

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

PATSY N. SAKUMA,

Petitioner Pro Se,

vs.

ASSOCIATION OF APARTMENT OWNERS OF
THE TROPICS AT WAIKELE, ET.AL,

Respondents.

APPENDICES TO PETITION FOR WRIT OF CERTIORARI
Appendix 01: 100-130

Patsy N. Sakuma
Petitioner Pro Se
1232 Makaloa Street #7
Honolulu, HI 96814
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APPX0001

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 26 2021

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

PATSY N. SAKUMA,

Plaintiff-Appellant,

v.

ASSOCIATION OF APARTMENT
OWNERS OF THE TROPICS AT
WAIKELE, an incorporated association, by
its board of directors; et al.,

Defendants-Appellees,

and

LOVE, YAMAMOTO & REVERE, LLP, a
limited liability law partnership;
YAMAMOTO & REVERE, LLP, a liability
law partnership,

Defendants.

No. 19-16615

D.C. No. 1:16-cv-00274-DKW-
KJM

MEMORANDUM*

Appeal from the United States District Court
for the District of Hawaii
Derrick Kahala Watson, District Judge, Presiding

Submitted January 20, 2021**

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision
without oral argument. See Fed. R. App. P. 34(a)(2).

App 1

APPX0002

Before: McKEOWN, CALLAHAN, and BRESS, Circuit Judges.

Patsy N. Sakuma appeals pro se from the district court's post-judgment orders in her action alleging Racketeer Influenced and Corrupt Organizations Act ("RICO") and state law claims. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion. *Sch. Dist. No. 1J, Multnomah Cty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262-63 (9th Cir. 1993). We affirm.

The district court did not abuse its discretion by denying Sakuma's Federal Rule of Civil Procedure 60(b)(6) motion for relief from judgment, or by denying leave to file a motion for reconsideration, because Sakuma failed to demonstrate any basis for the requested relief. *See id.* (setting forth grounds for relief under Rule 59(e) or 60(b)); *see also Latshaw v. Trainer Wortham & Co.*, 452 F.3d 1097, 1102-04 (9th Cir. 2006) (explaining that Rule 60(b)(6) relief may be granted only where extraordinary circumstances are present).

We do not consider Sakuma's contentions concerning her prior appeal (Case No. 16-16791).

Sakuma's request for judicial notice, set forth in her opening brief, is denied as unnecessary.

AFFIRMED.

PATSY NAOMI SAKUMA, Plaintiff,

APPX 0003

vs.

ASSOCIATION OF APARTMENT OWNERS OF THE TROPICS AT WAIKELE, et al.,
Defendants.

Case No. 16-cv-00274-DKW-KJM.

United States District Court, D. Hawaii.

June 14, 2019.

Patsy Naomi Sakuma, an individual, Plaintiff, pro se.

Association of Apartment Owners of The Tropics at Waikale, an incorporated association, by its board of directors, Defendant, represented by Matt A. Tsukazaki, Li & Tsukazaki.

Milton M. Motooka, an individual & Motooka Yamamoto & Revere, LLP, Defendants, represented by Janelle Mae Fong Lau, Motooka & Rosenberg, LLLC.

Porter McGuire Kiakona & Chow, LLP, a Hawaii limited law partnership, Defendant, represented by Keith K. Hiraoka, Roeca Luria Hiraoka LLP.

James S. Kometani, Commissioner, an individual, Defendant, represented by Robyn B. Chun, Office of the Attorney General Administration Division.

First Hawaiian Bank, a Hawaii corporation & Watanabe Ing, LLP, a limited liability law partnership, Defendants, represented by Jonathan W.Y. Lai, Watanabe Ing LLP & Tracey Lynn Ohta, Watanabe Ing, LLP.

Title Guaranty Escrow Services, Inc., a Hawaii corporation, Defendant, represented by Leta H. Price, Title Guaranty of Hawaii Inc..

ORDER DENYING MOTION FOR RELIEF FROM JUDGMENT AND ORDER

DERRICK K. WATSON, District Judge.

On October 28, 2016, this action was dismissed with prejudice because (1) the Court lacked subject matter jurisdiction under *Rooker-Feldman*; (2) the First Amended Complaint failed to state a plausible claim under the Racketeer Influenced and Corrupt Organizations Act (RICO); and (3) the Court declined

to exercise supplemental jurisdiction over the remaining state claims ("the October 28, 2016 Order"). Dkt. No. 95. Plaintiff Sakuma then appealed and petitioned the U.S. Supreme Court, but without any success. Now, Sakuma asks for relief from the October 28, 2016 Order because of legal errors allegedly made therein and an intervening change in the law ("the motion for relief"). For the reasons discussed herein, neither of those arguments warrant providing Sakuma relief from the October 28, 2016 Order and, therefore, the motion for relief is DENIED.

