset*".[17]

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[14] See <https://pca-cpa.org/en/about/introduction/contracting-parties/> (accessed on 5 December 2021).

[15] See David Keanu Sai, "The Royal Commission of Inquiry", in David Keanu Sai (ed.), The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom (Honolulu 2020) 12, at 25.

[16] See Nuno Sérgio Marques Antunes, "Acquiescence", in Rüdiger Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law* (2006), at para. 2.

[17] See International Court of Justice, *Case concerning the Temple of Preah Vihear (Cambodia v. Thailand)*, Merits, Judgment of 15 June 1962, *I.C.J. Reports* 1962, p. 6, at 23.

Exhibit "B"

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

HAWAIIAN KINGDOM,

Plaintiff,

v.

JOSEPH ROBINETTE BIDEN JR., in his official capacity as President of the United States; KAMALA HARRIS, in her official capacity as Vice-President and President of the United States Senate; ADMIRAL JOHN AQUILINO, in his official capacity as Commander, U.S. Indo-Pacific Command; CHARLES P. RETTIG, in his official capacity as Commissioner of the Internal Revenue Service; JANE HARDY, in her official capacity as Australia's Consul General to Hawai'i and the United Kingdom's Consul to Hawai'i; JOHANN URSCHITZ, in his official capacity as Austria's Honorary Consul to Hawai'i; M. JAN RUMI, in his official capacity as Bangladesh's Honorary Consul to Hawai'i and Morocco's Honorary Consul to Hawai'i; JEFFREY DANIEL LAU, in his official capacity as Belgium's Honorary Consul to Hawai'i; ERIC G. CRISPIN, in his official capacity as Brazil's Honorary Consul to Hawai'i; GLADYS VERNOY, in her official capacity as Chile's Honorary Consul General to Hawai'i; JOSEF SMYCEK, in his official capacity as the Czech Republic's Deputy Consul General for Los Angeles that oversees the Honorary Consulate in

Civil No. 1:21-cv-00243-LEK-RT

DECLARATION OF PROFESSOR FEDERICO LENZERINI

Hawai'i; BENNY MADSEN, in his official capacity as Denmark's Honorary Consul to Hawai'i; KATJA SILVERAA, in her official capacity as Finland's Honorary Consul to Hawai'i; GUILLAUME MAMAN, in his official capacity as France's Honorary Consul to Hawai'i; DENIS SALLE, in his official capacity as Germany's Honorary Consul to Hawai'i; KATALIN CSISZAR, in her official capacity as Hungary's Honorary Consul to Hawai'i; SHEILA WATUMULL, in her official capacity as India's Honorary Consul to Hawai'i; MICHELE CARBONE, in his official capacity as Italy's Honorary Consul to Hawai'i; YUTAKA AOKI, in his official capacity as Japan's Consul General to Hawai'i; JEAN-CLAUDE DRUI, in his official capacity as Luxembourg's Honorary Consul to Hawai'i; ANDREW M. KLUGER, in his official capacity as Mexico's Honorary Consul to Hawai'i; HENK ROGERS, in his official capacity as Netherland's Honorary Consul to Hawai'i; KEVIN BURNETT, in his official capacity as New Zealand's Consul General to Hawai'i; NINA HAMRE FASI, in her official capacity as Norway's Honorary Consul to Hawai'i; JOSELITO A. JIMENO, in his official capacity as the Philippines's Consul General to Hawai'i; BOZENA ANNA JARNOT, in her official capacity as Poland's Honorary Consul to Hawai'i; TYLER DOS SANTOS-TAM, in his official capacity as Portugal's Honorary Consul to Hawai'i; R.J. ZLATOPER, in his official capacity as Slovenia's Honorary Consul to Hawai'i; HONG, SEOK-IN, in his official capacity as the Republic of South Korea's Consul General to Hawai'i; JOHN HENRY

FELIX, in his official capacity as Spain's Honorary Consul to Hawai'i; BEDE DHAMMIKA COORAY, in his official capacity as Sri Lanka's Honorary Consul to Hawai'i; ANDERS G.O. NERVELL, in his official capacity as Sweden's Honorary Consul to Hawai'i; THERES RYF DESAI, in her official capacity as Switzerland's Honorary Consul to Hawai'i; COLIN T. MIYABARA, in his official capacity as Thailand's Honorary Consul to Hawai'i; DAVID YUTAKA IGE, in his official capacity as Governor of the State of Hawai'i; TY NOHARA, in her official capacity as Commissioner of Securities; ISSAC W. CHOY, in his official capacity as the director of the Department of Taxation of the State of Hawai'i; CHARLES E. SCHUMER, in his official capacity as U.S. Senate Majority Leader; NANCY PELOSI, in her official capacity as Speaker of the United States House of Representatives; RON KOUCHI, in his official capacity as Senate President of the State of Hawai'i; SCOTT SAIKI, in his official capacity as Speaker of the House of Representatives of the State of Hawai'i; the UNITED STATES OF AMERICA; and the STATE OF HAWAI'I,

Defendants.

DECLARATION OF PROFESSOR FEDERICO LENZERINI

Exhibit 2

DECLARATION OF PROFESSOR FEDERICO LENZERINI

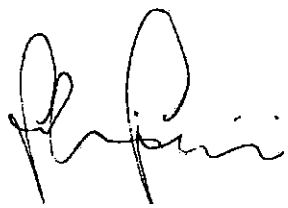
I, Federico Lenzerini, declare the following:

1. I am an Italian citizen residing in Siena, Italy. I am the author of the legal opinion on the authority of the Council of Regency of the Hawaiian Kingdom dated 24 May 2020, which a true and correct copy of the same is attached hereto.

2. I have a Ph.D. in international law and I am a Professor of International Law, University of Siena, Italy, Department of Political and International Sciences. For further information see https://docenti.unisi.it/it/lenzerini. I can be contacted at federico.lenzerini@unisi.it.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Siena, Italy, 13 May 2021.



Professor Federico Lenzerini

LEGAL OPINION ON THE AUTHORITY OF THE COUNCIL OF REGENCY OF THE HAWAIIAN KINGDOM

PROFESSOR FEDERICO LENZERINI*

As requested in the Letter addressed to me, on 11 May 2020, by Dr. David Keanu Sai, Ph.D., Head of the Hawaiian Royal Commission of Inquiry, I provide below a legal opinion in which I answer the three questions included in the above letter, for purposes of public awareness and clarification of the Regency's authority.

a) *Does the Regency have the authority to represent the Hawaiian Kingdom as a State that has been under a belligerent occupation by the United States of America since 17 January 1893?*

1. In order to ascertain whether the Regency has the authority to represent the Hawaiian Kingdom *as a State*, it is preliminarily necessary to ascertain whether the Hawaiian Kingdom can actually be considered a State under international law. To this purpose, two issues need to be investigated, i.e.: a) whether the Hawaiian Kingdom was a State at the time when it was militarily occupied by the United States of America, on 17 January 1893; b) in the event that the solution to the first issue would be positive, whether the continuous occupation of Hawai'i by the United States, from 1893 to present times, has led the Hawaiian Kingdom to be extinguished as an independent State and, consequently, as a subject of international law.
2. With respect to the first of the abovementioned issues, as acknowledged by the Arbitral Tribunal of the Permanent Court of Arbitration (PCA) in the *Larsen* case, "in the nineteenth century the Hawaiian Kingdom existed as an independent State recognized as such by the United States of America, the United Kingdom and various other States, including by exchanges of diplomatic or consular representatives and the conclusion of treaties."[1] At the time of the American occupation, the Hawaiian Kingdom fully satisfied the four elements of statehood prescribed by customary international law, which were later codified by the *Montevideo Convention on the Rights and Duties of States* in 1933[2]: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with the other states. This is confirmed by the fact that

> "the Hawaiian Kingdom became a full member of the Universal Postal Union on 1 January 1882, maintained more than a hundred legations and consulates throughout the world, and entered into extensive diplomatic and treaty relations with other States that included Austria-Hungary,

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[1] See *Larsen v. Hawaiian Kingdom*, 119 *International Law Reports*, 2001, 566, at 581.

[2] See *Montevideo Convention on the Rights and Duties of States*, 1933, 165 *LNTS* 19, Article 1. This article codified the so-called *declarative* theory of statehood, already accepted by customary international law; see Thomas D. Grant, "Defining Statehood: The Montevideo Convention and its Discontents", 37 *Columbia Journal of Transnational Law*, 1998-1999, 403; Joshua Castellino, *International Law and Self-Determination: The Interplay of the Politics of Territorial Possession with Formulations of Post-Colonial 'National' Identity*", The Hague/Boston/London, 2000, at 77; David J.

> Belgium, Bremen, Denmark, France, Germany, Great Britain, Hamburg, Italy, Japan, Netherlands, Portugal, Russia, Spain, Sweden-Norway, Switzerland and the United States".[3]

It is therefore unquestionable that **in the 1890s the Hawaiian Kingdom was an independent State and, consequently, a subject of international law**. This presupposed that its territorial sovereignty and internal affairs could not be legitimately violated by other States.

3. Once established that the Hawaiian Kingdom was actually a State, under international law, at the time when it was militarily occupied by the United States of America, on 17 January 1893, it is now necessary to determine whether the continuous occupation of Hawai'i by the United States from 1893 to present times has led the Hawaiian Kingdom to be extinguished as an independent State and, consequently, as a subject of international law. This issue is undoubtedly controversial, and may be considered according to different perspectives. As noted by the Arbitral Tribunal established by the PCA in the *Larsen* case, in principle the question in point might be addressed by means of a careful assessment carried out through "having regard *inter alia* to the lapse of time since the annexation [by the United States], subsequent political, constitutional and international developments, and relevant changes in international law since the 1890s".[4]
4. However – beyond all speculative argumentations and the consequential conjectures that might be developed depending on the different perspectives under which the issue in point could be addressed – in reality the argument which appears to overcome all the others is that a long-lasting and well-established rule of international law exists establishing that military occupation, irrespective of the length of its duration, *cannot* produce the effect of extinguishing the sovereignty and statehood of the occupied State. In fact, the validity of such a rule has *not* been affected by whatever changes occurred in international law since the 1890s. Consistently, as emphasized by the Swiss arbitrator Eugène Borel in 1925, in the famous *Affaire de la Dette publique ottomane*,

> "[q]uels que soient les effets de l'occupation d'un territoire par l'adversaire avant le rétablissement de la paix, il est certain qu'à elle seule cette occupation ne pouvait opérer juridiquement le transfert de souveraineté [...] L'occupation, par l'un des belligérants, de [...] territoire de l'autre belligérant est un pur fait. C'est un état de choses essentiellement provisoire, qui ne substitue pas légalement l'autorité du belligérant envahisseur à celle du belligérant envahi".[5]

This position was confirmed by, among others, the US Military Tribunal at Nuremberg in 1948, holding that "[i]n belligerent occupation the occupying power does not hold enemy territory by virtue of any legal right. On the contrary, it merely exercises a precarious and temporary actual control".[6] Indeed, as noted, much more recently, by Yoram Dinstein, "occupation does not affect sovereignty. The displaced sovereign loses possession of the occupied territory de facto but it retains title *de jure* [i.e. "as a matter of law"]".[7] In this regard, as previously specified, this

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[3] See David Keanu Sai, "Hawaiian Constitutional Governance", in David Keanu Sai (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations in the Hawaiian Kingdom*, Honolulu, 2020, 58, at 64 (footnotes omitted).

[4] See *Larsen v. Hawaiian Kingdom, supra* n. 1, at 9.2.

[5] See *Affaire de la Dette publique ottomane (Bulgarie, Irak, Palestine, Transjordanie, Grèce, Italie et Turquie)*, 18 April 1925, *Reports of International Arbitral Awards*, Volume I, 529, also available at <https://legal.un.org/riaa/cases/vol_I/529-614.pdf> (accessed on 16 May 2020), at 555 ("whatever are the effects of the occupation of a territory by the enemy before the re-establishment of peace, it is certain that such an occupation alone cannot legally determine the transfer of sovereignty [...] The occupation, by one of the belligerents, of [...] the territory of the other belligerent is nothing but a pure fact. It is a state of things essentially provisional, which does not legally substitute the authority of the invading belligerent to that of the invaded belligerent").

[6] See *USA v. Otto Ohlendorf et al. (Einsatzgruppen Trial)*, 10 April 1948, (1948) *LRTWC* 411, at 492.

conclusion can in no way be influenced by the length of the occupation in time, as "[p]rolongation of the occupation does not affect its innately temporary nature".[8] It follows that "'precarious' as it is, the sovereignty of the displaced sovereign over the occupied territory is not terminated" by belligerent occupation.[9] Under international law, "le transfert de souveraineté ne peut être considéré comme effectué juridiquement que par l'entrée en vigueur du Traité qui le stipule et à dater du jour de cette mise en vigueur",[10] which means, in the words of the famous jurist Oppenheim, that "[t]he only form in which a cession [of sovereignty] can be effected is an agreement embodied in a treaty between the ceding and the acquiring State. Such treaty may be the outcome of peaceable negotiations or of war".[11] Such a conclusion corresponds to "a universally recognized rule which is endorsed by jurists and confirmed by numerous rulings of international and national courts".[12]

5. The United States has taken possession of the territory of Hawai'i solely through de facto occupation and unilateral annexation, without concluding any treaty with the Hawaiian Kingdom. Furthermore, it appears that such an annexation has taken place in contravention of the rule of *estoppel*. At it is known, in international law "the doctrine of estoppel protects legitimate expectations of States induced by the conduct of another State".[13] On 18 December 1893 President Cleveland concluded with Queen Lili'uokalani a treaty, by executive agreement, which obligated the President to restore the Queen as the Executive Monarch, and the Queen thereafter to grant clemency to the insurgents.[14] Such a treaty, which was never carried into effect by the United States, would have precluded the latter from claiming to have acquired Hawaiian territory, because it had evidently induced in the Hawaiian Kingdom the legitimate expectation that the sovereignty of the Queen would have been reinstated, an expectation which was unduly frustrated through the annexation. It follows from the foregoing that, according to a plain and correct interpretation of the relevant legal rules, **the Hawaiian Kingdom cannot be considered, by virtue of the prolonged US occupation, as extinguished as an independent State and a subject of international law**, despite the long and effective exercise of the attributes of government by the United States over Hawaiian territory.[15] In fact, in the event of illegal annexation, "the legal existence of [...] States [is] preserved from extinction",[16] since "illegal occupation cannot of itself terminate statehood".[17] The possession of the attribute of statehood by the Hawaiian Kingdom was substantially confirmed by the PCA, which, before establishing the Arbitral Tribunal for the *Larsen* case, had to get assured that one of the parties of the arbitration was a State, as a necessary precondition for its jurisdiction to exist. In

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[8] Ibid.

[9] Ibid. (footnotes omitted). See also, consistently, Peter M.R. Stirk, *The Politics of Military Occupation*, Edinburgh, 2009, at 168 and 230.

[10] See *Affaire de la Dette publique ottomane*, *supra* n. 5, at 555 ("the transfer of sovereignty can only be considered legally effected by the entry into force of a treaty which establishes it and from the date of such entry into force").

[11] See Lassa FL Oppenheim, *Oppenheim's International Law*, 7th Ed., vol. 1, 1948, at 500.

[12] See Jean S. Pictet, *Commentary on the Fourth Geneva Convention Relative to the Protection of Civilion Persons in Time of War of 12 August 1949*, Geneva, 1958, at 275.

[13] See Thomas Cottier, Jörg Paul Müller, "Estoppel", *Max Planck Encyclopedias of International Law*, April 2007, available at <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1401> (accessed on 20 May 2020).

[14] See United States House of Representatives, 53rd Congress, *Executive Documents on Affairs in Hawai'i: 1894-95*, 1895, at 1269, available at <https://hawaiiankingdom.org/pdf/Willis_to_Gresham_(12.20.1893).pdf> (accessed on 20 May 2020).

[15] In this respect, it is to be emphasized that "a sovereign State would continue to exist despite its government being overthrown by military force"; see David Keanu Sai, "The Royal Commission of Inquiry", in David Keanu Sai (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations in the Hawaiian Kingdom*, Honolulu, 2020, 12, at 14.

[16] See James Crawford, *The Creation of States in International Law*, 2nd Ed., Oxford, 2006, at 702.

that case, the Hawaiian Kingdom was actually qualified as a "State", while the Claimant – Lance Paul Larsen – as a "Private entity."[18]

6. The conclusion according to which the Hawaiian Kingdom cannot be considered as having been extinguished – as a State – as a result of the American occupation also allows to confirm, *de plano*, that the Hawaiian Kingdom, as an independent State, **has been under uninterrupted belligerent occupation by the United States of America, from 17 January 1893 up to the moment of this writing**. This conclusion cannot be validly contested, even by virtue of the hypothetical consideration according to which, since the American occupation of Hawai'i has not substantially involved the use of military force, and has not encountered military resistance by the Hawaiian Kingdom,[19] it consequently could not be considered as "belligerent". In fact, a territory is considered occupied "when it is placed under the authority of the hostile army [...] The law on occupation applies to all cases of partial or total occupation, even if such occupation does not encounter armed resistance. The essential ingredient for applicability of the law of occupation is therefore the actual control exercised by the occupying forces".[20] This is consistent with the rule expressed in Article 42 of the Regulations annexed to the *Hague Convention (IV) respecting the Laws and Customs of War on Land* of 1907 – affirming that a "[t]erritory is considered occupied when it is actually placed under the authority of the hostile army" – as well as with Article 2 common to the four Geneva Conventions of 1949, establishing that such Conventions apply "to all cases of partial or total occupation of the territory of a High Contracting Party, *even if the said occupation meets with no armed resistance*" (emphasis added).
7. Once having ascertained that, under international law, the Hawaiian Kingdom continues to exist as an independent State, it is now time to assess the legitimacy and powers of the Regency. According to the *Lexico Oxford Dictionary*, a "regency" is "[t]he office of or period of government by a regent".[21] In a more detailed manner, the *Black's Law Dictionary*, which is the most trusted and widely used legal dictionary in the United States, defines the term in point as "[t]he man or body of men intrusted with the vicarious government of a kingdom during the minority, absence, insanity, or other disability of the king".[22] Therefore, it appears that, in consideration of the current situation of the Hawaiian Kingdom, a regency is the right body entitled to provisionally exercise the powers of the Hawaiian Executive Monarch in the absence of the latter, an absence which forcibly continues at present due to the persistent situation of military occupation to which the Hawaiian territory is subjected.
8. In legal terms, the legitimacy of the Hawaiian Council of Regency is grounded on Articles 32 and 33 of the *Hawaiian Kingdom Constitution* of 1864. In particular, Article 32 states that "[w]henever, upon the decease of the Reigning Sovereign, the Heir shall be less than eighteen years of age, the Royal Power shall be exercised by a Regent Council of Regency; as hereinafter provided". As far as Article 33 is concerned, it affirms that

> "[i]t shall be lawful for the King at any time when he may be about to absent himself from the Kingdom, to appoint a Regent or Council of Regency, who shall administer the Government in

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[18] See <https://pcacases.com/web/view/35> (accessed on 16 May 2020).

[19] It is to be noted, in this respect, that no armed resistance was opposed to the occupation despite the fact that, as acknowledged by US President Cleveland, the Queen "had at her command at least five hundred fully armed men and several pieces of artillery. Indeed, the whole military force of her kingdom was on her side and at her disposal"; see United States House of Representatives, 53rd Congress, *Executive Documents on Affairs in Hawai'i: 1894-95*, 1895, at 453, available at <https://hawaiiankingdom.org/pdf/Willis_to_Gresham_(12.20.1893).pdf> (accessed on 20 May 2020).

[20] See International Committee of the Red Cross, "The Law of Armed Conflict. Belligerent Occupation", Geneva, June 2002, available at <https://www.icrc.org/en/doc/assets/files/other/law9_final.pdf> (accessed on 17 May 2020), at 3.

[21] See <https://www.lexico.com/en/definition/regency> (accessed on 17 May 2020).

> His name; and likewise the King may, by His last Will and Testament, appoint a Regent or Council of Regency to administer the Government during the minority of any Heir to the Throne; and should a Sovereign decease, leaving a Minor Heir, and having made no last Will and Testament, the Cabinet Council at the time of such decease shall be a Council of Regency, until the Legislative Assembly, which shall be called immediately, may be assembled, and the Legislative Assembly immediately that it is assembled shall proceed to choose by ballot, a Regent of Council of Regency, who shall administer the Government in the name of the King, and exercise all the powers which are Constitutionally vested in the King, until he shall have attained the age of eighteen years, which age is declared to be the Legal Majority of such Sovereign".

The Council of Regency was established by proclamation on February 28, 1997, by virtue of the offices made vacant in the Cabinet Council, on the basis of the doctrine of necessity, the application of which was justified by the absence of a Monarch. Therefore, **the Council of Regency possesses the constitutional authority to temporarily exercise the Royal powers of the Hawaiian Kingdom**. The Council of Regency, composed by *de facto* officers, is actually serving as the provisional government of the Hawaiian Kingdom, and, should the military occupation come to an end, it shall immediately convene the Legislative Assembly, which "shall proceed to choose by ballot, a Regent of Council of Regency, who shall administer the Government in the name of the King, and exercise all the powers which are Constitutionally vested in the King" until it shall not be possible to nominate a Monarch, pursuant to Article 33 of the Hawaiian Kingdom Constitution of 1864.

9. In light of the foregoing – particularly in consideration of the fact that, under international law, the Hawaiian Kingdom continues to exist as an independent State, although subjected to a foreign occupation, and that the Council of Regency has been established consistently with the constitutional principles of the Hawaiian Kingdom and, consequently, possesses the legitimacy of temporarily exercising the functions of the Monarch of the Kingdom – it is possible to conclude that **the Regency actually has the authority to represent the Hawaiian Kingdom as a State, which has been under a belligerent occupation by the United States of America since 17 January 1893, both at the domestic and international level.**

b) Assuming the Regency does have the authority, what effect would its proclamations have on the civilian population of the Hawaiian Islands under internationol humanitarian law, to include its proclamation recognizing the State of Hawai'i and its Counties as the administration of the occupying State on 3 June 2019?

10. As previously ascertained, the Council of Regency actually possesses the constitutional authority to temporarily exercise the Royal powers of the Hawaiian Kingdom and, consequently, has the authority to represent the Hawaiian Kingdom as a State pending the American occupation and, in any case, up to the moment when it shall be possible to convene the Legislative Assembly pursuant to Article 33 of the Hawaiian Kingdom Constitution of 1864. This means that **the Council of Regency is exactly in the same position of a government of a State under military occupation, and is vested with the rights and powers recognized to governments of occupied States pursuant to international humanitarian law.**
11. In principle, however, such rights and powers are quite limited, by reason of the fact that the governmental authority of a government of a State under military occupation has been replaced by that of the occupying power, "[t]he authority of the legitimate power having in fact passed into the

hands of the occupant".[23] At the same time, the ousted government retains the function and the duty of, to the extent possible, preserving order, protecting the rights and prerogatives of local people and continuing to promote the relations between its people and foreign countries. In the *Larsen* case, the claimant even asserted that the Council of Regency had "an obligation and a responsibility under international law, to take steps to protect Claimant's nationality as a Hawaiian subject";[24] the Arbitral Tribunal established by the PCA, however, did not provide a response regarding this claim. In any event, leaving aside the latter specific aspect, in light of its position the Council of Regency may to a certain extent interact with the exercise of the authority by the occupying power. This is consistent with the fact that the occupant is under an international obligation to "take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country".[25] Indeed, as noted by the eminent jurist Robert Y. Jennings in an influential article published in 1946,[26] one of the main purposes of the law of belligerent occupation is to protect the sovereign rights of the legitimate government of the occupied territory, and the obligations of the occupying power in this regard continue to exist "even when, in disregard of the rules of international law, it claims [...] to have annexed all or part of an occupied territory".[27] It follows that, the ousted government being the entity which represents the "legitimate government" of the occupied territory, it may "attempt to influence life in the occupied area out of concern for its nationals, to undermine the occupant's authority, or both. One way to accomplish such goals is to legislate for the occupied population".[28] In fact, "occupation law does not require an exclusive exercise of authority by the Occupying Power. It allows for authority to be shared by the Occupying Power and the occupied government, provided the former continues to bear the ultimate and overall responsibility for the occupied territory".[29] While in several cases occupants have maintained the inapplicability to the occupied territory of new legislation enacted by the occupied government, for the reason that it "could undermine their authority [...] the majority of post-World War II scholars, also relying on the practice of various national courts, have agreed that the occupant should give effect to the sovereign's new legislation as long as it addresses those issues in which the occupant has no power to amend the local law, most notably in matters of personal status".[30] The Swiss Federal Tribunal has even held that "[e]nactments by the [exiled government] are constitutionally laws of the [country] and applied *ab initio* to the territory occupied [...] even though they could not be effectively implemented until the liberation".[31] Although this position was taken with specific regard to exiled governments, and the Council of Regency was not established *in exile* but *in situ*, the conclusion, to the extent that it is considered valid, would not substantially change as regards the Council of Regency itself.

12. It follows from the foregoing that, under international humanitarian law, **the proclamations of the Council of Regency are not divested of effects as regards the civilian population of the Hawaiian Islands**. In fact, considering these proclamations as included in the concept of "legislation" referred

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[23] See Article 43 of the Regulations annexed to the Hague Convention (IV) respecting the Laws and Customs of War on Land of 1907.

[24] See *Larsen v. Hawaiian Kingdom*, *supra* n. 1, at 12.8.

[25] See Article 43 of the Regulations annexed to the Hague Convention (IV) respecting the Laws and Customs of War on Land of 1907.

[26] See "Government in Commission", 23 *British Year Book of International Law*, 1946, 112.

[27] See Pictet, *Commentary on the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949*, *supra* n. 12, at 276.

[28] See Eyal Benvenisti, *The International Law of Occupation*, 2nd Ed., Oxford, 2012, at 104.

[29] See Philip Spoerri, "The Law of Occupation", in Andrew Clapham and Paola Gaeta (eds.), *The Oxford Handbook of International Law in Armed Conflict*, Oxford, 2014, 182, at 190.

[30] See Benvenisti, *The International Law of Occupation*, *supra* n. 28, at 104-105.

to in the previous paragraph,[32] they might even, if the concrete circumstances of the case so allow, apply retroactively at the end of the occupation, irrespective of whether or not they must be respected by the occupying power during the occupation, on the condition that the legislative acts in point do not "disregard the rights and expectations of the occupied population".[33] It is therefore necessary that the occupied government refrains "from using the national law as a vehicle to undermine public order and civil life in the occupied area".[34] In other words, in exercising the legislative function during the occupation, the ousted government is subjected to the condition of not undermining the rights and interests of the civilian population. However, once the latter requirement is actually respected, the proclamations of the ousted government – including, in the case of Hawai'i, those of the Council of Regency – may be considered applicable to local people, unless such applicability is explicitly refuted by the occupying authority, in its position of an entity bearing "the ultimate and overall responsibility for the occupied territory".[35] In this regard, however, it is reasonable to assume that the occupying power should not deny the applicability of the above proclamations when they do not undermine, or significantly interfere with the exercise of, its authority. This would be consistent with the obligation of the occupying power "to maintain the status quo ante (i.e. as it was before) in the occupied territory as far as is practically possible",[36] considering that local authorities are better placed to know what are the actual needs of the local population and of the occupied territory, in view of guaranteeing that the status quo ante is effectively maintained.

13. As regards, specifically, the Council of Regency's Proclamation recognizing the State of Hawai'i and its Counties as the administration of the occupying State of 3 June 2019,[37] it reads as follows:

> "Whereas, in order to account for the present circumstances of the prolonged illegal occupation of the Hawaiian Kingdom and to provide a temporary measure of protection for its territory and the population residing therein, the public safety requires action to be taken in order for the State of Hawai'i and its Counties to begin to comply with the 1907 Hague Convention, IV, the 1949 Geneva Convention, IV, and international humanitarian law:
> Now, therefore, We, the acting Council of Regency of the Hawaiian Kingdom, serving in the absence of the Monarch and temporarily exercising the Royal Power of the Kingdom, do hereby recognize the State of Hawai'i and its Counties, for international law purposes, as the administration of the Occupying Power whose duties and obligations are enumerated in the 1907 Hague Convention, IV, the 1949 Geneva Convention, IV, and international humanitarian law;
> And, We do hereby further proclaim that the State of Hawai'i and its Counties shall preserve the sovereign rights of the Hawaiian Kingdom government, and to protect the local population from exploitation of their persons and property, both real and personal, as well as their civil and political rights under Hawaiian Kingdom law".

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[32] This is consistent with the assumption that the expression "laws in force in the country", as used by Article 43 of the Regulations annexed to the Hague Convention (IV) respecting the Laws and Customs of War on Land of 1907 (see *supra*, text corresponding to n. 25), "refers not only to laws in the strict sense of the word, but also to the constitution, decrees, ordinances, court precedents [...] as well as administrative regulations and executive orders"; see Marco Sassòli, "Legislation and Maintenance of Public Order and Civil Life by Occupying Powers", 16 *European Journal of International Law*, 2005, 661, at 668-69.

[33] See Benvenisti, *The International Law of Occupation*, *supra* n. 28, at 105.

[34] Ibid., at 106.

[35] See *supra*, text corresponding to n. 29.

[36] See International Committee of the Red Cross, "The Law of Armed Conflict. Belligerent Occupation", *supra* n. 20, at 9.

[37] Available at <https://www.hawaiiankingdom.org/pdf/Proc_Recognizing_State_of_HI.pdf> (accessed on 18 May

As it is evident from a plain reading of its text, this Proclamation pursues the clear purpose of ensuring the protection of the Hawaiian territory and the people residing therein against the prejudicial effects which may arise from the occupation to which such a territory is actually subjected. Therefore, it represents a legislative act aimed at furthering the interests of the civilian population through ensuring the correct administration of their rights and of the land. As a consequence, it has the nature of an act that is equivalent, in its rationale and purpose (although not in its precise subject), to a piece of legislation concerning matters of personal status of the local population, requiring the occupant to give effect to it.[38] It is true that the Proclamation of 3 June 2019 takes a precise position on the status of the occupying power, the State of Hawai'i and its Counties being a direct emanation of the United States of America. However, in doing so, the said Proclamation simply reiterates an aspect that is self-evident, since the fact that the State of Hawai'i and its Counties belong to the political organization of the occupying power, and that they are de facto administering the Hawaiian territory, is objectively irrefutable. It follows that the Proclamation in discussion simply restates rules already existing under international humanitarian law. In fact, the latter clearly establishes the obligation of the occupying power to preserve the sovereign rights of the occupied government (as previously ascertained in this opinion),[39] the "overarching principle [of the law of occupation being] that an occupant does not acquire sovereignty over an occupied territory and therefore any occupation must only be a temporary situation".[40] Also, it is beyond any doubts that an occupying power is bound to guarantee and protect the human rights of the local population, as defined by the international human rights treaties of which it is a party as well as by customary international law. This has been authoritatively confirmed, *inter alia*, by the International Court of Justice.[41] While the Proclamation makes reference to the duty of the State of Hawai'i and its Counties to protect the human rights of the local population "under Hawaiian Kingdom law", and not pursuant to applicable international law, this is consistent with the obligation of the occupying power to respect, to the extent possible, the law in force in the occupied territory. In this regard, respecting the domestic laws which protect the human rights of the local population undoubtedly falls within "the extent possible", because it certainly does not undermine, or significantly interfere with the exercise of, the authority of the occupying power, and is consistent with existing international obligations. In other words, the occupying power cannot be considered "absolutely prevented"[42] from applying the domestic laws protecting the human rights of the local population, unless it is demonstrated that the level of protection of human rights guaranteed by Hawaiian Kingdom law is less advanced than human rights standards established by international law. Only in this case, the occupying power would be under a duty to ensure in favour of the local population the higher level of protection of human rights guaranteed by international law. In sum, **the Council of Regency's Proclamation of 3 June 2019 may be considered as a domestic act implementing international rules at the internal level,**

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[38] See *supra* text corresponding to n. 30.

[39] See, in particular, *supra*, para. 11.

[40] See United Nations, Officer of the High Commissioner of Human Rights, "Belligerent Occupation: Duties and Obligations of Occupying Powers", September 2017, available at <https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ohchr_syria_-_belligerent_occupation_-_legal_note_en.pdf> (accessed on 19 May 2020), at 3.

[41] See, in particular, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2004, *ICJ Reports*, 2004, at 111-113; *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of Congo v. Uganda)*, Judgement of 19 December 2005, at 178. For a more comprehensive assessment of this issue see Federico Lenzerini, "International Human Rights Law and Self-Determination of Peoples Related to the United States Occupation of the Hawaiian Kingdom", in David Keanu Sai (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations in the Hawaiian Kingdom*, Honolulu, 2020, 173, at 203-205.

which should be effected by the occupying power pursuant to international humanitarian law, since it does not undermine, or significantly interfere with the exercise of, its authority.

14. It may be concluded that, under international humanitarian law, **the proclamations of the Council of Regency** – including the Proclamation recognizing the State of Hawai'i and its Counties as the administration of the occupying State on 3 June 2019 – **have on the civilian population the effect of acts of domestic legislation aimed at protecting their rights and prerogatives, which should be, to the extent possible, respected and implemented by the occupying power.**

c) Comment on the working relationship between the Regency and the administration of the occupying State under international humanitarian law.

15. As previously noted, "occupation law [...] allows for authority to be shared by the Occupying Power and the occupied government, provided the former continues to bear the ultimate and overall responsibility for the occupied territory".[43] This said, it is to be kept well in mind that belligerent occupation necessarily has a *non-consensual nature*. In fact, "[t]he absence of consent from the state whose territory is subject to the foreign forces' presence [...] [is] a precondition for the existence of a state of belligerent occupation. Without this condition, the situation would amount to a 'pacific occupation' not subject to the law of occupation".[44] At the same time, we also need to remember that the absence of armed resistance by the territorial government can in no way be interpreted as determining the existence of an implied consent to the occupation, consistently with the principle enshrined by Article 2 common to the four Geneva Conventions of 1949.[45]. On the contrary, the consent, "for the purposes of occupation law, [...] [must] be genuine, valid and explicit".[46] It is evident that such a consent has never been given by the government of the Hawaiian Kingdom. On the contrary, the Hawaiian government opposed the occupation since its very beginning. In particular, Queen Lili'uokalani, executive monarch of the Hawaiian Kingdom, on 17 January 1893 stated that,

> "to avoid any collision of armed forces and perhaps the loss of life, I do, under this protest, and impelled by said force, yield my authority until such time as the Government of the United States shall, upon the facts being presented to it, undo the action of its representatives and reinstate me in the authority which I claim as the constitutional sovereign of the Hawaiian Islands".[47]

The opposition to the occupation has never been abandoned up to the time of this writing, although for some long decades it was stifled by the policy of *Americanization* brought about by the US government in the Hawaiian Islands. It has eventually revived in the last three lustrums, with the establishment of the Council of Regency.

16. Despite the fact that the occupation inherently configures as a situation unilaterally imposed by the occupying power – any kind of consent of the ousted government being totally absent – there still is some space for "cooperation" between the occupying and the occupied government – in the specific case of Hawai'i between the State of Hawai'i and its Counties and the Council of Regency.

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[43] See *supra*, text corresponding to n. 29.

[44] See Spoerri, "The Law of Occupation", supra n. 29, at 190.

[45] See *supra*, para. 6.

[46] See Spoerri, "The Law of Occupation", supra n. 29, at 190.

[47] See United States House of Representatives, 53rd Congress, *Executive Documents on Affairs in Hawai'i: 1894-95*,

Before trying to specify the characteristics of such a cooperation, it is however important to reiterate that, under international humanitarian law, the last word concerning any acts relating to the administration of the occupied territory is with the occupying power. In other words, "occupation law would allow for a vertical, but not a horizontal, sharing of authority [...] [in the sense that] this power sharing should not affect the ultimate authority of the occupier over the occupied territory".[48] This vertical sharing of authority would reflect "the hierarchical relationship between the occupying power and the local authorities, the former maintaining a form of control over the latter through a top-down approach in the allocation of responsibilities".[49]

17. The cooperation referred to in the previous paragraph is implied or explicitly established in some provisions of the Fourth Geneva Convention of 1949. In particular, Article 47 states that

> "Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory".

Through referring to possible agreements "concluded between the authorities of the occupied territories and the Occupying Power", this provision clearly implies the possibility of establishing cooperation between the occupying and the occupied government. More explicitly, Article 50 affirms that "[t]he Occupying Power shall, with the cooperation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children", while Article 56 establishes that, "[t]o the fullest extent of the means available to it, the Occupying Power has the duty of ensuring and maintaining, with the cooperation of national and local authorities, the medical and hospital establishments and services, public health and hygiene in the occupied territory [...]".

As far as United States practice is concerned, it acknowledges that "[t]he functions of the [occupied] government – whether of a general, provincial, or local character – continue only to the extent they are sanctioned".[50] With specific regard to cooperation with the occupied government, it is also recognized that "[t]he occupant may, while retaining its paramount authority, permit the government of the country to perform some or all of its normal functions".[51]

18. Importantly, the provisions referred to in the previous paragraph exactly refer to issues related to the protection of civilian persons and of their rights, which is one of the two main aspects (together with the preservation of the sovereign rights of the Hawaiian Kingdom government) dealt with by the Council of Regency's Proclamation recognizing the State of Hawai'i and its Counties as the administration of the occupying State of 3 June 2019.[52] In practice, the cooperation advocated by the provisions in point may take different forms, one of which translates into the possibility for the ousted government to adopt legislative provisions concerning the above aspects. As previously seen, the occupying power has, *vis-à-vis* the ensuing legislation, a duty not to oppose to it, because it normally does not undermine, or significantly interfere with the exercise of, its authority. Further to this, it is reasonable to assume that – in light of the spirit and the contents of the provisions referred to in the previous paragraph – the occupying power has a duty to cooperate in giving

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[48] See International Committee of the Red Cross, *Expert Meeting. Occupation and Other Forms of Administration of Foreign Territory. Report*, Geneva, 2012, available at <https://www.icrc.org/en/doc/assets/files/publications/icrc-002-4094.pdf> (accessed on 20 May 2020), at 20.

[49] Ibid., at footnote 7.

[50] See "The Law of Land Warfare", *United States Army Field Manual* 27-10, July 1956, Section 367(a).

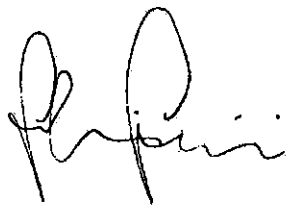
[51] Ibid., Section 367(b).

realization to the legislation in point, unless it is "absolutely prevented" to do so. This duty to cooperate appears to be reciprocal, being premised on both the Council of Regency and the State of Hawai'i and its Counties to ensure compliance with international humanitarian law.

19. The latter conclusion is consistent with the logical (and legally-grounded) assumption that the ousted government is better placed than the occupying power in order to know what are the real needs of the civilian population and what are the concrete measures to be taken to guarantee an effective response to such needs. It follows that, through allowing the legislation in discussion to be applied – and through contributing in its effective application – the occupying power would better comply with its obligation, existing under international humanitarian law and human rights law, to guarantee and protect the human rights of the local population. It follows that the occupying power has a duty – if not a proper legal obligation – to cooperate with the ousted government to better realize the rights and interest of the civilian population, and, more in general, to guarantee the correct administration of the occupied territory.

20 In light of the foregoing, it may be concluded that **the working relationship between the Regency and the administration of the occupying State should have the form of a cooperative relationship aimed at guaranteeing the realization of the rights and interests of the civilian population and the correct administration of the occupied territory**, provided that there are no objective obstacles for the occupying power to cooperate and that, in any event, the "supreme" decision-making power belongs to the occupying power itself. This conclusion is consistent with the position of the latter as "administrator" of the Hawaiian territory, as stated in the Council of Regency's Proclamation recognizing the State of Hawai'i and its Counties as the administration of the occupying State of 3 June 2019 and presupposed by the pertinent rules of international humanitarian law.

24 May 2020



Professor Federico Lenzerini

Exhibit "C"

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

HAWAIIAN KINGDOM,

Plaintiff,

v.

JOSEPH ROBINETTE BIDEN JR., in his official capacity as President of the United States; KAMALA HARRIS, in her official capacity as Vice-President and President of the United States Senate; ADMIRAL JOHN AQUILINO, in his official capacity as Commander, U.S. Indo-Pacific Command; CHARLES P. RETTIG, in his official capacity as Commissioner of the Internal Revenue Service; JANE HARDY, in her official capacity as Australia's Consul General to Hawai'i and the United Kingdom's Consul to Hawai'i; JOHANN URSCHITZ, in his official capacity as Austria's Honorary Consul to Hawai'i; M. JAN RUMI, in his official capacity as Bangladesh's Honorary Consul to Hawai'i and Morocco's Honorary Consul to Hawai'i; JEFFREY DANIEL LAU, in his official capacity as Belgium's Honorary Consul to Hawai'i; ERIC G. CRISPIN, in his official capacity as Brazil's Honorary Consul to Hawai'i; GLADYS VERNOY, in her official capacity as Chile's Honorary Consul General to Hawai'i; JOSEF SMYCEK, in his official capacity as the Czech Republic's Deputy Consul General for Los Angeles that oversees the Honorary Consulate in

Civil No. 1:21-cv-00243-LEK-RT

DECLARATION OF DAVID KEANU SAI, Ph.D.

Hawai'i; BENNY MADSEN, in his official capacity as Denmark's Honorary Consul to Hawai'i; KATJA SILVERAA, in her official capacity as Finland's Honorary Consul to Hawai'i; GUILLAUME MAMAN, in his official capacity as France's Honorary Consul to Hawai'i; DENIS SALLE, in his official capacity as Germany's Honorary Consul to Hawai'i; KATALIN CSISZAR, in her official capacity as Hungary's Honorary Consul to Hawai'i; SHEILA WATUMULL, in her official capacity as India's Honorary Consul to Hawai'i; MICHELE CARBONE, in his official capacity as Italy's Honorary Consul to Hawai'i; YUTAKA AOKI, in his official capacity as Japan's Consul General to Hawai'i; JEAN-CLAUDE DRUI, in his official capacity as Luxembourg's Honorary Consul to Hawai'i; ANDREW M. KLUGER, in his official capacity as Mexico's Honorary Consul to Hawai'i; HENK ROGERS, in his official capacity as Netherland's Honorary Consul to Hawai'i; KEVIN BURNETT, in his official capacity as New Zealand's Consul General to Hawai'i; NINA HAMRE FASI, in her official capacity as Norway's Honorary Consul to Hawai'i; JOSELITO A. JIMENO, in his official capacity as the Philippines's Consul General to Hawai'i; BOZENA ANNA JARNOT, in her official capacity as Poland's Honorary Consul to Hawai'i; TYLER DOS SANTOS-TAM, in his official capacity as Portugal's Honorary Consul to Hawai'i; R.J. ZLATOPER, in his official capacity as Slovenia's Honorary Consul to Hawai'i; HONG, SEOK-IN, in his official capacity as the Republic of South Korea's Consul General to Hawai'i; JOHN HENRY

FELIX, in his official capacity as Spain's Honorary Consul to Hawai'i; BEDE DHAMMIKA COORAY, in his official capacity as Sri Lanka's Honorary Consul to Hawai'i; ANDERS G.O. NERVELL, in his official capacity as Sweden's Honorary Consul to Hawai'i; THERES RYF DESAI, in her official capacity as Switzerland's Honorary Consul to Hawai'i; COLIN T. MIYABARA, in his official capacity as Thailand's Honorary Consul to Hawai'i; DAVID YUTAKA IGE, in his official capacity as Governor of the State of Hawai'i; TY NOHARA, in her official capacity as Commissioner of Securities; ISSAC W. CHOY, in his official capacity as the director of the Department of Taxation of the State of Hawai'i; CHARLES E. SCHUMER, in his official capacity as U.S. Senate Majority Leader; NANCY PELOSI, in her official capacity as Speaker of the United States House of Representatives; RON KOUCHI, in his official capacity as Senate President of the State of Hawai'i; SCOTT SAIKI, in his official capacity as Speaker of the House of Representatives of the State of Hawai'i; the UNITED STATES OF AMERICA; and the STATE OF HAWAI'I,

Defendants.

DECLARATION OF DAVID KEANU SAI, Ph.D.

Exhibit 1

DECLARATION OF DAVID KEANU SAI, Ph.D.

I, David Keanu Sai, declare the following:

1. Declarant is a Hawaiian subject residing in Mountain View, Island of Hawai'i, Hawaiian Kingdom. I am the Minister of the Interior, Minister of Foreign Affairs *ad interim*, and Chairman of the Council of Regency. Declarant served as Agent for the Hawaiian Kingdom in *Larsen v. Hawaiian Kingdom* arbitral proceedings at the Permanent Court of Arbitration from 1999-2001.

2. On or about mid-February 2000, declarant, as Agent for the Hawaiian Kingdom, had a phone conversation with the Secretary General of the Permanent Court of Arbitration (PCA), Tjaco T. van den Hout. In that conversation, the Secretary General stated to the declarant that the Secretariat was not able to find any evidence that the Hawaiian Kingdom had been extinguished as a State and admitted that the 1862 Hawaiian-Dutch Treaty was not terminated. The declarant understood that the Hawaiian Kingdom satisfied the PCA's institutional jurisdiction pursuant to Article 47 of the 1907 Hague Convention for the Pacific Settlement of International Disputes, I, whereby the PCA would be accessible to Non-Contracting States. The arbitral tribunal was not formed until June 9, 2000.

3. The Secretary General then stated to the declarant that in order to maintain the integrity of these proceedings, he recommended that the Hawaiian Kingdom Government provide a formal invitation to the United States to join in the arbitral proceedings. The declarant stated that he will bring this request up with the Council of Regency. After discussion, the Council of Regency accepted the Secretary General's request and declarant travelled by airplane with Ms. Ninia Parks, counsel for claimant, Lance P. Larsen, to Washington, D.C., on or about March 1, 2000.

4. On March 2, 2000, Ms. Parks and the declarant met with Sonia Lattimore, Office Assistant, L/EX, at 10:30 a.m. on the ground floor of the Department of State and presented her with two (2) binders, the first comprised of an Arbitration Log Sheet with accompanying documents on record at the Permanent Court of Arbitration. The second binder comprised of divers documents of the Acting Council of Regency as well as diplomatic correspondence with treaty partners of the Hawaiian Kingdom.

5. Declarant stated to Ms. Lattimore that the purpose of our visit was to provide these documents to the Legal Department of the U.S. State Department in order for the U.S. Government to be apprised of the arbitral proceedings already in train and that the Hawaiian Kingdom, by consent of the Claimant, extends an opportunity for the United States to join in the

arbitration as a party. Ms. Lattimore assured the declarant that the package would be given to Mr. Bob McKenna for review and assignment to someone within the Legal Department. Declarant told Ms. Lattimore that he and Ms. Parks will be in Washington, D.C., until close of business on Friday, and she assured declarant that she will call on declarant's cell phone by the close of business that day with a status report.

6. At 4:45 p.m., Ms. Lattimore contacted the declarant by phone and stated that the package had been sent to John Crook, Assistant Legal Advisor for United Nations Affairs. She stated that Mr. Crook will be contacting the declarant on Friday (March 3, 2000), but declarant could give Mr. Crook a call in the morning if desired.

7. At 11:00 a.m., March 3, 2000, declarant called Mr. Crook and inquired about the receipt of the package. Mr. Crook stated that he did not have ample time to critically review the package but will get to it. Declarant stated that the reason for our visit was the offer by the Respondent Hawaiian Kingdom, by consent of the Claimant, by his attorney, for the United States Government to join in the arbitral proceedings already in motion. Declarant also advised Mr. Crook that Secretary General van den Hout of the PCA was aware of our travel to Washington, D.C., and the offer to join in the

arbitration. The Secretary General requested that the dialogue be reduced to writing and filed with the International Bureau of the PCA for the record.

8. Declarant further stated to Mr. Crook that enclosed in the binders were Hawaiian diplomatic protests lodged by declarant's former country men and women with the Depart of State in the summer of 1897, that are on record at the U.S. National Archives, in order for him to understand the gravity of the situation. Declarant also stated that included in the binders were two (2) protests by the declarant as an officer of the Hawaiian Government against the State of Hawai'i for instituting unwarranted criminal proceedings against the declarant and other Hawaiian subjects under the guise of American municipal laws within the territorial dominion of the Hawaiian Kingdom.

9. In closing, the declarant stated to Mr. Crook that after a thorough investigation into the facts presented to his office, and following zealous deliberations as to the considerations offered, the Government of the United States shall resolve to decline our offer to enter the arbitration as a Party, the present arbitral proceedings shall continue without affect pursuant to the 1907 Hague Conventions IV and V, and the UNCITRAL Rules of arbitration. Mr. Crook acknowledged what was said and the conversation then came to a close. That day a letter confirming the content of the discussion was drafted by the declarant and sent to Mr. Crook. The letter

was also carbon copied to the Secretary General of the PCA, Ms. Parks, Mr. Keoni Agard, appointing authority for the arbitral proceedings, and Ms. Noelani Kalipi, Hawai'i Senator Daniel Akaka's Legislative Assistant.

10. Thereafter, the PCA's Deputy Secretary General, Phyllis Hamilton, spoke with declarant over the phone and informed declarant that the United States, through its embassy in The Hague, notified the PCA that the United States had declined the invitation to join in the arbitral proceedings. Instead, the United requested permission from the Hawaiian Government and the Claimant to have access to the pleadings and records of the case. Both the Hawaiian Government and the Claimant consented to the United States' request.

11. On March 21, 2000, Professor Christopher Greenwood, QC, was confirmed as an arbitrator, and on March 23, 2000, Gavan Griffith, QC, was confirmed as an arbitrator. On May 28, 2000, the arbitral tribunal was completed by the appointment of Professor James Crawford as the presiding arbitrator. On June 9, 2000, the parties jointly notified, by letter, to the Deputy Secretary General of the PCA that the arbitral tribunal had been duly constituted.

