No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

PATSY N. SAKUMA - PETITIONER PRO SE

vs.

ASSOCIATION OF APARTMENT OWNERS –RESPONDENTS
OF THE TROPICS AT WAIKELE ET. AL

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

PATSY N. SAKUMA, ESQ.
Petitioner Pro Se

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QUESTIONS PRESENTED

I. Whether the United States Court of Appeals for the Ninth Circuit properly applied waiver on appeal as a new exception to bypass the *Rooker-Feldman* jurisdictional question for the merit question when a different outcome results and which conflicts with the First Circuit and other circuits that apply hypothetical jurisdiction only if the outcome does not change or it is within the established factors discussed in *Steel Co.* to apply hypothetical jurisdiction to bypass a more difficult statutory jurisdictional question for an easier merits or non-merit preclusion question?

II. This Court must resolve the very important question dividing the United States Courts of Appeals for the Ninth Circuit and Seventh Circuit as to whether the circuit judge or circuit court must sua sponte raise the civil rights 42 U.S.C. §1985 claim or §1983 claim or defense in an attorney-drafted complaint before affirming a district court's dismissal of the complaint with prejudice?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties in the proceeding in the court whose judgment is the subject of this petition is as follows:

1. Patsy N. Sakuma, Petitioner Pro Se

2. Association of Apartment Owners Of The Tropics At Waikele, by its board of directors (AOAO), Respondent

3. Association of Condominium Owners Of Tropics At Waikele, by its board of directors (AOCH), Respondent

4. Milton M. Motooka (Motooka), Respondent

5. Love Yamamoto & Revere, LLP, (LYM- "Motooka One") Respondent

6. Motooka Yamamoto & Revere, LLP, (MYR- "Motooka Two") Respondent

7. Porter McGuire Kiakona & Chow, LLP, (PMKC) Respondent

8. James S. Kometani, Commissioner, (Commissioner), Respondent

9. First Hawaiian Ban (FHB), a Hawaii corporation, Respondent

10. Watanabe Ing, (WI) LLP, Respondent

11. Title Guaranty of Hawaii, Inc., (TGH) a Hawaii corporation, Respondent

12. Title Guaranty Escrow Services Inc. (TGE), a Hawaii corporation, Respondent

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OPINIONS BELOW

The Memorandum of the United States Court of Appeals for the Ninth Circuit affirming is at 707 Fed. Appx. 906 (9th Cir. 2017). The unpublished dismissal Order of the United States District Court of the Hawaii District is at 2016 WL 0433842. The Order of the United States Court of Appeals for the Ninth Circuit denying the petition for rehearing and rehearing en banc is Appendix 12.

JURISDICITION

This Court has jurisdiction to review the Memorandum of the United States Court of Appeals for the Ninth Circuit decided on December 21, 2017 with a petition for rehearing and rehearing en banc denied on May 1, 2018, by writ of certiorari under 28 U.S.C. §1254(1).

INTRODUCTION

This petition is about even in the land of Paradise, the arm of the republic, with the document called the Constitution of the United States of America, and Congress' enacted Civil Rights Act, and embodied in the U.S. Code must still stretch across the ocean to protect the less-able bodied among us—the handicap.

STATEMENT OF THE CASE

A. 2001 MAIN FEDRAL ACTION

Petitioner Pro Se Pro Se Patsy N. Sakuma (Petitioner Pro Se) is also an attorney licensed in the state of California and not in Hawaii where the actions were filed. App. 36. (¶6[1], 50 FAVC).

In 1998, Petitioner Pro Se obtained a Mortgage secured by a Note with Respondent First Hawaiian Bank (FHB) to buy a second home for her parents and siblings to live at the new Tropics At Waikele, condominium development in Waipahu, Hawaii (Tropics Home). App. 30. (¶29 FAVC).

In 2001, Petitioner Pro Se sued (Federal Main Action) Respondent Association Of Apartment Owners Of The Tropics At Waikele (AOAO), its attorneys Respondent Milton M. Motooka (Motooka), his law firm Respondent Love Yamamoto & Motooka (LYM), collectively (Motooka One), and its property management company Hawaiiana Property Management Company in the district court for not continuing to provide like the prior board's reasonable handicap-

[1] First-Amended Complaint (FAV) in the present action, 16-CV-00274 DKW:KJM *Sakuma v. AOAO The Tropics At Waikele, et. al.*

parking accommodation to her and her tenant family for her tenant and wheel-chair bound elderly mother under her associational handicap rights pursuant to the Fair Housing Act of 1968, as amended (FHA), 42 U.S.C. §3604(f) (3)(B), App. 40-41. (¶¶58, 62 FAVC).

In 2001, Respondent Motooka and Motooka One's associate attorney Randall K. Sing (Sing) recorded a lien (2001 Defective Lien) to collect Petitioner Pro Se's withheld fees. App. 39-40. (¶¶46, 57 FAVC).

In 2002, Petitioner Pro Se joined the developer Schuler Homes, LLC (Schuler Homes), who was succeeded by D.R. Horton Schuler, Homes, LLC (D.R. Horton) for failure to construct her newly constructed Tropics Home with a direct and unobstructed accessible route to the front door and because the steps in the garage were too high for her mother to enter from the garage, even with the installed handicap rails by Schuler Homes, under Title II of the Americans With Disabilities Act of 1990, as amended (ADA), 42 U.S.C. §12131 et seq. and the handicap accessibility guidelines for new construction formerly at 24 CFR §100.204(a) and now at 36 CFR §1191. App. 43-44,51,53-54. (¶¶57, 98,99,112,115 FAVC). Attached to her complaints were a copy of the correct legal description of her Tropics Home as Exhibits "A-1 to A-1,"and the Defective 2001 Lien, *infra*, as Exhibits "X-1 to X-7, " missing twenty-five exceptions to title in her home. *Id.* D.R. Horton's inaccessible handicap-design of Petitioner Pro Se's Tropics Home and the cul de sac under Title II of the ADA's handicap accessibility guidelines were the reasons why she needed the reasonable handicap parking accommodation. App at 39-40. ((¶¶ 57, 59).

In 2002, the Federal Main Action was dismissed by an enforced Stipulation of Dismissal with the clerk of the court signing in lieu of Petitioner Pro Se pursuant to District Judge Eza order. App. 40. (¶58 FAVC).

The reason Petitioner Pro Se did not sign the Stipulation of Dismissal was that on August 29, 2002, Petitioner Pro Se had sent a letter to the Magistrate Judge Barry M. Kurren to follow up on her timely August 23rd request for another hearing after opposing counsel Kevin P.H. Sumida (Sumida) for the AOAO unilaterally added an indirect, civil contempt provision and missing agreed upon terms in his draft of the Findings and Recommended Order. App. 37-39, 111. (¶¶52, 57-59, 5). Both the Honorable Magistrate Judge Barry M. Kurren and Honorable District Judge David Alan Ezra adopted Sumida's draft verbatim. App.25-26,40 (¶¶5, 52, 58 FAVC). In 2002, Petitioner Pro Se filed a reconsideration motion.

