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Plaintiff Pro Se

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DAVID KEANU SAI,

Plaintiff

vs.

HILLARY DIANE RODHAM
CLINTON, SECRETARY OF
STATE OF THE UNITED
STATES; ROBERT MICHAEL
GATES, SECRETARY OF
DEFENSE OF THE UNITED
STATES; ADMIRAL ROBERT
F. WILLARD, UNITED
STATES PACIFIC COMMAND
COMMANDER; AND LINDA
LINGLE, GOVERNOR OF THE
STATE OF HAWAII

Defendants.

CIVIL ACTION NO. 1:10-CV-00899

PLAINTIFF'S FIRST AMENDED
COMPLAINT; CERTIFICATE OF
SERVICE

PLAINTIFF'S FIRST AMENDED COMPLAINT

PRELIMINARY STATEMENT

1. This is an action arising under the Alien Tort Statute by PLAINTIFF DAVID KEANU SAI (hereafter referred to as "PLAINTIFF") in his capacity as a Hawaiian subject when he was indicted, prosecuted and convicted of a felony by the State of Hawai'i in violation of an executive agreement dated January 17, 1893 (hereafter referred to as the "*Lili'uokalani assignment*"). PLAINTIFF is a third party beneficiary with enforceable rights under the *Lili'uokalani assignment*, being self-

executing, and respectfully seeks a declaratory judgment declaring the Joint Resolution to provide for annexing the Hawaiian Islands to the United States (30 U.S. Stat. 750) unconstitutional, and seeking permanent injunctive relief, redress, restitution, disgorgement, and other equitable relief against DEFENDANTS for violations of the *Lili`uokalani assignment* and other treaties that the United States government has ratified. On January 17, 1893, an executive agreement was entered into between Queen Lili`uokalani of the Hawaiian Kingdom and President Grover Cleveland of the United States whereby Hawaiian executive power was temporarily and conditionally assigned under threat of war to the President of the United States to administer Hawaiian Kingdom law in the Hawaiian Islands (the *Lili`uokalani assignment*). The *Lili`uokalani assignment* binds President Cleveland's successors in office with the duty of administering Hawaiian Kingdom law until such time as the Hawaiian Kingdom government has been restored pursuant to a second executive agreement, known as the *Agreement of restoration* (December 18, 1893), whereupon the Hawaiian executive power would be returned and the Queen would grant amnesty to those individuals who participated in the insurrection to overthrow the Hawaiian Kingdom government. Defendant Barack Hussein Obama, President of the United States, has been removed from PLAINTIFF'S original complaint that was filed June 1, 2010, pursuant to *Nixon v. Fitzgerald*, 457 U.S. 731 (1982), but all other Defendants remain.

JURISDICTION AND VENUE

2. This case arises under U.S. CONST. art. VI, clause 2; Aliens Action for Tort, 28 U.S.C. §1350, whereby "The district courts shall have original jurisdiction of any

civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States;” the 1893 *Lili`uokalani assignment*; Hague Convention, IV, Laws and Customs of War on Land, Oct. 18, 1907, 36 U.S. Stat. 2277 (hereinafter referred to as 1907 Hague Convention, IV); Hague Convention, V, Rights and Duties of Neutral Powers and Persons in Case of War on Land, Oct. 18, 1907, 36 U.S. Stat. 2310 (hereinafter referred to as 1907 Hague Convention, V); and the Geneva Convention, IV, Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 UST 3516, 75 UNTS 287, (hereinafter referred to as 1949 Geneva Convention, IV) as hereinafter more fully appears.

3. Venue in the United States District Court for the District of Columbia is proper under 28 U.S.C. §1391(e), and the matter in controversy, exclusive of interests and costs, exceeds \$75,000.00.
4. This Court has authority to grant declaratory relief pursuant to 28 U.S.C. §2201.
5. This Court has authority to grant preliminary and permanent injunctive relief, redress, restitution, disgorgement, and other equitable relief pursuant to *U.S. v. Belmont*, 301 U.S. 324 (1937), *U.S. v. Pink*, 315 U.S. 203 (1942), and *American Insurance Association v. Garamendi* 539, U.S. 396 (2003) regarding executive agreements.

PARTIES

6. The PLAINTIFF is a Hawaiian subject and a protected person under the 1949 Geneva Convention, IV, and resides at 47-605 Puapo`o Place, Kaneohe, HI 96744.
7. HILLARY DIANE RODHAM CLINTON is Secretary of State of the United States of America since January 21, 2009, hereinafter called DEFENDANT CLINTON

and is the successor in office to Secretary of State John C. Calhoun (1844-1845) and Walter Gresham (1893-1895) as hereinafter more fully appears. DEFENDANT CLINTON is a United States citizen with an office at 2201 C Street NW, Washington, D.C., 20520.

8. ROBERT MICHAEL GATES is the Secretary of Defense of the United States of America since December 18, 2006, hereinafter called DEFENDANT GATES and is the successor in office to Secretary of the Navy John Davis Long (1897-1902) by virtue of the command structure of Unified Combatant Commands as hereinafter more fully appears. DEFENDANT GATES is a United States citizen with an office at 1400 Defense Pentagon, Washington, D.C., 20301-1400
9. ROBERT F. WILLARD, Admiral, United States Navy, is the Commander of United States Pacific Command, a military component of the United States of America's Unified Combatant Commands since October 19, 2009, hereinafter called DEFENDANT WILLARD, and is the successor in office to Rear-Admiral J.N. Miller, Commander in Chief of the United States Naval Force on the Pacific Station (1898) and Admiral Timothy Keating, Commander of United States Pacific Command (2007-2009), as hereinafter more fully appears. DEFENDANT WILLARD is a United States citizen with an office at HQ USPACOM, Attn JOO, Box 64028, Camp H.M. Smith, HI 96861-4031.
10. LINDA LINGLE is the Governor of the State of Hawai`i, a political component of the United States of America, since December 2, 2002, hereinafter called DEFENDANT LINGLE, and is the successor in office to Governor Benjamin Cayetano (1994-2002) as hereinafter more fully appears. DEFENDANT LINGLE is

a United States citizen with an office at 415 South Beretania Street, Honolulu, HI 96813.

FACTUAL ALLEGATIONS

11. On or about July 6, 1844, United States Secretary of State John C. Calhoun, predecessor in office to DEFENDANT CLINTON, notified the Hawaiian government of the United States formal recognition of the Hawaiian Kingdom as an independent and sovereign State since December 19, 1842 by President John Tyler, predecessor in office to President Barrack Obama. A copy of which is Exhibit A in the original complaint. In *Larsen v. Hawaiian Kingdom*, 119 ILR 566, 581 (2001), the Permanent Court of Arbitration in The Hague stated “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.” The 9th Circuit Court, in *Kahawaiola`a v. Norton*, 386 F.3rd 1271 (2004), also acknowledged the Hawaiian Kingdom’s status as “a co-equal sovereign alongside the United States;” and in *Doe v. Kamehameha*, 416 F.3d 1025, 1048 (2005), the Court stated that, “in 1866, the Hawaiian Islands were still a sovereign kingdom.”
12. As a result of said duly recognition, the United States and the Hawaiian Kingdom entered into a Treaty of Friendship, Commerce and Navigation, Dec. 20, 1849, 9 U.S. Stat. 977; Treaty of Commercial Reciprocity, Jan. 13, 1875, 19 U.S. Stat. 625; Postal Convention Concerning Money Orders, Sep. 11, 1883, 23 U.S. Stat. 736; and a Supplementary Convention to the 1875 Treaty of Commercial Reciprocity, Dec. 6, 1884, 25 U.S. Stat. 1399. The Hawaiian Kingdom also has treaties with Austria-Hungary, June 18, 1875, now separate States; Belgium, Oct. 4, 1862; Bremen,

March 27, 1854, succeeded by Germany; Denmark, Oct. 19, 1846; France, July 17, 1839, March 26, 1846, Sep. 8, 1858; French Tahiti, Nov. 24, 1853; Germany, March 25, 1879; Great Britain, Nov. 13, 1836 and March 26, 1846; Great Britain's New South Wales, March 10, 1874, now the State of Australia; Hamburg, Jan. 8, 1848), succeeded by Germany; Italy, July 22, 1863; Japan, Aug. 19, 1871, Jan. 28, 1886; Netherlands, Oct. 16, 1862; Portugal, May 5, 1882; Russia, June 19, 1869; Samoa, March 20, 1887; Spain, Oct. 9, 1863; Sweden-Norway, April 5, 1855, now separate States; and Switzerland, July 20, 1864.