12. After written pleadings were filed by the parties with the PCA, oral hearings were held at the PCA on December 7, 8 and 11, 2000. The arbitral award was filed with the PCA on February 5, 2000 where the tribunal found that it

lacked subject matter jurisdiction because it concluded that the United States was an indispensable third party. Consequently, the Claimant was precluded from alleging that the Hawaiian Kingdom, by its Council of Regency, was liable for the unlawful imposition of American municipal laws over the Claimant's person within the territorial jurisdiction of the Hawaiian Kingdom without the participation of the United States.

13. After returning from The Hague in December of 2000, the Council of Regency determined that the declarant would enter University of Hawai'i at Mānoa as a graduate student in the political science department in order to directly address the misinformation regarding the continuity of the Hawaiian Kingdom as an independent and sovereign State that has been under a prolonged occupation by the United States since January 17, 1893 through research and publication of articles. The decision made by the Council of Regency was in accordance with Section 495—*Remedies of Injured Belligerent*, United States Army FM-27-10 states, "[i]n the event of violation of the law of war, the injured party may legally resort to remedial action of the following types: *a.* Publication of the facts, with a view to influencing public opinion against the offending belligerent."

14. The declarant received his master's degree in political science specializing in international relations and law in 2004 and received his Ph.D. degree in

political science with particular focus on the continuity of the Hawaiian Kingdom. Declarant has published multiple articles and books on the prolonged occupation of the Hawaiian Kingdom and its continued existence as a State under international law. Declarant's curriculum vitae can be accessed online at http://www2.hawaii.edu/~anu/pdf/CV.pdf. Declarant can be contacted at interior@hawaiiankingdom.org.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Mountain View, Hawaiian Kingdom, May 19, 2021.

David Keanu Sai

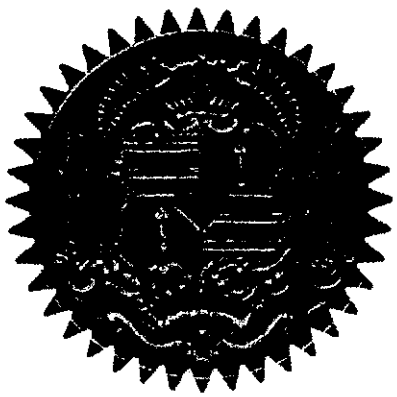
Exhibit "D"

Council of Regency,

Acting Cabinet Council of the Hawaiian Islands:

To Dexter Ke'eaumoku Ka'iama, Esq. *Greeting:*

Know ye, that this Executive Office, reposing special trust and confidence in your wisdom, integrity and fidelity, have constituted and appointed you acting **Attorney General**, to faithfully discharge and perform all the duties pertaining to said Office, under the Constitution and Laws of the Kingdom, and to hold office as such during this Office's pleasure: And all persons are hereby ordered to respect this your authority.



In Witness Whereof, I have hereunto set my hand, and caused the Great Seal of the Kingdom to be affixed this 11 day of August A.D. 2013.

Peter Umialiloa Sai,
Vice-Chairman of the Acting Council of Regency
Acting Minister of Foreign Affairs

By the Council

Kau'i P. Sai-Dudoit,
Acting Minister of Finance

IN THE SUPREME COURT OF THE
STATE OF HAWAI'I

ODC v. or, A confidential pending investigation and/or Proceeding under the Rules of the Supreme Court of the State of Hawai`i and its Disciplinary Board, regarding a matter of Attorney discipline.	**CONFIDENTIAL** Case No. 18-0339 CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and filed copy of the foregoing document will be duly served on the following parties by Hand-delivery or U.S. mail (postage prepaid on this date):

CLIFFORD L. NAKEA
Disciplinary Board Officer
Office of Disciplinary Counsel
Hawai`i Supreme Court
201 Merchant Street, Suite 1600
Honolulu, Hawai`i 96813

ALANA L. BRYANT, ESQ.
Assistant Disciplinary Counsel
Office of Disciplinary Counsel
Hawai`i Supreme Court
201 Merchant Street, Suite 1600
Honolulu, Hawai`i 96813

WILLIAM FENTON SINK, ESQ.
Dillingham Transportation Bldg.
735 Bishop Street, Ste. 400
Honolulu, HI 96813

Dated: Kailua, Hawai`i, August 25, 2022.

Dexter K. Ka`iama. Esq.
Respondent

Law Offices of
WILLIAM FENTON SINK
WILLIAM FENTON SINK
WILLIAM FENTON SINK
WILLIAM FENTON SINK
Dillingham Transportation Building
735 Bishop Street, Suite 400
Honolulu, Hawaii 96813

Hon. Clifford L. Nakea (Ret)., Chairperson
201 Merchant Street, Ste. 1600
Honolulu, Hawai'i 96813

From: Alana Bryant
To: William Fenton Sink
Subject: CONFIDENTIAL - ODC No. 18-0339 (Kaiama)
Date: Thursday, August 25, 2022 2:34:15 PM

Mr. Sink,

This morning our office received a Motion to Dismiss Subpoena. The motion is signed only by Dexter Kaiama, but I wanted to confirm whether or not you still represent Mr. Kaiama in this pending ODC matter. If you do still represent Mr. Kaiama, we will postpone the deposition that was scheduled for tomorrow, Aug. 26, 2022, until after the Supreme Court disposes of the Motion to Dismiss Subpoena.

Please let me know whether you still represent Mr. Kaiama at your soonest convenience.

Thank you,
Alana

Office of Disciplinary Counsel
Hawai'i Supreme Court
201 Merchant Street, Suite 1600
Honolulu, HI 96813

Alana L. Bryant
Assistant Disciplinary Counsel
(808) 521-4591 (main) | (808) 469-4037
http://www.dbhawaii.org|Alana.L.Bryant@dbhawaii.org

SCPW-22-0000511

IN THE SUPREME COURT OF THE STATE OF HAWAIʻI

DEXTER K. KAʻIAMA, Petitioner,

vs.

OFFICE OF DISCIPLINARY COUNSEL, Respondent,

ORIGINAL PROCEEDING
(ODC No. 18-0339)

ORDER
(By: Recktenwald, C.J., Nakayama, McKenna, Wilson, and Eddins, JJ.)

Upon consideration of the materials submitted on August 25, 2022 to the appellate clerks by attorney Dexter K. Kaʻiama, which was filed as a petition for a writ of mandamus, we conclude that attorney Kaʻiama seeks relief from the Disciplinary Board of the Hawaiʻi Supreme Court, not from this court. Therefore,

IT IS HEREBY ORDERED that the petition is denied without prejudice to attorney Kaʻiama seeking relief from the Disciplinary Board.

DATED: Honolulu, Hawaiʻi, August 31, 2022.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Michael D. Wilson

/s/ Todd W. Eddins

SCPW-22-0000511

IN THE SUPREME COURT OF THE STATE OF HAWAIʻI

DEXTER K. KAʻIAMA, Petitioner,

vs.

OFFICE OF DISCIPLINARY COUNSEL, Respondent.

ORIGINAL PROCEEDING

ORDER OF CLARIFICATION

(By: Recktenwald, C.J., Nakayama, McKenna, Wilson, and Eddins, JJ.)

Upon further review and consideration of the record in this matter, including this court's order of August 31, 2022 ("order"), it appears that the initial filing at Docket 1 was mischaracterized by the order as a petition for a writ of mandamus, when in fact it is directed at, and appears to seek relief from, the Disciplinary Board of the Supreme Court of the State of Hawaiʻi.

IT IS HEREBY ORDERED that, pursuant to Rule 2.22 of the Rules of the Supreme Court of the State of Hawaiʻi, the

initial filing materials submitted on August 25, 2022 at Docket 1 remain confidential.

DATED: Honolulu, Hawai‘i, September 2, 2022.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Michael D. Wilson

/s/ Todd W. Eddins

From: Alana Bryant
To: William Fenton Sink
Subject: CONFIDENTIAL - subpoena
Date: Wednesday, August 31, 2022 1:23:52 PM
Attachments: 220831 SDT Kaiama.pdf

Mr. Sink,

As Mr. Kaiama's motion was denied by the Supreme Court today, we are issuing another subpoena for his deposition. We have scheduled the deposition for Friday, September 9, 2022, 9:30 a.m., at ODC's offices. Please let me know if you are able to accept service of the attached subpoena on Mr. Kaiama's behalf.

Thank you,
Alana

Office of Disciplinary Counsel
Hawai'i Supreme Court
201 Merchant Street, Suite 1600
Honolulu, HI 96813

Alana L. Bryant
Assistant Disciplinary Counsel
(808) 521-4591 (main) | (808) 469-4037
http://www.dbhawaii.org|Alana.L.Bryant@dbhawaii.org

IN THE SUPREME COURT OF THE STATE OF HAWAIʻI

◯ ODC v. or, ◉ A confidential pending investigation and/or proceeding under the Rules of the Supreme Court of the State of Hawaiʻi and its Disciplinary Board, regarding a matter of attorney discipline.	**CONFIDENTIAL** Case No. 18-0339 ◉ SUBPOENA or ◯ SUBPOENA DUCES TECUM

TO: **Dexter K. Kaiama**
c/o William F. Sink, Esq.
735 Bishop Street, Suite 400
Honolulu, Hawaii 96813

1. **WE COMMAND YOU,** that all business and excuses being set aside, to appear in person and attend before:

   Alana L. Bryant , Disciplinary ◉ Counsel ◯ Investigator

2. At the place of the **Office of Disciplinary Counsel, 201 Merchant Street, Suite 1600, Honolulu, Hawaiʻi 96813.**

3. On the **9th** day of **September , 2022** (**Friday**) at **9:30** o'clock **a** .m. (and at any recessed or adjourned date);

4. Testify as a witness, or custodian, in the attorney disciplinary matter ◯ captioned above, or ◉ a confidential matter per RSCH Rule 2.22(a) identified by the case number captioned above.

5. **AND WE FURTHER COMMAND YOU** to bring and produce at the time and place aforesaid, the following which you have in your custody or power, concerning the matter:

   ◉
   ◯ or as set forth on **Attachment(s)** appended hereto.

6. **FOR FAILURE TO APPEAR AND TESTIFY OR PRODUCE** as herein require, you will be deemed to be in contempt of the Supreme Court of the State of Hawaiʻi.

BY AUTHORITY OF THE SUPREME COURT OF THE STATE OF HAWAIʻI.

DATED: August 31, 2022 Honolulu, Hawaiʻi

Disciplinary Board Officer

Clifford L. Nakea

Clerk, Supreme Court of the State of Hawaiʻi

/s/ Elizabeth Zack

IN THE SUPREME COURT OF THE
STATE OF HAWAI'I

ODC v.
or,
A confidential pending investigation and/or Proceeding under the Rules of the Supreme Court of the State of Hawai`i and its Disciplinary Board, regarding a matter of Attorney discipline.

CONFIDENTIAL

Case No. 18-0339

MOTION TO DISMISS SUBPOENA DATED AUGUST 31, 2022, PURSUANT TO HRCP 12(B)(2) AND THE *LORENZO* PRINCIPLE, AND TO SCHEDULE AN EVIDENTIARY HEARING, OR IN THE ALTERNATIVE, MOTION FOR PROTECTIVE ORDER; DECLARATION OF DEXTER K. KAIAMA; EXHIBITS "A-D"; CERTIFICATE OF SERVICE

Dexter K. Ka'iama4249
1486 Akeke Place
Kailua, HI 96734
Respondent

MOTION TO DISMISS SUBPOENA DATED AUGUST 31, 2022, PURSUANT TO HRCP 12(B)(2) AND THE *LORENZO* PRINCIPLE, AND TO SCHEDULE AN EVIDENTIARY HEARING, OR IN THE ALTERNATIVE, MOTION FOR PROTECTIVE ORDER

Respondent DEXTER K. KA'IAMA (hereafter "Respondent") respectfully moves the Disciplinary Board to schedule an evidentiary hearing for the ODC to provide rebuttable evidence, whether factual or legal, that the Hawaiian Kingdom ceases to exist as a State in light of the evidence and law in the instant motion. If the ODC is unable to proffer rebuttable evidence, the Respondent respectfully requests that this Disciplinary Board dismiss the subpoena pursuant to the HRCP 12(b)(2) and the *Lorenzo* principle. The reasons are set forth in the attached memorandum.

Respondent respectfully asserts that the Board Chairman is mandated to dismiss the instant proceedings, under the *Lorenzo* principle, unless the ODC is able to provide rebuttable evidence, whether factual or legal, that the Hawaiian Kingdom ceases to exist as a State. Should the ODC prevail by providing rebuttable evidence under international law, Respondent will move for a protective order pursuant to Rule 12(c)(i) of the Rules of the Disciplinary Board of the Hawai'i Supreme Court.

DATED: Honolulu, Hawai'i, September 6, 2022.

Respectfully submitted,

/s/ Dexter K. Ka'iama

DEXTER K. KA'IAMA (Bar No. 4249)

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ODC v. or, A confidential pending investigation and/or Proceeding under the Rules of the Supreme Court of the State of Hawai'i and its Disciplinary Board, regarding a matter of Attorney discipline.	**CONFIDENTIAL** Case No. 18-0339

MEMORANDUM OF POINTS AND AUTHORITIES

Respondent moves the Disciplinary Board to schedule an evidentiary hearing in order to dismiss subpoena dated August 31, 2022, pursuant to HRCP 12(b)(2) and the *Lorenzo* principle.

I. INTRODUCTION

One year after the United States Congress passed the *Joint Resolution To acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, and to offer an apology to Native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaii*,[1] an appeal, was heard by the State of Hawai'i Intermediate Court of Appeals, that centered on a claim that the Hawaiian Kingdom continues to exist as a State. In *State of Hawai'i v. Lorenzo* ("*Lorenzo* court"),[2] the Intermediate Court of Appeals ("ICA") stated:

> Lorenzo appeals, arguing that the lower court erred in denying his pretrial motion (Motion) to dismiss the indictment. The essence of the Motion is that the [Hawaiian Kingdom] (Kingdom) was recognized as an independent sovereign nation by the United States in numerous bilateral treaties; the Kingdom was illegally overthrown in 1893 with the assistance of the United States; the Kingdom still exists as a sovereign nation; he is a citizen of the Kingdom; therefore, the courts of the State

[1] 107 Stat. 1510 (1993).
[2] *State of Hawai'i v. Lorenzo*, 77 Hawai'i 219; 883 P.2d 641 (Ct. App. 1994).

> of Hawai'i have no jurisdiction over him. Lorenzo makes the same argument on appeal. For the reasons set forth below, we conclude that the lower court correctly denied the Motion.[3]

The *Lorenzo* Court based its denial of the motion to dismiss the indictment on personal jurisdictional grounds based on an evidentiary burden as described by the Ninth Circuit in its 1993 decision, in *United States v. Lorenzo*, that "[t]he appellants have presented no evidence that the Sovereign Kingdom of Hawaii is currently recognized by the federal government."[4] As a result, the *Lorenzo* court stated, it "was incumbent on Defendant to present evidence supporting his claim. *United States v. Lorenzo*. Lorenzo has presented no factual (or legal) basis for concluding that the Kingdom exists as a state in accordance with recognized attributes of a state's sovereign nature."[5] Neither the Ninth Circuit Court nor the *Lorenzo* Court foreclosed the question but rather provided, what it saw at the time, instruction for the courts to arrive at the conclusion that the Hawaiian Kingdom, from an evidentiary basis, exists as a State. This is evidenced in a subsequent decision by the ICA in 2004, in *State of Hawai'i v. Araujo*, that made it clear, "[b]ecause Araujo has not, either below or on appeal, 'presented [any] factual (or legal) basis for concluding that the Kingdom exists as a state in accordance with recognized attributes of a state's sovereign nature,' [...] his point of error on appeal must fail."[6]

The *Lorenzo* court used the word "presently" because it is an open legal question and not a political question. The ICA stated in a subsequent case, *State of Hawai'i v. Lee*, that the *Lorenzo* court "suggested that it is an open legal question whether the "[Hawaiian Kingdom]" **still exists** (emphasis added)."[7] The operative word here is "still exists," which means the *Lorenzo* court was

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[3] *Id.*, 220, 642.
[4] *United States v. Lorenzo*, 995 F.2d 1448, 1456; 1993 U.S. App. LEXIS 10548.
[5] *State of Hawai'i v. Lorenzo*, 221; 643.
[6] *State of Hawai'i v. Araujo*, 103 Haw. 508 (Haw. App. 2004).
[7] *State of Hawai'i v. Lee*, 90 Haw. 130, 142; 976 P.2d 444, 456 (Haw. App. 1999).

referring to the Hawaiian Kingdom from the nineteenth century and not the so-called native kingdom(s) or nations, which are a part of the political sovereignty movement of today.

Lorenzo also separates the Native Hawaiian sovereignty movement and nation building from the continued existence of the Hawaiian Kingdom as a State. The Hawai'i Supreme Court, in *State of Hawai'i v. Armitage*,[8] not only clarified this evidentiary burden but also discerned between a new Native Hawaiian nation brought about through nation-building, and the Hawaiian Kingdom that existed as a State in the nineteenth century. The Hawai'i Supreme Court explained:

> Petitioners' theory of nation-building as a fundamental right under the ICA's decision in Lorenzo does not appear viable. Lorenzo held that, for jurisdictional purposes, should a defendant demonstrate a factual or legal basis that the [Hawaiian Kingdom] "exists as a state in accordance with recognized attributes of a state's sovereign nature[,]" and that he or she is a citizen of that sovereign state, a defendant may be able to argue that the courts of the State of Hawai'i lack jurisdiction over him or her. Thus, Lorenzo does not recognize a fundamental right to build a sovereign Hawaiian nation.[9]

However, the *Lorenzo* court did acknowledge that it may have misplaced the burden of proof and what needs to be proven. It stated, "[a]lthough the court's rationale is open to question in light of international law, the record indicates that the decision was correct because Lorenzo did not meet his burden of proving his defense of lack of jurisdiction."[10] Because international law provides for the presumption of the continuity of the State despite the overthrow of its government by another State, it shifts the burden of proof and what is to be proven. According to Judge Crawford, there "is a presumption that the State continues to exist, with its rights and obligations [...] despite a period in which there is no, or no effective, government,"[11] and belligerent

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[8] *State of Hawai'i v. Armitage*, 132 Haw. 36, 57; 319 P.3d 1044, 1065 (2014).
[9] *Id.*, 57; 1065.
[10] *State of Hawai'i v. Lorenzo*, 221, 643.
[11] James Crawford, *The Creation of States in International Law* 34 (2nd ed. 2006).

occupation "does not affect the continuity of the State, even where there exists no government claiming to represent the occupied State."[12] Addressing the presumption of German State continuity after the overthrow of the Nazi government during the Second World War, Professor Brownlie explains:

> Thus, after the defeat of Nazi Germany in the Second World War the four major Allied powers assumed supreme power in Germany. The legal competence of the German state [its independence and sovereignty] did not, however, disappear. What occurred is akin to legal representation or agency of necessity. The German state continued to exist, and, indeed, the legal basis of the occupation depended on its continued existence.[13]

"If one were to speak about a presumption of continuity," explains Professor Craven, "one would suppose that an obligation would lie upon the party opposing that continuity to establish the facts substantiating its rebuttal. The continuity of the Hawaiian Kingdom, in other words, may be refuted only by reference to a valid demonstration of legal title, or sovereignty, on the part of the United States, absent of which the presumption remains."[14] Evidence of "a valid demonstration of legal title, or sovereignty, on the part of the United States" would be an international treaty, particularly a peace treaty, whereby the Hawaiian Kingdom would have ceded its territory and sovereignty to the United States. Examples of foreign States ceding sovereign territory to the United States by a peace treaty include the 1848 *Treaty of Peace, Friendship, Limits, and Settlement with the Republic of Mexico*[15] and the 1898 *Treaty of Peace between the United States of America and the Kingdom of Spain.*[16]

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[12] *Id.*
[13] Ian Brownlie, *Principles of Public International Law* 109 (4th ed. 1990).
[14] Matthew Craven, "Continuity of the Hawaiian Kingdom as a State under International Law," in David Keanu Sai, ed., *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 128 (2020).
[15] 9 Stat. 922 (1848).
[16] 30 Stat. 1754 (1898).

The *Joint Resolution To provide for annexing the Hawaiian Islands to the United States*,[17] is a municipal law of the United States without extraterritorial effect. It is not an international treaty. Annex "is to tie or bind[,] [t]o attach."[18] Under international law, to annex territory of another State is a unilateral act, as opposed to cession, which is a bilateral act between States. Under international law, annexation of an occupied State is unlawful. According to *The Handbook of Humanitarian Law in Armed Conflicts*:

> The international law of belligerent occupation must therefore be understood as meaning that the occupying power is not sovereign, but exercises provisional and temporary control over foreign territory. The legal situation of the territory can be altered only through a peace treaty or *debellatio*.[19] International law does not permit annexation of territory of another state.[20]

Furthermore, in 1988, the Department of Justice's Office of Legal Counsel ("OLC") published a legal opinion regarding the annexation of Hawai'i. The OLC's memorandum opinion was written for the Legal Advisor for the Department of State regarding legal issues raised by the proposed Presidential proclamation to extend the territorial sea from a three-mile limit to twelve.[21] The OLC concluded that only the President and not the Congress possesses "the constitutional authority to assert either sovereignty over an extended territorial sea or jurisdiction over it under international law on behalf of the United States."[22] As Justice Marshall stated, "[t]he President is the sole organ of the nation in its external relations, and its sole representative with foreign

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[17] 30 Stat. 750 (1898).
[18] *Black's Law Dictionary* (6th ed. 1990), 88.
[19] There was no extinction of the Hawaiian State by *debellatio* because the Permanent Court of Arbitration acknowledged the continued existence of the Hawaiian Kingdom as a State in *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01.
[20] Dieter Fleck (ed.), *The Handbook of Humanitarian Law in Armed Conflicts*, Section 525, 242 (1995).
[21] Douglas Kmiec, "Legal Issues Raised by Proposed Presidential Proclamation to Extend the Territorial Sea," 12 *Opinions of the Office of Legal Counsel* 238 (1988).
[22] *Id.*, 242.

nations,"[23] and not the Congress. The OLC further stated, "we doubt that Congress has constitutional authority to assert either sovereignty over an extended territorial sea or jurisdiction over it under international law on behalf of the United States."[24] Therefore, he stated it is "unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution. Accordingly, it is doubtful that the acquisition of Hawaii can serve as an appropriate precedent for a congressional assertion of sovereignty over an extended territorial sea."[25] That territorial sea was to be extended from three to twelve miles under the United Nations Law of the Sea Convention. In other words, the Congress could not extend the territorial sea an additional nine miles by statute because its authority was limited up to the three-mile limit. Furthermore, the United States Supreme Court, in *The Apollon*, concluded that the "laws of no nation can justly extend beyond its own territories."[26]

Arriving at this conclusion, the OLC cited constitutional scholar Professor Willoughby, "[t]he constitutionality of the annexation of Hawaii, by a simple legislative act, was strenuously contested at the time both in Congress and by the press. The right to annex by treaty was not denied, but it was denied that this might be done by a simple legislative act. ...Only by means of treaties, it was asserted, can the relations between States be governed, for a legislative act is necessarily without extraterritorial force—confined in its operation to the territory of the State by whose legislature enacted it."[27] Professor Willoughby also stated, "The incorporation of one sovereign State, such as was Hawaii prior to annexation, in the territory of another, is...essentially

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[23] *Id.*, 242.
[24] *Id.*
[25] *Id.*, 262.
[26] *The Apollon*, 22 U.S. 362, 370 (1824).
[27] Kmiec, 252.

a matter falling within the domain of international relations, and, therefore, beyond the reach of legislative acts."[28]

The instant motion is filed under the international rule of the presumption of continuity of the Hawaiian Kingdom as a State.

II. THE *LORENZO* PRINCIPLE

Lorenzo became a precedent case on the subject of the Hawaiian Kingdom's existence as a State in State of Hawai'i courts, and is known in the federal court, in *United States v. Goo*, as the *Lorenzo* principle.

> Since the Intermediate Court of Appeals for the State of Hawaii's decision in *Hawaii v. Lorenzo*, the courts in Hawaii have consistently adhered to the *Lorenzo* court's statements that the Kingdom of Hawaii is not recognized as a sovereign state [*4] by either the United States or the State of Hawaii. *See Lorenzo*, 77 Haw. 219, 883 P.2d 641, 643 (Haw. App. 1994); *see also State of Hawaii v. French*, 77 Haw. 222, 883 P.2d 644, 649 (Haw. App. 1994) (stating that "presently there is no factual (or legal) basis for concluding that the [Hawaiian] Kingdom exists as a state in accordance with recognizing attributes of a state's sovereign nature") (quoting *Lorenzo*, 883 P.2d at 643). This court sees no reason why it should not adhere to the Lorenzo principle (emphasis added).[29]

The *Lorenzo* principle should not be confused with a final decision. A principle is "a comprehensive rule or doctrine which furnishes a basis or origin for others; a settled rule of action, procedure or legal determination."[30] *Lorenzo*, as a principle, was cited by the Hawai'i Supreme Court in 8 cases, and by the ICA in 45 cases. The latest Hawai'i Supreme Court's citation of *Lorenzo* was in 2020 in *State of Hawai'i v. Malave*.[31] The most recent citation of *Lorenzo* by the

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[28] Westel Woodbury Willoughby, *The Constitutional Law of the United States*, vol. 1, 345 (1910).
[29] *Goo*, *3.
[30] Black's Law, 1193.
[31] *State of Hawai'i v. Malave*, 146 Haw. 341, 463 P.3d 998, 2020 Haw. LEXIS 80.

ICA was in 2021 in *Bank of N.Y. Mellon v. Cummings*.[32] Since 1994, *Lorenzo* had risen to precedent, and, therefore, is common law.

Whether or not the Hawaiian Kingdom "exists as a state in accordance with recognized attributes of a state's sovereign nature," it is governed by international law, not State of Hawai'i or United States laws. While the existence of a State is a fact, a "State is not a fact in the sense that a chair is a fact; it is a fact in the sense in which it may be said a treaty is a fact; that is, a legal status attaching to a certain state of affairs by virtue of certain [international] rules or practices."[33] The civilian law refers to this type of a fact to be a *juridical fact*. According to Professor Lenzerini:

> In the civil law tradition, a juridical fact (or legal fact) is a fact (or event)—determined either by natural occurrences or by humans—which produces consequences that are relevant according to law. Such consequences are defined juridical effects (or legal effects), and consist in the establishment, modification or extinction of rights, legal situations or juridical (or legal) relationships (privity). Reversing the order of the reasoning, among the multifaceted natural or social facts occurring in the world a fact is juridical when it is legally relevant, i.e. determines the production of legal effects per effect of a legal (juridical) rule (provision). In technical terms, it is actually the legal rule which produces legal effects, while the juridical fact is to be considered as the condition for the production of the effects. In practical terms, however, it is the juridical fact which activates a reaction by the law and makes the production of the effects concretely possible. At the same time, no fact can be considered as "juridical" without a legal rule attributing this quality to it.[34]

In *Larsen v. Hawaiian Kingdom*, the arbitral tribunal acknowledged the Hawaiian Kingdom as a *juridical fact* when it stated that in "the nineteenth century the Hawaiian Kingdom existed as an independent State recognized as such by the United States of America, the United

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[32] *Bank of N.Y. Mellon v. Cummings*, 149 Haw. 173, 484 P.3d 186, 2021 Haw. App. LEXIS 102, 2021 WL 1345675.
[33] Crawford, 5.
[34] See Exhibit A, Federico Lenzerini, *Civil Law on Juridical Fact of the Hawaiian State and the Consequential Juridical Act by the Permanent Court of Arbitration* [ECF 174-1], 1.

Kingdom and various other States, including by exchanges of diplomatic or consular representatives and the conclusion of treaties."[35]

a. Distinguishing Between Recognition of a State and Recognition of its Government

When the *Lorenzo* court stated that the "United States Government recently recognized the illegality of the overthrow of the Kingdom and the role of the United States in that event. P.L. 103-150, 107 Stat. 1510 (1993) [but] that recognition does not appear to be tantamount to a recognition that the Kingdom continues to exist,"[36] the Court implied that the United States "derecognized" the Hawaiian Kingdom, which it had previously recognized in the nineteenth century. It would appear that the *Lorenzo* court was confusing the recognition of government with the recognition of a State. Since the United States recognized the Hawaiian Kingdom as a State in the nineteenth century, the United States is precluded from derecognizing it.

According to Professor Oppenheim, once recognition of a State is granted, it "is incapable of withdrawal"[37] by the recognizing State, and that "recognition estops the State which has recognized the title from contesting its validity at any future time."[38] *Restatement (Third) of the Foreign Relations Law of the United States*, "[t]he duty to treat a qualified entity as a state also implies that so long as the entity continues to meet those qualifications its statehood **may not be 'derecognized.'** If the entity ceases to meet those requirements, it ceases to be a state and derecognition is not necessary (emphasis added)."[39] By applying international law, the *Lorenzo*

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[35] *Larsen v. Hawaiian Kingdom*, 119 International Law Reports 566, 581 (2001).
[36] *State of Hawai'i v. Lorenzo*, 221, 643.
[37] Lassa Oppenheim, *International Law* 137 (3rd ed. 1920).
[38] Georg Schwarzenberger, "Title to Territory: Response to a Challenge," 51(2) *American Journal of International Law* 308, 316 (1957).
[39] *Restatement (Third)*, §202, comment g.

principle places the burden on the ODC to provide any factual (or legal) basis for concluding that the Kingdom "ceases to be a state," and not that it derecognized it.

The government of a State, however, may be de-recognized depending on factual or legal circumstances. Such was the case when President Jimmy Carter terminated the defense treaty with Taiwan after the government of Taiwan was de-recognized as the government of China.[40] In *Goldwater v. Carter*, the Supreme Court explained, "[a]brogation of the defense treaty with Taiwan was a necessary incident to Executive recognition of the Peking Government, because the defense treaty was predicated upon the now-abandoned view that the Taiwan Government was the only legitimate authority in China."[41] In the case of the non-recognition of the government of Cuba, the Supreme Court, in *Banco Nacional de Cuba v. Sabbatino*, stated:

> It is perhaps true that nonrecognition of a government in certain circumstances may reflect no greater unfriendliness than the severance of diplomatic relations with a recognized government, but the refusal to recognize has a unique legal aspect. It signifies this country's unwillingness to acknowledge that the government in question speaks as the sovereign authority for the territory it purports to control [citation omitted].[42]

The *Lorenzo* principle is NOT a matter of recognition of government but rather the recognition of the Hawaiian State as evidenced by the Hawaiian-American Treaty of Friendship, Commerce and Navigation.[43] There is no evidence that the Executive branch de-recognized the government of the Hawaiian Kingdom. Rather, President Grover Cleveland, head of the Executive branch, admitted to an illegal overthrow of the Hawaiian government by the United States military

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[40] *Goldwater v. Carter*, 444 U.S. 996 (1979).
[41] *Id.*, 1007.
[42] *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 411 (1964).
[43] 9 Stat. 977 (1841-1851).

and vowed to restore that government. Therefore, as a *juridical fact*, the United States cannot simply derecognize the Hawaiian State.

b. United States Explicit Recognition of the Continued Existence of the Hawaiian Kingdom and the Council of Regency as its Government

The status of the Hawaiian Kingdom came to the attention of the United States in a complaint for injunctive relief filed with the United States District Court for the District of Hawai'i on August 4, 1999 in *Larsen v. United Nations, et al.*[44] The United States and the Council of Regency representing the Hawaiian Kingdom were named as defendants in the complaint.

On October 13, 1999, a notice of voluntary dismissal without prejudice was filed as to the United States and nominal defendants [United Nations, France, Denmark, Sweden, Norway, United Kingdom, Belgium, Netherlands, Italy, Spain, Switzerland, Russia, Japan, Germany, Portugal and Samoa] by the plaintiff.[45] On October 29, 1999, the remaining parties, Larsen and the Hawaiian Kingdom, entered into a stipulated settlement agreement dismissing the entire case without prejudice as to all parties and all issues and submitting all issues to binding arbitration. An agreement was reached to submit the dispute to final and binding arbitration at the Permanent Court of Arbitration at the The Hague, the Netherlands was entered into on October 30, 1999.[46] The stipulated settlement agreement was filed with the court by the plaintiff on November 5, 1999.[47] On November 8, 1999, a notice of arbitration was filed with the International Bureau of

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[44] *Larsen v. United Nations et al.*, case #1:99-cv-00546-SPK, document #1.
[45] *Id.*, document #6.
[46] Agreement between plaintiff Lance Paul Larsen and defendant Hawaiian Kingdom to submit the dispute to final and binding arbitration at the Permanent Court of Arbitration at The Hague, the Netherlands (October 30, 1999), https://www.alohaquest.com/arbitration/pdf/Arbitration_Agreement.pdf.
[47] *Larsen v. United Nations et al.*, document #8.

the Permanent Court of Arbitration ("PCA")—*Lance Paul Larsen v. Hawaiian Kingdom.*[48] An order dismissing the case by District Court Judge Samuel P. King, on behalf of the plaintiff, was entered on November 11, 1999.

Distinct from the subject matter jurisdiction of the *Larsen v. Hawaiian Kingdom* ad hoc arbitral tribunal, which was formed on June 9, 2000, the PCA had to first possess "institutional jurisdiction" by virtue of Article 47 of the 1907 Hague Convention for the Pacific Settlement of International Disputes, I (1907 PCA Convention), before it could establish the ad hoc tribunal in the first place ("The **jurisdiction of the Permanent Court** may, within the conditions laid down in the regulation, be extended to disputes [with] non-Contracting [States] [emphasis added].").[49] According to UNCTAD, there are three types of jurisdictions at the PCA, "Jurisdiction of the Institution," "Jurisdiction of the Arbitral Tribunal," and "Contentious/Advisory Jurisdiction."[50] Article 47 of the Convention provides for the jurisdiction of the PCA as an institution. Before the PCA could establish an ad hoc arbitral tribunal for the *Larsen* dispute it needed to possess institutional jurisdiction beforehand by ensuring that the Hawaiian Kingdom is a State, thus bringing the international dispute within the auspices of the PCA.

Evidence of the PCA's recognition of the continuity of the Hawaiian Kingdom as a State and its government is found in Annex 2—*Cases Conducted Under the Auspices of the PCA or with the Cooperation of the International Bureau* of the PCA Administrative Council's annual reports from 2000 through 2011. Annex 2 of these annual reports stated that the *Larsen* arbitral tribunal

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[48] Notice of Arbitration (November 8, 1999), https://www.alohaquest.com/arbitration/pdf/Notice_of_Arbitration.pdf.
[49] 36 Stat. 2199. The Senate ratified the 1907 PCA Convention on April 2, 1898 and entered into force on January 26, 1910.
[50] United Nations Conference on Trade and Development (UNCTAD), *Dispute Settlement: General Topics—1.3 Permanent Court of Arbitration* 15-16 (2003) (online at https://unctad.org/system/files/official-document/edmmisc232add26_en.pdf).

was established "[p]ursuant to article 47 of the 1907 Convention."[51] Since 2012, the annual reports ceased to include all past cases conducted under the auspices of the PCA but rather only cases on the docket for that year. Past cases became accessible at the PCA's case repository on its website at https://pca-cpa.org/en/cases/.

In determining the continued existence of the Hawaiian Kingdom as a non-Contracting State to the 1907 PCA Convention, the relevant rules of international law that apply to established States must be considered, and not those rules of international law that would apply to new States. Professor Lenzerini concluded that, "according to a plain and correct interpretation of the relevant rules, the Hawaiian Kingdom cannot be considered, by virtue of the prolonged US occupation, as extinguished as an independent State and subject of international law. In fact, in the event of illegal annexation, 'the legal existence of [...] States [is] preserved from extinction,' since 'illegal occupation cannot of itself terminate statehood.'"[52]

The PCA Administrative Council that published the annual reports did not "recognize" the Hawaiian Kingdom as a new State, but merely "acknowledged" its continuity since the nineteenth century for purposes of the PCA's institutional jurisdiction. If the United States objected to the PCA Administrative Council's annual reports, which it is a member of the Council, that the Hawaiian Kingdom is a non-Contracting State to the 1907 PCA Convention, it would have filed a declaration with the Dutch Foreign Ministry as it did when it objected to Palestine's accession to the 1907 PCA Convention on December 28, 2015. Palestine was seeking to become a Contracting State to the 1907 PCA Convention and submitted its accession to the Dutch government on

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[51] Permanent Court of Arbitration, *Annual Reports*, Annex 2 (online at https://pca-cpa.org/en/about/annual-reports/).

[52] See Exhibit B, Declaration of Professor Federico Lenzerini, *Legal Opinion on the Authority of the Council of Regency of the Hawaiian Kingdom* [ECF 55-2], para. 5.

October 30, 2015. In its declaration, which the Dutch Foreign Ministry translated into French, the United States explicitly stated, *inter alia*, "the government of the United States considers that 'the State of Palestine' does not answer to the definition of a sovereign State and does not recognize it as such (translation)."[53] The Administrative Council, however, did acknowledge, by vote of 54 in favor and 25 abstentions, that Palestine is a Contracting State to the 1907 PCA Convention in March of 2016.

Because the State is a juristic person, it requires a government to speak on its behalf, without which the State is silent, and, therefore, there could be no arbitral tribunal to be established by the PCA. On the contrary, the PCA did form a tribunal after confirming the existence of the Hawaiian State and its government, the Council of Regency, pursuant to Article 47. In international intercourse, which includes arbitration at the PCA, the Permanent Court of International Justice, in *German Settlers in Poland*, explained that "States can act only by and through their agents and representatives."[54] As Professor Talmon states, "[t]he government, consequently, possesses the *jus repraesentationis omnimodae*, i.e. plenary and exclusive competence in international law to represent its State in the international sphere. [Professor Talmon submits] that this is the case irrespective of whether the government is *in situ* or in exile."[55]

After the PCA verified the continued existence of the Hawaiian State, as a juristic person, it also simultaneously ascertained that the Hawaiian State was represented by its government—the Council of Regency.[56] The PCA identified the international dispute in *Larsen* as between a "State"

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[53] Ministry of Foreign Affairs of the Kingdom of the Netherlands, *Notification of the Declaration of the United States translated into French* (January 29, 2016) (online at https://repository.overheid.nl/frbr/vd/003316/1/pdf/003316_Notificaties_11.pdf).
[54] *German Settlers in Poland,* 1923, *PCIJ, Series B, No. 6,* 22.
[55] Stefan Talmon, *Recognition of Governments in International Law: With Particular Reference to Governments in Exile* 115 (1998).
[56] See Exhibit B.

and a "private entity" in its case repository.[57] Furthermore, the PCA described the dispute between the Council of Regency and Larsen as between a government and a resident of Hawai'i.

> Lance Paul Larsen, a resident of Hawaii, brought a claim against the Hawaiian Kingdom by its Council of Regency ("Hawaiian Kingdom") on the grounds that the Government of the Hawaiian Kingdom is in continual violation of: (a) its 1849 Treaty of Friendship, Commerce and Navigation with the United States of America, as well as the principles of international law laid down in the Vienna Convention on the Law of Treaties, 1969 and (b) the principles of international comity, for allowing the unlawful imposition of American municipal laws over the claimant's person within the territorial jurisdiction of the Hawaiian Kingdom (emphasis added)."[58]

Furthermore, the United States, by its embassy in The Hague, entered into an agreement with the Hawaiian Kingdom to have access to the pleadings of the arbitration. This agreement was brokered by Deputy Secretary General Phyllis Hamilton of the Permanent Court of Arbitration prior to the formation of the arbitral tribunal on June 9, 2000.[59]

Furthermore, there is no legal requirement for the Council of Regency, being the successor in office to Queen Lili'uokalani under the constitution and laws of the Hawaiian Kingdom, to get recognition from the United States as the government of the Hawaiian Kingdom. The United States recognition of the Hawaiian Kingdom as an independent State on July 6, 1844,[60] was also the recognition of its government—a constitutional monarchy, as its agent. Successors in office to King Kamehameha III, who at the time of international recognition was King of the Hawaiian Kingdom, did not require diplomatic recognition. These successors included King Kamehameha IV in 1854, King Kamehameha V in 1863, King Lunalilo in 1873, King Kalākaua in 1874, Queen

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[57] Permanent Court of Arbitration Case Repository, *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01 (online at https://pca-cpa.org/en/cases/35/).
[58] *Id.*
[59] See Exhibit C, Declaration of David Keanu Sai, Ph.D. [ECF 55-1].
[60] U.S. Secretary of State Calhoun to Hawaiian Commissioners (July 6, 1844) (online at: https://hawaiiankingdom.org/pdf/US_Recognition.pdf).

Lili'uokalani in 1891, the Council of Regency in 1997. The legal doctrines of recognition of new governments only arise "with extra-legal changes in government" of an existing State.[61] Successors to King Kamehameha III were not established through "extra-legal changes," but rather under the constitution and laws of the Hawaiian Kingdom. According to the *Restatement (Third) of the Foreign Relations Law of the United States*:

> *Recognition in cases of constitutional succession.* Where a new administration succeeds to power in accordance with a state's constitutional processes, no issue of recognition or acceptance arises; **continued recognition is assumed** (emphasis added).[62]

The Respondent is an aboriginal Hawaiian subject and was appointed by the Council of Regency as acting Attorney General for the Hawaiian Kingdom on August 11, 2013, and, therefore, meets the requirement set by the Supreme Court in *Armitage* "that he...is a citizen of that sovereign state, a defendant may be able to argue that the courts of the State of Hawai'i lack jurisdiction over him."[63]

c. Shifting the Burden of Proof in the *Lorenzo* principle

Because international law provides for the presumption of the continuity of the State despite the overthrow of its government by another State, it shifts the burden on the party opposing the presumption, the ODC, to provide rebuttable evidence that the Hawaiian Kingdom does not continue to exist as a State under international law. When the *Lorenzo* court acknowledged that Lorenzo pled in his motion to dismiss the indictment that the Hawaiian Kingdom "was recognized as an independent sovereign nation by the United States in numerous bilateral treaties,"[64] it set the

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[61] M.J. Peterson, *Recognition of Governments: Legal Doctrines and State Practice, 1815-1995* 26 (1997).
[62] *Restatement (Third)*, §203, comment c.
[63] See Exhibit D, Commission of Dexter Ke'eaumoku Ka'iama as Attorney General.
[64] *State of Hawai'i v. Lorenzo*, 220; 642.

presumption to be the Hawaiian Kingdom's existence as a State under international law. This would have resulted in placing the burden "on the party opposing that continuity to establish the facts substantiating its rebuttal." Under international law, it was not the burden of Lorenzo to provide evidence that the Hawaiian Kingdom "exists" when the *Lorenzo* court already acknowledged its existence and recognition by the United States. Rather, it was the burden of the prosecution to provide rebuttable evidence that the Hawaiian Kingdom "does not exist" as a State.

d. Conclusion

For these reasons, Respondent respectfully requests that the Disciplinary Board schedule an evidentiary hearing for the ODC to provide rebuttable evidence, whether factual or legal, that the Hawaiian Kingdom ceases to exist as a State in light of the evidence and law in the instant motion. If the ODC is unable to proffer rebuttable evidence, the Respondent respectfully requests that this Disciplinary Board dismiss the instant proceedings (18-0339) in its entirety, including the August 22, 2022 subpoena pursuant to the HRCP 12(b)(2) and the *Lorenzo* principle.

III. MOTION FOR PROTECTIVE ORDER

Respondent respectfully asserts that the Board Chairman is mandated to dismiss the instant proceedings, under the *Lorenzo* principle, unless the ODC is able to provide rebuttable evidence, whether factual or legal, that the Hawaiian Kingdom ceases to exist as a State. Should the ODC prevail by providing rebuttable evidence under international law, Respondent will move for a protective order pursuant to Rule 12(c)(i) of the Rules of the Disciplinary Board of the Hawai'i Supreme Court.

An examination of the records in this case will show that Respondent, through his counsel, has provided correspondence and an extensive submission of documents in response to inquiries from the ODC. Respondent's cooperation with ODC's (over 3 years old) investigation has not

been the subject of dispute requiring action on the part of the Board Chairman and should be taken into account as a mitigating factor in this proceeding.

The records will further confirm that ODC's inquiry, in large part, involves alleged violations of HRS Section 480E and 480E-13. Violations of this section can result in criminal incarceration as well as a fine of $10,000. However, despite requests from Respondent (through counsel) ODC has, as of this time, refused and/or rejected Respondent's request for transactional immunity. The matter of transactional immunity is consequential to Respondent's respectful objection and refusal of the ODC oral deposition.

DATED: Honolulu, Hawai'i, September 6, 2022.

Respectfully submitted,

/s/ Dexter K. Ka'iama

DEXTER K. KA'IAMA (Bar No. 4249)
Respondent

IN THE SUPREME COURT OF THE
STATE OF HAWAI'I

ODC v. or, A confidential pending investigation and/or Proceeding under the Rules of the Supreme Court of the State of Hawai`i and its Disciplinary Board, regarding a matter of Attorney discipline.	**CONFIDENTIAL** Case No. 18-0339 Declaration of Dexter K. Ka'iama; Exhibits "A-D"

DECLARATION OF DEXTER K. KA'IAMA

I, Dexter K. Ka'iama, declare the following:

1. I am an aboriginal Hawaiian Kingdom subject, the Respondent in ODC Case No. 18-0339, and make this declaration from my personal knowledge, unless otherwise so indicated.

2. I am also *Acting* Attorney General and legal counsel for Plaintiff in the matter of the *Hawaiian Kingdom v. Joseph Robinette Biden, Jr., et al.*, Civil No. 1:21:cv-00243-LEK-RT in the United States District Court for the District of Hawai`i (hereinafter referred to as "*Hawaiian Kingdom v. Biden*").

3. That attached to this declaration as Exhibit "A" is a true and correct copy of the Declaration of Professor Federico Lenzerini; Exhibit "1" that I filed as Document 174-1 in *Hawaiian Kingdom v. Biden* on December 6, 2021;

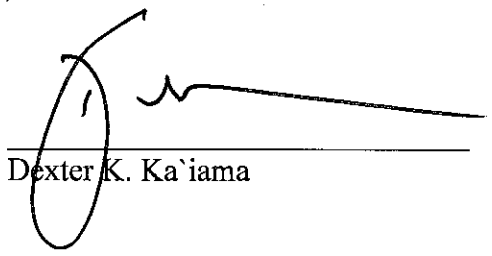
4. That attached to this declaration as Exhibit "B" is a true and correct copy of the Declaration of Professor Federico Lenzerini; Exhibit "2" that I filed as Document 55-2 in *Hawaiian Kingdom v. Biden* on August 11, 2021;

5. That attached to this declaration as Exhibit "C" is a true and correct copy of the Declaration of David Keanu Sai, Ph.D.; Exhibit "1" that I filed as Document 55-1 in *Hawaiian Kingdom v. Biden* on August 11, 2021;

6. That attached to this declaration as Exhibit "D" is a true and correct copy of my appointment as the *Acting* Attorney General, by the Council of Regency for the Hawaiian Kingdom on August 11, 2013. The appointment affirms my standing as an aboriginal Hawaiian Kingdom subject.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Kailua, Hawai'i, September 6, 2022.



Dexter K. Ka`iama

Exhibit "A"

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI'I

HAWAIIAN KINGDOM, Plaintiff, v. JOSEPH ROBINETTE BIDEN JR., in his official capacity as President of the United States; KAMALA HARRIS, in her official capacity as Vice-President and President of the United States Senate; ADMIRAL JOHN AQUILINO, in his official capacity as Commander, U.S. Indo-Pacific Command; CHARLES P. RETTIG, in his official capacity as Commissioner of the Internal Revenue Service; et al., Defendants.	Civil No. 1:21:cv-00243-LEK-RT DECLARATION OF PROFESSOR FEDERICO LENZERINI; EXHIBIT "1"

DECLARATION OF PROFESSOR FEDERICO LENZERINI

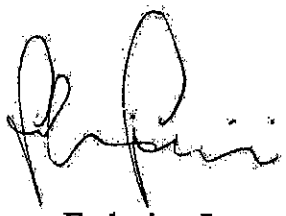
I, Federico Lenzerini, declare the following:

1. I am an Italian citizen residing in Poggibonsi, Italy. I am the author of the legal opinion on the civil law on juridical fact of the Hawaiian State and the consequential juridical act by the Permanent Court of Arbitration, which a true and correct copy of the same is attached hereto as Exhibit "1".

2. I have a Ph.D. in international law and I am a Professor of International Law, University of Siena, Italy, Department of Political and International Sciences. For further information see https://docenti.unisi.it/it/lenzerini. I can be contacted at federico.lenzerini@unisi.it.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Siena, Italy, 5 December 2021.



Professor Federico Lenzerini

Exhibit "1"

CIVIL LAW ON JURIDICAL FACT OF THE HAWAIIAN STATE AND THE CONSEQUENTIAL JURIDICAL ACT BY THE PERMANENT COURT OF ARBITRATION

FEDERICO LENZERINI*

5 December 2021

Juridical Facts

In the civil law tradition, a *juridical fact* (or *legal fact*) is a fact (or event) – determined either by natural occurrences or by humans – which produces consequences that are relevant according to law. Such consequences are defined *juridical effects* (or *legal effects*), and consist in the establishment, modification or extinction of rights, legal situations or *juridical* (or *legal*) *relationships* (*privity*). Reversing the order of the reasoning, among the multifaceted natural or social facts occurring in the world a fact is *juridical* when it is *legally relevant*, i.e. determines the production of *legal effects* per effect of a *legal* (*juridical*) *rule* (*provision*). In technical terms, it is actually the legal rule which produces legal effects, while the juridical fact is to be considered as the *condition* for the production of the effects. In practical terms, however, it is the juridical fact which activates a reaction by the law and makes the production of the effects concretely possible. At the same time, no fact can be considered as "juridical" without a legal rule attributing this quality to it.[1]

Both *rights*, *powers* or *obligations* – held by/binding a person or another subject of law (in international law, a State, an international organization, a people, or any other entity to which international law attributes legal personality) – may arise from a juridical fact.