In 2003, Petitioner Pro Se did not know that the District Court had entered its order (Doc. 68 in 01-CV-00556) denying her 2002 Reconsideration by retroactively applying First Amended Local Rule **(LR) 74.2 (2002)** promulgated under the emergency rules of 28 U.S.C. §§2071 & (b) &(d) to find her 2002 Motion was untimely. [2]Resp.CA, PMKC, Dkt. 36, Vol.3 at 419. This was done to close the loophole she found under Original LR.60.1(c) not being incorporated into Original LR7.2 so the merger doctrine of interlocutory orders to gave her more time to object under *Hook v. Arizona Dept. of Corrections,* 107 F.3d 1397 (9th Cir. 1977). App. 40-

[2] Resp.CA, PMKC, Dkt. 34, Vol. at 419, refers to the Respondent's Court of Appeals for the Ninth Circuit record on appeal. PMKC refers to Respondent Porter McGuire Kiakona and Chow, LLP

41. (¶58, 61 FAVC). Pet.CA, Dkt. 39, Vol. 1 at 031-035. The Second Amended LR.60.1 and 74.2 became effective June 2, 2003 pursuant to the district court's general order. *Id.* at 036-042.

Any notice of the emergency rule amendments did not put Petitioner Pro Se on notice that Original LR. 60.1 's and Original LR.74.2 ten calendar-day objection deadline had been amended effective December 1, 2002, under *U.S. v. Terry,* 44 F. 3d 110, 113 (9th Cir. 1993).

The 2001 Main Federal Action generated seven appeals and petitions for rehearing and rehearing en banc, Ninth Circuit Appeal Nos. 03-15522 in 81 Fed. Appx. 931 (9th Cir. 2003),US App. LEXIS 23910; App. No. 03-15480(in the Removed Action, 02-CV-00147 HG:LEK); Consolidated App. Nos. 05-1690 with No. 06-16161, 210 Fed. Appx. 748 (9th Cir. 2006)(subjecting her to successfully refute the eleven *Willy v. Coastal Corp.,* 503 U.S. 131, 137-39 (1992) non-reversible Rule 11 sanctions even if the court is later found not to be with jurisdiction); three consolidated 2007 appeals, App. Nos. 07-16396, 07-17189, and 07-17298, 311 Fed. Appx. (9th Cir. 2009). Petitioner Pro Se timely filed a rehearing and rehearing en banc for the three consolidated 2007 appeals, but it was construed as a motion for extension to file a second petition. This required her to send another 50 copies of her petitions and she later learned in 2009 they were filed late. App. 41. (¶61 FAVC).

Petitioner Pro Se asks this Court to take judicial notice of the docket and filings therein as public records and/or as Internet public documents through the Court's pacer.gov website. *Papasan v. Allainz,* 478 U.S. 265, 268 n.2 (1986) (in

reviewing a motion to dismiss the court may take judicial notice of items of public record; F.R.Evid. 902(b)(7)(self-authenticating data complilation of public records).

B. 2002 Removed Action Of AOAO's 2001 State Action

In 2001, Respondent AOAO's attorneys, Respondent Motooka and Randall K. Sing (Sing) of Motooka One, sued Petitioner Pro Se in the state district court to collect her withheld monthly fees (2001State Action) in state district court for Respondent AOAO, using the false name of Tropics as plaintiff (AOAO without "the" in it, which was not a misnomer, *see infra*, 1999-200 recorded liens, Pet.CA. Dkt. 40, Vol. 2 at 02-09; 10-32). She withheld the fees because of the breaches she alleged in her 2001 Main Federal Action. App. 17, 18, 30. (¶5, 6, 28 FAVC). Petitioner Pro Se removed the 2001 State Action to the district court and it was renumbered (Removed Action). *Id.* The Removed Action was part of the enforced global settlement with the 2001 Main Federal Action. App. 39. (¶57 FAVC) It was dismissed by an enforced Stipulation of Dismissal pursuant to District Judge Helen Gilmor's 2002 order with the clerk signing for her. App. 40. (¶59 FAVC).

C. Tropics' 2005 State Assumpsit Action

In 2005, Respondent Motooka and Respondent Motooka Two's associate Sing brought an assumpsit action disguising AOAO as the plaintiff Tropics (AOAO without "the" in its name) in the state district court against Petitioner Pro Se (2005 State Action) to collect her withheld HOA fees again. App. 41-42, 70. (¶63,123 FAVC). This time she withheld them due to Respondent AOAO breaching the global settlement and failing to pay her $500.00 fees and costs to

regain entry for the City and County of Honolulu para-transit HandiVan from entering the private cul de sac when her neighbors complained because Respondent AOAO's failure to notify Tropics members and residents of the one-hour handicap parking accommodation. App. 56. (¶99 FAVC). Petitioner Pro Se alleged she did not receive service of the 2005 Assumpsit Action like she did the 2001 Assumpsit Action. App. 42. (¶63 FAVC). On March 1, 2007, a $4,999.00 judgment was entered against her. Resp.CA Docket 36, Vol.2 at 321.

D. Current 2007 State Foreclosure Action

In 2005, Respondent Motooka and his new law firm of Respondent Motooka Yamamoto & Revere, LLP (MYR) (collectively, Respondent Motooka Two) recorded a lien (2005 Defective Lien) and lis pendens using the false name of Tropics allegedly against Petitioner Pro Se's Tropics Home, and attaching the same defective Exhibit A legal description that was missing 26 exceptions to title like in 2001 Defective Lien (Defective 2005 Lien). App. 41, 70. (¶62,123 FAVC). The purpose was to create a false chain of title in the official state records to deflect that Respondent FHB's borrower was in default of the Amended Negative Pledge Agreement for a $136.7 (sic) million dollar syndicated loan's representation clause to be incompliance with all laws. (CC&R). App. 20-21, 41, 65-66, 70-71. (¶¶62, 11, 13, 116,123, 128 FAVC).

In 2007, Respondents Motooka and Sing for Respondent AOCH, sued Petitioner Pro Se for judicial foreclosure, naming Respondent AOCH, not AOAO nor Tropics as plaintiff and Respondent FHB as defendant mortgagee in the state First

Circuit, and attaching the same Defective Exhibit A legal description 2005 Defective Lien of Tropics, not AOCH, and Defective Lis Pendens. App. 40-41. (¶62-63 FAVC).. Petitioner Pro Se had withheld her HOA fees due to AOAO's breach of the global settlement and non-payment of to her of her fee and costs in the HandiVan incident to regain entry into the private cul de sac. App. 56. . (¶99 FAVC).

Petitioner Pro Se was served by publication in a Hawaii newspaper. App. 18. (¶6 FAVC) & [3]Pet. CA, Dkt. 4-, Vol. 1 at 59-60 & Vol. 2 at 081. Respondents Motooka and Motooka Two could have served her at Respondent AOAO's 2007 Motion For Order To Show Cause Hearing Why she should not be held in contempt of court for not paying its sanctions award. App. 56. (¶99 FAVC).

