APPENDIX

PLAINTIFFS'

COMPLAINT

Chester Noel Abing
94-1118 Pohu Place
Waipahu, HI 96797
(808) 218-9385

getches@gmail.com
Dennis Duane DeShaw
3273 Hwy 58
Fairview, MT 59221
(701) 609-9008
dennis.deshaw@outlook.com

Susan Kay Broer-DeShaw
P. O. Box 573
Hill City, SD 57745
(808) 330-3125
s.deshaw@aol.com

UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

CHESTER NOEL ABING, DENNIS DUANE DESHAW, and SUSAN KAY BROER-DESHAW, *Plaintiffs,* *vs.*	Case No. 21-cv-95 JAO-WRP FIRST AMENDED VERIFIED CLASS ACTION COMPLAINT

JAMES F. EVERS, JOHN N. TOKUNAGA, STEPHEN H. LEVINS, LISA P. TONG, MELINDA D. SANCHES, CATHERINE AWAKUNI COLON, JO ANN UCHIDA TAKEUCHI, MICHAEL J.S. MORIYAMA, BRUCE B. KIM, BRADLEY R. TAMM, RYAN SUMMERS LITTLE, REBECCA SALWIN, YVONNE R. SHINMURA, CHARLENE M. NORRIS, ROY F. HUGHES, GAYLE J. LAU, JEFFREY P. MILLER, PHILIP H. LOWENTHAL, CLIFFORD NAKEA BERT I. AYABE, and JEANNETTE H. CASTAGNETTI, *Defendants, both Individually and in their Official Capacities.*	COMPLAINT FOR INJUNCTION AND DECLARATORY RELIEF AND DECLARATORY RELIEF AND FOR MONETARY DAMAGES DEMAND FOR JURY TRIAL No Trial Date Set

INTRODUCTION

1. Plaintiffs, Chester Noel Abing, Dennis Duane DeShaw, and Susan Kay Broer-DeShaw, pursuant to Fed.R.Civ.Pro., Rule 23(b)(2), bring this action to secure redress for unlawful discrimination against the following class of class-action plaintiffs: all homeowners in this State whose homes have been taken, or are in the process of being taken, through wrongful "foreclosure" actions by entities (the "Dummy Corporations") that pretend to have lent money to the homeowners and to own their mortgages, but actually have no legal interest in the properties. They are not legitimate banks, and they do not own the mortgages they are fraudulently "foreclosing." So, they use forged documents and other "dirty tricks," as spelled out in this Complaint. Sometimes the Dummy Corporations are nothing more than fictitious names that do not exist at all (as in the case of the entity taking the home of the DeShaw Plaintiffs), and sometimes they are real corporations that allege fictitious, nonexistent

interests (as in the case of the entity taking the home of Plaintiff Abing).

2. One example, among thousands, of a Dummy Corporation is an entity called "The Bank of New York Mellon FKA the Bank of New York, as Trustee (CWALT 2006-32CB," which is attempting to take the home of the DeShaw plaintiffs in the case of *The Bank of New York Mellon FKA the Bank of New York, as Trustee (CWALT 2006-32CB) v. DeShaw*, Case No. 1CC16-1-001821 (1st Cir. 2016). This entity is not to be confused in any way with The Bank of New York Mellon, with which it has no connection. Instead, this entity is a Dummy Corporation because it does not exist. There is no record of a trust by that name ever having existed. But that did not stop Jeannette H. Castagnetti, a complicit foreclosure judge in the First Circuit, from granting summary judgment at the request of an unethical attorney (David B. Rosen) claiming falsely to represent the non-existent plaintiff, giving the DeShaws' home to the non-existent entity that Att. Rosen pretends to represent. She did this on April 13, 2019. And she does this

routinely. That grant is now on appeal. (See the "Declaration of Dennis Duane DeShaw" and the "Declaration of Susan Kay Broer-DeShaw.)

3. Another example, among thousands, of a second kind of Dummy Corporation is the plaintiff in *PennyMac v. Abing*, 1CC12-1-003115 (1st Cir. 2012). That corporation, unlike the plaintiff in the DeShaw case, actually does exist somewhere. What makes this plaintiff a Dummy Corporation is that it is being used as one, to hide the fact that the owner of the mortgage has not come forward. There is no evidence whatsoever that PennyMac ever purchased the Note in Mr. Abing's case or that it has lent money to Mr. Abing, or that it ever has had anything to do with Mr. Abing's home. In fact, there is strong evidence (the formal endorsement and signature on the Note) that the Note was sold to someone else. But this did not stop Bert I. Ayabe, another complicit foreclosure judge in the First Circuit Court, from granting summary judgment to this Dummy Corporation. He did this on October 2, 2013. And he does this routinely.

4. The main problem with these takings are: (a) they are outrageous examples of officially sponsored theft that endanger the security of all private property in this State. Also, (b) if the homeowner has fallen behind in his mortgage payments for any reason and a Dummy Corporation that does not own the mortgage sues the homeowner to take the home, the Dummy Corporation cannot release or modify a mortgage it does not own, so it is impossible to negotiate a settlement with the entity and reinstate mortgage payments. (c) A Dummy Corporation cannot provide clear title because it cannot legally release a mortgage lien it does not own. (d) The Circuit Courts of this State are attempting to deal with this problem by pretending that the Dummy Corporations have good title to the properties they have stolen, and that pretense is unsustainable and corrupts the courts and the rules of evidence in the State's system of property title.

5. These thefts have occurred, and are possible, only because there are very few defense attorneys remaining in the State who are willing and compe-

tent to represent homeowners in foreclosure in a zealous manner. And this is not an accident. It is because the government officials named in this Class Action Complaint have entered into a confederacy formed for the purpose of committing, by their joint efforts, acts which are lawful in themselves (for example disciplining attorneys and policing the bar) but become unlawful when done by the concerted action of the conspirators to assist the Dummy Corporations in taking thousands of homes in this State. Upon information and belief, these government officials are former employees of the Dummy Corporations and/or attorneys who seek to represent the Dummy Corporations in court, in manifest conflicts of interest. The government officials accomplish this by abusing the authority of this State to intimidate and threaten the foreclosure-defense bar in this State by disbarring its members (for example Attorney Gary V. Dubin, the dean of the foreclosure-defense bar) for minor or trumped-up offenses, by threatening to disbar them, by subpoenaing their records on limitless fishing expeditions, by offering to bribe their former clients to

complain about them, and by suing them under laws intended to protect consumer

6. The government officials who are doing this constitute a combination or confederacy formed for the purpose of committing, by their joint efforts, both unlawful or criminal acts and also acts which are lawful in themselves, but becomes unlawful when done by the concerted action of the conspirators. That is the definition of a Conspiracy. See *Black's Law Dictionary* (6th ed.), s.v. "conspiracy." Therefore, the government officials names in this Complaint will be referred to collectively henceforth as "the Conspirators."

7. In their actions to harass the defense bar, the Conspirators allege that, since foreclosure-defendants always lose in this State, anyone who agrees to represent them in court must be scamming them, so the Conspirators have to shut the "scammers" down, regardless of what the homeowners say or need. Then, as the government officials intend, when the defense bar is eliminated, the homeowners are defenseless.

8. In addition to suppressing and intimidating the defense bar, the Conspirators act together to "blacklist" and discriminate against troublesome homeowners (for example Mr. Abing and Mr. and Mrs. DeShaw) who ask only that the law of this State be applied in their "foreclosure" cases. The government officials intervene in the wrongful "foreclosure" cases without leave of court (for example in the cases of Mr. Abing and Mr. and Mrs. DeShaw), threaten and intimidate the homeowners (for example Mr. Abing and Mr. and Mrs. DeShaw), harass them by subpoenaing their records--and in the case of Mr. Abing actually steal funds from his bank account. The Conspirators appear in court in hearings involving the blacklisted homeowners, to assist the attorneys of the Dummy Corporations on points of law and to intimidate the homeowners, when they should be doing the opposite: appearing in court to help the consumers they are supposed to protect. (See Declaration of Mrs. DeShaw.)

9. What these government officials are conspiring to do to the homeowners in this State is very similar

that court. (It is impossible to reach the Supreme Court without an attorney.) So, the Conspirators are abusing their power to corrupt the laws of this State.

Why Now?

11. It is common knowledge, and this Court may take judicial notice, that the Great Recession of 2008 was caused by a wave of fraudulent "Subprime Loans," fraudulently securitized, starting in 2003. (See "The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States," Pursuant to Public Law 111-21, January 2011, ISBN 9780-16-087983-8.) These mortgages were structured by now-defunct financial institutions intentionally to fail. (Mr. Abing's and Mr. and Mrs. DeShaws' home mortgages are among these fraudulent loans.)

12. It is common knowledge, and this Court may take judicial notice that, therefore, after 2008, there was an unprecedented wave of foreclosures in this State and throughout the United States.

13. Therefore, this State in 2011 enacted the most pro-consumer mortgage-foreclosure law in the U.S., requiring foreclosure-plaintiffs, in all "non-judicial" foreclosures (unsupervised by a judge) to engage in serious mediation in hope reaching a compromise and reinstating the loan. (See Haw.Rev.Stats. §667-71, L2011, c. 48, pt. of §1, §45[2].)

14. Therefore, the new foreclosure-plaintiffs promptly switched all of their cases to "judicial" foreclosures, to avoid the requirement to mediate fairly. But judicial foreclosures are supervised by judges. The legislature hoped that the Circuit Courts would end the mortgage fraud. And since the plaintiff in a foreclosure in front of a judge must actually present evidence, this change substantially increased the time required to foreclose.

15. Therefore, since foreclosure-plaintiffs often are the Dummy Corporations, which lack all evidence of their claims, the average time required for a foreclosure in this State suddenly increased from 2 or 3 months in 2011 to the current 1,558 days (over four

years) in 2020--the longest in the country. (See Nolo, "States with Long Foreclosure Timelines," at https://www.nolo.com/legal-encyclopedia/states-with-longforeclosure-timelines.html.)

16. Therefore, the desperate Dummy Corporations have turned to forging documents and have turned to the Conspirators to help them purge the defense bar.

Why This is Illegal

17. The actions of the Conspirators--suppressing the defense bar and going to court to assist the Dummy Corporations--deprive the homeowners of this State of their property without due process and without equal protection under the law, which are guarantied to all citizens of the U.S. by the Fourteenth Amendment. The Conspirators are discriminating against homeowners by failing to treat them equally with the Dummy Corporations,

18. Pursuant to the Fourteenth Amendment to the Constitution in 1868, Congress enacted several civil-rights acts to redress similar abuses of State power

that occurred in the South during Reconstruction. This Class Action Complaint invokes those laws:

(a) Section 1983 of the Civil Rights Act of 1871 (the "Ku Klux Klan Act"), 42 U.S.C. § 1983; and

(b) Subsection 2 and 3 of 42 U.S.C. § 1985, prohibiting intimidation of parties to lawsuits and obstruction of justice; and

(c) the Fourteenth Amendment itself, which guaranties due process and equal protection of the laws to all citizens of the United States.

19. Section 1983 provides:

> Every person who under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws [for example the rights of equal protection of the laws and to due process], shall be liable to the party injured in an action at law, Suit in equity, or other proper proceeding for redress . . . .

Section 1985(2) provides:

> OBSTRUCTING JUSTICE; INTIMIDATING PARTY, WITNESS, OR JUROR.
>
> If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

And Section 1 of the Fourteenth Amendment provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

20. Therefore, Mr. Abing and Mr. DeShaw and Mrs. DeShaw are asking this Court for compensatory damages, for punitive damages, for injunctive relieve ordering the Conspirators to cease and desist, and for a judgment declaring that the Conspirators' actions are illegal.

THE PARTIES

21. The Plaintiffs include Chester N. Abing, a homeowner and resident of the State of Hawaii;

Dennis Duane DeShaw; and Susan Kay Broer-DeShaw, owners of a home in the State of Hawaii.

22. Likewise, all members of the proposed Class are owners of real estate in the State of Hawaii.

23. The Conspirators all are residents and officials of the State of Hawaii and include the following:

(a) James F. Evers and John N. Tokunaga, their supervisor Stephen H. Levins, and their co-conspirators, Lisa P. Tong and Melinda D. Sanchez (the "OCP Lawyers");

(b) Catherine Awakuni Colon, Jo Ann Uchida Takeuchi, and Michael J.S. Moriyama (the "Supervisors of the OCP Lawyers");

(c) Bruce B. Kim, Bradley R. Tamm, Ryan Summers Little, Rebecca Salwin, Yvonne R. Shinmura, and Charlene M. Norris (the "ODC Lawyers");

(d) Roy F. Hughes, Gayle J. Lau, Jeffrey P. Miller, Philip H. Lowenthal, and Clifford Nakea (the "Disciplinary Board Lawyers"); and

(e) Bert I. Ayabe and Jeannette H. Castagnetti (designated foreclosure Judges in the Circuit Court of the First Circuit, in Honolulu).

JURISDICTION

24. This Court has personal jurisdiction over the Plaintiffs and the members of the Proposed Class because they all own homes in this State.

25. This Court has personal jurisdiction over the Conspirators because they all are residents of this State, and they all are employed in this State, and they all have committed in this State the acts alleged in this Class Action Complaint.

26. This Court has subject-matter jurisdiction over this Class Action Complaint pursuant to 28 U.S.C. § 1331 ("Federal Question") because it is brought pursuant to the laws of the United States, including the U.S. civil-rights laws, 42 U.S. Code §§ 1983 and 1985.

27. This Court has supplemental jurisdiction, pursuant to 28 U.S.C. §1367 ("Supplemental Jurisdiction"), over the State-law claims asserted in this Class Action Complaint (for example, abuse of power), because these claims are so closely related to the civil-rights claims (for example, conspiracy and intimidation of witnesses) that they form part of the same case or controversy, and because the State-law claims arise out of the same transactions or occurrences as do the claims under the laws of the United States.

28. In addition, this action is brought pursuant to 28 U.S.C. § 2201 ("Declaratory Judgments") to ask this Court to declare that the Conspirators' activities are illegal, and under this Court's inherent equity jurisdiction to enjoin the Conspirators from their illegal activities.

29. **LIST OF EXHIBITS**

Exhibit "A": Mr. Abing's Official Response to Interrogation.

Exhibit "B": Theft of Mr. Abing's Funds by OCP Lawyers.

Exhibit "C": Disbarment of Gary V. Dubin.

Declaration of Chester Noel Abing.

Declaration of Dennis Duane DeShaw.

Declaration of Susan Kay Broer-DeShaw.

Declaration of Robert L. Stone.

ALLEGATIONS COMMON TO ALL COUNTS

30. On August 30, 2018, the above-named OCP Lawyers intervened without leave of court in the ongoing case of *PennyMac v. Abing*, 1CC121-3115 (1st Cir.). Mr. Abing had asked the court to dismiss the wrongful "foreclosure" against him because the Dummy Lender in his case did not own the mortgage it was seeking to "foreclose." The Circuit Court could not simply deny Mr. Abing's motion without giving him a good appeal to the Supreme Court. So the OCP Lawyers acted without formal leave of court to subpoena Mr. Abing and his attorney (Mr. Keoni Agard) for an hours-long, third-degree interrogation in the Conspirators' offices. In the course of the

interrogation, the OCP Lawyers threatened Mr. Abing with prosecution for an unspecified "felony," bullied him, attempted to bribe him with a (fake) offer of $10,000, and ordered him to discharge his attorney's paralegal assistant and to stop defending his property in the ongoing case in Circuit Court. Throughout the interrogation, the OCP lawyers intentionally frightened, bullied, confused, and lied to Mr. Abing, for the purpose tricking him into making false statements from him to use against him in *PennyMac v. Abing*, 1CC12-1-3115 (1st Cir.), as if they were attorneys for the Dummy Corporations—which is what they really are, underneath their titles. (See Plaintiff's Exhibit "A," the "Declaration of Chester N. Abing," attached hereto.)

31. From May of 2012, until the present, the Plaintiffs—Mr. Abing, Mr. DeShaw, and Mrs. DeShaw—have been personally involved in seven separate lawsuits against the Dummy Corporations that are trying to take their homes. They have worked with five different attorneys. And Mrs. DeShaw has personally defended herself in court *pro*

se, and she has been deposed at length. All of the Plaintiffs are personally familiar with fraudulent "foreclosure" cases, and Mr. Abing and Mrs. DeShaw have become special targets of the Conspirators.

32. The above-named OCP Lawyers on February 8, 2019, again intervened in Mr. Abing's ongoing case in Circuit Court, without leave of court, by stealing $800 from Mr. Abing's credit-card account to prevent him from using that sum to pay his legal fees. And they did so intentionally and maliciously, thereby causing Mr. Abing to suffer injury. (See Plaintiff's Exhibit "B" and the "Declaration of Chester N. Abing," attached hereto.)

33. The above-named OCP Lawyers on March 23, 2019, again intervened in the ongoing case in Circuit Court, without leave of court, by stealing another $500 from Mr. Abing's credit-card account, again to prevent him from using it to pay his legal fees. So, they stole a total of $1,300. And they did so intentionally and maliciously, thereby causing Mr. Abing to suffer injury. (See Mr. Abing's Exhibit "B"

and the "Declaration of Chester N. Abing," attached hereto.)

34. The above-named Supervisors of the OCP Lawyers either authorized the unlawful acts of the OCP Lawyers in intimidating Mr. Abing and stealing from him, to prevent his testifying in court, or negligently failed to supervise them properly, thereby causing Mr. Abing to suffer injury.

35. On or about January 24, 2013, the above-named ODC Lawyers and the OCP Lawyers approached Attorney Sandra D. Lynch, who at that time was working as an associate attorney in a foreclosure-defense law firm in Honolulu, and ordered her to steal twenty-seven of the firm's foreclosure-defense clients from her employer, to resign from her firm, and to stop working zealously on the clients' cases. She complied with their orders. As a result, most of the twenty-seven homeowners in those cases lost their homes to the Dummy Corporations, and the law firm was broken up. Mr. Abing and Mr. and Mrs. DeShaw were clients of that law firm, so they suffered

injuries as a result to the action of the above-named ODC Lawyers and OCP Lawyers. (See the "Declaration of Chester N. Abing," the "Declaration of Dennis Duane DeShaw," and the "Declaration of Susan Kay Broer-DeShaw," attached hereto.)

36. The above-named Supervisors of the OCP Lawyers either authorized the theft of clients from Attorney Lynch's law firm and the breakup of her firm, or they negligently failed to supervise properly the OCP Lawyers, thereby causing Mr. Abing and Mr. and Mrs. DeShaw to suffer injury.

37. On December 13, 2018, the above-named ODC Lawyers conducted a hearing before the Disciplinary Board on their malicious and selective complaint against Attorney Gary V. Dubin, again using a combination of trivial and false allegations, for the purpose of disbarring him, for the purpose of suppressing foreclosure-defense in this State. In so doing the above-named ODC Lawyers wrongfully deprived the Plaintiffs of their choice of counsel and harmed

them in their defense of their homes against wrongful "foreclosures." (See the Plaintiffs' Exhibit "C.")

38. On February 13, 2019, the above-named Disciplinary Board Lawyers ratified and endorsed and joined in the malicious and selective prosecution of Attorney Gary V. Dubin and ruled that he should be disbarred, thereby wrongfully depriving the Plaintiffs of their choice of counsel and harming them in their defense of their property. (See Plaintiffs' Exhibit "C," the "Declaration of Chester N. Abing," the "Declaration of Dennis Duane DeShaw," and the "Declaration of Susan Kay Broer-DeShaw," attached hereto.) This too is an abuse of power.

39. The Plaintiffs' Exhibit "A" is a true and correct copy of "Decision of the Disciplinary Board" dated February 13, 2019, published online by the Disciplinary Board.

40. On December 3, 2014, the above-named ODC Lawyers filed a malicious and selective complaint against Attorney Robert L. Stone (hereafter "Mr.

