

Maltbie K. Napoleon
c/o Mail Acceptor: 1568 Miller St.#1
Honolulu, Oahu

1ST CIRCUIT COURT
STATE OF HAWAII
FILED

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In the Circuit Court of the First Circuit

State of Hawaii

S. TAMANAHA
CLERK

HOVEY B. LAMBERT, TRUSTEE) Civil No. 09-1-2529-10EEH
Under the HOVEY B. LAMBERT TRUST,)
an unrecorded Revocable living Trust) Defendant Maltbie K. Napoleon's
agreement dated April 5, 2002, et.al.,) Memorandum in Opposition to
vs,) Purchaser Patricia Chinn's Motion
) for Entry of a Final Judgment as to
) the Kuleana Parcel, Pursuant to the
WAHA (K), Maltbie K. Napoleon, et.al.,) *Lili'uokalani Assignment and*
) *Restoration Agreement. Affidavit of*
) Maltbie K. Napoleon Exhibits "A-D".
) Certificate of Service.
)
) Hearing Date: 830am, 11 July, 2013
) Judge: Honorable Rhonda A. Nishimura

Defendant Maltbie K. Napoleon's Memorandum in Opposition To Purchaser Patricia Chinn's Motion for Entry of a Final Judgment as to the Kuleana Parcel, Pursuant to the Lili'uokalani Assignment and Restoration Agreement.

Comes now Maltbie K. Napoleon, herein Defendant, who opposes Patricia Chinn's Motion for Entry of a Final Judgment as to the Kuleana Parcel, Pursuant to the *Lili'uokalani Assignment and Restoration Agreement*.

Preliminary Statement

1. There is no dispute between the United State and Hawai'i over the illegal overthrow of the Hawaiian Government that took place on January 17, 1893, just non-compliance to an already agreed settlement. On October 18, 1893, the U.S. Government concluded an investigation of its role in the overthrow, and negotiation for settlement with Queen Lili'uokalani began on November 13, 1893 at the U.S. legation in Honolulu. On December 18, 1893, settlement was achieved

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by: hta*

and an agreement was entered between the two countries whereby the United States committed itself to restore the government as it was prior to the unauthorized landing of U.S. troops on January 16, 1893, and once the government was restored, the Queen was bound to grant amnesty to members and supporters of the self-proclaimed provisional government who committed the crime of high treason, which was punishable by death and all property confiscated to the Hawaiian government.

2. On or about July 6, 1844, United States Secretary of State John C. Calhoun 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. (See Defendant's Exhibit "A", Opposition M.S.J., filed 20 Dec 2012.) As a result of said duly recognition, the United States and the Hawaiian Kingdom entered into a Treaty of Friendship, Commerce and Navigation (9 U.S. Stat. 977); Treaty of Commercial Reciprocity (19 U.S. Stat. 625); Postal Convention Concerning Money Orders (23 U.S. Stat. 736); and a Supplementary Convention to the 1875 Treaty of Commercial Reciprocity (25 U.S. Stat. 1399).
3. As a recognized State, the Hawaiian Kingdom became a full member of the Universal Postal Union in 1882, and maintained more than ninety legations and consulates throughout the world. The Hawaiian Kingdom currently has treaties with Austria-Hungary (June 18, 1875); Belgium (October 4, 1862); Bremen (March 27, 1854); Denmark (Oct. 19, 1846); France (July 17, 1839, March 26, 1846, September 8, 1858); French Tahiti (November 24, 1853); Germany (March

- 25, 1879); Great Britain (Nov. 13, 1836 and March 26, 1846); Great Britain's New South Wales (March 10, 1874); Hamburg (January 8, 1848); Italy (July 22, 1863); Japan (Aug. 19, 1871, January 28, 1886); Netherlands (October 16, 1862); Portugal (May 5, 1882); Russia (June 19, 1869); Samoa (March 20, 1887); Spain (October 9, 1863); Sweden and Norway (April 5, 1855); and Switzerland (July 20, 1864).
4. The Hawaiian Kingdom was also recognized as a neutral State as expressly stated in treaties with the Kingdom of Spain in 1863 and the Kingdom of Sweden and 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).”
 5. 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. Article 31 of the Hawaiian Constitution 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.

6. 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, Executive Documents on Affairs in Hawaii: 1894-95, *U.S. House of Representatives, 53rd Congress* p. 461. (See Defendant’s Exhibit “B”, Opposition M.S.J., filed 20 Dec 2012.)
7. Her 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 or risk bloodshed caused by the presence of U.S. troops if the insurgents were apprehended by the

- police force. On or about March 4, 1893, President Cleveland, 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).”
8. On or about April 1, 1893, U.S. Special Commissioner James Blount, who arrived in Honolulu under explicit instructions by President Cleveland, initiated a Presidential investigation into the circumstances of the overthrow of the Hawaiian Kingdom government and reported his findings to Secretary of State Gresham. 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).”
 9. 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).”