In 2008, the State First Circuit entered its Order Granting The Interlocutory Decree of Foreclosure that was certified "final" under HRCP 54(b) (2008 Decree of Foreclosure).. App 43, 80-81. (¶¶68,141,142 FAVC). Petitioner Pro Se did not know the decree would be certified as final judgment and she did not appeal the 2008 Decree of Foreclosure. *Id.*

In 2008, after Respondent AOCH had obtained the 2008 Decree of Foreclosure, it then served Petitioner its Motion for Approval Of Sale By Commissioner (Motion for Approval). App. 83. (¶146 FAVC). Petitioner Pro Se's 2008 Amended Opposition was the first substantive filing she made in the 2007 State Foreclosure Action. Resp. PMK, Dkt. 39, Vol. 3 at 453. In her opposition she raised that Respondent AOCH and its attorneys' Respondent Motooka and Motooka

[3] Pet. CA, Dkt. 4-, Vol. 1 at 59-60 & Vol. 2 at 081: Pet. CA Dkt.# refers to Petitioner's Court of Appeals'Dkt. # docket number and volume of that excerpt of record

Two's fraud on the court and unclean hands to prevent her right to remove under 28 U.S. C. 28 U.S.C. 1441 and 1446 like she did in 2001's Removed Action, a copy of which she attached. *Id.* She contended therein that her right to remove was derived from: 1) the 1986 recorded Amfac Certificate's providing affordable home purchase financing programs for low and moderate income Hawaii residents under the FHA §243 and Hula Mae loan programs in exchange for the Hawaii Land Commission's reclassification of the 557.21 acres agricultural district to an urban district (¶¶111, 115, 138, 163 FAVC) and 2) the recorded 1997 Amended Negative Pledge Agreement between Schuler Homes as borrower, and Respondent FHB as agent and co-lender with six other banks in a $137.6 Million Dollar securitized loan to be sold on Wall Street and alleged tax credits to developer. Copies of both title exceptions, in pertinent part were also attached to her opposition to the motion for approval. App. 53-54, 56-57, 62, 65, 88-89, 90-91 96. (¶¶95,98,99,111,115,138,162 & 168 FAVC). She also asserted all three exceptions to the Anti-Injunction Act, 28 U.S. C. 28 U.S.C. §2283 applied *Id.* The State First Circuit entered an Order (Dkt. 28 in 1cc:07-1487) Granting Respondent AOCH's Motion for Approval, and Respondent Commissioner was appointed was the foreclosure commissioner. Resp. CA, PMKC, Dkt. 36, Vol. 3 at 436.

In 2012, the Order of Confirmation of Sale, Judgment, Judgment for Possession, and a Writ of Possession, (collectively Order of Confirmation) were entered. Petitioner timely filed a post-judgment HRCP 59(e) motion from the entry of the Order of Confirmation. Later in 2012, the Respondent Commissioner's

Distribution Statement was also filed and thereby all of the Respondents, were paid either by check or wire, including an unknown attorney who did not submit a request for fees with the state First Circuit for approval and notice to Petitioner Pro Se. App. 108. (¶198 FAVC).

In 2013, the Hawaii Supreme Court reversed the ICA's 2013 Order Of Dismissal 2013 WL (150275 in its published decision of *Sakuma v. Association of Condominium Homeowners Of Tropics At Waikele,* 131 Hawaii 254, 318 P.3d 94 (2013), cited different authority but agreed with Petitioner Pro Se that the time to appeal runs from an entry of a final judgment by the clerk of the court, even if a post-judgment motion is deemed denied after ninety-days under Haw.R. App.P. (HRAP) 4(a)(3). The Hawaii Supreme Court reversed the ICA's dismissal of appeal in 2012 WL 3154498. Pet.CA, App.48-53. Justice Nakayama filed a separate dissenting opinion.

The current status of the 2007 State Foreclosure Action is that Petitioner Pro Se's Appeal in CAAP No. 16-0000627 of the state appellate court to reverse the First Circuit's 2016 Order Denying Petitioner Pro Se's Motion To Vacate is still pending as of July 23, 2018.

E. 2008 Federal Action

In 2008, Petitioner Pro Se, brought another federal action in lieu of reopening the 2002 Removed Action in the 2007 State Foreclosure (2008 Federal Action). U.S.D.C. Haw. Civ. No. 08-00502 HG:KSC (2008 Federal Action) against

142,148 FAVC). The primary reason was Respondent AOCH and its attorneys Respondent Motooka and Motooka One's fraud in obtaining the Order for Service By Publication of Service in the disputed Certified Mail of the Summons and Complaint to Petitioner Pro Se was to bar her from removing the 2007 Foreclosure Action to federal district court. App. 6. (¶6 FAVC).

In 2009, Petitioner Pro Se filed a TRO, Preliminary Injunction, and Summary Judgment Motion, and had attached the defective 2005 Exhibit A legal description. App.83. (¶148 FAVC) The District Court entered an order dismissing the appeal for lack of jurisdiction based on mootness since the second sale had already occurred. Petitioner Pro Se appealed in no. 09-17448. App. 73. (¶128 FAVC) The Ninth Circuit consolidated both 2009 appeals and affirmed. Resp.CA, PMKC Dkt. 36, Vol. 3 at 410. In 2011, the Ninth Circuit denied her petition for rehearing and rehearing en banc and construed it as a motion for reconsideration en banc. *Id.*

F. Current 2016 Federal Action

In 2016, Petitioner Pro Se sued ten defendants, Respondent AOAO, Respondent AOCH, Respondent Motooka, Respondent LYM, later known as MYR, Respondent PMKC, Respondent FHB and WI, Respondent Commissioner, Respondent TGH, Respondent TGE, for civil RICO, and state pendent claims, including Unfair Deceptive Acts and Practices (UDAP), wrongful foreclosure, unjust enrichment, and abuse of process in the district court for their harassment, unfair, deceptive, and fraudulent acts in the wrongful foreclosure of her Tropics Home, and fraud in the settlement of the Main Federal Action, Removed Action, dismissal of

the 2008 Federal Action. The 2016 Federal Action was a protective action because the statute of limitations would be running shortly. App. at 15-16, 11, 23.

With respect, the Hawaii ICA and Supreme Court was not ruling on her fraud or void judgment claims. One month later, before any summons were served, Petitioner Pro Se filed her First Amended Verified Complaint also as an independent action in lieu of a motion to reopen for fraud on the court the 2002 Removed Action, 2008 Federal Action, and to enjoin and declare void the 2007 State Foreclosure Action. App. 14.

The FAVC separately listed federal causes of action for Civil Racketeering Influenced Corrupt Organization ("RICO"), 18 USC §1964-(c), and Conspiracy to commit civil RICO, 18 USC 1964(d). App. at 76-123, 123, respectively. App. at 15.

In her FAVC, Petitioner Pro Se also expressly stated she was asserting her rights under the Fair Housing Act of 1960, as amended, 42 U.S.C. §3601 et seq., Title II :of the Americans With Disabilities Act, 42 U.S.C. §12131 et seq. and the handicap accessibility regulations thereunder for new construction formerly at 24 C.F.R. 100.204(a), now at 36 CFR §1191, Appendices B &D (2009). App. 15, 87. Petitioner Pro Se also did assert in the FAVC facts evidencing criminal handicap retaliation and sanctions under 42 U.S.C. §3631, and Title 18. App. 15.

The FAVC asserted federal jurisdiction under the federal question jurisdictional statute, 28 U.S.C. §1231, the court's inherent authority under Article III to vacate a settlement agreement for extrinsic fraud, removal jurisdiction under

28 1441, 1446, supplemental jurisdiction over the state claims under 28 U.S.C. 1367, and jurisdiction in aid of its jurisdiction. App. at 15-16.

