DEXTER K. KA‘IAMA (Bar No. 4249)
DEPARTMENT OF THE ATTORNEY GENERAL, HAWAIIAN KINGDOM
P.O. Box 2194
Honolulu, HI 96805-2194
Telephone: (808) 284-5675
Email: attorneygeneral@hawaiiankingdom.org

Attorney for Plaintiff, Hawaiian Kingdom

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

PLAINTIFF HAWAIIAN KINGDOM’S RESPONSE TO STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA FILED NOVEMBER 5, 2021 [ECF 164]; CERTIFICATE OF SERVICE

PLAINTIFF HAWAIIAN KINGDOM’S RESPONSE TO STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA FILED NOVEMBER 5, 2021 [ECF 164]

I. INTRODUCTION

The UNITED STATES OF AMERICA's Statement of Interest, filed November 5, 2021 [ECF 164] (hereinafter "UNITED STATES SOI"), is an intervention on behalf of the Consular Defendants named in Plaintiff's Amended Complaint [ECF 55] and seeks the Court's dismissal of these Consular Defendants from the instant civil action for lack of subject matter jurisdiction and to set aside, against those Consular Defendants, for which entries of default have been filed/entered by (clerk of) the Court, under Federal Rules of Civil Procedure 55 (c) for good cause shown.

By filing its statement of interest, the UNITED STATES engages in unfounded and disparaging remarks directed at Plaintiff in a poor attempt to present a false narrative of Plaintiff's status and the UNITED STATES' factual and undisputed recognition of that status. Exposure of this false narrative, as more fully set forth herein below, opens for clear view of an argument, by the UNITED STATES, that strains credibility and subject to terminable contradiction by the facts and laws presented in these proceedings.

In seeking the relief stated in its Statement of Interest, the UNITED STATES adopts the legal position asserted by Consular Defendant Ander G.O. Nervell (hereinafter "NERVELL"), in his official capacity as Sweden's Honorary Consul to Hawai'i in his Motion to Dismiss Amended Complaint for Declaratory Judgment and Injunctive Relief as to Anders G.O. Nervell, filed October 19, 2021 [ECF 74] (hereinafter "NERVELL'S MTD") and his Reply Memorandum in Further Support of Motion to Dismiss Amended Complaint for Declaratory Judgment and Injunctive Relief as to Anders G.O. Nervell, filed November 3, 2021 [ECF 146] (hereinafter "NERVELL'S REPLY"). As more fully set forth herein

below, the fallacy of the UNITED STATES' adoption and support of NERVELL'S MTD and NERVELL'S REPLY is addressed by Plaintiff.

Like NERVELL'S MTD and NERVELL'S REPLY, the UNITED STATES SOI wrongly presumes that the factual allegations in the HAWAIIAN KINGDOM's Amended Complaint are not true.

When a complaint is filed, a court must take the alleged facts as true. In reviewing a motion to dismiss, all allegations in the complaint and all reasonable inferences that can be drawn therefrom must be accepted as true and viewed in the light most favorable to the non-moving party—the HAWAIIAN KINGDOM.[1] In *Iqbal*, the Supreme Court says that "[w]hile legal conclusions can provide the framework of a complaint, they must be supported by factual allegations."[2]

Finally, the UNITED STATES SOI seeks to have the Court ignore the clear and fatal failures on the entry of default against those Consular Defendants who have failed to file an answer to the Amended Complaint, contact Plaintiff's counsel to request an extension to file its answer, file its motion to dismiss and/or respond in any manner whatsoever. The failures of these Consular Defendants cannot be so easily overlooked by the mere filing of the UNITED STATES SOI.

II. DISCUSSION

The UNITED STATES SOI states "[t]his lawsuit is brought by a group of individuals who call themselves the 'Council of Regency,' which in turn purports to be the government of the Hawaiian Kingdom. Plaintiff requests that the Court declare that the Council of Regency, not the democratically-elected government, is the rightful ruler of Hawaii." In this context, the UNITED STATES uses the word

[1] *See Wisniewski v. Johns-Manville Corp.*, 759 F.2d 271 (3d Cir. 1985).
[2] *Iqbal*, 556 U.S. 662, 679 (2009).