13. In 1882, the Hawaiian Kingdom also became a full member of the Universal Postal Union, and maintained more than ninety Legations and Consulates throughout the world. In particular, the Hawaiian Kingdom had a diplomat accredited to the United States and maintained a Legation in Washington, D.C., as well as maintaining Consul-Generals in the cities of New York and San Francisco, and Consulates in the cities of Philadelphia, San Diego, Boston, Portland, Port Townsend and Seattle. The United States, Portugal, Great Britain, France and Japan had diplomatic representatives accredited to the Court of Hawai`i and maintained Legations in the city of Honolulu. Italy, Chili, Germany, Sweden-Norway, Denmark, Peru, Belgium, Netherlands, Spain, Austria-Hungary, Russia, Great Britain, Mexico, United States and China also maintained Consulates in the city of Honolulu.
14. The Hawaiian Kingdom was also recognized as a neutral State as expressly stated in treaties with Spain in 1863 and Sweden-Norway in 1852. Article XXVI of the 1863 Hawaiian-Spanish treaty, for example, provides that "All vessels bearing the flag of Spain, shall, in time of war, receive every possible protection, short of active

hostility, within the ports and waters of the Hawaiian Islands, and Her Majesty the Queen of Spain engages to respect, *in time of war the neutrality of the Hawaiian Islands*, and to use her good offices with all the other powers having treaties with the same, to induce them to adopt the same policy toward the said Islands (emphasis added).”

15. On or about April 10, 1877, Lili`uokalani was named heir apparent in accordance with the Hawaiian Constitution, and on or about January 29, 1891 she was sworn in as Queen of the Hawaiian Kingdom. HAWN. CONST. (1864), art. 31, states, “To the [Queen] belongs the Executive power,” and in *Grieve v. Gulick*, 5 Hawai`i 73, 76 (1883), the Court stated, “the Constitution declares [Her Majesty] as the executive power of the Government,” which is the faithful execution and administration of Hawaiian Kingdom law as distinguished from the legislative power to enact law and the judicial power to judge law.
16. On or about January 17, 1893, Queen Lili`uokalani, by explicit grant, assigned her executive power under threat of war to the President of the United States. The Queen stated, “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 this under protest, and impelled by said force yield my authority until such time as the Government of the United States shall, upon facts being presented to it, undo the action of its representative and reinstate me in the authority which I claim as the constitutional sovereign of the Hawaiian Islands.” A copy of

the exchange of diplomatic notes assigning Hawaiian executive power to the President and calling for the investigation of the overthrow of the Hawaiian Kingdom government is Exhibit B in the original complaint (p. 461).

17. The Queen's duty as constitutional monarch was to faithfully execute the laws of the Hawaiian Kingdom by ensuring the apprehension and arrest of insurgents calling themselves a provisional government who committed the crime of treason against the Hawaiian Kingdom. But for the presence of U.S. troops in the aiding and protection of these insurgents, the Queen was prevented from carrying out the arrests and therefore was forced to yield, under protest, Hawaiian executive power by a temporary assignment to the President of the United States. If the insurgents were apprehended by the police force, the Queen believed there could have been armed conflict with the U.S. troops who aided and supported the insurrection. On or about March 9, 1893, President Cleveland, predecessor in office to President Barrack Obama, acknowledged receipt of this assignment and in his Message to Congress on December 18, 1893, confirmed that the Queen "surrendered not absolutely and permanently, but temporarily and conditionally until such time as the facts could be considered by the United States (Exhibit B, p. 457)." According to Justice Douglas, *U.S. v. Pink*, 315 U.S. 203, 241 (1942), executive agreements "must be read not as self-contained technical documents, like a marine insurance contract or a bill of lading, but as characteristically delicate and elusive expressions of diplomacy."
18. On or about April 1, 1893, U.S. Special Commissioner James Blount, who arrived in Honolulu under explicit instructions by Secretary of State Gresham, initiated a

Presidential investigation into the circumstances of the overthrow of the Hawaiian Kingdom government and reported his findings to the Secretary of State, predecessor in office to DEFENDANT CLINTON. On or about October 18, 1893, the Secretary of State apprised the President of the conclusion of the investigation. He concluded, “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... Should not the great wrong done to a feeble but independent State by an abuse of the authority of the United States be undone by restoring the legitimate government? Anything short of that will not, I respectfully submit, satisfy the demands of justice (Exhibit B, p. 462).”

19. On or about October 18, 1893, Secretary of State Gresham, by authority of the President, directed U.S. Minister Plenipotentiary Albert Willis to initiate negotiations with Queen Lili`uokalani for settlement and restoration of the Hawaiian Kingdom government. He stated to the Minister, “You will...inform the Queen that, when reinstated, the President expects that she will pursue a magnanimous course by granting fully amnesty to all who participated in the movement against her, including persons who are, or have been, officially or otherwise, connected with the Provisional Government, depriving them of no right or privilege which they enjoyed before the so-called revolution (Exhibit B, p. 464).”
20. On or about November 13, 1893, U.S. Minister Willis met with the Queen at the U.S. Legation in Honolulu. A copy of the exchange of diplomatic notes calling for restoration of the Hawaiian Kingdom government since November 13, 1893, is

Exhibit C in the original complaint. Willis conveyed to the Queen the “President’s sincere regret that, through the unauthorized intervention of the United States, she had been obliged to surrender her sovereignty, and his hope that, with her consent and cooperation, the wrong done to her and to her people might be redressed (Exhibit C, p. 1241).” He continued, “The President not only tenders you sympathy but wishes to help you,” [and] “Should you be restored to the throne, would you grant full amnesty as to life and property to all those persons who have been or who are now in the Provisional Government, or who have been instrumental in the overthrow of your government? (*Id.*)” In this initial meeting, the Queen refused to grant amnesty and cited “Chapter VI, section 9 of the Penal Code, as follows:

Whoever shall commit the crime of treason shall suffer the punishment of death and all his property shall be confiscated to the Government (Exhibit C, 1243).” The U.S. Minister notified the Secretary of State of the Queen’s refusal to grant amnesty on or about November 16, 1893 by dispatch (Exhibit C, 1241).

21. Not satisfied with the outcome of the initial meeting, Secretary State Gresham dispatched to Minister Willis on or about November 24, 1893, “The brevity and uncertainty of your telegrams are embarrassing. You will insist upon amnesty and recognition of obligations of the Provisional Government as essential conditions of restoration (Exhibit B, p. 464).” In follow-up instructions to Minister Willis on or about December 3, 1893, the Secretary of State emphatically stated “Should the Queen refuse assent to the written conditions, you will at once inform her that the President will cease interposition in her behalf, and that while he deems it his duty to endeavor to restore to the sovereign the constitutional government of the islands,

his further efforts in that direction will depend upon the Queen's unqualified agreement that all obligations created by the Provisional Government in a proper course of administration shall be assumed and upon such pledges by her as will prevent the adoption of measures of proscription or punishment for what was done in the past by those setting up or supporting the Provisional Government (Exhibit B, p. 465)." Negotiations for settlement continued.

22. On or about December 18, 1893, the U.S. Minister was notified by the Queen's assistant, Joseph Carter, that she was willing to spare their lives, not, however, their property, which, "should be confiscated to the Government, and they should not be permitted to remain in the Kingdom (Exhibit C, p. 1267)." But later that day the Queen agreed to grant "a full pardon and amnesty for their offenses, with restoration of all rights, privileges, and immunities under the constitution and the laws which have been made in pursuance thereof, and that I will forbid and prevent the adoption of any measures of proscription or punishment for what has been done in the past by those setting up or supporting the Provisional Government (Exhibit C, p. 1269)." The U.S. Minister dispatched the Declaration to the Secretary of State on or about December 20, 1893.
23. On or about January 12, 1894, Secretary of State Gresham acknowledged receipt of the Queen's declaration and stated to Minister Willis that the "matter now being in the hands of 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, ...heretofore withheld, and all instructions to you. In the mean time, while keeping the Department fully informed of the course of events, you will, until further notice,

consider that your special instructions upon this subject have been fully complied with (Exhibit C, p. 1284).”