RELEVANT BACKGROUND

The procedural and factual background of this action, as well as the many other actions involving Sakuma and some of the defendants, is set forth in the October 28, 2016 Order. Dkt. No. 95 at 2-13. The Court picks up with rulings in that Order. First, the Court found that the First Amended Complaint (FAC) failed to establish the Court's subject matter jurisdiction over this action in light of the *Rooker-Feldman* doctrine.^[1] More specifically, the Court found that, because Sakuma sought to overturn final state court decisions, *Rooker-Feldman* barred exercising jurisdiction over her claims. The Court also rejected all of Sakuma's arguments for why *Rooker-Feldman* was inapplicable. Second, the Court found that the FAC failed to state a plausible claim under RICO. Further, because Sakuma's RICO claim was the only claim involving federal law, the Court declined to exercise supplemental jurisdiction over her remaining state law claims.

The October 28, 2016 Order was entered roughly a month after a hearing on the various motions to dismiss that had been filed in this action. At said hearing, the Court stated that this case would be dismissed with a written order to follow. Dkt. No. 87. A week after the hearing, but before issuance of the October 28, 2016 Order, Sakuma filed a notice of appeal of the Court's oral pronouncement. Dkt. No. 88.

On December 21, 2017, the Ninth Circuit Court of Appeals affirmed the dismissal of this action. Dkt. No. 97. More specifically, the Ninth Circuit stated that it could affirm on any basis supported by the record and concluded that dismissal was proper "because Sakuma failed to allege facts sufficient to state a plausible RICO claim." *Id.* at 2 (citations omitted). The Ninth Circuit also stated that it would not consider matters "not specifically and distinctly raised and argued in the opening brief." *Id.* (citation omitted). On May 1, 2018, the Ninth Circuit denied Sakuma's petitions for panel rehearing and rehearing en banc. Dkt. No. 99. On October 9, 2018, the U.S. Supreme Court denied Sakuma's petition for a writ of certiorari. Dkt. No. 102. On December 6, 2018, the Supreme Court denied Sakuma's petition for rehearing.

Sakuma then filed the instant motion for relief on April 30, 2019 before this Court. Dkt. No. 104. On May 14 and 15, 2019, certain defendants filed oppositions to the motion for relief. Dkt. Nos. 110, 111. On May 30 and 31, 2019, Sakuma replied to the two oppositions. Dkt. Nos. 115, 116. The Court has elected, pursuant to Local Rule 7.2(d), to decide the motion for relief without a hearing. Dkt. No. 106.

Sakuma moves under Rule 60(p)(6) of the Federal Rules of Civil Procedure, Dkt. No. 104. Pursuant to Rule 60(p)(6), a court may relieve a party from a final judgment or order for "any other reason that justifies relief." Fed. R. Civ. P. 60(p)(6). In addition, a Rule 60(d) motion must be filed within a reasonable time. Fed. R. Civ. P. 60(c)(1).

DISCUSSION

In her opening memorandum, Dkt. No. 104-1, Sakuma provides two reasons why she should be provided relief from the October 28, 2016 Order. The first reason is a number of purported legal errors that this Court made in finding that Rooker-Feldman barred exercising subject-matter jurisdiction over this action. The second reason is a purported change in the law since entry of the October 28, 2016 Order.¹ The Court addresses each reason in turn.

First, Sakuma asserts that a number of legal errors were made when the Court found the exercise of subject-matter jurisdiction to be barred by Rooker-Feldman. Sakuma also asserts to assert that the Ninth Circuit erred in not correcting this Court's purported legal errors. None of the assertions of error, however, are determinative of whether Sakuma may be relieved from the October 28, 2016 Order. This is because the Court also dismissed this action due to the failure to allege a plausible RICO claim in the FAC. As previously stated, in affirming the dismissal of this action, the Ninth Circuit concluded that dismissal was proper because Sakuma failed to allege facts sufficient to state a plausible RICO claim. In other words, in order for legal error to justify relief from the October 28, 2016 Order, at a bare minimum, such error would need to involve the RICO claim, the only alleged basis for the exercise of jurisdiction. None of the assertions of error, however, concern the RICO claim. Therefore, irrespective of anything else that may be required for legal error to justify relief from a final judgment or order, the purported legal errors here do not justify the relief sought. As a result, the motion for relief is denied to the extent it relies on purported legal errors.