Stone"), using a combination of trivial and false allegations, for the purpose of forcing him to resign from the Bar, pursuant to their campaign to suppress foreclosure-defense in this State. Mr. Stone's attorney, Mr. Eric Seitz, advised him that it would cost $40,000 to defend against the malicious accusations, and all defense would be futile because he would not receive a fair trial. This case is an example of selective prosecution and retaliation against a member of the bar, that these are very serious abuses of power. The action of the above-named ODC Lawyers wrongfully deprived the Plaintiffs of their choice of counsel and harmed them in their defense of their property against wrongful "foreclosures." (See the "Declaration of Chester N. Abing," the "Declaration of Dennis Duane DeShaw," the "Declaration of Susan Kay Broer-DeShaw," and the "Declaration of Robert L. Stone," attached hereto.) This too is an abuse of power.

41. Upon information and belief, the above-named ODC Lawyers have filed other malicious and selective

complaints against other foreclosure-defense attorneys, thereby causing injury to the Plaintiffs.

42. On or about August 14, 2018, the above-named OCP Lawyers and the above-named ODC Lawyers, working together, maliciously threatened Attorney R. Steven Geshell (who was representing Mr. Abing and Mr. and Mrs. DeShaw) and caused him to turn on his own clients and to file unauthorized and inferior pleadings in their "foreclosure" cases, in defiance of clear instructions from Mr. Abing and from the DeShaws. These actions of the above-named Conspirators wrongfully deprived Mr. Abing and Mr. and Mrs. DeShaw of their choice of counsel and harmed them in their defense of their property against wrongful "foreclosures." (See the "Declaration of Chester N. Abing," the "Declaration of Dennis Duane DeShaw," and the "Declaration of Susan Kay Broer-DeShaw," attached hereto.) This too is an abuse of power.

43. The above-named Supervisors of the OCP Lawyers either authorized the unlawful acts of the

OCP Lawyers described above or negligently failed to supervise them properly, thereby causing Mr. Abing and Mr. and Mrs. DeShaw to suffer injury.

44. Likewise, on or about December 10, 2018, the above-named OCP Lawyers and the above-named ODC Lawyers, conspiring together, threatened Attorney Jason B. McFarlin, who accepted the Plaintiffs as his clients but then, pursuant to instructions from the Conspirators, failed to represent them vigorously. This failure wrongfully depriving Mr. Abing and Mr. and Mrs. DeShaw of their choice of counsel and harmed them in their defense of their properties against wrongful "foreclosures." (See the "Declaration of Chester N. Abing," the "Declaration of Dennis Duane DeShaw," and the "Declaration of Susan Kay Broer-DeShaw," attached hereto.) This too is an abuse of power.

45. The above-named Supervisors of the OCP Lawyers either authorized the unlawful acts of the OCP Lawyers in threatening Attorney McFarlin or

negligently failed to supervise them properly, thereby causing all three Plaintiffs to suffer injury.

46. Both the OCP Lawyers and the ODC Lawyers work closely with lawyers representing the Dummy Corporations in furtherance of their conspiracy.

47. On or about October 28, 2020, the above-named Conspirators in the OCP sent letters to Mr. Abing and to Mr. and Mrs. DeShaw. Therein the Conspirators offered to pay large bribes to the Plaintiffs ($34,016.00 in the case of the DeShaws) if they would inform against. and file a false complaint against, their paralegal assistant--so the OCP Lawyers could show the false complaints to their fellow Conspirators in the First Circuit, and they in turn could order the paralegal off of the Plaintiffs' "foreclosure" cases in that Circuit. The purpose of this trick was to block the Plaintiffs from appealing to the Supreme Court of this State, to help the Dummy Corporations steal Mr. Abing's and Mr. and Mrs. DeShaws' homes. No payment was ever made. It was just another dirty trick by the Conspirators. (See the "Declaration of

Chester Noel Abing," the "Declaration of Susan Kay Broer-DeShaw," the "Declaration of Dennis Duane DeShaw," and the "Declaration of Robert L. Stone.")

48. Bert I. Ayabe and Jeannette H. Castagnetti (designated foreclosure Judges in the Circuit Court of the First Circuit, in Honolulu) work closely with the other Conspirators, awarding huge prizes to the Dummy Corporations without requiring them to provide evidence of ownership. Jeannette H. Castagnetti also gives free rein to certain rude and unethical lawyers such as David B. Rosen, who works for the Dummy Corporations, to harass, trick, threaten, and "investigate" *pro se* defendants who are defenseless because they cannot afford attorneys. Accordingly, David B. Rosen acts the way someone does when he knows he has complete immunity from the rules of decency and fairness. (See the "Declaration of Susan Kay Broer-DeShaw.")

49. Section 1983 provides:

> Every person who under color of any statute, ordinance, regulation, custom, or usage, of any

> State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws [for example the rights of equal protection of the laws and to due process], shall be liable to the party injured in an action at law, Suit in equity, or other proper proceeding for redress . . . .

50. Therefore, although injunctive relief is not available against the judicial defendants, declaratory relief clearly is available. Section 1983 overrules the usual judge-made rules of judicial immunity. Civil-rights cases are different.

51. In all of the actions alleged above, the Conspirators have made it virtually impossible for the Plaintiffs to defend themselves. The Conspirators have worked together pursuant to an unwritten agreement among them all to commit unlawful acts (for the purpose of suppressing the foreclosure-defense bar in this State), and they all intend to achieve the agreement's objective. And they already have committed overt acts together in furtherance of

the agreement's objective in a coordinated campaign: by threatening homeowners and their attorneys with criminal prosecutions and trying to bribe them (Plaintiffs' Exhibit "A"), by stealing funds from consumers' bank accounts (Plaintiffs' Exhibit "B"), by maliciously and selectively prosecuting defense attorneys (Plaintiffs' Exhibit "C"), by intervening in a defense law firm in a conspiratorial manner to break it up, and by granting huge financial awards to Dummy Corporations while not requiring them to present evidence of ownership, in defiance of the Supreme Court of this State. This too is an abuse of power.

The Purpose of the Conspiracy

52. It is well known, and this Court can take judicial notice, that there is a mortgage-foreclosure crisis in this State. Since the Great Financial Crisis of 2008-2009, far too many homeowners have lost their homes to "foreclosures" by Dummy Corporations.

53. One example of a Dummy Lender is the plaintiff in the ongoing lawsuit against Mr. Abing currently in

the Circuit Court of the First Circuit: *Penny-Mac v. Chester N. Abing*, 1CC12-1-003115. Mr. Abing has been a special target of the Conspirators. (See the "Declaration of Chester N. Abing.")

54. The Supreme Court has attempted to deal with this crisis by ruling clearly that foreclosure-plaintiffs must own the mortgages they want to foreclose before they can take the homes that secure those mortgages. See, for example, *Bank of America v. Reyes-Toledo*, SCWC15-5 (October 9, 2018). Only this way can homeowners negotiate with a party that has the authority to modify the mortgage and agree to reasonable offers to reinstate payments due. And only this way are foreclosure-plaintiffs not unjustly enriched at the expense of homeowners. (See the "Declaration of Chester N. Abing," the "Declaration of Dennis Duane DeShaw," and the "Declaration of Susan Kay Broer-DeShaw," attached hereto.)

55. So the law of this State is clear. Dummy Corporations with no interest in the properties taken are not allowed legally to foreclose. But that does not stop them at all. They take the homes anyway because

they have enormous resources to use both in and out of court, and because the foreclosure-defense bar has been decimated by the Conspirators.

56. Since the Dummy Corporations do not lend money and have not purchased the mortgages they are "foreclosing" (actually stealing), their profit is equal to the total market value of all the homes they steal, with no subtraction for the mortgages, since they did not pay for them.

57. Before the pandemic, there were about 1,450 new foreclosures on homes each year in this State. (https://www.realtytrac.com/statsandtrends/foreclosuretrends/hi/) And about half of those are by Dummy Corporations instead of legitimate banks. If the average value of their victims' homes, including their land, is about $500,000, that means that the Dummy Corporations have an annual profit of about three hundred and sixty-two million dollars ($362,000, 000)—and that is just in this State. And as soon as the pandemic is under control and the

temporary freeze on evictions is lifted, there will be many more foreclosures.

58. No homeowners have the resources to defend themselves in court against the resources of a $362,000,000 enterprise (not counting its resources in the other forty-nine States). (See the "Declaration of Chester N. Abing," the "Declaration of Dennis Duane DeShaw," and the "Declaration of Susan Kay Broer-DeShaw," attached hereto.)

59. Also, there are no public defenders in foreclosure cases in this State. So, without foreclosure-defense attorneys, the wrongful "foreclosures" by the Dummy Corporations sail through the legal system. There are fewer than 5,000 active attorneys in this State, and most of them aspire to work for the banks, for the Dummy Corporations, or for the real-estate developers who buy land from the Dummy Corporations. There are only a handful of attorneys that aspire to work for distressed homeowners. In this situation, justice depends heavily upon the size and

vigor of the defense bar. (See the "Declaration of Chester N. Abing," the "Declaration of Dennis Duane DeShaw," and the "Declaration of Susan Kay Broer-DeShaw," attached hereto.)

60. The Dummy Corporations, with so much money at stake and with the law of this State not favorable to them, are using extrajudicial methods. One of these methods is to forge documents, as they have done in both the Abing case and the DeShaw case. Another such method is to use the Conspirators to suppress the foreclosure-defense bar. In other words, the Conspirators in the OCP and the ODC and the First Circuit are working together with the Dummy Corporations' attorneys in the plaintiffs' bar to suppress the foreclosure-defense bar.

61. Meanwhile, the Conspirators, who are charged with protecting consumers, are maliciously taking no action whatsoever against the massive fraud committed daily by the Conspirators together with the Dummy Corporations as they steal the homes of

residents of this State and reap unearned profits of hundreds of millions of dollars each year (not counting the other forty-nine States). (See the "Declaration of Chester N. Abing," the "Declaration of Dennis Duane DeShaw," and the "Declaration of Susan Kay Broer-DeShaw," attached hereto.) This too is an abuse of power.

62. In spite of the concerted efforts of the Conspirators, a small number of defense lawyers continued, until recently, to attempt to represent homeowners at considerable expense to themselves and considerable risk to their careers. (See the "Declaration of Chester N. Abing," the "Declaration of Dennis Duane DeShaw," and the "Declaration of Susan Kay Broer-DeShaw," attached hereto.)

63. One such courageous defense attorney is Keoni K. Agard, Mr. Abing's attorney in *PennyMac v. Abing*. Another such defense attorney is Gary V. Dubin, the dean of the foreclosure-defense bar. Mr. Dubin was, and is, the victim of a malicious ongoing campaign by

the Conspirators to disbar him permanently. Mr. Dubin is the most competent and knowledgeable foreclosure lawyer in this State (and arguably in the entire country). He has a long record of success in the Intermediate Court of Appeals and before the Supreme Court of this State. And, upon information and belief, he has done nothing that would normally merit disbarment. And he spends considerable time and effort on educating the public about the ongoing foreclosure crisis.

64. Mr. Dubin, therefore, is a high-value target for malicious prosecution by the Conspirators. His disbarment has thoroughly and finally chilled foreclosure-defense in this State and has harmed many consumers, including Mr. Abing and Mr. and Mrs. DeShaw. Whether or not Mr. Agard and others will be disbarred like Attorney Dubin depends entirely on whether or not they have learned to obey the Conspirators. (See "Declaration of Chester N. Abing," "Declaration of Dennis Duane DeShaw," and "Declaration of Susan Kay Broer-DeShaw.")

The Effect on Homeowners

65. This Court should take judicial notice of the well-known fact that every time a family loses its home, the loss is a disaster for many people. Usually, the family's life savings (the equity in their home) is destroyed, the marriage that holds the family together is ruined, the children are pulled out of school, the elderly are not cared for, the value of all of the neighbors' homes is negatively affected, medical bills and violence increase, thereby causing the home-owner to suffer injuries.

66. As a result of the foregoing acts of the Conspirators, Mr. Abing and Mr. DeShaw and Mrs. DeShaw have suffered financial injury and severe emotional injury, both proximately caused by the misconduct of the Conspirators. (See "Declaration of Chester N. Abing," "Declaration of Dennis Duane DeShaw," and "Declaration of Susan Kay Broer-DeShaw.")

The Effect on the Defense Bar

67. The Conspirators have maliciously prosecuted Attorney Gary Dubin and Mr. Stone, thereby harming Plaintiffs.

68. The Conspirators have threatened, maliciously investigated, intimidated, and corrupted Lawyers Sandra D. Lynch, R. Stephen Geshell and Lawyer Jason Blake McFarlin, frightening them into aiding the Conspiracy against their own clients, thereby chilling all foreclosure-defense in this State and thereby harming the Plaintiffs. (See the "Declaration of Chester N. Abing," the "Declaration of Dennis Duane DeShaw," and the "Declaration of Susan Kay Broer-DeShaw.")

69. Plaintiffs, together with a paralegal helping them with this case, contacted the following lawyers and asked them to accept this case and to represent Plaintiffs. Every single one of them declined:

Rick Abelman (808) 589-1010

Patricia Aburano (808) 664-1046

Kevin S. Adaniya (808) 528-2001

Andrew Agard (808) 540-0044

Keoni K. Agard (808) 342-4028

Paul Aker (614) 407-6874

Al Albrechtson (808) 344-1019

Roman F. Amagum, Jr. (808) 544-4151

Scott C. Arakaki (808) 695-4505

Attorneys for Freedom (480) 498-6508

Ryan G.S. Au (808) 450-2177

Victor Bakke (855) 957-3765

Bobby Bautista (808) 561-3289

James Bikerton, Bikerton Law Group

(808) 599-3811

James S. Bostwick (888) 421-8300

Wilham H. Brady (808) 526-3069

Jason Braswell (808) 464-5223

Bronster Fujichaku Robbins

Sharon Brooks (808) 321-2741

Scott Brower (808) 522-0053

William C. Bullard (808) 722-1746

Blake Bushnell (808) 455-3936

Mateo Caballeros (808) 600-4797

Phil Carrey (808) 934-9711

Benjamin Cassiday Ill (808) 220-3200

Daniel M. Chen (808) 206-7768

Jennifer Ching (808) 539-4444

Raymond C. Cho (808) 545-4600

Stephen S. Choi (808) 286-4248

Angela Correa-Pei (808) 395-1466

Mark S. Davis (808) 524-7500

William J. Deeley (808) 533-1751

Gregory Dunn (808) 524-4529

J. Porter DeVries (808) 339-3200

Todd Eddins (808) 538-1110

Barry D. Edwards (808) 599-3811

David L, Fairbanks (808) 600-3514

David Farmer (808) 222-3133

Rhonda Fasfinder (808) 242-4956

Ramon J. Ferrer (808) 298-7277

Rosa Flores (808) 682-8822

Jeffery Foster (808) 348-7800

L. Richard Fried (808) 600-3514

Elizabeth Jubin Fujiwara (808) 204-5436

Tracy Fukui (808) 521-0111

Kenneth K. Fukunaga (808) 533-4300

Max Garcia (808) 523-7702

Emily Gardner (808) 727-1220

Blake Goodman (808) 528-4274

Reza Gharakhani (Roster & Auster) (310) 695-1090

Go Law Office (808) 679-2049

Goodsill Anderson Quinn & Stifel (808) 547-5600

Arthur K. Goto (808) 526-2226

Bruce Graham (808) 539-0440

Michael Jay Green (808) 521-3336

Richard D Gronna (808) 523-2441

Richard M. Grover (808) 926-6699

Andrew Guzzo (808) 427-3391

David Hall (808) 526-0402

Sharon E. Har (808) 523-9000

Leighton M. Hara (808) 532-1728

William Harrison (808) 523-7041

Hawaii State Bar Assoc. Referral Service

Charles M. Heaukulani (808) 895-0615

Susan Kathleen Hippensteele (808) 721-1128

Charles Hite (808) 961-0641

Lahela H. F. Hite (808) 524-8350

Christi Liane Ho (808) 347-5555

James Hochberg (808) 534-1514

Richard Hoke, Jr. (808) 531-5927

Miriah Holden (808) 525-5092

Ted Hong (808) 933-1919

Carol M, Jung (808) 326-4852

Frank L. Jung (808) 326-4852

Derek Kamiya (8()8) 369-8281

Stuart A. Kaneko (808) 600-3514

Usha Kilpatrick (808) 326-4852

Grant Kidani, Kidani Law Center

(808) 521-0933

Sean Kim (808) 383-2350

Jo Kim (808) 775-0245

Warren Kim (808) 550-0733

Dennis W, King (808) 533-1753

Keith Kiuchi (808) 521-7465, 533-4216

Jane Alison Kimmel (808) 524-7900

Kimsey Law Firm, P.A. (888) 846-9149

Kurt W. Klein (808) 591-8822

Robert G. Klein (808) 591-8822

Kobayahi Sugita & Goda (808) 535-5700

Kerry Komatsubara (808) 225-4541

Ronald K. Kotoshirodo (808) 545-7700

Peter K. Kuboto (866) 439-0403

Stephen Laudig (808) 778-4562

Chase Howell Livingston (808) 524-7500

Charles S. Lotsof (808) 521-3333

Legal Shield (800) 654-7757

Colin Love (808) 329-2460

Sharon V. Lovejoy (808) 537-6100

Shawn Anthony Luiz (808) 538-0500

Sandra Lynch (808) 393-1779

Jennifer Lyons (808) 853-8750

Jason Blake McFarlin (808) 269-0625

Georgia K. McMillen (808) 242-4343

Edward D. Magauran (808) 585-1000

Robert Marx 9808) 935-8988

Jerold T. Matayoshi (808) 533-4300 Christy

Matsuba (808) 983-3850

Robert K. Matsumoto (808) 585-7244

Luis Mendonca (808) 895-0969

David J. Mink (808) 529-7300

Jeffrey Miller (808) 455-3936

Morgan & Morgan (877) 667-4265

Michael Morrison (850) 319-6373

Khaled Mujtabaa (808) 524-0511

Shawn Nakoa (808) 329-4466

Jennifer Ng (808) 935-6000

O'Conner Playdon Guben & Inoye (808) 524-8350

Michael O'Connor (808) 329-2076

Ronald T. Ogomori (808) 695-7768

Kevin O'Grady (808) 521-3367

Alan M. Okamoto (808) 961-0641

Blake Okimoto (808) 943-8899

John L. Olson (808) 323-2677

William N. Ota (808) 532-1728

F. Steven Pang (808) 533-1751

Angela K. Correa-Pei (808) 242-1400

Lars Peterson (808) 469-4300

Arnold T. Phillips 11 (808) 781-1414

Terry Revere (808) 791-9550

Stanley Roehrig (808) 599-3811

James Blaine Rogers (808) 740-0633

William Rosdil (808) 969-7300

Joseph Rosenbaum (808) 203-5436

Laura Sanders (808) 326-1161

Jerry Scatena (808) 329-2076

Schlack & Ito (808) 523-6040

John Matthew Schum (808) 235-3363

Jack Schweigert (808) 533-7491

Kevin Robert Seiter (808) 329-0731

Damon Senaha (808) 538-1919

Abelina M. Shaw (808) 523-5979

Patrick K. Shea (808) 369-8281

VanAlan Shima (808) 545-4600

David F. Simons (809) 536-3255

Steven Slavitt (808) 844-5498

Edward Joseph Smith S.F. (808) 523-6936

Sarah Smith (808) 326-2220

Smith & Himmelman (808) 523-5050

Joana Sokolow (808) 329-3910

Barry Lloyd Sooalo (808) 754-5669

Kaupena Francis Soon (808) 779-1334

Donald L, Spafford, Jr. (808) 532-6300

David Robert Squeri Ill (808) 426-7918

Michael Stern (808) 596-0766

Andrew Daisuke Steward (808)772-9297

Paul Sulla (808) 933-3600

Cheryl Takabayashi (808) 537-2027

Jason M. Tani (808) 868-5211

Christopher D. Thomas (808) 261-7710

Stephanie E. W, Thompson (808) 537-6100

Robert Triantos (808) 329-6464

Jose Isaias Utzurrum (808) 587-7070

John Van Dyke (808) 956-8509

Alan Van Etten (808) 533-1754

Carl M. Varady (808) 523-8447

Lisa Volguardsen (808) 447-1761

Wagner, Choi, & Verbrugge (808) 533-1877

John D. Waihe'e (808) 566-0999

Kim Warren (808) 550-0733

Jared Alden Washkowitz (808) 840-7410

Denise Miyasaki Wheeler (808) 545-7877

Stephen Whittaker (808) 960-4536

Ryan Witthans (Remillard & Huyan)

(808) 536-5737

Kenneth K. P. Wong (808) 536-3870

70. The above list is the Roll of Shame of the Hawaii bar. The list includes only those attorneys who flatly refused. It does not include those who intentionally pursue a losing strategy to please the Defendants. The above list alone is strong evidence in support of the allegations contained in this First Amended Class Action Complaint that the actions of the Defendants have caused devastating harm to the defense bar in this State and thereby have profoundly harmed Mr. Abing and Mr. and Mrs. Deshaw. And it is evidence that there is nothing they can do about it except request redress from this Court.