10. 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, Executive Documents on Affairs in Hawaii: 1894-95, *U.S. House of Representatives, 53rd Congress*. (See Defendant’s Exhibit “C”, Opposition M.S.J., filed 20 Dec 2012.) 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 (*Id.*, 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.

11. 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.
12. 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.
13. 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).” 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 McKinley entered office on March 4, 1898.
14. 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. 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. These protests relied on the settlement and agreement of restoration.

15. In willful disregard to 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 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 filed with the U.S. Senate by the League's President, James Kaulia.
16. 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. President McKinley signed the joint resolution into U.S. Federal law on or about July 7, 1898 (30 U.S. Stat. 750), despite the confinement of Congressional legislation to U.S. territory, and in direct violation of the *Lili`uokalani assignment*, the *Agreement of restoration* and international law.
17. On or about August 12, 1898, under orders of President McKinley, the United States militarily 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. Rear Admiral Miller reported to Secretary of the Navy John D. Long. The occupation of the Hawaiian Kingdom

during the Spanish-American War by the United States was also a violation of Hawai`i's international status as a neutral State.

18. 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 international law by virtue of Article 43 of the 1899 Hague Convention, II, *Laws and Customs of War on Land* (32 U.S. Stat. 1803), which was later superseded by Article 43, 1907 Hague Convention, IV, *Laws and Customs on War on Land* (36 U.S. Stat. 2277). 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 international law of occupation.
19. Since at least 1893, the United States President 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, by establishing the Territory of Hawai`I government in 1900 (31 U.S. Stat. 141), and the State of Hawai`i

government in 1959 (73 U.S. Stat. 4). Adding insult to injury, and an affront to the Queen and loyal Hawaiian subjects and residents of the Hawaiian Kingdom, President McKinley appointed Sanford Dole as the first Governor for the so-called Territory of Hawai`i in 1900. Dole pardoned by the Queen because the Hawaiian executive power was not returned after the Hawaiian Kingdom government was restored in accordance with the *Agreement of restoration*. Therefore, Sanford Dole remained a fugitive of Hawaiian law throughout his life, which included his term of office as the so-called Governor of the Territory of Hawai`i. Pauku 6. NA KANAWAI CIVILA O KO HAWAII PAE AINA, “*Ua pili na Kanawai I na kanaka a pau, na kanaka kupa o keia Aupuni, a me na kanaka o na Aupuni e, oiai ko lakau noho ana maloko o keia Aupuni, koe wale no na Luna Nui o na Aupuni e, a me kekahi poe e a e, e like me na Kanawai iwaena o na Aupuni. O ka waiwai o ia poe a pau oiai ka waiho ana o ia waiwai iloko o keia Aupuni malolo no ia ko’onei mau Kanawai.*” Translated, “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 within the Islands, irrespective of nationality, there is a corresponding duty upon the state of Hawaii offices 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 is restored and the executive power returned. Consequently, after the 17th day of January, 1893, all appointed positions deriving their authority from the office of the monarch, which include the Registrar of Conveyances under Chapter XXVI, section 1249, Civil Code, and the Notary Publics under Chapter XXVI under section 1266, Civil Code, were cancelled and void. All conveyances arising after January 16, 1893, were not capable of being recorded in accordance with Chapter XXVI of the Civil Code of the Hawaiian Islands. Further, all land titles are broken at the onset of occupation, government and judicial offices stand in abeyance until adjudicated under the jurisdiction of the Hawaiian Kingdom *Restoration Agreement*.

20. Sovereignty over the Hawaiian Islands is not a political question and the Court is bound to take judicial notice of Hawaiian sovereignty “from the public acts of the legislature and executive” *prior* to January 17th 1893. Once the executive has afforded recognition of Hawai‘i’s sovereignty, the recognizing State, which includes this Court, the Congress and the Executive, is estopped “from contesting its validity at any future time.” See *Schwarzenberger*, *supra*. Accordingly, the Court is not only estopped from denying the existence of the Hawaiian Kingdom as a State, without “reference to a valid demonstration of legal title” under international law—Congressional Acts notwithstanding, but also must ensure that the Executive faithfully executes the *Lili‘uokalani assignment*, being a sole executive agreement, whereby the Plaintiff is a third party beneficiary. The U.S. Constitution provides that the President “shall take Care that the Laws be faithfully executed,” see Article II, sec. 3, U.S. Const., and that “all [executive

agreements] made...under the Authority of the United States [President], shall be the supreme Law of the Land.” See Article VI, clause 2, U.S. Const; see also *U.S. v. Belmont* (1937), *U.S. v. Pink* (1942), and *American Insurance Association v. Garamendi*(2003).