24. In violation of these executive agreements, President Cleveland did not restore the Hawaiian Kingdom government, nor did he administer Hawaiian Kingdom law. Instead, he allowed the insurgents to maintain unlawful control over the Hawaiian Islands until his successor President William McKinley entered office on March 4, 1897.
25. On or about June 16, 1897, President McKinley signed a treaty of annexation in Washington, D.C., with these insurgents who were claiming then to be the Republic of Hawai`i. On the very next day a diplomatic protest was filed by Joseph Heleluhe, Secretary to the Queen, with the U.S. State Department while both were in Washington D.C. A copy of which is Exhibit D in the original complaint. Three other protests from three Patriotic Societies in Hawai`i were also filed by Mr. Heleluhe, as their Commissioner and by direction of the Queen, on or about July 24, 1897. A copy of which is Exhibit E in the original complaint. These protests relied on the settlement and agreement of restoration.
26. In willful disregard of these protests, President McKinley prepared to submit the treaty to the U.S. Senate for ratification when it would convene in December 1897. This decision prompted the three abovementioned Patriotic Societies in Hawai`i, the Men and Women’s Hawaiian Patriotic League (Hui Aloha `Aina) and the Hawaiian Political Association (Hui Kalai`aina), to organize a signature petition drive protesting annexation. The Patriotic League gathered 21,269 signatures and the Political Association gathered nearly 17,000 signatures, but because of concern

over the wording of the Political Association's preamble, it was decided by these organizations that only the Patriotic League's petition would be submitted to the Senate. On behalf of the Patriotic societies, Senator George Hoar (R-MA) introduced the signature petition to the U.S. Senate. A copy of which is Exhibit F in the original complaint. PLAINTIFF'S maternal great-great-great grandmother, "Kalua [Luaapana Simerson]," age 50, of Napo`opo`o, Island of Hawai`i, signed the petition (Exhibit F, p. 3); and Plaintiff's paternal great-great grandmother, "Ms. Julia [Kapapakuialii Kalaninuipoaimoku] Doiron," age 24, and her mother who is PLAINTIFF'S paternal great-great-great grandmother, "Mrs. Lucy [Pohaialii] K. [Kaili]," age 45, both of Hanalei, Island of Kaua`i, also signed the petition (Exhibit F, p. 538).

27. By March 1898, the Senate was unable to garner enough votes for Senate ratification on account of these protests, but as a result of the Spanish American War the Congress enacted a joint resolution unilaterally annexing the Hawaiian Islands for military purposes without the consent of the lawful authorities of the Hawaiian Kingdom. President McKinley signed the joint resolution into U.S. Federal law on or about July 7, 1898 (30 U.S. Stat. 750) in direct violation of the *Lili`uokalani assignment*, the *Agreement of restoration*, and international law. According to *Hawaii is now American*, N.Y. TIMES, July 7, 1898, Secretary of the Navy John D. Long "gave orders for the departure of the Philadelphia from Mare Island for Hawaii. She will carry the flag of the United States to those islands and include them with the Union. Admiral Miller, commanding the Pacific station, who

is now at Mare Island, will be charged with the function of hoisting the flag that was hauled down by Commissioner Blount.”

28. In the United States Department of State’s publication HISTORY OF THE DEPARTMENT OF STATE OF THE UNITED STATES 38 (1901), “A treaty was negotiated by Secretary Foster, agreed upon by both parties, and sent to the Senate by President Harrison February 14, 1893. President Cleveland withdrew the treaty. President McKinley revived the question, and a treaty was ratified by both parties, and annexation consummated September 16, 1898, which effected the absorption of the Sandwich Islands [Hawaiian Islands] into the domain of the United States.” A copy of which is annexed hereto as Exhibit FF and made a part hereof as if it were set forth in full herein. This is an untrue statement, which misled the international community, in particular the Hawaiian Kingdom’s treaty partners, that the Hawaiian Islands were legally incorporated into the domain of the United States by a treaty of cession, which would have superseded all international treaties the Hawaiian Kingdom had with other States as provided in paragraph 13.
29. On or about August 12, 1898, under orders of President McKinley, the United States military occupied the Hawaiian Islands during the Spanish-American War under the command of Rear-Admiral J.N. Miller, Commander in Chief of the United States Naval Force on the Pacific Station, predecessor in office to DEFENDANT WILLARD. Rear Admiral Miller reported to Secretary of the Navy John D. Long, who, under the current command structure of Unified Combatant Commands, is the predecessor in office to DEFENDANT GATES of which DEFENDANT WILLARD reports to. The international law of occupation, which

mandates an occupying military force to establish a military government to administer the laws of the occupied State, merely reinforces the 1893 *Lili`uokalani assignment* obligating the United States President and his successors in office to administer the laws of the Hawaiian Kingdom. This mandate of administering the laws of the occupied State by an occupying military government was codified under the 1863 Lieber Code, art. 6, G.O. 100, A.G.O. 1863, which was superseded by the 1899 Hague Convention, II, *Laws and Customs of War on Land*, art. 43, 32 U.S. Stat. 1803, and later superseded by the 1907 Hague Convention, IV, art. 43. Both Hague Conventions were ratified and therefore self-executing. During the occupation, the United States failed to establish a military government to administer the laws of the Hawaiian Kingdom as mandated under both the *Lili`uokalani assignment* and the 1907 Hague Convention, IV, art. 43.

30. What appears to be the last public act of reliance on the executive agreements by subjects and residents of the Hawaiian Kingdom, the Hawaiian Patriotic League held a convention in September 1898 whereby a memorial was unanimously approved calling upon the United States to restore the Hawaiian Kingdom government and filed with the U.S. Congressional “Hawaiian Commission” who were in the Islands from August to September 1898. See Munroe Smith, *Record of Political Events*, 13(4) *Polit. Sci. Quart.* 745, 752 (December 1898). The memorial was also printed in two newspapers in Honolulu, the *Ke Aloha Aina* (Native language) newspaper, Sep. 17, 1898, at 3; and the *Hawaiian Star* (English language) newspaper, Sep. 15, 1898, at 3. The memorial stated, in part, “Whereas: By memorial the people of Hawaii have protested against the consummation of an

invasion of their political rights, and have fervently appealed to the President, the Congress and the People of the United States, to refrain from further participation in the wrongful annexation of Hawaii; and; Whereas: The Declaration of American Independence expresses that Governments derive their just powers from the consent of the governed: Therefore, be it Resolved: That the representatives of a large and influential body of native Hawaiians, we solemnly pray that the constitutional government of the 16th day of January, A.D. 1893, be restored, under the protection of the United States of America.” Neither the Congress nor the President took heed of the memorial.

31. Since at least 1893, the United States President and thereafter the President’s successors have willfully violated the terms of the *Lili`uokalani assignment* and its obligation to restore the Hawaiian Kingdom government. Instead of administering Hawaiian Kingdom law, the United States allowed insurgents under the guise of a provisional government and later the Republic of Hawai`i to maintain unlawful control in the Hawaiian Islands. Since at least 1898, the United States willfully violated the *Lili`uokalani assignment, Agreement of restoration* and international law, when it enacted a Joint Resolution to provide for annexing the Hawaiian Islands to the United States, 30 U.S. Stat. 750 (1898); An Act to Provide a Government for the Territory of Hawaii, 31 U.S. Stat. 141 (1900), and An Act to Provide for the Admission of the State of Hawaii into the Union, Pub. L. No. 86-3, 73 U.S. Stat. 4 (1959). The United States further willfully violated the *Lili`uokalani assignment, Agreement of restoration* and international law, when President McKinley appointed Sanford Dole, president of the so-called provisional

government and the Republic of Hawai`i, as the first Governor for the so-called Territory of Hawai`i in 1900. The Queen did not pardon Dole because the Hawaiian Kingdom government was not restored in accordance with the *Agreement of restoration*. Therefore, Sanford Dole remained an insurgent and fugitive of Hawaiian law throughout his life, which included his term of office as the so-called Governor of the Territory of Hawai`i.

32. On or about October 20, 1900, the Maui News newspaper reported, “Thomas Clark, a candidate for Territorial senator from Maui holds that it was an unconstitutional proceeding on the part of the United States to annex the Islands without a treaty, and that as a matter of fact, the Island are not annexed, and cannot be, and that if the democrats come into power they will show the thing up in its true light and demonstrate that that the Islands are de facto independent at the present time.” A copy of which is annexed hereto as Exhibit GG and made a part hereof as if it were set forth in full herein. This is clear evidence that the people of Hawai`i understood the difference between a congressional joint resolution and a treaty of cession, and that congressional legislation has no extraterritorial effect.
33. Hawn. Civ. Code §6 (1884) provides that “The laws are obligatory upon all persons, whether subjects of this kingdom, or citizens or subjects of any foreign State, while within the limits of this kingdom, except so far as exception is made by the laws of nations in respect to Ambassadors or others. The property of all such persons, while such property is within the territorial jurisdiction of this kingdom, is also subject to the laws.” Since the laws are obligatory upon all persons, including PLAINTIFF, within the Islands, irrespective of nationality, there is a corresponding

duty upon the government to enforce and administer the laws of the Hawaiian Kingdom, which has been temporarily and conditionally vested with the United States President and his successors in office until the Hawaiian Kingdom government has been restored and the executive power returned.