71. The misconduct described in this Complaint above and in each of the following Counts has injured Mr. Abing and Mr. and Mrs. DeShaw. Their injuries include, but are not limited to, property damage, financial damage, emotional distress, and deprivation

of their civil rights. (See the "Declaration of Chester N. Abing," the "Declaration of Dennis Duane DeShaw," and the "Declaration of Susan Kay Broer-DeShaw," attached hereto.)

72. The misconduct described above and in each of the following Counts is objectively unreasonable and was undertaken intentionally and maliciously, with willful and reckless indifference to the constitutional rights of the Plaintiffs. (See the "Declaration of Chester N. Abing," the "Declaration of Dennis Duane DeShaw," and the "Declaration of Susan Kay Broer-DeShaw," attached hereto.)

73. The misconduct described above and in each of the following Counts was undertaken pursuant to the policy and practice of the Conspirators, in the manner described more fully above.

COUNT I:
STATE LAW CLAIM:
ABUSE OF POWER or MALFEASANCE

74. Each of the Paragraphs of this Complaint is incorporated into this Count as if restated fully herein.

75. The OCP Defendants all are employees of the Office of Consumer Protection, an agency created by statute. Its employees and agents can do only such things as the law authorizes them to do, and they must act in the manner prescribed by law.

76. Nothing in the OCP's enabling statute authorizes it agents to steal funds from consumers, to threaten consumers, to suppress an entire section of the bar, and to help Dummy Corporations defraud homeowners.

77. Likewise, the ODC Defendants all are employees and agents of the Office of Disciplinary Counsel, an agency created by order of the Supreme Court of this State. Its employees and agents can do only such

things as the Supreme Court authorizes them to do, and they must act in the manner prescribed by law.

78. The Supreme Court has never authorized the employees and agents of the ODC to suppress a section of the bar and to conspire to help Dummy Corporations defraud homeowners in this State.

79. The actions of the Conspirators are a textbook example of malfeasance in office or abuse of power:

> Malfeasance [a.k.a. abuse of power or official misconduct] has been defined by appellate courts in other jurisdictions as a wrongful act which the actor has no legal right to do. *McGuire v. Corn*, 92 Ohio App. 445, 110 N.E.2d 809; as any wrongful conduct which affects, interrupts, or interferes with the performance of official duty, *State v. Ward*, 163 Tenn. 265, 43 S.W.2d 217; as an act for which there is no authority or warrant of law, *Warren v. Commonwealth*, 136 Va. 573, 118 S.E. 125; as an act which a person ought not to do at all, *Bell v. Josselyn*, 69 Mass. (Gray) 309, 63 Am.Dec. 741; *Lee v. Providence Washington Insurance Co.*, 82 Mont. 264, 266 P. 640; *Rising v. Ferris*, 216 Ill. App. 252; as a

> wrongful act which a person ought not to do, *Robbins v. Commonwealth*, 232 Ky. 115, 22 S.W.2d 440; as an act which is wholly wrongful and unlawful, *Coite v. Lynes*, 33 Conn. 109; *State* ex rel. *Hardie v. Coleman*, 115 Fla. 119, 155 So. 129, 92 A.L.R. 988; *Minkler v. State of Nebraska* x rel. *Smithers*, 14 Neb. 181, 15 N.W. 30; as that which an officer has no authority to do and is positively wrong or unlawful, *White v. Lowry*, 162 Miss. 751, 139 So. 874; and as the unjust performance of some act which the party performing it has no right, or has contracted not, to do, *National Surety Co. v. State* ex rel. *Rathburn*, 90 Ind.App. 524, 161 N.E. 832; *Dudley v. City of Flemingsburg*, 115 Ky. 5, 72 S.W. 327, 60 L.R.A. 757, 103 Am.St.Rep. 253, 1 Ann.Cas. 958; *State* ex rel. *Jones v. Doucet*, 203 La. 743, 14 So.2d 622.
>
> --*Daugherty v. Ellis*, 142 W.Va. 340, 357-8, 97 S.E.2d 33, 43 (1956)

80. To establish malfeasance in office it is not necessary to show a specific intent to defraud, or that the acts of the Conspirators are, in themselves, criminal or corrupt in character. It is the pattern and intention that are decisive. An example of this is the driver of the getaway car in a bank robbery. Driving

a car is perfectly legal. Nevertheless, the driver is an important part of an illegal conspiracy:

> To establish malfeasance in office it is not necessary to show a specific intent to defraud, or that the act is criminal or corrupt in character. *Warren v. Commonwealth*, 136 Va. 573, 118 S.E. 125; *Law v. Smith*, 34 Utah 394, 98 P. 300; *State* ex rel. *Attorney General v. Lazarus*, 39 La.Ann. 142, 1 So. 361. See also *County Court of Tyler County v. Duty*, 777 W.Va. 17, 87 S.E. 256.
>
> --*Ibid.*

81. The Conspirators' misconduct described above and in each of the following Counts is objectively unreasonable and was undertaken intentionally and maliciously, with willful and reckless indifference to the constitutional rights of the Plaintiffs. And it injured the Plaintiffs in their property, financially, and emotionally. Also, the Conspirators' misconduct was undertaken pursuant to the policy and practice of the Conspirators, in the manner described more fully above.

COUNT II: 42 U.S.C. § 1983:
DUE PROCESS

82. Each of the Paragraphs of this Complaint is incorporated into this Count as if restated fully herein.

83. The Fourteenth Amendment to the Constitution of the United States provides in Section 1:

> No State . . . shall deprive any person of life, liberty, or property, without due process of law . . . .

84. To enable litigation to enforce the Fourteenth Amendment, 42 U.S.C. §1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for any act or omission taken in such officer's judicial capacity, injunctive relief shall not be

granted unless a declaratory decree was violated or declaratory relief was unavailable..

85. All of the Conspirators listed above acted individually, jointly, and in conspiracy, as well as under color of law to harass and suppress the foreclosure-defense bar—for the purpose of depriving the homeowners of access to the courts of this State.

86. In doing so, the Conspirators have subjected the Plaintiffs--Mr. Abing and Mr. DeShaw and Mrs. DeShaw--all of whom are citizens of the United States, to the deprivation of their rights, privileges, and immunities to due process thereby causing them to suffer injuries--in their property, financially, and emotionally.

87. Plaintiffs have a property interest, protected by the Constitution, in their homes, the value of which is to be determined by the jury. Defendants are abusing their power for the purpose of depriving Plaintiffs of their property interests, and they have succeeded in doing so.

88. Since the Defendants all are government employees joined in one illegal conspiracy, the Plaintiffs have been deprived of their interest, in intention and effect, by the government.

89. Since it is impossible for the Plaintiffs to find an attorney to litigate their cases zealously, and it is impossible to win a foreclosure defense in this State without an attorney, Plaintiffs have been effectively excluded from the courts of this State.

90. Effective exclusion by agents of the State is just as much an exclusion as would be a State statute prohibiting homeowners from litigating foreclosure defenses. In both cases, there is a lack of legal process in this State caused directly by the actions of the Conspirators. And there is nothing Plaintiff can do about it other than appeal to this court.

91. To say that Defendants may manipulate the legal system for Improper motives by excluding an entire class--because there is no right to counsel spelled out

In the Constitution--is to cynically pre-tend to ignore reality and to make a mockery of the Constitutional right to due process.

92. The right of access to the courts is a fundamental right protected by the Constitution.

93. The Conspirators' misconduct described above is objectively unreasonable and was undertaken intentionally and maliciously, with willful and reckless indifference to the constitutional rights of the Plaintiffs. Also, the Conspirators' misconduct was undertaken pursuant to the policy and practice of the Conspirators.

COUNT III: 42 U.S.C. § 1983:
THREATENING HOMEOWNERS

94. Each of the Paragraphs of this Complaint is incorporated into this Count as if restated fully herein.

95. 42 U.S.C. S 1985(2) and (3) provide:

Obstructing Justice; Intimidating Party. . . .
If two or more persons in any
State or Territory conspire to
deter, by intimidation, or threat,
any party or witness in any court
of the United States from . . .
testifying to any matter pending
there, freely, fully, and truthfully,
or to inure such party or witness
in his person or property on
account of his having so attended
or testified . . . ;
or if two or more persons conspire for
the purpose of impeding, hindering,
obstruction, or defeating, in any
manner, the due course of justice in
any State or Territory, with intent to
deny to any citizen the equal
protection of the law, or to injure
him in his property for lawfully
enforcing, or attempting to enforce,
the right of any person or class of
persons, to the equal protection of
the law . . .
the party so insured or deprived
may have an action for the recovery
of damages occasioned by such
injury or deprivation, against one or
more of the conspirators.

96. In addition to intimidating the defense bar, all of the Conspirators listed above acted individually, jointly, and in conspiracy, as well as under color of law to directly harass and threaten the Plaintiff homeowners—for the purpose of depriving them of access to the courts of this State.

97. These threats deprive the homeowners—all citizens of the United States--of their rights, privileges, and immunities both to equal protection under the law and to due process.

98. In doing so, the Conspirators have subjected the Plaintiffs--Mr. Abing and Mr. DeShaw and Mrs. DeShaw--all of whom are citizens of the United States, to the deprivation of their rights, thereby causing them to suffer injuries--in their property, financially, and emotionally.

99. The Conspirators' misconduct described above is objectively unreasonable and was undertaken intentionally and maliciously, with willful and reckless

indifference to the constitutional rights of the Plaintiffs. Also, the Conspirators' misconduct was undertaken pursuant to the policy and practice of the Conspirators.

100. The Conspirators' misconduct violates clearly established Constitutional rights of which any reasonable person would have known. None of the OCP Defendants possibly could have thought that it was proper or legal for James F. Evers to threaten Mr. Abing with prosecution for a "felony," order him to convey his home to a Dummy Corporation, threaten his attorney, subpoena his bank account, and steal money from his credit-card account. But they sat there and watched and did nothing about it. Likewise, no one in the ODC or the Disciplinary Board possibly could have thought that it was legitimate to disbar Gary V. Dubin, the dean of the foreclosure-defense bar nationally, for a minor alleged offense, But they sat there and watched and did nothing about it.

101. A public official is not entitled to "qualified immunity" when the contours of the allegedly violated right were sufficiently clear that a reasonable official would understand that what he was doing violated a Constitutional right.

COUNT IV: 42 U.S.C. § 1983
EQUAL PROTECTION

102. Each of the Paragraphs of this Class Action Complaint, is incorporated into this Count as if restated fully herein.

103. As described more fully above, one or more of the Conspirators, all while acting individually and jointly, and in conspiracy--as well as under color of law--subjected Mr. Abing and Mr. DeShaw and Mrs. DeShaw (all citizens of the United States) to the deprivation of their right, privilege, and immunity, under the Fourteenth Amendment to the Constitution of the United States, to equal protection of the laws, thereby causing them to suffer injuries.

104. Suppression of the defense bar is a violation of the right of the homeowners to equal protection under the law--not because there is a constitutional right to be represented by a lawyer in all cases. It is because everyone has the right to be treated equally under the law. If the Dummy Corporations do not have the right to be represented in court by attorneys, then neither do the homeowners. However, if the Dummy Corporations do have the right to be represented by attorneys (as they of course do), then so do the homeowners. The law of this State says that everyone, billion-dollar corporations and homeowners alike, has the equal right to be represented in court by an attorney. But the Conspirators have subverted the law. The Conspirators have rigged the game further in favor of the Dummy Corporations by making sure that the homeowners are defenseless. (See "Declaration of Chester N. Abing," "Declaration of Dennis Duane DeShaw," and "Declaration of Susan Kay Broer-DeShaw.")

105. Class-based violations of the right to equal protection arise whenever the law is applied in a

discriminatory manner or In such a way as to impose different burdens on different classes of people. The two different classes in the case at bar are homeowners and Dummy Corporations. These two groups are similarly situated in that both have to appear in Circuit Court in this States, and that is relevant to the State's challenged policy. Therefore, homeowners constitute a class, and the Dummy Corporations constitute the control group.

106. The laws that are applied differently to the two classes include, but are not limited to, the law that authorizes the Office of Consumer Protection to fine and harass and intimidate the defense bar (Haw.Rev.Stat. S 487-5), the law that authorizes it to enjoin the defense bar from representing home-owners (12 U.S.C. § 5538[b][1], MARS Rule § 1015. 10, and Haw.Rev.Stat. § 480E-14), and Haw.Rev. Stat. §§ 480-2(d), 480-15, 480-15.1, 487-5(6), 487-13, 487-14, and 487-15, which authorize Injunctions for alleged violations of Haw.Rev.Stat. Chapters 480, 480E, and 481A. (See the OCP's own list of the laws it is using, in the "Jurisdiction and Venue" section,

pp. 2-3, of its "Complaint" in *State of Hawaii v. Stone*, 19-cv-272, Dkt Entry No. 1 in that case.)

107. The laws that are applied differently to the two classes include, but are not limited to, the orders of the Hawaii Supreme Court that authorize the Office of Disciplinary Counsel to Investigate, harass, and disbar members of the defense bar, as they did to Gary V. Dubin, the dean of the foreclosure-defense bar, with a national reputation. (See Exhibit "C" hereto.)

108. All of these laws are valid on their face. It is the discriminatory application of these laws by the OCP and the ODC that violates the Equal Protection Clause of the Fourteenth Amendment. The case at bar is a classic case of violation of the right of all Americans to Equal Protection.

109. The Conspirators' misconduct described above is objectively unreasonable and was undertaken intentionally and maliciously, with willful and reck-

less indifference to the constitutional rights of the Plaintiffs. Also, the Conspirators' misconduct was undertaken pursuant to the policy and practice of the Conspirators.

COUNT V: 42 U.S.C. § 1985(2) and (3):
CONSPIRACY TO DEPRIVE
CONSTITUTIONAL RIGHTS

110. Each of the Paragraphs of this Complaint is incorporated into this Count as if restated fully herein.

111. 42 U.S.C. § 1985(2) and (3) provide:

> Obstructing Justice; Intimidating Party . . . . If two or more persons in any State or Territory conspire to deter, by . . . intimidation, or threat, any party or witness in any court of the United States from . . . testifying to any matter pending there, freely, fully, and truthfully, or to inure such party or witness in his person or property on account of his having so attended or testified
>
> ; . . . or if two or more persons conspire

> for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the law, or to injure him in his property for lawfully enforcing, or attempting to enforce, the right of any person or class of persons, to the equal protection of the law . . . : the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators.

112. As described more fully above, each of the Conspirators, all while acting individually, jointly, and in conspiracy, conspired to deter, by intimidation and threat, the Plaintiffs--Mr. Abing and Mr. DeShaw and Mrs. DeShaw (all of whom are parties and witnesses in trials) from testifying freely, fully, and truthfully. The Conspirators also conspired for the purpose of impeding, hindering, obstructing, and defeating the due course of justice in the Circuit Courts of Hawaii by denying the Plaintiffs equal protection of the laws. These acts, taken in furtherance of a conspiracy, have injured the Plain-tiffs in their property. (See the

"Declaration of Chester N. Abing," the "Declaration of Dennis Duane DeShaw," and the "Declaration of Susan Kay Broer-DeShaw," attached hereto.)

113. The Conspirators' misconduct described above is objectively unreasonable and was undertaken intentionally and maliciously, with willful and reckless indifference to the constitutional rights of the Plaintiffs. Also, the Conspirators' misconduct was undertaken pursuant to the policy and practice of the Conspirators.

COUNT VI: 42 U.S.C. § 1983:
DENIAL OF ACCESS TO COURTS

114. Each of the Paragraphs of this Class Action Complaint is incorporated into this Count as if restated fully herein.

115. A violation of Section 1985 occurs whenever. . .

> two or more persons conspire for the purpose of impeding, hindering, obstruction,

> or defeating, m any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the law, or to injure him in his property for lawfully enforcing, or attempting to enforce, the right of any person or class of persons, to the equal protection of the law . . . ;

116. Every act of the Conspirators described above is intended . . .

> for the purpose of impeding, hindering, obstructing, or defeating the due courses of justice in any State or Territory, with intent to deny to any citizen the equal protection of the law. . . .

117. Each of the Conspirators, while acting individually, jointly, and in conspiracy, as well as under color of law, subjected the Plaintiffs--Mr. Abing and Mr. DeShaw and Mrs. DeShaw--to the deprivation of their rights, privileges, and immunities to access the courts of this State. (See the "Declaration of Chester N. Abing," the "Declaration of Dennis Duane DeShaw," and the "Declaration of Susan Kay Broer-DeShaw," attached hereto.)

118. The Conspirators' misconduct described above is objectively unreasonable and was undertaken intentionally and maliciously, with willful and reckless indifference to the constitutional rights of the Plaintiffs. Also, the Conspirators' misconduct was undertaken pursuant to the policy and practice of the Conspirators.

COUNT VII: 42 U.S.C. § 1983:
FAILURE TO INTERVENE

119. Each of the Paragraphs of this Class Action Complaint is incorporated into this Count as if restated fully herein.

120. As a result of the Conspirators' failure to intervene to prevent the other Conspirators from violating the Plaintiffs' constitutional rights, the Plaintiffs and their families suffered pain and injury, as well as emotional distress. All of the Conspirators had a reasonable opportunity to prevent this harm, but they failed to do so.

121. The Conspirators' misconduct described above is objectively unreasonable and was undertaken intentionally and maliciously, with willful and reckless indifference to the constitutional rights of the Plaintiffs. Also, the Conspirators' misconduct was undertaken pursuant to the policy and practice of the Conspirators.

123. The Fourteenth Amendment imposes a duty on agents of a State to protect individuals from their fellow agents.-

For example, police officers have a duty to Intercede when their follow officers violate the Constitutional rights of a suspect or other citizen—if the agents have a realistic opportunity to intercede.

124. Defendant James F. Evers intervened in the case of the DeShaws to help a Dummy Corporation, without leave of court. And Evers interrogated Mr. Abing, threatened him, tried to bribe him, and ordered him to convey his home to a Dummy Corporation. This behavior was illegal and improper.

Meanwhile, Evers's sidekick (John N. Tokunaga) and their supervisors in the OCP (Catherine Awakuni Colon, Jo Ann Uchida Takeuchi, and Michael J. S. Moriyama), all of whom have a special relationship with the State, knew exactly what Evers was doing, because they were assisting him and directing him to do it. However, Tokunaga and the supervisors placed Plaintiffs into danger of suffering the loss of their homes by acting with deliberate indifference to a known or obvious danger.

COUNT VIII: STATE LAW CLAIM:
MALICIOUS PROSECUTION

125. Each of the Paragraphs of this Complaint is incorporated into this Count as if restated fully herein.

126. The Conspirators, all while acting individually, jointly, and in conspiracy, caused Attorneys Gary Dubin and Robert Stone (and unknown other members of the foreclosure-defense bar) to be subjected to judicial proceedings for which there was insufficient probable cause. These judicial proceedings were

instituted and continued selectively and maliciously, resulting in injury to the Plaintiffs--Mr. Abing and Mr. DeShaw and Mrs. DeShaw.