Sometimes a juridical fact determines the production of legal effects irrespective of the action of a person or another subject of law. In other terms, in some cases legal effects are automatically produced by a(n *inactive*) juridical fact – only by virtue of the mere existence of the latter – without any need of an action by a legal subject. "Inactive juridical facts are events which occur more or less spontaneously, but still have legal effects because a certain reaction is regarded to be necessary to deal with the newly arisen circumstances".[2] Inactive juridical facts may be based on an occasional situation, a quality of a person or a thing, or the course of time.[3]

Juridical Acts

In other cases, however, the legal effects arising from a juridical fact only exist *potentially*, and, in order to concretely come into existence they need to be activated through a behaviour by a subject of law, which may consist of either an action or a passive behaviour. The legal effects may arise from either an *operational act* – i.e. a behaviour to which the law attributes legally-relevant effects for the sole ground of its existence, "although the acting [subject] had no intention to create this legal

* Professor of International Law and Human Rights, University of Siena (Italy), Department of Political and International Sciences. Professor at the LL.M. Program on Intercultural Human Rights, St. Thomas University School of Law, Miami, FL, USA.

[1] See Lech Morawski, "Law, Fact and Legal Language", (1999) 18 *Law and Philosophy* 461, at 463.

[2] See "Legal System of Civil Law in the Netherlands", available at <http://www.dutchcivillaw.com/content/legalsystem022aa.htm> (accessed on 4 December 2021).

[3] Ibidem.

effect"[4] – or an act that a subject of law performs intentionally, "because he[/she/it] knows that the law will respond to it by acknowledging the conception of a particular legal effect. The act is explicitly [and voluntarily] chosen to let this legal effect arise".[5] In order to better comprehend this line of reasoning, one may consider the example of adverse possession,[6] which is determined by the juridical fact that a given span of time has passed during which the thing has continuously been in the possession without being claimed by its owner. However, in order for the possessor to effectively acquire the right to property, it is usually necessary to activate a legal action before the competent authority aimed at obtaining its legal recognition. In this and other similar cases a subject of law intentionally performs an act "to set the law in motion" with the purpose of producing a desired juridical effect. The legal subject concerned knows that, through performing such an act, the wanted juridical effect will be produced as a consequence of the existence of a juridical fact. Acts that are intentionally performed by a subject of law with the purpose of producing a desired legal effect are defined as *juridical acts* (or *legal acts*). It follows that an act consequential to a juridical fact (i.e. having the purpose of producing a given juridical effect in consequence of the existence of a juridical fact) is called *juridical* (or *legal*) *act*. The entitlement to perform a *juridical act* is the effect of a *power* attributed by the *juridical fact* to the legal subject concerned. The most evident difference between *juridical facts* and *juridical acts* is that, while the former "produce legal consequences regardless of a [person]'s will and capacity", the latter "are licit volitional acts – in the form of a manifestation of will – that are intended to produce legal consequences".[7]

Effects of Juridical Acts on Third Parties

One legal subject may only perform a juridical act unilaterally when it falls within her/his/its own legal sphere, but an unilateral juridical act may produce effects for other legal subjects as well. For instance, in private law unilateral juridical acts exist which produce juridical effects on third parties – for instance a will or a promise to donate a sum of money. Usually, unilateral juridical acts start to produce their effects from the moment when they are known by the beneficiary, and from that moment their withdrawal is precluded, unless otherwise provided for by applicable law (depending on the specific act concerned).

Similarly, bilateral or plurilateral juridical acts influencing the life of third parties are also provided by law – e.g. a contract in favour of third parties or a trust, typical of the common law tradition. Then, of course, the beneficiary of such acts may decide to refuse the benefits (if any) arising from them; however, if such benefits are not refused, said acts will definitely produce their effects, and may only be withdrawn within the limits established by law. Juridical acts also include the laws and regulations adopted by national parliaments, administrative acts, and, more in general, all acts determining – i.e. creating, modifying or abrogating – legal effects. *Acts of the judiciary* (judgments, orders, decrees, etc.) are also included in the concept of juridical acts. For instance, a judgment recognizing natural filiation produces the effects of filiation – with *retroactive effects* – "transform[ing] the [juridical] fact of procreation (in itself insufficient to create a legal relationship)

[4] Ibidem.

[5] Ibidem.

[6] Adverse possession refers to a legal principle – in force in many countries, especially of civil law – according to which a subject of law is granted property title over another subject's property by keeping continuous possession of it for a given (legally defined) period of time, on the condition that the title over the property is not claimed by the owner throughout the whole duration of that period of time.

[7] See Nikolaos A. Davrados, "A Louisiana Theory of Juridical Acts" (2020) 80 *Louisiana Law Review* 1119, at 1273.

into a state of filiation (recognized child) that is relevant to the law".[8] In this case, a juridical act of the judge actually leads to the recognition of a legal state – productive of a number of juridical effects, including *ex tunc* – arising from the juridical fact of the natural filiation. This is a perfect example of a juridical fact (exactly the natural filiation) whose legal effects exist *potentially*, and are activated by the juridical act represented by the judge's decision.

The Juridical Act of the Permanent Court of Arbitration (PCA) Recognizing the Juridical Fact of the Statehood of the Hawaiian Kingdom and the Council of Regency as its government

According to the *PCA Arbitration Rules*,[9] disputes included within the competence of the PCA include the following instances:

- disputes between two or more States;
- disputes between two parties of which only one is a State (i.e., disputes between a State and a private entity);
- disputes between a State and an international organization;
- disputes between two or more international organizations;
- disputes between an international organization and a private entity.

It is evident that, in order for a dispute to fall within the competence of the PCA, it is *always* necessary that either a State or an international organization are involved in the controversy. The case of *Larsen v. Hawaiian Kingdom*[10] was qualified by the PCA as a dispute between a State (The Hawaiian Kingdom) and a Private entity (Lance Paul Larsen).[11] In particular, the Hawaiian Kingdom was qualified as a non-Contracting Power under Article 47 of the 1907 Convention for the Pacific Settlement of International Disputes.[12] In addition, since the PCA allowed the Council of Regency to represent the Hawaiian Kingdom in the arbitration, it also implicitly recognized the former as the government of the latter.[13]

According to a civil law perspective, the juridical act of the International Bureau of the PCA instituting the arbitration in the case of *Larsen v. Hawaiian Kingdom* may be compared – *mutatis mutandis* – to a juridical act of a domestic judge recognizing a juridical fact (e.g. *filiation*) which is productive of certain legal effects arising from it according to law. Said legal effects may include, depending on applicable law, the power to stand before a court with the purpose of invoking certain rights. In the context of the *Larsen* arbitration, the juridical fact recognized by the PCA in favour of the Hawaiian Kingdom was its quality of *State* under international law. Among the legal effects produced by such a juridical fact, the entitlement of the Hawaiian Kingdom to be part of an international arbitration under the auspices of the PCA was included, since the existence of said juridical fact actually represented an indispensable condition for the Hawaiian Kingdom to be admitted in the *Larsen* arbitration, *vis-à-vis* a private entity (Lance Paul Larsen). Consequently, the

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[8] See Armando Cecatiello, "Recognition of the natural child", available at <https://www.cecatiello.it/en/riconoscimento-del-figlio-naturale-2/> (accessed on 4 December 2021).

[9] The *PCA Arbitration Rules 2012* (available at <https://docs.pca-cpa.org/2015/11/PCA-Arbitration-Rules-2012.pdf>, accessed on 5 December 2021) constitute a consolidation of the following set of PCA procedural rules: the *Optional Rules for Arbitrating Disputes between Two States (1992)*; the *Optional Rules for Arbitrating Disputes between Two Parties of Which Only One is a State* (1993); the *Optional Rules for Arbitration Between International Organizations and States* (1996); and *the Optional Rules for Arbitration Between International Organizations and Private Parties (1996)*.

[10] Case number 1999-01.

[11] See <https://pca-cpa.org/en/cases/35/> (accessed on 5 December 2021).

[12] Available at <https://docs.pca-cpa.org/2016/01/1907-Convention-for-the-Pacific-Settlement-of-International-Disputes.pdf> (accessed on 5 December 2021).

[13] See Declaration of Professor Federico Lenzerini [ECF 55-2].

International Bureau of the PCA carried out the juridical act consisting in establishing the arbitral tribunal as an effect of the recognition of the juridical fact in point. Likewise, e.g., the recognition of the juridical fact of filiation by a domestic judge, also the recognition of the Hawaiian Kingdom as a State had in principle retroactive effects, in the sense that the Hawaiian Kingdom did *not* acquire the condition of State per effect of the PCA's juridical act. Rather, the Hawaiian Kingdom's Statehood was a juridical fact that the PCA recognized as *pre-existing* to its juridical act.

The Effects of the Juridical Act of the PCA Recognizing the Juridical Fact of the Continued Existence of the Hawaiian Kingdom as a State and the Council of Regency as its government

At the time of the establishment of the *Larsen* arbitral tribunal by the PCA, the latter had 88 contracting parties.[14] One may safely assume that the PCA's juridical act consisting in the recognition of the juridical fact of the Hawaiian Kingdom as a State, through the institution of the *Larsen* arbitration, reflected a view shared by all such parties, on account of the fact that the decision of the International Bureau of the PCA was not followed by any complaints by any of them. In particular, it is especially meaningful that there was "no evidence that the United States, being a Contracting State [indirectly concerned by the *Larsen* arbitration], protested the International Bureau's recognition of the Hawaiian Kingdom as a State in accordance with Article 47".[15] On the contrary, the United States appeared to provide its acquiescence to the establishment of the arbitration, as it entered into an agreement with the Council of Regency of the Hawaiian Kingdom to access all records and pleadings of the dispute.

Under international law, the juridical act of the PCA recognizing the juridical fact of the Hawaiian Kingdom as a State may reasonably be considered as an important manifestation of – contextually – State practice and *opinio juris*, in support of the assumption according to which the Hawaiian Kingdom is actually – and has never ceased to be – a sovereign and independent State pursuant to customary international law. As noted a few lines above, it may be convincingly held that the PCA contracting parties actually agreed with the recognition of the juridical fact of the Hawaiian Kingdom as a State carried out by the International Bureau. In fact, in international law, *acquiescence* "concerns a consent tacitly conveyed by a State, unilaterally, through silence or inaction, in circumstances such that a response expressing disagreement or objection in relation to the conduct of another State [or an international institution] would be called for".[16] The case in discussion is evidently a situation in the context of which, in the event that any of the PCA contracting parties would have disagreed with the recognition of the continued existence of the Hawaiian Kingdom as a State by the International Bureau through its juridical act, an explicit reaction would have been necessary. Since they "did not do so [...] thereby must be held to have acquiesced. *Qui tacet consentire videtur si loqui debuisset ac potuisset*".[17]

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[14] See <https://pca-cpa.org/en/about/introduction/contracting-parties/> (accessed on 5 December 2021).

[15] See David Keanu Sai, "The Royal Commission of Inquiry", in David Keanu Sai (ed.), The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom (Honolulu 2020) 12, at 25.

[16] See Nuno Sérgio Marques Antunes, "Acquiescence", in Rüdiger Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law* (2006), at para. 2.

[17] See International Court of Justice, *Case concerning the Temple of Preah Vihear (Cambodia v. Thailand)*, Merits, Judgment of 15 June 1962, *I.C.J. Reports* 1962, p. 6, at 23.

Exhibit "B"

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

HAWAIIAN KINGDOM,

Plaintiff,

v.

JOSEPH ROBINETTE BIDEN JR., in his official capacity as President of the United States; KAMALA HARRIS, in her official capacity as Vice-President and President of the United States Senate; ADMIRAL JOHN AQUILINO, in his official capacity as Commander, U.S. Indo-Pacific Command; CHARLES P. RETTIG, in his official capacity as Commissioner of the Internal Revenue Service; JANE HARDY, in her official capacity as Australia's Consul General to Hawai'i and the United Kingdom's Consul to Hawai'i; JOHANN URSCHITZ, in his official capacity as Austria's Honorary Consul to Hawai'i; M. JAN RUMI, in his official capacity as Bangladesh's Honorary Consul to Hawai'i and Morocco's Honorary Consul to Hawai'i; JEFFREY DANIEL LAU, in his official capacity as Belgium's Honorary Consul to Hawai'i; ERIC G. CRISPIN, in his official capacity as Brazil's Honorary Consul to Hawai'i; GLADYS VERNOY, in her official capacity as Chile's Honorary Consul General to Hawai'i; JOSEF SMYCEK, in his official capacity as the Czech Republic's Deputy Consul General for Los Angeles that oversees the Honorary Consulate in

Civil No. 1:21-cv-00243-LEK-RT

DECLARATION OF PROFESSOR FEDERICO LENZERINI

Hawai'i; BENNY MADSEN, in his official capacity as Denmark's Honorary Consul to Hawai'i; KATJA SILVERAA, in her official capacity as Finland's Honorary Consul to Hawai'i; GUILLAUME MAMAN, in his official capacity as France's Honorary Consul to Hawai'i; DENIS SALLE, in his official capacity as Germany's Honorary Consul to Hawai'i; KATALIN CSISZAR, in her official capacity as Hungary's Honorary Consul to Hawai'i; SHEILA WATUMULL, in her official capacity as India's Honorary Consul to Hawai'i; MICHELE CARBONE, in his official capacity as Italy's Honorary Consul to Hawai'i; YUTAKA AOKI, in his official capacity as Japan's Consul General to Hawai'i; JEAN-CLAUDE DRUI, in his official capacity as Luxembourg's Honorary Consul to Hawai'i; ANDREW M. KLUGER, in his official capacity as Mexico's Honorary Consul to Hawai'i; HENK ROGERS, in his official capacity as Netherland's Honorary Consul to Hawai'i; KEVIN BURNETT, in his official capacity as New Zealand's Consul General to Hawai'i; NINA HAMRE FASI, in her official capacity as Norway's Honorary Consul to Hawai'i; JOSELITO A. JIMENO, in his official capacity as the Philippines's Consul General to Hawai'i; BOZENA ANNA JARNOT, in her official capacity as Poland's Honorary Consul to Hawai'i; TYLER DOS SANTOS-TAM, in his official capacity as Portugal's Honorary Consul to Hawai'i; R.J. ZLATOPER, in his official capacity as Slovenia's Honorary Consul to Hawai'i; HONG, SEOK-IN, in his official capacity as the Republic of South Korea's Consul General to Hawai'i; JOHN HENRY

FELIX, in his official capacity as Spain's Honorary Consul to Hawai'i; BEDE DHAMMIKA COORAY, in his official capacity as Sri Lanka's Honorary Consul to Hawai'i; ANDERS G.O. NERVELL, in his official capacity as Sweden's Honorary Consul to Hawai'i; THERES RYF DESAI, in her official capacity as Switzerland's Honorary Consul to Hawai'i; COLIN T. MIYABARA, in his official capacity as Thailand's Honorary Consul to Hawai'i; DAVID YUTAKA IGE, in his official capacity as Governor of the State of Hawai'i; TY NOHARA, in her official capacity as Commissioner of Securities; ISSAC W. CHOY, in his official capacity as the director of the Department of Taxation of the State of Hawai'i; CHARLES E. SCHUMER, in his official capacity as U.S. Senate Majority Leader; NANCY PELOSI, in her official capacity as Speaker of the United States House of Representatives; RON KOUCHI, in his official capacity as Senate President of the State of Hawai'i; SCOTT SAIKI, in his official capacity as Speaker of the House of Representatives of the State of Hawai'i; the UNITED STATES OF AMERICA; and the STATE OF HAWAI'I,

Defendants.

DECLARATION OF PROFESSOR FEDERICO LENZERINI

Exhibit 2

DECLARATION OF PROFESSOR FEDERICO LENZERINI

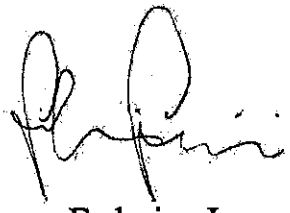
I, Federico Lenzerini, declare the following:

1. I am an Italian citizen residing in Siena, Italy. I am the author of the legal opinion on the authority of the Council of Regency of the Hawaiian Kingdom dated 24 May 2020, which a true and correct copy of the same is attached hereto.

2. I have a Ph.D. in international law and I am a Professor of International Law, University of Siena, Italy, Department of Political and International Sciences. For further information see https://docenti.unisi.it/it/lenzerini. I can be contacted at federico.lenzerini@unisi.it.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Siena, Italy, 13 May 2021.



Professor Federico Lenzerini

LEGAL OPINION ON THE AUTHORITY OF THE COUNCIL OF REGENCY OF THE HAWAIIAN KINGDOM

PROFESSOR FEDERICO LENZERINI*

As requested in the Letter addressed to me, on 11 May 2020, by Dr. David Keanu Sai, Ph.D., Head of the Hawaiian Royal Commission of Inquiry, I provide below a legal opinion in which I answer the three questions included in the above letter, for purposes of public awareness and clarification of the Regency's authority.

a) *Does the Regency have the authority to represent the Hawaiian Kingdom as a State that has been under a belligerent occupation by the United States of America since 17 January 1893?*

1. In order to ascertain whether the Regency has the authority to represent the Hawaiian Kingdom *as a State*, it is preliminarily necessary to ascertain whether the Hawaiian Kingdom can actually be considered a State under international law. To this purpose, two issues need to be investigated, i.e.: a) whether the Hawaiian Kingdom was a State at the time when it was militarily occupied by the United States of America, on 17 January 1893; b) in the event that the solution to the first issue would be positive, whether the continuous occupation of Hawai'i by the United States, from 1893 to present times, has led the Hawaiian Kingdom to be extinguished as an independent State and, consequently, as a subject of international law.
2. With respect to the first of the abovementioned issues, as acknowledged by the Arbitral Tribunal of the Permanent Court of Arbitration (PCA) in the *Larsen* case, "In the nineteenth century the Hawaiian Kingdom existed as an independent State recognized as such by the United States of America, the United Kingdom and various other States, including by exchanges of diplomatic or consular representatives and the conclusion of treaties."[1] At the time of the American occupation, the Hawaiian Kingdom fully satisfied the four elements of statehood prescribed by customary international law, which were later codified by the *Montevideo Convention on the Rights and Duties of States* in 1933[2]: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with the other states. This is confirmed by the fact that

> "the Hawaiian Kingdom became a full member of the Universal Postal Union on 1 January 1882, maintained more than a hundred legations and consulates throughout the world, and entered into extensive diplomatic and treaty relations with other States that included Austria-Hungary,

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[1] See *Larsen v. Hawaiian Kingdom*, 119 *International Law Reports*, 2001, 566, at 581.

[2] See *Montevideo Convention on the Rights and Duties of States*, 1933, 165 *LNTS* 19, Article 1. This article codified the so-called *declarative* theory of statehood, already accepted by customary international law; see Thomas D. Grant, "Defining Statehood: The Montevideo Convention and its Discontents", 37 *Columbia Journal of Transnational Law*, 1998-1999, 403; Joshua Castellino, *International Law and Self-Determination: The Interplay of the Politics of Territorial Possession with Formulations of Post-Colonial 'National' Identity*", The Hague/Boston/London, 2000, at 77; David J.

> Belgium, Bremen, Denmark, France, Germany, Great Britain, Hamburg, Italy, Japan, Netherlands, Portugal, Russia, Spain, Sweden-Norway, Switzerland and the United States".[3]

It is therefore unquestionable that **in the 1890s the Hawaiian Kingdom was an independent State and, consequently, a subject of international law**. This presupposed that its territorial sovereignty and internal affairs could not be legitimately violated by other States.

3. Once established that the Hawaiian Kingdom was actually a State, under international law, at the time when it was militarily occupied by the United States of America, on 17 January 1893, it is now necessary to determine whether the continuous occupation of Hawai'i by the United States from 1893 to present times has led the Hawaiian Kingdom to be extinguished as an independent State and, consequently, as a subject of international law. This issue is undoubtedly controversial, and may be considered according to different perspectives. As noted by the Arbitral Tribunal established by the PCA in the *Larsen* case, in principle the question in point might be addressed by means of a careful assessment carried out through "having regard *inter alia* to the lapse of time since the annexation [by the United States], subsequent political, constitutional and international developments, and relevant changes in international law since the 1890s".[4]
4. However – beyond all speculative argumentations and the consequential conjectures that might be developed depending on the different perspectives under which the issue in point could be addressed – in reality the argument which appears to overcome all the others is that a long-lasting and well-established rule of international law exists establishing that military occupation, irrespective of the length of its duration, *cannot* produce the effect of extinguishing the sovereignty and statehood of the occupied State. In fact, the validity of such a rule has *not* been affected by whatever changes occurred in international law since the 1890s. Consistently, as emphasized by the Swiss arbitrator Eugène Borel in 1925, in the famous *Affaire de la Dette publique ottomane*,

> "[q]uels que soient les effets de l'occupation d'un territoire par l'adversaire avant le rétablissement de la paix, il est certain qu'à elle seule cette occupation ne pouvait opérer juridiquement le transfert de souveraineté [...] L'occupation, par l'un des belligérants, de [...] territoire de l'autre belligérant est un pur fait. C'est un état de choses essentiellement provisoire, qui ne substitue pas légalement l'autorité du belligérant envahisseur à celle du belligérant envahi".[5]

This position was confirmed by, among others, the US Military Tribunal at Nuremberg in 1948, holding that "[i]n belligerent occupation the occupying power does not hold enemy territory by virtue of any legal right. On the contrary, it merely exercises a precarious and temporary actual control".[6] Indeed, as noted, much more recently, by Yoram Dinstein, "occupation does not affect sovereignty. The displaced sovereign loses possession of the occupied territory de facto but it retains title *de jure* [i.e. "as a matter of law"]".[7] In this regard, as previously specified, this

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[3] See David Keanu Sai, "Hawaiian Constitutional Governance", in David Keanu Sai (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations in the Hawaiian Kingdom*, Honolulu, 2020, 58, at 64 (footnotes omitted).

[4] See *Larsen v. Hawaiian Kingdom, supra* n. 1, at 9.2.

[5] See *Affaire de la Dette publique ottomane (Bulgarie, Irak, Palestine, Transjardanie, Grèce, Italie et Turquie)*, 18 April 1925, *Reports of International Arbitral Awards*, Volume I, 529, also available at <https://legal.un.org/riaa/cases/vol_I/529-614.pdf> (accessed on 16 May 2020), at 555 ("whatever are the effects of the occupation of a territory by the enemy before the re-establishment of peace, it is certain that such an occupation alone cannot legally determine the transfer of sovereignty [...] The occupation, by one of the belligerents, of [...] the territory of the other belligerent is nothing but a pure fact. It is a state of things essentially provisional, which does not legally substitute the authority of the invading belligerent to that of the invaded belligerent").

[6] See *USA v. Otto Ohlendorf et al. (Einsatzgruppen Trial)*, 10 April 1948, (1948) *LRTWC* 411, at 492.

conclusion can in no way be influenced by the length of the occupation in time, as "[p]rolongation of the occupation does not affect its innately temporary nature".[8] It follows that "'precarious' as it is, the sovereignty of the displaced sovereign over the occupied territory is not terminated" by belligerent occupation.[9] Under international law, "le transfert de souveraineté ne peut être considéré comme effectué juridiquement que par l'entrée en vigueur du Traité qui le stipule et à dater du jour de cette mise en vigueur",[10] which means, in the words of the famous jurist Oppenheim, that "[t]he only form in which a cession [of sovereignty] can be effected is an agreement embodied in a treaty between the ceding and the acquiring State. Such treaty may be the outcome of peaceable negotiations or of war".[11] Such a conclusion corresponds to "a universally recognized rule which is endorsed by jurists and confirmed by numerous rulings of international and national courts".[12]

5. The United States has taken possession of the territory of Hawai'i solely through de facto occupation and unilateral annexation, without concluding any treaty with the Hawaiian Kingdom. Furthermore, it appears that such an annexation has taken place in contravention of the rule of *estoppel*. At it is known, in international law "the doctrine of estoppel protects legitimate expectations of States induced by the conduct of another State".[13] On 18 December 1893 President Cleveland concluded with Queen Lili'uokalani a treaty, by executive agreement, which obligated the President to restore the Queen as the Executive Monarch, and the Queen thereafter to grant clemency to the insurgents.[14] Such a treaty, which was never carried into effect by the United States, would have precluded the latter from claiming to have acquired Hawaiian territory, because it had evidently induced in the Hawaiian Kingdom the legitimate expectation that the sovereignty of the Queen would have been reinstated, an expectation which was unduly frustrated through the annexation. It follows from the foregoing that, according to a plain and correct interpretation of the relevant legal rules, **the Hawaiian Kingdom cannot be considered, by virtue of the prolonged US occupation, as extinguished as an independent State and a subject of international law**, despite the long and effective exercise of the attributes of government by the United States over Hawaiian territory.[15] In fact, in the event of illegal annexation, "the legal existence of [...] States [is] preserved from extinction",[16] since "illegal occupation cannot of itself terminate statehood".[17] The possession of the attribute of statehood by the Hawaiian Kingdom was substantially confirmed by the PCA, which, before establishing the Arbitral Tribunal for the *Larsen* case, had to get assured that one of the parties of the arbitration was a State, as a necessary precondition for its jurisdiction to exist. In

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[8] Ibid.

[9] Ibid. (footnotes omitted). See also, consistently, Peter M.R. Stirk, *The Politics of Military Occupation*, Edinburgh, 2009, at 168 and 230.

[10] See *Affaire de la Dette publique ottomane*, *supra* n. 5, at S55 ("the transfer of sovereignty can only be considered legally effected by the entry into force of a treaty which establishes it and from the date of such entry into force").

[11] See Lassa FL Oppenheim, *Oppenheim's International Law*, 7th Ed., vol. 1, 1948, at 500.

[12] See Jean S. Pictet, *Commentary on the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949*, Geneva, 1958, at 275.

[13] See Thomas Cottier, Jörg Paul Müller, "Estoppel", *Max Planck Encyclopedias of International Law*, April 2007, available at <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1401> (accessed on 20 May 2020).

[14] See United States House of Representatives, 53rd Congress, *Executive Documents on Affairs in Hawai'i: 1894-95*, 1895, at 1269, available at <https://hawaiiankingdom.org/pdf/Willis_to_Gresham_(12.20.1893).pdf> (accessed on 20 May 2020).

[15] In this respect, it is to be emphasized that "a sovereign State would continue to exist despite its government being overthrown by military force"; see David Keanu Sai, "The Royal Commission of Inquiry", in David Keanu Sai (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations in the Hawaiian Kingdom*, Honolulu, 2020, 12, at 14.

[16] See James Crawford, *The Creation of States in International Law*, 2nd Ed., Oxford, 2006, at 702.

that case, the Hawaiian Kingdom was actually qualified as a "State", while the Claimant – Lance Paul Larsen – as a "Private entity."[18]

6. The conclusion according to which the Hawaiian Kingdom cannot be considered as having been extinguished – as a State – as a result of the American occupation also allows to confirm, *de plano*, that the Hawaiian Kingdom, as an independent State, **has been under uninterrupted belligerent occupation by the United States of America, from 17 January 1893 up to the moment of this writing.** This conclusion cannot be validly contested, even by virtue of the hypothetical consideration according to which, since the American occupation of Hawai'i has not substantially involved the use of military force, and has not encountered military resistance by the Hawaiian Kingdom,[19] it consequently could not be considered as "belligerent". In fact, a territory is considered occupied "when it is placed under the authority of the hostile army [...] The law on occupation applies to all cases of partial or total occupation, even if such occupation does not encounter armed resistance. The essential ingredient for applicability of the law of occupation is therefore the actual control exercised by the occupying forces".[20] This is consistent with the rule expressed in Article 42 of the Regulations annexed to the *Hague Convention (IV) respecting the Laws and Customs of War on Land* of 1907 – affirming that a "[t]erritory is considered occupied when it is actually placed under the authority of the hostile army" – as well as with Article 2 common to the four Geneva Conventions of 1949, establishing that such Conventions apply "to all cases of partial or total occupation of the territory of a High Contracting Party, *even if the said occupation meets with no armed resistance*" (emphasis added).
7. Once having ascertained that, under international law, the Hawaiian Kingdom continues to exist as an independent State, it is now time to assess the legitimacy and powers of the Regency. According to the *Lexico Oxford Dictionary*, a "regency" is "[t]he office of or period of government by a regent".[21] In a more detailed manner, the *Black's Law Dictionary*, which is the most trusted and widely used legal dictionary in the United States, defines the term in point as "[t]he man or body of men intrusted with the vicarious government of a kingdom during the minority, absence, insanity, or other disability of the king".[22] Therefore, it appears that, in consideration of the current situation of the Hawaiian Kingdom, a regency is the right body entitled to provisionally exercise the powers of the Hawaiian Executive Monarch in the absence of the latter, an absence which forcibly continues at present due to the persistent situation of military occupation to which the Hawaiian territory is subjected.
8. In legal terms, the legitimacy of the Hawaiian Council of Regency is grounded on Articles 32 and 33 of the *Hawaiian Kingdom Constitution* of 1864. In particular, Article 32 states that "[w]henever, upon the decease of the Reigning Sovereign, the Heir shall be less than eighteen years of age, the Royal Power shall be exercised by a Regent Council of Regency; as hereinafter provided". As far as Article 33 is concerned, it affirms that

> "[i]t shall be lawful for the King at any time when he may be about to absent himself from the Kingdom, to appoint a Regent or Council of Regency, who shall administer the Government in

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[18] See <https://pcacases.com/web/view/35> (accessed on 16 May 2020).

[19] It is to be noted, in this respect, that no armed resistance was opposed to the occupation despite the fact that, as acknowledged by US President Cleveland, the Queen "had at her command at least five hundred fully armed men and several pieces of artillery. Indeed, the whole military force of her kingdom was on her side and at her disposal"; see United States House of Representatives, 53rd Congress, *Executive Documents on Affairs in Hawai'i: 1894-95*, 1895, at 453, available at <https://hawaiiankingdom.org/pdf/Willis_to_Gresham_(12.20.1893).pdf> (accessed on 20 May 2020).

[20] See International Committee of the Red Cross, "The Law of Armed Conflict. Belligerent Occupation", Geneva, June 2002, available at <https://www.icrc.org/en/doc/assets/files/other/law9_final.pdf> (accessed on 17 May 2020), at 3.

[21] See <https://www.lexico.com/en/definition/regency> (accessed on 17 May 2020).

> His name; and likewise the King may, by His last Will and Testament, appoint a Regent or Council of Regency to administer the Government during the minority of any Heir to the Throne; and should a Sovereign decease, leaving a Minor Heir, and having made no last Will and Testament, the Cabinet Council at the time of such decease shall be a Council of Regency, until the Legislative Assembly, which shall be called immediately, may be assembled, and the Legislative Assembly immediately that it is assembled shall proceed to choose by ballot, a Regent of Council of Regency, who shall administer the Government in the name of the King, and exercise all the powers which are Constitutionally vested in the King, until he shall have attained the age of eighteen years, which age is declared to be the Legal Majority of such Sovereign".

The Council of Regency was established by proclamation on February 28, 1997, by virtue of the offices made vacant in the Cabinet Council, on the basis of the doctrine of necessity, the application of which was justified by the absence of a Monarch. Therefore, **the Council of Regency possesses the constitutional authority to temporarily exercise the Royal powers of the Hawaiian Kingdom.** The Council of Regency, composed by *de facto* officers, is actually serving as the provisional government of the Hawaiian Kingdom, and, should the military occupation come to an end, it shall immediately convene the Legislative Assembly, which "shall proceed to choose by ballot, a Regent of Council of Regency, who shall administer the Government in the name of the King, and exercise all the powers which are Constitutionally vested in the King" until it shall not be possible to nominate a Monarch, pursuant to Article 33 of the Hawaiian Kingdom Constitution of 1864.

9. In light of the foregoing – particularly in consideration of the fact that, under international law, the Hawaiian Kingdom continues to exist as an independent State, although subjected to a foreign occupation, and that the Council of Regency has been established consistently with the constitutional principles of the Hawaiian Kingdom and, consequently, possesses the legitimacy of temporarily exercising the functions of the Monarch of the Kingdom – it is possible to conclude that **the Regency actually has the authority to represent the Hawaiian Kingdom as a State, which has been under a belligerent occupation by the United States of America since 17 January 1893, both at the domestic and international level.**

b) Assuming the Regency does have the authority, what effect would its proclamations have on the civilian population of the Hawaiian Islands under international humanitarian law, to include its proclamation recognizing the State of Hawai'i and its Counties as the administration of the occupying State on 3 June 2019?

10. As previously ascertained, the Council of Regency actually possesses the constitutional authority to temporarily exercise the Royal powers of the Hawaiian Kingdom and, consequently, has the authority to represent the Hawaiian Kingdom as a State pending the American occupation and, in any case, up to the moment when it shall be possible to convene the Legislative Assembly pursuant to Article 33 of the Hawaiian Kingdom Constitution of 1864. This means that **the Council of Regency is exactly in the same position of a government of a State under military occupation, and is vested with the rights and powers recognized to governments of occupied States pursuant to international humanitarian law.**
11. In principle, however, such rights and powers are quite limited, by reason of the fact that the governmental authority of a government of a State under military occupation has been replaced by that of the occupying power, "[t]he authority of the legitimate power having in fact passed into the

hands of the occupant".[23] At the same time, the ousted government retains the function and the duty of, to the extent possible, preserving order, protecting the rights and prerogatives of local people and continuing to promote the relations between its people and foreign countries. In the *Larsen* case, the claimant even asserted that the Council of Regency had "an obligation and a responsibility under international law, to take steps to protect Claimant's nationality as a Hawaiian subject";[24] the Arbitral Tribunal established by the PCA, however, did not provide a response regarding this claim. In any event, leaving aside the latter specific aspect, in light of its position the Council of Regency may to a certain extent interact with the exercise of the authority by the occupying power. This is consistent with the fact that the occupant is under an international obligation to "take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country".[25] Indeed, as noted by the eminent jurist Robert Y. Jennings in an influential article published in 1946,[26] one of the main purposes of the law of belligerent occupation is to protect the sovereign rights of the legitimate government of the occupied territory, and the obligations of the occupying power in this regard continue to exist "even when, in disregard of the rules of international law, it claims [...] to have annexed all or part of an occupied territory".[27] It follows that, the ousted government being the entity which represents the "legitimate government" of the occupied territory, it may "attempt to influence life in the occupied area out of concern for its nationals, to undermine the occupant's authority, or both. One way to accomplish such goals is to legislate for the occupied population".[28] In fact, "occupation law does not require an exclusive exercise of authority by the Occupying Power. It allows for authority to be shared by the Occupying Power and the occupied government, provided the former continues to bear the ultimate and overall responsibility for the occupied territory".[29] While in several cases occupants have maintained the inapplicability to the occupied territory of new legislation enacted by the occupied government, for the reason that it "could undermine their authority [...] the majority of post-World War II scholars, also relying on the practice of various national courts, have agreed that the occupant should give effect to the sovereign's new legislation as long as it addresses those issues in which the occupant has no power to amend the local law, most notably in matters of personal status".[30] The Swiss Federal Tribunal has even held that "[e]nactments by the [exiled government] are constitutionally laws of the [country] and applied *ab initio* to the territory occupied [...] even though they could not be effectively implemented until the liberation".[31] Although this position was taken with specific regard to exiled governments, and the Council of Regency was not established *in exile* but *in situ*, the conclusion, to the extent that it is considered valid, would not substantially change as regards the Council of Regency itself.

12. It follows from the foregoing that, under international humanitarian law, **the proclamations of the Council of Regency are not divested of effects as regards the civilian population of the Hawaiian Islands.** In fact, considering these proclamations as included in the concept of "legislation" referred

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[23] See Article 43 of the Regulations annexed to the Hague Convention (IV) respecting the Laws and Customs of War on Land of 1907.

[24] See *Larsen v. Hawaiian Kingdom*, *supra* n. 1, at 12.8.

[25] See Article 43 of the Regulations annexed to the Hague Convention (IV) respecting the Laws and Customs of War on Land of 1907.

[26] See "Government in Commission", 23 *British Year Book of International Law*, 1946, 112.

[27] See Pictet, *Commentary on the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949*, *supra* n. 12, at 276.

[28] See Eyal Benvenisti, *The Internationanl Law of Occupation*, 2nd Ed., Oxford, 2012, at 104.

[29] See Philip Spoerri, "The Law of Occupation", in Andrew Clapham and Paola Gaeta (eds.), *The Oxford Handbook of International Law in Armed Conflict*, Oxford, 2014, 182, at 190.

[30] See Benvenisti, *The International Law of Occupation*, *supra* n. 28, at 104-105.

to in the previous paragraph,[32] they might even, if the concrete circumstances of the case so allow, apply retroactively at the end of the occupation, irrespective of whether or not they must be respected by the occupying power during the occupation, on the condition that the legislative acts in point do not "disregard the rights and expectations of the occupied population".[33] It is therefore necessary that the occupied government refrains "from using the national law as a vehicle to undermine public order and civil life in the occupied area".[34] In other words, in exercising the legislative function during the occupation, the ousted government is subjected to the condition of not undermining the rights and interests of the civilian population. However, once the latter requirement is actually respected, the proclamations of the ousted government – including, in the case of Hawai'i, those of the Council of Regency – may be considered applicable to local people, unless such applicability is explicitly refuted by the occupying authority, in its position of an entity bearing "the ultimate and overall responsibility for the occupied territory".[35] In this regard, however, it is reasonable to assume that the occupying power should not deny the applicability of the above proclamations when they do not undermine, or significantly interfere with the exercise of, its authority. This would be consistent with the obligation of the occupying power "to maintain the status quo ante (i.e. as it was before) in the occupied territory as far as is practically possible",[36] considering that local authorities are better placed to know what are the actual needs of the local population and of the occupied territory, in view of guaranteeing that the status quo ante is effectively maintained.

13. As regards, specifically, the Council of Regency's Proclamation recognizing the State of Hawai'i and its Counties as the administration of the occupying State of 3 June 2019,[37] it reads as follows:

> "Whereas, in order to account for the present circumstances of the prolonged illegal occupation of the Hawaiian Kingdom and to provide a temporary measure of protection for its territory and the population residing therein, the public safety requires action to be taken in order for the State of Hawai'i and its Counties to begin to comply with the 1907 Hague Convention, IV, the 1949 Geneva Convention, IV, and international humanitarian law:
> Now, therefore, We, the acting Council of Regency of the Hawaiian Kingdom, serving in the absence of the Monarch and temporarily exercising the Royal Power of the Kingdom, do hereby recognize the State of Hawai'i and its Counties, for international law purposes, as the administration of the Occupying Power whose duties and obligations are enumerated in the 1907 Hague Convention, IV, the 1949 Geneva Convention, IV, and international humanitarian law;
> And, We do hereby further proclaim that the State of Hawai'i and its Counties shall preserve the sovereign rights of the Hawaiian Kingdom government, and to protect the local population from exploitation of their persons and property, both real and personal, as well as their civil and political rights under Hawaiian Kingdom law".

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[32] This is consistent with the assumption that the expression "laws in force in the country", as used by Article 43 of the Regulations annexed to the Hague Convention (IV) respecting the Laws and Customs of War on Land of 1907 (see *supra*, text corresponding to n. 25), "refers not only to laws in the strict sense of the word, but also to the constitution, decrees, ordinances, court precedents [...] as well as administrative regulations and executive orders"; see Marco Sassòli, "Legislation and Maintenance of Public Order and Civil Life by Occupying Powers", 16 *European Journal of International Law*, 2005, 661, at 668-69.

[33] See Benvenisti, *The International Law of Occupation*, *supra* n. 28, at 105.

[34] Ibid., at 106.

[35] See *supra*, text corresponding to n. 29.

[36] See International Committee of the Red Cross, "The Law of Armed Conflict. Belligerent Occupation", *supra* n. 20, at 9.

[37] Available at <https://www.hawaiiankingdom.org/pdf/Proc_Recognizing_State_of_HI.pdf> (accessed on 18 May

As it is evident from a plain reading of its text, this Proclamation pursues the clear purpose of ensuring the protection of the Hawaiian territory and the people residing therein against the prejudicial effects which may arise from the occupation to which such a territory is actually subjected. Therefore, it represents a legislative act aimed at furthering the interests of the civilian population through ensuring the correct administration of their rights and of the land. As a consequence, it has the nature of an act that is equivalent, in its rationale and purpose (although not in its precise subject), to a piece of legislation concerning matters of personal status of the local population, requiring the occupant to give effect to it.[38] It is true that the Proclamation of 3 June 2019 takes a precise position on the status of the occupying power, the State of Hawai'i and its Counties being a direct emanation of the United States of America. However, in doing so, the said Proclamation simply reiterates an aspect that is self-evident, since the fact that the State of Hawai'i and its Counties belong to the political organization of the occupying power, and that they are de facto administering the Hawaiian territory, is objectively irrefutable. It follows that the Proclamation in discussion simply restates rules already existing under international humanitarian law. In fact, the latter clearly establishes the obligation of the occupying power to preserve the sovereign rights of the occupied government (as previously ascertained in this opinion),[39] the "overarching principle [of the law of occupation being] that an occupant does not acquire sovereignty over an occupied territory and therefore any occupation must only be a temporary situation".[40] Also, it is beyond any doubts that an occupying power is bound to guarantee and protect the human rights of the local population, as defined by the international human rights treaties of which it is a party as well as by customary international law. This has been authoritatively confirmed, *inter alia*, by the International Court of Justice.[41] While the Proclamation makes reference to the duty of the State of Hawai'i and its Counties to protect the human rights of the local population "under Hawaiian Kingdom law", and not pursuant to applicable international law, this is consistent with the obligation of the occupying power to respect, to the extent possible, the law in force in the occupied territory. In this regard, respecting the domestic laws which protect the human rights of the local population undoubtedly falls within "the extent possible", because it certainly does not undermine, or significantly interfere with the exercise of, the authority of the occupying power, and is consistent with existing international obligations. In other words, the occupying power cannot be considered "absolutely prevented"[42] from applying the domestic laws protecting the human rights of the local population, unless it is demonstrated that the level of protection of human rights guaranteed by Hawaiian Kingdom law is less advanced than human rights standards established by international law. Only in this case, the occupying power would be under a duty to ensure in favour of the local population the higher level of protection of human rights guaranteed by international law. In sum, **the Council of Regency's Proclamation of 3 June 2019 may be considered as a domestic act implementing international rules at the internal level,**

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[38] See *supra* text corresponding to n. 30.

[39] See, in particular, *supra*, para. 11.

[40] See United Nations, Officer of the High Commissioner of Human Rights, "Belligerent Occupation: Duties and Obligations of Occupying Powers", September 2017, available at <https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ohchr_syria_-_belligerent_occupation_-_legal_note_en.pdf> (accessed on 19 May 2020), at 3.

[41] See, in particular, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2004, *ICJ Reports*, 2004, at 111-113; *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of Congo v. Uganda)*, Judgement of 19 December 2005, at 178. For a more comprehensive assessment of this issue see Federico Lenzerini, "International Human Rights Law and Self-Determination of Peoples Related to the United States Occupation of the Hawaiian Kingdom", in David Keanu Sai (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations in the Hawaiian Kingdom*, Honolulu, 2020, 173, at 203-205.

which should be effected by the occupying power pursuant to international humanitarian law, since it does not undermine, or significantly interfere with the exercise of, its authority.

14. It may be concluded that, under international humanitarian law, **the proclamations of the Council of Regency** – including the Proclamation recognizing the State of Hawai'i and its Counties as the administration of the occupying State on 3 June 2019 – **have on the civilian population the effect of acts of domestic legislation aimed at protecting their rights and prerogatives, which should be, to the extent possible, respected and implemented by the occupying power.**

c) Comment on the working relationship between the Regency and the administration of the occupying State under international humanitarian law.

15. As previously noted, "occupation law [...] allows for authority to be shared by the Occupying Power and the occupied government, provided the former continues to bear the ultimate and overall responsibility for the occupied territory".[43] This said, it is to be kept well in mind that belligerent occupation necessarily has a *non-consensual nature*. In fact, "[t]he absence of consent from the state whose territory is subject to the foreign forces' presence [...] [is] a precondition for the existence of a state of belligerent occupation. Without this condition, the situation would amount to a 'pacific occupation' not subject to the law of occupation".[44] At the same time, we also need to remember that the absence of armed resistance by the territorial government can in no way be interpreted as determining the existence of an implied consent to the occupation, consistently with the principle enshrined by Article 2 common to the four Geneva Conventions of 1949.[45]. On the contrary, the consent, "for the purposes of occupation law, [...] [must] be genuine, valid and explicit".[46] It is evident that such a consent has never been given by the government of the Hawaiian Kingdom. On the contrary, the Hawaiian government opposed the occupation since its very beginning. In particular, Queen Lili'uokalani, executive monarch of the Hawaiian Kingdom, on 17 January 1893 stated that,

> "to avoid any collision of armed forces and perhaps the loss of life, I do, under this protest, and impelled by said force, yield my authority until such time as the Government of the United States shall, upon the facts being presented to it, undo the action of its representatives and reinstate me in the authority which I claim as the constitutional sovereign of the Hawaiian Islands".[47]

The opposition to the occupation has never been abandoned up to the time of this writing, although for some long decades it was stifled by the policy of *Americanization* brought about by the US government in the Hawaiian Islands. It has eventually revived in the last three lustrums, with the establishment of the Council of Regency.

16. Despite the fact that the occupation inherently configures as a situation unilaterally imposed by the occupying power – any kind of consent of the ousted government being totally absent – there still is some space for "cooperation" between the occupying and the occupied government – in the specific case of Hawai'i between the State of Hawai'i and its Counties and the Council of Regency.

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[43] See *supra*, text corresponding to n. 29.
[44] See Spoerri, "The Law of Occupation", supra n. 29, at 190.
[45] See *supra*, para. 6.
[46] See Spoerri, "The Law of Occupation", supra n. 29, at 190.
[47] See United States House of Representatives, 53rd Congress, *Executive Documents on Affairs in Hawai'i: 1894-95*,

Before trying to specify the characteristics of such a cooperation, it is however important to reiterate that, under international humanitarian law, the last word concerning any acts relating to the administration of the occupied territory is with the occupying power. In other words, "occupation law would allow for a vertical, but not a horizontal, sharing of authority [...] [in the sense that] this power sharing should not affect the ultimate authority of the occupier over the occupied territory".[48] This vertical sharing of authority would reflect "the hierarchical relationship between the occupying power and the local authorities, the former maintaining a form of control over the latter through a top-down approach in the allocation of responsibilities".[49]

17. The cooperation referred to in the previous paragraph is implied or explicitly established in some provisions of the Fourth Geneva Convention of 1949. In particular, Article 47 states that

> "Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory".

Through referring to possible agreements "concluded between the authorities of the occupied territories and the Occupying Power", this provision clearly implies the possibility of establishing cooperation between the occupying and the occupied government. More explicitly, Article 50 affirms that "[t]he Occupying Power shall, with the cooperation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children", while Article 56 establishes that, "[t]o the fullest extent of the means available to it, the Occupying Power has the duty of ensuring and maintaining, with the cooperation of national and local authorities, the medical and hospital establishments and services, public health and hygiene in the occupied territory [...]".

As far as United States practice is concerned, it acknowledges that "[t]he functions of the [occupied] government – whether of a general, provincial, or local character – continue only to the extent they are sanctioned".[50] With specific regard to cooperation with the occupied government, it is also recognized that "[t]he occupant may, while retaining its paramount authority, permit the government of the country to perform some or all of its normal functions".[51]

18. Importantly, the provisions referred to in the previous paragraph exactly refer to issues related to the protection of civilian persons and of their rights, which is one of the two main aspects (together with the preservation of the sovereign rights of the Hawaiian Kingdom government) dealt with by the Council of Regency's Proclamation recognizing the State of Hawai'i and its Counties as the administration of the occupying State of 3 June 2019.[52] In practice, the cooperation advocated by the provisions in point may take different forms, one of which translates into the possibility for the ousted government to adopt legislative provisions concerning the above aspects. As previously seen, the occupying power has, *vis-à-vis* the ensuing legislation, a duty not to oppose to it, because it normally does not undermine, or significantly interfere with the exercise of, its authority. Further to this, it is reasonable to assume that – in light of the spirit and the contents of the provisions referred to in the previous paragraph – the occupying power has a duty to cooperate in giving

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[48] See International Committee of the Red Cross, *Expert Meeting. Occupation and Other Forms of Administration of Foreign Territory. Report*, Geneva, 2012, available at <https://www.icrc.org/en/doc/assets/files/publications/icrc-002-4094.pdf> (accessed on 20 May 2020), at 20.

[49] Ibid., at footnote 7.

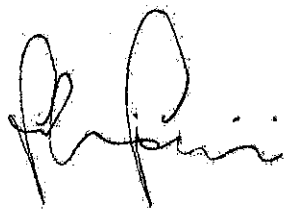
[50] See "The Law of Land Warfare", *United States Army Field Manual* 27-10, July 1956, Section 367(a).

[51] Ibid., Section 367(b).

realization to the legislation in point, unless it is "absolutely prevented" to do so. This duty to cooperate appears to be reciprocal, being premised on both the Council of Regency and the State of Hawai'i and its Counties to ensure compliance with international humanitarian law.

19. The latter conclusion is consistent with the logical (and legally-grounded) assumption that the ousted government is better placed than the occupying power in order to know what are the real needs of the civilian population and what are the concrete measures to be taken to guarantee an effective response to such needs. It follows that, through allowing the legislation in discussion to be applied – and through contributing in its effective application – the occupying power would better comply with its obligation, existing under international humanitarian law and human rights law, to guarantee and protect the human rights of the local population. It follows that the occupying power has a duty – if not a proper legal obligation – to cooperate with the ousted government to better realize the rights and interest of the civilian population, and, more in general, to guarantee the correct administration of the occupied territory.
20. In light of the foregoing, it may be concluded that **the working relationship between the Regency and the administration of the occupying State should have the form of a cooperative relationship aimed at guaranteeing the realization of the rights and interests of the civilian population and the correct administration of the occupied territory**, provided that there are no objective obstacles for the occupying power to cooperate and that, in any event, the "supreme" decision-making power belongs to the occupying power itself. This conclusion is consistent with the position of the latter as "administrator" of the Hawaiian territory, as stated in the Council of Regency's Proclamation recognizing the State of Hawai'i and its Counties as the administration of the occupying State of 3 June 2019 and presupposed by the pertinent rules of international humanitarian law.