Second, Sakuma argues that a case decided by the Seventh Circuit Court of Appeals since entry of the October 28, 2016 Order constitutes an intervening change in the law that warrants relief under Rule 60(p)(6). The Seventh Circuit case is Simpson v. Brown, 860 F.3d 1001 (7th Cir. 2017). According to Sakuma, in Simpson, the Seventh Circuit sua sponte stayed off dismissal of an attorney-drafted, third amended complaint by both raising and rejecting a defense that had not previously been an issue in the case. See Dkt. No. 104-1 at 27, 31.

This, obviously, does not concern law (let alone a change in the law) that was applied in dismissing this case either in the October 28, 2016 Order or the Ninth Circuit's affirmance, as Simpson has nothing to do with Rooker-Feldman or RICO. Sakuma, instead, appears to contend that Simpson requires a court

PPX 0006
to construe one of the claims she raised in the FAC as a different claim in order to starve off dismissal of this action. See *id.* at 30.^[4] Even if the Court was willing to assume that the foregoing could constitute a change in the law for Rule 60(b) purposes,^[5] Sakuma's characterization of *Simpson* would not change anything the Court did in the October 28, 2016 Order. Put another way, in dismissing the FAC, the Court did not refuse to do something that *Simpson* now purportedly allows the Court to do. On October 28, 2016, the Court could have construed the allegations in the FAC as raising a plausible claim under federal law, but only if those allegations could be so construed.^[6] Nothing in the law prevented the Court from doing this and nothing in the law, *Simpson* included, has changed in that regard. Sakuma does not accurately contend otherwise. Instead, she appears to contend that, because she cannot find a Ninth Circuit decision sua sponte raising a claim in an attorney-drafted, as opposed to a pro se-drafted, complaint, *Simpson* "extends" Ninth Circuit law.^[7] See *id.* at 29-30. This is not a "change" in the law. See *Phelps v. Almeida*, 569 F.3d 1120, 1136 (9th Cir. 2009) (explaining that Rule 60(b)(6) relief was appropriate when, *inter alia*, "the law in our circuit was decidedly unsettled....").^[8] As a result, the motion for relief is denied to the extent it relies on a purported change in the law.^[9]

CONCLUSION

Because the reasons Sakuma provides for Rule 60(b)(6) relief are meritless, not dispositive, and/or irrelevant, the motion for relief, Dkt. No. 104, is DENIED.

IT IS SO ORDERED.

[1] *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *Dist. of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983).

[2] Sakuma also asserts that the Ninth Circuit's affirmance of the dismissal of this action does not have "preclusive effect...." Dkt. No. 104-1 at 19. Even if true, that is not a reason for relieving Sakuma from the October 28, 2016 Order.

[3] This is a very liberal construction of Sakuma's characterization of the *Simpson* case, given that Sakuma's actual summary of the same is difficult to follow.

[4] Specifically, Sakuma states the following: "Here, Sakuma requests that this Court apply *Simpson* to sua sponte apply §§ 1993, 1985(2), and (3) for stated but unlabeled statutory claims to starve [sic] off dismissal on the merits, and notice by labeling the state law equivalent of 'abuse of process' in the [FAC]."

[5] As far as the Court is concerned, the part of *Simpson* upon which Sakuma relies is not "law." In *Simpson*, the Seventh Circuit merely stated that, even if a defense had been asserted in the case, the allegations in the complaint were sufficient to defeat it. *Simpson*, 860 F.3d at 1006. The Seventh Circuit made this statement in order to "address the pleading posture" of the case. *Id.* at 1005. In other words, to explain why the substantive merits of a claim could be addressed when, ordinarily, the claim could not be raised against the defendants named in the case.

[6] The allegations in the FAC, however, could not be so construed. Sakuma does not adequately explain otherwise. Instead, she asks this Court to construe her state law claim for "abuse of process" as multiple claims under various federal statutes and then

provides a laundry list of paragraphs from the FAC that she says "categorize[]" a conspiracy to obstruct justice. See Dkt. No. 104-1 at 30-32. At no point does Sakuma explain why any of the FAC's allegations should be construed as alleging claims under the federal statutes she cites. Having independently reviewed the FAC, the Court cannot discern how any of the allegations support a claim under these statutes either, including Sakuma's contention of a conspiracy. Simply put, the conclusory assertions that defendants "associated together" or "conspired" do not plausibly allege a claim of conspiracy.