34. On or about December 10, 1995, the PLAINTIFF and Donald A. Lewis, both being Hawaiian subjects, formed a general partnership in compliance with an Act to Provide for the Registration of Co-partnership Firms (1880). A copy of which is Exhibit G in the original complaint. The partnership was named the Perfect Title Company (hereafter referred to as “PTC”), and functioned as a land title abstracting company. A copy of the partnership agreement is Exhibit H in the original complaint. According to Hawaiian law, co-partnerships were required to register their articles of agreement with the Interior Department’s Bureau of Conveyances, and for the Minister of the Interior, it was his duty to ensure that co-partnerships maintain their compliance with the statute. However, due to the failure of the United States to administer Hawaiian Kingdom law, there was no government, whether established by the President or a restored Hawaiian Kingdom government *de jure*, to ensure the company’s compliance with the co-partnership statute.
35. The partners of PTC desired to establish a legitimate co-partnership pursuant to Hawaiian Kingdom law and in order for the title company to exist as a legal co-partnership firm, the government had to be reestablished in an acting capacity, whereby an acting official is “not an appointed incumbent, but merely a *locum tenens*, who is performing the duties of an office to which he himself does not claim title,” BLACK’S LAW DICTIONARY, 26 (6th ed., 1990). Hawaiian law did not assume

that the whole of the Hawaiian government would be made vacant, and, consequently, the law did not formalize provisions for the reactivation of the government in extraordinary circumstances. Therefore, a deliberate course of action was taken to re-activate the Hawaiian government by and through its executive branch as officers *de facto* under the common law doctrine of necessity, notwithstanding the temporary assignment of executive power to the United States President.

36. The 1880 Co-partnership Act requires members of co-partnerships to register their articles of agreement in the Bureau of Conveyances, which is within the Interior department. This same Bureau of Conveyances is under the State of Hawai`i's Department of Land and Natural Resources, which was formerly the Interior Department. The Minister of the Interior holds a seat of government as a member of the Cabinet Council, together with the other Cabinet Ministers. HAWN. CONST, art. 43 (1864), provides that, "Each member of the King's Cabinet shall keep an office at the seat of Government, and shall be accountable for the conduct of his deputies and clerks." Necessity dictated that in the absence of any "deputies or clerks" of the Interior department, the partners of a registered co-partnership could assume the duty of the same because of the current state of affairs. Therefore, it was reasonable for the partners of this registered co-partnership to assume the office of the Registrar of the Bureau of Conveyances in the absence of the same; then assume the office of the Minister of Interior in the absence of the same; then assume the office of the Cabinet Council in the absence of the Minister of Foreign Affairs, the Minister of Finance and the Attorney General; and, finally assume the office

constitutionally vested in the Cabinet as a Regency, HAWN. CONST, art. 33 (1864).

A regency is “the man or body of men intrusted with the vicarious government of a kingdom during the minority, absence, insanity, or other disability of the [monarch].” BLACK’S LAW DICTIONARY, 1282 (6th ed., 1990).

37. With the specific intent of assuming the “seat of Government,” the partners of PTC formed a second partnership called the Hawaiian Kingdom Trust Company (hereafter referred to as “HKTC”) on December 15, 1995. A copy of which is Exhibit I in the original complaint. The partners intended that this registered partnership would serve as a provisional surrogate for the Council of Regency. Therefore, and in light of the ascension process explained in paragraph 36, HKTC would serve as officers *de facto* for the Registrar of the Bureau of Conveyances, the Minister of Interior, the Cabinet Council, and ultimately the Council of Regency in an acting capacity by necessity.
38. Thirty-eight deeds of trusts conveyed by Hawaiian subjects and residents to HKTC acknowledged the trust as a company acting for and on behalf of the Hawaiian government and outlined the role of the trust company and its fiduciary duty it had to its beneficiaries. A copy of one of the thirty-eight deeds of trust is Exhibit J in the original complaint. HKTC not only served as officers *de facto* of the acting Cabinet Council, but also possessed a fiduciary duty toward its beneficiaries to serve as an acting government until restored *de jure* in accordance with the terms of the 1893 Agreement of restoration.
39. The purpose of the HKTC was two fold; first, to ensure PTC complies with the co-partnership statute despite the temporary assignment of executive power, and,

second, to provisionally serve as an acting government of the Hawaiian Kingdom. What became apparent was the seeming impression of a conflict of interest, whereby the duty to comply and the duty to ensure compliance was vested in the same two partners of two companies. Therefore, in order to avoid this apparent conflict of interest, the partners of both PTC and HKTC, reasoned that an *acting* Regent, having no interests in either company, should be appointed to serve as a *de facto* officer of the Hawaiian government. Since HKTC assumed to represent the interests of the Hawaiian government in an acting capacity, the trustees would therefore make the appointment.

40. The assumption by Hawaiian subjects through the offices of constitutional authority in government to the office of Regent, as enumerated under Article 33 of the Constitution, was a *de facto* process born out of necessity. THOMAS COOLEY, A TREATISE ON THE LAW OF TAXATION 185 (1876), defines an officer *de facto* “to be one who has the reputation of being the officer he assumes to be, and yet is not a good officer in point of law,” but rather “comes in by claim and color of right.” In *Carpenter v. Clark*, 217 Michigan 63, 71 (1921), the Court stated the “doctrine of a *de facto* officer is said to have originated as a rule of public necessity to prevent public mischief and protect the rights of innocent third parties who may be interested in the acts of an assumed officer apparently clothed with authority and the courts have sometimes gone far with delicate reasoning to sustain the rule where threatened rights of third parties were concerned.”
41. In a meeting of HKTC, it was agreed that the PLAINTIFF would be appointed to serve as *acting* Regent, but could not retain an interest in the two companies prior to

the appointment. In that meeting, it was also decided and agreed upon that Nai`a-Ulumaimalu, a Hawaiian subject, would replace the PLAINTIFF as trustee of HKTC and partner of PTC. The plan was to maintain the standing of the two partnerships under the 1880 Co-partnership Act, and not have either lapse into sole-proprietorships. To accomplish this, the PLAINTIFF would relinquish his entire one-half (50%) interest by deed of conveyance in both companies to Lewis; after which Lewis would convey a redistribution of interest to Nai`a-Ulumaimalu, whereby the former would hold a ninety-nine percent (99%) interest in the two companies and the latter a one percent (1%) interest in the same. In order to have these two transactions take place simultaneously without affecting the standing of the two partnerships, both deeds of conveyance would take place on the same day but won't take effect until the following day, February 28, 1996. A copy of both deeds are Exhibit K & L in the original complaint. With the transactions completed, the Trustees then appointed the PLAINTIFF as *acting* Regent on or about March 1, 1996. A copy of which is Exhibit M in the original complaint. Thereafter, HKTC resumed its role as a general partnership within the meaning of the 1880 Co-partnership Act, and no longer served as "a company *acting* for and on behalf of the Hawaiian Kingdom government" and prepared for the dissolution of the company.

42. On or about May 15, 1996, the Trustees conveyed by deed all of its right, title and interest acquired by thirty-eight deeds of trust to the *acting* Regent, and stipulated that the company would be dissolved in accordance with the provisions of its deed of general partnership on or about June 30, 1996. A copy of which is Exhibit N in the original complaint. On or about February 28, 1997, a Proclamation by the *acting*

Regent announcing the provisional restoration of the Hawaiian government was printed in the HONOLULU SUNDAY ADVERTISER, March 9, 1997, A-27. A copy of which is Exhibit O in the original complaint. The international law of occupation allows for an occupied State's government and the military government of an occupying State to co-exist within one and the same territory. According to KRYSZYNA MAREK, IDENTITY AND CONTINUITY OF STATES IN PUBLIC INTERNATIONAL LAW 91 (2nd ed. 1968), "it is always the legal order of the State which constitutes the legal basis for the existence of its government, whether such government continues to function in its own country or goes into exile; but never the delegation of the territorial State nor any rule of international law other than the one safeguarding the continuity of an occupied State. The relation between the legal order of the territorial State and that of the occupied State...is not one of delegation, but of co-existence."

43. Notwithstanding the assignment of executive power to the U.S. President, the establishment of an *acting* Regent—an officer *de facto*, was a political act of self-preservation, not revolution, and grounded upon the legal doctrine of limited necessity. Under British common law, deviations from a State's constitutional order "can be justified on grounds of necessity." See STANLEY A. DE SMITH, CONSTITUTIONAL AND ADMINISTRATIVE LAW 80 (1986). De Smith also states, that "State necessity has been judicially accepted in recent years as a legal justification for ostensibly unconstitutional action to fill a vacuum arising within the constitutional order [and to] this extent it has been recognized as an implied exception to the letter of the constitution." (*Id.*). F.W. Oppenheimer, *Governments*

and Authorities in Exile, 36 AM. J. INT'L. L. 581 (1942), states that, "a temporary deviation from the wording of the constitution is justifiable if this is necessary to conserve the sovereignty and independence of the country." In *Madzimbamuto v. Lardner-Burke*, 1 A.C. 645, 732 (1969), Lord Pearce stated that there are certain limitations to the principle of necessity, "namely (a) so far as they are directed to and reasonably required for ordinary orderly running of the State, and (b) so far as they do not impair the rights of citizens under the lawful...Constitution, and (c) so far as they are not intended to and do not run contrary to the policy of the lawful sovereign." See also *Mitchell v. Director of Public Prosecutions*, L.R.C. (Const) 35, 88–89 (1986); and *Chandrika Persaud v. Republic of Fiji* (Nov. 16, 2000); and *Mokotso v. HM King Moshoeshoe II*, LRC (Const) 24, 132 (1989).