Only Respondent AOAO answered. Pet.CA, Docket 40, Vol. 1 at 093-101. Respondent AOAO asserted 16 affirmative defenses. *Id.* at 98-101. Respondent AOCH was served the Summons and Complaint (Docs.15 & 63 in 16-CV-00274). However, no attorney or representative of Respondent AOCH has made an appearance in this action on behalf of Respondent AOCH. (Dockets 1-40 in 9th Cir. Appeal No. 16-16791). Respondent AOAO, however, in response to Petitioner Pro Se's allegations of fraudulent names, averred in ¶6 of its Answer with respect ¶26 of the FAVC that Respondent Defendant-Appellee is known as the AOAO and the documents speak for themselves. Pet. CA, Dkt. 39, Vol. 1 at 095.

Petitioner Pro Se at the motion to dismiss stage, however, needed only to plead not prove plausible federal claims under RICO and her unlawful harassment of her associational handicap discrimination claims. *Swierkiewicz v. Sorema,* N.A., 534 U.S. 506, 512 (2002) and *Johnson v. City of Shelby*, 134 S.Ct. 346, 347 (2014) citing *Sorem; see, also, Iqbal,* 556 U.S. at 678. Respondent AOAO's motion to dismiss was asserted in its answer, and it did not set forth specific arguments why the FAVC should be dismissed for failure to state a claim. *Id. at 98-101.*

Respondent Commissioner's argued in his motion to dismiss under FRCP Rule 12(b)(1) that the FAVC is barred under the *Rooker-Feldman* Doctrine because the state 2008 Interlocutory Decree of Foreclosure is a final judgment under its HRCP Rule 54(b) certification so that the district court lacks appellate jurisdiction.

Resp. CA, PMKC, Dkt. 36 Vol. 3 at 493. The Commissioner next contended that even interlocutory orders are subject to *Rooker-Feldman. Id. at 676-677.* Therefore, the district court lacks subject-matter jurisdiction over the FAVC. *Id.* Lastly, he contended even if the district court has subject-matter jurisdiction, he is immune from suit under his derivative Eleventh Amendment quasi-judicial immunity. *Id.* The rest of the Respondents joined the Commissioner's motion to dismiss.

Collectively, Respondents' claimed under FRCP Rule 12(b)(6), the FAVC claims fail to plead a claim for relief under both the general pleading standard of FRCP 8(a)(2), and the heightened pleading of Rule 9 in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), that the district court's 2007 Order Designating Petitioner Pro Se as a vexatious litigant causing harassment, frivolous filings and unnecessary costs to defendants in the Main Federal Action should bar her right to claim her FAVC allegations.

Only Respondent Motooka Two gave some specific FAVC allegations that the FAVC allegations were conclusory in their motion to dismiss. However, Respondent Motooka Two did not file a separate responsive brief on appeal, they only joined Respondent PMKC's responsive brief. Dkt. 28 in 9cc-16-16791. Neither Respondents nor Petitioner Pro Se included Respondent Motooka Two's Motion to Dismiss into the excerpts of record. Therefore, they have been abandoned. Even if Respondents Motooka and Motooka Two's contentions are not abandoned, on appeal Petitioner Pro Se supplemented the excerpts of record on appeal with certified public liens and lis pendens recorded by Respondent Motooka and Motooka One and

two mail or wire transactions to survive a motion to dismiss for civil RICO under *Sedima, SPRL v. Imrex Co., Inc.*, 473 U.S. 419, 498 n. 12 (1985).

All of the Respondents claimed under FRCP Rule 12(b)(6) that Petitioner Pro Se did not allege a plausible RICO claim on the merits or any claim as to a right to relief against each respondent or that res judicata applied, but did not separately assert what allegation in the FAVC applied to each respondent, other Respondents Motooka and Motooka Two. Respondents' attorneys at firm PMKC, WI and Motooka One and Two argued they had absolute litigation privilege under Hawaii law. Respondent FHB and WI contended the FAVC is moot because the sale of Petitioner Pro Se's property already occurred. The Respondents argued that the district court should issue an order for a more definite statement and RICO Discovery Statement.

In opposition, Petitioner Pro Se contended her 2016 Federal Action met all three exceptions to the Anti-Injunction Act, 28 U.S.C. §2283 in that Congress expressly allowed injunctions under the FHA, in aid of the federal court's jurisdiction, and to protect is judgments, and that the public-interest exception to mootness applied. As to their allegation of being a vexatious litigant, with respect, Petitioner Pro Se alleged the order was a pretext to stop her from proceeding on her subpoena duces tecum filed as an Errata because the District Court had directed the Clerk of the Court to return her motion to enforce the subpoenas to obtain opposing counsel's copy of the allegedly tampered August 29, 2002 letter, and for exposing the loophole in Original LR.74.2 and 60.1. App. 38. (¶52 FAVC). Lastly,

she contended she should be allowed to amend the FAVC as just needed dates for respondents' court filings.

She also filed an application for default against Respondent AOCH, which was not ruled on. Pet.CA. Dkt. 40, Vol.1 at 162-176.

At the 2016 hearing on Respondents' Motion to Dismiss, the District Court ruled it was dismissing the action with prejudice. With respect, the Honorable Derrick K. Watson stated that "they can call themselves the Chair, ... the "State," they can call themselves the "Building." It does not matter....you can call yourself anything, the wall, the chair ..." (10/28/16 Tr. 7:21-25; 8:1; 8:2-3). Resp.CA, PMKC, Dkt 36, Vol. 1 at 07-08.

The district court in *Sakuma v. AOAO The Tropics At Waikele,* Civ. No. 16-00274 DKW:KJM 2016 WL 0433842, *1 & n.1 (D. Hawaii 2016) (2018 Dismissal Order) granted Respondent's dismissals with prejudice. With respect, District Judge Darryl K. Watson correctly pointed out, as did she in her FAVC, that from on or about September 16, 2005 to October 8, 2013, her bar license was suspended because she was unable to pay her state bar dues. App. 36-38. (¶¶50-52).

With respect, Petitioner Pro Se incurred additional costs to attempt to reverse the unfair 2003 Order Denying 2002 Reconsideration's retroactive application of 1st Amended LR.74.2, then to exonerate herself after Chief District Judge Ezra complained about her filings and had the clerk submit his 2002-2007 orders to (Doc. 181 in 01-CV-00556) the State Bar of California's Disciplinary Officer, in State Bar File No. 07-1440. Resp.CA, PMKC, Docket 36, Vol. 3 at 449.

Coincidentally while she was appealing in 2004, she incurred unexpected costs *after a firefighter from the Westwood Village fire station mistakenly chopped and destroyed her one-of-a-kind patented Bundy Locksmith Medico lock.* to her front door. She then incurred unexpected expenses from four successive water leaks and toxic mold to her Los Angeles condominium home and having to sue the upstairs owner for her tenants' negligence and her Los Angeles condominium homeowner association for concealing. App. 37-38. (¶¶51-52, FAVC). App. 37-38. *To be added if granted leave to amend, but Petitioner Pro Se has already reported this in her previous filings with the district court, Ninth Circuit and state courts. Furthermore, it was unfair to sanction Petitioner Pro Se for taking one side of an intra-circuit split even if they considered her arguments late. The reason is the circuits were still divided when she argued whether it is permissible to summarily enforce a settlement agreement under *Doi v. Halekulani Corp.*, 276 F. 2d 1131, 1136 (9th Cir. 2002) or impermissible indirect, civil contempt requiring another hearing under *Metronet Services v. U.S. West Communications*, 329 F.3d 986, 1012, 1014 (9th Cir. 2003) citing *In re Cities Equities Anaheim, Ltd.*, 22 F.2d 954, 957 (9th Cir. 1996) and MetroNet citing *Wilson v. Wilson*, 46 F. 3d. 660, 664 (7th Cir. 1995), which cited this Court's decision *Pierce v. Underwood*, 487 U.S. 552, 554-56, 558 n.1 (1988). App. 36. (¶50 FAVC).