**A.Plaintiff’s Title To Kuleana Is Defective In Violation Of
The Lili`uokalani assignment and Restoration agreement**

21. As of January 16, 1893, title to the Kuleana, royal patent 1303, the freehold life estate, remains vested in Kahela Kanui, any and all conveyances done after the 17th day of January, 1893, being recorded or unrecorded, are void and without merit.
22. In the year 1839 began that peaceful but complete revolution in the entire polity of the Kingdom. His Majesty Kamehameha III began by declaring protection for the persons and private rights of all his people from the highest to the lowest. In 1840 he granted the first Constitution by which he declared and established the equality before the law of all his subjects, chiefs and people alike. By that Constitution, he voluntarily divested himself of some of his powers and attributes as an absolute Ruler, and conferred certain political rights upon his subjects, admitting them to a share with himself in legislation and government. This was the beginning of a government that was separate from the person of the King, who was thereafter regarded more as the chief executive as opposed to absolute Ruler. But the political changes introduced at that period did not affect in the least the King’s rights in the land as the great feudal Chief or Suzerain of the Kingdom.
23. On December 10th, 1845, Kamehameha III, as head of the Nation, initiated the necessary steps toward offering his subjects inheritable estates, which would

provide security in land holdings and help develop and foster the economic growth of the country, by establishing a Board of Commissioners to Quiet Land Titles (Land Commission) under the Second Act of Kamehameha III to organize the Executive Departments of the Hawaiian Islands. Article 8 Section 1 of the Act establishing the Land Commission stated, “His Majesty shall appoint, through the Minister of Interior, and upon consultation with the Privy Council, five commissioners, one of whom shall be the Attorney-General of this Kingdom, to a board for the investigation and final ascertainment or rejection of all claims of private individuals, whether natives or foreigners, to any landed property acquired anterior (prior) to the passage of this Act.”

24. Before inheritable estates could be offered by the Hawaiian Government after the 10th day of December, 1845, without affecting any prior existing rights in the land, an inventory of all claims to land titles throughout the islands, acquired before the 10th day of December, 1845, whether fee-simple titles, life estates or leases, needed to be validated or invalidated by an authorized and competent party, being the Land Commission. Section 10 of the same Act states that the “...Minister of Interior shall have power in concurrence with the Privy Council, and under the sanction of His Majesty, to issue to any lessee or tenant for life of lands so confirmed, being a Hawaiian subject, a patent in fee-simple for the same, upon payment of a commutation to be agreed upon by His Majesty in Privy Council.”
25. Under § 7, article II, chapter VII, part I of the Second Act of Kamehameha III to organize the Executive Departments of the Hawaiian Islands, conditions and

restrictions were placed upon title to land in the Hawaiian Islands. “Land so patented shall never revert to the king of these islands, nor escheat to this government, for any other cause than attainder of high treason, as defined in the criminal code, nor be diverted from the patentee or his assigns, except by operation of law under sale in virtue of a judicial decree, or for the non-payment of taxes as prescribed in the third part of this act, or the utter default of heirs of the testate or intestate owners, being Hawaiian subjects, as in the fifth part of this act prescribed; but the patented lands shall descend to the lineal or collateral heirs, being Hawaiians, of the patentee and his assigns, as tenants in common, unless otherwise prescribed by the will of a testate patentee.”

26. Foreign nationals were not allowed to acquire fee-simple titles to land at this time, but that restriction was removed by an “Act to Abolish the disabilities of Aliens to acquire and convey lands in fee-simple,” passed by the Hawaiian Legislature on the 10th day of July, 1850.
27. Under chapter II, article I of the Second Act of Kamehameha III to organize the Executive Departments, a Registry of Conveyances was established to record the subsequent conveyances of confirmed claims by the Land Commission and also the subsequent grants of titles, mortgages, bills of sale of chattel property, contracts and agreements, articles of marriage settlement, certificates of co-partnership, powers of attorney, and all other instruments affecting the transactions of persons in the kingdom. All these transactions were required to be recorded with the Registrar of Conveyances to be considered valid and binding.

28. The *inheritance* of the heirs are established by law, 1864 Constitution; under § 7, article II, chapter VII, part I of the Second Act of Kamehameha III to organize the Executive Departments of the Hawaiian Islands, “...*but the patented lands shall descend to the lineal or collateral heirs, being Hawaiians, of the patentee and his assigns, as tenants in common, unless otherwise prescribed by the will of a testate patentee.*”
29. On August 20th, 1846, the Land Commission drew up certain principles that would guide them in the adjudication of each claim submitted before them, which they arrived by careful examination of numerous witnesses; among’ whom were some of the oldest chiefs, possessing large tracts of land, which equally with other lands, came under the adjudication of the Land Commission, and under the principles about to be laid down. The principles continue to state that the King (Government), in disposing of the allodium (inheritable estate) to any other person, cannot infringe upon the rights of the Konohiki (landlords); neither could the Konohiki upon receipt of the allodium by purchase or otherwise, seize upon the rights of the tenants and dispossess them. It being fully established, that there are but three classes of persons having vested “undivided” rights in the land: 1st, the Government, 2nd, the landlord (Konohiki), and 3rd, the tenant (Natives), it next became necessary to ascertain the proportional rights of each, and if the King be disposed voluntarily to yield to the tenant a portion of what practice had given himself, he most assuredly had a right to do it; and should the King (Government) allow to the landlord one third, to the tenant one third, and retain one third himself, he would injure no one but himself. The vested undivided rights of the

Tenants in the land only applied to the native population as noted in the clause reserving the rights of native tenants, and further noted in the minutes of the Privy Council.