44. The failure of the United States to administer Hawaiian Kingdom law had a direct and profound impact on real estate transactions in the Islands that prevented titles from being lawfully conveyed since the overthrow of the Hawaiian Kingdom government was settled on December 18, 1893 by the *Agreement of restoration*. The failure of executing Hawaiian law also prevented native tenants from dividing out their vested rights into fee-simple titles under the rules of the 1848 Mahele. A legal formality under Hawaiian statute provides that "it shall not be lawful to record any conveyance...unless the same shall have been previously impressed with the Royal stamp, Hawn. Civ. Code, §1254 (1884)," and in order "to entitle any conveyance...to be recorded, it shall be acknowledged by the party or parties executing the same, before the Registrar of Conveyances, or his agent, or some judge of a court of record, or notary public of this Kingdom, or before some

minister, commissioner or consul of the Hawaiian Islands, or some notary public or judge of a court of record in any foreign country (§1255).” In *Lenehan v. Akana*, 6 Haw. 538, 541 (1884), the Court stated if a conveyance, whether by deed or mortgage, “was not properly acknowledged it was not entitled to be recorded, and though spread upon the record it must be treated as a nullity.” The failure of the United States President and his successors to administer the laws of the Hawaiian Kingdom since 1893 has prevented any lawful conveyance of real property, in particular, by failing to get conveyances “properly acknowledged” “before the Registrar of Conveyances, or his agent, or some judge of a court of record, or notary public of this Kingdom, or before some minister, commissioner or consul of the Hawaiian Islands.”

45. The beneficiaries of HKTC, who were native tenants, possessed a vested right in the *dominium*, by virtue of the 1840 Constitution that stated “Kamehameha I, was the founder of the kingdom, and to him belonged all the land from one end of the Islands to the other, though it was not his own private property. It belonged to the chiefs and people in common, of whom Kamehameha I was the head, and had the management of the landed property,” and according to *Kekiekie v. Dennis*, 1 Hawai`i 69, 70 (1851), native tenant rights in the lands “were secured to them by the Constitution and laws of the Kingdom, and no power can convey them away, not even that of royalty itself.” See also *Kuki`iahu v. Gill*, 1 Hawai`i 90 (1851). By virtue of these vested rights, native tenants are capable of dividing their interest in fee-simple, whenever they “shall desire such a division,” (Exhibit P, p. 13, Rules #3 and #4). The only bar to this right would be a valid fee-simple title recognizable

under Hawaiian Kingdom law in accordance with Mahele rule #5 (*Id.*, p. 14).

Hence, current claims to fee-simple titles would have to be investigated before any beneficiary or native tenant could divide out their interest and acquire a fee-simple title. Because these rights are undivided in the entire territory of the Hawaiian Islands, a division by a native tenant could theoretically take place anywhere within the landed territory of the Hawaiian Kingdom.

46. According to an *Act confirming certain resolutions of the King and Privy Council, passed on the 21st day of December, A.D. 1849, granting to the common people allodial titles for their own lands and house lots, and certain other privileges* (1850), a native tenant's division for his "house lot shall not exceed one quarter of an acre," and pursuant to section 4, "a certain portion of the government lands in each island shall be set apart, and placed in the hands of special agents, to be disposed of in lots of from one to fifty acres, in fee-simple, to such natives as may not be otherwise furnished with sufficient land, at a minimum price of fifty cents per acre." This Act, also known as the 1850 *Kuleana Act*, has not been repealed and continues to be the law of the land.
47. On or about February 3, 1996, the Trustees of HKTC, by necessity, acted upon the vested rights of its beneficiaries under the Hawaiian Constitution and laws and passed a resolution announcing the quieting of all land titles in the Hawaiian Islands, and adopted six principles to aide in the investigation of claims to fee-simple titles. In order to bind PTC and its successors to the faithful performance of the "investigation and final ascertainment or rejection of all claimants of fee-simple titles," both HKTC and PTC entered into a covenant of agreement on or about

February 6, 1996. A copy of the agreement, together with the resolution and six principles, is Exhibit Q of the original complaint. According to F.M. Brookfield, *The Fiji Revolutions of 1987*, (July 1988) N.Z. L. J. 250, 251, the principle of necessity is that the “power of a Head of State under a written Constitution extends by implication to executive acts, and also legislative acts taken temporarily (that is, until confirmed, varied or disallowed by the lawful Legislature) to preserve or restore the Constitution, even though the Constitution itself contains no express warrant for them.” And that “such powers are not dependent on the words of a particular Constitution, except in so far as that Constitution designates the authority in whom the implied powers would be found to reside.” (*Id.*)

48. The announcement of the quieting of all land titles in the Hawaiian Islands was published in PACIFIC BUSINESS, Feb. 19, 1996, at 39, and the KA WAI OLA O OHA, March 1996, at 4. A copy of both announcements are Exhibits R & S in the original complaint. Claimants submitted evidence of their fee-simple titles at the office of PTC between February 14, 1996 and February 14, 1998. On or about March 1, 1996, the *acting* Regent succeeded HKTC as a party to the covenant of agreement. A copy of which is Exhibit T in the original complaint. As a *de facto* officer representing the original warrantor of all lands in fee-simple—the Hawaiian Kingdom government, the *acting* Regent was empowered to remedy rejected claims that have been properly investigated by PTC in accordance with the abovementioned covenant of agreement.
49. On or about July 17, 1996, Carole Simafranca filed a claim with PTC, on behalf of herself and husband, Michael Simafranca, to investigate the validity of their fee-

simple title, and was assigned claim no. 64. A copy of which is Exhibit U in the original complaint. The title report was concluded on or about August 5, 1996, and determined that the Simafranca's had no valid claim to a fee-simple title, because the fee-simple interest remained vested in James Austin, who died testate in 1894, and whose estate "remained subject to probate proceedings of a competent tribunal" under the laws of the Hawaiian Kingdom. A copy of the warranty of seisin that provided the findings of PTC's title report is Exhibit V in the original complaint (p. 11).

50. Of the Simafrancas, only Carol was a native tenant and she decided to remedy her claim by dividing out her undivided interest in the *dominium* and thereby received a fee-simple title on or about November 21, 1996, by warranty deed from the PLAINTIFF, in his capacity as *acting* Regent, to the same property that had been investigated. A copy of which is Exhibit W in the original complaint. On or about April 10, 1996, the PLAINTIFF, as *acting* Regent, filed with the Bureau of Conveyances a warranty of seisin explicitly stating the covenant of warranty. A copy of which is Exhibit V in the original complaint.
51. After receiving PTC's title report, the Simafranca's approached their former escrow company, Title Guarantee of Hawai'i, to either refute PTC's report or have the title insurance policy they purchased from Title Guarantee to payoff the remaining balance on the loan under the Simafrancas' lender's policy. Title Guaranty refused to respond to the Simafrancas and the so-called foreclosure and auction continued over the protests of the Simafrancas. Without a title to real estate there is no mortgage agreement, only an unsecured promissory note, and therefore no

foreclosure proceedings. Notwithstanding the Simafranca's notification to the foreclosure commissioner, Leroy Ujimori, of the Simafranca's lack of title and title insurance, he conveyed without title, by commissioner's deed on or about July 26, 1996 to Myung Soo Hwang and I Sun Hwang, husband and wife. A copy of which is Exhibit X in the original complaint. The Hwang's in turn conveyed without title the property to Craig Hideki Uyehara and Sandra Ken Uyehara, husband and wife, on November 22, 1996. A copy of which is Exhibit Y in the original complaint.

52. On or about September 5, 1997, the Honolulu Police arrested Lewis, the PLAINTIFF, and the company's secretary, Christine Chew, "for investigation of theft, racketeering and tax evasion," and seized all the company's records and computers (Exhibit Z, HONOLULU STAR-BULLETIN, Sep. 6, 1997, at A-1). All three were processed and confined to jail for a day. According to the Honolulu Advertiser, the "arrests were the result of a joint investigation by the state attorney general's office and the Police Department" (Exhibit AA, HONOLULU ADVERTISER NEWSPAPER, Sep. 6, 1997, A-1). All three were released the same day pending further investigation. Unable to substantiate these bizarre allegations of "theft, racketeering and tax evasion," the State of Hawai'i moved to secure grand jury indictments on or about December 17, 1997, against Lewis and the PLAINTIFF on one count each of attempted theft in the first degree, a class B felony. A copy of the indictment is Exhibit BB in the original complaint. Also indicted were PTC clients Michael and Carol Simfranca, husband and wife, on two counts each of attempted theft in the first degree and burglary in the first degree. Benjamin Cayetano was the Governor for the State of Hawai'i, and predecessor in office to DEFENDANT

LINGLE, under whom the so-called investigation and arrest was done by his Attorney General, Margery Bronster (1995-1999).