24 May 2020



Professor Federico Lenzerini

Exhibit "C"

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

HAWAIIAN KINGDOM,

Plaintiff,

v.

JOSEPH ROBINETTE BIDEN JR., in his official capacity as President of the United States; KAMALA HARRIS, in her official capacity as Vice-President and President of the United States Senate; ADMIRAL JOHN AQUILINO, in his official capacity as Commander, U.S. Indo-Pacific Command; CHARLES P. RETTIG, in his official capacity as Commissioner of the Internal Revenue Service; JANE HARDY, in her official capacity as Australia's Consul General to Hawai'i and the United Kingdom's Consul to Hawai'i; JOHANN URSCHITZ, in his official capacity as Austria's Honorary Consul to Hawai'i; M. JAN RUMI, in his official capacity as Bangladesh's Honorary Consul to Hawai'i and Morocco's Honorary Consul to Hawai'i; JEFFREY DANIEL LAU, in his official capacity as Belgium's Honorary Consul to Hawai'i; ERIC G. CRISPIN, in his official capacity as Brazil's Honorary Consul to Hawai'i; GLADYS VERNOY, in her official capacity as Chile's Honorary Consul General to Hawai'i; JOSEF SMYCEK, in his official capacity as the Czech Republic's Deputy Consul General for Los Angeles that oversees the Honorary Consulate in

Civil No. 1:21-cv-00243-LEK-RT

DECLARATION OF DAVID KEANU SAI, Ph.D.

Hawai'i; BENNY MADSEN, in his official capacity as Denmark's Honorary Consul to Hawai'i; KATJA SILVERAA, in her official capacity as Finland's Honorary Consul to Hawai'i; GUILLAUME MAMAN, in his official capacity as France's Honorary Consul to Hawai'i; DENIS SALLE, in his official capacity as Germany's Honorary Consul to Hawai'i; KATALIN CSISZAR, in her official capacity as Hungary's Honorary Consul to Hawai'i; SHEILA WATUMULL, in her official capacity as India's Honorary Consul to Hawai'i; MICHELE CARBONE, in his official capacity as Italy's Honorary Consul to Hawai'i; YUTAKA AOKI, in his official capacity as Japan's Consul General to Hawai'i; JEAN-CLAUDE DRUI, in his official capacity as Luxembourg's Honorary Consul to Hawai'i; ANDREW M. KLUGER, in his official capacity as Mexico's Honorary Consul to Hawai'i; HENK ROGERS, in his official capacity as Netherland's Honorary Consul to Hawai'i; KEVIN BURNETT, in his official capacity as New Zealand's Consul General to Hawai'i; NINA HAMRE FASI, in her official capacity as Norway's Honorary Consul to Hawai'i; JOSELITO A. JIMENO, in his official capacity as the Philippines's Consul General to Hawai'i; BOZENA ANNA JARNOT, in her official capacity as Poland's Honorary Consul to Hawai'i; TYLER DOS SANTOS-TAM, in his official capacity as Portugal's Honorary Consul to Hawai'i; R.J. ZLATOPER, in his official capacity as Slovenia's Honorary Consul to Hawai'i; HONG, SEOK-IN, in his official capacity as the Republic of South Korea's Consul General to Hawai'i; JOHN HENRY

FELIX, in his official capacity as Spain's Honorary Consul to Hawai'i; BEDE DHAMMIKA COORAY, in his official capacity as Sri Lanka's Honorary Consul to Hawai'i; ANDERS G.O. NERVELL, in his official capacity as Sweden's Honorary Consul to Hawai'i; THERES RYF DESAI, in her official capacity as Switzerland's Honorary Consul to Hawai'i; COLIN T. MIYABARA, in his official capacity as Thailand's Honorary Consul to Hawai'i; DAVID YUTAKA IGE, in his official capacity as Governor of the State of Hawai'i; TY NOHARA, in her official capacity as Commissioner of Securities; ISSAC W. CHOY, in his official capacity as the director of the Department of Taxation of the State of Hawai'i; CHARLES E. SCHUMER, in his official capacity as U.S. Senate Majority Leader; NANCY PELOSI, in her official capacity as Speaker of the United States House of Representatives; RON KOUCHI, in his official capacity as Senate President of the State of Hawai'i; SCOTT SAIKI, in his official capacity as Speaker of the House of Representatives of the State of Hawai'i; the UNITED STATES OF AMERICA; and the STATE OF HAWAI'I,

Defendants.

DECLARATION OF DAVID KEANU SAI, Ph.D.

Exhibit 1

DECLARATION OF DAVID KEANU SAI, Ph.D.

I, David Keanu Sai, declare the following:

1. Declarant is a Hawaiian subject residing in Mountain View, Island of Hawai'i, Hawaiian Kingdom. I am the Minister of the Interior, Minister of Foreign Affairs *ad interim*, and Chairman of the Council of Regency. Declarant served as Agent for the Hawaiian Kingdom in *Larsen v. Hawaiian Kingdom* arbitral proceedings at the Permanent Court of Arbitration from 1999-2001.

2. On or about mid-February 2000, declarant, as Agent for the Hawaiian Kingdom, had a phone conversation with the Secretary General of the Permanent Court of Arbitration (PCA), Tjaco T. van den Hout. In that conversation, the Secretary General stated to the declarant that the Secretariat was not able to find any evidence that the Hawaiian Kingdom had been extinguished as a State and admitted that the 1862 Hawaiian-Dutch Treaty was not terminated. The declarant understood that the Hawaiian Kingdom satisfied the PCA's institutional jurisdiction pursuant to Article 47 of the 1907 Hague Convention for the Pacific Settlement of International Disputes, I, whereby the PCA would be accessible to Non-Contracting States. The arbitral tribunal was not formed until June 9, 2000.

3. The Secretary General then stated to the declarant that in order to maintain the integrity of these proceedings, he recommended that the Hawaiian Kingdom Government provide a formal invitation to the United States to join in the arbitral proceedings. The declarant stated that he will bring this request up with the Council of Regency. After discussion, the Council of Regency accepted the Secretary General's request and declarant travelled by airplane with Ms. Ninia Parks, counsel for claimant, Lance P. Larsen, to Washington, D.C., on or about March 1, 2000.

4. On March 2, 2000, Ms. Parks and the declarant met with Sonia Lattimore, Office Assistant, L/EX, at 10:30 a.m. on the ground floor of the Department of State and presented her with two (2) binders, the first comprised of an Arbitration Log Sheet with accompanying documents on record at the Permanent Court of Arbitration. The second binder comprised of divers documents of the Acting Council of Regency as well as diplomatic correspondence with treaty partners of the Hawaiian Kingdom.

5. Declarant stated to Ms. Lattimore that the purpose of our visit was to provide these documents to the Legal Department of the U.S. State Department in order for the U.S. Government to be apprised of the arbitral proceedings already in train and that the Hawaiian Kingdom, by consent of the Claimant, extends an opportunity for the United States to join in the

arbitration as a party. Ms. Lattimore assured the declarant that the package would be given to Mr. Bob McKenna for review and assignment to someone within the Legal Department. Declarant told Ms. Lattimore that he and Ms. Parks will be in Washington, D.C., until close of business on Friday, and she assured declarant that she will call on declarant's cell phone by the close of business that day with a status report.

6. At 4:45 p.m., Ms. Lattimore contacted the declarant by phone and stated that the package had been sent to John Crook, Assistant Legal Advisor for United Nations Affairs. She stated that Mr. Crook will be contacting the declarant on Friday (March 3, 2000), but declarant could give Mr. Crook a call in the morning if desired.

7. At 11:00 a.m., March 3, 2000, declarant called Mr. Crook and inquired about the receipt of the package. Mr. Crook stated that he did not have ample time to critically review the package but will get to it. Declarant stated that the reason for our visit was the offer by the Respondent Hawaiian Kingdom, by consent of the Claimant, by his attorney, for the United States Government to join in the arbitral proceedings already in motion. Declarant also advised Mr. Crook that Secretary General van den Hout of the PCA was aware of our travel to Washington, D.C., and the offer to join in the

arbitration. The Secretary General requested that the dialogue be reduced to writing and filed with the International Bureau of the PCA for the record.

8. Declarant further stated to Mr. Crook that enclosed in the binders were Hawaiian diplomatic protests lodged by declarant's former country men and women with the Depart of State in the summer of 1897, that are on record at the U.S. National Archives, in order for him to understand the gravity of the situation. Declarant also stated that included in the binders were two (2) protests by the declarant as an officer of the Hawaiian Government against the State of Hawai'i for instituting unwarranted criminal proceedings against the declarant and other Hawaiian subjects under the guise of American municipal laws within the territorial dominion of the Hawaiian Kingdom.

9. In closing, the declarant stated to Mr. Crook that after a thorough investigation into the facts presented to his office, and following zealous deliberations as to the considerations offered, the Government of the United States shall resolve to decline our offer to enter the arbitration as a Party, the present arbitral proceedings shall continue without affect pursuant to the 1907 Hague Conventions IV and V, and the UNCITRAL Rules of arbitration. Mr. Crook acknowledged what was said and the conversation then came to a close. That day a letter confirming the content of the discussion was drafted by the declarant and sent to Mr. Crook. The letter

was also carbon copied to the Secretary General of the PCA, Ms. Parks, Mr. Keoni Agard, appointing authority for the arbitral proceedings, and Ms. Noelani Kalipi, Hawai'i Senator Daniel Akaka's Legislative Assistant.

10. Thereafter, the PCA's Deputy Secretary General, Phyllis Hamilton, spoke with declarant over the phone and informed declarant that the United States, through its embassy in The Hague, notified the PCA that the United States had declined the invitation to join in the arbitral proceedings. Instead, the United requested permission from the Hawaiian Government and the Claimant to have access to the pleadings and records of the case. Both the Hawaiian Government and the Claimant consented to the United States' request.

11. On March 21, 2000, Professor Christopher Greenwood, QC, was confirmed as an arbitrator, and on March 23, 2000, Gavan Griffith, QC, was confirmed as an arbitrator. On May 28, 2000, the arbitral tribunal was completed by the appointment of Professor James Crawford as the presiding arbitrator. On June 9, 2000, the parties jointly notified, by letter, to the Deputy Secretary General of the PCA that the arbitral tribunal had been duly constituted.

12. After written pleadings were filed by the parties with the PCA, oral hearings were held at the PCA on December 7, 8 and 11, 2000. The arbitral award was filed with the PCA on February 5, 2000 where the tribunal found that it

lacked subject matter jurisdiction because it concluded that the United States was an indispensable third party. Consequently, the Claimant was precluded from alleging that the Hawaiian Kingdom, by its Council of Regency, was liable for the unlawful imposition of American municipal laws over the Claimant's person within the territorial jurisdiction of the Hawaiian Kingdom without the participation of the United States.

13. After returning from The Hague in December of 2000, the Council of Regency determined that the declarant would enter University of Hawai'i at Mānoa as a graduate student in the political science department in order to directly address the misinformation regarding the continuity of the Hawaiian Kingdom as an independent and sovereign State that has been under a prolonged occupation by the United States since January 17, 1893 through research and publication of articles. The decision made by the Council of Regency was in accordance with Section 495—*Remedies of Injured Belligerent*, United States Army FM-27-10 states, "[i]n the event of violation of the law of war, the injured party may legally resort to remedial action of the following types: *a.* Publication of the facts, with a view to influencing public opinion against the offending belligerent."

14. The declarant received his master's degree in political science specializing in international relations and law in 2004 and received his Ph.D. degree in

political science with particular focus on the continuity of the Hawaiian Kingdom. Declarant has published multiple articles and books on the prolonged occupation of the Hawaiian Kingdom and its continued existence as a State under international law. Declarant's curriculum vitae can be accessed online at http://www2.hawaii.edu/~anu/pdf/CV.pdf. Declarant can be contacted at interior@hawaiiankingdom.org.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Mountain View, Hawaiian Kingdom, May 19, 2021.

David Keanu Sai

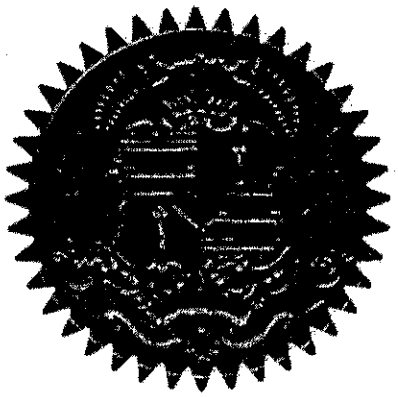
Exhibit "D"

Council of Regency,

Acting Cabinet Council of the Hawaiian Islands:

To Dexter Ke'eaumoku Ka'iama, Esq. *Greeting:*

Know ye, that this Executive Office, reposing special trust and confidence in your wisdom, integrity and fidelity, have constituted and appointed you acting **Attorney General**, to faithfully discharge and perform all the duties pertaining to said Office, under the Constitution and Laws of the Kingdom, and to hold office as such during this Office's pleasure: And all persons are hereby ordered to respect this your authority.



In Witness Whereof, I have hereunto set my hand, and caused the Great Seal of the Kingdom to be affixed this 11 day of August A.D. 2013.

Peter Umialiloa Sai,
Vice-Chairman of the Acting Council of Regency
Acting Minister of Foreign Affairs

By the Council

Kau'i P. Sai-Dudoit,
Acting Minister of Finance

IN THE SUPREME COURT OF THE
STATE OF HAWAI'I

ODC v.
or,
A confidential pending investigation and/or Proceeding under the Rules of the Supreme Court of the State of Hawai`i and its Disciplinary Board, regarding a matter of Attorney discipline.

CONFIDENTIAL

Case No. 18-0339

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and filed copy of the foregoing document will be duly served on the following parties by Hand-delivery or U.S. mail (postage prepaid on this date):

CLIFFORD L. NAKEA
Disciplinary Board Officer
Office of Disciplinary Counsel
Hawai`i Supreme Court
201 Merchant Street, Suite 1600
Honolulu, Hawai`i 96813

ALANA L. BRYANT, ESQ.
Assistant Disciplinary Counsel
Office of Disciplinary Counsel
Hawai`i Supreme Court
201 Merchant Street, Suite 1600
Honolulu, Hawai`i 96813

WILLIAM FENTON SINK, ESQ.
Dillingham Transportation Bldg.
735 Bishop Street, Ste. 400
Honolulu, HI 96813

Dated: Kailua, Hawai`i, September 6, 2022.

Dexter K. Ka`iama. Esq.
Respondent

IN THE SUPREME COURT OF THE
STATE OF HAWAI'I

ODC v.
or,
A confidential pending investigation and/or Proceeding under the Rules of the Supreme Court of the State of Hawai`i and its Disciplinary Board, regarding a matter of Attorney discipline.

CONFIDENTIAL

Case No. 18-0339

MOTION FOR REQUEST OF JUDICIAL NOTICE IN SUPPORT OF REPONDENT'S MOTION TO DISMISS SUBPOENA DATED AUGUST 31, 2022, PURSUANT TO HRCP 12(B)(2) AND THE *LORENZO* PRINCIPLE, AND TO SCHEDULE AN EVIDENTIARY HEARING, OR IN THE ALTERNATIVE, MOTION FOR PROTECTIVE ORDER; EXHIBITS "1-7"; CERTIFICATE OF SERVICE

Dexter K. Ka'iama 4249
1486 Akeke Place
Kailua, HI 96734
Respondent

MOTION FOR REQUEST OF JUDICIAL NOTICE IN SUPPORT OF REPONDENT'S MOTION TO DISMISS SUBPOENA DATED AUGUST 31, 2022, PURSUANT TO HRCP 12(B)(2) AND THE *LORENZO* PRINCIPLE, AND TO SCHEDULE AN EVIDENTIARY HEARING, OR IN THE ALTERNATIVE, MOTION FOR PROTECTIVE ORDER

In accordance with Hawai'i Rule of Evidence 201, the Respondent respectfully requests that the Board Chairman, in its consideration of Respondent's motion for request of judicial notice in support of Repondent's motion to dismiss subpoena dated August 31, 2022, pursuant to HRCP 12(b)(2) and the *Lorenzo* principle, and to schedule an evidentiary hearing, or in the alternative, motion for protective order, filed herewith, take judicial notice of §202, comment g, and §203, comment c of *Restatement (Third) of the Foreign Relations Law of the United States*. The Respondent also respectfully requests that this Court take judicial notice of the information contained in the exhibits attached hereto.

1. Exhibit 1 is a true and correct copy of the 1849 Treaty of Friendship, Commerce, and Navigation between the Hawaiian Kingdom and the United States, 9 Stat. 977. Article VIII states, "and each of the two contracting parties engages that the citizens or subjects of the other residing in their respective states shall enjoy their property and personal security, in as full and ample manner as their own citizens or subjects, or the subjects or citizens of the most favored nation, but subject always to the laws and statutes of the two countries respectively (emphasis added)."

2. Exhibit 2 is a true and correct copy of Annex 2—*Cases Conducted under the Auspices of the PCA or with the Cooperation of the International Bureau*, Permanent Court of Arbitration's Annual Report of 2011. On page 51, the Permanent Court of Arbitration ("PCA") reported that Larsen – Hawaiian Kingdom arbitration was established "[p]ursuant to article 47 of the 1907 Convention (article 26 of the 1899 Convention)."

3. Exhibit 3 is a true and correct copy of the 1907 Hague Convention, I, for the Pacific Settlement of International Disputes, 36 Stat. 2199, and referred to by the PCA as the 1907 Convention. Article 47 of the 1907 Convention provides access to the PCA for non-Contracting Powers or States.

4. Exhibit 4 is a true and correct copy of the PCA's case repository for *Larsen v. Hawaiian Kingdom*, which is also accessible on the PCA's website at https://pca-cpa.org/en/cases/35/. The PCA acknowledges the Hawaiian Kingdom as a "State" and the Council of Regency as its government.

5. Exhibit 5 is a true and correct copy of Professor Federico Lenzerini's legal memorandum "Civil Law on Juridical Fact of the Hawaiian State and the Consequential Juridical Act by the Permanent Court of Arbitration" [ECF 174-2].

6. Exhibit 6 is a true and correct copy of Professor Federico Lenzerini's "Legal Opinion on the Authority of the Council of Regency of the Hawaiian Kingdom" [ECF 55-2].

7. Exhibit 7 is a true and correct copy of the Declaration of Dr. David Keanu Sai [ECF 55-1] attesting to an agreement brokered by the PCA Deputy Secretary General Phyllis Hamilton between the Council of Regency and the United States granting access to all records and pleadings in the *Larsen v. Hawaiian Kingdom* arbitral proceedings.

DATED: Honolulu, Hawai'i, September 6, 2022.

Respectfully submitted,

/s/ Dexter K. Ka'iama

DEXTER K. KA'IAMA (Bar No. 4249)
Respondent

Exhibit "1"

TREATY WITH THE HAWAIIAN ISLANDS, DEC. 20, 1849.

Dec. 20, 1849.

Ratifications exchanged at Honolulu Aug. 24, 1850.

Proclamation made Nov. 9, 1850.

Preamble.

WHEREAS a treaty of friendship, commerce, and navigation, between the United States of America and his Majesty the King of the Hawaiian Islands, was concluded and signed at Washington, on the twentieth day of December, in the year of our Lord one thousand eight hundred and forty-nine, the original of which treaty is, word for word, as follows:—

The United States of America and his Majesty the King of the Hawaiian Islands, equally animated with the desire of maintaining the relations of good understanding which have hitherto so happily subsisted between their respective states, and consolidating the commercial intercourse between them, have agreed to enter into negotiations for the conclusion of a treaty of friendship, commerce, and navigation, for which purpose they have appointed plenipotentiaries, that is to say: The President of the United States of America, John M. Clayton, Secretary of State of the United States; and his Majesty the King of the Hawaiian Islands, James Jackson Jarves, accredited as his special commissioner to the government of the United States; who, after having exchanged their full powers, found in good and due form, have concluded and signed the following articles:—

ARTICLE I.

Peace and amity.

There shall be perpetual peace and amity between the United States and the King of the Hawaiian Islands, his heirs and his successors.

ARTICLE II.

Reciprocal freedom of trade.

There shall be reciprocal liberty of commerce and navigation between the United States of America and the Hawaiian Islands. No duty of customs, or other impost, shall be charged upon any goods, the produce or manufacture of one country, upon importation from such country into the other, other or higher than the duty of impost charged upon goods of the same kind, the produce or manufacture of, or imported from, any other country; and the United States of America and his Majesty the King of the Hawaiian Islands do hereby engage, that the subjects or citizens of any other state shall not enjoy any favor, privilege, or immunity, whatever, in matters of commerce and navigation, which shall not also, at the same time, be extended to the subjects or citizens of the other contracting party, gratuitously, if the concession in favor of that other state shall have been gratuitous, and in return for a compensation, as nearly as possible of proportionate value and effect, to be adjusted by mutual agreement, if the concession shall have been conditional.

"Most-favored nation" stipulation.

ARTICLE III.

Same subject

All articles, the produce or manufacture of either country, which can legally be imported into either country from the other, in ships of that other country, and thence coming, shall, when so imported, be subject to the same duties, and enjoy the same privileges, whether imported in ships of the one country, or in ships of the other; and in like manner, all goods which can legally be exported or re-exported

from either country to the other, in ships of that other country, shall, when so exported or re-exported, be subject to the same duties, and be entitled to the same privileges, drawbacks, bounties, and allowances, whether exported in ships of the one country, or in ships of the other; and all goods and articles, of whatever description, not being of the produce or manufacture of the United States, which can be legally imported into the Sandwich Islands, shall, when so imported in vessels of the United States, pay no other or higher duties, imposts, or charges, than shall be payable upon the like goods and articles, when imported in the vessels of the most favored foreign nation, other than the nation of which the said goods and articles are the produce or manufacture.

ARTICLE IV.

Tonnage &c. duties.

No duties of tonnage, harbor, lighthouses, pilotage, quarantine, or other similar duties, of whatever nature, or under whatever denomination, shall be imposed in either country upon the vessels of the other, in respect of voyages between the United States of America and the Hawaiian Islands, if laden, or in respect of any voyage, if in ballast, which shall not be equally imposed in the like cases on national vessels.

ARTICLE V.

Provisions of this treaty not to extend to coasting trade.

It is hereby declared, that the stipulations of the present treaty are not to be understood as applying to the navigation and carrying trade between one port and another, situated in the states of either contracting party, such navigation and trade being reserved exclusively to national vessels.

ARTICLE VI.

Privileges of steam vessels carrying mails.

Steam vessels of the United States which may be employed by the government of the said States, in the carrying of their public mails across the Pacific Ocean, or from one port in that ocean to another, shall have free access to the ports of the Sandwich Islands, with the privilege of stopping therein to refit, to refresh, to land passengers and their baggage, and for the transaction of any business pertaining to the public mail service of the United States, and shall be subject in such ports to no duties of tonnage, harbor, lighthouses, quarantine, or other similar duties of whatever nature or under whatever denomination.

ARTICLE VII.

Privileges of whale ships.

The whale ships of the United States shall have access to the ports of Hilo, Kealakekua, and Hanalei, in the Sandwich Islands, for the purposes of refitment and refreshment, as well as to the ports of Honolulu and Lahaina, which only are ports of entry for all merchant vessels; and in all the above-named ports, they shall be permitted to trade or barter their supplies or goods, excepting spirituous liquors, to the amount of two hundred dollars *ad valorem* for each vessel, without paying any charge for tonnage or harbor dues of any description, or any duties or imposts whatever upon the goods or articles so traded or bartered. They shall also be permitted, with the like exemption from all charges for tonnage and harbor dues, further to trade or barter, with the same exception as to spirituous liquors, to the additional amount of one thousand dollars *ad valorem*, for each vessel, paying upon the additional goods and articles so traded and bartered, no other or higher duties than are payable on like goods and articles, when imported in the vessels and by the citizens or subjects of the most favored foreign nation. They shall also be permitted to pass from port to port of the Sandwich Islands, for the purpose of procuring refreshments, but they

shall not discharge their seamen or land their passengers in the said Islands, except at Lahaina and Honolulu; and in all the ports named in this article, the whale ships of the United States shall enjoy, in all respects whatsoever, all the rights, privileges, and immunities, which are enjoyed by, or shall be granted to, the whale ships of the most favored foreign nation. The like privilege of frequenting the three ports of the Sandwich Islands, above named in this article, not being ports of entry for merchant vessels, is also guaranteed to all the public armed vessels of the United States. But nothing in this article shall be construed as authorizing any vessel of the United States, having on board any disease usually regarded as requiring quarantine, to enter, during the continuance of such disease on board, any port of the Sandwich Islands, other than Lahaina or Honolulu.

ARTICLE VIII.

Privileges of citizens of U. S. in Hawaiian Islands, and vice versa.

The contracting parties engage, in regard to the personal privileges, that the citizens of the United States of America shall enjoy in the dominions of his Majesty the King of the Hawaiian Islands, and the subjects of his said Majesty in the United States of America, that they

Travel.

shall have free and undoubted right to travel and to reside in the states of the two high contracting parties, subject to the same precautions of police which are practiced towards the subjects or citizens of the most favored nations. They shall be entitled to occupy dwellings and warehouses, and to dispose of their personal property of every kind and

Trade.

description, by sale, gift, exchange, will, or in any other way whatever,

Heirship.

without the smallest hindrance or obstacle; and their heirs or representatives, being subjects or citizens of the other contracting party, shall succeed to their personal goods, whether by testament or *ab intestato*; and may take possession thereof, either by themselves or by others acting for them, and dispose of the same at will, paying to the profit of the respective governments, such dues only as the inhabitants of the country wherein the said goods are, shall be subject to pay in like cases. And in case of the absence of the heir and representative, such care shall be taken of the said goods as would be taken of the goods of a native of the same country in like case, until the lawful owner may take measures for receiving them. And if a question should arise among several claimants as to which of them said goods belong, the same shall be decided finally by the laws and judges of the

Real estate.

land wherein the said goods are. Where, on the decease of any person holding real estate within the territories of one party, such real estate would, by the laws of the land, descend on a citizen or subject of the other, were he not disqualified by alienage, such citizen or subject shall be allowed a reasonable time to sell the same, and to withdraw the proceeds without molestation, and exempt from all duties of detraction on the part of the government of the respective states.

Taxes.

The citizens or subjects of the contracting parties shall not be obliged to pay, under any pretence whatever, any taxes or impositions other or greater than those which are paid, or may hereafter be paid, by the subjects or citizens of the most favored nations, in the respective states of the high contracting parties. They shall be exempt from all mili-

Military service.

tary service, whether by land or by sea; from forced loans; and from every extraordinary contribution not general and by law established. Their dwellings, warehouses, and all premises appertaining thereto, destined for the purposes of commerce or residence, shall be respected.

Right of search of tenements.

No arbitrary search of, or visit to, their houses, and no arbitrary examination or inspection whatever of the books, papers, or accounts of their trade, shall be made; but such measures shall be executed only in conformity with the legal sentence of a competent tribunal; and

each of the two contracting parties engages that the citizens or subjects of the other residing in their respective states shall enjoy their property and personal security, in as full and ample manner as their own citizens or subjects, or the subjects or citizens of the most favored nation, but subject always to the laws and statutes of the two countries respectively.

ARTICLE IX.

Trade in either country with citizens of the country.

The citizens and subjects of each of the two contracting parties shall be free in the states of the other to manage their own affairs themselves, or to commit those affairs to the management of any persons whom they may appoint as their broker, factor, or agent; nor shall the citizens and subjects of the two contracting parties be restrained in their choice of persons to act in such capacities; nor shall they be called upon to pay any salary or remuneration to any person whom they shall not choose to employ.

Absolute freedom shall be given in all cases to the buyer and seller to bargain together, and to fix the price of any goods or merchandise imported into, or to be exported from, the states and dominions of the two contracting parties, save and except generally such cases wherein the laws and usages of the country may require the intervention of any special agents in the states and dominions of the contracting parties. But nothing contained in this or any other article of the present treaty shall be construed to authorize the sale of spirituous liquors to the natives of the Sandwich Islands, further than such sale may be allowed by the Hawaiian laws.

ARTICLE X.

Consuls, &c.

Each of the two contracting parties may have, in the ports of the other, consuls, vice-consuls, and commercial agents, of their own appointment, who shall enjoy the same privileges and powers with those of the most favored nations; but if any such consuls shall exercise commerce, they shall be subject to the same laws and usages to which the private individuals of their nation are subject in the same place.

Deserters from vessels.

The said consuls, vice-consuls, and commercial agents, are authorized to require the assistance of the local authorities for the search, arrest, detention and imprisonment of the deserters from the ships of war and merchant vessels of their country. For this purpose they shall apply to the competent tribunals, judges, and officers, and shall, in writing, demand the said deserters, proving, by the exhibition of the registers of the vessels, the rolls of the crews, or by other official documents, that such individuals formed part of the crews; and this reclamation being thus substantiated, the surrender shall not be refused. Such deserters, when arrested, shall be placed at the disposal of the said consuls, vice-consuls, or commercial agents, and may be confined in the public prisons, at the request and cost of those who shall claim them, in order to be detained until the time when they shall be restored to the vessel to which they belonged, or sent back to their own country by a vessel of the same nation, or any other vessel whatsoever. The agents, owners, or masters of vessels on account of whom the deserters have been apprehended, upon requisition of the local authorities, shall be required to take or send away such deserters from the states and dominions of the contracting parties, or give such security for their good conduct as the law may require. But if not sent back nor reclaimed within six months from the day of their arrest, or if all the expenses of such imprisonment are not defrayed by the party causing such arrest and imprisonment, they shall be set at liberty, and shall not be again arrested for the same cause. However, if the deserters should

be found to have committed any crime or offence, their surrender may be delayed until the tribunal before which their case shall be depending shall have pronounced its sentence, and such sentence shall have been carried into effect.

ARTICLE XI.

Liberty of conscience.

It is agreed that perfect and entire liberty of conscience shall be enjoyed by the citizens and subjects of both the contracting parties, in the countries of the one and the other, without their being liable to be disturbed or molested on account of their religious belief. But nothing contained in this article shall be construed to interfere with the exclusive right of the Hawaiian government to regulate for itself the schools which it may establish or support within its jurisdiction.

Proviso as to schools.

ARTICLE XII.

Wrecks.

If any ships of war or other vessels be wrecked on the coasts of the states or territories of either of the contracting parties, such ships or vessels, or any parts thereof, and all furniture and appurtenances belonging thereunto, and all goods and merchandise which shall be saved therefrom, or the produce thereof, if sold, shall be faithfully restored with the least possible delay to the proprietors, upon being claimed by them, or by their duly authorized factors; and if there are no such proprietors or factors on the spot, then the said goods and merchandise, or the proceeds thereof, as well as all the papers found on board such wrecked ships or vessels, shall be delivered to the American or Hawaiian consul, or vice-consul, in whose district the wreck may have taken place; and such consul, vice-consul, proprietors, or factors, shall pay only the expenses incurred in the preservation of the property, together with the rate of salvage and expenses of quarantine which would have been payable in the like case of a wreck of a national vessel; and the goods and merchandise saved from the wreck shall not be subject to duties unless entered for consumption, it being understood that in case of any legal claim upon such wreck, goods, or merchandise, the same shall be referred for decision to the competent tribunals of the country.

ARTICLE XIII.

Vessels driven into port by stress of weather.

The vessels of either of the two contracting parties which may be forced by stress of weather or other cause into one of the ports of the other, shall be exempt from all duties of port or navigation paid for the benefit of the state, if the motives which led to their seeking refuge be real and evident, and if no cargo be discharged or taken on board, save such as may relate to the subsistence of the crew, or be necessary for the repair of the vessels, and if they do not stay in port beyond the time necessary, keeping in view the cause which led to their seeking refuge.

ARTICLE XIV.

Extradition of criminals.

The contracting parties mutually agree to surrender, upon official requisition, to the authorities of each, all persons who, being charged with the crimes of murder, piracy, arson, robbery, forgery, or the utterance of forged paper, committed within the jurisdiction of either, shall be found within the territories of the other, provided that this shall only be done upon such evidence of criminality as, according to the laws of the place where the person so charged shall be found, would justify his apprehension and commitment for trial, if the crime had there been committed; and the respective judges and other magistrates of the two governments shall have authority, upon complaint made under oath, to

issue a warrant for the apprehension of the person so charged, that he may be brought before such judges or other magistrates respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive. The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive.

ARTICLE XV.

Mail arrangements.

So soon as steam or other mail packets under the flag of either of the contracting parties shall have commenced running between their respective ports of entry, the contracting parties agree to receive at the post-offices of those ports all mailable matter, and to forward it as directed, the destination being to some regular post-office of either country, charging thereupon the regular postal rates as established by law in the territories of either party receiving said mailable matter, in addition to the original postage of the office whence the mail was sent. Mails for the United States shall be made up at regular intervals at the Hawaiian post-office, and despatched to ports of the United States; the postmasters at which ports shall open the same, and forward the enclosed matter as directed, crediting the Hawaiian government with their postages as established by law, and stamped upon each manuscript or printed sheet.

All mailable matter destined for the Hawaiian Islands shall be received at the several post-offices in the United States, and forwarded to San Francisco, or other ports on the Pacific coast of the United States, whence the postmasters shall despatch it by the regular mail packets to Honolulu, the Hawaiian government agreeing on their part to receive and collect for and credit the post-office department of the United States with the United States' rates charged thereupon. It shall be optional to prepay the postage on letters in either country, but postage on printed sheets and newspapers shall in all cases be prepaid. The respective post-office departments of the contracting parties shall in their accounts, which are to be adjusted annually, be credited with all dead letters returned.

ARTICLE XVI.

Continuance of this treaty.

The present treaty shall be in force from the date of the exchange of the ratifications, for the term of ten years, and further, until the end of twelve months after either of the contracting parties shall have given notice to the other of its intention to terminate the same, each of the said contracting parties reserving to itself the right of giving such notice at the end of the said term of ten years, or at any subsequent term.

Any citizen or subject of either party infringing the articles of this treaty shall be held responsible for the same, and the harmony and good correspondence between the two governments shall not be interrupted thereby, each party engaging in no way to protect the offender, or sanction such violation.

ARTICLE XVII.

Ratification.

The present treaty shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate of the said States, and by his Majesty the King of the Hawaiian Islands, by and with the advice of his Privy Council of State, and the

ratification shall be exchanged at Honolulu within eighteen months from the date of its signature, or sooner if possible.

In witness whereof, the respective plenipotentiaries have signed the same in triplicate, and have thereto affixed their seals.

Done at Washington, in the English language, the twentieth day of December, in the year one thousand eight hundred and forty-nine. Date.

JOHN M. CLAYTON, [SEAL.]
JAMES JACKSON JARVES. [SEAL.]

Exhibit "2"

CASES CONDUCTED UNDER THE AUSPICES OF THE PCA OR WITH THE COOPERATION OF THE INTERNATIONAL BUREAU

For summaries of the arbitral awards in many of these cases, see P. Hamilton, et al., *The Permanent Court of Arbitration: International Arbitration and Dispute Resolution - Summaries of Awards, Settlement Agreements and Reports* (Kluwer Law International 1999) pp. 29-281, and B. Macmahon and F. Smith, *Permanent Court of Arbitration Summaries of Awards 1999-2009* (TMC Asser Press 2010) pp. 39-312.

	Parties	Case	Date Initiated	Date of Award	Arbitrators[1]
1.	United States of America - Republic of Mexico	Pious Fund of the Californias	22 - 05 - 1902	14 - 10 - 1902	**Matzen** Sir Fry de Martens Asser de Savornin Lohman
2.	Great Britain, Germany and Italy - Venezuela	Preferential Treatment of Claims of Blockading Powers Against Venezuela	07 - 05 - 1903	22 - 02 - 1904	**Mourawieff** Lammasch de Martens
3.	Japan - Germany, France and Great Britain	Japanese House Tax leases held in perpetuity	28 - 08 - 1902	22 - 05 - 1905	**Gram** Renault Motono
4.	France - Great Britain	Muscat Dhows fishing boats of Muscat	13 - 10 - 1904	08 - 08 - 1905	**Lammasch** Fuller de Savornin Lohman
5.	France - Germany	Deserters of Casablanca	10/24 - 11 - 1908	22 - 05 - 1909	**Hammarskjöld** Sir Fry Fusinato Kriege Renault
6.	Norway - Sweden[2]	Maritime Boundary Grisbådarna Case	14 - 03 - 1908	23 - 10 - 1909	**Loeff**[3] Beichmann Hammarskjöld
7.	United States of America - Great Britain	North Atlantic Coast Fisheries	27 - 01 - 1909	07 - 09 - 1910	**Lammasch** de Savornin Lohman Gray Sir Fitzpatrick Drago
8.	United States of Venezuela - United States of America	Orinoco Steamship Company	13 - 02 - 1909	25 - 10 - 1910	**Lammasch** Beernaert de Quesada
9.	France - Great Britain	Arrest and Restoration of Savarkar	25 - 10 - 1910	24 - 02 - 1911	**Beernaert** Ce de Desart Renault Gram de Savornin Lohman

1. The names of the presidents are typeset in bold.
2. Pursuant to article 47 of the 1907 Convention (article 26 of the 1899 Convention).
3. Not a Member of the Permanent Court of Arbitration.
4. The proceedings of this case were conducted in writing exclusively.
5. In this case the summary procedure provided for in Chapter IV of the 1907 Convention was applied.

	Parties	Case	Date Initiated	Date of Award	Arbitrators[1]
10.	Italy - Peru	Canevaro Claim	25 - 04 - 1910	03 - 05 - 1912	**Renault** Fusinato Alvarez Calderón
11.	Russia - Turkey[2]	Russian Claim for Indemnities damages claimed by Russia for delay in payment of compensation owed to Russians injured in the war of 1877-1878	22 - 07 - 1910/ 04 - 08 - 1910	11 - 11 - 1912	**Lardy** Bon de Taube Mandelstam[3] H.A. Bey[3] A.R. Bey[3]
12.	France - Italy	French Postal Vessel "Manouba"	26 - 01 - 1912/ 06 - 03 - 1912	06 - 05 - 1913	**Hammarskjöld** Fusinato Kriege Renault Bon de Taube
13.	France - Italy	The "Carthage"	26 - 01 - 1912/ 06 - 03 - 1912	06 - 05 - 1913	**Hammarskjöld** Fusinato Kriege Renault Bon de Taube
14.	France - Italy	The "Tavignano," "Camouna" and "Gaulois" Incident	08 - 11 - 1912	Settled by agreement of parties	**Hammarskjöld** Fusinato Kriege Renault Bon de Taube
15.	The Netherlands - Portugal[4]	Dutch-Portuguese Boundaries on the Island of Timor	03 - 04 - 1913	25 - 06 - 1914	**Lardy**
16.	Great Britain, Spain and France - Portugal[5]	Expropriated Religious Properties	31 - 07 - 1913	02/04 - 09 - 1920	**Root** de Savornin Lohman Lardy
17.	France - Peru[2]	French claims against Peru	02 - 02 - 1914	11 - 10 - 1921	**Ostertag**[3] Sarrut[3] Elguera
18.	United States of America - Norway[2]	Norwegian shipowners' claims	30 - 06 - 1921	13 - 10 - 1922	**Vallotton**[3] Anderson[3] Vogt[3]
19.	United States of America - The Netherlands[4]	The Island of Palmas case (or Miangas)	23 - 01 - 1925	04 - 04 - 1928	**Huber**
20.	Great Britain - France[2]	Chevreau claims	04 - 03 - 1930	09 - 06 - 1931	**Beichmann**
21.	Sweden - United States of America[2]	Claims of the Nordstjernan company	17 - 12 - 1930	18 - 07 - 1932	**Borel**
22.	Radio Corporation of America - China[2]	Interpretation of a contract of radio-telegraphic traffic	10 - 11 - 1928	13 - 04 - 1935	**van Hamel**[3] Hubert[3] Furrer[3]
23.	States of Levant under French Mandate - Egypt[2]	Radio-Orient	11 - 11 - 1938	02 - 04 - 1940	**van Lanschot**[3] Raestad Mondrup[3]

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	Parties	Case	Date Initiated	Date of Award	Arbitrators[1]
24.	France - Greece[2]	Administration of lighthouses	15 - 07 - 1931	24 - 07 - 1956	**Verzijl**[3] Mestre Charbouris[3]
25.	Turriff Construction (Sudan) Limited - Sudan[2]	Interpretation of a construction contract	21 - 10 - 1966	23 - 04 - 1970	**Erades**[3] Parker[3] Bentsi-Enchill[3]
26.	United States of America - United Kingdom of Great Britain and Northern Ireland[2]	Heathrow Airport user charges treaty obligations; amount of damages	16 - 12 - 1988	30 - 11 - 1992 02 - 05 - 1994 Settlement on amount of damages	**Foighel**[3] Fielding[3] Lever[3]
27.	Moiz Goh Pte. Ltd - State Timber Corporation of Sri Lanka[2]	Contract dispute	14 - 12 - 1989	05 - 05 - 1997	**Pinto**[3]
28.	African State - two foreign nationals[2]	Investment dispute	-	30 - 09 - 1997 Settled by agreement of parties	-
29.	Technosystem SpA - Taraba State Government and the Federal Government of Nigeria[2]	Contract dispute	21 - 02 - 1996	25 - 11 - 1996 Lack of jurisdiction	**Ajibola**
30.	Asian State-owned enterprise - three European enterprises[2]	Contract dispute	-	02 - 10 - 1996 Award on agreed terms	-
31.	State of Eritrea - Republic of Yemen[2]	Eritrea/Yemen: Sovereignty of various Red Sea Islands sovereignty; maritime delimitation	03 - 10 - 1996	09 - 10 - 1998 Award on sovereignty 17 - 12 - 1999 Award on maritime delimitation	**Jennings** Schwebel[3] El-Kosheri[3] Highet[3] Higgins
32.	Italy - Costa Rica[2]	Loan agreement between Italy and Costa Rica dispute arising under financing agreement	11 - 09 - 1997	26 - 06 - 1998	**Lalive**[3] Ferrari Bravo Hernandez Valle[3]
33.	Larsen - Hawaiian Kingdom[2]	Treaty interpretation	30 - 10 - 1999	05 - 02 - 2001	**Crawford**[3] Greenwood[3] Griffith[3]
34.	The Netherlands - France[2]	Treaty interpretation	21 - 10 -/17 - 12 - 1999	12 - 03 - 2004	**Skubiszewski** Guillaume Kooijmans[3]
35.	European corporation - African government	Contract dispute	04 - 08 - 2000	18 - 02 - 2003 Settled by agreement of parties	-
36.	Eritrea-Ethiopia Boundary Commission[2]	Boundary dispute	12 - 12 - 2000	13 - 04 - 2002	**Lauterpacht** Ajibola Reisman[3] Schwebel[3] Watts

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	Parties	Case	Date Initiated	Date of Award	Arbitrators[1]
37.	Eritrea-Ethiopia Claims Commission[2]	Settlement of claims arising from armed conflict	12 - 12 - 2000	01 - 07 - 2003 Partial Awards for prisoner of war claims 28 - 04 - 2004 Partial Awards for Central Front claims 17 - 12 - 2004 Partial Awards for civilians claims 19 - 12 - 2005 Partial Awards for remaining liability claims 17 - 08 - 2009 Final Award for damages	**van Houtte**[3] Aldrich[3] Crook[3] Paul[3] Reed[3]
38.	Dr. Horst Reineccius; First Eagle SoGen Funds, Inc.; Mr.P.M. Mathieu - Bank for International Settlements[2]	Dispute with former private shareholders	07 - 03 - 2001 31 - 08 - 2001 24 - 10 - 2001	22 - 11 - 2002 Partial Award 19 - 09 - 2003 Final Award	**Reisman**[3] van den Berg[3] Frowein[3] Krafft[3] Lagarde[3]
39.	Ireland - United Kingdom[2]	Proceedings pursuant to the OSPAR Convention	15 - 06 - 2001	02 - 07 - 2003	**Reisman**[3] Griffith[3] Mustill[3]
40.	Saluka Investments B.V. - Czech Republic[2]	Investment treaty dispute	18 - 06 - 2001	17 - 03 - 2006 Partial Award	**Watts** Behrens[3] Fortier[3]
41.	Ireland - United Kingdom[2]	Proceedings pursuant to the Law of the Sea Convention (UNCLOS) "MOX Plant Case"	25 - 10 - 2001	06 - 06 - 2008 Termination order following withdrawal of claim	**Mensah**[3] Fortier[3] Hafner Crawford[3] Watts
42.	European government - European corporation[2]	Investment treaty dispute	30 - 04 - 2002	24 - 05 - 2004 Settled by agreement of parties	-
43.	Two corporations - Asian government[2]	Contract dispute	16 - 08 - 2002	12 - 10 - 2004 Partial Award	-
44.	Telekom Malaysia Berhad - Government of Ghana[2]	Investment treaty dispute	10 - 02 - 2003	01 - 11 - 2005 Award on agreed terms	**Van den Berg**[3] Gaillard[3] Layton[3]
45.	Belgium - The Netherlands[2]	Dispute regarding the use and modernization of the "IJzeren Rijn" on the territory of The Netherlands	22/23 - 07 - 2003	24 - 05 - 2005	**Higgins** Schrans[3] Simma[3] Soons[3] Tomka
46.	Barbados - Trinidad and Tobago[2]	Proceedings pursuant to the Law of the Sea Convention (UNCLOS)	16 - 02 - 2004	11 - 04 - 2006	**Schwebel**[3] Brownlie[3] Orrego Vicuña[3] Lowe[3] Watts
47.	Guyana - Suriname[2]	Proceedings pursuant to the Law of the Sea Convention (UNCLOS)	24 - 02 - 2004	17 - 09 - 2007	**Nelson**[3] Hossain[3] Franck[3] Shearer Smit[3]

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	Parties	Case	Date Initiated	Date of Award	Arbitrators[1]
48.	Malaysia - Singapore[2]	Proceedings pursuant to the Law of the Sea Convention (UNCLOS)	04 - 07 - 2003	01 - 09 - 2005 Award on agreed terms	**Pinto**[3] Hossain[3] Shearer Oxman[3] Watts
49.	1.The Channel Tunnel Group Limited 2. France-Mache S.A. - 1. United Kingdom 2. France[2]	Proceedings pursuant to the Treaty of Canterbury Concerning the Construction and Operation by Private Concessionaires of a Channel Fixed Link (Eurotunnel)	17 - 12 - 2003	30 - 01 - 2007 Partial Award 2010 Termination order	**Crawford**[3] Fortier[3] Guillaume Millett[3] Paulsson
50.	Chemtura Corporation (formerly Crompton Corporation) - Government of Canada[2]	Proceedings conducted under Chapter Eleven of the North American Free Trade Agreement (NAFTA)	17 - 10 - 2002/ 17 - 02 - 2005	02 - 08 - 2010	**Kaufmann-Kohler**[3] Brower[3] Crawford[3]
51.	Vito G. Gallo - Government of Canada[2]	Proceedings conducted under Chapter Eleven of the North American Free Trade Agreement (NAFTA)	30 - 03 - 2007	15 - 9 - 2011	**Fernández-Armesto**[3] Castel[3] Lévy[3]
52.	Romak S.A. - The Republic of Uzbekistan[2]	Proceedings pursuant to the Agreement between the Swiss Confederation and the Republic of Uzbekistan on the Promotion and the Reciprocal Protection of Investments	06 - 09 - 2007	26 - 11 - 2009	**Mantilla-Serrano**[3] Rubins[3] Molfessis[3]
53.	The Government of Sudan - The Sudan People's Liberation Movement/Army[2]	Delimitation of the Abyei area	11 - 07 - 2008	22 - 07 - 2009	**Dupuy**[3] Al-Khasawneh Hafner Reisman[3] Schwebel
54.	Centerra Gold Inc. & Kumtor Gold Co. - Kyrgyz Republic[2]	Investment agreement dispute	08 - 03 - 2006	29 - 06 - 2009 Termination order	**Van den Berg**[3]
55.	TCW Group & Dominican Energy Holdings - Dominican Republic[2]	Proceedings conducted under the Central America-DR-USA Free Trade Agreement (CAFTA-DR)	21 - 12 - 2007	16 - 07 - 2009 Consent Award	**Böckstiegel**[3] Fernández-Armesto[3] Kantor[3]
56.	Bilcon of Delaware *et al.* - Government of Canada[2]	Proceedings conducted under Chapter Eleven of the North American Free Trade Agreement (NAFTA)	26-05-2008	-	**Simma**[3] McRae Schwartz[3]

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4. The proceedings of this case were conducted in writing exclusively.
5. In this case the summary procedure provided for in Chapter IV of the 1907 Convention was applied.

	Parties	Case	Date Initiated	Date of Award	Arbitrators[1]
57.	HICEE B.V. - The Slovak Republic[2]	Proceedings pursuant to the Agreement on Encouragement and Reciprocal Protection of Investments between the Kingdom of the Netherlands and the Czech and Slovak Federal Republic	17 - 12 - 2008	23 - 05 - 2011 Partial Award 17 - 10 - 2011 Supplementary and Final Award	**Berman** Tomka Brower[3]
58.	Polis Fundi Immobliare di Banche Popolare S.G.R.p.A - International Fund for Agricultural Development (IFAD)[2]	Contract dispute	10 - 11 - 2009	17 - 12 - 2010	**Reinisch**[3] Canu[3] Stern[3]
59.	European American Investment Bank AG - The Slovak Republic[2]	Proceedings pursuant to the Agreement Between the Republic of Austria and the Czech and Slovak Federal Republic Concerning the Promotion and Protection of Investments	23 - 11 - 2009	-	**Greenwood** Petsche[3] Stern[3]
60.	Bangladesh - India[2]	Proceedings pursuant to the Law of the Sea Convention (UNCLOS)	08 - 10 - 2009	-	**Wolfrum**[3] Mensah[3] Rao[3] Shearer Treves[3]
61.	China Heilongjiang International Economic & Technical Cooperative Corporation *et al.* - Mongolia[2]	Proceedings pursuant to the Agreement between the Government of the Mongolian People's Republic and the Government of the People's Republic of China concerning the Encouragement and Reciprocal Protection of Investments dated August 26, 1991	12 - 02 - 2010	-	**Donovan**[3] Banifatemi[3] Clodfelter[3]
62.	Chevron Corporation & Texaco Corporation - The Republic of Ecuador	Proceedings pursuant to the Treaty between the United States of America and the Republic of Ecuador concerning the Encouragement and Reciprocal Protection of Investment	22 - 05 - 2007	31 - 08 - 2011	**Böckstiegel**[3] Brower[3] Van den Berg[3]

1. The names of the presidents are typeset in bold.
2. Pursuant to article 47 of the 1907 Convention (article 26 of the 1899 Convention).
3. Not a Member of the Permanent Court of Arbitration.
4. The proceedings of this case were conducted in writing exclusively.
5. In this case the summary procedure provided for in Chapter IV of the 1907 Convention was applied.