30. On December 11th, 1847, the subject of formulating an instrument to divide out the undivided rights in the land, was discussed at length in the King's Privy Council. Before the formal discussion ensued, it was noted that the legislature resolved, that there are the following classes of rights inherent in all lands, 1st, the Government, 2nd, the Konohiki, 3rd, People or Tenants. It also became obvious that the King held a dual role. At one end he was the chief executive or head of state of the Government, and on the other he was the Great Feudal Chief of all the lands. Agreeably to this distinction, the King claimed to be Konohiki of a great portion of the lands, as the highest of landlords in the Konohiki class. The King made it known to the other Konohiki's, "...that they are only holders of lands under him, but he will only take a part and leave them a part. The Chiefs did not greatly object to this, but they asked, 'Has the Government a third interest in the lands left to us?' The King replied yes, and the Government has a 1/3 interest in the King's. The Chiefs then said, 'Let us have an allodial (inheritable) title to what the King has left us, subject only to the rights of the Tenants.'"
31. On December 18th, 1847, certain rules, numbering seven in all, were introduced by William L. Lee, Chief Justice of the Hawaiian Kingdom Supreme Court, and unanimously voted upon and passed by the King and his Privy Council. Rule 3 of those principles state, to wit: "The division between the Chiefs and Konohiki's and their Tenants, prescribed by Rule 2nd shall take place, whenever any Chief,

Konohiki or Tenant shall desire such division, subject only to confirmation by the King in Privy Council.

32. With these rules in mind it was finally resolved by the King in Privy Council to effect through the assistance of a Committee, a division of lands between the King, as the highest of the Konohiki class, and the other Konohiki's namely William Charles Lunalilo. That division appears to have been effected with dispatch, for by the 7th day of March, AD. 1848, it was completed. Kamehameha III had resumed the possession of the larger part of the lands previously in the possession of the Konohiki's, and the balance of lands had been granted to the other Konohiki's as freehold life estates certified to the Land Commission for its formal award, and capable of being converted into inheritable estates, by payment to the Government of a commutation to be fixed in Privy Council, but subject always to the rights of native tenants to divide their vested interest in fee-simple.
33. On January 4th, 1848, Rev. Hitchcock was very concerned about the February 14th deadline for native tenants to file their claims and asked Chief Justice William Lee if the deadline could be extended. On January 14th, 1848, the Chief Justice responded to Rev. Hitchcock's concern and stated, "I agree with you that the subject of prolonging the time for sending in land claims is worthy of serious consideration, and I will take the first opportunity to bring it before the King in Privy Council. The tenants however, will not lose their rights should they fail to send in their claims, for I will see that no Konohiki has a title to lands except upon the condition of respecting the rights of tenants. Still, it is necessary that the

- tenants should send in their claims, in order that their rights may be separated from those of the Konohiki, and they know what rights they really have.”
34. William Charles Lunalilo, of the Konohiki class surrendered certain lands formerly held by the same in trust, to Kamehameha III on the 27th day of January, 1848, and thereafter was granted lands on the islands of Kaua’i, O’ahu, Maui, Molokai, Lanai, Maui and Hawai’i, which included Laiewai and Laiemaloo, island of Oahu. By this grant William Lunalilo, Konohiki, received a freehold life estate from Kamehameha III, who was the highest of the Konohiki class. This particular grant was conditional, for the grant specifically read that he shall present this conveyance to the Land Commission for confirmation and formal award. Blackstone states that life estates may be created “by a general grant, without defining or limiting any specific estate. As if one grants to AB the manor of Dale, this makes him tenant for life. For though, as there are no words of inheritance or heirs mentioned in the grant, it cannot be construed to be a fee, it shall, however, be construed to be as large an estate as the words of the donation will bear, and therefore an estate for life.”
35. On January, 28 1848, Ka Buke Kakau Paa p. 22, Kamehameha III to Charles Kanaina for William Charles Lunalilo, includes the Ahupuaa of Laie. (See Defendant’s Exhibit “C”, Amended Answer to Complaint, filed 19 Oct 2010.)
36. On December 21st, 1849, the King in Privy Council passed a resolution that waived the commutation due to the Government class and the Konohiki class for all native tenants who wish to divide their undivided rights in the lands of the Government or a particular Konohiki named in the Great Mahele and receive a