53. The Grand Jury was convened by Dwight Nadamoto, Deputy Attorney General, representing the State of Hawai`i, and observed by Clifford Hunt, Independent counsel to the Grand Jury, and Paul Mau, Deputy Prosecuting Attorney for the City and County of Honolulu. Craig H. Uyehara, the complainant and person who claimed to own the realty in question, was an attorney for the State of Hawai`i Department of Commerce and Consumer Affairs, and Daniel Hanagami, a Lieutenant with the Honolulu Police department's white-collar crime unit, testified on behalf of the State of Hawai`i. All parties, including the complainant, were government employees of the State of Hawai`i.
54. On or about November 24, 1997, PLAINTIFF, in his capacity as *acting* Regent, seeking to have the United States President abide by international law, filed a Petition for Writ of Mandamus with the United States Supreme Court under its original jurisdiction, and not its appellate jurisdiction, against William Jefferson Clinton, President of the United States and predecessor in office to DEFENDANT OBMAMA, and assigned no. 97-969, a copy of which is annexed hereto as Exhibit HH and made a part hereof as if it were set forth in full herein. The petition requested the Court to grant a "writ of mandamus directed to Respondent, commanding and requiring Respondent as President of the United States to undo the actions of its Government within the territorial jurisdiction of the Hawaiian Kingdom, a sovereign nation, as follows:

1. Acknowledge the treaty obligations of the United States of America as mandated under Article VI, §2 of the United States Constitution.
 2. Immediately execute the laws of the Hawaiian Kingdom, being the Civil Code of the Hawaiian Islands as noted in the Compiled Laws of 1884, together with the session laws of 1884 and 1886 and the Hawaiian Penal Code, for the control and management of public affairs and the protection of the public peace until terms of transition and complete withdrawal have been negotiated and agreed upon.
 3. Require all officers under the government of the State of Hawai`i and its municipal corporations to sign oaths of allegiance to the Hawaiian Kingdom government in accordance with §430 and §431 of the Hawaiian Civil Code, Compiled laws, 1884, p. 105, and thereafter continue to continue to exercise their functions and perform the duties of their respective offices in compliance with the Civil and Penal Codes of the Hawaiian Kingdom.
 4. All Hawaiian laws and Constitutional principles of the Hawaiian Kingdom not inconsistent herewith shall be in force until amended by the Legislative Council to be hereafter convened under and by virtue of the laws of the Hawaiian Kingdom.” (p. 12-13).
55. On or about December 22, 1997, a protest was sent to President Clinton regarding the unlawful actions taken by certain individuals of the State of Hawai`i government claiming to have issued an indictment. At the arraignment, the PLAINTIFF refused to enter a plea, but instead submitted aforesaid protest with the

court on or about December 29, 1997, which stated in part that “As a native subject of the Hawaiian Kingdom, I do hereby solemnly protest against any and all acts done against myself by certain citizens of the United States claiming to have authority under the guise of a United States Government ‘State’, within the dominion and sovereignty of the Hawaiian Islands; a claim which stands in violation of treaties entered between our two nations, international law and my civil rights.” A copy of which is Exhibit CC in the original complaint.

56. On or about March 23, 1998, the United States Supreme Court issued an order denying granting the writ of mandamus, after the petition was misfiled under the Court’s appellate jurisdiction on or about December 12, 1997 when it was apparent that there was no lower court decision being appealed.
57. On or about April 14, 1998, PLAINTIFF, in his capacity as acting Regent, filed a Petition for rehearing. A copy of which is annexed hereto as Exhibit II and made a part hereof as if it were set forth in full herein. On or about May 18, 1998, the United States Supreme Court denied PLAINTIFF’S request for rehearing. Being undeterred by the procedural games exhibited by the Court, the PLAINTIFF attempted for a second time to resolve the illegal occupation by filing an original complaint under the Court’s original jurisdiction, U.S. CONST., art. III, §2, and 28 U.S.C. §1251(b)(1) so that it could not be misconstrued as an appeal. On or about August 12, 1898, the Deputy Clerk, Francis J. Lorson, notified the PLAINTIFF by correspondence that the “motion for leave to file a bill of complaint and appendix were received August 6, 1998, and must be returned.”

58. In a telephone conversation between Lorson and Francis A. Boyle, PLAINTIFF'S legal adviser and attorney, the deputy Clerk admitted he was acting pursuant to verbal instructions issued to him by the Justices of the Court. Lorson suggested that a motion to direct the clerk of the Court to file the complaint be filed and that the Justices would take it up accordingly. Procedurally, the complaint complied with the rules, but for the intervention of the Justices, the Clerk's suggestion of a motion to compel him to follow the rules of the Court was strange and odd. Nevertheless, the PLAINTIFF filed a *Motion to Direct the Clerk of the Court to file Complaint* on or about October 8, 1998. The Motion was assigned no. M-26 and was denied on or about November 2, 1998, without explanation. Unable to get relief from the United States Supreme Court, PLAINTIFF found himself, along with the other Defendants, at the mercy of the State of Hawai`i in the prosecution of a manufactured indictment of attempted theft.
59. According to the Grand Jury transcripts, Nadamoto made the Simafranca's deed from the PLAINTIFF, in his capacity as *acting* Regent, the subject of the attempted theft in the first degree when questioning both Craig Uyehara and Daniel Hanagami, and not a deed deriving from the Uyehara's themselves through fraud or deception, which is how the theft statute was to be used. A copy of the Grand Jury transcript is Exhibit DD in the original complaint. Nadamoto also suggested to the Grand Jury that Craig Uyehara was vested with the fee-simple title when PTC did the investigation, implying it took place without his consent. The Uyehara's did not acquire their deed until November 22, 1996, well after PTC's investigation, and a

day after the PLAINTIFF, in his capacity as *acting* Regent, conveyed the remedial deed to Carol Simafranca under her native tenant rights.

60. Lewis was acquitted, but the PLAINTIFF was convicted of attempted theft in the first degree. A copy of which is Exhibit EE in the original complaint. The Simafrancas also were both convicted of attempted theft in the first degree and attempted burglary. These convictions were rendered by a court that lacked subject matter jurisdiction as it was neither a court of a restored Hawaiian Kingdom government *de jure*, nor a court of a military government established by the U.S. President under and by virtue of Article II of the U.S. Constitution and regulated by the 1907 Hague Convention, IV, and the 1949 Geneva Convention, IV.
61. Since the conviction of the so-called felony on March 7, 2000, and damage to PLAINTIFF'S reputation and good standing, PLAINTIFF was unable to secure employment to contribute in the support of his family. As a result, PLAINTIFF was forced to apply for student loans in order to support his family by enrolling at the University of Hawai'i at Manoa in 2001 as a graduate student. PLAINTIFF received his M.A. degree in political science specializing in international relations in May 2004, and in December 2008 received his Ph.D. in political science specializing in both international relations and public law. PLAINTIFF'S combined student loans under Sallie Mae totaled \$41,435.96 with a capitalized interest of \$4,010.86. PLAINTIFF has paid \$11,164.27 with a remaining balance of \$30,271.69 and continues to be a hardship on PLAINTIFF'S family.
62. On or about February 25, 2009, the PLAINTIFF, in his private capacity as a political scientist specializing in international relations and public law, briefed

Colonel James Herring, Army Staff Judge Advocate, 8th Theater Sustainment Command, and his staff officers at the Wheeler Courthouse on the history of the Hawaiian Kingdom, its continued existence as sovereign State under prolonged occupation, and the continued violations of international law. The following month on or about March 7, 2009, the PLAINTIFF, in his capacity representing the acting government, sent by United States Postal Service certified mail a “Protest and Notice of Continued Violation of International Law,” addressed to Admiral Timothy J. Keating, Commander, U.S. Pacific Command, predecessor in office to DEFENDANT WILLARD, a copy of which is annexed hereto as Exhibit JJ and made a part hereof as if it were set forth in full herein. The U.S. Pacific Command has, to date, not complied with the *Lili`uokalani assignment*, the Treaty of Washington, 17 U.S. Stat. 863 (1871) (hereinafter referred to as 1871 Treaty of Washington), the 1907 Hague Convention, IV, the 1907 Hague Convention, V, and the 1949 Geneva Convention, IV.