	Parties	Case	Date Initiated	Date of Award	Arbitrators[1]
63.	Achmea B.V. (formerly known as Eureko B.V.) - The Slovak Republic	Proceedings pursuant to the Agreement on Encouragement and Reciprocal Protection of Investments Between the Kingdom of the Netherlands and the Czech and Slovak Federal Republic	01 – 10 – 2008		**Lowe**[3] Van den Berg[3] Veeder[3]
64.	Chevron Corporation & Texaco Corporation - The Republic of Ecuador	Proceedings pursuant to the Treaty between the United States of America and the Republic of Ecuador concerning the Encouragement and Reciprocal Protection of Investment	23 – 09 – 2009		**Veeder**[3] Grigera Naón[3] Lowe[3]
65.	Pakistan – India	Indus Waters Treaty Arbitration	17 – 05 – 2010		**Schwebel** Berman Wheater[3] Caflisch Paulsson Simma[3] Tomka
66.	Guaracachi America, Inc. & Rurelec PLC – The Plurinational State of Bolivia	Proceedings pursuant to the Treaty between the Government of the United States of America and the Government of the Republic of Bolivia Concerning the Encouragement and Reciprocal Protection of Investment and the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Republic of Bolivia for the Promotion and Protection of Investments	10 – 11 – 2010		**Júdice**[3] Conthe[3] Vinuesa
67.	The Republic of Mauritius - The United Kingdom of Great Britain and Northern Ireland	Proceedings pursuant to the Law of the Sea Convention (UNCLOS)	20 – 12 – 2010		**Shearer** Greenwood Hoffmann[3] Kateka[3] Wolfrum[3]

1. The names of the presidents are typeset in bold.
2. Pursuant to article 47 of the 1907 Convention (article 26 of the 1899 Convention).
3. Not a Member of the Permanent Court of Arbitration.
4. The proceedings of this case were conducted in writing exclusively.
5. In this case the summary procedure provided for in Chapter IV of the 1907 Convention was applied.

Exhibit "3"

Convention between the United States and other Powers for the pacific settlement of international disputes. Signed at The Hague October 18, 1907; ratification advised by the Senate April 2, 1908; ratified by the President of the United States February 23, 1909; ratification deposited with the Netherlands Government November 27, 1909; proclaimed February 28, 1910.

October 18, 1907.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

International arbitration. Preamble.

Whereas a Convention for the Pacific Settlement of International Disputes was concluded and signed at The Hague on October 18, 1907, by the respective Plenipotentiaries of the United States of America, Germany, the Argentine Republic, Austria-Hungary, Belgium, Bolivia, Brazil, Bulgaria, Chile, China, Colombia, Cuba, Denmark, the Dominican Republic, Ecuador, Spain, France, Great Britain, Greece, Guatemala, Haiti, Italy, Japan, Luxemburg, Mexico, Montenegro, Norway, Panama, Paraguay, the Netherlands, Peru, Persia, Portugal, Roumania, Russia, Salvador, Servia, Siam, Sweden, Switzerland, Turkey, Uruguay, and Venezuela, the original of which Convention, being in the French language is word for word as follows:

[Translation.]

I.

CONVENTION

POUR LE RÈGLEMENT PACIFIQUE DES CONFLITS INTERNATIONAUX.

SA MAJESTÉ L'EMPEREUR D'ALLEMAGNE, ROI DE PRUSSE; LE PRÉSIDENT DES ÉTATS-UNIS D'AMÉRIQUE; LE PRÉSIDENT DE LA RÉPUBLIQUE ARGENTINE; SA MAJESTÉ L'EMPEREUR D'AUTRICHE, ROI DE BOHÊME, ETC., ET ROI APOSTOLIQUE DE HONGRIE; SA MAJESTÉ LE ROI DES BELGES; LE PRÉSIDENT DE LA RÉPUBLIQUE DE BOLIVIE; LE PRÉSIDENT DE LA RÉPUBLIQUE DES ÉTATS-UNIS DU BRÉSIL; SON ALTESSE ROYALE LE PRINCE DE BULGARIE; LE PRÉSIDENT DE LA RÉPUBLIQUE DE CHILI; SA MAJESTÉ L'EMPEREUR DE CHINE; LE PRÉSIDENT DE LA RÉPUBLIQUE DE COLOMBIE; LE

I.

CONVENTION

FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES.

Contracting Powers.

His Majesty the German Emperor, King of Prussia; the President of the United States of America; the President of the Argentine Republic; His Majesty the Emperor of Austria, King of Bohemia, &c., and Apostolic King of Hungary; His Majesty the King of the Belgians; the President of the Republic of Bolivia; the President of the Republic of the United States of Brazil; His Royal Highness the Prince of Bulgaria; the President of the Republic of Chile; His Majesty the Emperor of China; the President of the Republic of Colombia; the Provisional Governor of the Republic of Cuba; His Majesty the King of Denmark; the President of the Dominican Republic; the President of the Republic of Ecuador; His Majesty the King

GOUVERNEUR PROVISOIRE DE LA RÉPUBLIQUE DE CUBA; SA MAJESTÉ LE ROI DE DANEMARK; LE PRÉSIDENT DE LA RÉPUBLIQUE DOMINICAINE; LE PRÉSIDENT DE LA RÉPUBLIQUE DE L'ÉQUATEUR; SA MAJESTÉ LE ROI D'ESPAGNE; LE PRÉSIDENT DE LA RÉPUBLIQUE FRANÇAISE; SA MAJESTÉ LE ROI DU ROYAUME-UNI DE GRANDE BRETAGNE ET D'IRLANDE ET DES TERRITOIRES BRITANNIQUES AU DELÀ DES MERS, EMPEREUR DES INDES; SA MAJESTÉ LE ROI DES HELLÈNES; LE PRÉSIDENT DE LA RÉPUBLIQUE DE GUATÉMALA; LE PRÉSIDENT DE LA RÉPUBLIQUE D'HAÏTI; SA MAJESTÉ LE ROI D'ITALIE; SA MAJESTÉ L'EMPEREUR DU JAPON; SON ALTESSE ROYALE LE GRAND-DUC DE LUXEMBOURG, DUC DE NASSAU; LE PRÉSIDENT DES ÉTATS-UNIS MEXICAINS; SON ALTESSE ROYALE LE PRINCE DE MONTÉNÉGRO; SA MAJESTÉ LE ROI DE NORVÈGE; LE PRÉSIDENT DE LA RÉPUBLIQUE DE PANAMA; LE PRÉSIDENT DE LA RÉPUBLIQUE DU PARAGUAY; SA MAJESTÉ LA REINE DES PAYS-BAS; LE PRÉSIDENT DE LA RÉPUBLIQUE DU PÉROU; SA MAJESTÉ IMPÉRIALE LE SCHAH DE PERSE; SA MAJESTÉ LE ROI DE PORTUGAL ET DES ALGARVES, ETC.; SA MAJESTÉ LE ROI DE ROUMANIE; SA MAJESTÉ L'EMPEREUR DE TOUTES LES RUSSIES; LE PRÉSIDENT DE LA RÉPUBLIQUE DU SALVADOR; SA MAJESTÉ LE ROI DE SERBIE; SA MAJESTÉ LE ROI DE SIAM; SA MAJESTÉ LE ROI DE SUÈDE; LE CONSEIL FÉDÉRAL SUISSE; SA MAJESTÉ L'EMPEREUR DES OTTOMANS; LE PRÉSIDENT DE LA RÉPUBLIQUE ORIENTALE DE L'URUGUAY; LE PRÉSIDENT DES ÉTATS-UNIS DE VÉNÉZUÉLA:

of Spain; the President of the French Republic; His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India; His Majesty the King of the Hellenes; the President of the Republic of Guatemala; the President of the Republic of Haïti; His Majesty the King of Italy; His Majesty the Emperor of Japan; His Royal Highness the Grand Duke of Luxemburg, Duke of Nassau; the President of the United States of Mexico; His Royal Highness the Prince of Montenegro; His Majesty the King of Norway; the President of the Republic of Panama; the President of the Republic of Paraguay; Her Majesty the Queen of the Netherlands; the President of the Republic of Peru; His Imperial Majesty the Shah of Persia; His Majesty the King of Portugal and of the Algarves, &c.; His Majesty the King of Roumania; His Majesty the Emperor of All the Russias; the President of the Republic of Salvador; His Majesty the King of Servia; His Majesty the King of Siam; His Majesty the King of Sweden; the Swiss Federal Council; His Majesty the Emperor of the Ottomans; the President of the Oriental Republic of Uruguay; the President of the United States of Venezuela:

Animés de la ferme volonté de concourir au maintien de la paix générale;

Résolus à favoriser de tous leurs efforts le règlement amiable des conflits internationaux;

Reconnaissant la solidarité qui unit les membres de la société des nations civilisées;

Voulant étendre l'empire du droit et fortifier le sentiment de la justice internationale;

Convaincus que l'institution permanente d'une juridiction arbitrale accessible à tous, au sein des Puissances independantes, peut contribuer efficacement à ce résultat;

Considérant les avantages d'une organisation générale et régulière de la procédure arbitrale;

Estimant avec l'Auguste Initiateur de la Conférence internationale de la Paix qu'il importe de consacrer dans un accord international les principes d'équité et de droit sur lesquels reposent la sécurité des Etats et le bien-être des peuples;

Désireux, dans ce but, de mieux assurer le fontionnement pratique des Commissions d'enquête et des tribunaux d'arbitrage et de faciliter le recours à la justice arbitrale lorsqu'il s'agit de litiges de nature à comporter une procédure sommaire;

Ont jugé nécessaire de reviser sur certains points et de compléter l'œuvre de la Première Conférence de la Paix pour le règlement pacifique des conflits internationaux;

Les Hautes Parties contractantes ont résolu de conclure une nouvelle Convention à cet effet et ont nommé pour Leurs Plénipotentiaires, savoir:

SA MAJESTÉ L'EMPEREUR D'ALLEMAGNE, ROI DE PRUSSE:

Son Excellence le baron Marschall de Bieberstein, Son ministre d'état, Son ambassadeur extraordinaire et plénipotentiaire à Constantinople;

Animated by the sincere desire to work for the maintenance of general peace; Purpose of convention.

Resolved to promote by all the efforts in their power the friendly settlement of international disputes;

Recognizing the solidarity uniting the members of the society of civilized nations;

Desirous of extending the empire of law and of strengthening the appreciation of international justice;

Convinced that the permanent institution of a Tribunal of Arbitration accessible to all, in the midst of independent Powers, will contribute effectively to this result;

Having regard to the advantages attending the general and regular organization of the procedure of arbitration;

Sharing the opinion of the august initiator of the International Peace Conference that it is expedient to record in an International Agreement the principles of equity and right on which are based the security of States and the welfare of peoples;

Being desirous, with this object, of insuring the better working in practice of Commissions of Inquiry and Tribunals of Arbitration, and of facilitating recourse to arbitration in cases which allow of a summary procedure;

Have deemed it necessary to revise in certain particulars and to complete the work of the First Peace Conference for the pacific settlement of international disputes; Vol. 32, p. 1779.

The High Contracting Parties have resolved to conclude a new Convention for this purpose, and have appointed the following as their Plenipotentiaries: Plenipotentiaries.

[Here follow the names of Plenipotentiaries.]

Plenipotentiaries—Continued.

M. le dr. Johannes Kriege, Son envoyé en mission extraordinaire à la présente Conférence, Son conseiller intime de légation et jurisconsulte au ministère Impérial des affaires étrangères, membre de la cour permanente d'arbitrage.

LE PRÉSIDENT DES ÉTATS-UNIS D'AMÉRIQUE:

Son Excellence M. Joseph H. Choate, ambassadeur extraordinaire;

Son Excellence M. Horace Porter, ambassadeur extraordinaire;

Son Excellence M. Uriah M. Rose, ambassadeur extraordinaire;

Son Excellence M. David Jayne Hill, envoyé extraordinaire et ministre plénipotentiaire de la République à La Haye;

M. Charles S. Sperry, contre-amiral, ministre plénipotentiaire;

M. George B. Davis, général de brigade, chef de la justice militaire de l'armée fédérale, ministre plénipotentiaire;

M. William I. Buchanan, ministre plénipotentiaire;

LE PRÉSIDENT DE LA RÉPUBLIQUE ARGENTINE:

Son Excellence M. Roque Saenz Peña, ancien ministre des affaires étrangères, envoyé extraordinaire et ministre plénipotentiaire de la République à Rome, membre de la cour permanente d'arbitrage;

Son Excellence M. Luis M. Drago, ancien ministre des affaires étrangères et des cultes de la République, député national, membre de la cour permanente d'arbitrage;

Son Excellence M. Carlos Rodriguez Larreta, ancien ministre des affaires étrangères et des cultes de la République, membre de la cour permanante d'arbitrage.

SA MAJESTÉ L'EMPEREUR D'AUTRICHE, ROI DE BOHÊME, ETC., ET ROI APOSTOLIQUE DE HONGRIE:

Son Excellence M. Gaëtan Mérey de Kapos-Mére, Son conseil-

Plenipotentiaries—Continued.

ler intime, Son ambassadeur extraordinaire et plénipotentiaire;

Son Excellence M. le baron Charles de Macchio, Son envoyé extraordinaire et ministre plénipotentiaire à Athènes.

SA MAJESTÉ LE ROI DES BELGES:

Son Excellence M. Beernaert, Son ministre d'état, membre de la chambre des représentants, membre de l'Institut de France et des Académies Royales de Belgique et de Roumanie, membre d'honneur de l'institut de droit international, membre de la cour permanente d'arbitrage;

Son Excellence M. J. Van den Heuvel, Son ministre d'état, ancien ministre de la justice;

Son Excellence M. le baron Guillaume, Son envoyé extraordinaire et ministre plénipotentiaire à La Haye, membre de l'académie Royale de Roumanie.

LE PRÉSIDENT DE LA RÉPUBLIQUE DE BOLIVIE:

Son Excellence M. Claudio Pinilla, ministre des affaires étrangères de la République, membre de la cour permanente d'arbitrage;

Son Excellence M. Fernando E. Guachalla, ministre plénipotentiaire à Londres.

LE PRÉSIDENT DE LA RÉPUBLIQUE DES ÉTATS-UNIS DU BRÉSIL:

Son Excellence M. Ruy Barbosa, ambassadeur extraordinaire et plénipotentiaire, membre de la cour permanente d'arbitrage;

Son Excellence M. Eduardo F. S. dos Santos Lisbôa, envoyé extraordinaire et ministre plénipotentiaire à La Haye.

SON ALTESSE ROYALE LE PRINCE DE BULGARIE:

M. Vrban Vinaroff, général-major de l'état-major, Son général à la suite;

M. Ivan Karandjouloff, procureur-général de la cour de cassation.

Plenipotentiaries—Continued.

LE PRÉSIDENT DE LA RÉPUBLIQUE DE CHILI:

Son Excellence M. Domingo Gana, envoyé extraordinaire et ministre plénipotentiaire de la République à Londres;

Son Excellence M. Augusto Matte, envoyé extraordinaire et ministre plénipotentiaire de la République à Berlin.

Son Excellence M. Carlos Concha, ancien ministre de la guerre, ancien président de la chambre des députés, ancien envoyé extraordinaire et ministre plénipotentiaire à Buenos Aires.

SA MAJESTÉ L'EMPEREUR DE CHINE:

Son Excellence M. Lou-Tseng-Tsiang, Son ambassadeur extraordinaire; Son Excellence M. Tsien-Sun, Son envoyé extraordinaire et ministre plénipotentiaire à La Haye.

LE PRÉSIDENT DE LA RÉPUBLIQUE DE COLOMBIE:

M. Jorge Holguin, général;

M. Santiago Pérez Triana;

Son Excellence M. Marceliano Vargas, général, envoyé extraordinaire et ministre plénipotentiaire de la République à Paris.

LE GOUVERNEUR PROVISOIRE DE LA RÉPUBLIQUE DE CUBA:

M. Antonio Sanchez de Bustamante, professeur de droit international à l'université de la Havane, sénateur de la République;

Son Excellence M. Gonzalo de Quesada y Aróstegui, envoyé extraordinaire et ministre plénipotentiaire de la République à Washington;

M. Manuel Sanguily, ancien directeur de l'institut d'enseignement secondaire de la Havane, sénateur de la République.

SA MAJESTÉ LE ROI DE DANEMARK:

Son Excellence M. Constantin Brun, Son chambellan, Son envoyé extraordinaire et ministre plénipotentiaire à Washington;

Plenipotentiaries—Continued.

M. Christian Frederik Scheller, contre-amiral;
M. Axel Vedel, Son chambellan, chef de section au ministère Royal des affaires étrangères.

LE PRÉSIDENT DE LA RÉPUBLIQUE DOMINICAINE:

M. Francisco Henriquez y Carvajal, ancien secrétaire d'état au ministère des affaires étrangères de la République, membre de la cour permanente d'arbitrage;
M. Apolinar Tejera, recteur de l'institut professionnel de la République, membre de la cour permanente d'arbitrage.

LE PRÉSIDENT DE LA RÉPUBLIQUE DE L'ÉQUATEUR

Son Excellence M. Victor Rendón, envoyé extraordinaire et ministre plénipotentiaire de la République à Paris et à Madrid;
M. Enrique Dorn y de Alsúa, chargé d'affaires.

SA MAJESTÉ LE ROI D'ESPAGNE:

Son Excellence M. W. R. de Villa-Urrutia, sénateur, ancien ministre des affaires étrangères, son ambassadeur extraordinaire et plénipotentiaire à Londres;
Son Excellence M. José de la Rica y Calvo, Son envoyé extraordinaire et ministre plénipotentiaire à La Haye;
M. Gabriel Maura y Gamazo, comte de Mortera, député aux Cortès.

LE PRÉSIDENT DE LA RÉPUBLIQUE FRANÇAISE:

Son Excellence M. Léon Bourgeois, ambassadeur extraordinaire de la République, sénateur, ancien président du conseil des ministres, ancien ministre des affaires étrangères, membre de la cour permanente d'arbitrage;
M. le baron d'Estournelles de Constant, sénateur, ministre plénipotentiaire de première classe, membre de la cour permanente d'arbitrage;

Plenipotentiaries—Continued.

M. Louis Renault, professeur à la faculté de droit à l'université de Paris, ministre plénipotentiaire honoraire, jurisconsulte du ministère des affaires étrangères, membre de l'Institut de France, membre de la cour permanente d'arbitrage;

Son Excellence M. Marcellin Pellet, envoyé extraordinaire et ministre plénipotentiaire de la République Française à La Haye.

SA MAJESTÉ LE ROI DU ROYAUME-UNI DE GRANDE BRETAGNE ET D'IRLANDE ET DES TERRITOIRES BRITANNIQUES AU DELÀ DES MERS, EMPEREUR DES INDES:

Son Excellence the Right Honourable Sir Edward Fry, G. C. B., membre du conseil privé, son ambassadeur extraordinaire, membre de la cour permanente d'arbitrage;

Son Excellence the Right Honourable Sir Ernest Mason Satow, G. C. M. G., membre du conseil privé, membre de la cour permanente d'arbitrage;

Son Excellence the Right Honourable Donald James Mackay Baron Reay, G. C. S. I., G. C. I.E., membre du conseil privé, ancien président de l'institut de droit international;

Son Excellence Sir Henry Howard, K. C. M. G., C. B., Son envoyé extraordinaire et ministre plénipotentiaire à La Haye.

SA MAJESTÉ LE ROI DES HELLÈNES:

Son Excellence M. Cléon Rizo Rangabé, Son envoyé extraordinaire et ministre plénipotentiaire à Berlin;

M. Georges Streit, professeur de droit international à l'université d'Athènes, membre de la cour permanente d'arbitrage.

LE PRÉSIDENT DE LA RÉPUBLIQUE DE GUATÉMALA:

M. José Tible Machado, chargé d'affaires de la République à La Haye et à Londres, membre de la cour permanente d'arbitrage;

M. Enrique Gómez Carillo, chargé d'affaires de la République à Berlin.

Plenipotentiaries—Continued.

LE PRÉSIDENT DE LA RÉPUBLIQUE D'HAÏTI:

Son Excellence M. Jean Joseph Dalbémar, envoyé extraordinaire et ministre plénipotentiaire de la République à Paris;

Son Excellence M. J. N. Léger, envoyé extraordinaire et ministre plénipotentiaire de la République à Washington;

M. Pierre Hudicourt, ancien professeur de droit international public, avocat au barreau de Port au Prince.

SA MAJESTÉ LE ROI D'ITALIE:

Son Excellence le Comte Joseph Tornielli Brusati Di Vergano, Sénateur du Royaume, ambassadeur de Sa Majesté le Roi à Paris, membre de la cour permanente d'arbitrage, président de la délégation Italienne.

Son Excellence M. le commandeur Guido Pompilj, député au parlement, sous-secrétaire d'état au ministère Royal des affaires étrangères;

M. le commandeur Guido Fusinato, conseiller d'état, député au parlement, ancien ministre de l'instruction.

SA MAJESTÉ L'EMPEREUR DU JAPON:

Son Excellence M. Keiroku Tsudzuki, Son ambassadeur extraordinaire et plénipotentiaire;

Son Excellence M. Aimaro Sato, Son envoyé extraordinaire et ministre plénipotentiaire à La Haye.

SON ALTESSE ROYALE LE GRAND DUC DE LUXEMBOURG, DUC DE NASSAU:

Son Excellence M. Eyschen, Son ministre d'état, président du Gouvernement Grand Ducal;

M. le comte de Villers, chargé d'affaires du Grand-Duché à Berlin.

LE PRÉSIDENT DES ÉTATS-UNIS MEXICAINS:

Son Excellence M. Gonzalo A. Esteva, envoyé extraordinaire et ministre plénipotentiaire de la République à Rome;

Plenipotentiaries—Continued.

Son Excellence M. Sebastian B. de Mier, envoyé extraordinaire et ministre plénipotentiaire de la République à Paris;

Son Excellence M. Francisco L. de la Barra, envoyé extraordinaire et ministre plénipotentiaire de la République à Bruxelles et à La Haye.

SON ALTESSE ROYALE LE PRINCE DE MONTÉNÉGRO:

Son Excellence M. Nelidow, conseiller privé Impérial actuel, ambassadeur de Sa Majesté l'Empereur de Toutes les Russies à Paris;

Son Excellence M. de Martens, conseiller privé Impérial, membre permanent du conseil du ministère Impérial des affaires étrangères de Russie;

Son Excellence M. Tcharykow, conseiller d'état Impérial actuel, envoyé extraordinaire et ministre plénipotentiaire de Sa Majesté l'Empereur de Toutes les Russies à La Haye.

SA MAJESTÉ LE ROI DE NORVÈGE:

Son Excellence M. Francis Hagerup, ancien président du conseil, ancien professeur de droit, Son envoyé extraordinaire et ministre plénipotentiaire à La Haye et à Copenhague, membre de la cour permanente d'arbitrage.

LE PRÉSIDENT DE LA RÉPUBLIQUE DE PANAMA:

M. Belisario Porras.

LE PRÉSIDENT DE LA RÉPUBLIQUE DU PARAGUAY:

Son Excellence M. Eusebio Machaïn, envoyé extraordinaire et ministre plénipotentiaire de la République à Paris;

M. le comte G. Du Monceau de Bergendal, consul de la République à Bruxelles.

SA MAJESTÉ LA REINE DES PAYS-BAS:

M. W. H. de Beaufort, Son ancien ministre des affaires étrangères, membre de la seconde chambre des états-généraux;

Plenipotentiaries—Continued.

Son Excellence M. T. M. C. Asser, Son ministre d'état, membre du conseil d'état, membre de la cour permanente d'arbitrage;

Son Excellence le jonkheer J. C. C. den Beer Poortugael, lieutenant-général en retraite, ancien ministre de la guerre, membre du conseil d'état;

Son Excellence le jonkheer J. A. Röell, Son aide de camp en service extraordinaire, vice-amiral en retraite, ancien ministre de la marine;

M. J. A. Loeff, Son ancien ministre de la justice, membre de la seconde chambre des états généraux.

LE PRÉSIDENT DE LA RÉPUBLIQUE DU PÉROU:

Son Excellence M. Carlos G. Candamo, envoyé extraordinaire et ministre plénipotentiaire de la République à Paris et à Londres, membre de la cour permanente d'arbitrage.

SA MAJESTÉ IMPÉRIALE LE SCHAH DE PERSE:

Son Excellence Samad Khan Momtazos Saltaneh, Son envoyé extraordinaire et ministre plénipotentiaire à Paris, membre de la cour permanente d'arbitrage;

Son Excellence Mirza Ahmed Khan Sadigh Ul Mulk, Son envoyé extraordinaire et ministre plénipotentiaire à La Haye.

SA MAJESTÉ LE ROI DE PORTUGAL ET DES ALGARVES, ETC.:

Son Excellence M. le marquis de Soveral, Son conseiller d'état, pair du Royaume, ancien ministre des affaires étrangères, Son envoyé extraordinaire et ministre plénipotentiaire à Londres, Son ambassadeur extraordinaire et plénipotentiaire;

Son Excellence M. le comte de Selir, Son envoyé extraordinaire et ministre plénipotentiaire à La Haye;

Son Excellence M. Alberto d'Oliveira, Son envoyé extraordinaire et ministre plénipotentiaire à Berne.

Plenipotentiaries—Continued.

SA MAJESTÉ LE ROI DE ROUMANIE:

Son Excellence M. Alexandre Beldiman, Son envoyé extraordinaire et ministre plénipotentiaire à Berlin;

Son Excellence M. Edgar Mavrocordato, Son envoyé extraordinaire et ministre plénipotentiaire à la Haye.

SA MAJESTÉ L'EMPEREUR DE TOUTES LES RUSSIES:

Son Excellence M. Nelidow, Son conseiller privé actuel, Son ambassadeur à Paris;

Son Excellence M. de Martens, Son conseiller privé, membre permanent du conseil du ministère Impérial des affaires étrangères, membre de la cour permanente d'arbitrage;

Son Excellence M. Tcharykow, Son conseiller d'état actuel, Son chambellan, Son envoyé extraordinaire et ministre plénipotentiaire à La Haye.

LE PRÉSIDENT DE LA RÉPUBLIQUE DU SALVADOR:

M. Pedro I. Matheu, chargé d'affaires de la République à Paris, membre de la cour permanente d'arbitrage;

M. Santiago Perez Triana, chargé d'affaires de la République à Londres.

SA MAJESTÉ LE ROI DE SERBIE:

Son Excellence M. Sava Grouïtch, général, président du conseil d'état;

Son Excellence M. Milovan Milovanovitch, Son envoyé extraordinaire et ministre plénipotentiaire à Rome, membre de la cour permanente d'arbitrage;

Son Excellence M. Michel Militchevitch, Son envoyé extraordinaire et ministre plénipotentiaire à Londres et à La Haye.

SA MAJESTÉ LE ROI DE SIAM:

Mom Chatidej Udom, major-général;

Plenipotentiaries—Continued.

M. C. Corragioni d'Orelli, Son conseiller de légation;
Luang Bhuvanarth Narübal, capitaine.

SA MAJESTÉ LE ROI DE SUÈDE, DES GOTHS ET DES VENDES:

Son Excellence M. Knut Hjalmar Leonard Hammarskjold, Son ancien ministre de la justice, Son envoyé extraordinaire et ministre plénipotentiaire à Copenhague, membre de la cour permanente d'arbitrage;
M. Johannes Hellner, Son ancien ministre sans portefeuille, ancien membre de la cour suprême de Suède, membre de la cour permanente d'arbitrage.

LE CONSEIL FÉDÉRAL SUISSE:

Son Excellence M. Gaston Carlin, envoyé extraordinaire et ministre plénipotentiaire de la Confédération suisse à Londres et à La Haye;
M. Eugène Borel, colonel d'état major-général, professeur à l'université de Genève;
M. Max Huber, professeur de droit à l'université de Zürich.

SA MAJESTÉ L'EMPEREUR DES OTTOMANS:

Son Excellence Turkhan Pacha, Son ambassadeur extraordinaire, ministre de l'evkaf;
Son Excellence Rechid Bey, Son ambassadeur à Rome;
Son Excellence Mehemmed Pacha, vice-amiral.

LE PRÉSIDENT DE LA RÉPUBLIQUE ORIENTALE DE L'URUGUAY:

Son Excellence M. José Batlle y Ordoñez, ancien président de la République, membre de la cour permanente d'arbitrage.
Son Excellence M. Juan P. Castro, ancien président du sénat, envoyé extraordinaire et ministre plénipotentiaire de la République à Paris, membre de la cour permanente d'arbitrage.

LE PRÉSIDENT DES ETATS UNIS DE VÉNÉZUÉLA:

M. José Gil Fortoul, chargé d'affaires de la République à Berlin.

Lesquels, après avoir déposé leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus de ce qui suit:

Who, after having deposited their full powers, found in good and due form, have agreed upon the following:—

Maintenance of general peace.

Titre I. Du maintien de la paix générale.

Article Premier.

Peaceful settlement of differences.

En vue de prévenir autant que possible le recours à la force dans les rapports entre les Etats, les Puissances contractantes conviennent d'employer tous leurs efforts pour assurer le règlement pacifique des différends internationaux.

Part I.—The Maintenance of General Peace.

Article 1.

With a view to obviating as far as possible recourse to force in the relations between States, the Contracting Powers agree to use their best efforts to ensure the pacific settlement of international differences.

Good offices and mediation.

Titre II. Des bons offices et de la médiation.

Article 2.

Recourse to good offices of friendly Powers.

En cas de dissentiment grave ou de conflit, avant d'en appeler aux armes, les Puissances contractantes conviennent d'avoir recours, en tant que les circonstances le permettront, aux bons offices ou à la médiation d'une ou de plusieurs Puissances amies.

Part II.—Good Offices and Mediation.

Article 2.

In case of serious disagreement or dispute, before an appeal to arms, the Contracting Powers agree to have recourse, as far as circumstances allow, to the good offices or mediation of one or more friendly Powers.

Article 3.

Offers of mediation.

Indépendamment de ce recours, les Puissances contractantes jugent utile et désirable qu'une ou plusieurs Puissances étrangères au conflit offrent de leur proper initiative, en tant que les circonstances s'y prêtent, leurs bons offices ou leur médiation aux Etats en conflit.

During hostilities.

Le droit d'offrir les bons offices ou la médiation appartient aux Puissances étrangères au conflit, même pendant le cours des hostilités.

Not an unfriendly act.

L'exercice de ce droit ne peut jamais être considéré par l'une ou l'autre des Parties en litige comme un acte peu amical.

Article 3.

Independently of this recourse, the Contracting Powers deem it expedient and desirable that one or more Powers, strangers to the dispute, should, on their own initiative and as far as circumstances may allow, offer their good offices or mediation to the States at variance.

Powers strangers to the dispute have the right to offer good offices or mediation even during the course of hostilities.

The exercise of this right can never be regarded by either of the parties in dispute as an unfriendly act.

ARTICLE 4.

Le rôle du médiateur consiste à concilier les prétentions opposées et à apaiser les ressentiments qui peuvent s'être produits entre les Etats en conflit.

ARTICLE 4.

Scope of mediator.

The part of the mediator consists in reconciling the opposing claims and appeasing the feelings of resentment which may have arisen between the States at variance.

ARTICLE 5.

Les fonctions du médiateur cessent du moment où il est constaté, soit par l'une des Parties en litige, soit par le médiateur lui-même, que les moyens de conciliation proposés par lui ne sont pas acceptés.

ARTICLE 5.

End of mediator's functions.

The functions of the mediator are at an end when once it is declared, either by one of the parties to the dispute or by the mediator himself, that the means of reconciliation proposed by him are not accepted.

ARTICLE 6.

Les bons offices et la médiation, soit sur le recours des Parties en conflit, soit sur l'initiative des Puissances étrangères au conflit, ont exclusivement le caractère de conseil et n'ont jamais force obligatoire.

ARTICLE 6.

Not binding.

Good offices and mediation undertaken either at the request of the parties in dispute or on the initiative of Powers strangers to the dispute have exclusively the character of advice, and never have binding force.

ARTICLE 7.

L'acceptation de la médiation ne peut avoir pour effet, sauf convention contraire, d'interrompre, de retarder ou d'entraver la mobilisation et autres mesures préparatoires à la guerre.

Si elle intervient après l'ouverture des hostilités, elle n'interrompt pas, sauf convention contraire, les opérations militaires en cours.

ARTICLE 7.

War measures not interrupted.

The acceptance of mediation cannot, unless there be an agreement to the contrary, have the effect of interrupting, delaying, or hindering mobilization or other measures of preparation for war.

If it takes place after the commencement of hostilities, the military operations in progress are not interrupted in the absence of an agreement to the contrary.

ARTICLE 8.

Les Puissances contractantes sont d'accord pour recommander l'application, dans les circonstances qui le permettent, d'une médiation spéciale sous la forme suivante.

En cas de différend grave compromettant la paix, les Etats en conflit choisissent respectivement une Puissance à laquelle ils confient la mission d'entrer en rapport direct avec la Puissance choisie d'autre part, à l'effet de prévenir la rupture des relations pacifiques.

ARTICLE 8.

Special mediation.

The Contracting Powers are agreed in recommending the application, when circumstances allow, of special mediation in the following form:—

Choosing mediators.

In case of a serious difference endangering peace, the States at variance choose respectively a Power, to which they intrust the mission of entering into direct communication with the Power chosen on the other side, with the object of preventing the rupture of pacific relations.

Direct communication to cease between States in dispute.

Pendant la durée de ce mandat dont le terme, sauf stipulation contraire, ne peut excéder trente jours, les Etats en litige cessent tout rapport direct au sujet du conflit, lequel est considéré comme déféré exclusivement aux Puissances médiatrices. Celles-ci doivent appliquer tous leurs efforts à régler le différend.

Efforts to restore peace.

En cas de rupture effective des relations pacifiques, ces Puissances demeurent chargées de la mission commune de profiter de toute occasion pour rétablir la paix.

For the period of this mandate, the term of which, unless otherwise stipulated, cannot exceed thirty days, the States in dispute cease from all direct communication on the subject of the dispute, which is regarded as referred exclusively to the mediating Powers, which must use their best efforts to settle it.

In case of a definite rupture of pacific relations, these Powers are charged with the joint task of taking advantage of any opportunity to restore peace.

International commissions of inquiry.

Titre III. Des Commissions internationales d'enquête.

Article 9.

Investigations of differences of opinion as to facts.

Dans les litiges d'ordre international n'engageant ni l'honneur ni des intérêts essentiels et provenant d'une divergence d'appréciation sur des points de fait, les Puissances contractantes jugent utile et désirable que les Parties qui n'auraient pu se mettre d'accord par les voies diplomatiques instituent, en tant que les circonstances le permettront, une Commission internationale d'enquête chargée de faciliter la solution de ces litiges en éclaircissant, par un examen impartial et consciencieux, les questions de fait.

Article 10.

Special agreements.

Les Commissions internationales d'enquête sont constituées par convention spéciale entre les Parties en litige.

Extent of commission's jurisdiction.

La convention d'enquête précise les faits à examiner; elle détermine le mode et le délai de formation de la Commission et l'étendue des pouvoirs des Commissaires.

Meetings, etc.

Elle détermine également, s'il y a lieu, le siège de la Commission et la faculté de se déplacer, la langue dont la Commission fera usage et celles dont l'emploi sera autorisé devant elle, ainsi que la date à laquelle chaque Partie devra déposer son exposé des faits, et généralement toutes les con-

Part III.—International Commissions of Inquiry.

Article 9.

In disputes of an international nature involving neither honour nor vital interests, and arising from a difference of opinion on points of fact, the Contracting Powers deem it expedient and desirable that the parties who have not been able to come to an agreement by means of diplomacy, should, as far as circumstances allow, institute an International Commission of Inquiry, to facilitate a solution of these disputes by elucidating the facts by means of an impartial and conscientious investigation.

Article 10.

International Commissions of Inquiry are constituted by special agreement between the parties in dispute.

The Inquiry Convention defines the facts to be examined; it determines the mode and time in which the Commission is to be formed and the extent of the powers of the Commissioners.

It also determines, if there is need, where the Commission is to sit, and whether it may remove to another place, the language the Commission shall use and the languages the use of which shall be authorized before it, as well as the date on which each party must deposit its statement of facts, and,

ditions dont les Parties sont convenues.

Si les Parties jugent nécessaire de nommer des assesseurs, la convention d'enquête détermine le mode de leur désignation et l'étendue de leurs pouvoirs.

ARTICLE 11.

Si la convention d'enquête n'a pas désigné le siège de la Commission, celle-ci siégera à La Haye.

Le siège une fois fixé ne peut être changé par la Commission qu'avec l'assentiment des Parties.

Si la convention d'enquête n'a pas déterminé les langues à employer, il en est décidé par la Commission.

ARTICLE 12.

Sauf stipulation contraire, les Commissions d'enquête sont formées de la manière déterminée par les articles 45 et 57 de la présente Convention

ARTICLE 13.

En cas de décès, de démission ou d'empêchement, pour quelque cause que ce soit, de l'un des Commissaires, ou éventuellement de l'un des assesseurs, il est pourvu à son replacement selon le mode fixé pour sa nomination.

ARTICLE 14.

Les Parties ont le droit de nommer auprès de la Commission d'enquête des agents spéciaux avec la mission de Les représenter et de servir d'intermédiaires entre Elles et la Commission.

Elles sont, en outre, autorisées à charger des conseils ou avocats nommés par elles, d'exposer et de soutenir leurs intérêts devant la Commission.

ARTICLE 15.

Le Bureau international de la Cour permanente d'arbitrage sert

generally speaking, all the conditions upon which the parties have agreed.

Assessors.

If the parties consider it necessary to appoint Assessors, the Convention of Inquiry shall determine the mode of their selection and the extent of their powers.

ARTICLE 11.

Place of meeting, etc.

If the Inquiry Convention has not determined where the Commission is to sit, it will sit at The Hague.

The place of meeting, once fixed, cannot be altered by the Commission except with the assent of the parties.

If the Inquiry Convention has not determined what languages are to be employed, the question shall be decided by the Commission.

ARTICLE 12.

Formation.

Unless an undertaking is made to the contrary, Commissions of Inquiry shall be formed in the manner determined by Articles 45 and 57 of the present Convention.

Post, pp. 2223, 2227.

ARTICLE 13.

Filling vacancies.

Should one of the Commissioners or one of the Assessors, should there be any, either die, or resign, or be unable for any reason whatever to discharge his functions, the same procedure is followed for filling the vacancy as was followed for appointing him.

ARTICLE 14.

Special agents.

The parties are entitled to appoint special agents to attend the Commission of Inquiry, whose duty it is to represent them and to act as intermediaries between them and the Commission.

Counsel.

They are further authorized to engage counsel or advocates, appointed by themselves, to state their case and uphold their interests before the Commission.

ARTICLE 15.

Assistance of International Bureau.

The International Bureau of the Permanent Court of Arbitra-

de greffe aux Commissions qui siègent à La Haye, et mettra ses locaux et son organisation à la disposition des Puissance contractantes pour le fonctionnement de la Commission d'enquête.

tion acts as registry for the Commissions which sit at The Hague, and shall place its offices and staff at the disposal of the Contracting Powers for the use of the Commission of Inquiry.

ARTICLE 16.

ARTICLE 16.

Registry.

Si la Commission siège ailleurs qu'à La Haye, elle nomme un Secrétaire-Général dont le bureau lui sert de greffe.

If the Commission meets elsewhere than at The Hague, it appoints a Secretary-General, whose office serves as registry.

Functions.

Le greffe est chargé, sous l'autorité du Président, de l'organisation matérielle des séances de la Commission, de la rédaction des procès-verbaux et, pendant le temps de l'enquête, de la garde des archives qui seront ensuite versées au Bureau international de La Haye.

It is the function of the registry, under the control of the President, to make the necessary arrangements for the sittings of the Commission, the preparation of the Minutes, and, while the inquiry lasts, for the charge of the archives, which shall subsequently be transferred to the International Bureau at The Hague.

ARTICLE 17.

ARTICLE 17.

General rules of procedure.

En vue de faciliter l'institution et le fonctionnement des Commissions d'enquête, les Puissances contractantes recommandent les règles suivantes qui seront applicables à la procédure d'enquête en tant que les Parties n'adopteront pas d'autres règles.

In order to facilitate the constitution and working of Commissions of Inquiry, the Contracting Powers recommend the following rules, which shall be applicable to the inquiry procedure in so far as the parties do not adopt other rules.

ARTICLE 18.

ARTICLE 18.

Further details.

La Commission règlera les détails de la procédure non prévus dans la convention spéciale d'enquête ou dans la présente Convention, et procèdera à toutes les formalités que comporte l'administration des preuves.

The Commission shall settle the details of the procedure not covered by the special Inquiry Convention or the present Convention, and shall arrange all the formalities required for dealing with the evidence.

ARTICLE 19.

ARTICLE 19.

Hearings.

L'enquête a lieu contradictoirement.

Aux dates prévues, chaque Partie communique à la Commission et à l'autre Partie les exposés des faits, s'il y a lieu, et, dans tous les cas, les actes, pièces et documents qu'Elle juge utiles à la découverte de la vérité, ainsi que la liste des témoins et des experts qu'elle désire faire entendre.

On the inquiry both sides must be heard.

At the dates fixed, each party communicates to the Commission and to the other party the statements of facts, if any, and, in all cases, the instruments, papers, and documents which it considers useful for ascertaining the truth, as well as the list of witnesses and experts whose evidence it wishes to be heard.

ARTICLE 20.

La Commission a la faculté, avec l'assentiment des Parties, de se transporter momentanément sur les lieux où elle juge utile de recourir à ce moyen d'information, ou d'y déléguer un ou plusieurs de ses membres. L'autorisation de l'Etat sur le territoire duquel il doit être procédé à cette information devra être obtenue.

ARTICLE 20.

Change of meeting place.

The Commission is entitled, with the assent of the Powers, to move temporarily to any place where it considers it may be useful to have recourse to this means of inquiry or to send one or more of its members. Permission must be obtained from the State on whose territory it is proposed to hold the inquiry.

ARTICLE 21.

Toutes constatations matérielles, et toutes visites des lieux doivent être faites en présence des agents et conseils des Parties ou eux dûment appelés.

ARTICLE 21.

Presence at investigations.

Every investigation, and every examination of a locality, must be made in the presence of the agents and counsel of the parties or after they have been duly summoned.

ARTICLE 22.

La Commission a le droit de solliciter de l'une ou l'autre Partie telles explications ou informations qu'elle juge utiles.

ARTICLE 22.

Explanations, etc.

The Commission is entitled to ask from either party for such explanations and information as it considers necessary.

ARTICLE 23.

Les Parties s'engagent à fournir à la Commission d'enquête, dans la plus large mesure qu'Elles jugeront possible, tous les moyens et toutes les facilités nécessaires pour la connaissance complète et l'appréciation exacte des faits en question.

Elles s'engagent à user des moyens dont Elles disposent d'après leur législation intérieure, pour assurer la comparution des témoins ou des experts se trouvant sur leur territoire et cités devant la Commission.

Si ceux-ci ne peuvent comparaître devant la Commission, Elles feront procéder à leur audition devant leurs autorités compétentes.

ARTICLE 23.

Presenting evidence.

Tbe parties undertake to supply the Commission of Inquiry, as fully as they may think possible, with all means and facilities necessary to enable it to become completely acquainted with, and to accurately understand, the facts in question.

Appearance of witnesses.

They undertake to make use of the means at their disposal, under their municipal law, to insure the appearance of the witnesses or experts who are in their territory and have been summoned before the Commission.

Depositions.

If the witnesses or experts are unable to appear before the Commission, the parties will arrange for their evidence to be taken before the qualified officials of their own country.

ARTICLE 24.

Pour toutes les notifications que la Commission aurait à faire sur le territoire d'une tierce Puissance contractante, la Commission s'adressera directement

ARTICLE 24.

Serving notice in other countries.

For all notices to be served by the Commission in the territory of a third Contracting Power, the Commission shall apply direct to the Government of the said Power.

au Gouvernement de cette Puissance. Il en sera de même s'il s'agit de faire procéder sur place à l'établissement de tous moyens de preuve.

Les requêtes adressées à cet effet seront exécutées suivant les moyens dont la Puissance requise dispose d'après sa législation intérieure. Elles ne peuvent être refusées que si cette Puissance les juge de nature à porter atteinte à Sa souveraineté ou à Sa sécurité.

La Commission aura aussi toujours la faculté de recourir à l'intermédiaire do la Puissance sur le territoire de laquelle elle a son siège.

The same rule applies in the case of stops being taken on the spot to procure evidence.

The requests for this purpose are to be executed so far as the means at the disposal of the Power applied to under its municipal law allow. They can not be rejected unless the Power in question considers they are calculated to impair its sovereign rights or its safety.

The Commission will equally be always entitled to act through the Power on whose territory it sits.

ARTICLE 25.

Summoning witnesses.

Les témoins et les experts sont appelés à la requête des Parties ou d'office par la Commission, et, dans tous les cas, par l'intermédiaire du Gouvernement de l'Etat sur le territoire duquel ils se trouvent.

Hearings.

Les témoins sont entendus, successivement et séparément, en présence des agents et des conseils et dans un ordre à fixer par la Commission.

ARTICLE 25.

The witnesses and experts are summoned on the request of the parties or by the Commission of its own motion, and, in every case, through the Government of the State in whose territory they are.

The witnesses are heard in succession and separately, in the presence of the agents and counsel, and in the order fixed by the Commission.

ARTICLE 26.

Examination of witnesses.

L'interrogatoire des témoins est conduit par le Président.

Les membres de la Commission peuvent néanmoins poser à chaque témoin les questions qu'ils croient convenables pour éclaircir ou compléter sa déposition, ou pour se renseigner sur tout ce qui concerne le témoin dans les limites nécessaires à la manifestation de la vérité.

Les agents et les conseils des Parties ne peuvent interrompre le témoin dans sa déposition, ni lui faire aucune interpellation directe, mais peuvent demander au Président de poser au témoin telles questions complémentaires qu'ils jugent utiles.

ARTICLE 26.

The examination of witnesses is conducted by the President.

The members of the Commission may however put to each witness questions which they consider likely to throw light on and complete his evidence, or get information on any point concerning the witness within the limits of what is necessary in order to get at the truth.

The agents and counsel of the parties may not interrupt the witness when he is making his statement, nor put any direct question to him, but they may ask the President to put such additional questions to the witness as they think expedient.

ARTICLE 27.

Restriction on witnesses.

Le témoin doit déposer sans qu'il lui soit permis de lire aucun projet écrit. Toutefois, il peut

ARTICLE 27.

The witness must give his evidence without being allowed to read any written draft. He may,

être autorisé par le Président à s'aider de notes ou documents si la nature des faits rapportés en nécessite l'emploi.

however, be permitted by the President to consult notes or documents if the nature of the facts referred to necessitates their employment.

ARTICLE 28.

Procès-verbal de la déposition du témoin est dressé séance tenante et lecture en est donnée au témoin. Le témoin peut y faire tels changements et additions que bon lui semble et qui seront consignés à la suite de sa déposition.

Lecture faite au témoin de l'ensemble de sa déposition, le témoin est requis de signer.

ARTICLE 28.

Transcript of evidence.

A Minute of the evidence of the witness is drawn up forthwith and read to the witness. The latter may make such alterations and additions as he thinks necessary, which will be recorded at the end of his statement.

When the whole of his statement has been read to the witness, he is asked to sign it.

ARTICLE 29.

Les agents sont autorisés, au cours ou à la fin de l'enquête, à présenter par écrit à la Commission et à l'autre Partie tels dires, réquisitions ou résumés de fait, qu'ils jugent utiles à la découverte de la vérité.

ARTICLE 29.

Statements by agents.

The agents are authorized, in the course of or at the close of the inquiry, to present in writing to the Commission and to the other party such statements, requisitions, or summaries of the facts as they consider useful for ascertaining the truth.

ARTICLE 30.

Les délibérations de la Commission ont lieu à huis clos et restent secrètes.

Toute décision est prise à la majorité des membres de la Commission.

Le refus d'un membre de prendre part au vote doit être constaté dans le procès-verbal.

ARTICLE 30.

Decisions of commission.

The Commission considers its decisions in private and the proceedings are secret.

Majority to decide.

All questions are decided by a majority of the members of the Commission.

Record of declining to vote.

If a member declines to vote, the fact must be recorded in the Minutes.

ARTICLE 31.

Les séances de la Commission ne sont publiques et les procès-verbaux et documents de l'enquête ne sont rendus publics qu'en vertu d'une décision de la Commission, prise avec l'assentiment des Parties.

ARTICLE 31.

Sittings, etc., not public.

The sittings of the Commission are not public, nor the Minutes and documents connected with the inquiry published except in virtue of a decision of the Commission taken with the consent of the parties.

ARTICLE 32.

Les Parties ayant présenté tous les éclaircissements et preuves, tous les témoins ayant été entendus, le Président prononce la clôture de l'enquête et la Commission s'ajourne pour délibérer et rédiger son rapport.

ARTICLE 32.

Termination of inquiry.

After the parties have presented all the explanations and evidence, and the witnesses have all been heard, the President declares the inquiry terminated, and the Commission adjourns to deliberate and to draw up its Report.

ARTICLE 33.

Report.