- fee-simple title for their house lot, being no more than a quarter acre, and their cultivating lands, excepting the lands in the districts of Honolulu, Lahaina and Hilo. This resolution was confirmed by the Hawaiian Legislature and passed into law on August 6th, 1850. This Act came to be known as the “Kuleana Act.”
37. On July 25, 1850, the Land Commission awarded to WAHA, LCA 3741, book 6, p. 374.
38. WAHA’S R.P. 1303, Numerical Index of Patents on Awards, p. 48, a certified copy attached as Exhibit “A”.
39. On August 27th, 1850, the King in Privy Council passed a resolution which allowed the Konohiki who received lands from Kamehameha III in the division of 1848, to surrender certain lands to the Government in lieu of commutation, thereby converting their remaining lands into inheritable estates. (See Defendant’s Exhibit “D”, Amended Answer to Complaint, filed 19 Oct 2010.) Agreeably to this resolution William Charles Lunalilo, on this same day re-vested certain lands back to the Government, consequently converting his remaining lands into estates of inheritance, which included Laiewai and Laiemaloo, Island of Oahu. With the one-third vested right of inheritance of the Hawaiian Government having been extinguished, William Charles Lunalilo, in compliance with the conditions of his title, was now lawfully seized of an estate of inheritance, and capable of conveying freehold or less than freehold titles without the written consent of the King in Privy Council as required under Rule no. 3 of the rules of the Great Mahele, but subject always to the rights of native tenants. See, § 7, article II, chapter VII, part

- I of the Second Act of Kamehameha III to organize the Executive Departments of the Hawaiian Islands.
40. Proper application for a fee simple title, WAHA is awarded a Royal Patent no. 1303, on July 11, 1853. Liber 5, p. 181.
 41. On 22 July 1884, the heirs of WAHA, Kauwa and Hahauupaa, by descent to Rahela Kani the kuleana. Liber 107, p. 150, a certified copy attached as Exhibit “B”.
 42. The Act 1866, Relating to the Escheats of Kuleanas. *“Upon the decease of any person owning, possessed of, or entitled to any estate of inheritance or kuleana in any land or lands in this Kingdom, leaving no kindred surviving, all such land and lands shall thereupon escheat and revert to the owner of the Ahupuaa, Ili or other denomination of land, of which such escheated kuleana had originally formed a part.”*
 43. On January 17, 1893, certain individuals calling themselves the “committee of safety” committed the crime of treason by taking over the government of the Hawaiian Kingdom, and forcibly removed Queen Lili’uokalani and her cabinet from office. Consequently, after the 17th day of January, 1893, all appointed positions deriving their authority from the office of the monarch, which include the Registrar of Conveyances under Chapter XXVI, section 1249, Civil Code, and the Notary Publics under Chapter XXVI under section 1266, Civil Code, were cancelled and void. All conveyances arising after January 16, 1893, were not capable of being recorded in accordance with Chapter XXVI of the Civil Code of the Hawaiian Islands.

44. U.S. President Grover Cleveland called this act an, "act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress," and "Therefore the military *occupation* of Honolulu by the United States on the day mentioned was wholly without justification, either as an *occupation* by consent or as an *occupation* necessitated by dangers threatening American life..."
45. On October 18, 1893, the U.S. government concluded an investigation of its role in the overthrow, and negotiation for settlement with Queen Lili`uokalani began on November 13, 1893 at the U.S. Legation in Honolulu. On December 18, 1893, settlement was achieved and an agreement was entered between the two countries whereby the United States committed itself to restore the government as it was prior to the unauthorized landing of U.S. troops on January 16, 1893, and once the government was restored, the Queen was bound to grant amnesty to members and supporters of the self-proclaimed provisional government who committed the crime of high treason, which was punishable by death and all property confiscated to the Hawaiian government. There is a binding agreement of restoration of the Hawaiian Kingdom government, and that there exists no valid transfer of Hawaiian sovereignty under international law to the U.S.
46. In light of the aforementioned, as of January 16, 1893, title to the Kuleana, royal patent 1303, the freehold life estate, remains vested in Kahela Kanui, any and all conveyances done after the 17th day of January, 1893, being recorded or unrecorded, are void and without merit.

47. As such, Patricia Chinn’s title is defective as no evidence exists as to Patricia Chinn’s continuous chain of title after January 17th, 1893, as said kuleana remains subject to probate proceedings of a competent tribunal under the laws of the Hawaiian Kingdom, to escheat to the original owner, being the estate of William Charles Lunalilo. Under § 7, article II, chapter VII, part I of the Second Act of Kamehameha III to organize the Executive Departments of the Hawaiian Islands, “...but the patented lands shall descend to the lineal or collateral heirs, being Hawaiians, of the patentee and his assigns, as tenants in common, unless otherwise prescribed by the will of a testate patentee.”

**B. Patricia Chinn’s Attorney HENRY F. BEERMAN
is Not Duly Constituted Under Hawaiian Law**

48. Title 1. Chapter II. §6. Of the Civil Code of the Hawaiian Islands, states in pertinent part; “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,...”

49. Laws Governing Practicing Attorneys in the Hawaiian Islands. Section IX, Chapter 1, of the Third Act of Kamehameha III, empowered the Courts of record to examine and admit attorneys into their respective bars. Since that enactment, the Hawaiian Legislature further defined this section under section 1065, chapter XXI, title 4, of the Compiled Laws, 1884, to wit: “The Supreme Court shall have power to examine and admit as prosecutioners, in the courts of record, such person, being Hawaiian subjects, of good moral character, and having taken the prescribed oath of office, as said court may find qualified for that purpose. Section 1969, chapter XXI, title 4, aforesaid, prescribes the oath as follows,

“____, being duly sworn, deposes that he will support the Constitution and laws of the Hawaiian Islands, and faithfully discharge the duties of attorney, counselor, solicitor and proctor, in the courts of this Kingdom, to the best of his ability.”