[7] Of course, in *Simpson*, the Seventh Circuit did not sua sponte raise a claim on behalf of any party, pro se or attorney-represented. Instead, *Simpson* is quite clear that the parties litigated a plausible claim on the merits, but an unraised defense may (but did not at the pleading stage) apply. Sakuma asks this Court to do something far different. In addition, although Sakuma alleges that she is an attorney licensed in California, see Dkt. No. 9 at ¶ 50, she proceeded in this case pro se. The FAC was construed with that in mind. See Dkt. No. 95 at 21 (acknowledging that pro se complaints are liberally construed and describing Sakuma as a pro se plaintiff). As such, *Simpson* does not appear to be at all relevant to this case, even when considered in the manner in which Sakuma frames it.

[8] Sakuma appears to believe that this conclusion in *Phelps* supports her reliance upon *Simpson* because *Simpson* "does not overturn any settled legal precedents in the Ninth Circuit." See Dkt. No. 104-1 at 29. The fact that *Simpson* does not upset Ninth Circuit law is not something that favors granting Sakuma any relief. Instead, it merely demonstrates why *Simpson* does not represent a change in the law.

[9] The Court notes that, rather than relying on a change in the law, the motion for relief, more accurately, seeks an opportunity for Sakuma to amend the FAC by adding claims under various federal statutes. See Dkt. No. 116 at 14 (asserting, in her reply, that Sakuma has a right to amend the FAC). Although, in the October 28, 2016 Order, the Court did not allow leave to amend the FAC, Sakuma could have moved under Rule 59(e) to alter, or, after 28 days, Rule 60(b) for relief from, that decision. Sakuma did not take these approaches, even though she now contends that her new claims were present in the FAC. See *id.* This is another reason why relief under Rule 60(b) is inappropriate here: Sakuma has simply moved unreasonably late for the relief she actually seeks. See Fed.R.Civ.P. 60(c)(1).

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APPX 0008

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U.S. District Court

District of Hawaii

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Case Number: 1:16-cv-00274-DKW-KJM

Filer:

WARNING: CASE CLOSED on 10/28/2016

Document Number: 120(No document attached)

Docket Text:

EO: On July 12, 2019, Plaintiff Patsy Naomi Sakuma filed a motion for leave to file a motion for reconsideration ("the motion for leave"), Dkt. No. 118. In the motion for leave, Sakuma seeks leave to file a motion for reconsideration of the Court's June 14, 2019 Order denying an earlier motion for relief from judgment. Because Sakuma presents no adequate reason for the Court to reconsider the June 14, 2019 Order, the motion for leave is DENIED. (JUDGE DERRICK K. WATSON)(tyk)

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UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

FEB 9 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

PATSY N. SAKUMA,

Plaintiff-Appellant,

v.

ASSOCIATION OF APARTMENT
OWNERS OF THE TROPICS AT
WAIKELE, an incorporated association, by
its board of directors; et al.,

Defendants-Appellees,

and

LOVE, YAMAMOTO & REVERE, LLP, a
limited liability law partnership;
YAMAMOTO & REVERE, LLP, a liability
law partnership,

Defendants.

No. 19-16615

D.C. No. 1:16-cv-00274-DKW-
KJM
District of Hawaii,
Honolulu

ORDER

Before: McKEOWN, CALLAHAN, and BRESS, Circuit Judges.

Sakuma's motion for an extension of time to file a petition for rehearing
(Docket Entry No. 37) is granted. Any petition for rehearing is due on March 9,
2021.

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

MAY 25 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

PATSY N. SAKUMA,

Plaintiff-Appellant,

v.

ASSOCIATION OF APARTMENT
OWNERS OF THE TROPICS AT
WAIKELE, an incorporated association, by
its board of directors; et al.,

Defendants-Appellees,

and

LOVE, YAMAMOTO & REVERE, LLP, a
limited liability law partnership;
YAMAMOTO & REVERE, LLP, a liability
law partnership,

Defendants.

No. 19-16615

D.C. No. 1:16-cv-00274-DKW-
KJM

District of Hawaii,
Honolulu

ORDER

Before: McKEOWN, CALLAHAN, and BRESS, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no
judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R.
App. P. 35.

Sakuma's petition for panel rehearing and petition for rehearing en banc

(Docket Entry Nos. 42, 44) are denied.

Sakuma's motion for leave to file errata to the petitions for rehearing APPX 0011

(Docket Entry No. 43) is granted. The errata has been filed.

Sakuma's motions for an extension of time to file a petition for rehearing and to "expedite extension" (Docket Entry Nos. 39, 40, 41) are denied as unnecessary.