In *Sakuma v. AOAO The Tropics At Waikele,* U.S.D.C. Haw. No. 1:16-cv-00274 DKW:KJM 2016, WL 0433842, the District Court concluded that that Petitioner Pro Se's FAVC was an impermissible collateral attack on the 2008

Interlocutory Decree of Foreclosure, and that she did not establish subject-matter jurisdiction because the 2008 Interlocutory Decree of Foreclosure that was certified as a Haw. R. Civ. P. 54(b) final order and under the Hawaii Supreme Court decision *Beneficial Hawaii, Inc. v. Casey*, 98 Hawaii 159, 165 (2003), since Petitioner Pro Se did not appeal it. *Id.**6. App. 6. The District Court concluded her FAVC claims do not meet the *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1141 (9th Cir. 2004) independent claim-exception under the *Rooker-Feldman* doctrine. *Id.* App.6 Further, her FAVC claims for e.g., RICO, UDAP, abuse of process are inextricably intertwined with the state final judgment of the 2008 Interlocutory decree. *Id.* App. 6. The reason was any ruling in her favor would require the reversal of the 2008 Interlocutory Decree of Foreclosure. App.7. The district court concluded that res judicata barred revisiting any fraud in the 2001, 2002, and 2008 federal actions. App. 7. The District Court stated Petitioner Pro Se's claim that her FAVC merely seeks to contradict the state judgment was nonsensical. *Id.*, App. 7. The district court dismissed with prejudice FAVC App. 8.

With respect, the district court should not have gone on to rule on the merits. *See, Exxon-Mobil v. Saudi Basic Industries*, 544 U.S. 280, 292 (2005) citing *Rooker v. Fidelity Trust*, 263 U.S. 413 (1923), once a court determines the *Rooker-Feldman* doctrine applies, it must dismiss the action and not rule on the merits. *Id.* On the merits, the district court determined that Petitioner Pro Se's RICO claim did not state a plausible RICO claim, and that her single foreclosure action cannot constitute a "pattern" under RICO. App. 8. It then dismissed the action with

prejudice as to Respondent Commissioner based on his qualified judicial immunity. *App.8*, n.5.

G. 2017 Ninth Circuit Appeal

With respect, in response to Respondents PMKC and Commissioner's responsive briefs (Resp. CA, PMCK Dkt. 31, Commissioner Dkt -32), asserting that Petitioner had not asserted a plausible claim for relief under civil RICO, Petitioner Pro Se unearthed Hawaii Revised Statute (HRS) §667-51's legislative history that the legislature specifically excluded HRCP Rule 60(b) fraud on the court and (b)(4) void judgments from the *Casey bar,* 98 Haw. at 164 (holding that a litigant who does not appeal the Rule 54(b) certified final Interlocutory Decree of Foreclosure forfeits the appellate review to determine the right to foreclose. App. 118-119. On Appeal, by the clerk of the court order (Dkt. 38) three volumes of the supplemental record were filed as Docket 40 pursuant to *In re American Continental Corp/Lincoln Sav, & Loan Securities Litig.*, 102 F.3d 1524, 1537 (9th Cir. 1996). The supplemental record primarily consisted of recorded and certified public documents or uncontested filings by Respondents in the related state and federal actions to show a pattern from 1999 to 2007, and set out two mail or wire fraud under acts for each respondent to meet the pleading requirement to survive a motion to dismiss a civil RICO action under 18 USC 1961(5), 1964(c). Pet. CA, Dkt. 40 at 6-8; 39-1, 6-8. Petitioner Pro Se adds this Court's decision *Sedima ,SPRL v. Imrex Co.,* Inc., 473 419, 498 n. 12 (1985) for further support.

On appeal, the United States Court of Appeals for the Ninth Circuit in *Sakuma v. Association of Apartment Owners Of The Tropics At Waikele et. al*, 707 Fed. Appx. 906 (9th Cir. 2017) affirmed stating:

"We review de novo a dismissal under the *Rooker-Feldman* doctrine. *Noel v. Hall*, 341 F.3d 1148, 1154 (9th Cir. 2003). We may affirm on any basis supported by the record. *Thompson v. Paul*, 547 F.3d 1055,58-59 (9th Cir. 2008), and we affirm.

Dismissal of Sakuma's action was proper because Sakuma failed to allege facts sufficient to state a plausible RICO claim. *See Hebbe v. Pliler*, 627 F.ed 338, 341-42 (9th Cir. 2010)(although pro se pleadings are construed liberally, a plaintiff must present factual allegations sufficient to state a plausible claim for relief); *Living Designs, Inc. v. E.I. Dupont de Nemours & Co.*, 431 F.3d 353, 361 (9th Cir. 2005) (elements of a civil RICO claim).

We do not consider matters specifically and distinctly raised and argued in the opening brief. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

Sakuma's motion to file supplemental excerpts of record (Docket Entry No. 40) is granted and the docket reflects that the supplemental excerpts of record have been filed. All other pending requests and motions are denied. AFFIRMED."

REASONS FOR GRANTING THE PETITION

I. As to the first question presented implicates, this Court should hear this petition to resolve a very important question as to the whether the United States Court of Appeals for the Ninth Circuit properly applied its new waiver on appeal exception to bypass the *Rooker-Feldman* jurisdictional question for the merits because a different outcome results, and thus it further divides the circuit

courts on whether they may apply hypothetical jurisdiction to bypass the Rooker-Feldman statutory question for any easier answered merits or non-merit preclusion question based only on the factors discussed in this Court's plurality decision *Steel Co. v. Citizens For A Better Environment,* 523 U.S. 83, 97-98, n.2 (1998).

II. The second question presented is exceptionally important requiring this Court to resolve the conflict between the United States Court of Appeals for the Seventh Circuit in *Simpson v. Brown,* 860 F.3d 1001, 1005-06 (7th Cir. 2017), in sua sponte raising the §1983 Monnell municipal liability claim in an attorney-drafted complaint and reversing the district court dismissal of the complaint with prejudice with the United States Court of Appeals for the Ninth Circuit in its memorandum opinion *Sakuma v. AOAO Tropics At Waikele,* 707 Fed. Appx. 906 (9th Cir. 2017), affirming the district court's dismissal of the action with prejudice at the pleading stage and not sua sponte raising Petitioner Pro Se's factual established claim under 42 U.S.C. §1985(2) for the obstruction of justice in the state proceeding because she is also an attorney. Congress has passed the torch when it promulgated the special jurisdictional statute 28 U.S.C. §1343 for actions under 42 U.S.C. §§1983, 1985, and 1986. This Court should grant the petition to resolve this very important question to ensure uniformity of among its circuit decisions.