COUNT ONE

63. PLAINTIFF realleges and incorporates herein by reference Paragraphs 1-62, above, of PLAINTIFF’S First Amended Complaint.
64. Pursuant to the *Lili`uokalani assignment*, the 1871 Treaty of Washington, the 1907 Hague Convention, IV, the 1907 Hague Convention, V, and the 1949 Geneva Convention, IV, the United States Government and the above-named DEFENDANTS had a duty to administer Hawaiian Kingdom law in the Hawaiian Islands until such time as the Hawaiian Kingdom government has been restored pursuant to the 1893 *Agreement of restoration*.

65. By unilaterally enacting a Joint Resolution to provide for annexing the Hawaiian Islands to the United States as a wartime necessity during the Spanish-American War, DEFENDANTS have misrepresented the Hawaiian Islands to be a part of the domain of the United States and not an occupied State, and has, since the so-called annexation, unlawfully enacted legislation, established administrative policies, and created judicial decisions for the Hawaiian Islands. In addition, the United States Government established military installations throughout the Hawaiian Islands for its Army, Navy, Marines and Air Force, and the United States Pacific Command, under the United States Department of Defense's Unified Combatant Commands, has its headquarters at Camp H.M. Smith, Island of O`ahu, in violation of the *Lili`uokalani assignment*.
66. According to GARY BORN, INTERNATIONAL CIVIL LITIGATION IN UNITED STATES COURTS 493 (3rd ed. 1996), "American courts, commentators, and other authorities understood international law as imposing strict territorial limits on national assertions of legislative jurisdiction." In *Rose v. Himely*, 8 U.S. 241, 279 (1807), the Court illustrated this view by asserting, "that the legislation of every country is territorial." In *The Apollon*, 22 U.S. 362, 370 (1824), the Court stated that the "laws of no nation can justly extend beyond its own territory" for it would be "at variance with the independence and sovereignty of foreign nations," and in *U.S. v. Belmont*, 301 U.S. 324, 332 (1937), Justice Sutherland resounded, "our Constitution, laws and policies have no extraterritorial operation, unless in respect of our own citizens." Consistent with this view of non-extraterritoriality of legislation, *acting* Assistant Attorney General Douglas Kmiec, *Legal Issues Raised by Proposed*

Presidential Proclamation to Extend the Territorial Sea, 12 OP. OFF. LEGAL COUNSEL 238-263, 252 (1988), opined “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.”

67. United States President John Tyler’s explicit recognition of the Hawaiian Kingdom as an independent and sovereign State on December 19, 1842 cannot be withdrawn, and, according to Georg Schwarzenberger, *Title to Territory: Response to a Challenge*, 51(2) AM. J. INT’L. L. 308-324, 316 (1957), “recognition estops the State which has recognized the title from contesting its validity at any future time.”
- GEORG SCHWARZENBERGER, *INTERNATIONAL LAW* 168, Vol. II (1968), also states, “Without the consent of the [occupied] State to any change in the territorial *quo ante*, the rule [on the prohibition of wartime annexation] stands and cannot be affected by any purported action of the Occupying Power or third States.” And according to EYAL BENVENISTI, *THE INTERNATIONAL LAW OF OCCUPATION* 19 (1993), “The occupant may not surpass its limits under international law through extraterritorial prescriptions emanating from its national institutions: the legislature, government, and courts. The reason for this rule is, of course, the functional symmetry, with respect to the occupied territory, among the various lawmaking authorities of the occupying state. Without this symmetry, Article 43 [1907 Hague Convention, IV] could become almost meaningless as a constraint upon the occupant, since the occupation administration would then choose to operate through extraterritorial prescription of its national institutions.”

68. According to U.S. Army Field Manual 27-10, §358 (1956), “Military occupation confers upon the invading force the means of exercising control for the period of occupation. It does not transfer the sovereignty to the occupant, but simply the authority or power to exercise some of the rights of sovereignty. The exercise of these rights results from the established power of the occupant and from the necessity of maintaining law and order, indispensable both to the inhabitants and to the occupying force. It is therefore unlawful for a belligerent occupant to annex occupied territory or to create a new State therein while hostilities are still in progress.” See also Article 47, 1949 Geneva Convention, IV.
69. RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE U.S. §901 (1987), provides that “Under international law, a state that has violated a legal obligation to another state is required to terminate the violation and, ordinarily, to make reparation, including in appropriate circumstances restitution or compensation for loss or injury.” §901(c) clarifies that the “obligation of a state to terminate a violation of international law may include discontinuance, revocation, or cancellation of the act (whether legislative, administrative, or judicial) that caused the violation; abstention from further violation; or performance of an act that the state was obligated but failed to perform. *For instance, there is an obligation to repeal a law illegally annexing a foreign territory* (emphasis added).”
70. The United States’ occupation of the Hawaiian Kingdom during the Spanish-American War also violated the Hawaiian Kingdom’s international status as a neutral State and therefore in violation of the 1871 Treaty of Washington, which provides that a “neutral government is bound...not to permit or suffer either

belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purposes of the renewal or augmentation of military supplies or arms, or the recruitment of men,” and Article 2, 1907 Hague Convention, V, which provides that “Belligerents are forbidden to move troops or convoys of either munitions of war or supplies across the territory of a neutral Power.”

71. DEFENDANTS’ misrepresentation that the Hawaiian Islands are an incorporated territory of the United States by virtue of Congressional legislation is false and constitutes a violation of the sovereignty of the Hawaiian Kingdom, international law, the *Lili`uokalani assignment*, the 1871 Treaty of Washington, the 1907 Hague Convention, V, and U.S CONST., art. VI, clause 2.
72. As a result of the foregoing, PLAINTIFF has suffered injuries and damages and therefore, the PLAINTIFF requests the Court declare that the Joint Resolution to provide for annexing the Hawaiian Islands to the United States is unconstitutional and void.

COUNT TWO

73. PLAINTIFF realleges and incorporates herein by reference Paragraphs 1-72, above, of PLAINTIFF’S First Amended Complaint.
74. In *U.S. v. Belmont*, 301 U.S. 324, 330 (1937), the Court stated, “Plainly, the external powers of the United States are to be exercised without regard to state laws or policies,” and in “respect of all international negotiations and compacts, and in respect of our foreign relations generally, state lines disappear.” In *United States v. Pink*, 315 U.S. 203, 230 (1942), the Court reiterated that “state law must yield when it is inconsistent with, or impairs the policy or provisions of, a treaty or of an

international compact or agreement.... Then, the power of a State to refuse enforcement of rights based on foreign law which runs counter to the public policy of the forum . . . must give way before the superior Federal policy evidenced by a treaty or international compact or agreement.”

75. Both *Belmont and Pink* were reinforced by *American Insurance Association v. Garamendi*, 539 U.S. 396 (2003), where the Court reiterated, that “valid executive agreements are fit to preempt state law, just as treaties are,” and that the preemptive power of an executive agreement derives from “the Constitution’s allocation of the foreign relations power to the National Government.” The Court also stated, “Specifically, the President has authority to make ‘executive agreements’ with other countries, requiring no ratification by the Senate or approval by Congress (p. 397).” All three cases affirm that the *Lili`uokalani assignment* does not require Senate approval to be self-executing, and as a valid executive agreement the *Lili`uokalani assignment* preempts all laws and policies of the State of Hawai`i, and all Federal laws and policies that are “inconsistent with, or impairs the policy or provisions of, a treaty or of an international compact or agreement.”
76. Hague Convention, IV, art. 43, provides that “The 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.” Article 43 reinforces the *Lili`uokalani assignment* which mandates the United States President to administer Hawaiian Kingdom law when the Hawaiian Kingdom was occupied during the Spanish-American War on August 12, 1898.

1949 Geneva Convention, IV, art. 147, also provides “a protected person of the rights of fair and regular trial,” whereby PLAINTIFF should have been indicted, prosecuted and convicted according to the penal laws of the Hawaiian Kingdom, not the penal laws of the United States, via the State of Hawai`i.

77. The breach of the executive agreement to administer Hawaiian Kingdom law occurred when President Cleveland and his successors in office failed to abide by the terms of the executive agreements to administer Hawaiian law and then to restore the Hawaiian Kingdom government since 1893. President Obama’s predecessor in office, President William Jefferson Clinton, in 1997 was notified by the PLAINTIFF of the United States’ duty and its breach of international law as previously stated in paragraphs 54-58, but his failure to abide by his duty to administer Hawaiian Kingdom law has caused personal injury to the PLAINTIFF when he was indicted, prosecuted and convicted of a so-called felony by the State of Hawai`i.
78. The indictment, prosecution and conviction are egregious and malicious violations of the PLAINTIFF’S civil rights secured under Article 9 of the Hawaiian Constitution (1864), which provides that “No person shall...be deprived of life, liberty, or property without due process of law.” Therefore, PLAINTIFF’S arrest, prosecution and conviction was in violation of the *Lili`uokalani assignment*, the 1907 Hague Convention, IV, the 1949 Geneva Convention, IV, and U.S. CONST., art. VI, clause 2, and PLAINTIFF requests that the Court set aside and expunge PLAINTIFF’S conviction of a so-called felony by the State of Hawai`i.