Le rapport est signé par tous les membres de la Commission.

Si un des membres refuse de signer, mention en est faite; le rapport reste néanmoins valable.

ARTICLE 33.

The Report is signed by all the members of the Commission.

If one of the members refuses to sign, the fact is mentioned; but the validity of the Report is not affected.

ARTICLE 34.

Reading of report.

Le rapport de la Commission est lu en séance publique, les agents et les conseils des Parties présents ou dûment appelés.

Un exemplaire du rapport est remis à chaque Partie.

ARTICLE 34.

The Report of the Commission is read at a public sitting, the agents and counsel of the parties being present or duly summoned.

A copy of the Report is given to each party.

ARTICLE 35.

Effect of report.

Le rapport de la Commission, limité à la constatation des faits, n'a nullement le caractère d'une sentence arbitrale. Il laisse aux Parties une entière liberté pour la suite à donner à cette constatation.

ARTICLE 35.

The Report of the Commission is limited to a statement of facts, and has in no way the character of an Award. It leaves to the parties entire freedom as to the effect to be given to the statement

ARTICLE 36.

Expenses.

Chaque Partie supporte ses propres frais et une part égale des frais de la Commission

ARTICLE 36.

Each party pays its own expenses and an equal share of the expenses incurred by the Commission.

International arbitration.

TITRE IV. DE L'ARBITRAGE INTERNATIONAL.

PART IV.—INTERNATIONAL ARBITRATION.

System.

CHAPITRE I.—*De la Justice arbitrale.*

CHAPTER I.—*The system of arbitration.*

ARTICLE 37.

Object.

L'arbitrage international a pour objet le règlement de litiges entre les Etats par des juges de leur choix et sur la base du respect du droit.

Submission to award.

Le recours à l'arbitrage implique l'engagement de se soumettre de bonne foi à la sentence.

ARTICLE 37.

International arbitration has for its object the settlement of disputes between States by Judges of their own choice and on the basis of respect for law.

Recourse to arbitration implies an engagement to submit in good faith to the Award.

ARTICLE 38.

Recognition by Powers.

Dans les questions d'ordre juridique, et en premier lieu, dans les questions d'interprétation ou d'application des Conventions internationales, l'arbitrage est reconnu par les Puissances contractantes comme le moyen le

ARTICLE 38.

In questions of a legal nature, and especially in the interpretation or application of International Conventions, arbitration is recognized by the Contracting Powers as the most effective, and, at the same time, the most equi-

plus efficace et en même temps le plus équitable de régler les litiges qui n'ont pas été résolus par les voies diplomatiques.

En conséquence, il serait désirable que, dans les litiges sur les questions susmentionnées, les Puissances contractantes eussent, le cas échéant, recours à l'arbitrage, en tant que les circontsances le permettraient.

ARTICLE 39.

La convention d'arbitrage est conclue pour des contestations déjà nées ou pour des contestations éventuelles.

Elle peut concerner tout litige ou seulement les litiges d'une catégorie déterminée.

ARTICLE 40.

Indépendamment des Traités généraux ou particuliers qui stipulent actuellement l'obligation du recours à l'arbitrage pour les Puissances contractantes, ces Puissances se réservent de conclure des accords nouveaux, généraux ou particuliers, en vue d'étendre l'arbitrage obligatoire à tous les cas qu'Elles jugeront possible de lui soumettre.

CHAPITRE II.—*De la Cour permanente d'arbitrage.*

ARTICLE 41.

Dans le but de faciliter le recours immédiat à l'arbitrage pour les différends internationaux qui n'ont pu être réglés par la voie diplomatique, les Puissances contractantes s'engagent à maintenir, telle qu'elle a été établie par la Première Conférence de la Paix, la Cour permanente d'arbitrage, accessible en tout temps et fonctionnant, sauf stipulation contraire des Parties, conformément aux règles de procédure insérées dans la présente Convention.

ARTICLE 42.

La Cour permanente est compétente pour tous les cas d'arbitrage, à moins qu'il n'y ait entente entre les Parties pour l'établissement d'une juridiction spéciale.

table means of settling disputes which diplomacy has failed to settle.

Consequently, it would be desirable that, in disputes about the above-mentioned questions, the Contracting Powers should, if the case arose, have recourse to arbitration, in so far as circumstances permit. Recourse to its use.

ARTICLE 39.

The Arbitration Convention is concluded for questions already existing or for questions which may arise eventually. Questions to be considered.

It may embrace any dispute or only disputes of a certain category.

ARTICLE 40.

Independently of general or private Treaties expressly stipulating recourse to arbitration as obligatory on the Contracting Powers, the said Powers reserve to themselves the right of concluding new Agreements, general or particular, with a view to extending compulsory arbitration to all cases which they may consider it possible to submit to it. Extension of principle reserved.

CHAPTER II.—*The permanent court of arbitration.* Permanent Court of Arbitration.

ARTICLE 41.

With the object of facilitating an immediate recourse to arbitration for international differences, which it has not been possible to settle by diplomacy, the Contracting Powers undertake to maintain the Permanent Court of Arbitration, as established by the First Peace Conference, accessible at all times, and operating, unless otherwise stipulated by the parties, in accordance with the rules of procedure inserted in the present Convention. Maintenance agreed to. Vol. 32, p. 1789.

ARTICLE 42.

The Permanent Court is competent for all arbitration cases, unless the parties agree to institute a special Tribunal. Authority.

ARTICLE 43.

Location.

La Cour permanente a son siège à La Haye.

International Bureau. Purpose, etc.

Un Bureau International sert de greffe à la Cour; il est l'intermédiaire des communications relatives aux réunions de celle-ci; il a la garde des archives et la gestion de toutes les affaires administratives.

Awards of special tribunals.

Les Puissances contractantes s'engagent à communiquer au Bureau, aussitôt que possible, une copie certifiée conforme de toute stipulation d'arbitrage intervenue entre Elles et de toute sentence arbitrale Les concernant et rendue par des juridictions spéciales.

Execution of awards.

Elles s'engagent à communiquer de même au Bureau les lois, règlements et documents constatant éventuellement l'exécution des sentences rendues par la Cour.

ARTICLE 44.

Selection of arbitrators.

Chaque Puissance contractante désigne quatre personnes au plus, d'une compétence reconnue dans les questions de droit international, jouissant de la plus haute considération morale et disposées à accepter les fonctions d'arbitre.

List of members.

Les personnes ainsi désignées sont inscrites, au titre de Membres de la Cour, sur une liste qui sera notifiée à toutes les Puissances contractantes par les soins du Bureau.

Changes.

Toute modification à la liste des arbitres est portée, par les soins du Bureau, à la connaissance des Puissances contractantes.

Selection in common.

Deux ou plusieurs Puissances peuvent s'entendre pour la désignation en commun d'un ou de plusieurs Membres.

La même personne peut être désignée par des Puissances différentes.

Terms

Les Membres de la Cour sont nommés pour un terme de six ans. Leur mandat peut être renouvelé.

Vacancies.

En cas de décès ou de retraite d'un Membre de la Cour, il est pourvu à son remplacement selon le mode fixé pour sa nomination, et pour une nouvelle période de six ans.

ARTICLE 43.

The Permanent Court sits at The Hague.

An International Bureau serves as registry for the Court. It is the channel for communications relative to the meetings of the Court; it has charge of the archives and conducts all the administrative business.

The Contracting Powers undertake to communicate to the Bureau, as soon as possible, a certified copy of any conditions of arbitration arrived at between them and of any Award concerning them delivered by a special Tribunal.

They likewise undertake to communicate to the Bureau the laws, regulations, and documents eventually showing the execution of the Awards given by the Court.

ARTICLE 44.

Each Contracting Power selects four persons at the most, of known competency in questions of international law, of the highest moral reputation, and disposed to accept the duties of Arbitrator.

The persons thus selected are inscribed, as members of the Court, in a list which shall be notified to all the Contracting Powers by the Bureau.

Any alteration in the list of Arbitrators is brought by the Bureau to the knowledge of the Contracting Powers.

Two or more Powers may agree on the selection in common of one or more members.

The same person can be selected by different Powers.

The members of the Court are appointed for a term of six years. These appointments are renewable.

Should a member of the Court die or resign, the same procedure is followed for filling the vacancy as was followed for appointing him. In this case the appointment is made for a fresh period of six years.

ARTICLE 45.

Lorsque les Puissances contractantes veulent s'adresser à la Cour permanente pour le règlement d'un différend survenu entre Elles, le choix des arbitres appelés à former le Tribunal compétent pour statuer sur ce différend, doit être fait dans la liste générale des Membres de la Cour.

A défaut de constitution du Tribunal arbitral par l'accord des Parties, il est procédé de la manière suivante:

Chaque Partie nomme deux arbitres, dont un seulement peut être son national ou choisi parmi ceux qui ont été désignés par Elle comme Membres de la Cour permanente. Ces arbitres choisissent ensemble un surarbitre.

En cas de partage des voix, le choix du surarbitre est confié à une Puissnace tierce, désignée de commun accord par les Parties.

Si l'accord ne s'établit pas à ce sujet, chaque Partie désigne une Puissance différente et le choix du surarbitre est fait de concert par les Puissances ainsi désignées.

Si, dans un délai de deux mois, ces deux Puissances n'ont pu tomber d'accord, chacune d'Elles présente deux candidats pris sur la liste des Membres de la Cour permanente, en dehors des Membres désignés par les Parties et n'étant les nationaux d'aucune d'Elles. Le sort détermine lequel des candidats ainsi présentés sera le surarbitre.

ARTICLE 45.

When the Contracting Powers wish to have recourse to the Permanent Court for the settlement of a difference which has arisen between them, the Arbitrators called upon to form the Tribunal with jurisdiction to decide this difference must be chosen from the general list of members of the Court.

Powers to choose tribunal.

Failing the direct agreement of the parties on the composition of the Arbitration Tribunal, the following course shall be pursued:—

Failure of direct agreement.

Each party appoints two Arbitrators, of whom one only can be its national or chosen from among the persons selected by it as members of the Permanent Court. These Arbitrators together choose an Umpire.

Appointment of separate arbitrators.

If the votes are equally divided, the choice of the Umpire is intrusted to a third Power, selected by the parties by common accord.

Umpire.

If an agreement is not arrived at on this subject each party selects a different Power, and the choice of the Umpire is made in concert by the Powers thus selected.

Selection by other Powers.

If, within two months' time, these two Powers cannot come to an agreement, each of them presents two candidates taken from the list of members of the Permanent Court, exclusive of the members selected by the parties and not being nationals of either of them. Drawing lots determines which of the candidates thus presented shall be Umpire.

Determination of umpire in case of disagreement.

ARTICLE 46.

Dès que le Tribunal est composé, les Parties notifient au Bureau leur décision de s'adresser à la Cour, le texte de leur compromis, et les noms des arbitres.

ARTICLE 46.

The Tribunal being thus composed, the parties notify to the Bureau their determination to have recourse to the Court, the text of their "Compromis,"* and the names of the Arbitrators.

Notification to Bureau.

*The preliminary Agreement in an international arbitration defining the point at issue and arranging the procedure to be followed.

Notification to arbitrators.

Le Bureau communique sans délai à chaque arbitre le compromis et les noms des autres Membres du Tribunal.

The Bureau communicates without delay to each Arbitrator the "Compromis," and the names of the other members of the Tribunal.

Meeting of tribunal.

Le Tribunal se réunit à la date fixée par les Parties. Le Bureau pourvoit à son installation.

The Tribunal assembles at the date fixed by the parties. The Bureau makes the necessary arrangements for the meeting.

Diplomatic privileges.

Les Membres du Tribunal, dans l'exercice de leurs fonctions et en dehors de leur pays, jouissent des privilèges et immunités diplomatiques.

The members of the Tribunal, in the exercise of their duties and out of their own country, enjoy diplomatic privileges and immunities.

ARTICLE 47.

ARTICLE 47.

Use of Bureau for special boards.

Le Bureau est autorisé à mettre ses locaux et son organisation à la disposition des Puissances contractantes pour le fonctionnement de toute juridiction spéciale d'arbitrage.

The Bureau is authorized to place its offices and staff at the disposal of the Contracting Powers for the use of any special Board of Arbitration.

Extension to non-contracting powers.

La juridiction de la Cour permanente peut être étendue, dans les conditions prescrites par les règlements, aux litiges existant entre des Puissances non contractantes ou entre des Puissances contractantes et des Puissances non contractantes, si les Parties sont convenues de recourir à cette juridiction.

The jurisdiction of the Permanent Court may, within the conditions laid down in the regulations, be extended to disputes between non-Contracting Powers or between Contracting Powers and non-Contracting Powers, if the parties are agreed on recourse to this Tribunal.

ARTICLE 48.

ARTICLE 48.

Notifying disputants.

Les Puissances contractantes considèrent comme un devoir, dans le cas où un conflit aigu menacerait d'éclater entre deux ou plusieurs d'entre Elles, de rappeler à celles-ci que la Cour permanente leur est ouverte.

The Contracting Powers consider it their duty, if a serious dispute threatens to break out between two or more of them, to remind these latter that the Permanent Court is open to them.

Regarded as a friendly act.

En conséquence, Elles déclarent que le fait de rappeler aux Parties en conflit les dispositions de la présente Convention, et le conseil donné, dans l'intérêt supérieur de la paix, de s'adresser à la Cour permanente, ne peuvent être considérés que comme actes de bons offices.

Consequently, they declare that the fact of reminding the parties at variance of the provisions of the present Convention, and the advice given to them, in the highest interests of peace, to have recourse to the Permanent Court, can only be regarded as friendly actions.

Offer for arbitration.

En cas de conflit entre deux Puissances, l'une d'Elles pourra toujours adresser au Bureau International une note contenant sa déclaration qu'Elle serait disposée à soumettre le différend à un arbitrage.

In case of dispute between two Powers, one of them can always address to the International Bureau a note containing a declaration that it would be ready to submit the dispute to arbitration.

Notice to other Power.

Le Bureau devra porter aussitôt la déclaration à la connaissance de l'autre Puissance.

The Bureau must at once inform the other Power of the declaration.

ARTICLE 49.

Le Conseil administratif permanent, composé des Représentants diplomatiques des Puissances contractantes accrédités à La Haye et du Ministre des Affaires Etrangères des Pays-Bas, qui remplit les fonctions de Président, a la direction et le contrôle du Bureau International.

Le Conseil arrête son règlement d'ordre ainsi que tous autres règlements nécessaires.

Il décide toutes les questions administratives qui pourraient surgir touchant le fonctionnement de la Cour.

Il a tout pouvoir quant à la nomination, la suspension ou la révocation des fonctionnaires et employés du Bureau.

Il fixe les traitements et salaires, et contrôle la dépense générale.

La présence de neuf membres dans les réunions dûment convoquées suffit pour permettre au Conseil de délibérer valablement. Les décisions sont prises à la majorité des voix.

Le Conseil communique sans délai aux Puissances contractantes les règlements adoptés par lui. Il Leur présente chaque année un rapport sur les travaux de la Cour, sur le fonctionnement des services administratifs et sur les dépenses. Le rapport contient également un résumé du contenu essentiel des documents communiqués au Bureau par les Puissances en vertu de l'article 43 alinéas 3 et 4.

ARTICLE 50.

Les frais du Bureau seront supportés par les Puissances contractantes dans la proportion établie pour le Bureau international de l'Union postale universelle.

Les frais à la charge des Puissances adhérentes seront comptés à partir du jour où leur adhésion produit ses effets.

ARTICLE 49.

The Permanent Administrative Council, composed of the Diplomatic Representatives of the Contracting Powers accredited to The Hague and of the Netherland Minister for Foreign Affairs, who will act as President, is charged with the direction and control of the International Bureau. Administrative council.

The Council settles its rules of procedure and all other necessary regulations. Functions.

It decides all questions of administration which may arise with regard to the operations of the Court.

It has entire control over the appointment, suspension, or dismissal of the officials and employees of the Bureau.

It fixes the payments and salaries, and controls the general expenditure.

At meetings duly summoned the presence of nine members is sufficient to render valid the discussions of the Council. The decisions are taken by a majority of votes. Quorum, etc.

The Council communicates to the Contracting Powers without delay the regulations adopted by it. Regulations. It furnishes them with an annual Report on the labours of the Court, the working of the administration, and the expenditure. The Report likewise contains a résumé of what is important in the documents communicated to the Bureau by the Powers in virtue of Article 43 paragraphs 3 and 4. Annual report. *Ante*, p. 2222.

ARTICLE 50.

The expenses of the Bureau shall be borne by the Contracting Powers in the proportion fixed for the International Bureau of the Universal Postal Union. Expenses. Vol. 35, p. 1780.

The expenses to be charged to the adhering Powers shall be reckoned from the date on which their adhesion comes into force.

Procedure.

Chapitre III.—*De la procédure arbitrale.*

Article 51.

General rules.

En vue de favoriser le développement de l'arbitrage, les Puissances contractantes ont arrêté les règles suivantes qui sont applicables à la procédure arbitrale, en tant que les Parties ne sont pas convenues d'autres règles.

Article 52.

"Compromis." Contents.

Les Puissances qui recourent à l'arbitrage signent un compromis dans lequel sont déterminés l'objet du litige, le délai de nomination des arbitres, la forme, l'ordre et les délais dans lesquels la communication visée par l'article 63 devra être faite, et le montant de la somme que chaque Partie aura à déposer à titre d'avance pour les frais.

Post, p. 2228.

Further conditions.

Le compromis détermine également, s'il y a lieu, le mode de nomination des arbitres, tous pouvoirs spéciaux éventuels du Tribunal, son siège, la langue dont il fera usage et celles dont l'emploi sera autorisé devant lui, et généralement toutes les conditions dont les Parties sont convenues.

Article 53.

Settlement by Permanent Court.

La Cour permanente est compétente pour l'établissement du compromis, si les Parties sont d'accord pour s'en remettre à elle.

Post, p. 2240.

Requests by one Power.

Elle est également compétente, même si la demande est faite seulement par l'une des Parties, après qu'un accord par la voie diplomatique a été vainement essayé, quand il s'agit:

Disputes under arbitration treaties.

1°. d'un différend rentrant dans un Traité d'arbitrage général conclu ou renouvelé après la mise en vigueur de cette Convention et qui prévoit pour chaque différend un compromis et n'exclut pour l'établissement de ce dernier ni explicitement ni implicitement la compétence de la Cour. Toutefois, le recours à la Cour n'a pas lieu si l'autre Partie déclare qu'à son avis

Exception.

Chapter III.—*Arbitration procedure.*

Article 51.

With a view to encouraging the development of arbitration, the Contracting Powers have agreed on the following rules, which are applicable to arbitration procedure, unless other rules have been agreed on by the parties.

Article 52.

The Powers which have recourse to arbitration sign a "Compromis," in which the subject of the dispute is clearly defined, the time allowed for appointing Arbitrators, the form, order, and time in which the communication referred to in Article 63 must be made, and the amount of the sum which each party must deposit in advance to defray the expenses.

The "Compromis" likewise defines, if there is occasion, the manner of appointing Arbitrators, any special powers which may eventually belong to the Tribunal, where it shall meet, the language it shall use, and the languages the employment of which shall be authorized before it, and, generally speaking, all the conditions on which the parties are agreed.

Article 53.

The Permanent Court is competent to settle the "Compromis," if the parties are agreed to have recourse to it for the purpose.

It is similarly competent, even if the request is only made by one of the parties, when all attempts to reach an understanding through the diplomatic channel have failed, in the case of:—

1. A dispute covered by a general Treaty of Arbitration concluded or renewed after the present Convention has come into force, and providing for a "Compromis" in all disputes and not either explicitly or implicitly excluding the settlement of the "Compromis" from the competence of the Court. Recourse cannot, however, be had to the

le différend n'appartient pas à la catégorie des différends à soumettre à un arbitrage obligatoire, à moins que le Traité d'arbitrage ne confère au Tribunal arbitral le pouvoir de décider cette question préalable;

2°. d'un différend provenant de dettes contractuelles réclamées à une Puissance par une autre Puissance comme dues à ses nationaux, et pour la solution duquel l'offre d'arbitrage a été acceptée. Cette disposition n'est pas applicable si l'acceptation a été subordonnée à la condition que le compromis soit établi selon un autre mode.

Court if the other party declares that in its opinion the dispute does not belong to the category of disputes which can be submitted to compulsory arbitration, unless the Treaty of Arbitration confers upon the Arbitration Tribunal the power of deciding this preliminary question;

2. A dispute arising from contract debts claimed from one Power by another Power as due to its nationals, and for the settlement of which the offer of arbitration has been accepted. This arrangement is not applicable if acceptance is subject to the condition that the "Compromis" should be settled in some other way.

Contract debts.

Post, p. 2241.

ARTICLE 54.

Dans les cas prévus par l'article précédent, le compromis sera établi par une commission composée de cinq membres désignés de la manière prévue à l'article 45 alinéas 3 à 6.

Le cinquième membre est de droit Président de la commission.

ARTICLE 54.

In the cases contemplated in the preceding Article, the "Compromis" shall be settled by a Commission consisting of five members selected in the manner arranged for in Article 45, paragraphs 3 to 6.

The fifth member is President of the Commission *ex officio*.

Selection of Commission.

Ante, p. 2123.

ARTICLE 55.

Les fonctions arbitrales peuvent être conférées à un arbitre unique ou à plusieurs arbitres désignés par les Parties à leur gré, ou choisis par Elles parmi les Membres de la Cour permanente d'arbitrage établie par la présente Convention.

A défaut de constitution du Tribunal par l'accord des Parties, il est procédé de la manière indiquée à l'article 45 alinéas 3 à 6.

ARTICLE 55.

The duties of Arbitrator may be conferred on one Arbitrator alone or on several Arbitrators selected by the parties as they please, or chosen by them from the members of the Permanent Court of Arbitration established by the present Convention.

Failing the constitution of the Tribunal by direct agreement between the parties, the course referred to in Article 45, paragraphs 3 to 6, is followed.

Selection of arbitrators.

Disagreements.

Ante, p. 2123.

ARTICLE 56.

Lorsqu'un Souverain ou un Chef d'État est choisi pour arbitre, la procédure arbitrale est réglée par Lui.

ARTICLE 56.

When a Sovereign or the Chief of a State is chosen as Arbitrator, the arbitration procedure is settled by him.

Arbitration by a Sovereign, etc.

ARTICLE 57.

Le surarbitre est de droit Président du Tribunal.

Lorsque le Tribunal ne comprend pas de surarbitre, il nomme lui-même son Président.

ARTICLE 57.

The Umpire is President of the Tribunal *ex officio*.

When the Tribunal does not include an Umpire, it appoints its own President.

President of Tribunal.

ARTICLE 58.

Tribunal formed by commission.

En cas d'établissement du compromis par une commission, telle qu'elle est visée à l'article 54, et sauf stipulation contraire, la commission elle même formera le Tribunal d'arbitrage.

Ante, p. 2227.

ARTICLE 58.

When the "Compromis" is settled by a Commission, as contemplated in Article 54, and in the absence of an agreement to the contrary, the Commission itself shall form the Arbitration Tribunal.

ARTICLE 59.

Vacancies.

En cas de décès, de démission ou d'empêchement, pour quelque cause que ce soit, de l'un des arbitres, il est pourvu à son remplacement selon le mode fixé pour sa nomination.

ARTICLE 59.

Should one of the Arbitrators either die, retire, or be unable for any reason whatever to discharge his functions, the same procedure is followed for filling the vacancy as was followed for appointing him.

ARTICLE 60.

Sessions.

A défaut de désignation par les Parties, le Tribunal siège à La Haye.

Le Tribunal ne peut siéger sur le territoire d'une tierce Puissance qu'avec l'assentiment de celle-ci.

Le siège une fois fixé ne peut être changé par le Tribunal qu'avec l'assentiment des Parties.

ARTICLE 60.

The Tribunal sits at The Hague, unless some other place is selected by the parties.

The Tribunal can only sit in the territory of a third Power with the latter's consent.

The place of meeting once fixed cannot be altered by the Tribunal, except with the consent of the parties.

ARTICLE 61.

Selection of language.

Si le compromis n'a pas déterminé les langues à employer, il en est décidé par le Tribunal.

ARTICLE 61.

If the question as to what languages are to be used has not been settled by the "Compromis," it shall be decided by the Tribunal.

ARTICLE 62.

Agents.

Les Parties ont le droit de nommer auprès du Tribunal des agents spéciaux, avec la mission de servir d'intermédiaires entre Elles et le Tribunal.

Counsel.

Elles sont en outre autorisées à charger de la défense de leurs droits et intérêts devant le Tribunal, des conseils ou avocats nommés par Elles à cet effet.

Restriction on members of Permanent Court.

Les Membres de la Cour permanente ne peuvent exercer les fonctions d'agents, conseils ou avocats, qu'en faveur de la Puissance qui les a nommés Membres de la Cour.

ARTICLE 62.

The parties are entitled to appoint special agents to attend the Tribunal to act as intermediaries between themselves and the Tribunal.

They are further authorized to retain for the defence of their rights and interests before the Tribunal counsel or advocates appointed by themselves for this purpose.

The members of the Permanent Court may not act as agents, counsel, or advocates except on behalf of the Power which appointed them members of the Court.

ARTICLE 63.

Procedure.

La procédure arbitrale comprend en règle générale deux

ARTICLE 63.

As a general rule, arbitration procedure comprises two distinct

phases distinctes: l'instruction écrite et les débats.

L'instruction écrite consiste dans la communication faite par les agents respectifs, aux membres du Tribunal et à la Partie adverse, des mémoires, des contre-mémoires et, au besoin, des répliques; les Parties y joignent toutes pièces et documents invoqués dans la cause. Cette communication aura lieu, directement ou par l'intermédiaire du Bureau International, dans l'ordre et dans les délais déterminés par le compromis.

Les délais fixés par le compromis pourront être prolongés de commun accord par les Parties, ou par le Tribunal quand il le juge nécessaire pour arriver à une décision juste.

Les débats consistent dans le développement oral des moyens des Parties devant le Tribunal.

ARTICLE 64.

Toute pièce produite par l'une des Parties doit être communiquée, en copie certifiée conforme, à l'autre Partie.

ARTICLE 65.

A moins de circonstances spéciales, le Tribunal ne se réunit qu'après la clôture de l'instruction.

ARTICLE 66.

Les débats sont dirigés par le Président.

Ils ne sont publics qu'en vertu d'une décision du Tribunal, prise avec l'assentiment des Parties.

Ils sont consignés dans des procès-verbaux rédigés par des secrétaires que nomme le Président. Ces procès-verbaux sont signés par le Président et par un des secrétaires; ils ont seuls caractère authentique.

ARTICLE 67.

L'instruction étant close, le Tribunal a le droit d'écarter du débat tous actes ou documents nouveaux qu'une des Parties voudrait lui soumettre sans le consentement de l'autre.

phases: pleadings and oral discussions.

Pleadings. The pleadings consist in the communication by the respective agents to the members of the Tribunal and the opposite party of cases, counter-cases, and, if necessary, of replies; the parties annex thereto all papers and documents called for in the case. This communication shall be made either directly or through the intermediary of the International Bureau, in the order and within the time fixed by the "Compromis."

Extension of time. The time fixed by the "Compromis" may be extended by mutual agreement by the parties, or by the Tribunal when the latter considers it necessary for the purpose of reaching a just decision.

Oral discussions. The discussions consist in the oral development before the Tribunal of the arguments of the parties.

ARTICLE 64.

Exchange of documents. A certified copy of every document produced by one party must be communicated to the other party.

ARTICLE 65.

Meeting of Tribunal. Unless special circumstances arise, the Tribunal does not meet until the pleadings are closed.

ARTICLE 66.

Discussions. The discussions are under the control of the President.

Public. They are only public if it be so decided by the Tribunal, with the assent of the parties.

Record. They are recorded in minutes drawn up by the Secretaries appointed by the President. These minutes are signed by the President and by one of the Secretaries and alone have an authentic character.

ARTICLE 67.

Limiting discussions. After the close of the pleadings, the Tribunal is entitled to refuse discussion of all new papers or documents which one of the parties may wish to submit to it without the consent of the other party.

ARTICLE 68.

Admission of new evidence.

Le Tribunal demeure libre de prendre en considération les actes ou documents nouveaux sur lesquels les agents ou conseils des Parties appelleraient son attention.

En ce cas, le Tribunal a le droit de requérir la production de ces actes ou documents, sauf l'obligation d'en donner connaissance à la Partie adverse.

ARTICLE 68.

The Tribunal is free to take into consideration new papers or documents to which its attention may be drawn by the agents or counsel of the parties.

In this case, the Tribunal has the right to require the production of these papers or documents, but is obliged to make them known to the opposite party.

ARTICLE 69.

Production of all papers.

Le Tribunal peut, en outre, requérir des agents des Parties la production de tous actes et demander toutes explications nécessaires. En cas de refus, le Tribunal en prend acte.

ARTICLE 69.

The Tribunal can, besides, require from the agents of the parties the production of all papers, and can demand all necessary explanations. In case of refusal the Tribunal takes note of it.

ARTICLE 70.

Oral arguments.

Les agents et les conseils des Parties sont autorisés à présenter oralement au Tribunal tous les moyens qu'ils jugent utiles à la défense de leur cause.

ARTICLE 70.

The agents and the counsel of the parties are authorized to present orally to the Tribunal all the arguments they may consider expedient in defence of their case.

ARTICLE 71.

Decisions final.

Ils ont le droit de soulever des exceptions et des incidents. Les décisions du Tribunal sur ces points sont définitives et ne peuvent donner lieu à aucune discussion ultérieure.

ARTICLE 71.

They are entitled to raise objections and points. The decisions of the Tribunal on these points are final and cannot form the subject of any subsequent discussion.

ARTICLE 72.

Questions by arbitrators.

Les membres du Tribunal ont le droit de poser des questions aux agents et aux conseils des Parties et de leur demander des éclaircissements sur les points douteux.

Ni les questions posées, ni les observations faites par les membres du Tribunal pendant le cours des débats ne peuvent être regardées comme l'expression des opinions du Tribunal en général ou de ses membres en particulier.

ARTICLE 72.

The members of the Tribunal are entitled to put questions to the agents and counsel of the parties, and to ask them for explanations on doubtful points.

Neither the questions put, nor the remarks made by members of the Tribunal in the course of the discussions, can be regarded as an expression of opinion by the Tribunal in general or by its members in particular.

ARTICLE 73.

Competence of Tribunal.

Le Tribunal est autorisé à déterminer sa compétence en interprétant le compromis ainsi que les autres actes et documents qui peuvent être invoqués dans la matière, et en appliquant les principes du droit.

ARTICLE 73.

The Tribunal is authorized to declare its competence in interpreting the "Compromis," as well as the other Treaties which may be invoked, and in applying the principles of law.

ARTICLE 74.

Le Tribunal a le droit de rendre des ordonnances de procédure pour la direction du procès, de déterminer les formes, l'ordre et les délais dans lesquels chaque Partie devra prendre ses conclusions finales, et de procéder à toutes les formalités que comporte l'administration des preuves.

ARTICLE 74.

Special rules.

The Tribunal is entitled to issue rules of procedure for the conduct of the case, to decide the forms, order, and time in which each party must conclude its arguments, and to arrange all the formalities required for dealing with the evidence.

ARTICLE 75.

Les Parties s'engagent à fournir au Tribunal, dans la plus large mesure qu'Elles jugeront possible, tous les moyens nécessaires pour la décision du litige.

ARTICLE 75.

Information to be furnished.

The parties undertake to supply the Tribunal, as fully as they consider possible, with all the information required for deciding the case.

ARTICLE 76.

Pour toutes les notifications que le Tribunal aurait à faire sur le territoire d'une tierce Puissance contractante, le Tribunal s'adressera directement au Gouvernement de cette Puissance. Il en sera de même s'il s'agit de faire procéder sur place à l'établissement de tous moyens de preuve.

Les requêtes adressées à cet effet seront exécutées suivant les moyens dont la Puissance requise dispose d'après sa législation intérieure. Elles ne peuvent être refusées que si cette Puissance les juge de nature à porter atteinte à sa souveraineté ou à sa sécurité.

Le Tribunal aura aussi toujours la faculté de recourir à l'intermédiaire de la Puissance sur le territoire de laquelle il a son siège.

ARTICLE 76.

Serving notice in other countries.

For all notices which the Tribunal has to serve in the territory of a third Contracting Power, the Tribunal shall apply direct to the Government of that Power. The same rule applies in the case of steps being taken to procure evidence on the spot.

Executing requests.

The requests for this purpose are to be executed as far as the means at the disposal of the Power applied to under its municipal law allow. They cannot be rejected unless the Power in question considers them calculated to impair its own sovereign rights or its safety.

The Court will equally be always entitled to act through the Power on whose territory it sits.

ARTICLE 77.

Les agents et les conseils des Parties ayant présenté tous les éclaircissements et preuves à l'appui de leur cause, le Président prononce la clôture des débats.

ARTICLE 77.

Close of discussions.

When the agents and counsel of the parties have submitted all the explanations and evidence in support of their case the President shall declare the discussion closed.

ARTICLE 78.

Les délibérations du Tribunal ont lieu à huis clos et restent secrètes.

Toute décision est prise à la majorité de ses membres.

ARTICLE 78.

Deliberations private.

The Tribunal considers its decisions in private and the proceedings remain secret.

Majority to decide.

All questions are decided by a majority of the members of the Tribunal.

ARTICLE 79.

Statement of award.

La sentence arbitrale est motivée. Elle mentionne les noms des arbitres; elle est signée par le Président et par le greffier ou le secrétaire faisant fonctions de greffier.

ARTICLE 79.

The Award must give the reasons on which it is based. It contains the names of the Arbitrators; it is signed by the President and Registrar or by the Secretary acting as Registrar.

ARTICLE 80.

Announcement.

La sentence est lue en séance publique, les agents et les conseils des Parties présents ou dûment appelés.

ARTICLE 80.

The Award is read out in public sitting, the agents and counsel of the parties being present or duly summoned to attend.

ARTICLE 81.

Finality.

La sentence, dûment prononcée et notifiée aux agents des Parties, décide définitivement et sans appel la contestation.

ARTICLE 81.

The Award, duly pronounced and notified to the agents of the parties, settles the dispute definitively and without appeal

ARTICLE 82.

Disputes as to interpretation.

Tout différend qui pourrait surgir entre les Parties, concernant l'interprétation et l'exécution de la sentence, sera, sauf stipulation contraire, soumis au jugement du Tribunal qui l'a rendue.

ARTICLE 82.

Any dispute arising between the parties as to the interpretation and execution of the Award shall, in the absence of an Agreement to the contrary, be submitted to the Tribunal which pronounced it.

ARTICLE 83.

Right of revision.

Les Parties peuvent se réserver dans le compromis de demander la révision de la sentence arbitrale.

Grounds for demand.

Dans ce cas, et sauf stipulation contraire, la demande doit être adressée au Tribunal qui a rendu la sentence. Elle ne peut être motivée que par la découverte d'un fait nouveau qui eût été de nature à exercer une influence décisive sur la sentence et qui, lors de la clôture des débats, était inconnu du Tribunal lui-même et de la Partie qui a demandé la révision.

Proceedings.

La procédure de révision ne peut être ouverte que par une décision du Tribunal constatant expressément l'existence du fait nouveau, lui reconnaissant les caractères prévus par le paragraphe précédent et déclarant à ce titre la demande recevable.

Limitation.

Le compromis détermine le délai dans lequel la demande de révision doit être formée.

ARTICLE 83.

The parties can reserve in the "Compromis" the right to demand the revision of the Award.

In this case and unless there be an Agreement to the contrary, the demand must be addressed to the Tribunal which pronounced the Award. It can only be made on the ground of the discovery of some new fact calculated to exercise a decisive influence upon the Award and which was unknown to the Tribunal and to the party which demanded the revision at the time the discussion was closed.

Proceedings for revision can only be instituted by a decision of the Tribunal expressly recording the existence of the new fact, recognizing in it the character described in the preceding paragraph, and declaring the demand admissible on this ground.

The "Compromis" fixes the period within which the demand for revision must be made.

ARTICLE 84.

La sentence arbitrale n'est obligatoire que pour les Parties en litige.

Lorsqu'il s'agit de l'interprétation d'une Convention à laquelle ont participé d'autres Puissances que les Parties en litige, celles-ci avertissent en temps utile toutes les Puissances signataires. Chacune de ces Puissances a le droit d'intervenir au procès. Si une ou plusieurs d'entre Elles ont profité de cette faculté, l'interprétation contenue dans la sentence est également obligatoire à leur égard.

ARTICLE 84.

The Award is not binding except on the parties in dispute. Parties bound.

When it concerns the interpretation of a Convention to which Powers other than those in dispute are parties, they shall inform all the Signatory Powers in good time. Each of these Powers is entitled to intervene in the case. If one or more avail themselves of this right, the interpretation contained in the Award is equally binding on them. Right of other Powers to intervene.

ARTICLE 85.

Chaque Partie supporte ses propres frais et une part égale des frais du Tribunal.

ARTICLE 85.

Each party pays its own expenses and an equal share of the expenses of the Tribunal. Expenses.

CHAPITRE IV.—*De la Procédure sommaire d'arbitrage.* Summary arbitration.

CHAPTER IV.—*Arbitration by summary procedure.*

ARTICLE 86.

En vue de faciliter le fonctionnement de la justice arbitrale, lorsqu'il s'agit de litiges de nature à comporter une procédure sommaire, les Puissances contractantes arrêtent les règles ci-après qui seront suivies en l'absence de stipulations différentes, et sous réserve, le cas échéant, de l'application des dispositions du chapitre III qui ne seraient pas contraires.

ARTICLE 86.

With a view to facilitating the working of the system of arbitration in disputes admitting of a summary procedure, the Contracting Powers adopt the following rules, which shall be observed in the absence of other arrangements and subject to the reservation that the provisions of Chapter III apply so far as may be. Rules for summary procedure.

Ante, p. 2226.

ARTICLE 87.

Chacune des Parties en litige nomme un arbitre. Les deux arbitres ainsi désignés choisissent un surarbitre. S'ils ne tombent pas d'accord à ce sujet, chacun présente deux candidats pris sur la liste générale des Membres de la Cour permanente en dehors des Membres indiqués par chacune des Parties Elles-mêmes et n'étant les nationaux d'aucune d'Elles; le sort détermine lequel des candidats ainsi présentés sera le surarbitre.

Le surarbitre préside le Tribunal, qui rend ses décisions à la majorité des voix.

ARTICLE 87.

Each of the parties in dispute appoints an Arbitrator. The two Arbitrators thus selected choose an Umpire. If they do not agree on this point, each of them proposes two candidates taken from the general list of the members of the Permanent Court exclusive of the members appointed by either of the parties and not being nationals of either of them; which of the candidates thus proposed shall be the Umpire is determined by lot. Arbitrators and Umpire.

The Umpire presides over the Tribunal, which gives its decisions by a majority of votes.

ARTICLE 88.

Submission of cases.

A défaut d'accord préalable, le Tribunal fixe, dès qu'il est constitué, le délai dans lequel les deux Parties devront lui soumettre leurs mémoires respectifs.

ARTICLE 88.

In the absence of any previous agreement the Tribunal, as soon as it is formed, settles the time within which the two parties must submit their respective cases to it.

ARTICLE 89.

Agents.

Chaque Partie est représentée devant le Tribunal par un agent qui sert d'intermédiaire entre le Tribunal et le Gouvernement qui l'a désigné.

ARTICLE 89.

Each party is represented before the Tribunal by an agent, who serves as intermediary between the Tribunal and the Government who appointed him.

ARTICLE 90.

Proceedings to be in writing.

Oral explanations.

La procédure a lieu exclusivement par écrit. Toutefois, chaque Partie a le droit de demander la comparution de témoins et d'experts. Le Tribunal a, de son côté, la faculté de demander des explications orales aux agents des deux Parties, ainsi qu'aux experts et aux témoins dont il juge la comparution utile.

ARTICLE 90.

The proceedings are conducted exclusively in writing. Each party, however, is entitled to ask that witnesses and experts should be called. The Tribunal has, for its part, the right to demand oral explanations from the agents of the two parties, as well as from the experts and witnesses whose appearance in Court it may consider useful.

Final provisions.

TITRE V.—DISPOSITIONS FINALES.

PART V.—FINAL PROVISIONS.

ARTICLE 91.

Former convention replaced.

Vol. 32, p. 1779.

La présente Convention dûment ratifiée remplacera, dans les rapports entre les Puissances contractantes, la Convention pour le règlement pacifique des conflits internationaux du 29 juillet 1899.

ARTICLE 91.

The present Convention, duly ratified, shall replace, as between the Contracting Powers, the Convention for the Pacific Settlement of International Disputes of the 29th July, 1899.

ARTICLE 92.

Ratification.

Deposit at The Hague.

La présente Convention sera ratifiée aussitôt que possible.

Les ratifications seront déposées à La Haye.

Le premier dépôt de ratifications sera constaté par un procès-verbal signé par les représentants des Puissances qui y prennent part et par le Ministre des Affaires Etrangères des Pays-Bas.

Les dépôts ultérieurs de ratifications se feront au moyen d'une notification écrite, adressée au Gouvernement des Pays-Bas et accompagnée de l'instrument de ratification.

ARTICLE 92.

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be recorded in a *procès-verbal* signed by the Representatives of the Powers which take part therein and by the Netherland Minister for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification, addressed to the Netherland Government and accompanied by the instrument of ratification.

Copie certifiée conforme du procès-verbal relatif au premier dépôt de ratifications, des notifications mentionnées à l'alinéa précédent, ainsi que des instruments de ratification, sera immédiatement remise, par les soins du Gouvernement des Pays-Bas et par la voie diplomatique, aux Puissances conviées à la Deuxième Conférence de la Paix, ainsi qu'aux autres Puissances qui auront adhéré à la Convention. Dans les cas visés par l'alinéa précédent, ledit Gouvernement Leur fera connaître en même temps la date à laquelle il a reçu la notification.

A duly certified copy of the *procès-verbal* relative to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, and of the instruments of ratification, shall be immediately sent by the Netherland Government, through the diplomatic channel, to the Powers invited to the Second Peace Conference, as well as to those Powers which have adhered to the Convention. In the cases contemplated in the preceding paragraph, the said Government shall at the same time inform the Powers of the date on which it received the notification.

Certified copies to Powers.

ARTICLE 93.

Les Puissances non signataires qui ont été conviées à la Deuxième Conférence de la Paix pourront adhérer à la présente Convention.

La Puissance qui désire adhérer notifie par écrit son intention au Gouvernement des Pays-Bas en lui transmettant l'acte d'adhésion qui sera déposé dans les archives dudit Gouvernement.

Ce Gouvernement transmettra immédiatement à toutes les autres Puissances conviées à la Deuxième Conférence de la Paix copie certifiée conforme de la notification ainsi que de l'acte d'adhésion, en indiquant la date à laquelle il a reçu la notification.

ARTICLE 93.

Non-Signatory Powers which have been invited to the Second Peace Conference may adhere to the present Convention.

Nonsignatory Powers may adhere.

The Power which desires to adhere notifies its intention in writing to the Netherland Government, forwarding to it the act of adhesion, which shall be deposited in the archives of the said Government.

Notification of intent.

This Government shall immediately forward to all the other Powers invited to the Second Peace Conference a duly certified copy of the notification as well as of the act of adhesion, mentioning the date on which it received the notification.

Communication to other Powers.

ARTICLE 94.

Les conditions auxquelles les Puissances qui n'ont pas été conviées à la Deuxième Conférence de la Paix, pourront adhérer à la présente Convention, formeront l'objet d'une entente ultérieure entre les Puissances contractantes.

ARTICLE 94.

The conditions on which the Powers which have not been invited to the Second Peace Conference may adhere to the present Convention shall form the subject of a subsequent Agreement between the Contracting Powers.

Adherence by other Powers.

ARTICLE 95.

La présente Convention produira effet, pour les Puissances qui auront participé au premier dépôt de ratifications, soixante jours après la date du procès-verbal de ce dépôt et, pour les Puissances qui ratifieront ulté-

ARTICLE 95.

The present Convention shall take effect, in the case of the Powers which were not a party to the first deposit of ratifications, sixty days after the date of the *procès-verbal* of this deposit, and, in the case of the Powers which

Effect of ratification.

rieurement ou qui adhèreront, soixante jours après que la notification de leur ratification ou de leur adhésion aura été reçue par le Gouvernement des Pays-Bas.

ratify subsequently or which adhere, sixty days after the notification of their ratification or of their adhesion has been received by the Netherland Government.

ARTICLE 96.

Denunciation.

S'il arrivait qu'une des Puissances contractantes voulût dénoncer la présente Convention, la dénonciation sera notifiée par écrit au Gouvernement des Pays-Bas qui communiquera immédiatement copie certifiée conforme de la notification à toutes les autres Puissances en leur faisant savoir la date à laquelle il l'a reçue.

ARTICLE 96.

In the event of one of the Contracting Parties wishing to denounce the present Convention, the denunciation shall be notified in writing to the Netherland Government, which shall immediately communicate a duly certified copy of the notification to all the other Powers informing them of the date on which it was received.

Notifying Power only affected.

La dénonciation ne produira ses effets qu'à l'égard de la Puissance qui l'aura notifiée et un an après que la notification en sera parvenue au Gouvernement des Pays-Bas.

The denunciation shall only have effect in regard to the notifying Power, and one year after the notification has reached the Netherland Government.

ARTICLE 97.

ARTICLE 97.

Register of ratifications.

Un registre tenu par le Ministère des Affaires Etrangères des Pays-Bas indiquera la date du dépôt de ratifications effectué en vertu de l'article 92 alinéas 3 et 4, ainsi que la date à laquelle auront été reçues les notifications d'adhésion (article 93 alinéa 2) ou de dénonciation (article 96 alinéa 1).

Ante, p. 2284.

Ante, p. 2295.

Supra.

Chaque Puissance contractante est admise à prendre connaissance de ce registre et à en demander des extraits certifiés conformes.

A register kept by the Netherland Minister for Foreign Affairs shall give the date of the deposit of ratifications effected in virtue of Article 92, paragraphs 3 and 4, as well as the date on which the notifications of adhesion (Article 93, paragraph 2) or of denunciation (Article 96, paragraph 1) have been received.

Each Contracting Power is entitled to have access to this register and to be supplied with duly certified extracts from it.

Signing.

En foi de quoi, les Plénipotentiaires ont revêtu la présente Convention de leurs signatures.

In faith whereof the Plenipotentiaries have appended their signatures to the present Convention.

Deposit of original.

Fait à La Haye, le dix-huit octobre mil neuf cent sept, en un seul exemplaire qui restera déposé dans les archives du Gouvernement des Pays-Bas et dont des copies certifiées conformes, seront remises par la voie diplomatique aux Puissances contractantes.

Done at The Hague, the 18th October, 1907, in a single copy, which shall remain deposited in the archives of the Netherland Government, and duly certified copies of which shall be sent, through the diplomatic channel, to the Contracting Powers.

Signatures.

[Here follow signatures.]

1. Pour l'Allemagne:
MARSCHALL.
KRIEGE.

2. Pour les Etats-Unis d'Amérique. Sous réserve de la Déclaration faite dans la séance plénière de la Conférence du 16 Octobre 1907.
   JOSEPH H. CHOATE.
   HORACE PORTER.
   U. M. ROSE.
   DAVID JAYNE HILL.
   C. S. SPERRY:
   WILLIAM I. BUCHANAN.
3. Pour l'Argentine:
   ROQUE SAENZ PEÑA.
   LUIS M. DRAGO.
   C. RÚEZ LARRETA.
4. Pour l'Autriche-Hongrie:
   MÉREY.
   Bon MACCHIO.
5. Pour la Belgique:
   A. BEERNAERT.
   J. VAN DEN HEUVEL.
   GUILLAUME.
6. Pour la Bolivie:
   CLAUDIO PINILLA.
7. Pour le Brésil: Avec réserves sur l'article 53, alinéas 2, 3 et 4.
   RUY BARBOSA.
8. Pour la Bulgarie:
   Général-Major VINAROFF.
   Iv. KARANDJOULOFF.
9. Pour le Chili: Sous la réserve de la déclaration formulée à propos de l'article 39 dans la septième séance du 7 octubre de la première Commission.
   DOMINGO GANA.
   AUGUSTO MATTE.
   CARLOS CONCHA.
10. Pour la Chine:
    LOUTSENGTSIANG.
    TSIENSUN.
11. Pour la Colombie:
    JORGE HOLGUIN.
    S. PEREZ TRIANA.
    M. VARGAS.
12. Pour la République de Cuba:
    ANTONIO S. DE BUSTAMANTE.
    GONZALO DE QUESADA.
    MANUEL SANGUILY.
13. Pour le Danemark:
    C. BRUN.
14. Pour la République Dominicaine:
    dr. HENRIQUE Y CARVAJAL.
    APOLINAR TEJERA.

Signatures—Cont'd.

15. Pour l'Equateur:
Victor M. Rendon.
E. Dorn y de Alsúa.
16. Pour l'Espagne:
W. R. de Villa Urrutia.
José de la Rica y Calvo.
Gabriel Maura.
17. Pour la France:
Léon Bourgeois.
d'Estournelles de Constant.
L. Renault.
Marcellin Pellet.
18. Pour la Grande-Bretagne:
Edw. Fry.
Ernest Satow.
Reay.
Henry Howard.
19. Pour la Grèce: Avec la réserve de l'alinéa 2 de l'article 53:
Cléon Rizo Rangabé.
Georges Streit.
20. Pour le Guatémala:
José Tible Machado.
21. Pour le Haïti:
Dalbémar Jn Joseph.
J. N. Léger.
Pierre Hudicourt.
22. Pour l'Italie:
Pompilj.
G. Fusinato.
23. Pour le Japon: Avec réserve des alinéas 3 et 4 de l'article 48, de l'alinéa 2 de l'article 53 et de l'article 54.
Aimaro Sato.
24. Pour le Luxembourg:
Yeschen.
Cte. de Villers.
25. Pour la Mexique:
G. A. Esteva.
S. B. de Mier.
F. L. de la Barra.
26. Pour le Monténégro:
Nelidow.
Martens.
N. Tcharykow.
27. Pour le Nicaragua:
28. Pour la Norvège:
F. Hagerup.
29. Pour le Panama:
B. Porras.
30. Pour le Paraguay:
J du Monceau.
31. Pour les Pays-Bas:
W. H. de Beaufort.
T. M. C. Asser.
den Beer Poortugael.
J. A. Röell.
J. A. Loeff.