A. Steel Co.'s Holding On Its Narrowest Ground Is That Only Article III Subject- Matter Jurisdiction Must Go First

When a fragmented court decides a case like in *Steel Co. v. Citizens For A Better Environment,* 533 U.S. 83, 93-97 (1998) where no single rational explaining the result enjoys the assent of five judges, the holding of the court may be viewed as

that position taken by those members who concurred in the judgment, on the narrowest ground. *Mark v. United States,* 430 U.S. 188, 193 (1997) quoting *Gregg v. Georgia,* 428 U.S. 153, 169 n. 15 (1976).

Steel Co. concerned whether a federal statute that imposed reporting requirements for toxic chemicals created liability for past reporting failures that had just been remedied before the filing the lawsuit. 523 U.S. at 86. A citizens group sued Steel Company under the statute's citizen-suit provision requesting *Steel Co.* pay civil sanctions to the government for past reporting failures. The case involved two questions: 1) whether the statute authorized suits for purely historical violations (the merit) and 2) whether the citizens group had Article III standing to challenge the historical violations at issue. *Id.* at 88-89. The plurality decision of the Court held for *Steel Co.* on both questions.

B. Only Three Justices Assented To Part III Of *Steel Co.* That Discusses The Use Of Hypothetical Jurisdiction So It May Be Viewed As Not Part Of The Holding

Justice Scalia's plurality opinion's discussion of hypothetical jurisdiction appears in Part III and was joined by four other justices. *Steel Co.* acknowledged that a federal court may apply hypothetical jurisdiction to reach a merits question before deciding a statutory standing question because the merits inquiry and the statutory inquiry often overlap and it would be artificial to draw a distinction between the two. Justice Scalia distinguished this Court's two past cases where hypothetical jurisdiction was applied due to their unique procedure posture of those cases: *Secretary of the Navy v. Avrech,* 418 U.S. 676, 677 (1974)(per curiam) order

(bypass if no difference in outcome) and *Norton v. Mathews,* 427 U.S. 524, 530 (1976) (merits preordained by companion case's resolution) *Id.* at 96-97 & n. 2.

Two members of five-member majority, Justice O'Connor wrote a separate concurrence that was joined by Justice Kennedy. Justice O'Connor stated that although courts should be certain of their jurisdiction before reaching the merits of a case, the court's referenced two cases of this Court where they agreed it may be proper to apply hypothetical jurisdiction, but the list of cases in the opinion "should not be read as cataloging an exhaustive list of cases under which federal courts may exercise jurisdiction in resigning difficult questions of jurisdiction when the case alternatively could be resolved on the merits in favor of the same party asserting a lack of jurisdiction, J. O'Connor quoting *Norton v. Matthews,* 427 U.S. 524, 532 (1976). *Id.* at 111.

Justice Breyer concurring in part and concurring in the judgment, but did not join Part III of the court's opinion also remarked separately that federal courts often and generally decide jurisdictional issues first, but not always. If there is a difficult jurisdictional question but easy answer on the substantive merits or if the same party wins as the prevailing party were if jurisdiction is denied it may be applied. *Id.* at 111-112.

Although the parties did not raise the issue of hypothetical jurisdiction, Justice Stevens' concurrence argued that the Court should bypass the Article III issue for the statutory jurisdictional question of the citizen-group's standing to sue. Justice Stevens was joined by Justice Souter agreeing with Parts I, III, and IV and

Justice Ginsburg only to Part III. Justice Stevens disagreed with the three justices that absolutely rejected the use of hypothetical jurisdiction and particularly with statutory issues. *Id.* at 121-131. Justice Stevens would have applied hypothetical jurisdiction because in *Steel Co.* the issue was between statutory jurisdictional standing and constitutional standing, and for constitutional avoidance grounds, the statutory jurisdictional issue should be decided first. *Id* at113.

Accordingly, *Steel Co.'s* narrowest ground is, except for a few exceptions, that federal courts generally must address Article III subject-matter jurisdiction before reaching the merits or a non-jurisdictional question such as preclusion. *Id.* at 93-97.

The *Rooker-Feldman* doctrine is not a constitutional doctrine. Rather it is a statutory jurisdictional doctrine that limits Article III subject-matter jurisdiction. The doctrine arises out of a pair of negative inferences drawn from two statutes: 28 USC §1331 (authorizing the district court original jurisdiction over federal questions and diversity actions) and 28 U.S.C. §1257 authorizing the U.S. Supreme Court of appellate jurisdiction over final state judgments. *Noel v. Hall,* 341 F.3d 1148, 1154-55 (9th Cir. 2003) and *Noel,* cited in *Exxon-Mobil v. Saudi Basis Industries, Inc.,* 544 U.S. 280, 293 (2005). The doctrine bears the names from two decisions: *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923)(stating the general rule) and *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462 (1983)(involving issues under the general rule and one of its exception for "independent claims").

The doctrine is narrow. With the exception of habeas corpus proceedings, the inferior federal courts lack subject-matter jurisdiction over cases brought by state-court losers complaining of injuries caused by state court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments. *Exxon-Mobil v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005).

In *Rooker v. Fidelity Trust*, 263 U.S. 413 (1923) this Court stated the general rule that the lower federal courts lack jurisdiction to hear actions brought by state court losers seeking the federal court review to overturn a state court judgment.

In *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476, 479-482 (1983) this Court applied the general rule when the *Rooker-Feldman* doctrine applies to respondents-applicants' claims seeking relief of the D.C. Court of Appeals' denial of their petition for waiver of the D.C. Court of Appeals' rule in that only applicants with degrees from an accredited law school may apply to the D.C. Bar, the district court lacked subject-matter jurisdiction for their complaints. But this Court applied the "independent claim" exception and concluded the federal district court did have subject-matter jurisdiction over elements of their complaint involving a general attack on the constitutionality of the District of Columbia's bar admission rule. *Id.*

In this Court's next *Rooker-Feldman case, Exxon-Mobil,* this Court applied the "parallel state and federal action" exception to *Rooker-Feldman* gleaned from the fact there was still no "final" state judgment—the state action was still pending

because respondent Saudi Basis Indus. Corp.'s representation of its intent to seek writ of certiorari review with this Court from the adverse state judgment against it. *Exxon,* 544 U.S. at 291-292.

Next in *Lance v. Dennis,* 546 U.S. 459, 464, (2006)(per curiam) order, this Court reiterated that the elements of preclusion, and specifically "privity of parties," do not apply *to Rooker-Feldman,* as it did not apply in *Exxon-Mobile,* 544 U.S. at 292-293. In *Lance,* 546 U.S. at 464, this Court noted two other *Rooker-Feldman* exceptions: the "executive action review," including by state administrative agency, and the "non-party to the earlier action" exception. *Id.* at 464.