"purport" as to referring to something falsely claimed or professed to be something it isn't. This is not only an improper pleading because the UNITED STATES has not answered the Amended Complaint that it is "not" the Council of Regency, but also a pejorative statement inserted in a non-answer pleading that attempts to influence the Court that its argument that the foreign Defendant Consulates have immunity from jurisdiction via the Vienna Convention on Consular Relations has merit.

As the Council of Regency are officers *de facto* of a government, albeit a government of an occupied State where democratic principles have no play in a belligerent occupation, the UNITED STATES, as a government itself of an independent and sovereign State, must provide rebuttable evidence that another government of a co-equal independent and sovereign State is not what it claims to be. To do otherwise, is an insult to its dignity because the Council of Regency is the Head of the Hawaiian Kingdom government. According to Oppenheim,

> Since dignity is a recognized quality of States as International Persons, all members of the Family of Nations grant reciprocally to one another by custom certain rights and ceremonial privileges. (These are chiefly the rights to demand—that their heads shall not be libelled and slandered […].) Every State must not only itself comply with the duties corresponding to these rights of other States, but must also prevent its subjects from such acts as violate the dignity of foreign States, and must punish them for acts of that kind which it could not prevent. The Municipal Laws of all States must therefore provide for the punishment of those who commit offences against the dignity of foreign States, and, if the Criminal Law of the land does not contain such provisions, it is no excuse for failure by the respective States to punish offenders.[3]

[3] L. Oppenheim, *International Law*, vol. 1, 175-76 (2nd ed., 1912).

Though it cites NERVELL'S REPLY, the UNITED STATES, like NERVELL, fails to counter the factual allegations in the Amended Complaint that: (a) the UNITED STATES, to include Sweden and all States of the other Consular Defendants, as members of the Permanent Court of Arbitration's Administrative Council, acknowledged the HAWAIIAN KINGDOM as a non-Contracting State under Article 47 of the 1907 Hague Convention on the Pacific Settlement of International Disputes,[4] and the Council of Regency as its government[5] and; (b) the UNITED STATES, by its embassy in The Hague, entering into an agreement with the Council of Regency, as the government of the Hawaiian Kingdom, to have access to all records and pleadings of the arbitral proceedings.[6]

Accordingly, Plaintiff can only conclude and respectfully asserts that the UNITED STATES SOI intervention, on behalf of and in support of Consular Defendant NERVELL, on behalf of Sweden, and the submission of the NERVELL'S MTD and NERVELL'S REPLY are blatantly unsubstantiated denials and desperate attempts by both to distract this Court from the facts of this case. Furthermore, Sweden, as a co-equal sovereign and independent State is responsible for NERVELL's pleadings, which has a tenor of arrogance.

The UNITED STATES SOI, as an intervention on behalf of and, thereby, an adoption of NERVELL'S MTD and NERVEL'S REPLY warrants closer examination of the position asserted in said MTD and REPLY. All NERVELL cites in his reply is both State of Hawai'i and federal court decisions regarding the Hawaiian Kingdom. These court decisions only reflect the allegations of facts made or not made by the defendants in the cases cited. It has no application to the

[4] 36 U.S. Stat. 2199.
[5] Amended Complaint for Declaratory and Injunctive Relief [ECF 55], para. 96-105.
[6] See Declaration of David Keanu Sai, Ph.D. [ECF 55-1].

instant case before this Court because these decisions are *in personam* and not *in rem*. What these decisions do provide, however, are instructional for defendants that claim the Hawaiian Kingdom exists in their particular case, to provide evidence of the Hawaiian State's existence. NERVELL'S REPLY cites *United States v. Lorenzo*, where the court stated, "[t]he appellants have **presented no evidence** that the Sovereign Kingdom of Hawaii is currently recognized by the federal government (emphasis added)."[7] The operative words here are "presented no evidence."