127. The Conspirators identified above accused Gary V. Dubin and Mr. Stone (and unknown other members of the foreclosure-defense bar) of improper activity knowing those accusations to be without substantial justification, and they made statements with the intent of exerting influence to assist the Dummy Corporations in the judicial proceedings.
104. Upon information and belief, statements by the Conspirators regarding the alleged culpability of Gary V. Dubin and Mr. Stone were made with knowledge that said statements either were false or misleading and described trivial matters.

128. Upon information and belief, statements by the Conspirators regarding the alleged culpability of Gary V. Dubin and Mr. Stone were made with knowledge that said statements either were false or misleading and described trivial matters.

COUNT IX: STATE LAW CLAIM:
CIVIL CONSPIRACY

129. Each of the Paragraphs of this First Amended Class Action Complaint is incorporated into this Count as if restated fully herein.

130. As described more fully in the preceding paragraphs, the Conspirators, acting in concert with other known and unknown coconspirators, conspired by concerted action to accomplish an unlawful purpose by unlawful means, thereby causing the Plaintiffs to suffer injuries. (See the "Declaration of Chester N. Abing," the "Declaration of Dennis Duane DeShaw," and the "Declaration of Susan Kay Broer-DeShaw," attached hereto.)

131. In furtherance of the conspiracy, the Conspirators committed overt acts and were otherwise willful participants in joint activity, thereby causing injury to the Plaintiffs. (See the "Declaration of Chester N. Abing," the "Declaration of Dennis

Duane DeShaw," and the "Declaration of Susan Kay Broer-DeShaw," attached hereto.)

132. The Conspirators' misconduct described above is objectively unreasonable and was undertaken intentionally and maliciously, with willful and reckless indifference to the constitutional rights of the Plaintiffs. Also, the Conspirators' misconduct was undertaken pursuant to the policy and practice of the Conspirators.

COUNT X: STATE LAW CLAIM:
INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS

133. Each of the Paragraphs of this Complaint is incorporated into this Count as if restated fully herein.

134. The acts and conduct of the Conspirators as set forth above were extreme and outrageous. The Conspirators intended to cause, or were in reckless disregard of the probability that their conduct would

cause, severe emotional distress to the Plaintiffs--Mr. Abing and Mr. DeShaw and Mrs. DeShaw--as is more fully alleged above.

135. Said actions and conduct did directly and proximately cause severe emotional distress to the Plaintiffs and their families. (See the "Declaration of Chester N. Abing," the "Declaration of Dennis Duane DeShaw," and the "Declaration of Susan Kay Broer-DeShaw," attached hereto.)

136. The Conspirators' misconduct described above is objectively unreasonable and was undertaken intentionally and maliciously, with willful and reckless indifference to the constitutional rights of the Plaintiffs. Also, the Conspirators' misconduct was undertaken pursuant to the policy and practice of the Conspirators.

COUNT XI: 42 U.S.C. §1986:
ACTION FOR NEGLECT TO
PREVENT A HARM

137. Each of the Paragraphs of this Class Action Complaint is incorporated into this Count as if restated fully herein.

138. 42 U.S.C. §1986 provides:

> Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act . . . , and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action . . . .

139. In the manner described above, during the constitutional violations by the Conspirators described above, one or more of the Conspirators committed the unlawful acts, while the others had knowledge of the unlawful acts, had the power to prevent or aid in

preventing the commission of the same, and neglected or refused so to do.

140. As a result of the Conspirators' neglect to prevent the violation of Plaintiffs' constitutional rights, Mr. Abing and Mr. and Mrs. DeShaw and their families have suffered pain and injury, as well as emotional distress. These Conspirators had a reasonable opportunity to prevent this harm, but they failed to do so.

141. The "neglect to prevent" harm described in this Count was done with malice and with willful and reckless indifference to the rights of others, thereby causing the Plaintiffs to suffer injury.

142. The misconduct described in this Count was undertaken pursuant to the policy and practices of the Conspirators.

COUNT XII: FOURTEENTH AMENDMENT: EQUAL PROTECTION

143. Each of the Paragraphs of this First Amended Class Action Complaint is incorporated into this Count as if restated fully herein.

144. Plaintiffs bring this action directly under the Fourteenth Amendment in addition to Sections 1983, 1985, and 1986 of the Civil Rights Laws.

145. The Fourteenth Amendment at Section One provides:

> No State shall make or enforce any law which shall abridge the privileges or Immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

146. The Defendants in the case at bar have denied to Plaintiffs the equal protection of the law.

147. Plaintiff are within the jurisdiction of the Defendant officers.

148. 42 U.S.C. §§ 1983, 1985, and 1985, pled above, are for the purpose of providing for monetary damages. The Fourteenth Amendment by itself, on the other hand, does not on its face provide for monetary damages. However, it obviously provides for declaratory relief, as was provided by the Supreme Court of the United States in a similar civil-rights case, *Brown v. Board of Education*, 347 U.S. 483 (1954).

WHEREFORE, the Plaintiffs respectfully request:

(a) That this Court enter a declaratory judgment in their favor and against the Defendant Conspirators (James F. Evers, John N. Tokunaga, Stephen H. Levins, Lisa P. Tong, Melinda D. Sanchez, Catherine Awakuni Colon, Jo Ann Uchida Takeuchi, Michael J.S. Moriyama, Bruce B. Kim, Bradley R. Tamm, Ryan Summers Little, Rebecca Salwin, Yvonne R.

Shinmura, Charlene M. Norris, Roy F. Hughes, Gayle J. Lau, Jeffrey P. Miller, Philip H. Lowenthal, Clifford Nakea, Bert I Ayabe, and Jeannette H. Castagnetti) declaring that the Conspirators are acting illegally and improperly and are abusing their power.

(b) That this Court enter a judgment against the Defendant Conspirators, both individually and in their official capacities, for compensatory damages, costs, and attorneys' fees, along with punitive damages, in an amount to be determined at trial;

(c) That this Court enjoin the Defendant Conspirators from continuing the actions alleged in this Class Action Complaint;

(d) That this Court appoint counsel to represent the Proposed Class in the case at bar and a Special Master to supervise all foreclosure-defense cases in this State, to report to this Court on the actions of the Conspirators to suppress the foreclosure-defense bar in this State and to insure that foreclosure-defendants' right to representation in court, without malicious interference, is not again abridged by the Conspirators; and

(e) That this Court provide any other relief that it deems appropriate.

September 30, 2021 Respectfully submitted:

/s/ Chester Noel Abing
Chester Noel Abing
Plaintiff

/s/ Dennis Duane DeShaw
Dennis Duane DeShaw
Plaintiff

/s/ Susan Kay Broer-DeShaw
Susan Kay Broer DeShaw
Plaintiff

JURY DEMAND

The Plaintiffs hereby demand a trial by jury pursuant to Fed.R.Civ.Pro. 38(b) on all issues so triable.

September 30, 2021

/s/ Chester Noel Abing
Chester Noel Abing
Plaintiff

/s/ Dennis Duane DeShaw
Dennis Duane DeShaw
Plaintiff

/s/Susan Kay Broer DeShaw
Susan Kay Broer DeShaw
Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that, on the dates noted below, a true and correct copy of the foregoing First Amended Class Action Complaint was served electronically through this Court's CM/ECF system on all parties to this case.

PLAINTIFFS'

EXHIBIT "A"

TO THE COMPLAINT

Chester Noel Abing
[redacted]
Waipahu, HI 96797
October 12, 2018

James Evers
Staff Attorney
Office of Consumer Protection
235 S. Beretania Street, Suite 801
Honolulu, HI 96813

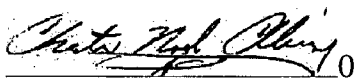
OCP Case No. 2018-0281

Dear Mr. Evers:

I have seen a transcript, of your questions and my answers during your examination of me at your office at 1:00 p.m. on Thursday, August 309 2018. There are five important points or fact and one conclusion that I did not make clear at that time, and I think it would be helpful if I may clarify them on the record at this time. I am attaching a sworn declaration of the clarifications/ corrections for your convenience.

Encl: Declaration

Yours truly,



Chester Noel Abing

STATE OF HAWAII
OFFICE OF CONSUMER PROTECTION

In the Matter of OCP Case No. 2018-0281,
ROBERT LEE STONE Respondent.

DECLARATION OF CHESTER NOEL ABING

I am the witness who was examined by James Evers on August 30, 2018, in the above-captioned case. I am more than twenty-one years of age, and I am legally qualified to make this Declaration. I have personal knowledge of all the facts stated herein, and I make this Declaration under oath, subject to penalty of law, for the purpose of correcting the record of August 30, 2018:

1. My statements on August 30, 2018, were confused and incomplete. The 0reason they were is because James Evers, who was conducting the examination, ambushed me with documents that I had not seen or thought about for many years, and then he told me what they meant. It did not occur to me at the time that he, a lawyer, could misunderstand all of them.

2. Also, Mr. Evers's threatening to charge me with a felony was very intimidating to me, and I panicked and started guessing in my answers, I am not a lawyer, and I am not used to being threatened. This is the first time in my life I have ever been accused of a felony.

3. Also, I was shocked and confused to see Mr. Evers intervening to protect the fraudulent bill collector in my case in Circuit Court (ICC12-1-3115) from the consumer (me), when that is the opposite of

the purpose of his office.

4. Also, I was confused about why Mr. Evers was offering to pay me for testifying against my attorney and his assistant.

5. The whole thing was very scary and very confusing.

6. The first point of fact that needs to be clarified is that neither my attorney, Mr. Agard, nor his assistant, Mr. Robert Stone, has ever paid me for any referrals of clients to them at any time, The checks from Mr. Stone to me (Evers Exhibits 4, 5, 6, and 7) are payments for work in Mr. Stone's law office: helping prepare and file bankruptcy petitions, typing, filing, designing marketing, and delivering documents to other attorneys and to the courts.0

7. The second point that needs to be clarified is that, at all relevant times, I have had written contracts both with Mr. Agard and with his assistant, Mr. Stone, spelling out in detail their responsibilities and my responsibilities in the 0foreclosure-defense litigation in Case ICC12-1-3115. And at all time Mr. Agard and Mr. Stone have carefully observed their contracts.

8. The third point that needs to be clarified is that I have never paid Mr. Stone in advance for any of the many services he has provided in my litigation. I paid a modest retainer to Mr. Agard, but that is entirely proper.

9. The fourth point that needs to be clarified is what Mr. Evers said during the examination about Chapter 7: that my checking the "surrender the property" box in my "Statement of Intention for Individuals Filing Under Chapter 7," filed September 12, 2017, (Evers Exhibit 9) is a contract that binds me to give my home to "American Home Mortgage" (which

no longer exists). I want to make clear that that never was my intention. My intention was to indicate that I would not try to use Chapter 7 to contest the wrongful mortgage foreclosure against me, because that is not the purpose of Chapter 7. I was already contesting the wrongful fore0closure in Circuit Court, in Case ICC12-1-3115. During the examination I did not 0answer clearly this question because I was stunned by Mr. Evers's novel interpretation of Chapter 7.

10. In sum, during the examination, Mr. Evans alleged that Mr. Stone is scamming me and that, if I disagree, that just shows that I do not understand what a scam is. However, I want to make something clear, now that I understand that Mr. Evers really is attacking me while pretending to protect me. Mr. Stone has 0worked hard to keep me in my home for five years, in the face of organized fraud on the court, in Case ICC12-1-3115, by two different plaintiffs claiming falsely to own my mortgage.

11. I am attaching a recent pleading in my case filed by my attorney, Mr. Agard, showing how the plaintiffs have clearly stepped over the line. Mr. Agard and Mr. Stone, who drafted this pleading for me, so far have saved my home, in spite of all of concerted efforts of Mr. Evers and his colleagues. At all times, Mr. Agard and Mr. Stone have been able to do so for an extremely low cost, while never overpromising and while answering truthfully all of my questions. No one else could have benefitted me to this extent. For Mr. Evers to call this a scam is nothing less than ridiculous and cannot be done in good faith.

12. I look forward eagerly to explaining all of this to a judge and telling him what Mr. Evers is trying to do.

October 12, 2018

/s/ Chester Noel Abing 0
Chester Noel Abing

PLAINTIFFS'

EXHIBIT "B"

TO THE COMPLAINT

MD.907
Merchant Services
8500 Governors Hill Dr, MD IGH2Y140SO
Symmes Township, OH 45249-1384

03/23/2019

DRAFT RETRIEVAL
PRENOTIFICATION

This item is currently under dispute. Please retrieve the sales draft below and fax it to (513) 900-3456. The response must be received no later than: 04/02/2019 We must receive your response by the above due date or you [nay receive a non-reversible chargeback.

GAH LAW GROUP 1.1 C
23144 JOYCE LN
NAPERVIULE, IL 60564-8901

Card Brand:	MasterCard
Dispute Type:	RETREIVAL REQUEST
Report Date:	03/23/2019
Reason Code:	COPY REQUEST- **LEGAL FRAUD**
CHARTS Number:	9082201557-01
Dispute Amount;	$500.00 DR

Original Transaction Detail Information

Chain Code:	OY0722	Reason Code:	REQUEST-**LEGAL FRAUD**

Merchant Number.	4445054403410	Card Number:	510599X>00CXX4230
Transaction Date:	01/09/2019	Reference Number:	023009690100043351923 5
Transaction Amount:	$500.00	Foreign:	No
Merchant Name:	GAH LAW GROUP LLC	Transaction Method:	Card Present
AVS Code:	Y.ADDR ZIPS MATCH	POS Entry:	01 Manually Keyed
Draft/ Ticket #	00014952427	CVV21CVC2/CID:	NIA

Store/ Terminal #:	000000 001	Register/Sequen	0001

This dispute has been Initialed by BANK OF HAWAII. If you accept this dispute, no response or further action is needed.

If you want to contest this dispute, please send this form and a legible copy of the transaction sales draft with card imprint if applicable, Card Member's signatures proof of delivery, and any other proof that the Card Member engaged in the transaction DO NOT ISSUE CREDIT. However, if credit was previously issued. please provide the date and a copy of the credit. Failure to respond by the deadline provided may impact future dispute rights.

In order to have an opportunity to reverse this dispute, we must receive this form and all of the above documentation by 04/0212019. Please send to:

Merchant Services
38500 Governors Hill Dr, MD IGH2Y 1-4050
Symmes Township, OH 45249-1384
or FAX to (513) 900-3456
Please call (800) 667-9573 if you have any questions about this chargeback.
#:

Chester Noel Abing
94-1118 Pohu Place
Waipahu, HI 96797
(808) 218-9385

April 1, 2019

MD.907
Merchant Services
8500 Governors HiU Dr MD IGH2Y1-4050
Symmes 0Township, OH 45249-1384

Re: Reference No. 02300969010000433519235

Dear Sir.

My name is Chester Noel Abing. Today I received from GAH Law Group LLC (merchant Number 4445054403410) a copy of the attached "Draft Retrieval Prenotification" from your office dated 03/23/2019. I am the owner of the credit-card account number 51059XXXXX X4230 referenced in your Prenotification, and I personally made the payment in question to GAH Law Group: $500.00 on 1/9/2019. I am attaching a copy of the "successful transaction" notice from your office for the payment in question I 0did not initiate the "dispute ' in question. I do not know who made it. It is not for my benefit. It was made without my permission and without authorization. And it was not made by Bank of Hawaii. It was made

by someone pretending to be Bank of Hawaii. I am very pleased with the services of GAH Law Group LLC. I am requesting that you deny the "dispute.'0

This "dispute" is a fraud. Some unknown person who has no connection with me is trying to grab those funds. I have no account at Bank of Hawaii, which supposedly initiated the "dispute." I called Bank of Hawaii to protest the "dispute," and they do not know anything about it. Some unknown person is trying to steal the funds in question, using Bank of Hawaii's name.0

Please do not allow this fraud to occur. That is my credit card account, and no one should be able to grab payment without my knowledge and consent,

By the way, last month, the same unknown person tried to steal funds using my account information, using the same method, and you denied that "dispute." I hope you investigate this continuing fraud.

Please call me at the above number if you need further information or verification. Please let me know if there is anything more I can do to stop this fraud0

Yours very truly.

/s/ Chester Noel Abing
Chester Noel Abing0

0

MD-967
Merchant Services
8500 Governors Hill Dr., MD 1GH2Y1-4050
Symmes Township, OH 45249-1384

RETRIEVAL PRENOTIFICATION 0GAH

02/08/2019

This item is currently under dispute. Please retrieve the sales draft below and fax it to (513) 900-3456. The response must be received no later than: 02/1812019

We must receive your response by the above due date or you may receive a non-reversible chargeback.

Law Group LL.C.
23144 Joyce LN
Naperville, IL 60564-89011

Card Brand:	MasterCard-
Dispute Type:	RETREIVAL REQUEST **LEGAL FRAUD**
Report Date:	02/08/2019
Reason:	COPY REQUEST-

LEGAL FRAUD
CHARTS

Number: 9039201488-01
Dispute Amount: $800.00 DR

Original Transaction Detail Information

Chain Code:	OY0722	Reason Code:	6341/COPY REQUEST-LEGAUFRA
Merchant Number:	4445054403410	Card Number:	510599xxxxxx42300
Transaction Date:	11/12/2018	Reference Number:	0230096831700 0437274110
Transaction Amount:	$800.00	Foreign:	
Merchant Name:	GAH LAW GROUP LLC	Transaction Method:	Card Present
AVS	Y-AODR	POS	01 Manually

Code:	ZIP5 MATCH	Entry:	Keyed
Draft/ Ticket #;	000140228 74	CW21CV C21ClD$.	N/A
Store termi nal #0. 0.0	000000001	Register/ Sequence #:	0001

This dispute has been initiated by BANK OF HAWAII

If you accept this dispute: No response or further action is needed.

0If you want to contest this dispute, please send this form and a legible copy of the transaction sales draft 0imprint if applicable, Card Member's signature, proof of delivery, and any other proof that the Card Member engaged in the transaction. DO NOT ISSUE CREDIT. However, if credit was previously issued, please provide the date and a copy of the credit. Failure to respond by the deadline provided may impact future dispute rights.

In order to have an opportunity to reverse this dispute, we must receive this form and all of the above documentation by 02/18/2019. Please send to:

Merchant Services
8500 Governors Hill Dr. MD IGH2Y1-4050
Symmes Township, OH 45249-1384 or FAX to (513) 900-3456.
Please call (800) 067-9573 if you have any questions about this chargeback.

#
0

Chester Noel Abing
94-1118 Pohu Place
Waipahu, HI 96797
(808) 218-9385

11/13/2018

MD-907
Merchant Services
8500 Governors Hill Dr. MD
Symmes Township, OH 45249-1384

Dear Sir:

My name is Chester Noel Abing. Today I received from GAH Law Group LLC (Merchant Number 4445054403410) a copy of the attached "Draft Retrieval Prenotification" from your office dated 02/08/2019. I am the owner of the credit-card account number 51059XXXXXX4230 referenced in your Prenotification, and I personally made the payment in question to GAH Law Group: $800.00 on 11/13/2018. I am attaching a copy of my account statement to establish my identify.

I did not initiate the dispute in question. I do not know who made it. It is not for my benefit. It was made without my permission and without my authorization. I am very pleased with the services of GAH Law Group LLC. I am requesting that you deny the dispute.
This "dispute" was not made by Bank of Hawaii.

Instead, someone who has no connection with me is trying to grab those funds. Please do not allow this fraud to occur. That is my credit card account, and no one should be able to grab my payment without my knowledge and consent.
Please call me at the above number if you need further information or verification. Please let me know if there is anything I can do to stop this fraud.