C. The Circuit Courts Are Divided Whether They May Apply Hypothetical Jurisdiction To Bypass The More Complex *Rooker-Feldman Question* For An Easier Merit Or Preclusion, A Non-Merit Question

The Eight Circuit in *Edwards v. City of Jonesboro,* 645 F.3d 1014, 1017-1018 (8th Cir. 2011) applied hypothetical jurisdiction to bypass both the *Rooker-Feldman* statutory question and Eleventh Amendment sovereign immunity question (that is generally decided if the district court has subject-matter jurisdiction) for the preclusion question. The Eight Circuit noted the circuit court's division as to whether the court may apply hypothetical jurisdiction to bypass *Rooker-Feldman* generally as follows:

The Third, Sixth, Seventh and Tenth Circuits all have published decisions that the *Rooker-Feldman* question must go first:

- *In re Knapper*, 407 F.3d 573, 580 n.15 (3rd Cir. 2005)(stating without mentioning *Steel Co.* that courts may not bypass *Rooker-Feldman* to reach the merits);
- *Hutchenson v. Laudrdale County*, 326 F. 3d 747 (6th Cir. 2003)(same);
- *Ctrs. Inc. v. Town of Brookfield*, 148 F.3d 699, 703 (7th Cir. 1998) (same);

The Ninth (until now), Tenth and Eleventh Circuits agree that the *Rooker-Feldman* question must go first in unpublished decisions:

- *Alysah v. United States*, 241 Fed. Appx. 668 n. 3 (11th Cir. 2007) (stating that *Steel Co.* prevents federal courts from assuming *Rooker-Feldman* does not apply to reach the merits);
- *Shell v. Meconi,* 123 Fed. Appx. 866, 867-88 (10th Cir. 2005)(same);
- *Nguyen v. Phillips*, 69 Fed. Appx. 358, 359 (9th Cir. 2003) (same);

The First, Seventh, and Eight Circuits in published decisions agree that the courts may bypass *Rooker-Feldman* for the merits or non-jurisdictional preclusion (e.g. res judicata is an affirmative defense subject to waiver, *see,* Fed.R.Civ. P. 8(c):

- *Cawley v. Celeste*, 715 F. 3d 230, 235 (8th Cir. 2013)(citing the published decisions of the 1st and 7th Circuits that bypass of *Rooker-Feldman,* including the 11th Amendment sovereign immunity question is permissible for preclusion, a non-merit question);
- *Toromeo v. Town of Fremont,* 438 F.3d 113 (1st Cir. 2006)(recognizes the exception to *Steel Co.*'s strict order of operational rule if the merit

ruling is foreordained and does not create new precedent, we leave the jurisdictional issue for another day and turn to the merits—here preclusion);

- *Garcia v. Villa of Mount Prospect,* 360 F.3d 630, 634 n.5 (7th Cir. 2004)(the courts may bypass the *Rooker-Feldman* question for the preclusion question);

The Second and Third Circuits agree in unpublished decisions that the courts may bypass *Rooker-Feldman* for the merits or non-merit preclusion question:

- *Laychock v. Wells Fargo Home Mtg.*, 399 Fed. Appx. 716, 718-19 (3rd Cir. 2010)(the courts are permitted to bypass of *Rooker-Feldman* for non-merit preclusion question);
- *Quadrozzi Concrete Corp. v. City of New York,* 149 Fed. Appx. 17 (2nd Cir. 2005)(same);

The Tenth Circuit goes both ways: they also have published decisions that the courts may bypass *Rooker-Feldman*;

- *Abernathy v. Wandes,* 713 F.3d 538, 557 n.17 (10th Cir. 2013); cert denied, 134 S.Ct. 1874 (2014) (citing cases from the 1st, 2nd & 3rd Cir. that bypass of *Rooker-Feldman* in a prisoner habeas corpus case).

The First Circuit and other circuits that apply hypothetical jurisdiction to bypass the often more complex *Rooker-Feldman* statutory jurisdictional question have done so within the explicit reasons stated in *Steel Co.* addressed by Justice Scalia or stated in its three concurring opinions based on: 1) judicial economy, even

on an Eleventh Amendment sovereign immunity question, to reach the easier merit or non-merit preclusion question, 2) where the merit result is foreordained, or 3) when there is no law making effect on the merit resolution, or 4) there is no difference in the outcome—the party who wins is not the not the party asserting jurisdiction. *Steel Co.*, 523 U.S. 96-97, n.2.

D. Waiver On Appeal Of The *Rooker-Feldman* Question Without Comment Should Not Be Added To The List Of Hypothetical Jurisdictional Exceptions Because A Different Result Occurs.

This Court in *Steel Co.* concluded that one of the factors that supports hypothetical jurisdiction is if there is no change in the outcome. *Secretary of Navy v. Avrech*, 418 US 676, 677 (1974) (per curiam). Applying HRS §667-51 to this action, it proves a change in the outcome results because the state 2008 Interlocutory Decree has reverted to back to its interlocutory status since Petitioner Pro Se has filed both a HRCP Rule 60(b) fraud on the court and (b)(4) void judgment motions in the state First Circuit court and they are still pending. *See*, Pet. CA. R.Br. Dkt. 40, App.9-23; 24-44. *See also, Magoon v. Magoon*, 70 Haw. 605, 616 (1989)(the legislature must explicitly state when a statute is limiting the court's inherent powers like to investigate for fraud on the court) cited in *Matsuura v. E.I. Du Pont De Nemours & Co.*, 102 Haw. 149, 155-158 (2003). And *Magoon,* 70 Haw. at 619 citing this Court's decision *Hazel Atlas Glass Co. v. Hartford Empire Co.*, 322 U.S.238 (1944). *Id.*

Under this Court's decision in *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986)(a party does not need not enter any evidence to refute a summary judgment

motion if the other party fails to establish the existence of an essential element on which that party will bear the burden of proof at trial), App. 17. (¶5 FAVC). *See also*, Hawaii Supreme Court decision in *Bank of America, N.A. v. Reyes-Toledo,* 139 Haw. 361, 367-71 (2017)(in order to establish the right to foreclose, standing must be raised at the commencement of the action). *Id.* Thus, Petitioner Pro Se did not need to file any objection to the summary judgment motion since Respondent AOCH failed to establish its right to foreclose from the beginning. App. 5, 73, 78.

Likewise, Respondent FHB's whose mortgage was missing in the Defective Exhibit A legal description attached to the 2005 Lien. Respondent FHB has already had been paid by Third Buyers the balance of Petitioner Pro Se's mortgage. Pet. CA. R.Br. Dkt. 40, App. 038. Under this Courts decision *Ruhrgas AG v. Marathon Oil Co.*, 526 US. 574, 583 (1999) the court has an independent duty at any level of the proceeding to determine whether it properly has subject-matter over the case. In 2012, pursuant to the Commissioner's Quit Claim Apartment Deed title to Petitioner Pro Se's Tropics Home has already been transferred to Third Buyers. Resp. CA, Dkt. 36, Vol. 3 at 285 -295. (Recorded Commissioner's Quitclaim Deed to Third Buyers). App. 224-25. Therefore, under HRS §667-51 the parallel action exception to the *Rooker-Feldman* question results in a different outcome from the Ninth Circuit's Memorandum App. 42-43 (¶66 FAVC).

Respectfully, under HRS §667-51 and this Court's decisions *Voorhees v. Jackson,* 33 U.S. (10 Pet.) 469 (1836), the FAVC is a proper collateral attack of the state foreclosure action for fraud on the court under *SEC v. American General,*

Capital, Inc. 98 F.3d 1133, 1339-42 (9th Cir. 1996), cert. denied 20 U.S. 1185 (1997)(*Voorhees* appear to allow a collateral attack on a judicially void sale, but did not address a direct attack); sub nom *Shelton v. Barnes*, 520 U.S. 1185 (1997); under this Court's decision in *United Student Aid Funds, Inc. v. Espinoza, 559 U.S. 26, 37* (2010) for void judgment under HRCP 60(b)(4); HRS §604-5 (state district court dollar limitation $5,000 at that time), App. and *Stafford v. Dickson*, 46 Haw. 52, 63 (1962)(holding under HRCP 60(b)(4) that a default judgment was void under Hawaii law on the ground the defendant had been denied due process by lack of notice).