Signatures—Cont'd.

32. Pour le Pérou:
C. G. CANDAMO.
33. Pour la Perse:
MOMTAZOS-SALTANEH M. SAMAD KHAN.
SADIGH UL MULK M. AHMED KHAN.
34. Pour le Portugal:
MARQUIS DE SOVERAL.
CONDE DE SÉLIR.
ALBERTO D'OLIVEIRA.
35. Pour la Roumanie: Avec les mêmes réserves formulées par les Plénipotentaires Roumains à la signature de la Convention pour la Règlement pacifique des conflits internationaux du 29 juillet 1899.
EDG. MAVROCORDATO.
36. Pour la Russie:
NELIDOW.
MARTENS.
N. TCHARYKOW.
37. Pour le Salvador:
P. J. MATHEU.
S. PEREZ TRIANA.
38. Pour la Serbie:
S. GROUÏTCH.
M. G. MILOVANOVITCH.
M. G. MILITCHEVITCH.
39. Pour le Siam:
MOM CHATIDEJ UDOM.
C. CORRAGIONI D'ORELLI.
LUANG BHÜVANARTH NARÜBAL.
40. Pour la Suède:
JOH. HELLNER.
41. Pour la Suisse: Sous réserve de l'article 53, chiffre 2°.
CARLIN.
42. Pour la Turquie: Sous réserve des déclarations portées au procès-verbal de la 9e séance plénière de la Conférence du 16 octobre 1907.
TURKHAN.
43. Pour l'Uruguay:
JOSÉ BATLLE Y ORDOÑEZ.
44. Pour le Vénézuéla:
J. GIL FORTOUL.

Certifié pour copie conforme:
Le Secrétaire-Général du Ministère des Affaires Etrangères des Pays-Bas.

HANNEMA.

Reservation by United States.

And whereas the said Convention was signed by the Plenipotentiaries of the United States of America under reserve of the declaration made by them to the International Peace Conference at its session of October 16, 1907, as follows:

"Nothing contained in this convention shall be so construed as to require the United States of America to depart from its traditional policy of not intruding upon, interfering with, or entangling itself in the political questions of policy or internal administration of any foreign state; nor shall anything contained in the said convention be construed to imply a relinquishment by the United States of its traditional attitude toward purely American questions;"

Resolution of the United States Senate.

And whereas the Senate of the United States, by its resolution of April 2, 1908, (two-thirds of the Senators present concurring therein) did advise and consent to the ratification of the said Convention with the following understanding and declarations, to wit:

"*Resolved further, as a part of this act of ratification,* That the United States approves this convention with the understanding that recourse to the permanent court for the settlement of differences can be had only by agreement thereto through general or special treaties of arbitration heretofore or hereafter concluded between the parties in dispute; and the United States now exercises the option contained in article fifty-three of said convention, to exclude the formulation of the 'compromis' by the permanent court, and hereby excludes from the competence of the permanent court the power to frame the 'compromis' required by general or special treaties of arbitration concluded or hereafter to be concluded by the United States, and further expressly declares that the 'compromis' required by any treaty of arbitration to which the United States may be a party shall be settled only by agreement between the contracting parties, unless such treaty shall expressly provide otherwise."

Ante, p. 2226.

Ratification.

And whereas the said Convention has been duly ratified by the Government of the United States of America, by and with the advice and consent of the Senate thereof, and by the Governments of Germany, Austria-Hungary, Bolivia, China, Denmark, Mexico, the Netherlands, Russia, Salvador, and Sweden, and the ratifications of the said Governments were, under the provisions of Article 92 of the said Convention, deposited by their respective plenipotentiaries with the Netherlands Government on November 27, 1909;

Ante, p. 2234.

Proclamation.

Now, therefore, be it known that I, William Howard Taft, President of the United States of America, have caused the said Convention to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof, subject to the reserve made in the aforesaid declaration of the Plenipotentiaries of the United States and to the aforesaid understanding and declarations stated and made by the Senate of the United States in its resolution of April 2, 1908.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this twenty-eighth day of February in the year of our Lord one thousand nine hundred and ten, and of the Independence of the United States of America the one hundred and thirty-fourth.

[SEAL.]

WM H TAFT

By the President:

P C KNOX
Secretary of State.

Exhibit "4"

Larsen v. Hawaiian Kingdom

Case name	Larsen v. Hawaiian Kingdom
Case description	Lance Paul Larsen, a resident of Hawaii, brought a claim against the Hawaiian Kingdom by its Council of Regency ("Hawaiian Kingdom") on the grounds that the Government of the Hawaiian Kingdom is in continual violation of: (a) its 1849 Treaty of Friendship, Commerce and Navigation with the United States of America, as well as the principles of international law laid down in the Vienna Convention on the Law of Treaties, 1969 and (b) the principles of international comity, for allowing the unlawful imposition of American municipal laws over the claimant's person within the territorial jurisdiction of the Hawaiian Kingdom. In determining whether to accept or decline to exercise jurisdiction, the Tribunal considered the questions of whether there was a legal dispute between the parties to the proceeding, and whether the tribunal could make a decision regarding that dispute, if the very subject matter of the decision would be the rights or obligations of a State not party to the proceedings. The Tribunal underlined the many points of agreement between the parties, particularly with respect to the propositions that Hawaii was never lawfully incorporated into the United States, and that it continued to exist as a matter of international law. The Tribunal noted that if there existed a dispute, it concerned whether the respondent has fulfilled what both parties maintain is its duty to protect the Claimant, not in the abstract but against the acts of the United States of America as the occupant of the Hawaiian islands. Moreover, the United States' actions would not give rise to a duty of protection in international law unless they were themselves unlawful in international law. The Tribunal concluded that it could not determine whether the Respondent has failed to discharge its obligations towards the Claimant without ruling on the legality of the acts of the United States of America – something the Tribunal was precluded from doing as the United States was not party to the case.
Name(s) of claimant(s)	Lance Paul Larsen (Private entity)
Name(s) of respondent(s)	The Hawaiian Kingdom (State)
Names of parties	
Case number	1999-01
Administering institution	Permanent Court of Arbitration (PCA)
Case status	Concluded
Type of case	Other proceedings
Subject matter or economic sector	Treaty interpretation
Rules used in arbitral proceedings	UNCITRAL Arbitration Rules 1976
Treaty or contract under which proceedings were commenced	Other The 1849 Treaty of Friendship, Commerce and Navigation with the United States of America
Language of proceeding	English
Seat of arbitration (by country)	Netherlands
Arbitrator(s)	Dr. Gavan Griffith QC Professor Christopher J. Greenwood QC Professor James Crawford SC (President of the Tribunal)
Representatives of the claimant(s)	Ms. Ninia Parks, Counsel and Agent
Representatives of the respondent(s)	Mr. David Keanu Sai, Agent

Representatives of the parties	Mr. Peter Umialiloa Sai, First deputy agent Mr. Gary Victor Dubin, Second deputy agent and counsel
Number of arbitrators in case	3
Date of commencement of proceeding [dd-mm-yyyy]	08-11-1999
Date of issue of final award [dd-mm-yyyy]	05-02-2001
Length of proceedings	1-2 years
Additional notes	

Attachments

Award or other decision

> Arbitral Award 15-05-2014 English

Other

>	Annex 1 - President Cleveland's Message to the Senate and the House of Representatives	18-12-1893	English
>	Joint Resolution - To acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, and to offer an apology to the native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaii.	23-11-1993	English

Exhibit "5"

CIVIL LAW ON JURIDICAL FACT OF THE HAWAIIAN STATE AND THE CONSEQUENTIAL JURIDICAL ACT BY THE PERMANENT COURT OF ARBITRATION

FEDERICO LENZERINI*

5 December 2021

Juridical Facts

In the civil law tradition, a *juridical fact* (or *legal fact*) is a fact (or event) – determined either by natural occurrences or by humans – which produces consequences that are relevant according to law. Such consequences are defined *juridical effects* (or *legal effects*), and consist in the establishment, modification or extinction of rights, legal situations or *juridical* (or *legal*) *relationships* (*privity*). Reversing the order of the reasoning, among the multifaceted natural or social facts occurring in the world a fact is *juridical* when it is *legally relevant*, i.e. determines the production of *legal effects* per effect of a *legal* (*juridical*) *rule* (*provision*). In technical terms, it is actually the legal rule which produces legal effects, while the juridical fact is to be considered as the *condition* for the production of the effects. In practical terms, however, it is the juridical fact which activates a reaction by the law and makes the production of the effects concretely possible. At the same time, no fact can be considered as "juridical" without a legal rule attributing this quality to it.[1]

Both *rights*, *powers* or *obligations* – held by/binding a person or another subject of law (in international law, a State, an international organization, a people, or any other entity to which international law attributes legal personality) – may arise from a juridical fact.

Sometimes a juridical fact determines the production of legal effects irrespective of the action of a person or another subject of law. In other terms, in some cases legal effects are automatically produced by a(n *inactive*) juridical fact – only by virtue of the mere existence of the latter – without any need of an action by a legal subject. "Inactive juridical facts are events which occur more or less spontaneously, but still have legal effects because a certain reaction is regarded to be necessary to deal with the newly arisen circumstances".[2] Inactive juridical facts may be based on an occasional situation, a quality of a person or a thing, or the course of time.[3]

Juridical Acts

In other cases, however, the legal effects arising from a juridical fact only exist *potentially*, and, in order to concretely come into existence they need to be activated through a behaviour by a subject of law, which may consist of either an action or a passive behaviour. The legal effects may arise from either an *operational act* – i.e. a behaviour to which the law attributes legally-relevant effects for the sole ground of its existence, "although the acting [subject] had no intention to create this legal

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[1] See Lech Morawski, "Law, Fact and Legal Language", (1999) 18 *Law and Philosophy* 461, at 463.

[2] See "Legal System of Civil Law in the Netherlands", available at <http://www.dutchcivillaw.com/content/legalsystem022aa.htm> (accessed on 4 December 2021).

[3] Ibidem.

effect"[4] – or an act that a subject of law performs intentionally, "because he[/she/it] knows that the law will respond to it by acknowledging the conception of a particular legal effect. The act is explicitly [and voluntarily] chosen to let this legal effect arise".[5] In order to better comprehend this line of reasoning, one may consider the example of adverse possession,[6] which is determined by the juridical fact that a given span of time has passed during which the thing has continuously been in the possession without being claimed by its owner. However, in order for the possessor to effectively acquire the right to property, it is usually necessary to activate a legal action before the competent authority aimed at obtaining its legal recognition. In this and other similar cases a subject of law intentionally performs an act "to set the law in motion" with the purpose of producing a desired juridical effect. The legal subject concerned knows that, through performing such an act, the wanted juridical effect will be produced as a consequence of the existence of a juridical fact. Acts that are intentionally performed by a subject of law with the purpose of producing a desired legal effect are defined as *juridical acts* (or *legal acts*). It follows that an act consequential to a juridical fact (i.e. having the purpose of producing a given juridical effect in consequence of the existence of a juridical fact) is called *juridical* (or *legal*) *act*. The entitlement to perform a *juridical act* is the effect of a *power* attributed by the *juridical fact* to the legal subject concerned. The most evident difference between *juridical facts* and *juridical acts* is that, while the former "produce legal consequences regardless of a [person]'s will and capacity", the latter "are licit volitional acts – in the form of a manifestation of will – that are intended to produce legal consequences".[7]

Effects of Juridical Acts on Third Parties

One legal subject may only perform a juridical act unilaterally when it falls within her/his/its own legal sphere, but an unilateral juridical act may produce effects for other legal subjects as well. For instance, in private law unilateral juridical acts exist which produce juridical effects on third parties – for instance a will or a promise to donate a sum of money. Usually, unilateral juridical acts start to produce their effects from the moment when they are known by the beneficiary, and from that moment their withdrawal is precluded, unless otherwise provided for by applicable law (depending on the specific act concerned).

Similarly, bilateral or plurilateral juridical acts influencing the life of third parties are also provided by law – e.g. a contract in favour of third parties or a trust, typical of the common law tradition. Then, of course, the beneficiary of such acts may decide to refuse the benefits (if any) arising from them; however, if such benefits are not refused, said acts will definitely produce their effects, and may only be withdrawn within the limits established by law. Juridical acts also include the laws and regulations adopted by national parliaments, administrative acts, and, more in general, all acts determining – i.e. creating, modifying or abrogating – legal effects. *Acts of the judiciary* (judgments, orders, decrees, etc.) are also included in the concept of juridical acts. For instance, a judgment recognizing natural filiation produces the effects of filiation – with *retroactive effects* – "transform[ing] the [juridical] fact of procreation (in itself insufficient to create a legal relationship)

[4] Ibidem.

[5] Ibidem.

[6] Adverse possession refers to a legal principle – in force in many countries, especially of civil law – according to which a subject of law is granted property title over another subject's property by keeping continuous possession of it for a given (legally defined) period of time, on the condition that the title over the property is not claimed by the owner throughout the whole duration of that period of time.

[7] See Nikolaos A. Davrados, "A Louisiana Theory of Juridical Acts" (2020) 80 *Louisiana Law Review* 1119, at 1273.

into a state of filiation (recognized child) that is relevant to the law".[8] In this case, a juridical act of the judge actually leads to the recognition of a legal state – productive of a number of juridical effects, including *ex tunc* – arising from the juridical fact of the natural filiation. This is a perfect example of a juridical fact (exactly the natural filiation) whose legal effects exist *potentially*, and are activated by the juridical act represented by the judge's decision.

The Juridical Act of the Permanent Court of Arbitration (PCA) Recognizing the Juridical Fact of the Statehood of the Hawaiian Kingdom and the Council of Regency as its government

According to the *PCA Arbitration Rules*,[9] disputes included within the competence of the PCA include the following instances:

- disputes between two or more States;
- disputes between two parties of which only one is a State (i.e., disputes between a State and a private entity);
- disputes between a State and an international organization;
- disputes between two or more international organizations;
- disputes between an international organization and a private entity.

It is evident that, in order for a dispute to fall within the competence of the PCA, it is *always* necessary that either a State or an international organization are involved in the controversy. The case of *Larsen v. Hawaiian Kingdom*[10] was qualified by the PCA as a dispute between a State (The Hawaiian Kingdom) and a Private entity (Lance Paul Larsen).[11] In particular, the Hawaiian Kingdom was qualified as a non-Contracting Power under Article 47 of the 1907 Convention for the Pacific Settlement of International Disputes.[12] In addition, since the PCA allowed the Council of Regency to represent the Hawaiian Kingdom in the arbitration, it also implicitly recognized the former as the government of the latter.[13]

According to a civil law perspective, the juridical act of the International Bureau of the PCA instituting the arbitration in the case of *Larsen v. Hawaiian Kingdom* may be compared – *mutatis mutandis* – to a juridical act of a domestic judge recognizing a juridical fact (e.g. *filiation*) which is productive of certain legal effects arising from it according to law. Said legal effects may include, depending on applicable law, the power to stand before a court with the purpose of invoking certain rights. In the context of the *Larsen* arbitration, the juridical fact recognized by the PCA in favour of the Hawaiian Kingdom was its quality of *State* under international law. Among the legal effects produced by such a juridical fact, the entitlement of the Hawaiian Kingdom to be part of an international arbitration under the auspices of the PCA was included, since the existence of said juridical fact actually represented an indispensable condition for the Hawaiian Kingdom to be admitted in the *Larsen* arbitration, *vis-à-vis* a private entity (Lance Paul Larsen). Consequently, the

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[8] See Armando Cecatiello, "Recognition of the natural child", available at <https://www.cecatiello.it/en/riconoscimento-del-figlio-naturale-2/> (accessed on 4 December 2021).

[9] The *PCA Arbitration Rules 2012* (available at <https://docs.pca-cpa.org/2015/11/PCA-Arbitration-Rules-2012.pdf>, accessed on 5 December 2021) constitute a consolidation of the following set of PCA procedural rules: the *Optional Rules for Arbitroting Disputes between Two States (1992)*; the *Optional Rules for Arbitroting Disputes between Two Porties of Which Only One is a State* (1993); the *Optional Rules for Arbitration Between International Organizations and Stotes* (1996); and *the Optional Rules for Arbitration Between Internotional Organizations and Private Parties (1996)*.

[10] Case number 1999-01.

[11] See <https://pca-cpa.org/en/cases/35/> (accessed on 5 December 2021).

[12] Available at <https://docs.pca-cpa.org/2016/01/1907-Convention-for-the-Pacific-Settlement-of-International-Disputes.pdf> (accessed on 5 December 2021).

[13] See Declaration of Professor Federico Lenzerini [ECF 55-2].

International Bureau of the PCA carried out the juridical act consisting in establishing the arbitral tribunal as an effect of the recognition of the juridical fact in point. Likewise, e.g., the recognition of the juridical fact of filiation by a domestic judge, also the recognition of the Hawaiian Kingdom as a State had in principle retroactive effects, in the sense that the Hawaiian Kingdom did *not* acquire the condition of State per effect of the PCA's juridical act. Rather, the Hawaiian Kingdom's Statehood was a juridical fact that the PCA recognized as *pre-existing* to its juridical act.

The Effects of the Juridical Act of the PCA Recognizing the Juridical Fact of the Continued Existence of the Hawaiian Kingdom as a State and the Council of Regency as its government

At the time of the establishment of the *Larsen* arbitral tribunal by the PCA, the latter had 88 contracting parties.[14] One may safely assume that the PCA's juridical act consisting in the recognition of the juridical fact of the Hawaiian Kingdom as a State, through the institution of the *Larsen* arbitration, reflected a view shared by all such parties, on account of the fact that the decision of the International Bureau of the PCA was not followed by any complaints by any of them. In particular, it is especially meaningful that there was "no evidence that the United States, being a Contracting State [indirectly concerned by the *Larsen* arbitration], protested the International Bureau's recognition of the Hawaiian Kingdom as a State in accordance with Article 47".[15] On the contrary, the United States appeared to provide its acquiescence to the establishment of the arbitration, as it entered into an agreement with the Council of Regency of the Hawaiian Kingdom to access all records and pleadings of the dispute.

Under international law, the juridical act of the PCA recognizing the juridical fact of the Hawaiian Kingdom as a State may reasonably be considered as an important manifestation of – contextually – State practice and *opinio juris*, in support of the assumption according to which the Hawaiian Kingdom is actually – and has never ceased to be – a sovereign and independent State pursuant to customary international law. As noted a few lines above, it may be convincingly held that the PCA contracting parties actually agreed with the recognition of the juridical fact of the Hawaiian Kingdom as a State carried out by the International Bureau. In fact, in international law, *acquiescence* "concerns a consent tacitly conveyed by a State, unilaterally, through silence or inaction, in circumstances such that a response expressing disagreement or objection in relation to the conduct of another State [or an international institution] would be called for".[16] The case in discussion is evidently a situation in the context of which, in the event that any of the PCA contracting parties would have disagreed with the recognition of the continued existence of the Hawaiian Kingdom as a State by the International Bureau through its juridical act, an explicit reaction would have been necessary. Since they "did not do so [...] thereby must be held to have acquiesced. *Qui tacet consentire videtur si loqui debuisset ac potuisset*".[17]

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[14] See <https://pca-cpa.org/en/about/introduction/contracting-parties/> (accessed on 5 December 2021).

[15] See David Keanu Sai, "The Royal Commission of Inquiry", in David Keanu Sai (ed.), The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom (Honolulu 2020) 12, at 25.

[16] See Nuno Sérgio Marques Antunes, "Acquiescence", in Rüdiger Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law* (2006), at para. 2.

[17] See International Court of Justice, *Case concerning the Temple of Preah Vihear (Cambodia v. Thailand)*, Merits, Judgment of 15 June 1962, *I.C.J. Reports* 1962, p. 6, at 23.

Exhibit "6"

LEGAL OPINION ON THE AUTHORITY OF THE COUNCIL OF REGENCY OF THE HAWAIIAN KINGDOM

PROFESSOR FEDERICO LENZERINI*

As requested in the Letter addressed to me, on 11 May 2020, by Dr. David Keanu Sai, Ph.D., Head of the Hawaiian Royal Commission of Inquiry, I provide below a legal opinion in which I answer the three questions included in the above letter, for purposes of public awareness and clarification of the Regency's authority.

a) Does the Regency have the authority to represent the Hawaiian Kingdom as a State that has been under a belligerent occupation by the United States of America since 17 January 1893?

1. In order to ascertain whether the Regency has the authority to represent the Hawaiian Kingdom *as a State*, it is preliminarily necessary to ascertain whether the Hawaiian Kingdom can actually be considered a State under international law. To this purpose, two issues need to be investigated, i.e.: a) whether the Hawaiian Kingdom was a State at the time when it was militarily occupied by the United States of America, on 17 January 1893; b) in the event that the solution to the first issue would be positive, whether the continuous occupation of Hawai'i by the United States, from 1893 to present times, has led the Hawaiian Kingdom to be extinguished as an independent State and, consequently, as a subject of international law.
2. With respect to the first of the abovementioned issues, as acknowledged by the Arbitral Tribunal of the Permanent Court of Arbitration (PCA) in the *Larsen* case, "in the nineteenth century the Hawaiian Kingdom existed as an independent State recognized as such by the United States of America, the United Kingdom and various other States, including by exchanges of diplomatic or consular representatives and the conclusion of treaties."[1] At the time of the American occupation, the Hawaiian Kingdom fully satisfied the four elements of statehood prescribed by customary international law, which were later codified by the *Montevideo Convention on the Rights and Duties of States* in 1933[2]: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with the other states. This is confirmed by the fact that

> "the Hawaiian Kingdom became a full member of the Universal Postal Union on 1 January 1882, maintained more than a hundred legations and consulates throughout the world, and entered into extensive diplomatic and treaty relations with other States that included Austria-Hungary,

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[1] See *Larsen v. Hawaiian Kingdom*, 119 *International Law Reports*, 2001, 566, at 581.

[2] See *Montevideo Convention on the Rights and Duties of States*, 1933, 16S *LNTS* 19, Article 1. This article codified the so-called *declarative* theory of statehood, already accepted by customary international law; see Thomas D. Grant, "Defining Statehood: The Montevideo Convention and its Discontents", 37 *Columbia Journal of Transnational Law*, 1998-1999, 403; Joshua Castellino, *International Law and Self-Determination: The Interplay of the Politics of Territorial Possession with Formulations of Post-Colonial 'National' Identity*", The Hague/Boston/London, 2000, at 77; David J. Harris (ed.), *Cases and Materials on International Law*, 6th Ed., London, 2004, at 99.

> Belgium, Bremen, Denmark, France, Germany, Great Britain, Hamburg, Italy, Japan, Netherlands, Portugal, Russia, Spain, Sweden-Norway, Switzerland and the United States".[3]

It is therefore unquestionable that **in the 1890s the Hawaiian Kingdom was an independent State and, consequently, a subject of international law**. This presupposed that its territorial sovereignty and internal affairs could not be legitimately violated by other States.

3. Once established that the Hawaiian Kingdom was actually a State, under international law, at the time when it was militarily occupied by the United States of America, on 17 January 1893, it is now necessary to determine whether the continuous occupation of Hawai'i by the United States from 1893 to present times has led the Hawaiian Kingdom to be extinguished as an independent State and, consequently, as a subject of international law. This issue is undoubtedly controversial, and may be considered according to different perspectives. As noted by the Arbitral Tribunal established by the PCA in the *Larsen* case, in principle the question in point might be addressed by means of a careful assessment carried out through "having regard *inter alia* to the lapse of time since the annexation [by the United States], subsequent political, constitutional and international developments, and relevant changes in international law since the 1890s".[4]
4. However – beyond all speculative argumentations and the consequential conjectures that might be developed depending on the different perspectives under which the issue in point could be addressed – in reality the argument which appears to overcome all the others is that a long-lasting and well-established rule of international law exists establishing that military occupation, irrespective of the length of its duration, *cannot* produce the effect of extinguishing the sovereignty and statehood of the occupied State. In fact, the validity of such a rule has *not* been affected by whatever changes occurred in international law since the 1890s. Consistently, as emphasized by the Swiss arbitrator Eugène Borel in 1925, in the famous *Affaire de la Dette publique ottomane*,

> "[q]uels que soient les effets de l'occupation d'un territoire par l'adversaire avant le rétablissement de la paix, il est certain qu'à elle seule cette occupation ne pouvait opérer juridiquement le transfert de souveraineté [...] L'occupation, par l'un des belligérants, de [...] territoire de l'autre belligérant est un pur fait. C'est un état de choses essentiellement provisoire, qui ne substitue pas légalement l'autorité du belligérant envahisseur à celle du belligérant envahi".[5]

This position was confirmed by, among others, the US Military Tribunal at Nuremberg in 1948, holding that "[i]n belligerent occupation the occupying power does not hold enemy territory by virtue of any legal right. On the contrary, it merely exercises a precarious and temporary actual control".[6] Indeed, as noted, much more recently, by Yoram Dinstein, "occupation does not affect sovereignty. The displaced sovereign loses possession of the occupied territory de facto but it retains title *de jure* [i.e. "as a matter of law"]".[7] In this regard, as previously specified, this

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[3] See David Keanu Sai, "Hawaiian Constitutional Governance", in David Keanu Sai (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations in the Hawaiian Kingdom*, Honolulu, 2020, 58, at 64 (footnotes omitted).

[4] See *Larsen v. Hawaiian Kingdom*, *supra* n. 1, at 9.2.

[5] See *Affaire de la Dette publique ottomane (Bulgarie, Irak, Palestine, Transjordanie, Grèce, Italie et Turquie)*, 18 April 1925, *Reports of International Arbitral Awards*, Volume I, 529, also available at <https://legal.un.org/riaa/cases/vol_I/529-614.pdf> (accessed on 16 May 2020), at 555 ("whatever are the effects of the occupation of a territory by the enemy before the re-establishment of peace, it is certain that such an occupation alone cannot legally determine the transfer of sovereignty [...] The occupation, by one of the belligerents, of [...] the territory of the other belligerent is nothing but a pure fact. It is a state of things essentially provisional, which does not legally substitute the authority of the invading belligerent to that of the invaded belligerent").

[6] See *USA v. Otto Ohlendorf et al. (Einsatzgruppen Trial)*, 10 April 1948, (1948) *LRTWC* 411, at 492.

[7] See Yoram Dinstein, *The International Law of Belligerent Occupation*, 2nd Ed., Cambridge, 2019, at 58.

conclusion can in no way be influenced by the length of the occupation in time, as "[p]rolongation of the occupation does not affect its innately temporary nature".[8] It follows that "'precarious' as it is, the sovereignty of the displaced sovereign over the occupied territory is not terminated" by belligerent occupation.[9] Under international law, "le transfert de souveraineté ne peut être considéré comme effectué juridiquement que par l'entrée en vigueur du Traité qui le stipule et à dater du jour de cette mise en vigueur",[10] which means, in the words of the famous jurist Oppenheim, that "[t]he only form in which a cession [of sovereignty] can be effected is an agreement embodied in a treaty between the ceding and the acquiring State. Such treaty may be the outcome of peaceable negotiations or of war".[11] Such a conclusion corresponds to "a universally recognized rule which is endorsed by jurists and confirmed by numerous rulings of international and national courts".[12]

5. The United States has taken possession of the territory of Hawai'i solely through de facto occupation and unilateral annexation, without concluding any treaty with the Hawaiian Kingdom. Furthermore, it appears that such an annexation has taken place in contravention of the rule of *estoppel*. At it is known, in international law "the doctrine of estoppel protects legitimate expectations of States induced by the conduct of another State".[13] On 18 December 1893 President Cleveland concluded with Queen Lili'uokalani a treaty, by executive agreement, which obligated the President to restore the Queen as the Executive Monarch, and the Queen thereafter to grant clemency to the insurgents.[14] Such a treaty, which was never carried into effect by the United States, would have precluded the latter from claiming to have acquired Hawaiian territory, because it had evidently induced in the Hawaiian Kingdom the legitimate expectation that the sovereignty of the Queen would have been reinstated, an expectation which was unduly frustrated through the annexation. It follows from the foregoing that, according to a plain and correct interpretation of the relevant legal rules, **the Hawaiian Kingdom cannot be considered, by virtue of the prolonged US occupation, as extinguished as an independent State and a subject of international law**, despite the long and effective exercise of the attributes of government by the United States over Hawaiian territory.[15] In fact, in the event of illegal annexation, "the legal existence of [...] States [is] preserved from extinction",[16] since "illegal occupation cannot of itself terminate statehood".[17] The possession of the attribute of statehood by the Hawaiian Kingdom was substantially confirmed by the PCA, which, before establishing the Arbitral Tribunal for the *Larsen* case, had to get assured that one of the parties of the arbitration was a State, as a necessary precondition for its jurisdiction to exist. In

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[8] Ibid.

[9] Ibid. (footnotes omitted). See also, consistently, Peter M.R. Stirk, *The Politics of Military Occupation*, Edinburgh, 2009, at 168 and 230.

[10] See *Affaire de la Dette publique ottomane*, *supra* n. 5, at 555 ("the transfer of sovereignty can only be considered legally effected by the entry into force of a treaty which establishes it and from the date of such entry into force").

[11] See Lassa FL Oppenheim, *Oppenheim's International Law*, 7th Ed., vol. 1, 1948, at 500.

[12] See Jean S. Pictet, *Commentary on the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949*, Geneva, 1958, at 275.

[13] See Thomas Cottier, Jörg Paul Müller, "Estoppel", *Max Planck Encyclopedias of International Law*, April 2007, available at <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1401> (accessed on 20 May 2020).

[14] See United States House of Representatives, 53rd Congress, *Executive Documents on Affairs in Hawai'i: 1894-95*, 1895, at 1269, available at <https://hawaiiankingdom.org/pdf/Willis_to_Gresham_(12.20.1893).pdf> (accessed on 20 May 2020).

[15] In this respect, it is to be emphasized that "a sovereign State would continue to exist despite its government being overthrown by military force"; see David Keanu Sai, "The Royal Commission of Inquiry", in David Keanu Sai (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations in the Hawaiian Kingdom*, Honolulu, 2020, 12, at 14.

[16] See James Crawford, *The Creation of States in International Law*, 2nd Ed., Oxford, 2006, at 702.

[17] See Ian Brownlie, *Principles of Public International Law*, 7th Ed., Oxford, 2008, at 78.

that case, the Hawaiian Kingdom was actually qualified as a "State", while the Claimant – Lance Paul Larsen – as a "Private entity."[18]

6. The conclusion according to which the Hawaiian Kingdom cannot be considered as having been extinguished – as a State – as a result of the American occupation also allows to confirm, *de plano*, that the Hawaiian Kingdom, as an independent State, **has been under uninterrupted belligerent occupation by the United States of America, from 17 January 1893 up to the moment of this writing**. This conclusion cannot be validly contested, even by virtue of the hypothetical consideration according to which, since the American occupation of Hawai'i has not substantially involved the use of military force, and has not encountered military resistance by the Hawaiian Kingdom,[19] it consequently could not be considered as "belligerent". In fact, a territory is considered occupied "when it is placed under the authority of the hostile army [...] The law on occupation applies to all cases of partial or total occupation, even if such occupation does not encounter armed resistance. The essential ingredient for applicability of the law of occupation is therefore the actual control exercised by the occupying forces".[20] This is consistent with the rule expressed in Article 42 of the Regulations annexed to the *Hague Convention (IV) respecting the Laws and Customs of War on Land* of 1907 – affirming that a "[t]erritory is considered occupied when it is actually placed under the authority of the hostile army" – as well as with Article 2 common to the four Geneva Conventions of 1949, establishing that such Conventions apply "to all cases of partial or total occupation of the territory of a High Contracting Party, *even if the said occupation meets with no armed resistance*" (emphasis added).
7. Once having ascertained that, under international law, the Hawaiian Kingdom continues to exist as an independent State, it is now time to assess the legitimacy and powers of the Regency. According to the *Lexica Oxford Dictionary*, a "regency" is "[t]he office of or period of government by a regent".[21] In a more detailed manner, the *Block's Law Dictionary*, which is the most trusted and widely used legal dictionary in the United States, defines the term in point as "[t]he man or body of men intrusted with the vicarious government of a kingdom during the minority, absence, insanity, or other disability of the king".[22] Therefore, it appears that, in consideration of the current situation of the Hawaiian Kingdom, a regency is the right body entitled to provisionally exercise the powers of the Hawaiian Executive Monarch in the absence of the latter, an absence which forcibly continues at present due to the persistent situation of military occupation to which the Hawaiian territory is subjected.
8. In legal terms, the legitimacy of the Hawaiian Council of Regency is grounded on Articles 32 and 33 of the *Hawaiian Kingdom Constitution* of 1864. In particular, Article 32 states that "[w]henever, upon the decease of the Reigning Sovereign, the Heir shall be less than eighteen years of age, the Royal Power shall be exercised by a Regent Council of Regency; as hereinafter provided". As far as Article 33 is concerned, it affirms that

> "[i]t shall be lawful for the King at any time when he may be about to absent himself from the Kingdom, to appoint a Regent or Council of Regency, who shall administer the Government in

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[18] See <https://pcacases.com/web/view/35> (accessed on 16 May 2020).

[19] It is to be noted, in this respect, that no armed resistance was opposed to the occupation despite the fact that, as acknowledged by US President Cleveland, the Queen "had at her command at least five hundred fully armed men and several pieces of artillery. Indeed, the whole military force of her kingdom was on her side and at her disposal"; see United States House of Representatives, 53rd Congress, *Executive Documents on Affairs in Hawai'i: 1894-95*, 1895, at 453, available at <https://hawaiiankingdom.org/pdf/Willis_to_Gresham_(12.20.1893).pdf> (accessed on 20 May 2020).

[20] See International Committee of the Red Cross, "The Law of Armed Conflict. Belligerent Occupation", Geneva, June 2002, available at <https://www.icrc.org/en/doc/assets/files/other/law9_final.pdf> (accessed on 17 May 2020), at 3.

[21] See <https://www.lexico.com/en/definition/regency> (accessed on 17 May 2020).

[22] See <https://thelawdictionary.org/regency/> (accessed on 17 May 2020).

> His name; and likewise the King may, by His last Will and Testament, appoint a Regent or Council of Regency to administer the Government during the minority of any Heir to the Throne; and should a Sovereign decease, leaving a Minor Heir, and having made no last Will and Testament, the Cabinet Council at the time of such decease shall be a Council of Regency, until the Legislative Assembly, which shall be called immediately, may be assembled, and the Legislative Assembly immediately that it is assembled shall proceed to choose by ballot, a Regent of Council of Regency, who shall administer the Government in the name of the King, and exercise all the powers which are Constitutionally vested in the King, until he shall have attained the age of eighteen years, which age is declared to be the Legal Majority of such Sovereign".

The Council of Regency was established by proclamation on February 28, 1997, by virtue of the offices made vacant in the Cabinet Council, on the basis of the doctrine of necessity, the application of which was justified by the absence of a Monarch. Therefore, **the Council of Regency possesses the constitutional authority to temporarily exercise the Royal powers of the Hawaiian Kingdom**. The Council of Regency, composed by *de facto* officers, is actually serving as the provisional government of the Hawaiian Kingdom, and, should the military occupation come to an end, it shall immediately convene the Legislative Assembly, which "shall proceed to choose by ballot, a Regent of Council of Regency, who shall administer the Government in the name of the King, and exercise all the powers which are Constitutionally vested in the King" until it shall not be possible to nominate a Monarch, pursuant to Article 33 of the Hawaiian Kingdom Constitution of 1864.

9. In light of the foregoing – particularly in consideration of the fact that, under international law, the Hawaiian Kingdom continues to exist as an independent State, although subjected to a foreign occupation, and that the Council of Regency has been established consistently with the constitutional principles of the Hawaiian Kingdom and, consequently, possesses the legitimacy of temporarily exercising the functions of the Monarch of the Kingdom – it is possible to conclude that **the Regency actually has the authority to represent the Hawaiian Kingdom as a State, which has been under a belligerent occupation by the United States of America since 17 January 1893, both at the domestic and international level**.

b) Assuming the Regency does have the authority, what effect would its proclamations have on the civilian population of the Hawaiian Islands under international humanitarian law, to include its proclamation recognizing the State of Hawai'i and its Counties as the administration of the occupying State an 3 June 2019?

10. As previously ascertained, the Council of Regency actually possesses the constitutional authority to temporarily exercise the Royal powers of the Hawaiian Kingdom and, consequently, has the authority to represent the Hawaiian Kingdom as a State pending the American occupation and, in any case, up to the moment when it shall be possible to convene the Legislative Assembly pursuant to Article 33 of the Hawaiian Kingdom Constitution of 1864. This means that **the Council of Regency is exactly in the same position of a government of a State under military occupation, and is vested with the rights and powers recognized to governments of occupied States pursuant to international humanitarian law**.
11. In principle, however, such rights and powers are quite limited, by reason of the fact that the governmental authority of a government of a State under military occupation has been replaced by that of the occupying power, "[t]he authority of the legitimate power having in fact passed into the

hands of the occupant".[23] At the same time, the ousted government retains the function and the duty of, to the extent possible, preserving order, protecting the rights and prerogatives of local people and continuing to promote the relations between its people and foreign countries. In the *Larsen* case, the claimant even asserted that the Council of Regency had "an obligation and a responsibility under international law, to take steps to protect Claimant's nationality as a Hawaiian subject";[24] the Arbitral Tribunal established by the PCA, however, did not provide a response regarding this claim. In any event, leaving aside the latter specific aspect, in light of its position the Council of Regency may to a certain extent interact with the exercise of the authority by the occupying power. This is consistent with the fact that the occupant is under an international obligation to "take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country".[25] Indeed, as noted by the eminent jurist Robert Y. Jennings in an influential article published in 1946,[26] one of the main purposes of the law of belligerent occupation is to protect the sovereign rights of the legitimate government of the occupied territory, and the obligations of the occupying power in this regard continue to exist "even when, in disregard of the rules of international law, it claims [...] to have annexed all or part of an occupied territory".[27] It follows that, the ousted government being the entity which represents the "legitimate government" of the occupied territory, it may "attempt to influence life in the occupied area out of concern for its nationals, to undermine the occupant's authority, or both. One way to accomplish such goals is to legislate for the occupied population".[28] In fact, "occupation law does not require an exclusive exercise of authority by the Occupying Power. It allows for authority to be shared by the Occupying Power and the occupied government, provided the former continues to bear the ultimate and overall responsibility for the occupied territory".[29] While in several cases occupants have maintained the inapplicability to the occupied territory of new legislation enacted by the occupied government, for the reason that it "could undermine their authority [...] the majority of post-World War II scholars, also relying on the practice of various national courts, have agreed that the occupant should give effect to the sovereign's new legislation as long as it addresses those issues in which the occupant has no power to amend the local law, most notably in matters of personal status".[30] The Swiss Federal Tribunal has even held that "[e]nactments by the [exiled government] are constitutionally laws of the [country] and applied *ab initio* to the territory occupied [...] even though they could not be effectively implemented until the liberation".[31] Although this position was taken with specific regard to exiled governments, and the Council of Regency was not established *in exile* but *in situ*, the conclusion, to the extent that it is considered valid, would not substantially change as regards the Council of Regency itself.

12. It follows from the foregoing that, under international humanitarian law, **the proclamations of the Council of Regency are not divested of effects as regards the civilian population of the Hawaiian Islands**. In fact, considering these proclamations as included in the concept of "legislation" referred

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[23] See Article 43 of the Regulations annexed to the Hague Convention (IV) respecting the Laws and Customs of War on Land of 1907.

[24] See *Larsen v. Hawaiian Kingdom, supra* n. 1, at 12.8.

[25] See Article 43 of the Regulations annexed to the Hague Convention (IV) respecting the Laws and Customs of War on Land of 1907.

[26] See "Government in Commission", 23 *British Year Book of Internationol Low*, 1946, 112.

[27] See Pictet, *Commentary on the Fourth Genevo Convention Relotive to the Protection of Civilian Persons in Time of Wor of 12 August 1949, supra* n. 12, at 276.

[28] See Eyal Benvenisti, *The International Law of Occupation*, 2nd Ed., Oxford, 2012, at 104.

[29] See Philip Spoerri, "The Law of Occupation", in Andrew Clapham and Paola Gaeta (eds.), *The Oxford Handbook of Internotional Law in Armed Conflict*, Oxford, 2014, 182, at 190.

[30] See Benvenisti, *The International Low of Occupation, supra* n. 28, at 104-105.

[31] See *Ammon v. Royal Dutch Co.*, 21 *International Law Reports*, 1954, 25, at 27.

to in the previous paragraph,[32] they might even, if the concrete circumstances of the case so allow, apply retroactively at the end of the occupation, irrespective of whether or not they must be respected by the occupying power during the occupation, on the condition that the legislative acts in point do not "disregard the rights and expectations of the occupied population".[33] It is therefore necessary that the occupied government refrains "from using the national law as a vehicle to undermine public order and civil life in the occupied area".[34] In other words, in exercising the legislative function during the occupation, the ousted government is subjected to the condition of not undermining the rights and interests of the civilian population. However, once the latter requirement is actually respected, the proclamations of the ousted government – including, in the case of Hawai'i, those of the Council of Regency – may be considered applicable to local people, unless such applicability is explicitly refuted by the occupying authority, in its position of an entity bearing "the ultimate and overall responsibility for the occupied territory".[35] In this regard, however, it is reasonable to assume that the occupying power should not deny the applicability of the above proclamations when they do not undermine, or significantly interfere with the exercise of, its authority. This would be consistent with the obligation of the occupying power "to maintain the status quo ante (i.e. as it was before) in the occupied territory as far as is practically possible",[36] considering that local authorities are better placed to know what are the actual needs of the local population and of the occupied territory, in view of guaranteeing that the status quo ante is effectively maintained.

13. As regards, specifically, the Council of Regency's Proclamation recognizing the State of Hawai'i and its Counties as the administration of the occupying State of 3 June 2019,[37] it reads as follows:

> "Whereas, in order to account for the present circumstances of the prolonged illegal occupation of the Hawaiian Kingdom and to provide a temporary measure of protection for its territory and the population residing therein, the public safety requires action to be taken in order for the State of Hawai'i and its Counties to begin to comply with the 1907 Hague Convention, IV, the 1949 Geneva Convention, IV, and international humanitarian law:
> Now, therefore, We, the acting Council of Regency of the Hawaiian Kingdom, serving in the absence of the Monarch and temporarily exercising the Royal Power of the Kingdom, do hereby recognize the State of Hawai'i and its Counties, for international law purposes, as the administration of the Occupying Power whose duties and obligations are enumerated in the 1907 Hague Convention, IV, the 1949 Geneva Convention, IV, and international humanitarian law;
> And, We do hereby further proclaim that the State of Hawai'i and its Counties shall preserve the sovereign rights of the Hawaiian Kingdom government, and to protect the local population from exploitation of their persons and property, both real and personal, as well as their civil and political rights under Hawaiian Kingdom law".

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[32] This is consistent with the assumption that the expression "laws in force in the country", as used by Article 43 of the Regulations annexed to the Hague Convention (IV) respecting the Laws and Customs of War on Land of 1907 (see *supra*, text corresponding to n. 25), "refers not only to laws in the strict sense of the word, but also to the constitution, decrees, ordinances, court precedents [...] as well as administrative regulations and executive orders"; see Marco Sassòli, "Legislation and Maintenance of Public Order and Civil Life by Occupying Powers", 16 *European Journal of International Law*, 2005, 661, at 668-69.

[33] See Benvenisti, *The International Law of Occupation*, *supro* n. 28, at 105.

[34] Ibid., at 106.

[35] See *supra*, text corresponding to n. 29.

[36] See International Committee of the Red Cross, "The Law of Armed Conflict. Belligerent Occupation", *supra* n. 20, at 9.

[37] Available at <https://www.hawaiiankingdom.org/pdf/Proc_Recognizing_State_of_HI.pdf> (accessed on 18 May 2020)

As it is evident from a plain reading of its text, this Proclamation pursues the clear purpose of ensuring the protection of the Hawaiian territory and the people residing therein against the prejudicial effects which may arise from the occupation to which such a territory is actually subjected. Therefore, it represents a legislative act aimed at furthering the interests of the civilian population through ensuring the correct administration of their rights and of the land. As a consequence, it has the nature of an act that is equivalent, in its rationale and purpose (although not in its precise subject), to a piece of legislation concerning matters of personal status of the local population, requiring the occupant to give effect to it.[38] It is true that the Proclamation of 3 June 2019 takes a precise position on the status of the occupying power, the State of Hawai'i and its Counties being a direct emanation of the United States of America. However, in doing so, the said Proclamation simply reiterates an aspect that is self-evident, since the fact that the State of Hawai'i and its Counties belong to the political organization of the occupying power, and that they are de facto administering the Hawaiian territory, is objectively irrefutable. It follows that the Proclamation in discussion simply restates rules already existing under international humanitarian law. In fact, the latter clearly establishes the obligation of the occupying power to preserve the sovereign rights of the occupied government (as previously ascertained in this opinion),[39] the "overarching principle [of the law of occupation being] that an occupant does not acquire sovereignty over an occupied territory and therefore any occupation must only be a temporary situation".[40] Also, it is beyond any doubts that an occupying power is bound to guarantee and protect the human rights of the local population, as defined by the international human rights treaties of which it is a party as well as by customary international law. This has been authoritatively confirmed, *inter alia*, by the International Court of Justice.[41] While the Proclamation makes reference to the duty of the State of Hawai'i and its Counties to protect the human rights of the local population "under Hawaiian Kingdom law", and not pursuant to applicable international law, this is consistent with the obligation of the occupying power to respect, to the extent possible, the law in force in the occupied territory. In this regard, respecting the domestic laws which protect the human rights of the local population undoubtedly falls within "the extent possible", because it certainly does not undermine, or significantly interfere with the exercise of, the authority of the occupying power, and is consistent with existing international obligations. In other words, the occupying power cannot be considered "absolutely prevented"[42] from applying the domestic laws protecting the human rights of the local population, unless it is demonstrated that the level of protection of human rights guaranteed by Hawaiian Kingdom law is less advanced than human rights standards established by international law. Only in this case, the occupying power would be under a duty to ensure in favour of the local population the higher level of protection of human rights guaranteed by international law. In sum, **the Council of Regency's Proclamation of 3 June 2019 may be considered as a domestic act implementing international rules at the internal level,**

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[38] See *supra* text corresponding to n. 30.

[39] See, in particular, *supra*, para. 11.

[40] See United Nations, Officer of the High Commissioner of Human Rights, "Belligerent Occupation: Duties and Obligations of Occupying Powers", September 2017, available at <https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ohchr_syria_-_belligerent_occupation_-_legal_note_en.pdf> (accessed on 19 May 2020), at 3.

[41] See, in particular, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2004, *ICJ Reports*, 2004, at 111-113; *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of Congo v. Uganda)*, Judgement of 19 December 2005, at 178. For a more comprehensive assessment of this issue see Federico Lenzerini, "International Human Rights Law and Self-Determination of Peoples Related to the United States Occupation of the Hawaiian Kingdom", in David Keanu Sai (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations in the Hawaiian Kingdom*, Honolulu, 2020, 173, at 203-205.

[42] See *supra*, text corresponding to n. 25.

which should be effected by the occupying power pursuant to international humanitarian law, since it does not undermine, or significantly interfere with the exercise of, its authority.

14. It may be concluded that, under international humanitarian law, **the proclamations of the Council of Regency** – including the Proclamation recognizing the State of Hawai'i and its Counties as the administration of the occupying State on 3 June 2019 – **have on the civilian population the effect of acts of domestic legislation aimed at protecting their rights and prerogatives, which should be, to the extent possible, respected and implemented by the occupying power**.

c) Comment on the working relationship between the Regency and the administration of the occupying State under international humanitarian law.

15. As previously noted, "occupation law [...] allows for authority to be shared by the Occupying Power and the occupied government, provided the former continues to bear the ultimate and overall responsibility for the occupied territory".[43] This said, it is to be kept well in mind that belligerent occupation necessarily has a *non-consensual nature*. In fact, "[t]he absence of consent from the state whose territory is subject to the foreign forces' presence [...] [is] a precondition for the existence of a state of belligerent occupation. Without this condition, the situation would amount to a 'pacific occupation' not subject to the law of occupation".[44] At the same time, we also need to remember that the absence of armed resistance by the territorial government can in no way be interpreted as determining the existence of an implied consent to the occupation, consistently with the principle enshrined by Article 2 common to the four Geneva Conventions of 1949.[45]. On the contrary, the consent, "for the purposes of occupation law, [...] [must] be genuine, valid and explicit".[46] It is evident that such a consent has never been given by the government of the Hawaiian Kingdom. On the contrary, the Hawaiian government opposed the occupation since its very beginning. In particular, Queen Lili'uokalani, executive monarch of the Hawaiian Kingdom, on 17 January 1893 stated that,

> "to avoid any collision of armed forces and perhaps the loss of life, I do, under this protest, and impelled by said force, yield my authority until such time as the Government of the United States shall, upon the facts being presented to it, undo the action of its representatives and reinstate me in the authority which I claim as the constitutional sovereign of the Hawaiian Islands".[47]

The opposition to the occupation has never been abandoned up to the time of this writing, although for some long decades it was stifled by the policy of *Americanization* brought about by the US government in the Hawaiian Islands. It has eventually revived in the last three lustrums, with the establishment of the Council of Regency.

16. Despite the fact that the occupation inherently configures as a situation unilaterally imposed by the occupying power – any kind of consent of the ousted government being totally absent – there still is some space for "cooperation" between the occupying and the occupied government – in the specific case of Hawai'i between the State of Hawai'i and its Counties and the Council of Regency.

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[43] See *supra*, text corresponding to n. 29.
[44] See Spoerri, "The Law of Occupation", supra n. 29, at 190.
[45] See *supra*, para. 6.
[46] See Spoerri, "The Law of Occupation", supra n. 29, at 190.
[47] See United States House of Representatives, 53rd Congress, *Executive Documents on Affairs in Hawai'i: 1894-95*, 1895, at 586.