Yours very truly,

/s/ Chester Noel Abing
0 Chester Noel Abing

PLAINTIFFS'

EXHIBIT "C"

TO THE COMPLAINT

DBF 104
DISCIPLINARY BOARD
OF THE
HAWAII SUPREME COURT
RECEIVED
13 February 2019
2:15 pm by ffh

DISCIPLINARY BOARD
OF THE HAWAII SUPREME COURT

OFFICE OF DISCIPLINARY COUNSEL, Petitioner, v. GARY V. DUBIN Respondent.	Case No. : ODC 16-147 ODC 16-0-213 DISCIPLINARY BOARD DECISION OF THE BOARD; CERTIFICATE OF SERVICE

Respondent Board Hearing:
Date: December 13, 2018

DECISION OF THE DISCIPLINARY BOARD

This matter came on for hearing before the Disciplinary Board of the Hawaii Supreme Court ("Board") on December 13, 2018. Considered was the appointed Hearing Officer's Findings of Facts, Conclusions of Law, and Recommendation for Discipline, filed herein on April 12, 2018, DBF-71, the transcripts of proceedings, the briefs of the parties, and the arguments and the colloquy with the Board. Petitioner Office of Disciplinary Counsel ("ODC") was represented by Deputy Chief Disciplinary Counsel Rebecca M. Salwin. Respondent, present at the hearing, appeared with his counsel John D. Waihee, Ill. This matter is no longer confidential pursuant to RSCH 2.22(a)(7).

The Board, with quorum present, having fully considered the matters before it, concludes and decides to accept and adopt the Hearing Officer's Findings of Facts, Conclusions of Law and Recommendations for Discipline DBF-71.

IT IS HEREBY ORDERED, that:

A. The Board recommends that the Supreme Court of the Stale of Hawaii:

1. Issue an Order that Respondent be DISBARRED. RSCH 2.3(a)(1).
2. Order, pursuant to Rsch 2.3(c), that Respondent shall pay restitution in the

amount of $19,885.00 to Robert K. and Carmelita A. Andia;

3. Order Respondent to pay the costs of these proceedings to the Disciplinary Board in such time and amount as stated in any final order or judgment issued by the Supreme Court.

B. Within 30 days of the entry of this Decision, the parties shall review the entire record, including Disciplinary Board File (DBF-I, et seq.), along with any Exhibits which may have been admitted into evidence during the formal hearing process, for Hawaii Court Records Rules ("HCRR") Rule 9 compliance, and file herein, a list of documents or portions thereof, identifying which documents or exhibits contain personal, sealed or restricted information, as defined by HCRR 2. Thereafter, the record will be prepared for transmission to the Supreme Court pursuant to RSCH 2.7(d) as a public record pursuant to RSCH 2.7(f); and,

The Board shall thereafter submit its Report and Recommendation to the Supreme Court pursuant to RSCH 2.7(d).

Dated: February 13, 2019

Hawaii Supreme Court
Hon. Clifford Nakea, Ret.
Chairman
201 Merchant Street, Suite 1600
Honolulu, HI 96813

telephone (808) 819-1909

CERTIFICATE OF SERVICE

I hereby certify that a copy of the DECISION OF THE DISCIPLINARY BOARD and CERTIFICATE OF SERVICE has been filed with the Disciplinary Board of the Hawaii Supreme Court on this date, and service was, as noted on the Service List below, by either 1) regular U.S. Mail, postage prepaid, or 2) hand delivery.

DATED: Honolulu, Hawaii, February 13, 2019.

/s/ FAYE F. HEE
FAYE F. HEE
DISCIPLINARY BOARD FILING CLERK

SERVICE LIST:

Party	*by mail*	*hand delivery*
John D. Waihee III Gary Victor Dubin Dubin Law Office 55 Merchant St., Suite 3100 Honolulu, HI 96813 Attorneys for Respondent courtesy copy to: jwaihee@dubinlaw.net gdubin@dubinlaw.net	X	
Bradley R. Tamm Chief Disciplinary Counsel Rebecca M. Salwin Deputy Chief Disciplinary Counsel Office of Disciplinary Counsel 201 Merchant Street, Suite 1600 Honolulu, HI 96813 Attorneys for Petitioner courtesy copies to: bradley.r.tamm@dbhawaii.org rebecca.m.salwin@dbhawaii.org		X

DECLARATION OF

CHESTER NOEL ABING

UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

CHESTER NOEL ABING, DENNIS DUANE DESHAW, and SUSAN KAY BROER-DESHAW,

Plaintiffs,

vs.

21-cv-95

JAMES F. EVERS, JOHN N. TOKUNAGA, STEPHEN H. LEVINS, LISA P. TONG, MELINDA D. SANCHES, CATHERINE AWAKUNI COLON, JO ANN UCHIDA TAKEUCHI, MICHAEL J.S. MORIYAMA, BRUCE B. KIM, BRADLEY R. TAMM, RYAN SUMMERS LITTLE, REBECCA SALWIN, YVONNE R. SHINMURA, CHARLENE M. NORRIS, ROY F. HUGHES, GAYLE J. LAU, JEFFREY P. MILLER, PHILIP H. LOWENTHAL, CLIFFORD NAKEA, BERT I. AYABE, and JEANNTTE H. CASTAGNETTI,

Defendants.

DECLARATION OF
CHESTER NOEL ABING

I, Chester Noel Abing, do hereby declare:

1. I am one of the Plaintiffs in the above-captioned case. I am making this Declaration in support of my class Action Complaint.

2. I am more than twenty-one years of age and of sound mind; I know all of the facts stated in this Declaration either by first-hand observation or from personal experience, and I am ready to testify in court as to the truth of all facts declared herein.

3. I have personal knowledge of all of the facts declared herein because I am the victim of a wrongful "foreclosure" lawsuit, *PennyMac Corp. v. Abing* (Ochiai, Dean E., J.), 1CC12-1-003115 (2012), which has dragged through the courts for nine years.

4. The Lender of my mortgage is Bank of America, which is not suing me. Instead the Plain-tiff is PennyMac, which has never purchased an interest in the mortgage on my home and has never lent any money to me in any way.

5. I owe PennyMac nothing, and I never have, yet PennyMac is trying, with assistance from the "Office of Consumer Protection," to steal my family's

only home.

6. (a) I have offered to reinstate mortgage payments to PennyMac, although it is a Dummy Corporation. (b) A Dummy Corporation cannot provide clear title because it cannot legally release my mortgage lien, because it does not own it. (c) The Circuit Courts of this State are attempting to deal with this problem by pretending that the Dummy Corporations have good title to the properties they have stolen.

7. This fake "foreclosure" case (*PennyMac v. Abing*), brought by a Dummy Corporation that obviously does not own the mortgage, has dragged through the courts for nine years. This is possible only because there are few if any defense attorneys remaining in the State who are willing and competent to represent homeowners in foreclosure in a zealous manner. And this is not an accident. It is because the government officials named in this Class Action Complaint have entered into a confederacy formed for the purpose of committing, by their joint efforts, acts which are lawful in themselves (for example disci-

plining attorneys and policing the bar) but become unlawful when done by the concerted action of the conspirators to assist the Dummy Corporations in taking thousands of homes in this State.

8. Upon information and belief, these government officials are former employees of the Dummy Corporations and/or attorneys who seek to represent the Dummy Corporations in court, in manifest conflicts of interest. The government officials accomplish this by abusing the authority of this State to intimidate and threaten the foreclosure-defense bar in this State by disbarring its members (for example Attorney Gary V. Dubin, the dean of the foreclosure-defense bar) for minor or trumped-up offenses, by threatening to disbar them, by subpoenaing their records on limitless and endless fishing expeditions, by offering to bribe their former clients to complain about them, and by suing them under laws intended to protect consumers. They did all of this to my lead attorney, Robert L. Stone.

9. The government officials who are doing this constitute a combination or confederacy formed for the

purpose of committing, by their joint efforts, unlawful or criminal acts.

10. In their actions to harass the defense bar, the Conspirators allege that, since foreclosure defendants always lose in this State, anyone who agrees to represent them in court must be scamming them, so the Conspirators have to "shut the Scammers down," regardless of what the homeowners say or need. Then, as the government officials intend, when the defense bar is eliminated, we homeowners are defenseless.

11. In addition to suppressing and intimidating the defense bar, the Conspirators act together to "blacklist" and discriminate against troublesome homeowners like me, although I ask only that the law of this State be applied in my "foreclosure" (actually theft) case. The government officials have intervened strongly and repeatedly in my case without leave of court. They have threatened and intimidated me, harassed me by subpoenaing my records and confidential attorney-client files, and then turned those files over to the Dummy Corporation in my case.

And, although it is shocking and hard to believe, they actually stole funds from my bank account because they found out that the funds were intended to pay my attorney. In the case of the DeShaws, the Conspirators also appear in court in hearings involving the blacklisted homeowners, to assist the attorneys of the Dummy Corporations on points of law and to intimidate the homeowners, when they should be doing the opposite: appearing in court to help the consumers they are supposed to protect.

12. The government officials named in the Class Action Complaint are conspiring to act under color of State law in that they collect government salaries and issue their orders on government stationery. However, they are not enforcing any State law. Upon information and belief, there is no State law that Dummy Corporations may take homes without paying for them. (In fact, upon information and belief, the law of this State is directly contrary. See, for example, *Bank of America v. Reyes-Toledo*, SCWC-15-5 [October 9, 2018], which requires that foreclosure plaintiffs must prove an interest in the properties they

are taking.) Likewise, upon information and belief, there is no State law or Bar Association rule saying that it is illegal to represent foreclosure defendants. In fact, one purpose of the officials' conspiracy in my case is to prevent my case from reaching the Supreme Court of this State, to prevent me from testifying in that court. (It is impossible to reach the Supreme Court without an attorney.)

13. On August 30, 2018, the OCP Lawyers named in the Complaint intervened without leave of court in my "foreclosure" (actually theft) case. I had asked the court to dismiss the case, because the Dummy Lender obviously does not own the mortgage. The Circuit Court could not simply deny my motion without giving me a good appeal to the Supreme Court. So the OCP Lawyers stepped in and acted without formal leave of court to subpoena me and my attorney (Mr. Keoni Agard) for an hours-long, third-degree interrogation in the Conspirators" offices. In the course of the interrogation, the OCP Lawyers threatened me with prosecution for an unspecified "felony," bullied me, attempted to bribe me with a (fake) offer of $10,000,

and ordered me to discharge my attorney's paralegal assistant and to stop defending my property in the ongoing case in Circuit Court.

14. Throughout the interrogation, the OCP lawyer named in the Complaint intentionally frightened, bullied, confused, and lied to me, for the purpose of trying to trick me into making false statements so he could give them to the Dummy Corporation to use against me in *PennyMac v. Abing*, 1CC12-1-3115 (1st Cir.). He acted as if he were an attorney for the Dummy Corporations--which is exactly what he really is, underneath his title. (See Plaintiffs' Exhibit "A" attached to the Complaint.)

15. From May of 2012, until the present, I have been personally involved in two separate lawsuits against the Dummy Corporation that is trying to take my home. I have worked with four different attorneys. I am personally familiar with fraudulent foreclosure cases, and I have become a special target of the Conspirators.

16. On February 8, 2019, the OCP Lawyers named in the Complaint again intervened in my ongoing case

in Circuit Court, without leave of court, by stealing $800 from my credit-card account to prevent me from using that sum to pay my legal fees. And they did so intentionally and maliciously, thereby causing me to suffer injury. (See Plaintiffs' Exhibit "B" attached to the Complaint.)

17. On March 23, 2019, the OCP Lawyers named in the Complaint again intervened in the ongoing case in Circuit Court, without leave of court, by attempting to steal another $500 from my credit-card account, again to prevent me from using it to pay my legal fees. So, they stole a total of $1,300. And they did so intentionally and maliciously, thereby again causing me to suffer injury. (See Plaintiffs' Exhibit "B" attached to the Complaint.)

18. The Supervisors of the OCP Lawyers, also named in the Complaint, either authorized the unlawful acts of the OCP Lawyers in intimidating me and stealing from me, to prevent my testifying in court, or they negligently failed to supervise the OCP Lawyers properly, thereby causing me to suffer injury.

19. On or about January 24, 2013, the ODC Lawyers and the OCP Lawyers named in the Complaint approached Attorney Sandra D. Lynch, who at that time was working as an associate attorney in a foreclosure-defense law firm in Honolulu and was representing me. The OCP Lawyers ordered her to steal twenty-seven of the firm's foreclosure-defense clients from her employer, to resign from her firm, and to stop working on the clients' cases. She complied with their orders. As a result, upon information and belief, most of the twenty-seven homeowners in those cases lost their homes to the Dummy Corporations, and the law firm was broken up. Mr. and Mrs. DeShaw and I were clients of that law firm, so we suffered injuries as a result to the action of the above-named ODC Lawyers and OCP Lawyers.

20. The Supervisors of the OCP Lawyers named in the Complaint either authorized the theft of clients from Attorney Lynch's law firm and the break-up of her firm, or they negligently failed to supervise properly the OCP Lawyers, thereby causing Mr. and

Mrs. DeShaw and me to suffer injury.

21. On December 13, 2018, the ODC Lawyers named in the Complaint conducted a hearing before the Disciplinary Board on their malicious and selective complaint against Attorney Gary V. Dubin, again using a combination of trivial and false allegations, for the purpose of disbarring him, for the purpose of suppressing foreclosure-defense in this State. In so doing the ODC Lawyers wrongfully deprived me of my choice of counsel and harmed me in their defense of my home against wrongful

22. "foreclosure" (actually theft). (See the Plaintiffs' Exhibit "C" attached to the Complaint.)

23. On February 13, 2019, the Disciplinary Board Lawyers named in the Complaint ratified and endorsed and joined in the malicious and selective prosecution of Attorney Gary V. Dubin and ruled that he should be disbarred, thereby wrongfully depriving me of my choice of counsel and harming me in my defense of my property. (See Plaintiffs' Exhibit "C" attached to the Complaint.)

24. On December 3, 2014, the ODC Lawyers

named in the Complaint filed a malicious and selective complaint against Attorney Robert L. Stone (hereafter "Mr. Stone"), using a combination of trivial and false allegations, for the purpose of forcing him to resign from the Bar, pursuant to their campaign to suppress foreclosure-defense in this State. This case is an example of selective prosecution and retaliation against a member of the bar, that these are very serious abuses of power. This action of the ODC Lawyers wrongfully deprived me of my choice of counsel and harmed me in my defense of my property against a wrongful foreclosure.

25. Upon information and belief, the same ODC Lawyers have filed other malicious and selective complaints against other foreclosure-defense attorneys, thereby causing injury to me.

26. On or about August 14, 2018, the same OCP Lawyers and ODC Lawyers, working together, maliciously threatened Attorney R. Steven Geshell (who was representing Mr. and Mrs. DeShaw and me) and caused him to turn on us, his own clients, and to file unauthorized and inferior pleadings in both of our

foreclosure cases, in defiance of our clear instructions. These actions of the above-named Conspirators wrongfully deprived Mr. and Mrs. DeShaw and me of our choice of counsel and harmed us in our defense of our properties against wrongful "foreclosures." (See the "Declaration of Dennis Duane DeShaw," and the "Declaration of Susan Kay Broer-DeShaw," attached to the Complaint.)

27. The Supervisors of the OCP Lawyers named in the Complaint either authorized the unlawful acts of the OCP Lawyers or negligently failed to supervise them properly, thereby causing Mr. and Mrs. DeShaw and me to suffer injury.

28. Likewise, on or about December 10, 2017, the same OCP Lawyers and the same ODC Lawyers, conspiring together, threatened Attorney Jason B. McFarlin, who had previously accepted the Plaintiffs as his clients but then, pursuant to instructions from the Conspirators, refrained from representing us vigorously. This failure wrongfully deprived Mr. and Mrs. DeShaw and me of our choice of counsel and harmed us in our defense of our properties against

wrongful "foreclosures."

29. The Supervisors of the OCP Lawyers named in the Complaint either authorized the unlawful acts of the OCP Lawyers in threatening Attorney McFarlin or negligently failed to supervise them properly, thereby causing Mr. and Mrs. DeShaw and me to suffer injury.

30. On several occasions, I have observed both the OCP Lawyers and the ODC Lawyers working closely with lawyers representing the Dummy Corporations in furtherance of their conspiracy.

31. On or about October 28, 2020, the abovenamed Conspirators in the OCP sent letters to me and to Mr. and Mrs. DeShaw. Therein the Conspirators offered to pay large bribes to us ($34,016.00 in the case of the DeShaws) if we would inform against, and file false complaints against, our paralegal assistant, so the OCP Lawyers could show the false complaints to their fellow Conspirators in the First Circuit, and they in turn could order the paralegal off of our foreclosure cases in that Circuit. The purpose of this trick is to block us from appealing to the Supreme Court of this

State, to help the Dummy Corporations steal our homes. No payment was ever made. It was all just another dirty trick by the Conspirators. (See the "Declaration of Susan Kay Broer-DeShaw," the "Declaration of Dennis Duane DeShaw," and the "Declaration of Robert L. Stone.")

32. Bert I. Ayabe and Jeannette H. Castagnetti (designated foreclosure Judges in the Circuit Court of the First Circuit, in Honolulu) work closely with the other Conspirators, awarding huge prizes to the Dummy Corporations without requiring them to provide evidence of ownership.

33. In all of the actions alleged above, the Conspirators have made it virtually impossible for Mr. and Mrs. DeShaw and me to defend ourselves. The Conspirators have worked together pursuant to an unwritten agreement among them all to commit unlawful acts (for the purpose of suppressing the foreclosure-defense bar in this State), and they all intend to achieve the agreement's objective. And they already have committed overt acts together in furtherance of the agreement's objective in a

coordinated campaign: by us homeowners and our attorneys with criminal prosecutions and trying to bribe us (Plaintiffs' Exhibit "A"), by stealing funds from my credit-card account (Plaintiffs' Exhibit "B"), by maliciously and selectively prosecuting our defense attorneys (Plaintiffs' Exhibit "C"), by intervening in a defense law firm in a conspiratorial manner to break it up, and by granting huge financial awards to Dummy Corporations while not requiring them to present evidence of ownership, in defiance of the Supreme Court of this State.

34. It is well known that there is a mortgage-foreclosure crisis in this State. Since the Great Financial Crisis of 2008-2009, far too many homeowners have lost their homes to "foreclosures" by Dummy Corporations.

35. The Supreme Court has attempted to deal with this crisis by ruling clearly that foreclosure plaintiffs must own the mortgages they want to foreclose before they can take the homes that secure those mortgages. See, for example, *Bank of America v. Reyes-Toledo*, SCWC15-5 (October 9, 2018). Only this way can

homeowners negotiate with a party that has the authority to modify the mortgage and agree to reasonable offers to reinstate payments due. And only this way are foreclosure plaintiffs not unjustly enriched at the expense of homeowners. (See the "Declaration of Dennis Duane DeShaw" and the "Declaration of Susan Kay Broer-DeShaw," attached to the Complaint.)

36. So the law of this State is clear. Dummy Corporations with no interest in the properties taken are not allowed legally to foreclose. But that does not stop them at all. They take the homes anyway because they have enormous resources to use both in and out of court, and because the foreclosure-defense bar has been decimated by the Conspirators.

37. Since the Dummy Corporations do not lend money and have not purchased the mortgages they are "foreclosing" (actually stealing) their profit is equal to the total market value of all the homes they steal, with no subtraction for the mortgages, since they did not pay for them.

38. Upon information and belief, before the

pandemic, there were about 1,450 new foreclosures on homes each year in this State. (https://www.realtytrac.com/statsandtrends/foreclosuretrends/hi/) And almost half of those are by Dummy Corporations instead of by legitimate banks. If the average value of their victims' homes, including their land, is about $500,000 apiece, that means that the Dummy Corporations have an annual profit of about three hundred and sixty-two million dollars ($362,000,000), and that is just in this State. And as soon as the pandemic is under control and the temporary freeze on evictions is lifted, there will be many more foreclosures.

39. I do not have the resources to defend myself in court *pro se* against the resources of a $362,000,000 enterprise (not counting its resources in the other forty-nine States).