E. A Circuit Court Is Bound To Consider A State Statute, And It's Legislative History Without Plea or Proof

Even assuming that waiver on appeal may apply as an exception to *Rooker-Feldman,* under this Court's precedents a circuit court is bound to consider a state statute and therefore, its legislative history, without plea or proof. *Lamar v. Micou*, 114 U.S. 218, 223 (1885) holds that it is well-established that "[t]he law of any state of the union, whether depending on statutes or judicial opinion, is a matter of which the courts of the United States are bound to take judicial notice, without plea or proof." (internal citation omitted); *Bowen v. Johnston*, 306 U.S. 19, 23 (1923)(same); *Kamen v. Kemper*, 500 U.S. 90, 96 n. 5, 99-101 (1991)(same).

Accordingly, based on this Court's decisions above, the Ninth Circuit was bound to consider Petitioner Pro Se's new argument that HRS §667-51's legislative history refutes the district court's conclusion it lacked jurisdiction because the 2008 Interlocutory Decree of Foreclosure was a final state judgment. Petitioner put into the record below that her motion to vacate the final judgments was still pending at

the state circuit court. App. 118-119. Therefore, with respect, the Ninth Circuit erred in applying waiver on appeal to bypass the *Rooker-Feldman* doctrine. All of the above is also in accord with this Court's decisions *Elder v. Holloway*, 510 U.S. 510, 513 (1994) this Court held that a circuit court may not disregard a circuit decisional case discovered on appeal by the circuit court that will assist the circuit court in correctly deciding the appeal. In *Yee v. Escondido*, 503 U.S. 519, 534, 112 S.Ct. 1522, 118 L.Ed. 2d 153 (1992) this Court held that only claims, not arguments are waivable on appeal. The Ninth Circuit's own precedent in *Eberle v. City of Anaheim,* 901 F.2d 814, 818 (9th Cir. 1990) concluded that the court could have considered the issue had appellees raised it in their brief.

III. Because Their Statutory Language Is Incorporated Into Their Special Jurisdictional Section 28 U.S.C. 1343(a)(1) and (a)(3), Respectively, And Take The Position Of The Seventh Circuit That A Circuit Judge Or The Circuit Court Must Sua Sponte Raise A §1985 Claim and §1983 Defense.

In *Simpson v. Brown*, 860 F.3d 1001 (7th Cir. 2017), the plaintiff, who was represented by counsel filed an action for damages stemming from the revocation of his license to install septic tanks in the county without due process rights under the Fourteenth Amendment and 42 U.S.C. §1983. The Seventh Circuit, on de novo view of the complaint on a motion to dismiss, sua sponte raised the *Monell* rule for municipality liability under §1983 based on the factual allegations of appellant's complaint and stating what the Monell argument was as implied by the facts, even if the complaint also did explicitly argue Monell's liability argument. The Seventh Circuit relied on *Monell v. Dept. of Social Services,* 436

U.S. 658, 690-91 (1978) and in citing *Parratt v. Taylor*, 451 U.S. 527, 532 (1981), for proposition the county was not required to provide a pre-deprivation process because the conduct alleged in the third amended complaint was random and unauthorized conduct. Simpson stated *Parratt* was overruled in part on other grounds by *Daniels v. Williams*, 474 U.S. 327 (1986); *Hudson v. Palmer* 468 U.S. 517 (1982) (prisoner was deprived of property due to negligence of prison officials in violation of prison regulations). I*n Parratt,* 451 U.S. at 532, Justice Rehnquist stated 28 U.S.C. §1343(a)(3), which is the statute conferring jurisdiction is closely related to the language of §1983, and thus by inference §1983 is jurisdictional. App. 126, 127. Likewise, 28 U.S.C. §1343(a)(1)'s jurisdictional section closely mirrors the language in 42 U.S.C §1985(2) and therefore §1985 is jurisdictional. App. 126, 128. In *Steel Co.* 523 U.S. at 94, Justice Scalia cited *Mt. Healthy City Bd. v, Doyle*, 429 U.S. 274, 278-279 (1970) for the rare instance where a statutory federal question may also be jurisdictional so a court must sua sponte inquire whether a 11983 claim has been made. A*ccord, Arbaugh v Y & H Corp.*, 546 U.S. 500, 515-516 & n. 11 (2006) listing statutes that are jurisdictional and not separately stated in a stand alone statute like §1343. Therefore, the Seventh Circuit in *Simpson v. Brown,* correctly raised the *Monell* municipal liability rule sua sponte that was factually asserted by not labeled as such in the attorney-drafted complaint.

In this Court's decision *Kush v. Rutledge,* 460 U.S. 719, 725 (1983), the second clause of §1985(2) applies to conspiracies to obstruct justice in the course of justice in state courts. It requires the intent to deprive a person of equal protection

or privileges and immunities. There also must be some racial or class protected invidious discriminatory animus (citing *Griffin v. Breckenridge,* 403 U.S. 88 (1971). Id. at 726.

The Ninth Circuit in *Sakuma v. AOAO Tropics At Waikele,* 707 Fed. Appx. 906 (9th Cir. 2017), did not nor did any circuit judge sua sponte raise the §1985(2) cause of action asserted but not labeled in her FAVC. App. 10-11. However, Petitioner Pro Se did raise a §1985(2) claim in her petition for rehearing and rehearing en banc. Pet.CA. R'hg/R'hg En Banc Petition at 10-13 under FRCP Rule 8(a)(2) general pleading standard; *see, Johnson v. City of Shelby,* 135 S.Ct, 346, 347 (2014)(per curiam). In *United States v. Jimenez-Recio*, 537 U.S. 270, 273-77, 123 S.Ct. 819, 154 L.Ed. 2d 744 (2003) this Court held that a new theory may be raised even in a rehearing and rehearing en banc petition. Petitioner Pro Se has asserted unlawful associational handicap discrimination and retaliation based on her equal protection rights inferred in the FHA. FAVC ¶¶148-159, and under 42 U.S. C. §§3612 and 3631 in her 2008 action claim. App. 83-88. Her FAVC abuse of process, RICO, wrongful foreclosure, and UDPA allegations gave respondents fair notice of her §1985(2) claims was given to respondents under *Espinosa v. United Student Aid Funds, Inc.*, 553 F. 3d 1193 (9h Cir. 2008) citing *Owens-Corning Fiberglass Corp. v. Center Wholesale, Inc., (In re Center Wholesale, Inc.),* 759 F.2d 1440, 1448-51 (9th Cir. 1985); *accord, Johnson,* 135 S.Ct. at 347.

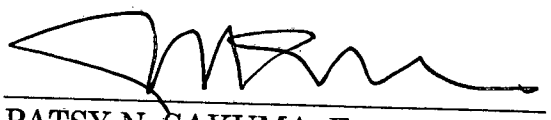
Thus, this Court should follow the Seventh Circuit in requiring that a circuit court or judge must sua sponte raise the civil rights 42 U.S.C. §1985(2) claims and

§1983claim or defense in even to attorney-drafted complaint because these claims are jurisdictional under 28 U.S.C. §1343(a)(3), (1) and (2), respectively.

CONCLUSION

The Court should grant this petition for writ of certiorari.

Respectfully submitted,



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