Patricia Chinn’s Attorney’s HENRY F. BEERMAN, claims to be a practicing attorney in the Hawaiian Islands, and having been admitted into the bar by the Supreme court of Hawaii, you swore the following oath, to wit: “I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution and laws of the State of Hawaii, and that I will at all times conduct myself with the Hawaii Rules of Professional Conduct. As an officer of the courts to which I am admitted to practice, I will conduct myself with dignity and civility towards judicial officers, court staff, and my fellow professionals...” By this oath and admittance into the bar, HENRY F.

BEERMAN, is not a competent practitioner of law in the Hawaiian Islands under section 1065, chapter XXI, title 4, aforesaid, and cannot claim any more competency than the state of Hawaii and its political subdivisions can claim sovereign authority without standing in contravention of Hawaiian Law and in violation of the Treaty between the United States and the Hawaiian Kingdom, 1850 and the Hague Convention, Laws of War. HENRY F. BEERMAN cannot exercise American municipal law in the Hawaiian Islands nor over its subjects.

C.The Circuit Court, State of Hawaii Is Not A Competent Tribunal Lawfully Constituted Under Hawaiian Law.

50. The Judiciary department was established by the Third Act of Kamehameha III to organize the Judiciary department of the Hawaiian Islands, and it had been determined by section 1 of that act that “...in order to conduct with greater

certainty and system, the several judicial functions specified in the constitution, and required by the exigencies of this kingdom, by the treaties with other powers heretofore made and hereafter entered into, and by the general usage and comity of nations, there shall be styled the Judiciary Department of the Hawaiian Islands.” Since the establishment of this department, it had also gone through lawful evolution by the Hawaiian Legislature and is clearly defined in title 4 of the Compiled Laws of 1884. Section 870, chapter XIV, title 4, specifically defines the First Circuit Court, which consists of the Island of O’ahu, whose seat of justice shall be at Honolulu. By an Act 1874 Chapter IX, Legislation revised and then amended in 1876 Chapter VI, the Civil Code to abolish the office of circuit judge for the island of O’ahu. Title 5. Of the Civil Code provides the LAWS AFFECTING DOMESTIC RELATIONS. The circuit court, State of Hawaii is not a competent tribunal lawfully constituted under section 870, chapter XIV, title 4, aforesaid, but is merely a subdivision of the State of Hawaii, having puppet character under international law, which can claim no authority without standing in violation of the Treaty with the Hawaiian Islands, 1850, and in contravention of the, so stated statutes of the Compiled Laws of the Hawaiian Islands 1884. The circuit court, state of Hawaii, cannot interfere with existing rights and obligations of Hawaiian subjects as American municipal law has no effect within the territorial domain of the Hawaiian Kingdom.

51. In light of these facts, Patricia Chinn’s motion for entry of a final judgment as to the Kuleana parcel introduces fraud upon this Court and should be denied.

D.Patricia Chinn’s Title Is A Violation Of Defendant’s Civil Rights Under The Lili`uokalani Assignment.

52. In light of the current U.S. occupation of Hawaii, Constitutional protection of the civil rights of third party beneficiaries under the *Lili`uokalani assignment*, include, but are not limited, to the right to “life, liberty, and the right of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness (Hawn. Const., art. 1)”; the right to “worship God according to the dictates of their own consciences (Hawn. Const., art. 2)”; the right to “freely speak, write, and publish their sentiments on all subjects, being responsible for the abuse of that right, and no law shall be enacted to restrain the liberty of speech, or of the press, except such laws as may be necessary for the protection of His Majesty the King and the Royal Family (Hawn. Const., art. 3)”; the right “to assemble, without arms, to consult upon the common good, and to petition the King or Legislative Assembly for redress of grievances (Hawn. Const., art. 4)”; the right to the “writ of Habeas Corpus belongs to all men, and shall not be suspended, unless by the King, when in cases of rebellion or invasion, the public safety shall require its suspension (Hawn. Const., art. 5)”; the right that no “person shall be subject to punishment for any offense, except on due and legal conviction thereof, in a Court having jurisdiction of the case (Hawn. Const., art. 6)”; the right that no “person shall be held to answer for any crime in which the right of trial by Jury has been heretofore used, it shall be held inviolable forever, except in actions of debt or assumpsit in which the amount claimed is less than Fifty Dollars (Hawn. Const., art. 7)”; the right that no “person shall be required to answer again for an offense, of which he has been duly convicted, or of which he