COUNT THREE

79. PLAINTIFF realleges and incorporates herein by reference Paragraphs 1-78, above, of Plaintiff's First Amended Complaint.
80. On or about August 12, 1898, the United States military occupied the Hawaiian Kingdom during the Spanish-American War without the consent of the lawful authorities of the Hawaiian Kingdom and in violation of its neutrality, and that the occupation has since been prolonged. As an occupying State, the United States is regulated by international law, in particular, the 1907 Hague Convention, IV, and the 1949 Geneva Convention, IV, while within the territory of the Hawaiian Kingdom.
81. Under 18 U.S.C. 2441(c)(1), a war crime is "defined as grave breach in any of the international conventions signed at Geneva 12 August 1949." The 1949 Geneva Convention, IV, art. 147, defines a grave breach as "unlawful confinement of a protected person [and] willfully depriving a protected person of the rights of fair and regular trial."
82. The indictment, prosecution and conviction of the charge of attempted theft violated the basic elements of what constitutes theft, which according to JOSEPH COOK & PAUL MARKUS, CRIMINAL LAW 308 (1995), "The subject of larceny at common law is personal property. Interest in real property is not included, nor objects attached to the soil, such as trees and crops, at least so long as the severance and asportation are a continuous act." Opposing and separate deeds of title to one in the same property cannot be the subject of theft, but rather agents of the real property owners

themselves could have committed theft if the deeds were drawn up through fraud or deception for the agent's benefit of value.

83. According to the AMERICAN LAW INSTITUTE, MODEL PENAL CODE AND COMMENTARIES 166 (Part II, 1980), it "seems clear that a theft prosecution should be possible where the [criminal] actor, having power as a trustee, attorney, or otherwise to dispose of another's real estate, does so to his own benefit in violation of his trust (*Id.*)." And that, "the inclusion of real estate within the definition of 'property' also has the effect of extending the theft provisions to situations where the actor secures title or other interest in real property [from the owner] by deception or threat (*Id.*)." Neither the Plaintiff nor the Simafrancas were the Uyeharas' "trustee, attorney, or otherwise" who secured title in real property from them "by deception or threat" for their benefit. Conversely, the evidence clearly showed that it was the Uyeharas that attempted to secure "title or other interest in real property [from the Simafrancas] by deception or threat" for their benefit.
84. In the Trial of Friedrich Flick and Five Others, United States Military Tribunal, Nuremberg, 9 L.R.T.W.C. 1, 18 (1949), the U.S. Military Tribunal stated, "International law, as such, binds every citizen just as does ordinary municipal law. Acts adjudged criminal when done by an officer of the Government are criminal also when done by a private individual. The guilt differs only in magnitude, not in quality." The tribunal defined a crime for private citizens during the occupation of a sovereign State as any "person without regard to the nationality or the capacity in which he acted, is deemed to have committed a crime...if he was (a) a principal or (b) was an accessory to the commission of any such crime or ordered or abetted the

same or (c) took a consenting part therein or (d) was connected with plans or enterprises involving its commission.” (p. 19). The Tribunal also stated “that responsibility of an individual for infractions of international law is not open to question. In dealing with property located outside his own State, he must be expected to ascertain and keep within the applicable law. Ignorance thereof will not excuse guilt but may mitigate punishment.” (p. 23).

85. The arrest/confinement, indictment, prosecution and conviction of the PLAINTIFF by the State of Hawai`i was a grave breach of Article 147, Geneva Convention, IV, where the State of Hawai`i not only violated the elements of what constitutes theft, but also the “unlawful confinement” after arrest of the PLAINTIFF and the deprivation of a “fair and regular trial.” Therefore, pursuant to 18 U.S.C. 2441, the PLAINTIFF requests this Court to find that the prosecution and conviction constituted a war crime.

CONTINUOUS INJURY

86. PLAINTIFF realleges and incorporates herein by reference Paragraphs 1-85, above, of PLAINTIFF’S First Amended Complaint.
87. DEFENDANTS’ unlawful acts, as set forth above, have caused and continue to cause substantial injury to PLAINTIFF, and all residents and visitors across the Islands of the Hawaiian Kingdom. Absent a declaratory judgment and injunctive relief by this Court, DEFENDANTS are likely to continue to injure PLAINTIFF, reap unjust enrichment through unlawful taxation, imposts and duties, and continue to harm the public interest of the Hawaiian Kingdom. “A suit to enjoin a state official from enforcing an action violating a treaty might be said to arise under the

Constitution as well under ‘treaties,’ since the state action would violate the Supremacy Clause.” See LOUIS HENKIN, FOREIGN AFFAIRS AND THE U.S. CONSTITUTION 483, NOTE 121 (2nd ed. 1996).

88. Based on the foregoing, PLAINTIFF seeks the aforementioned declaratory and injunctive relief, and reimbursement, payment, and indemnification for the unlawful taxation, imposts and duties, and any and all other harm suffered by PLAINTIFF as a so-called convicted felon and subject of the Hawaiian Kingdom.

THIS COURT’S POWER TO GRANT RELIEF

89. PLAINTIFF realleges and incorporates herein by reference Paragraphs 1-88, above, of PLAINTIFF’S First Amended Complaint.
90. Article VI, clause 2, United States Constitution, U.S. v. Belmont (1937), U.S. v. Pink (1942) and American Insurance Association v. Garamendi (2003), empowers this Court to grant a declaratory judgment, injunctive and other ancillary relief, including actual and punitive damages, disgorgement and restitution, to prevent and remedy any violations of a valid executive agreement, the *Lili`uokalani assignment*. This Court, in the exercise of its jurisdiction, may award other ancillary relief to remedy injury caused by DEFENDANTS’ law violations.
91. According to LOUIS HENKIN, FOREIGN AFFAIRS AND THE U.S. CONSTITUTION 203 (2nd ed. 1996), an executive agreement “is legally binding on the United States [and it] is their obligation to see to it that it is faithfully implemented; it is their obligation to do what is necessary to make it a rule for the courts if the [executive agreement] requires that it be a rule for the courts, or if making it a rule for the

courts is a necessary or proper means for the United States to carry out its obligation.”

92. Based upon the foregoing, PLAINTIFF requests declaratory judgment, injunctive and other ancillary relief, including actual and punitive damages, disgorgement and restitution, and any other remedies to prevent further violations of a valid executive agreement, the *Lili`uokalani assignment*.

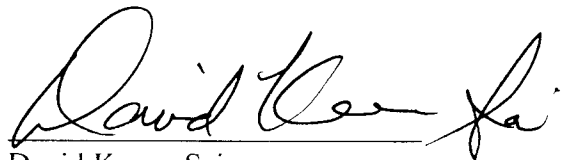
PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF respectfully prays for the following:

1. For a Judgment declaring the Joint Resolution to provide for annexing the Hawaiian Islands to the United States (30 U.S. Stat. 750) to be in violation of the U.S. CONST., art. VI, clause 2.
2. For a Judgment or Order Awarding PLAINTIFF all temporary and preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of continuous injury during the pendency of this action and to preserve the possibility of effective final relief;
3. For a Judgment or Order Preliminarily and Permanently enjoining DEFENDANTS from continuing to violate the *Lili`uokalani assignment*;
4. For a Judgment against DEFENDANTS and in favor of PLAINTIFF for each violation alleged in this complaint;
5. For a Judgment in favor of PLAINTIFF for general damages and for punitive damages in order to redress injury to PLAINTIFF and the reputation of his person, not including actual damages, restitution and disgorgement to be determined by the Court in these proceedings;

6. Reasonable fees and costs for bringing this action, as well as such other and further additional equitable relief as the Court may determine to be just and proper.

DATED: Honolulu, Hawaii July 7, 2010

A handwritten signature in cursive script that reads "David Keanu Sai". The signature is written in black ink and is positioned above a horizontal line.

David Keanu Sai
Plaintiff Pro Se

CERTIFICATE OF SERVICE

I, David Keanu Sai, hereby certify that on July 20, 2010, I served copies of Plaintiff's First Amended Complaint on the following parties by way of U.S. certified mail:

Hillary Rodham Clinton, Secretary of State
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Robert Michael Gates, Secretary of Defense
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DATED: Honolulu, Hawaii July 20, 2010



David Keanu Sai
Plaintiff Pro Se