Before trying to specify the characteristics of such a cooperation, it is however important to reiterate that, under international humanitarian law, the last word concerning any acts relating to the administration of the occupied territory is with the occupying power. In other words, "occupation law would allow for a vertical, but not a horizontal, sharing of authority [...] [in the sense that] this power sharing should not affect the ultimate authority of the occupier over the occupied territory".[48] This vertical sharing of authority would reflect "the hierarchical relationship between the occupying power and the local authorities, the former maintaining a form of control over the latter through a top-down approach in the allocation of responsibilities".[49]

17. The cooperation referred to in the previous paragraph is implied or explicitly established in some provisions of the Fourth Geneva Convention of 1949. In particular, Article 47 states that

> "Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory".

Through referring to possible agreements "concluded between the authorities of the occupied territories and the Occupying Power", this provision clearly implies the possibility of establishing cooperation between the occupying and the occupied government. More explicitly, Article 50 affirms that "[t]he Occupying Power shall, with the cooperation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children", while Article 56 establishes that, "[t]o the fullest extent of the means available to it, the Occupying Power has the duty of ensuring and maintaining, with the cooperation of national and local authorities, the medical and hospital establishments and services, public health and hygiene in the occupied territory [...]".

As far as United States practice is concerned, it acknowledges that "[t]he functions of the [occupied] government – whether of a general, provincial, or local character – continue only to the extent they are sanctioned".[50] With specific regard to cooperation with the occupied government, it is also recognized that "[t]he occupant may, while retaining its paramount authority, permit the government of the country to perform some or all of its normal functions".[51]

18. Importantly, the provisions referred to in the previous paragraph exactly refer to issues related to the protection of civilian persons and of their rights, which is one of the two main aspects (together with the preservation of the sovereign rights of the Hawaiian Kingdom government) dealt with by the Council of Regency's Proclamation recognizing the State of Hawai'i and its Counties as the administration of the occupying State of 3 June 2019.[52] In practice, the cooperation advocated by the provisions in point may take different forms, one of which translates into the possibility for the ousted government to adopt legislative provisions concerning the above aspects. As previously seen, the occupying power has, *vis-à-vis* the ensuing legislation, a duty not to oppose to it, because it normally does not undermine, or significantly interfere with the exercise of, its authority. Further to this, it is reasonable to assume that – in light of the spirit and the contents of the provisions referred to in the previous paragraph – the occupying power has a duty to cooperate in giving

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[48] See International Committee of the Red Cross, *Expert Meeting. Occupatian and Other Forms of Administration of Foreign Territory. Report*, Geneva, 2012, available at <https://www.icrc.org/en/doc/assets/files/publications/icrc-002-4094.pdf> (accessed on 20 May 2020), at 20.

[49] Ibid., at footnote 7.

[50] See "The Law of Land Warfare", *United States Army Field Manual* 27-10, July 19S6, Section 367(a).

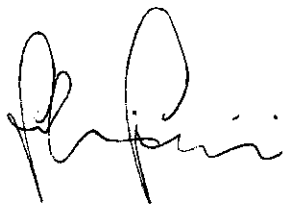
[51] Ibid., Section 367(b).

[52] See supra, text following n. 37.

realization to the legislation in point, unless it is "absolutely prevented" to do so. This duty to cooperate appears to be reciprocal, being premised on both the Council of Regency and the State of Hawai'i and its Counties to ensure compliance with international humanitarian law.

19. The latter conclusion is consistent with the logical (and legally-grounded) assumption that the ousted government is better placed than the occupying power in order to know what are the real needs of the civilian population and what are the concrete measures to be taken to guarantee an effective response to such needs. It follows that, through allowing the legislation in discussion to be applied – and through contributing in its effective application – the occupying power would better comply with its obligation, existing under international humanitarian law and human rights law, to guarantee and protect the human rights of the local population. It follows that the occupying power has a duty – if not a proper legal obligation – to cooperate with the ousted government to better realize the rights and interest of the civilian population, and, more in general, to guarantee the correct administration of the occupied territory.
20. In light of the foregoing, it may be concluded that **the working relationship between the Regency and the administration of the occupying State should have the form of a cooperative relationship aimed at guaranteeing the realization of the rights and interests of the civilian population and the correct administration of the occupied territory**, provided that there are no objective obstacles for the occupying power to cooperate and that, in any event, the "supreme" decision-making power belongs to the occupying power itself. This conclusion is consistent with the position of the latter as "administrator" of the Hawaiian territory, as stated in the Council of Regency's Proclamation recognizing the State of Hawai'i and its Counties as the administration of the occupying State of 3 June 2019 and presupposed by the pertinent rules of international humanitarian law.

24 May 2020



Professor Federico Lenzerini

Exhibit "7"

DECLARATION OF DAVID KEANU SAI, Ph.D.

I, David Keanu Sai, declare the following:

1. Declarant is a Hawaiian subject residing in Mountain View, Island of Hawai'i, Hawaiian Kingdom. I am the Minister of the Interior, Minister of Foreign Affairs *ad interim*, and Chairman of the Council of Regency. Declarant served as Agent for the Hawaiian Kingdom in *Larsen v. Hawaiian Kingdom* arbitral proceedings at the Permanent Court of Arbitration from 1999-2001.

2. On or about mid-February 2000, declarant, as Agent for the Hawaiian Kingdom, had a phone conversation with the Secretary General of the Permanent Court of Arbitration (PCA), Tjaco T. van den Hout. In that conversation, the Secretary General stated to the declarant that the Secretariat was not able to find any evidence that the Hawaiian Kingdom had been extinguished as a State and admitted that the 1862 Hawaiian-Dutch Treaty was not terminated. The declarant understood that the Hawaiian Kingdom satisfied the PCA's institutional jurisdiction pursuant to Article 47 of the 1907 Hague Convention for the Pacific Settlement of International Disputes, I, whereby the PCA would be accessible to Non-Contracting States. The arbitral tribunal was not formed until June 9, 2000.

3. The Secretary General then stated to the declarant that in order to maintain the integrity of these proceedings, he recommended that the Hawaiian Kingdom Government provide a formal invitation to the United States to join in the arbitral proceedings. The declarant stated that he will bring this request up with the Council of Regency. After discussion, the Council of Regency accepted the Secretary General's request and declarant travelled by airplane with Ms. Ninia Parks, counsel for claimant, Lance P. Larsen, to Washington, D.C., on or about March 1, 2000.

4. On March 2, 2000, Ms. Parks and the declarant met with Sonia Lattimore, Office Assistant, L/EX, at 10:30 a.m. on the ground floor of the Department of State and presented her with two (2) binders, the first comprised of an Arbitration Log Sheet with accompanying documents on record at the Permanent Court of Arbitration. The second binder comprised of divers documents of the Acting Council of Regency as well as diplomatic correspondence with treaty partners of the Hawaiian Kingdom.

5. Declarant stated to Ms. Lattimore that the purpose of our visit was to provide these documents to the Legal Department of the U.S. State Department in order for the U.S. Government to be apprised of the arbitral proceedings already in train and that the Hawaiian Kingdom, by consent of the Claimant, extends an opportunity for the United States to join in the

arbitration as a party. Ms. Lattimore assured the declarant that the package would be given to Mr. Bob McKenna for review and assignment to someone within the Legal Department. Declarant told Ms. Lattimore that he and Ms. Parks will be in Washington, D.C., until close of business on Friday, and she assured declarant that she will call on declarant's cell phone by the close of business that day with a status report.

6. At 4:45 p.m., Ms. Lattimore contacted the declarant by phone and stated that the package had been sent to John Crook, Assistant Legal Advisor for United Nations Affairs. She stated that Mr. Crook will be contacting the declarant on Friday (March 3, 2000), but declarant could give Mr. Crook a call in the morning if desired.

7. At 11:00 a.m., March 3, 2000, declarant called Mr. Crook and inquired about the receipt of the package. Mr. Crook stated that he did not have ample time to critically review the package but will get to it. Declarant stated that the reason for our visit was the offer by the Respondent Hawaiian Kingdom, by consent of the Claimant, by his attorney, for the United States Government to join in the arbitral proceedings already in motion. Declarant also advised Mr. Crook that Secretary General van den Hout of the PCA was aware of our travel to Washington, D.C., and the offer to join in the

arbitration. The Secretary General requested that the dialogue be reduced to writing and filed with the International Bureau of the PCA for the record.

8. Declarant further stated to Mr. Crook that enclosed in the binders were Hawaiian diplomatic protests lodged by declarant's former country men and women with the Depart of State in the summer of 1897, that are on record at the U.S. National Archives, in order for him to understand the gravity of the situation. Declarant also stated that included in the binders were two (2) protests by the declarant as an officer of the Hawaiian Government against the State of Hawai'i for instituting unwarranted criminal proceedings against the declarant and other Hawaiian subjects under the guise of American municipal laws within the territorial dominion of the Hawaiian Kingdom.

9. In closing, the declarant stated to Mr. Crook that after a thorough investigation into the facts presented to his office, and following zealous deliberations as to the considerations offered, the Government of the United States shall resolve to decline our offer to enter the arbitration as a Party, the present arbitral proceedings shall continue without affect pursuant to the 1907 Hague Conventions IV and V, and the UNCITRAL Rules of arbitration. Mr. Crook acknowledged what was said and the conversation then came to a close. That day a letter confirming the content of the discussion was drafted by the declarant and sent to Mr. Crook. The letter

was also carbon copied to the Secretary General of the PCA, Ms. Parks, Mr. Keoni Agard, appointing authority for the arbitral proceedings, and Ms. Noelani Kalipi, Hawai'i Senator Daniel Akaka's Legislative Assistant.

10. Thereafter, the PCA's Deputy Secretary General, Phyllis Hamilton, spoke with declarant over the phone and informed declarant that the United States, through its embassy in The Hague, notified the PCA that the United States had declined the invitation to join in the arbitral proceedings. Instead, the United requested permission from the Hawaiian Government and the Claimant to have access to the pleadings and records of the case. Both the Hawaiian Government and the Claimant consented to the United States' request.

11. On March 21, 2000, Professor Christopher Greenwood, QC, was confirmed as an arbitrator, and on March 23, 2000, Gavan Griffith, QC, was confirmed as an arbitrator. On May 28, 2000, the arbitral tribunal was completed by the appointment of Professor James Crawford as the presiding arbitrator. On June 9, 2000, the parties jointly notified, by letter, to the Deputy Secretary General of the PCA that the arbitral tribunal had been duly constituted.

12. After written pleadings were filed by the parties with the PCA, oral hearings were held at the PCA on December 7, 8 and 11, 2000. The arbitral award was filed with the PCA on February 5, 2000 where the tribunal found that it

lacked subject matter jurisdiction because it concluded that the United States was an indispensable third party. Consequently, the Claimant was precluded from alleging that the Hawaiian Kingdom, by its Council of Regency, was liable for the unlawful imposition of American municipal laws over the Claimant's person within the territorial jurisdiction of the Hawaiian Kingdom without the participation of the United States.

13. After returning from The Hague in December of 2000, the Council of Regency determined that the declarant would enter University of Hawai'i at Mānoa as a graduate student in the political science department in order to directly address the misinformation regarding the continuity of the Hawaiian Kingdom as an independent and sovereign State that has been under a prolonged occupation by the United States since January 17, 1893 through research and publication of articles. The decision made by the Council of Regency was in accordance with Section 495—*Remedies of Injured Belligerent*, United States Army FM-27-10 states, "[i]n the event of violation of the law of war, the injured party may legally resort to remedial action of the following types: *a.* Publication of the facts, with a view to influencing public opinion against the offending belligerent."

14. The declarant received his master's degree in political science specializing in international relations and law in 2004 and received his Ph.D. degree in

political science with particular focus on the continuity of the Hawaiian Kingdom. Declarant has published multiple articles and books on the prolonged occupation of the Hawaiian Kingdom and its continued existence as a State under international law. Declarant's curriculum vitae can be accessed online at http://www2.hawaii.edu/~anu/pdf/CV.pdf. Declarant can be contacted at interior@hawaiiankingdom.org.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Mountain View, Hawaiian Kingdom, May 19, 2021.

David Keanu Sai

IN THE SUPREME COURT OF THE
STATE OF HAWAI'I

ODC v. or, A confidential pending investigation and/or Proceeding under the Rules of the Supreme Court of the State of Hawai`i and its Disciplinary Board, regarding a matter of Attorney discipline.	**CONFIDENTIAL** Case No. 18-0339 CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and filed copy of the foregoing document will be duly served on the following parties by Hand-delivery or U.S. mail (postage prepaid on this date):

CLIFFORD L. NAKEA
Disciplinary Board Officer
Office of Disciplinary Counsel
Hawai`i Supreme Court
201 Merchant Street, Suite 1600
Honolulu, Hawai`i 96813

ALANA L. BRYANT, ESQ.
Assistant Disciplinary Counsel
Office of Disciplinary Counsel
Hawai`i Supreme Court
201 Merchant Street, Suite 1600
Honolulu, Hawai`i 96813

WILLIAM FENTON SINK, ESQ.
Dillingham Transportation Bldg.
735 Bishop Street, Ste. 400
Honolulu, HI 96813

Dated: Kailua, Hawai`i, September 6, 2022.

Dexter K. Ka`iama. Esq.
Respondent

From: Alana Bryant
To: William Fenton Sink
Subject: RE: CONFIDENTIAL - subpoena
Date: Wednesday, September 7, 2022 1:19:18 PM

Mr. Sink,

This email is to confirm that the deposition of Mr. Kaiama that was scheduled for Friday, September 9, 2022 is postponed pending the disposition of the motions Mr. Kaiama filed with the Disciplinary Board yesterday (9/6/22). Please let me know if you have any questions.

Aloha,
Alana

Office of Disciplinary Counsel
Hawai'i Supreme Court
201 Merchant Street, Suite 1600
Honolulu, HI 96813

Alana L. Bryant
Assistant Disciplinary Counsel
(808) 521-4591 (main) | (808) 469-4037
http://www.dbhawaii.org|Alana.L.Bryant@dbhawaii.org

From: Alana Bryant
Sent: Wednesday, August 31, 2022 1:24 PM
To: William Fenton Sink <jennifer@wfsinklaw.com>
Subject: CONFIDENTIAL - subpoena

Mr. Sink,

As Mr. Kaiama's motion was denied by the Supreme Court today, we are issuing another subpoena for his deposition. We have scheduled the deposition for Friday, September 9, 2022, 9:30 a.m., at ODC's offices. Please let me know if you are able to accept service of the attached subpoena on Mr. Kaiama's behalf.

Thank you,
Alana

Office of Disciplinary Counsel
Hawai'i Supreme Court
201 Merchant Street, Suite 1600
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DISCIPLINARY BOARD OF THE HAWAIʻI SUPREME COURT

In re Dexter K. Kaʻiama, Respondent.	CONFIDENTIAL ODC 18-0339

ORDER DENYING MOTIONS

Resisting the Office of Disciplinary Counsel's (ODC) efforts to investigate a complaint suggesting that Dexter K. Kaʻiama violated the Hawaiʻi Rules of Professional Conduct, attorney Kaʻiama has moved the Hawaiʻi Supreme Court's Disciplinary Board Chairperson to dismiss an ODC subpoena and schedule an evidentiary hearing on the grounds of a lack of jurisdiction citing HRCP Rule 12(b)(2).

A license to practice law in Hawaiʻi is a privilege issued by the Hawaiʻi Supreme Court in accordance to its rules (RSCH Rule 1 et seq.) to qualifying applicants who take the oath:

> I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution and laws of the State of Hawaii, and that I will at all times conduct myself in accordance with the Hawaii Rules of Professional Conduct.

> As an officer of the courts to which I am admitted to practice, I will conduct myself with dignity and civility towards judicial officers, court staff, and my fellow professionals.
>
> I will faithfully discharge my duties as attorney, counselor, and solicitor in the courts of the state to the best of my ability, giving due consideration to the legal needs of those without access to justice.

Dexter Ka‘iama was admitted to the bar of the Hawai‘i Supreme Court in 1986. In his motions, he submits that he is not subject to the jurisdiction of the Hawai‘i Supreme Court’s Disciplinary Board. To the extent that Dexter Ka‘iama wishes to practice law as a licensed attorney in the state of Hawai‘i, he is subject to the jurisdiction of the Disciplinary Board that serves as a Special Master for the Hawai‘i Supreme Court to investigate and prosecute attorney violations of the Hawai‘i Rules of Professional Conduct. (RSCH Rule 2 et seq.) In this context, arguments over the Kingdom of Hawai‘i are irrelevant. The motions are DENIED and Dexter Ka‘iama, as a voluntary member of the bar of the Hawai‘i Supreme Court, is obligated to cooperate with the Office of Disciplinary Counsel’s investigation.

Dated: September 13, 2022

Disciplinary Board of the Hawai‘i Supreme Court

Hon. Clifford L. Nakea (Ret.)
Chairperson

201 Merchant Street, Suite 1600, Honolulu, Hawai‘i 96813
Telephone (808) 599-1909 (www.dbhawaii.org)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that service of a copy of the foregoing ORDER DENYING MOTIONS was made either 1) by regular U.S. Mail, postage prepaid, or 2) by hand delivery, as indicated below:

Party	1) by US mail	2) hand delivery
DEXTER K. KA‘IAMA 1486 Akeke Place Kailua, Hawai‘i 96734 Respondent courtesy copy to: cdexk@hotmail.com	☒	☐
WILLIAM FENTON SINK Dillingham Transportation Building 735 Bishop Street, Suite 400 Honolulu, Hawai‘i 96813 Counsel for Respondent courtesy copy to: jennifer@wfsinklaw.com	☒	☐

Party	1) by US mail	2) hand delivery
ALANA L. BRYANT Deputy Disciplinary Counsel BRADLEY R. TAMM Chief Disciplinary Counsel Office of Disciplinary Counsel Merchant Street, Suite 1600 Honolulu, Hawai‘i 96813 Attorneys for Office of Disciplinary Counsel courtesy copy to: alana.l.bryant@dbhawaii.org and bradley.r.tamm@dbhawaii.org	☒	☐

DATED: Honolulu, Hawai‘i, September 13, 2022.

FAYE F. HEE
DISCIPLINARY BOARD ADMINISTRATIVE DIRECTOR

IN THE SUPREME COURT OF THE STATE OF HAWAIʻI

◯ ODC v. or, ◉ A confidential pending investigation and/or proceeding under the Rules of the Supreme Court of the State of Hawaiʻi and its Disciplinary Board, regarding a matter of attorney discipline.	**CONFIDENTIAL** Case No. 18-0339 ◉ SUBPOENA or ◯ SUBPOENA DUCES TECUM

TO: **Dexter K. Kaiama**
c/o William F. Sink, Esq.
735 Bishop Street, Suite 400
Honolulu, Hawaii 96813

1. **WE COMMAND YOU,** that all business and excuses being set aside, to appear in person and attend before:

   Alana L. Bryant , Disciplinary ◉ Counsel ◯ Investigator

2. At the place of the **Office of Disciplinary Counsel, 201 Merchant Street, Suite 1600, Honolulu, Hawaiʻi 96813.**

3. On the **27th** day of **September , 2022** (**Tuesday**) at **9:30** o'clock **a** .m. (and at any recessed or adjourned date);

4. Testify as a witness, or custodian, in the attorney disciplinary matter ◯ captioned above, or ◉ a confidential matter per RSCH Rule 2.22(a) identified by the case number captioned above.

5. **AND WE FURTHER COMMAND YOU** to bring and produce at the time and place aforesaid, the following which you have in your custody or power, concerning the matter:

   ◉
   ◯ or as set forth on **Attachment(s)** appended hereto.

6. **FOR FAILURE TO APPEAR AND TESTIFY OR PRODUCE** as herein require, you will be deemed to be in contempt of the Supreme Court of the State of Hawaiʻi.

BY AUTHORITY OF THE SUPREME COURT OF THE STATE OF HAWAIʻI.

DATED: September 14, 2022 Honolulu, Hawaiʻi

Disciplinary Board Officer

Clifford L. Nakea

Clerk, Supreme Court of the State of Hawaiʻi

/s/ Elizabeth Zack

From: William Fenton Sink
To: Alana Bryant
Cc: Dexter Kaiama
Subject: Re: CONFIDENTIAL - Subpoena (3)
Date: Thursday, September 15, 2022 10:12:30 AM

Dear Ms. Bryant:

As we discussed, I will accept service of the subpoena for Mr. Kaiama but he will **not** be appearing at his deposition on September 27, 2022, at least until all his procedural defenses have been exhausted.

Thanking you for your professionalism, and I am,

Most respectfully,
/s/
William Fenton Sink

Law Offices of William Fenton Sink
735 Bishop Street, Ste. 400
Honolulu, Hawaii 96813

Office: (808) 531-7162
Facsimile: (808) 524-2055
Email: jennifer@wfsinklaw.com

MR. SINK DOES NOT USE EMAIL; PLEASE INCLUDE YOUR PHONE NUMBER ON ALL EMAILS TO ENSURE A QUICKER RESPONSE.

From: Alana Bryant <Alana.L.Bryant@dbhawaii.org>
Sent: Wednesday, September 14, 2022 11:07 AM
To: William Fenton Sink <jennifer@wfsinklaw.com>
Subject: CONFIDENTIAL - Subpoena (3)

Mr. Sink,

As Mr. Kaiama's motions were denied by the Disciplinary Board yesterday, we are issuing another subpoena for his deposition. We have scheduled the deposition for Tuesday, September 27, 2022, 9:30 a.m., at ODC's offices. Please respond affirmatively to this email if you are able to accept service of the attached subpoena on Mr. Kaiama's behalf.

Thank you,
Alana

Alana L. Bryant
Assistant Disciplinary Counsel

Office of Disciplinary Counsel
Hawai'i Supreme Court
201 Merchant Street, Suite 1600
Honolulu, HI 96813

(808) 521-4591 (main) | (808) 469-4037
http://www.dbhawaii.org|Alana.L.Bryant@dbhawaii.org

Hand Delivered

IN THE SUPREME COURT OF THE
STATE OF HAWAI'I

ODC v.
or,
A confidential pending investigation and/or Proceeding under the Rules of the Supreme Court of the State of Hawai`i and its Disciplinary Board, regarding a matter of Attorney discipline.

CONFIDENTIAL

Case No. 18-0339

MOTION TO ALTER OR AMEND JUDGMENT DATED SEPTEMBER 13, 2022, PURSUANT TO HRCP 59(e); CERTIFICATE OF SERVICE

Dexter K. Ka'iama 4249
1486 Akeke Place
Kailua, HI 96734
Respondent

MOTION TO ALTER OR AMEND JUDGMENT DATED SEPTEMBER 13, 2022, PURSUANT TO HRCP 59(e)

Respondent DEXTER K. KA'IAMA (hereafter "Respondent") respectfully moves the Disciplinary Board to alter or amend its order denying motions dated September 13, 2022, pursuant to HRCP 59(e) on the grounds of manifest error of law or fact resulting from disregarding the evidentiary standard established by *State of Hawai'i v. Lorenzo*[1] and the Respondent's right to due process and a fair and regular trial.

Respondent requests the Board to alter or amend its order by granting Respondent's request for an evidentiary hearing and to take judicial notice of certain facts in support Respondent's motion to dismiss subpoena.

DATED: Honolulu, Hawai'i, September 21, 2022.

Respectfully submitted,

/s/ Dexter K. Ka'iama

DEXTER K. KA'IAMA (Bar No. 4249)

[1] *State of Hawai'i v. Lorenzo*, 77 Haw. 219, 221; 883 P.2d 641, 643 (Haw. App. 1994).

MEMORANDUM IN SUPPORT OF MOTION

Respondent moves the Disciplinary Board of the Hawai'i Supreme Court (hereinafter "Board") to reconsider, alter or amend its September 13, 2022 order denying motions on the grounds of manifest error of law or fact resulting from its disregard of the evidentiary standard established by *State of Hawai'i v. Lorenzo* ("*Lorenzo*").

I. INTRODUCTION

At issue in *Lorenzo* was an evidentiary standard set by the Intermediate Court of Appeals ("ICA") on personal jurisdiction. ODC claims this Board has personal jurisdiction over Respondent. The Respondent is a Hawaiian subject of the Hawaiian Kingdom and that this Board lacks personal jurisdiction over him pursuant to the evidentiary standard set by the *Lorenzo* court.

As a result, Respondent filed a motion to dismiss subpoena dated August 31, 2022, pursuant to HRCP 12(b)(2), and to schedule an evidentiary hearing, or in the alternative, motion for protective order dated September 6, 2022, and a motion for request of judicial notice in support of Respondent's motion to dismiss dated September 6, 2022. On September 13, 2022, Clifford Nākea, Chairperson the Disciplinary Board, filed an order denying motions by stating:

> Dexter Ka'iama was admitted to the bar of the Hawai'i Supreme Court in 1986. In his motions, he submits that he is not subject to the jurisdiction of the Hawai'i Supreme Court's Disciplinary Board. To the extent that Dexter Ka'iama wishes to practice law as a licensed attorney in the state of Hawai'i, he is subject to the jurisdiction of the Disciplinary Board that serves as a Special Master for the Hawai'i Supreme Court to investigate and prosecute attorney violations of the Hawai'i Rules of Professional Conduct. (RSCH Rule 2 at seq.) In this context, arguments over the Kingdom of Hawai'i are irrelevant.

Chairperson Nākea's justification in denying Respondent's motions denies Respondent's right to due process and his right to a fair and regular hearing that affords all the protection under the law. Respondent's entry into the bar was 8 years prior to *Lorenzo* and the evidentiary standard that was set, which has become Hawai'i common law, and is

binding on all the courts in the (current) State of Hawai`i and members of the bar, to include Chairperson Nākea. It wasn't until 2009 that the Respondent became fully aware of the Hawaiian Kingdom's continued existence as a State under international law and his nationality as a Hawaiian subject.

Respondent's first case applying *Lorenzo* was in 2010 in *Onewest Bank v. Tamanaha*, case no. 3RC10-1-1306, where he was one of three attorneys of record with lead counsel, Keoni K. Agard, for the defendant. Since 2010, Respondent has taken the time and energy to further research the case law and international laws on the subject of the Hawaiian Kingdom as a State and he has, since the *Tamanaha* case, become as proficient on this matter as any attorney within the territory of the Hawaiian Islands. According to *Lorenzo*, the burden of proof was placed on the Defendant in either civil or criminal proceedings, to include these proceedings. There were no exceptions to this burden, *i.e.*, defendants or respondents that are practicing attorneys. To date, *Lorenzo* remains an open legal question.[1]

In its opening statement in its order denying motions, Chairperson Nākea gives the appearance that the Respondent is "[r]esisting the Office of Disciplinary Counsel's (ODC) efforts to investigate a complaint." This statement is prejudicial and violates Respondent's right to a presumption of innocence, which is recognized as one of the most basic requirements of a fair trial or hearing. Filing a motion to dismiss the subpoena pursuant to the evidentiary standard set by *Lorenzo* cannot be construed by the Board as an action that constitutes "resisting." It is a pre-trial or pre-administrative hearing matter allowable under HRCP 12(b)(2).

Furthermore, the Respondent regrettably views Chairperson Nākea's statement, "[t]o the extent that Dexter Ka'iama wishes to practice law as a licensed attorney in the state of Hawai'i, he is subject to the jurisdiction of the Disciplinary Board," as: (1) Manifestly unjust dismissals of pre-trial (in this case pre-administrative proceedings) motions to dismiss clearly provided for under Hawai`i State law and rules of civil procedure; (2) A blatant disregard of his legal obligations to enforce the evidentiary standard set by the Intermediate Court of Appeals ("ICA") on personal jurisdiction under *Lorenzo*; (3) Lacking a modicum of judicial/administrative impartiality; and (4) a veiled

[1] *State of Hawai'i v. Lee*, 90 Haw. 130, 142; 976 P.2d 444, 456 (Haw. App. 1999).

threat in order to coerce Respondent to "cooperate with the Office of Disciplinary Counsel's investigation," the accumulation of which is tantamount to an abuse of discretion of the administrative authorities of the Chairperson.

These proceedings should be guided by the rule of law as set forth by the ICA in *Lorenzo*. "The rule of law, sometimes called 'the supremacy of law,' provides that decisions should be made by the application of known principles or laws without the intervention of discretion in their application."[2] As United States Attorney General explained this past Saturday before new immigrants at Ellis Island, "[t]he protection of law—the rule of law—is the foundation of our system of government. The rule of law means that the law treats each of us alike; There is not one rule for friends, another for foes; one rule for the powerful, another for the powerless; a rule for the rich, another for the poor."[3]

II. DISCUSSION

According to the ICA in *Nishitani v. Baker*, "although the prosecution had the burden of proving beyond all reasonable doubt facts establishing jurisdiction [in *Lorenzo*], the defendant had the burden of proving facts in support of any defense, such as immunity, which would have precluded the court from exercising jurisdiction over the defendant."[4] "However broadly we may review a litigant's standing to pursue a legal issue in court or before an agency," states the Hawai'i Supreme Court, "every court must nevertheless determine as a threshold matter whether it has jurisdiction to decide the issue presented."[5]

According to *Lorenzo*, the threshold matter is whether the Board has personal jurisdiction over the Respondent in light of the Hawaiian Kingdom's continued existence as a State and the Respondent as a Hawaiian subject. "Personal jurisdiction exists when (1)

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[2] Black's Law Dictionary (6th ed. 1990), 1332.

[3] United States Department of Justice, *Justice News—Attorney General Merrick B. Garland Administers the Oath of Allegiance and Delivers Congratulatory Remarks at Ellis Island Ceremony in Celebration of Constitution Week and Citizenship Day*, September 17, 2022 (online at: https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-administers-oath-allegiance-and-delivers).

[4] *Nishitani v. Baker*, 82 Haw. 281, 289; 921 P.2d 1182, 1190 (Haw. App. 1996).

[5] *Pele Def. Fund v. Puna Geothermal Venture*, 77 Haw. 64, 67 (1994), citing *Bush v. Hawaiian Homes Comm'n*, 76 Haw. 128, 133, 870 P.2d 1272, 1277 (1994) (observing that a judgment rendered.

the defendant's activity falls under the State's long-arm statute, and (2) the application of the statute complies with constitutional due process."[6] "Hawaii's long-arm statute, HRS §634-635, was adopted to expand the jurisdiction of the State's courts to the extent permitted by the due process clause of the Fourteenth Amendment."[7]

The exception to the long-arm statute are defendants that have successfully presented a "factual (or legal) basis for concluding that the Kingdom exists as a state in accordance with recognized attributes of a state's sovereign nature."[8] As the Hawai'i Supreme Court explained, in *State of Hawai'i v. Armitage*, "Lorenzo held that, for jurisdictional purposes, should a defendant demonstrate a factual or legal basis that the [Hawaiian Kingdom] 'exists as a state in accordance with recognized attributes of a state's sovereign nature[,]' and that he or she is a citizen of that sovereign state, a defendant may be able to argue that the courts of the State of Hawai'i lack jurisdiction over him or her."[9]

To determine personal jurisdiction "the court has discretion to proceed either upon the written submissions or through a full evidentiary hearing."[10] In *Shaw v. North Am. Title Co.*, the ICA quoted 2A J. Moore, J. Lucas & G. Grotheer, *Moore's Federal Practice* ¶12.07[2.-2] at 12-69-70 (2d ed. 1993):

> If the...court chooses not to conduct a full-blown evidentiary hearing on a pretrial motion to dismiss for lack of personal jurisdiction, plaintiff need make only a prima facie showing of jurisdiction through its own affidavits and supporting materials, even though plaintiff eventually must establish jurisdiction by a preponderance of the evidence either at a pretrial evidentiary hearing or at trial and, before the hearing is held, a prima facie showing suffices notwithstanding any controverting presentation by the moving party to defeat the motion.

The ODC, at the onset of these proceedings, did provide a "prima facie" showing of the Board's jurisdiction, but the Respondent's motions would have the effect of compelling the ODC "to establish jurisdiction by a preponderance of the evidence." To deny Respondent the opportunity to "prov[e] facts in support of [his] defense, such as

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[6] *Norris v. Six Flags Theme Parks, Inc.*, 102 Haw. 203, 207; 74 P.3d 26, 30 (2003).
[7] *Cowan v. First Ins. Co. of Hawaii, Ltd.*, 61 Haw. 644, 649; 608 P.2d 394, 399 (1980).
[8] *State of Hawai'i v. Lorenzo*, 77 Haw. 219, 221; 883 P.2d 641, 643 (Haw. App. 1994).
[9] *State of Hawai'i v. Armitage*, 132 Haw. 36, 57; 319 P.3d 1044, 1065 (2014).
[10] *Shaw v. North Am. Title Co.*, 76 Haw. 323, 326-27, 876 P.2d 1291, 1294-95 (1994).

immunity," violates Respondent's right to due process. The Hawai'i Supreme Court, in *State v. Matafeo*, stated, "[t]he due process guarantee of the Federal and Hawaii constitutions serves to protect the right of an accused in a criminal case to a fundamentally fair trial (citation omitted). Central to the protections of due process is the right to be accorded a 'meaningful opportunity to present a complete defense.'"[11]

III. CONCLUSION

For the reasons set forth above, Respondent requests the Chairperson reverse its orders and grant Respondent's Motion to Dismiss Subpoena Dated August 31, 2022, Pursuant to HRCP 12(b)(2) and the Lorenzo Principle, filed September 6, 2022 ("Motion to Dismiss Subpoena") and Request for Judicial Notice in Support of Respondent's Motion to Dismiss Subpoena, filed September 6, 2022. In the alternative, Respondent requests the Chairperson schedule an evidentiary hearing, pursuant to *Lorenzo*, for the Office of Disciplinary Counsel to provide rebuttable evidence, factual and legal, that the Hawaiian Kingdom ceases to exist as a State.

DATED: Honolulu, Hawai'i, September 21, 2022.

Respectfully submitted,

/s/ Dexter K. Ka'iama

DEXTER K. KA'IAMA (Bar No. 4249)

[11] *State v. Matafeo*, 71 Haw. 183, 184 (1990).

IN THE SUPREME COURT OF THE
STATE OF HAWAI'I

ODC v. or, A confidential pending investigation and/or Proceeding under the Rules of the Supreme Court of the State of Hawai`i and its Disciplinary Board, regarding a matter of Attorney discipline.	**CONFIDENTIAL** Case No. 18-0339 CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and filed copy of the foregoing document will be duly served on the following parties by Hand-delivery or U.S. mail (postage prepaid on this date):

CLIFFORD L. NAKEA
Disciplinary Board Officer
Office of Disciplinary Counsel
Hawai`i Supreme Court
201 Merchant Street, Suite 1600
Honolulu, Hawai`i 96813

ALANA L. BRYANT, ESQ.
Assistant Disciplinary Counsel
Office of Disciplinary Counsel
Hawai`i Supreme Court
201 Merchant Street, Suite 1600
Honolulu, Hawai`i 96813

WILLIAM FENTON SINK, ESQ.
Dillingham Transportation Bldg.
735 Bishop Street, Ste. 400
Honolulu, HI 96813

Dated: Kailua, Hawai`i, September 21, 2022.

Dexter K. Ka`iama. Esq.
Respondent

From: William Fenton Sink
To: Alana Bryant
Subject: Re: CONFIDENTIAL - Subpoena (3)
Date: Monday, September 26, 2022 9:03:18 AM

Received. Thank you!

Sincerely,
Jennifer M. Inouye, Paralegal

9/26/2022 115p
18-0339

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Law Offices of William Fenton Sink
735 Bishop Street, Ste. 400
Honolulu, Hawaii 96813

Office: (808) 531-7162
Facsimile: (808) 524-2055
Email: jennifer@wfsinklaw.com

MR. SINK DOES NOT USE EMAIL; PLEASE INCLUDE YOUR PHONE NUMBER ON ALL EMAILS TO ENSURE A QUICKER RESPONSE.

From: Alana Bryant <Alana.L.Bryant@dbhawaii.org>
Sent: Monday, September 26, 2022 8:50 AM
To: William Fenton Sink <jennifer@wfsinklaw.com>
Subject: RE: CONFIDENTIAL - Subpoena (3)

Mr. Sink,

As Mr. Kaiama has filed a motion (Motion to Alter or Amend Judgment Dated September 13, 2022) that is still pending, we will postpone the deposition that was scheduled for tomorrow, Sept.27 until after the motion has been decided.

Thank you,
Alana

Alana L. Bryant
Assistant Disciplinary Counsel
(808) 521-4591 (main) | (808) 469-4037
http://www.dbhawaii.org|Alana.L.Bryant@dbhawaii.org

Office of Disciplinary Counsel
Hawai'i Supreme Court
201 Merchant Street, Suite 1600
Honolulu, HI 96813

From: William Fenton Sink <jennifer@wfsinklaw.com>
Sent: Thursday, September 15, 2022 8:05 AM
To: Alana Bryant <Alana.L.Bryant@dbhawaii.org>
Cc: Dexter Kaiama <cdexk@hotmail.com>
Subject: Re: CONFIDENTIAL - Subpoena (3)

Dear Ms. Bryant:

As we discussed, I will accept service of the subpoena for Mr. Kaiama but he will **not** be appearing at his deposition on September 27, 2022, at least until all his procedural defenses have been exhausted.

Thanking you for your professionalism, and I am,

Most respectfully,
/s/
William Fenton Sink

Law Offices of William Fenton Sink
735 Bishop Street, Ste. 400
Honolulu, Hawaii 96813

Office: (808) 531-7162
Facsimile: (808) 524-2055
Email: jennifer@wfsinklaw.com

MR. SINK DOES NOT USE EMAIL; PLEASE INCLUDE YOUR PHONE NUMBER ON ALL EMAILS TO ENSURE A QUICKER RESPONSE.

From: Alana Bryant <Alana.L.Bryant@dbhawaii.org>
Sent: Wednesday, September 14, 2022 11:07 AM
To: William Fenton Sink <jennifer@wfsinklaw.com>
Subject: CONFIDENTIAL - Subpoena (3)

Mr. Sink,

As Mr. Kaiama's motions were denied by the Disciplinary Board yesterday, we are issuing another subpoena for his deposition. We have scheduled the deposition for Tuesday, September 27, 2022, 9:30 a.m., at ODC's offices. Please respond affirmatively to this email if you are able to accept service of the attached subpoena on Mr. Kaiama's behalf.

Thank you,

Alana

Office of Disciplinary Counsel
Hawai'i Supreme Court
201 Merchant Street, Suite 1600
Honolulu, HI 96813

Alana L. Bryant
Assistant Disciplinary Counsel
(808) 521-4591 (main) | (808) 469-4037
http://www.dbhawaii.org|Alana.L.Bryant@dbhawaii.org

BRADLEY TAMM 7841
Chief Disciplinary Counsel
ALANA L. BRYANT 10372
Deputy Disciplinary Counsel

OFFICE OF DISCIPLINARY COUNSEL
201 Merchant St., Suite 1600
Honolulu, HI 96813
(808) 521-4591
alana.l.bryant@dbhawaii.org

Counsel for Petitioner

DISCIPLINARY BOARD OF THE HAWAI'I SUPREME COURT

In Re: Dexter K. Kaʻiama, HSBA No. 4249, Respondent.	ODC No. 18-0339

OFFICE OF DISCIPLINARY COUNSEL'S RESPONSE TO RESPONDENT DEXTER K. KAʻIAMA'S MOTION TO ALTER OR AMEND JUDGMENT DATED SEPTEMBER 13, 2022, PURSUANT TO HRCP 59(e); CERTIFICATE OF SERVICE

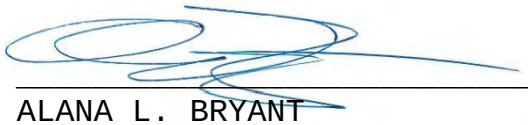
On September 21, 2022, Respondent Dexter K. Kaʻiama filed his *Motion to Alter or Amend Judgment dated September 13, 2022, Pursuant to HRCP 59(e)*. As this is a disciplinary matter, the Supreme Court of the State of Hawaiʻi is the court of original jurisdiction. Haw. Const. art. VI, § 7; HRS § 605-1 (2019); RSCH Rule 2.1. As such, the Hawaiʻi Rules of Appellate Procedure (HRAP) apply, rather than the Hawaiʻi Rules of Civil Procedure (HRCP). Rule 40(c) of HRAP states, "[n]o response to a motion for reconsideration . . . will be received unless

requested by the appellate court." ODC believes that the Disciplinary Board ("Board") would be considered the "appellate court" in this case.

ODC awaits instruction from the Board as to whether it should substantively reply to Kaʻiama's motion.

DATED: September 23, 2022

OFFICE OF DISCIPLINARY COUNSEL



ALANA L. BRYANT
Deputy Disciplinary Counsel
Counsel for ODC

BRADLEY TAMM 7841
Chief Disciplinary Counsel
ALANA L. BRYANT 10372
Deputy Disciplinary Counsel

OFFICE OF DISCIPLINARY COUNSEL
201 Merchant St., Suite 1600
Honolulu, HI 96813
(808) 521-4591
alana.l.bryant@dbhawaii.org

Counsel for Petitioner

DISCIPLINARY BOARD OF THE HAWAI'I SUPREME COURT

In Re: Dexter K. Kaʻiama, HSBA No. 4249, Respondent.	ODC No. 18-0339

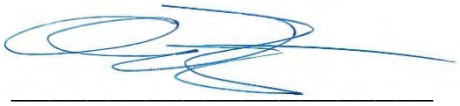
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above document, dated September 23, 2022, was duly served by U.S. Mail, First Class, postage prepaid, pursuant to RSCH Rule 2.11(b), on the date set forth below to the following at their last known address:

Dexter K. Kaʻiama
2700 King Street, #11942
Honolulu, Hawaiʻi 96826

DATE: September 23, 2022

Office of Disciplinary Counsel



ALANA L. BRYANT
Deputy Disciplinary Counsel
Counsel for ODC

DISCIPLINARY BOARD OF THE HAWAIʻI SUPREME COURT

In re Dexter K. Kaʻiama, Respondent.	CONFIDENTIAL ODC 18-0339

ORDER REJECTING RECONSIDERATION

There being no rules of the Hawaiʻi Supreme Court or the Disciplinary Board thereof to the contrary, Hawaiʻi Rules of Appellate Procedure are applicable and, as required by Rule 40 (d) HRAP, 10 days having elapsed from the motion filed herein on September 21, 2022, deemed a motion to reconsider the Order of September 13, 2022, with no action thereon by or on behalf of the Disciplinary Board, the motion for reconsideration is rejected.

Dated: October 5, 2022

Disciplinary Board of the Hawaiʻi Supreme Court

Hon. Clifford L. Nakea (Ret.)
Chairperson

201 Merchant Street, Suite 1600, Honolulu, Hawaiʻi 96813
Telephone (808) 599-1909 (www.dbhawaii.org)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that service of a copy of the foregoing ORDER REJECTING RECONSIDERATION was made either 1) by regular U.S. Mail, postage prepaid, or 2) by hand delivery, as indicated below:

Party	1) by US mail	2) hand delivery
DEXTER K. KA'IAMA 1486 Akeke Place Kailua, Hawai'i 96734 Respondent courtesy copy to: cdexk@hotmail.com	☒	☐
WILLIAM FENTON SINK Dillingham Transportation Building 735 Bishop Street, Suite 400 Honolulu, Hawai'i 96813 Counsel for Respondent courtesy copy to: jennifer@wfsinklaw.com	☒	☐
ALANA L. BRYANT Deputy Disciplinary Counsel BRADLEY R. TAMM Chief Disciplinary Counsel Office of Disciplinary Counsel Merchant Street, Suite 1600 Honolulu, Hawai'i 96813 Attorneys for Office of Disciplinary Counsel courtesy copy to: alana.l.bryant@dbhawaii.org and bradley.r.tamm@dbhawaii.org	☐	☒

DATED: Honolulu, Hawai'i, October 5, 2022.

FAYE F. HEE
DISCIPLINARY BOARD ADMINISTRATIVE DIRECTOR

IN THE SUPREME COURT OF THE STATE OF HAWAIʻI

◯ ODC v. or, ◉ A confidential pending investigation and/or proceeding under the Rules of the Supreme Court of the State of Hawaiʻi and its Disciplinary Board, regarding a matter of attorney discipline.	**CONFIDENTIAL** Case No. 18-0339 ◉ SUBPOENA or ◯ SUBPOENA DUCES TECUM

TO: **Dexter K. Kaiama**
c/o William F. Sink, Esq.
735 Bishop Street, Suite 400
Honolulu, Hawaii 96813

1. **WE COMMAND YOU,** that all business and excuses being set aside, to appear in person and attend before:

   Alana L. Bryant , Disciplinary ◉ Counsel ◯ Investigator

2. At the place of the **Office of Disciplinary Counsel, 201 Merchant Street, Suite 1600, Honolulu, Hawaiʻi 96813.**

3. On the **13th** day of **October** , **2022** (**Thursday**) at **9:30** o'clock **a** .m. (and at any recessed or adjourned date);

4. Testify as a witness, or custodian, in the attorney disciplinary matter ◯ captioned above, or ◉ a confidential matter per RSCH Rule 2.22(a) identified by the case number captioned above.

5. **AND WE FURTHER COMMAND YOU** to bring and produce at the time and place aforesaid, the following which you have in your custody or power, concerning the matter:

   ◉
   ◯ or as set forth on **Attachment(s)** appended hereto.

6. **FOR FAILURE TO APPEAR AND TESTIFY OR PRODUCE** as herein require, you will be deemed to be in contempt of the Supreme Court of the State of Hawaiʻi.

BY AUTHORITY OF THE SUPREME COURT OF THE STATE OF HAWAIʻI.

DATED: October 6, 2022 Honolulu, Hawaiʻi

Disciplinary Board Officer

Clifford L. Nakea

Clerk, Supreme Court of the State of Hawaiʻi

/s/ Elizabeth Zack

From: Alana Bryant
To: William Fenton Sink
Subject: Re: CONFIDENTIAL - Subpoena (4)
Date: Wednesday, October 12, 2022 5:46:51 PM

Aloha Mr. Sink,

My last email should have specified that I attempted to serve Mr. Kaiama via first class mail on 10/3/22, but the mail was returned to sender. Please send an updated address for Mr. Kaiama at your soonest convenience.

Thank you,
Alana

From: Alana Bryant
Sent: Wednesday, October 12, 2022 3:46:53 PM
To: William Fenton Sink <jennifer@wfsinklaw.com>
Subject: RE: CONFIDENTIAL - Subpoena (4)

Good afternoon Mr. Sink,

The request below is received. At this time, ODC will not postpone or withdraw the subpoena Mr. Kaiama's deposition that is scheduled for tomorrow, Oct. 13 at 9:30am. Mr. Kaiama is free to pursue any remedy he sees fit, however, ODC must move forward with its disciplinary investigation.

I also wanted to let you know that ODC submitted a response to Mr. Kaiama's Motion to Alter or Amend Judgment, and attempted to serve him on 10/3/22 via First Class mail at "2700 E. King Street, #11942, Honolulu, HI 96826." This is the address that is currently listed for Mr. Kaiama on the HSBA website. Can you send me Mr. Kaiama's address for service of process?

Thank you, and please call at 808-429-0479 if you have any questions.

Alana

Alana L. Bryant
Deputy Disciplinary Counsel
(808) 521-4591 (main) | (808) 469-4037
http://www.dbhawaii.org|Alana.L.Bryant@dbhawaii.org

Office of Disciplinary Counsel
Hawai'i Supreme Court
201 Merchant Street, Suite 1600
Honolulu, HI 96813

From: William Fenton Sink <jennifer@wfsinklaw.com>
Sent: Wednesday, October 12, 2022 12:58 PM
To: Alana Bryant <Alana.L.Bryant@dbhawaii.org>
Subject: Re: CONFIDENTIAL - Subpoena (4)

October 12, 2022

Via Email Only

Alana L. Bryant
Office of Disciplinary Counsel
201 Merchant Street, Ste. 1600
Honolulu, Hawai'i 96813

Re: Dexter K. Kaiama, Esq.

Dear Ms. Bryant:

On behalf of Mr. Kaiama, we would respectfully request you hold off on any requests for a deposition until every appeal and/or writ has made their way through the system.

Mr. Kaiama intends to exhaust all remedies available to him, as is his right. Mr. Kaiama does not intend to waive any claims he might have to challenge the proceedings against him.

Therefore, we respectfully ask that no more notices of deposition are issued until, and if, all of Mr. Kaiama's options to challenge this procedure are complete.

Thanking you for your professionalism, I am,

Most respectfully,

/s/

William Fenton Sink
WFS:jmi

cc: Dexter Kaiama, Esq.

Law Offices of William Fenton Sink
735 Bishop Street, Ste. 400
Honolulu, Hawaii 96813

Office: (808) 531-7162
Facsimile: (808) 524-2055
Email: jennifer@wfsinklaw.com

MR. SINK DOES NOT USE EMAIL; PLEASE INCLUDE YOUR PHONE NUMBER ON ALL EMAILS TO ENSURE A QUICKER RESPONSE.

this message or its attachments is strictly prohibited without the prior approval of the named recipient hereunder. If you have received this communication in error, please immediately notify us by telephone (808) 531-7162 or by return e-mail, and delete the original message. Your cooperation is appreciated.

From: Alana Bryant <Alana.L.Bryant@dbhawaii.org>
Sent: Thursday, October 6, 2022 6:49 PM
To: William Fenton Sink <jennifer@wfsinklaw.com>
Subject: CONFIDENTIAL - Subpoena (4)

Mr. Sink

As the Disciplinary Board Chair issued an Order Rejecting Reconsideration yesterday, we are issuing another subpoena for Mr. Kaiama's deposition. I have scheduled the deposition for Thursday, October 13, 2022, 9:30 a.m., at ODC's offices. Please let me know if, consistent with the other subpoenas we have issued, you will accept service on Mr. Kaiama's behalf. Please call me at 808-429-0479 if you have any questions or want to discuss anything related to this matter.

Thank you,
Alana

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Hawai'i Supreme Court
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Alana L. Bryant
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