40. Also, there are no public defenders in foreclosure cases in this State. So, without foreclosure-defense attorneys, the wrongful "foreclosures" by the Dummy Corporations sail through the legal system. There are fewer than 5,000 active attorneys

in Hawaii, and most of them aspire to work either for the banks, or for the Dummy Corporations, or for the real-estate developers who buy the stolen land from the Dummy Corporations. There are only a handful of attorneys that aspire to work for distressed homeowners. In this situation, justice depends heavily upon the size and vigor of the defense bar.

41. The Dummy Corporations, with so much money at stake and with the law of this State not favorable to them, are using extrajudicial methods. One of these methods is to forge documents, as they did in my case. Another such method is to use the Conspirators to suppress the foreclosure-defense bar. In other words, the Conspirators in the OCP and the ODC and the First Circuit are working together with the Dummy Corporations' attorneys in the plaintiffs' bar to suppress the foreclosure-defense bar.

42. Meanwhile, the Conspirators, who are charged with protecting consumers like me, are maliciously taking no action whatsoever against the massive fraud committed daily against me by the Conspirators together with the Dummy Corporations as

they try to steal my home and reap unearned profits.

43. In spite of the concerted efforts of the Conspirators, a small number of defense lawyers continued, until recently, to attempt to represent me at considerable expense to themselves and considerable risk to their careers.

44. One such courageous defense attorney is Keoni K. Agard, my attorney in *PennyMac v. Abing*. Another such defense attorney is Gary V. Dubin, the dean of the foreclosure-defense bar. Mr. Dubin was, and is, the victim of a malicious ongoing campaign by the Conspirators to disbar him permanently. Mr. Dubin is the most competent and knowledgeable foreclosure lawyer in this State (and arguably in the entire country). He has a long record of success in the Intermediate Court of Appeals and before the Supreme Court of this State. And, upon information and belief, he has done nothing that would normally merit disbarment. And he spends considerable time and effort on educating the public about the ongoing foreclosure crisis.

45. Mr. Dubin, therefore, is a high-value target for

malicious prosecution by the Conspirators. His disbarment has thoroughly and finally chilled foreclosure-defense in this State and has harmed many consumers, including me. Whether or not Mr. Agard and others will be disbarred like Attorney Dubin depends entirely on whether or not they have learned to obey the Conspirators.

46. It is a well-known fact that every time a family loses its home, the loss is a disaster for many people. If PennyMac succeeds in stealing my home, my family's life savings (the equity in our home) will be destroyed, the value of all of the neighbors' homes will be negatively affected, and medical bills will increase, thereby causing me and my family to suffer injuries.

47. As a result of the foregoing acts of the Conspirators, we Plaintiffs (Mr. DeShaw and Mrs. DeShaw and I) have suffered financial injury and severe emotional injury, both proximately caused by the misconduct of the Conspirators.

48. The Conspirators have maliciously prosecuted Attorney Gary Dubin and Mr. Stone, thereby harming Mr. and Mrs. DeShaw and me. We all have

asked him to represent us, and he has been forced to decline.

49. The Conspirators have threatened, maliciously investigated, intimidated, and corrupted Lawyers Sandra D. Lynch, R. Stephen Geshell, and Jason Blake McFarlin, frightening them into aiding the Conspiracy against their own clients, thereby chilling all foreclosure-defense in this State and thereby harming the Mr. and Mrs. DeShaw and me.

49. My attorney in *PennyMac v. Abing* is Attorney Keoni K. Agard, Att. No. 2649. His paralegal assistant is Robert L. Stone.

50. Neither of these gentlemen can represent me in the case at bar. Attorney Agard is afraid to do so and probably will resign from the bar to avoid illegal persecution by the Defendant Conspirators. And his paralegal assistant is not a member of the bar of this state, so he cannot represent anyone.

The pleadings that I have filed in this case have been drafted by me together with Plaintiff Susan Kay DeShaw, together with suggestions by my attorney's paralegal assistant and by my wife. I could not have

done it without all of them.

I personally read and comment on every paragraph of every pleading I have filed with this Court. I know better than anyone else what the Defendant Conspirators have done to me. And when appropriate I correct and change my pleadings. Therefore, I have been substantially involved in drafting my Class Action Complaint and all other pleadings and filings in the case at bar.

Mr. Stone, my current attorney's para-legal assistant, is not qualified to give legal advice or presentation in connection with this (or any other) litigation, and he has not done so. Mr. Stone has made it very clear to me that he is not authorized to give legal advice or representation to anyone. He and I have discussed this problem at length, and I believe we are in compliance with the law.

So, I know that I am fundamentally alone before the majesty of this Court. Homeowners in this State who refuse to knuckle under to the Defendant Conspirators are treated like pariahs. No attorney will work on my case. I and my fellow plaintiff have

been put into this situation by the Defendant Conspirators. Therefore, I have turned for help to my friend and former employer, Mr. Stone, and I impose on his time by asking him to comment on my case. He has been generous with his time. However, since the first day of this case, Mr. Stone has not asked for one penny of compensation for his time spent helping me as my friend. No attorney would do that.

I, Chester Noel Abing, do declare under penalty of perjury under the laws of the United States of America that the foregoing Declaration is true and correct.

Executed on: June 28, 2021

/s/ Chester Noel Abing
Chester Noel Abing

CERTIFICATE OF SERVICE

I hereby certify that I and my fellow Plaintiffs caused a paper copy of this Declaration to be delivered by hand to the Defendants at the following address:

Robyn B. Chun and Majes C. Paige
Attorney General's Office
425 Queen St.
Honolulu, HI 96813

/s/ Chester Noel Abing
Chester Noel Abing

DECLARATION OF

DENNIS DUANE DESHAW

UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

CHESTER NOEL ABING, DENNIS DUANE DESHAW, and SUSAN KAY BROER-DESHAW,

Plaintiffs,

vs.

JAMES F. EVERS, JOHN N. TOKUNAGA, STEPHEN H. LEVINS, LISA P. TONG, MELINDA D. SANCHES, CATHERINE AWAKUNI COLON, JO ANN UCHIDA TAKEUCHI, MICHAEL J.S. MORIYAMA, BRUCE KIM, BRADLEY R. TAMM, RYAN SUMMERS LITTLE, REBECCA F. SALWIN, YVONNE R. SHINMURA, CHARLENE M. NORRIS, ROY F. HUGHES, GAYLE J. LAU, JEFFREY P.MILLER, PHILIP H. LOWENTHAL, CLIFFORD NAKEA, BERT AYABE, and JEANNTTE H. CASTAGNETTI,

Defendants.

21-CV-95

DECLARATION OF
DENNIS DUANE DESHAW

I, Dennis Duane DeShaw, do hereby declare:

I am one of the Plaintiffs in the above-captioned case. I am making this Declaration in support of my Class Action Complaint.

1. I am more than twenty-one years of age, of sound mind; I know all of the facts stated in this Declaration either by first-hand observation or from personal experience, and I am ready to testify in court as to the truth of all facts declared herein.

2. I have personal knowledge of all of the facts declared herein because I am the victim of a wrongful "foreclosure" lawsuit, *The Bank of New York Mellon FKA The Bank of New York, as Trustee (CWALT 200632CB) v. DeShaw*, 1CC16-1-001821 (1st Cir. 2016), which has been dragging through the court for five years.

3. The Lender of my mortgage was the notorious First Magnus Financial Corp., which is now defunct. It failed to sell my mortgage to a third party before it was dissolved, so now Dummy Corporations are lining up to try to steal my home by claiming falsely to be First Magnus's successor in

interest.

4. One example, among thousands, of a Dummy Corporation is the foreclosure-plaintiff in *The Bank of New York Mellon FKA The Bank of New York, as Trustee (CWALT 2006-32CB) v. DeShaw*, 1CC16-1-001821 (1st Cir. 2016). What makes this a Dummy Corporation is that it is being used as one, to hide the fact that the owner of the mortgage has not come forward. There is no evidence whatsoever that "Bank of New York" ever purchased the Note in my case or that it has lent money to me, or that it ever has had anything to do with my home. In fact, there is strong evidence that the Note may have been sold to someone else. Also, the Dummy Corporation does not exist! But this did not stop Jeannette H. Castagnetti, a complicit foreclosure judge in the First Circuit Court, from granting summary judgment to this Dummy Corporation against me. She did this on April 3, 2019. And she does this routinely.

5. I have been injured by the fact that the foreclosing entity in my case is a Dummy Corporation in the following ways: (a) my case is an

outrageous example of officially sponsored theft that endangers the security of all private property in this State. Also, (b) if I have fallen behind in my mortgage payments for any reason, and a Dummy Corporation that does not own the mortgage sues me to take my home, the Dummy Corporation cannot release or modify my mortgage because it does not own it, so it is impossible for me to negotiate a settlement with the Dummy Corporation and reinstate mortgage payments, if I owed any money to Bank of New York (and I do not).

6. A Dummy Corporation cannot provide clear title because it cannot legally release my mortgage lien because it does not own it. The Circuit Courts of this State are attempting to deal with this problem by pretending that the Dummy Corporations have good title to the properties they have stolen.

7. This fake "foreclosure" case brought by a Dummy Corporation that obviously does not own the mortgage has dragged through the courts for five years. This is possible only because there are few if any defense attorneys remaining in the State who

are willing and competent to represent home-owners like me in foreclosure in a zealous manner. And this is not an accident. It is because the government officials named in the Complaint have entered into a confederacy formed for the purpose of committing, by their joint efforts, acts which are lawful in themselves (for example disciplining attorneys and policing the bar) but become unlawful when done by the concerted action of the Conspirators to assist the Dummy Corporations in taking thousands of homes in this State.

8. Upon information and belief, these government officials are former and future employees of the Dummy Corporations and/or attorneys who seek to represent the Dummy Corporations in court, in manifest conflicts of interest. The government officials accomplish this by abusing the authority of this State, to intimidate and threaten the foreclosure-defense bar in Hawaii by disbarring its members (for example Attorney Gary V. Dubin, the dean of the foreclosure-defense bar) for minor or trumped-up offenses, by threatening to disbar them,

by subpoenaing their records in limitless fishing expeditions, by offering to bribe their former clients to complain about them, and by suing them under laws intended to protect consumers. They did all of this to my lead attorney, Robert L. Stone.

9. The government officials who are doing this constitute a combination or confederacy formed for the purpose of committing, by their joint efforts, unlawful or criminal acts.

10. In their actions to harass the defense bar, the Conspirators allege that, since foreclosure defendants always lose in this State, anyone who agrees to represent them in court must be scamming them, so the Conspirators have to "shut the scammers down," regardless of what the homeowners say or need. Then, as the government officials intend, when the defense bar is eliminated, we homeowners are defenseless.

11. In addition to suppressing and intimidating the defense bar, the Conspirators named in the Complaint act together to "blacklist" and discriminate against troublesome homeowners like me,

although I ask only that the law of this State be applied in my "foreclosure" (actually theft) case. A disreputable attorney for the Dummy Corporation in my case has threatened and tried to intimidate Mrs. DeShaw, harassed her by subpoenaing our records and confidential attorney-client files. And he has done this with the tacit approval of Judge Castagnetti, who is complicit in his actions. Also with the approval of Judge Castagnetti, the Conspirators from the ODC appear in court in hearings involving my case, to assist the attorneys of the Dummy Corporations on points of law and to try to intimidate Mrs. DeShaw and me, when they should be doing the opposite: appearing in court to help the consumers they are supposed to protect.

12. The government officials named in this Class Action Complaint are conspiring to act under color of State law in that they collect government salaries and issue their orders on government stationery. However, they are not enforcing any State law. Upon information and belief, there is no State law that Dummy Corporations may take homes

without paying for them. (In fact, upon information and belief, the law of this State is directly contrary. See, for example, *Bank of America v. Reyes-Toledo*, SCWC-15-5 [October 9, 2018], which requires that foreclosure plaintiffs must prove an interest in the properties they are taking.) Likewise, upon information and belief, there is no State law or Bar Association rule saying that it is illegal to represent foreclosure defendants. In fact, one purpose of the officials' conspiracy in my case is to prevent my case from reaching the Supreme Court of this State, to prevent me from testifying in that court. (It is impossible to reach the Supreme Court without an attorney.)

13. From May of 2012, until the present, I have been personally involved in five separate lawsuits against the Dummy Corporation that is trying to take my home. I have worked with four different attorneys. I am personally familiar with fraudulent foreclosure cases, and I have become a special target of the Conspirators.

14. The above-named Supervisors of the OCP

Lawyers named in the Complaint either authorized the unlawful acts of the OCP Lawyers in intimidating me, to prevent my testifying in court, or negligently failed to supervise them properly, thereby causing me to suffer injury.

15. On or about January 24, 2013, the ODC Lawyers and the OCP Lawyers named in the Complaint approached Attorney Sandra D. Lynch, who at that time was working as an associate attorney in a foreclosure-defense law firm in Honolulu. They ordered her to steal twenty-seven of the firm's foreclosure-defense clients from her employer, to resign from her firm, and to stop working zealously on the clients' cases. She complied with their orders. As a result, upon information and belief, most of the twenty-seven homeowners in those cases lost their homes to the Dummy Corporations, and the law firm was broken up. Mr. Abing and Mrs. DeShaw and I were clients of that law firm, so we suffered injuries as a result to the action of the those ODC Lawyers and OCP Lawyers.

16. The Supervisors of the OCP Lawyers

named in the Complaint either authorized the theft of clients from Attorney Lynch's law firm and the breakup of her firm, or they negligently failed to supervise properly the OCP Lawyers, thereby causing Mr. Abing and Mrs. DeShaw and me to suffer injury.

17. On December 13, 2018, the ODC Lawyers named in the Complaint conducted a hearing before the Disciplinary Board on their malicious and selective complaint against Attorney Gary V. Dubin, again using a combination of trivial and false allegations, for the purpose of disbarring him, for the purpose of suppressing foreclosure-defense in this State. In so doing these ODC Lawyers named in the Complaint wrongfully deprived me and Mrs. DeShaw of our choice of counsel and harmed us in our defense of our home against wrongful "foreclosure" (actually theft). (See the Plaintiffs' Exhibit "C" attached to the Complaint.)

18. On February 13, 2019, the Disciplinary Board Lawyers named in the Complaint ratified and endorsed and joined in the malicious and selective

prosecution of Attorney Gary V. Dubin and ruled that he should be disbarred, thereby wrongfully depriving Mr. Abing and Mrs. DeShaw and me of our choice of counsel and harming us in our defense of our properties. (See Plaintiffs' Exhibit "C" attached to the Complaint.)

19. On December 3, 2014, the ODC Lawyers named in the Complaint filed a malicious and selective complaint against Attorney Robert L. Stone (hereafter "Mr. Stone"), using a combination of trivial and false allegations, for the purpose of forcing him to resign from the Bar, pursuant to their campaign to suppress foreclosure-defense in this State. This case is an example of selective prosecution and retaliation against a member of the bar, that these are very serious abuses of power. The action of the ODC Lawyers wrongfully deprived Mr. Abing and Mrs. DeShaw and me of our choice of counsel and harmed us in our defense of our properties against a wrongful "foreclosure."

20. Upon information and belief, the same ODC Lawyers have filed other malicious and selec-

tive complaints against other foreclosure-defense attorneys, thereby causing injury to Mr. Abing and to Mrs. DeShaw and me.

21. On or about August 14, 2018, the same OCP Lawyers and the ODC Lawyers, working together, maliciously threatened Attorney R. Steven Geshell (who was representing Mr. Abing and Mrs. DeShaw and me) and caused him to turn on us, his own clients, and to file unauthorized and inferior pleadings in both of our "foreclosure" cases, in defiance of our clear instructions. These actions of the above-named Conspirators wrongfully deprived Mr. Abing and Mrs. DeShaw and me of our choice of counsel and harmed us in our defense of our property against wrongful "foreclosures." (See the "Declaration of Susan Kay Broer-DeShaw" and the "Declaration of Chester Noel Abing," attached to the this Complaint.)

22. The Supervisors of the OCP Lawyers named in the Complaint either authorized the unlawful acts of the OCP Lawyers or negligently failed to supervise them properly, thereby causing Mr. Abing, Mrs.

DeShaw, and me to suffer injury.

23. Likewise, on or about December 10, 2017, the same OCP Lawyers and the same ODC Lawyers, conspiring together, threatened Attorney Jason B. McFarlin, who had previously accepted Mr. Abing and Mrs. DeShaw and me as his clients but then, pursuant to instructions from the Conspirators, refrained from representing us vigorously. This failure wrongfully deprived Mr. Abing and Mrs. DeShaw and me of our choice of counsel and harmed us in our defense of our properties against wrongful "foreclosures."

24. The Supervisors of the OCP Lawyers named in the Complaint either authorized the unlawful acts of the OCP Lawyers in threatening Attorney McFarlin or negligently failed to supervise them properly, thereby causing Mr. Abing, Mrs. DeShaw, and me to suffer injury.

25. On several occasions, I have observed both the OCP Lawyers and the ODC Lawyers working closely with lawyers representing the Dummy Corporations in furtherance of their conspiracy.

26. On or about October 28, 2020, the above-named Conspirators in the OCP sent letters to Mr. Abing and to Mrs. DeShaw and me. In those letters, the Conspirators offered to pay large bribes to us ($34,016.00 in the case of Mrs. DeShaw and me) if we would file a false complaint against our paralegal assistant, so the OCP Lawyers could show the false complaints to their fellow Conspirators in the First Circuit, and they in turn could order the paralegal off of our "foreclosure" cases in that Circuit. The purpose of this trick was to block us from appealing to the Supreme Court of this State, to help the Dummy Corporations steal our homes. No payment was ever made. It was just one more dirty trick by the Conspirators. (See the "Declaration of Chester Noel Abing," the "Declaration of Susan Kay Broer DeShaw," and the "Declaration of Robert L. Stone.")

27. Bert I. Ayabe and Jeannette H. Castagnetti (designated foreclosure Judges in the Circuit Court of the First Circuit, in Honolulu) work closely with the other Conspirators, awarding huge prizes to the Dummy Corporations without requiring them to

provide evidence of ownership.

28. In all of the actions alleged above, the Conspirators named in the Complaint have made it virtually impossible for Mr. Abing, Mrs. DeShaw, and me to defend ourselves. The Conspirators have worked together pursuant to an unwritten agreement among them all to commit unlawful acts (for the purpose of suppressing the foreclosure-defense bar in this State), and they all intend to achieve the agreement's objective. And they already have committed overt acts together in furtherance of the agreement's objective in a coordinated campaign to threaten us homeowners and our attorneys with criminal prosecutions and trying to bribe Mr. Abing (Plaintiffs' Exhibit "A"), by trying to steal funds from his credit-card account (Plaintiffs' Exhibit "B"), by maliciously and selectively prosecuting our defense attorneys (Plaintiffs' Exhibit "C"), by intervening in a foreclosure-defense law firm in a conspiratorial manner to break it up, and by granting huge financial awards to Dummy Corporations while not requiring them to present evidence of ownership, in

defiance of the Supreme Court of this State.

29. It is well known that there is a mortgage-foreclosure crisis in this State. Since the Great Financial Crisis of 2008-2009, far too many homeowners have lost their homes to "foreclosures" by Dummy Corporations.

30. The Supreme Court has attempted to deal with this crisis by ruling clearly that foreclosure plaintiffs must own the mortgages they want to foreclose before they can take the homes that secure those mortgages. See, for example, *Bank of America v. Reyes-Toledo*, SCWC15-5 (October 9, 2018). Only this way can homeowners negotiate with a party that has the authority to modify the mortgage and agree to reasonable offers to reinstate payments due. And only this way are foreclosure plaintiffs not unjustly enriched at the expense of homeowners. (See the "Declaration of Chester N. Abing" and the "Declaration of Susan Kay Broer-DeShaw," attached to the Complaint.)

31. So the law of this State is clear. Dummy Corporations with no interest in the properties taken

are not allowed legally to foreclose. But that does not stop them at all. They take the homes anyway because they have enormous resources to use both in and out of court, and because the foreclosure-defense bar has been decimated by the Conspirators.