has been duly acquitted upon a good and sufficient indictment (Hawn. Const., art. 8)”; the right that no “person shall be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property without due process of law (Hawn. Const., art. 9)”; the right that no “person shall sit as a judge or juror, in any case in which his relative is interested, either as plaintiff or defendant, or in the issue of which the said judge or juror, may have, either directly or through a relative, any pecuniary interest (Hawn. Const., art. 10)”; that “involuntary servitude, except for crime, is forever prohibited in this Kingdom; whenever a slave shall enter Hawaiian Territory, he shall be free (Hawn. Const., art. 11)”; that every “person has the right to be secure from all unreasonable searches and seizures of his person, his house, his papers, and effects; and no warrants shall issue, but on probable cause, supported by oath or affirmation, and describing the place to be searched, and the persons or things to be seized (Hawn. Const., art. 12).” With regard to the civil rights of resident aliens, the Hawaiian Supreme Court stated that foreign nationals in the Islands “rely on the numerous treaty provisions which secure them all the civil rights which subjects have ‘to enjoy their property in as full and ample a manner as subjects.’ —American Treaty, Article 8. ‘Full and perfect protection in regard to their property and the same right as native subjects.’ —British Treaty, Article 8. ‘The same protection as regards their properties as native subjects,’ etc. —Bremen Treaty, Article 2.” See *Bankruptcy of S.C. Allen*, 6 Hawai`i 146, 147 (1875). Therefore, by virtue of the Lili`uokalani Assignment, Hawaiian subjects or citizens or subjects of any foreign State while within Hawaiian territory are third party beneficiaries that have

enforceable rights, and it is the duty of the Federal government, by its President, to acknowledge and protect these rights as if it were the Hawaiian Kingdom government itself. In *Kolovrat v. Oregon*, 366 U.S. 187 (1961), the court enforced a Yugoslav citizen's right under the U.S.-Serbia treaty to inherit personal property located in Oregon; in *Clark v. Allen*, 331 U.S. 503 (1947), the court enforced a German citizen's right to inherit property in California; in *Bacardi Corp. of American v. Domenech*, 311 U.S. 150 (1940), the court enforced a foreign trademark owner's rights under Pan-American Trade-Mark treaty; in *Nielson v. Johnson*, 279 U.S. 47 (1929), the court enforced a Danish citizen's right under U.S.-Denmark treaty to be free of discriminatory taxation; in *Jordan v. Tashiro*, 278 U.S. 123 (1928), the court enforced the U.S.-Japan treaty allowing Japanese citizens to conduct trade in the United States; in *Cheung Sum Shee v. Nagle*, 268 U.S. 336 (1925), the court held that U.S.-China treaty prevented mandatory exclusion of wives and minor children of Chinese merchants under Immigration Act of 1924; in *Hauenstein v. Lynham*, 100 U.S. 483, (1879), the court enforced a treaty assuring Swiss citizen's right to inherit property in Virginia; and in *Society for Propagation of the v. New Haven*, 21 U.S. (8 Wheat.) 464 (1823), the court enforced the 1873 treaty with Great Britain preventing Town of New Haven from seizing lands held under a British corporation.

53. Patricia Chinn's motion denies Defendants' rights under the *Lili'uokalani assignment*, and committed in violation of the law of nations or a treaty of the United States"—in this case an executive agreement. Justice Sutherland stated "our Constitution, laws and policies have no extraterritorial operation unless in

respect of our own citizens.” See *U.S. v. Belmont*, 301 U.S. 324, 332 (1937). Justice Field stated, in *Ross v. McIntyre*, 140 U.S. 453, 464 (1890), “The Constitution can have no operation in another country.” Accordingly, the U.S. Constitution cannot be invoked as a defense to Defendant’s claim, unless the defense can clearly show that the Hawaiian Kingdom was ceded under recognized principles of international law and therefore incorporated as part of the domain of the United States. Plaintiff’s have provided no such evidence of cession, that would have succeeded the *Lili`uokalani assignment and Restoration agreement*. Rather Plaintiff’s are relying on state of Hawaii authority, which assumes the Hawaiian Kingdom was ceded in the first place, which it was not.

54. Because U.S. legislation has no extraterritorial force and effect, except over U.S. citizens, it cannot be considered to have extinguished the Hawaiian Kingdom as a state, and the executive agreements remain binding on the United States under both international law and U.S. Federal law, see *U.S. v. Belmont*, 310 U.S. 324 (1937), *U.S. v. Pink*, 315 U.S. 203, 241 (1942), and *American Insurance Association v. Garamendi*, 539 U.S. 396 (2003).

Conclusion

In light of the current U.S. occupation of Hawaii, Patricia Chinn’s motion should be denied as any grant would violate the *Lili`uokalani assignment* also in violation of the law of nations or a treaty of the United States”—in this case an executive agreement.