No further filings will be entertained in this closed case.

UNITED STATES COURT OF APPEALS

APPX 0012

FILED

FOR THE NINTH CIRCUIT

OCT 3 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

PATSY N. SAKUMA,

Plaintiff-Appellant,

v.

ASSOCIATION OF APARTMENT
OWNERS OF THE TROPICS AT
WAIKELE, an incorporated association, by
its board of directors; et al.,

Defendants-Appellees,

and

LOVE, YAMAMOTO & REVERE, LLP, a
limited liability law partnership;
YAMAMOTO & REVERE, LLP, a liability
law partnership,

Defendants.

No. 19-16615

D.C. No.

1:16-cv-00274-DKW-KJM

District of Hawaii,
Honolulu

ORDER

Before: Peter L. Shaw, Appellate Commissioner.

Appellant's August 14, 2019 notice of appeal challenges the district court's final order and judgment as well as the district court's June 14, 2019 and July 30, 2019 post-judgment orders. However, a review of the record reflects that the scope of this appeal is limited to a review of the district court's June 14, 2019 and July 30, 2019 post-judgment orders.

EXHIBIT

"A"

The district court orally announced its decision following a hearing held on September 23, 2016. The district court then entered a final order and judgment on October 28, 2016 and October 31, 2016, respectively. *See* Fed. R. App. P. 4(a)(2). Appellant filed a notice of appeal on September 30, 2016, which was docketed as appeal no. 16-16791. This court affirmed the district court's final order and judgment in appeal No. 16-16791. The mandate issued in appeal No. 16-16791 on May 9, 2018.

Following the issuance of the mandate in appeal No. 16-16791, appellant returned to the district court on April 30, 2019 and filed a motion for relief from the judgment. The district court entered an order denying appellant's first post-judgment motion on June 14, 2019. Appellant filed a motion for reconsideration of that order within 28 days, on July 12, 2019. *See* Fed. R. App. P. 4(a)(4). The district court denied appellant's second post-judgment motion on July 30, 2019. Appellant filed her notice of appeal on August 14, 2019.

Any challenge to the district court's final order and judgment would be untimely as well as duplicative of appeal No. 16-16791. *See* 28 U.S.C. § 2107(a). Accordingly, the scope of this appeal is limited to a review of the June 14, 2019 and July 30, 2019 post-judgment orders.

The previously established briefing schedule remains in effect.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

APPX 0012.2

FILED

DEC 17 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

PATSY N. SAKUMA,

Plaintiff-Appellant,

v.

ASSOCIATION OF APARTMENT
OWNERS OF THE TROPICS AT
WAIKELE, an incorporated association, by
its board of directors; et al.,

Defendants-Appellees,

and

LOVE, YAMAMOTO & REVERE, LLP, a
limited liability law partnership;
YAMAMOTO & REVERE, LLP, a liability
law partnership,

Defendants.

No. 19-16615

D.C. No.

1:16-cv-00274-DKW-KJM

District of Hawaii,
Honolulu

ORDER

Before: THOMAS, Chief Judge, and BRESS, Circuit Judge.

Appellant's motion for reconsideration of this court's October 3, 2019 order
is denied (Docket Entry No. 3).

The briefing schedule established previously remains in effect.

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

PATSY N. SAKUMA - Petitioner Pro Se

vs.

ASSOCIATION OF APARTMENT OWNERS OF
THE TROPICS AT WAIKELE, ET. AL, - Respondents

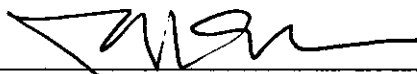
PROOF OF SERVICE

I, Patsy N. Sakuma, do swear or declare that on this date, 10/22, 2021, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and PETITION FOR WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

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

Executed on OCT 22, 2021.

+ Compliance Cent


Patsy N. Sakuma, Petitioner Pro Se
1232 Makaloa Street #7
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The names and addresses of those served are as follows:

Peter William Olson, Esq.
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**continued on attached page(s)

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

PATSY N. SAKUMA - Petitioner Pro Se

vs.

ASSOCIATION OF APARTMENT OWNERS OF
THE TROPICS AT WAIKELE, ET. AL, - Respondents


PROOF OF SERVICE

I, Patsy N. Sakuma, do swear or declare that on this date, 10/22, 2021, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and PETITION FOR WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

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

Executed on Oct 22, 2021.

+ Compliance Cert


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The names and addresses of those served are as follows:

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Attorneys for Defendant-Appellee
Porter McGuire Kiakona & Chow, LLP

**continued on attached page(s)

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