NERVELL's REPLY further goes on to cite *Keliihuluhulu v. Keanaaina*, where the federal court stated, "[a]s stated by the Hawai'i Intermediate Court of Appeals ("ICA"), a statement that is as true now as it was when the ICA stated in 1994, '**presently** there is no factual (or legal) basis for concluding that the [Hawaiian] exists as a state in accordance with recognized attributes of a state's foreign nature.' *Hawaii v. French*, 77 Haw. 222, 228, 883 P.2d 644, 650 (CT. App. 1994) (quotations omitted) (emphasis added)."[8] The operative word here is "presently." In other words, these federal court decisions clearly state that the defendants provided no factual or legal evidence of the Hawaiian Kingdom's existence as a State.

On the contrary, the HAWAIIAN KINGDOM, as the Plaintiff, has provided "a factual (or legal) basis for concluding that the [Hawaiian] exists as a state" despite the UNITED STATES admitted illegal overthrow of its government on January 17, 1893. The *Amici* also address the *French* case in their filed *amicus* brief [ECF 96].

---

[7] *United States v. Lorenzo*, 995 F.2d 1448, 1456 (9th Cir. 1993).
[8] *Keliihuluhulu v. Keanaaina*, No. 19-00417 LEK-WRP, 2019 U.S. Dist. LEXIS 158306, at *8 (D. Haw. Sep. 17, 2019).

> In Defendant County of Kaua'i's Motion to Dismiss Plaintiff's original Complaint, the County cites *Hawai'i v. French*, 77 Haw. 222, 228, 883 P.2d 644, 650 (Ct. App. 1994) in support of the statement that 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." [ECF No. 15-1, Page ID #158]. **This assertion is factually and legal incorrect**. The 1994 ruling in French stands in stark contrast to the 2001 Arbitral Award of the Permanent Court of Arbitration of the *Larsen v. Hawaiian Kingdom* and the PCA Annual Reports from 2000-2011, that explicitly found Hawai'i to be a continued state to-date under international law (emphasis added).[9]

The Court's Order granting permission for *Amici* to file their *amicus brief* stated that the "briefing 'supplement[s] the efforts of counsel, and draw[s] the court's attention to law that escaped consideration.'" As such, the *amicus* brief, which supplements the Amended Complaint regarding its jurisdictional statement, must also be considered true. Reinforcing the merit of the *amicus* is that the Court granted permission to the *Amici* to file their brief.

III. CONCLUSION

The jurisdiction of the Court as an Article II Court is consequential to the existence of the Hawaiian Kingdom as a State. In the *Lotus* case, the Permanent Court of International Justice stated, "[t]he first and foremost restriction imposed by international law upon a State is that—failing the existence of a permissive rule to the contrary—it may not exercise its power in any form in the territory of another State."[10] There is no permission from the HAWAIIAN KINGDOM giving

[9] Brief of Amici Curiae International Association of Democratic Lawyers, National Lawyers Guild, and Water Protector Legal Collective in Support of Plaintiff's Amended Complaint [ECF 96], 17-18.
[10] *Lotus*, PCIJ, ser. A no. 10 (1927), 18.

its consent to the UNITED STATES, whether by its Congress or otherwise, to establish an Article III Court within the territorial jurisdiction of the HAWAIIAN KINGDOM. In the absence of consent by the HAWAIIAN KINGDOM, authorization for this Court to transform into an Article II Court is by virtue of Article 43 of the Hague Regulations.[11]

Until this Court transforms itself into an Article II Court, it is precluded from considering the relief sought by the UNITED STATES SOI and NERVELL'S MTD because, as an Article III Court, it does not possess subject matter and personal jurisdiction. In colloquial terms, the UNITED STATES, on behalf of the Consular Defendants, including NERVELL, appear to be asking for a chicken without first qualifying the egg. Furthermore, the Federal Rules of Civil Procedure, the Local Rules of the Court, and Court decisions, to include the United States Supreme Court, are instructional and not binding until the Court, as an Article II Court, declares otherwise in conformity with the laws of armed conflict—international humanitarian law.

DATED: Honolulu, Hawai'i, November 7, 2021.

Respectfully submitted,

/s/ Dexter K. Ka'iama

DEXTER K. KA'IAMA (Bar No. 4249)
Attorney General of the Hawaiian Kingdom
DEPARTMENT OF THE ATTORNEY GENERAL, HAWAIIAN KINGDOM

Attorney for Plaintiff, Hawaiian Kingdom

[11] 36 Stat. 2277, 2306 (1907).