32. Since the Dummy Corporations do not lend money and have not purchased the mortgages they are "foreclosing" (actually stealing), their profit is equal to the total market value of all the homes they steal, with no subtraction for the mortgages, since they did not pay for them.

33. Before the pandemic, there were about 1,450 new foreclosures on homes each year in this State. (https://www.realtytrac.com/statsandtrends/foreclosuretrends/hi/). And about half of those are by Dummy Corporations instead of legitimate banks. If the average value of their victims' homes, including their land, is about $500,000, that means that the Dummy Corporations have an annual profit of about three hundred and sixty-two million dollars ($362,000, 000), and that is just in this State.

34. And as soon as the pandemic is under

control and the temporary freeze on evictions is lifted, there will be many more foreclosures.

34. I do not have the resources to defend myself in court *pro se* against the resources of a $362,000,000 enterprise (not counting its resources in the other forty-nine States).

35. Also, there are no public defenders in foreclosure cases in this State. So, without foreclosure-defense attorneys, the wrongful "foreclosures" by the Dummy Corporations sail through the legal system. There are fewer than 5,000 active attorneys in this State, and most of them aspire to work for the banks, for the Dummy Corporations, or for the real-estate developers who buy land from the Dummy Corporations. There are only a handful of attorneys that aspire to work for distressed homeowners. In this situation, justice depends heavily upon the size and vigor of the defense bar.

36. The Dummy Corporations, with so much money at stake and with the law of this State not favorable to them, are using extrajudicial methods. One of these methods is to forge documents, as they

did in my case. Another such method is to use the Conspirators to suppress the foreclosure-defense bar. In other words, the Conspirators in the OCP and the ODC and the First Circuit are working together with the Dummy Corporations' attorneys in the plaintiffs' bar to suppress the foreclosure-defense bar.

37. Meanwhile, the Conspirators, who are charged with protecting consumers like me, are maliciously taking no action whatsoever against the massive fraud committed daily against me by the Conspirators together with the Dummy Corporations as they try to steal my home and reap unearned profits.

38. In spite of the concerted efforts of the Conspirators, a small number of defense lawyers continued, until recently, to attempt to represent me at considerable expense to themselves and considerable risk to their careers.

39. One such courageous defense attorney is Keoni K. Agard, Mr. Abing's attorney in *PennyMac v. Abing*. Another such defense attorney is Gary V. Dubin, the dean of the foreclosure-defense bar. Mr.

Dubin was, and is, the victim of a malicious ongoing campaign by the Conspirators to disbar him permanently. Mr. Dubin is the most competent and knowledgeable foreclosure lawyer in this State (and arguably in the entire country). He has a long record of success in the Intermediate Court of Appeals and before the Supreme Court of this State. And, upon information and belief, he has done nothing that would normally merit disbarment. And he spends considerable time and effort on educating the public about the ongoing foreclosure crisis.

40. Mr. Dubin, therefore, is a high-value target for malicious prosecution by the Conspirators. His disbarment has thoroughly and finally chilled foreclosure-defense in this State and has harmed many consumers, including me. Whether or not Mr. Agard and others will be disbarred like Attorney Dubin depends entirely on whether or not they have learned to obey the Conspirators.

41. It is a well-known fact that every time a family loses its home, the loss is a disaster for many people. If the fake "Bank of New York" succeeds in

stealing my home, my family's life savings (the equity in our home) will be destroyed, the value of all of the neighbors' homes will be negatively affected, and medical bills will increase, thereby causing me and my family to suffer injuries.

42. As a result of the foregoing acts of the Conspirators named in the Complaint, we Plaintiffs (Mr. Abing and Mrs. DeShaw and I) have suffered financial injury and severe emotional injury, both proximately caused by the misconduct of the Conspirators.

43. The Conspirators named in the Com-plaint have maliciously prosecuted Attorney Gary Dubin and Mr. Stone, thereby harming Mr. Abing and Mrs. DeShaw and me. We all have asked him to represent us, and he has been forced to decline.

44. The Conspirators named in the Complaint have threatened, maliciously investigated, intimidated, and corrupted Lawyers Sandra D. Lynch, R. Stephen Geshell and Lawyer Jason Blake McFarlin, frightening them into aiding the Conspiracy against

their own clients, thereby chilling all foreclosure-defense in this State and thereby harming Mr. Abing and Mrs. DeShaw and me.

45. Our injuries include, but are not limited to, property damage, financial damage, emotional distress, and deprivation of our civil rights.

46. The misconduct described in the Complaint is objectively unreasonable and was undertaken intentionally and maliciously, with willful and reckless indifference to our constitutional rights.

47. The misconduct described in the Complaint was undertaken pursuant to the policy and practice of the Conspirators.

48. I, Dennis Duane DeShaw, do declare under penalty of perjury under the laws of the United States of America that the foregoing Declaration is true and correct.

Executed on: February 12, 2021

/s/ Dennis Duane DeShaw
Dennis Duane DeShaw
Class Action Plaintiff

DECLARATION OF

SUSAN KAY BROER-DESHAW

UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

CHESTER NOEL ABING,
DENNIS DUANE DESHAW, and
SUSAN KAY BROER-DESHAW,

Plaintiffs,

vs.

JAMES F. EVERS, JOHN N. TOKU-NAGA,STEPHEN H. LEVINS, LISA P.TONG,LINDA D. SANCHES, CATHERINE AWAKUNI COLON, JO ANN UCHIDA TAKEUCHI, MICHAELJ.S. MORIYAMA, BRUCE KIM,BRADLEY R. TAMM, RYAN SUMMERS LITTLE, REBECCA SALWIN, YVONNE R. SHINMURA, CHARLENE M. NORRIS, ROY F. HUGHES, GAYLE J. LAU, JEFFREY P. MILLER, PHILIP H. LOWEN-THAL, CLIFFORD NAKEA, BERT I. AYABE, and JEANNTTE H. CASTA-GNETTI,

Defendants.

21-CV-95

DECLARATION OF
SUSAN KAY BROER-DESHAW

I, Susan Kay Broer-DeShaw, do hereby declare:

1. I am one of the Plaintiffs in the above-captioned case. I am making this Declaration in support of my Class Action Complaint.

2. I am more than twenty-one years of age and of sound mind; I know all of the facts stated in this Declaration either by first-hand observation or from personal experience, and I am ready to testify in court as to the truth of all facts declared herein.

3. I have personal knowledge of all of the facts declared herein because I am the victim of a wrongful "foreclosure" lawsuit, *The Bank of New York Mellon FKA The Bank of New York, as Trustee (CWALT 200632CB) v. DeShaw*, 1CC16-1-001821 (1st Cir. 2016), which has been dragging through the courts for five years.

4. The Lender of my mortgage was the notorious First Magnus Financial Corp., which is now defunct. It failed to sell my mortgage to a third party before it was dissolved, so now Dummy Corporations are lining up to try to steal my home by claiming falsely to be First Magnus's heir.

5. One example, among thousands, of a Dummy Corporation is the "foreclosure-plaintiff" in *The Bank of New York Mellon FKA The Bank of New York, as Trustee (CWALT 2006-32CB) v. DeShaw*, 1CC16-1001821 (1st Cir. 2016). What makes Bank of New York a Dummy Corporation is that it is being used as one, to hide the fact that the owner of the mortgage has not come forward. There is no evidence whatsoever that the Bank of New York ever purchased the Note in my case or that it has lent money to me, or that it ever has had anything to do with my home. In fact, there is strong evidence that the Note has been sold to someone else. Also, the Dummy Corporation is a fiction; it does not exist. But this did not stop Jeannette H. Castagnetti, a complicit foreclosure-judge in the First Circuit Court, from granting summary judgment to this Dummy Corporation against me. She did this on April 3, 2019. And she does this routinely.

6. I have been injured by the fact that the foreclosing entity in my case is a Dummy Corporation in the following ways: (a) my case is an out-

rageous example of officially sponsored theft that endangers the security of all private property in this State. Also, (b) if I have fallen behind in my mortgage payments for any reason, and a Dummy Corporation that does not own the mortgage sues me to take my home, the Dummy Corporation cannot release or modify my mortgage because it does not own, so it is impossible for me to negotiate a settlement with the Dummy Corporation and reinstate mortgage payments, if I owed any money to Bank of New York (and I do not).

7. A Dummy Corporation cannot provide clear title because it cannot legally release my mortgage lien because it does not own it. (d) The Circuit Courts of this State are attempting to deal with this problem by pretending that the Dummy Corporations have good title to the properties they have stolen.

8. This fake "foreclosure" case brought by a Dummy Corporation that obviously does not own the mortgage has dragged through the courts for five years. This is possible only because there are few if any defense attorneys remaining in the State who

are willing and competent to represent homeowners like me in foreclosure in a zealous manner. And this is not an accident. It is because the government officials named in this Class Action Complaint have entered into a confederacy formed for the purpose of committing, by their joint efforts, acts which are lawful in themselves (for example disciplining attorneys and policing the bar) but become unlawful when done by the concerted action of the conspirators to assist the Dummy Corporations in stealing thousands of homes in this State.

9. Upon information and belief, these government officials are former employees of the Dummy Corporations and/or attorneys who seek to represent the Dummy Corporations in court, in manifest conflicts of interest. The government officials accomplish this by abusing the authority of this State to intimidate and threaten the foreclosure-defense bar in this State by disbarring its members (for example Attorney Gary V. Dubin, the dean of the foreclosure-defense bar) for minor or trumped-up offenses, by threatening to disbar them, by subpoenaing their

records on limitless fishing expeditions, by offering to bribe their former clients to complain about them, and by suing them under laws intended to protect consumers. They did all of this to my lead attorney, Robert L. Stone.

10. The government officials who are doing this constitute a combination or confederacy formed for the purpose of committing, by their joint efforts, unlawful or criminal acts.

11. In their actions to harass the defense bar, the Conspirators allege that, since foreclosure defendants always lose in this State, anyone who agrees to represent them in court must be scamming them, so the Conspirators have to "shut the scammers down," regardless of what the homeowners say or need. Then, as the government officials intend, when the defense bar is eliminated, we homeowners are defenseless.

12. In addition to suppressing and intimidating the defense bar, the Conspirators act together to "blacklist" and discriminate against troublesome homeowners like me, although I ask only that the

law of this State be applied in my "foreclosure" (actually theft) case.

13. David Rosen, a disreputable attorney for the Dummy Corporation in my case, has threatened and intimidated me, harassed me by subpoenaing my records and confidential attorney-client files. And he has done this with the tacit approval of Judge Castagnetti, who is complicit in his actions. Also with the approval of Judge Castagnetti, the Conspirators from the ODC named in the Complaint appear in court in hearings involving my case, to assist the attorneys of the Dummy Corporations on points of law and to try to intimidate me, when they should be doing the opposite: appearing in court to help the consumers they are supposed to protect.

14. The government officials named in this Class Action Complaint are conspiring to act under color of State law in that they collect government salaries and issue their orders on government stationery. However, they are not enforcing any State law. Upon information and belief, there is no State law that Dummy Corporations may take homes

without paying for them. (In fact, upon information and belief, the law of this State is directly contrary. See, for example, *Bank of America v. Reyes-Toledo*, SCWC-15-5 [October 9, 2018], which requires that foreclosure-plaintiffs must prove an interest in the properties they are taking.) Likewise, upon information and belief, there is no State law or rule of the Bar Association saying that it is illegal to represent foreclosure defendants. In fact, one purpose of the officials' conspiracy in my case is to prevent my case from reaching the Supreme Court of this State, to prevent me from testifying in that court. (It is impossible to reach the Supreme Court without an attorney.)

15. From May of 2012, until the present, I have been personally involved in five separate lawsuits against the Dummy Corporation that is being used to take my home. I have worked with four different attorneys. I am personally familiar with fraudulent "foreclosure" cases, and I have become a special target of the Conspirators.

16. The Supervisors of the OCP Lawyers

named in the Complaint either authorized the unlawful acts of the OCP Lawyers in intimidating me, to prevent my testifying in court, or negligently failed to supervise the OCP Lawyers properly, thereby causing me and Mr. DeShaw to suffer injury.

17. On or about January 24, 2013, upon information and belief, the ODC Lawyers and the OCP Lawyers named in the Complaint approached Attorney Sandra D. Lynch, who at that time was working as an associate attorney in a foreclosure-defense law firm in Honolulu and representing me and Mr. DeShaw. They ordered her to steal twenty-seven of the firm's foreclosure-defense clients from her employer, to resign from her firm, and to stop working zealously on those cases. She complied with their orders. As a result, upon information and belief, most of the twenty-seven homeowners in those cases lost their homes to Dummy Corporations, and the law firm was broken up. Mr. Abing and Mr. DeShaw and I were clients of that law firm, so we suffered injuries as a result of this action by the ODC Lawyers and OCP Lawyers named in the Complaint.

18. The Supervisors of the OCP Lawyers either authorized the theft of clients from Attorney Lynch's law firm and the breakup of her firm, or they negligently failed to supervise properly the OCP Lawyers, thereby causing Mr. Abing and Mr. DeShaw and me to suffer injury.

19. On December 13, 2018, the ODC Lawyers named in the Complaint conducted a hearing before the Disciplinary Board on their malicious and selective complaint against Attorney Gary V. Dubin, again using a combination of trivial and false allegations, for the purpose of disbarring him, for the purpose of suppressing foreclosure-defense in this State. In so doing these ODC Lawyers wrongfully deprived me of my choice of counsel and harmed me in my defense of my home against wrongful "foreclosure" (actually attempted theft). (See the Plaintiffs' Exhibit "C" attached to the Complaint.)

20. On February 13, 2019, the Disciplinary Board Lawyers named in the Complaint ratified and endorsed and joined in the malicious and selective prosecution of Attorney Gary V. Dubin and ruled

that he should be disbarred, thereby wrongfully depriving me of my choice of counsel and harming me in my defense of my property. (See Plaintiffs' Exhibit "C" attached to the Complaint.)

21. On December 3, 2014, the ODC Lawyers named in the Complaint filed a malicious and selective complaint against Attorney Robert L. Stone (hereafter "Mr. Stone"), using a combination of trivial and false allegations, for the purpose of forcing him to resign from the Bar, pursuant to their campaign to suppress foreclosure-defense in this State. This case too is an example of selective prosecution and retaliation against a member of the bar, and these are very serious abuses of power. The action of these ODC Lawyers wrongfully deprived me and Mr. DeShaw of our choice of counsel and harmed us in our defense of our property against a wrongful "foreclosure."

22. Upon information and belief, the same ODC Lawyers have filed other malicious and selective complaints against other foreclosure-defense attorneys, thereby causing injury to Mr. Abing and

to Mr. DeShaw and me.

23. On or about August 14, 2018, the same OCP Lawyers and ODC Lawyers, working together, maliciously threatened Attorney R. Steven Geshell (who was representing Mr. Abing and Mr. DeShaw and me me) and caused him to turn on us, his own clients, and to file unauthorized and inferior pleadings in my foreclosure case, in defiance of my clear instructions. These actions of the above-named Conspirators wrongfully deprived Mr. Abing and Mr. DeShaw and me of our choice of counsel and harmed us in our defense of our properties against wrongful "foreclosures." (See the "Declaration of Dennis Duane DeShaw," and the "Declaration of Chester Noel Abing," attached to the Complaint.)

24. The Supervisors of the OCP Lawyers named in the Complaint either authorized the unlawful acts of the OCP Lawyers or negligently failed to supervise them properly, thereby causing Mr. Abing, Mr. DeShaw, and me to suffer injury.

22. Likewise, on or about December 10, 2017, the same OCP Lawyers and the same ODC Lawyers,

conspiring together, threatened Attorney Jason B. McFarlin, who had previously accepted Mr. Abing and Mr. DeShaw and me as his clients but then, pursuant to instructions from the Conspirators, refrained from representing us vigorously. This failure wrongfully deprived Mr. Abing and Mr. DeShaw and me of our choice of counsel and harmed us in our defense of our properties against wrongful "foreclosures."

23. The Supervisors of the OCP Lawyers named in the Complaint either authorized the unlawful acts of the OCP Lawyers in threatening Attorney McFarlin or negligently failed to supervise them properly, thereby causing Mr. Abing, Mr. DeShaw, and me to suffer injury.

24. On several occasions, I have observed both the OCP Lawyers and the ODC Lawyers working closely with lawyers representing the Dummy Corporations in furtherance of their conspiracy.

25. On or about October 28, 2020, the above-named Conspirators in the OCP sent letters to Mr. Abing and to Mr. DeShaw and me. In those letters,

the Conspirators offered to pay large bribes to us ($34,016.00 in the case of Mr. DeShaw and me) if we would file a false complaint against our paralegal assistant, so the OCP Conspirators could show the false complaints to their fellow Conspirators in the First Circuit, and they in turn could order the paralegal off of our "foreclosure" cases in that Circuit. The purpose of this trick was to block us from appealing to the Supreme Court of this State, to help the Dummy Corporations steal our homes. No payment was ever made. It was just one more dirty trick by the Conspirators. (See the "Declaration of Chester Noel Abing," the "Declaration of Dennis Duane DeShaw," and the "Declaration of Robert L. Stone.")

26. Bert I. Ayabe and Jeannette H. Castagnetti (designated foreclosure Judges in the Circuit Court of the First Circuit, in Honolulu) work closely with the other Conspirators, awarding huge prizes to the Dummy Corporations without requiring them to provide evidence of ownership.

27. In all of the actions alleged above, the

Conspirators have made it virtually impossible for Mr. Abing, Mr. DeShaw, and me to defend ourselves. The Conspirators have worked together pursuant to an unwritten agreement among them all to commit unlawful acts (for the purpose of suppressing the foreclosure-defense bar in this State), and they all intend to achieve the agreement's objective. And they already have committed overt acts together in furtherance of the agreement's objective in a coordinated campaign against us homeowners and our attorneys with criminal prosecutions and trying to bribe Mr. Abing (Plaintiffs' Exhibit "A"), by attempting to steal funds from his credit-card account (Plaintiffs' Exhibit "B"), by maliciously and selectively prosecuting our defense attorneys (Plaintiffs' Exhibit "C"), by intervening in a defense-law firm in a conspiratorial manner to break it up, and by granting huge financial awards to Dummy Corporations while not requiring them to present evidence of ownership, in defiance of the Supreme Court of this State.

28. It is well known that there is a mortgage-foreclosure crisis in this State. Since the Great Financial Crisis of 2008-2009, far too many homeowners have lost their homes to "foreclosures" by Dummy Corporations.

29. The Supreme Court has attempted to deal with this crisis by ruling clearly that foreclosure plaintiffs must own the mortgages they want to foreclose before they can take the homes that secure those mortgages. See, for example, *Bank of America v. Reyes-Toledo*, SCWC15-5 (October 9, 2018). Only this way can homeowners negotiate with a party that has the authority to modify the mortgage and agree to reasonable offers to reinstate payments due. And only this way are foreclosure-plaintiffs not unjustly enriched at the expense of homeowners. (See the "Declaration of Chester N. Abing" and the "Declaration of Dennis Duane DeShaw," attached to the Complaint.)

30. So the law of this State is clear. Dummy Corporations with no interest in the properties taken are not allowed legally to foreclose. But that does not

stop them at all. They take the homes anyway because they have enormous resources to use both in and out of court, and because the foreclosure-defense bar has been decimated by the Conspirators.

31. Since the Dummy Corporations do not lend money and have not purchased the mortgages they are "foreclosing" (actually stealing) their profit is equal to the total market value of all the homes they take, with no subtraction for the mortgages, since they did not pay for them.

32. Before the pandemic, there were about 1,450 new foreclosures on homes each year in this State. (https://www.realtytrac.com/statsandtrends/foreclosuretrends/hi/) And almost half of those are by Dummy Corporations instead of legitimate banks. If the average value of their victims' homes, including their land, is about $500,000, that means that the Dummy Corporations have an annual profit of about three hundred and sixty-two million dollars ($362,000,000), and that is just in this State. 33. And as soon as the pandemic is under control and the temporary freeze on evictions is lifted, there will be

many more foreclosures.