Further, the record shows that Patricia Chinn’s motion has failed to provide (1) valid transfer of Hawaiian sovereignty under international law to the U.S., and (2) a valid demonstration of Plaintiff’s legal title under international law. Said acts constitute

violation of the *Lili'uokalani assignment*, the 1907 Hague Convention, IV, the 1949 Geneva Convention, IV, and for allowing HENRY F. BEERMAN and Ms. RHONDA A. NISHIMURA to maliciously, prosecute and deny Defendant a jury trial, for adhering to Hawaiian Kingdom laws, which by definition constitutes a "**war crime**" under Title 18 U.S.C. §2441(c)(1). Defendant, herein, denies the jurisdiction of HENRY F. BEERMAN and Ms. RHONDA A. NISHIMURA due to the usurpation of the court, At-Law, under the *Lili'uokalani assignment* and *Restoration agreement*, and the court shall take JUDICIAL NOTICE of the same. As such, Patricia Chinn's motion, should be denied.

Dated _____

Maltbie K. Napoleon

Maltbie K. Napoleon
c/o Mail Acceptor: 1568 Miller St.#1
Honolulu, Oahu

In the Circuit Court of the First Circuit

State of Hawaii

HOVEY B. LAMBERT, TRUSTEE)	Civil No. 09-1-2529-10EEH
Under the HOVEY B. LAMBERT TRUST,)	
an unrecorded Revocable living Trust)	Affidavit of Maltbie K. Napoleon
agreement dated April 5, 2002, et.al.,)	Exhibits "A-D".
)	
vs,)	
)	
WAHA (K), Maltbie K. Napoleon, et.al.,)	
_____)	

Affidavit of Maltbie K. Napoleon Exhibits "A-D"

I, Maltbie K. Napoleon, am competent and have first hand knowledge of the facts listed herein;

1. On or about July 6, 1844, United States Secretary of State John C. Calhoun 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.
2. 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, See Defendant's Exhibit "B", Opposition M.S.J., filed 20 Dec 2012.
3. 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, See Defendant's Exhibit "C", Opposition M.S.J., filed 20 Dec 2012.
4. Defendant's Attorney admits I am a native tenent of the Hawaiian Kingdom possessing a vested right in the *dominium*, and provided the constitutional protections under Kumukanawai 1864.
 5. Defendant's Attorney admits their title is based on original title of the Hawaiian Kingdom.
 6. Defendant's Attorney admits the continued independence of the Hawaiian Kingdom under international law.
 7. Defendant's Attorney admits their title is a violation of the *Liliuokalani assignment and Agreement of restoration*.
 8. Defendant's Attorney admits I have been deprived a fair and regular trial.
 9. Defendant's Attorney admits that no treaty of annexation exists to provide this court jurisdiction to hear this case.
 10. WAHA'S R.P. 1303, Numerical Index of Patents on Awards, p. 48, a certified copy attached as Exhibit "A".
 11. On 22 July 1884, the heirs of WAHA, Kauwa and Hahaupaa, by descent to Rahela Kani the kuleana, a certified copy attached as Exhibit "B".
 12. As new evidence of the existence of the Hawaiian Kingdom, a certified copy attached as Exhibit "C", on December 10, 2012, the acting government of the Hawaiian Kingdom [deposited](#) its [Instrument of Accession](#) acceding to the jurisdiction of the [International Criminal Court](#) (ICC) with the United Nations Secretary-General in New York City. On January 14, 2013, Ambassador Benno

Bättig, General Secretariat of the [Swiss Federal Department of Foreign Affairs](#) (FDFA), received at his office in Berne, Switzerland, the Hawaiian Kingdom's [Instrument of Accession](#) to the 1949 Fourth Geneva Convention for the Protection of Civilian Persons in Time of War.

13. Further new evidence, a certified copy attached as Exhibit "D", on June 17, 2013, the ICC received the acting government's Referral to initiate criminal investigations, and its Declaration extending the jurisdiction of the ICC to investigate war crimes committed on Hawaiian territory since July 1, 2002.

I, Maltbie K. Napoleon, declare under penalty of law to be true and correct to the best of my knowledge and belief. Executed on this ____ day of July, 2013.

Maltbie K. Napoleon

Subscribed and sworn to before me
this ____ day of July, 2011.

Notary Public, State of Hawaii
My commission expires:

Maltbie K. Napoleon
c/o Mail Acceptor: 1568 Miller St.#1
Honolulu, Oahu

In the Circuit Court of the First Circuit

State of Hawaii

HOVEY B. LAMBERT, TRUSTEE)	Civil No. 09-1-2529-10EEH
Under the HOVEY B. LAMBERT TRUST,)	
an unrecorded Revocable living Trust)	Certificate of Service.
agreement dated April 5, 2002, et.al.,)	
)	
vs,)	
)	
WAHA (K), Maltbie K. Napoleon, et.al.,)	
_____)	

Certificate of Service

I certify that a copy of the foregoing instrument, Defendant Maltbie K. Napoleon’s Memorandum in Opposition To Purchaser Patricia Chinn’s Motion for Entry of a Final Judgment as to the Kuleana Parcel, Pursuant to the *Lili’uokalani Assignment* and *Restoration Agreement*, Affidavit of Maltbie K. Napoleon Exhibit “A-D”, Certificate of Service, was duly served by hand or by mail, postage prepaid and sent to the following:

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Attorney for Defendant Lesieli Teisina
and Intervenor Penisimani Teisina

Dated _____

Maltbie K. Napoleon