34. I do not have the resources to defend myself in court *pro se* against the resources of a $362,000,000 enterprise (not counting its resources in the other forty-nine States).

35. Also, there are no public defenders in foreclosure cases in this State. So, without foreclosure-defense attorneys, the wrongful "foreclosures" by the Dummy Corporations sail through the courts. There are fewer than 5,000 active attorneys in this State, and most of them aspire to work for the banks, for the Dummy Corporations, or for the real-estate developers who buy land from the Dummy Corporations. There are only a handful of attorneys that aspire to work for distressed homeowners. In this situation, justice depends heavily upon the size and vigor of the defense bar.

36. The Dummy Corporations, with so much money at stake and with the law of this State not favorable to them, are using extrajudicial methods. One of these methods is to forge documents, as they did in my case.

37. Another method is to use the Conspirators to suppress the foreclosure-defense bar. In other words, the Conspirators in the OCP and the ODC and the First Circuit are working together with the Dummy Corporations' attorneys in the plaintiffs' bar to suppress the foreclosure-defense bar.

38. Meanwhile, the Conspirators, who are charged with protecting consumers like me, are maliciously taking no action whatsoever against the massive fraud committed daily against me by the Conspirators together with the Dummy Corporations as they try to steal my home and reap unearned profits.

39. In spite of the concerted efforts of the Conspirators, a small number of defense lawyers continued, until recently, to attempt to represent me at considerable expense to themselves and considerable risk to their careers.

40. One such courageous defense attorney is Keoni K. Agard, Mr. Abing's attorney in *PennyMac v. Abing*. Another such defense attorney is Gary V. Dubin, the dean of the foreclosure-defense bar. Mr.

Dubin was, and is, the victim of a malicious ongoing campaign by the Conspirators to disbar him permanently. Mr. Dubin is the most competent and knowledgeable foreclosure lawyer in this State (and arguably in the entire country). He has a long record of success in the Intermediate Court of Appeals and before the Supreme Court of this State. And, upon information and belief, he has done nothing that would normally merit disbarment. And he spends considerable time and effort on educating the public about the ongoing foreclosure crisis.

41. Mr. Dubin, therefore, is a high-value target for malicious prosecution by the Conspirators. His disbarment has thoroughly and finally chilled foreclosure-defense in this State and has harmed many consumers, including me. Whether or not Mr. Agard and others will be disbarred like Attorney Dubin depends entirely on whether or not they have learned to obey the Conspirators.

42. It is a well-known fact that every time a family loses its home, the loss is a disaster for many people. If the fake "Bank of New York" succeeds in

stealing my home, my family's life savings (the equity in our home) will be destroyed, the value of all of the neighbors' homes will be negatively affected, and medical bills will increase, thereby causing me and my family to suffer injuries.

43. As a result of the foregoing acts of the Conspirators, we Plaintiffs (Mr. Abing and Mr. DeShaw and I) have suffered financial injury and severe emotional injury, both proximately caused by the misconduct of the Conspirators.

44. The Conspirators named in the Complaint have maliciously prosecuted Attorney Gary Dubin and Mr. Stone, thereby harming Mr. Abing and Mr. DeShaw and me. We all have asked him to represent us, and he has been forced to decline.

45. The Conspirators named in the Complaint have threatened, maliciously investigated, intimidated, and corrupted Lawyers Sandra D. Lynch, R. Stephen Geshell and Lawyer Jason Blake McFarlin, frightening them into aiding the Conspiracy against their own clients, thereby chilling all foreclosure-defense in this State and thereby harming Mr. Abing

and Mr. DeShaw and me.

46. The misconduct described in this Complaint above and in each of the following Counts has injured Mr. Abing and Mr. DeShaw and me. Our injuries include, but are not limited to, property damage, financial damage, emotional distress, and deprivation of our civil rights.

47. The misconduct described in the Class Action Complaint is objectively unreasonable and was undertaken intentionally and maliciously, with willful and reckless indifference to our Constitutional rights.

48. The misconduct described in the Class Action Complaint was undertaken pursuant to the policy and practice of the Conspirators.

49. I, Susan Kay Broer-DeShaw, do declare under penalty of perjury under the laws of the United States of America that the foregoing Declaration is true and correct.

Executed on: February 12, 2021

/s/ Susan Kay Broer-DeShaw
Susan Kay Broer-DeShaw
Class Action Plaintiff

DECLARATION OF
ROBERT L. STONE

UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

CHESTER NOEL ABING,
DENNIS DUANE DESHAW, and
SUSAN KAY BROER-DESHAW,

Plaintiffs,

vs.

21-cv-95

JAMESF.EVERS, JOHN N. TOKUNAGA,STEPHEN H. LEVINS, LISA P.TONG,MELINDA D. SANCHES, CATHERINE AWAKUNI COLON, JO ANNUCHIDA TAKEUCHI, MICHAEL J.S. MORIYAMA, BRUCE B.KIM, BRADLEY R. TAMM, RYAN SUMMERS LITTLE, REBECCA SALWIN, YVONNE R. SHINMURA, CHARLENE M. NORRIS, ROY F. HUGHES, GAYLE J. LAU, JEFFREY P.MILLER, PHILIP H. LOWENTHAL, CLIFFORD NAKEA, BERT I. AYABE and JEANETTE H. CASTAGNETTI,

Defendants.

DECLARATION

OF ROBERT L. STONE

I, Robert L. Stone, do hereby declare:

1. I am making this Declaration in support of the Class Action Complaint of Plaintiffs Chester Noel Abing, Dennis Duane DeShaw, and Susan Kay Broer-DeShaw in the above-captioned case.

2. I am more than twenty-one years of age, of sound mind; I know all of the facts stated in this Declaration either by first-hand observation or from personal experience, and I am ready to testify in court as to the truth of all facts declared herein.

3. I have personal knowledge of all of the facts declared herein because I represented Mr. Abing for eight years in the wrongful "foreclosure" lawsuit against him by a Dummy Corporation: *PennyMac v. Abing*, 1CC12-1-003115 (1st Cir. 2012), which has been dragging through the court for nine years. Likewise, I represented Mr. and Mrs. DeShaw for six years in their defense against

a wrongful "foreclosure" lawsuit against them by a different Dummy Corporation: *The Bank of New York Mellon FKA The Bank of New York, as Trustee (CWALT 200632CB) v. DeShaw*, 1CC16-1001821 (1st Cir. 2016).

4. The foreclosure-plaintiff in the case of *The Bank of New York Mellon FKA the Bank of New York, as Trustee (CWALT 2006-32CB) v. DeShaw*, Case No. 1CC16-1-001821 (1st Cir. 2016). This entity is not to be confused in any way with The Bank of New York Mellon, with which it has no connection. Instead, this entity is a Dummy Corporation because it does not exist. There is no record of a trust by that name ever having existed. But that did not stop Jeannette H. Castagnetti, a complicit foreclosure judge in the First Circuit, from granting summary judgment at the request of an unethical attorney (David B. Rosen) claiming falsely to represent the non-existent plaintiff,

giving the DeShaws' home to the non-existent entity that Att. Rosen pretends to represent. She did this on April 13, 2019. And she does this routinely. That grant is now on appeal. (See the "Declaration of Dennis Duane DeShaw" and the "Declaration of Susan Kay Broer-DeShaw."

5. An example, among thousands, of a second kind of Dummy Corporation is the plaintiff in *PennyMac v. Abing*, 1CC12-1-003115 (1st Cir. 2012). That corporation, unlike the plaintiff in the DeShaws' case, actually does exist (in California). What makes this plaintiff a Dummy Corporation is that it is being used as one, to hide the fact that the owner of the mortgage has not come forward. There is no evidence whatsoever that PennyMac ever purchased the Note in Mr. Abing's case or that it has lent money to Mr. Abing, or that it ever has had anything to do with Mr. Abing's home. In fact, there is evidence (the formal endorsement and

signature on the Note) that the Note was sold to someone else. But this did not stop Bert I. Ayabe, another complicit foreclosure judge in the First Circuit Court, from granting summary judgment to this Dummy Corporation. He did this on October 2, 2013. And he does this routinely.

6. The main problem with these takings are: (a) they are outrageous examples of officially sponsored theft that endanger the security of all private property in this State. Also, (b) if the homeowner has fallen behind in his mortgage payments for any reason and a Dummy Corporation that does not own the mortgage sues the homeowner to take the home, the Dummy Corporation cannot release or modify a mortgage it does not own, so it is impossible to negotiate a settlement with the entity and reinstate mortgage payments. (c) A Dummy Corporation cannot provide clear title because it cannot legally release a

mortgage lien it does not own. (d) The Circuit Courts of this State are attempting to deal with this problem by pretending that the Dummy Corporations have good title to the properties they have stolen, and that pretense is unsustainable and corrupts the courts and the rules of evidence in the State's system of property title.

7. These thefts have occurred, and are possible, only because there are few if any defense attorneys remaining in the State who are willing and competent to represent homeowners in foreclosure in a zealous manner. And this is not an accident. It is because the government officials named in this Class Action Complaint have entered into a confederacy formed for the purpose of committing, by their joint efforts, acts which are lawful in themselves (for example disciplining attorneys and policing the bar) but become unlawful when done by the concerted action of the

conspirators to assist the Dummy Corporations in taking thousands of homes in this State. Upon information and belief, these government officials are former employees of the Dummy Corporations and/or attorneys who seek to represent the Dummy Corporations in court, in manifest conflicts of interest. The government officials accomplish this by abusing the authority of this State to intimidate and threaten the foreclosure-defense bar in this State by disbarring its members (for example Attorney Gary V. Dubin, the dean of the fore-closure-defense bar) for minor or trumped-up offenses, by threatening to disbar them, by subpoenaing their records on limitless fishing expeditions, by offering to bribe their former clients to complain about them, and by suing them under laws intended to protect consumers.

8. The government officials who are doing

this constitute a combination or confederacy formed for the purpose of committing, by their joint efforts, both unlawful or criminal acts and also acts which are lawful in themselves, but becomes unlawful when done by the concerted action of the conspirators. That is the definition of a Conspiracy. See *Black's Law Dictionary* (6th ed.), s.v. "conspiracy." Therefore, the government officials named in this Complaint will be referred to collectively henceforth as "the Conspirators.'

9. In their actions to harass the defense bar, the Conspirators allege that, since foreclosure-defendants always lose in this State, any attorney who agrees to represent one of them in court must be scamming them, so the Conspirators have to "shut the scammers down," regardless of what the homeowners say or need. Then, as the government officials intend, when the defense bar is eliminated, the homeowners are defenseless.

10. In addition to suppressing and intimidating the defense bar, the Conspirators act together to "blacklist" and discriminate against troublesome homeowners (for example Mr. Abing and Mr. and Mrs. DeShaw) who ask only that the law of this State be applied in their "foreclosure" cases. The government officials intervene in the wrongful "foreclosure" cases without leave of court (for example in the cases of Mr. Abing and Mr. and Mrs. DeShaw), threaten and intimidate the homeowners (for example Mr. Abing and Mr. and Mrs. DeShaw), harass them by subpoenaing their records--and in the case of Mr. Abing actually try to steal funds from his bank account. The Conspirators appear in court in hearings involving the black-listed homeowners, to assist the attorneys of the Dummy Corporations on points of law and to intimidate the homeowners, when they should be doing the opposite: appearing in court to help the

consumers they are supposed to protect. (See Declaration of Mrs. DeShaw.)

11. What these government officials are conspiring to do to the homeowners in this State is very similar to what officials of the former Confederate States of America did to suppress, discriminate, intimidate, and steal from the former slaves after the end of Reconstruction and the withdrawal of the federal government from the South in 1876.

12. The government officials named in this Class Action Complaint are conspiring to act under color of State law in that they collect government salaries and issue their orders on government stationery. However, they are not enforcing any State law. There is no State law that Dummy Corporations may take homes without paying for them. (In fact, the law of this State is directly contrary. See, for example, *Bank of*

America v. Reyes-Toledo, SCWC-15-5 [October 9, 2018], which requires that foreclosure plaintiffs must prove an interest in the properties they are taking.)

13. Likewise, there is no State law or Supreme Court rule saying that it is illegal to represent foreclosure defendants. In fact, one purpose of the officials' conspiracy is to prevent foreclosure cases from reaching the Supreme Court of this State, to prevent homeowners and their attorneys from testifying in that court. (It is impossible to reach the Supreme Court without an attorney.) So, the Conspirators are abusing their power to corrupt the laws of this State.

14. It is common knowledge that the Great Recession of 2008 was caused by a wave of fraudulent "Subprime Loans," fraudulently securitized, starting in 2003. (See "The Financial Crisis Inquiry Report: Final Report of the National

Commission on the Causes of the Financial and Economic Crisis in the United States," Pursuant to Public Law 111-21, January 2011, ISBN 978-0-16-087983-8.) These mortgages were structured by now-defunct financial institutions intentionally to fail. (Mr. Abing's and Mr. and Mrs. DeShaws' home mortgages are among these fraudulent loans.)

15. It is common knowledge that, therefore, after 2008, there was an unprecedented wave of foreclosures in this State and throughout the United States.

16. Therefore, this State in 2011 enacted the most pro-consumer mortgage-foreclosure law in the U.S., requiring foreclosure-plaintiffs, in all "non-judicial" foreclosures (unsupervised by a judge) to engage in serious mediation in hope reaching a compromise and reinstating the loan. (See Haw.Rev.Stats. § 667-71, L2011, c. 48, pt of 1.

45[2].)

17. Therefore, the new foreclosure plaintiffs promptly switched all of their cases to "judicial" foreclosures, to avoid the requirement to mediate fairly. But judicial foreclosures are supervised by judges. The legislature apparently hoped that the Circuit Courts would end the mortgage fraud. And since the plaintiff in a foreclosure in front of a judge must actually present evidence, this change substantially increased the time required to foreclose.

18. Therefore, since foreclosure-plaintiffs often are the Dummy Corporations, which lack all evidence for their claims, the average time required for a foreclosure in this State suddenly increased from 2 or 3 months in 2011 to the current 1,558 days (over four years) in 2020--the longest in the country. (See Nolo, "States with Long Foreclosure Timelines," at

https://www.nolo.com/legalencyclopedia/states-with-longforeclosuretimelines.html.) Therefore, the desperate lawyers manipulating the Dummy Corporations like puppets have turned to forging documents and have turned to the Conspirators to help them purge the defense bar.

19. The actions of the Conspirators--suppressing the defense bar and going to court to assist the Dummy Corporations---deprive the homeowners of this State of their property without due process and without equal protection under the law, which are guarantied to all citizens of the U.S. by the Fourteenth Amendment. The Conspirators are discriminating against homeowners by failing to treat them equally with the Dummy Corporations,

20. On August 30, 2018, the OCP Lawyers named in the Complaint intervened without leave of court in the ongoing case of *PennyMac v. Abing*,

1CC12-1-3115 (1st Cir.). Mr. Abing had asked the court to dismiss the wrongful "foreclosure" against him because the Dummy Lender in his case did not own the mortgage it was seeking to "foreclose." The Circuit Court could not simply deny Mr. Abing's motion without giving him a good appeal to the Supreme Court.

21. So the OCP Lawyers acted without formal leave of court to subpoena Mr. Abing and his attorney (Mr. Keoni Agard) for an hours-long, third-degree interrogation in the Conspirators' offices. In the course of the interrogation, the OCP Lawyers threatened Mr. Abing with prosecution for an unspecified "felony," bullied him, attempted to bribe him with a (fake) offer of $10,000, and ordered him to discharge his attorney's paralegal assistant and to stop defending his property in the ongoing case in Circuit Court. Throughout the interrogation, the OCP lawyers intentionally

frightened, bullied, confused, and lied to Mr. Abing, for the purpose of tricking him into making false statements their fellow Conspirators could use against him in *PennyMac v. Abing*, 1CC12 1-3115 (1st Cir.), as if they were attorneys for the Dummy Corporations, which is what they really are, underneath their titles. (See Plaintiff's Exhibit "A," the "Declaration of Chester N. Abing," attached hereto.)

22. From May of 2012, until the present, the Plaintiffs (Mr. Abing, Mr. DeShaw, and Mrs. DeShaw) have been personally involved in seven separate lawsuits against the Dummy Corporations that are trying to steal their homes. They have worked with five different attorneys. And Mrs. DeShaw has personally defended herself in court *pro se*, and she has been deposed at length. All of the Plaintiffs are personally familiar with fraudulent "foreclosure" cases, and Mr. Abing and

Mrs. DeShaw have become special targets of the Conspirators.

23. On February 8, 2019, the OCP Lawyers named in the Complaint again intervened in Mr. Abing's ongoing case in Circuit Court, without leave of court, by stealing $800 from Mr. Abing's credit-card account to prevent him from using that sum to pay his legal fees. And they did so intentionally and maliciously, thereby causing Mr. Abing to suffer injury. (See Plaintiff's Exhibit "B" and the 'Declaration of Chester N. Abing," attached hereto.)

24. On March 23, 2019, the OCP Lawyers named in the Complaint, again intervened in the ongoing case in Circuit Court, without leave of court, by stealing another $500 from Mr. Abing's credit-card account, again to prevent him from using it to pay his legal fees. So, they stole a total of $1,300. And they did so intentionally and

maliciously, thereby causing Mr. Abing to suffer injury. (See Mr. Abing's Exhibit "B" and the "Declaration of Chester N. Abing," attached hereto.)

25. The Supervisors of the OCP Lawyers named in the Complaint either authorized the unlawful acts of the OCP Lawyers in intimidating Mr. Abing and stealing from him, to prevent his testifying in court, or negligently failed to supervise them properly, thereby causing Mr. Abing to suffer injury.

26. On or about January 24, 2013, the ODC Lawyers and the OCP Lawyers named in the Complaint approached Attorney Sandra D. Lynch, who at that time was working as an associate attorney in my foreclosure-defense law firm in Honolulu, and ordered her to steal twenty-seven of my firm's foreclosure-defense clients from my firm, to resign from my firm, and to stop working

zealously on the clients' cases. She complied with their orders. As a result, most of the twenty-seven homeowners in those cases lost their homes to the Dummy Corporations, and the law firm was broken up. Mr. Abing and Mr. and Mrs. DeShaw were clients of that law firm, so they suffered injuries as a result to the action of the ODC Lawyers and OCP Lawyers. (See the "Declaration of Chester N. Abing," the "Declaration of Dennis Duane DeShaw," and the "Declaration of Susan Kay Broer-DeShaw," attached hereto.)

27. The Supervisors of the OCP Lawyers named in the Complaint either authorized the theft of clients from my law firm and the breakup of my firm, or they negligently failed to supervise properly the OCP Lawyers, thereby causing Mr. Abing and Mr. and Mrs. DeShaw to suffer injury.

28. On December 13, 2018, the ODC Lawyers named in the Complaint conducted a

hearing before the Disciplinary Board on their malicious and selective complaint against Attorney Gary V. Dubin, again using a combination of trivial and false allegations, for the purpose of disbarring him, for the purpose of suppressing foreclosure-defense in this State. In so doing the ODC Lawyers wrongfully deprived the Plaintiffs of their choice of counsel and harmed them in their defense of their homes against wrongful "foreclosures." (See the Plaintiffs' Exhibit "C.")

29. On February 13, 2019, the Disciplinary Board Lawyers named in the Complaint ratified and endorsed and joined in the malicious and selective prosecution of Attorney Gary V. Dubin and ruled that he should be disbarred, thereby wrongfully depriving the Plaintiffs of their choice of counsel and harming them in their defense of their property. (See Plaintiffs' Exhibit "C," the "Declaration of Chester N. Abing," the "Declaration

of Dennis Duane DeShaw," and the "Declaration of Susan Kay Broer-DeShaw," attached hereto.)

30. The Plaintiffs' Exhibit "A" is a true and correct copy of "Decision of the Disciplinary Board" dated February 13, 2019, published online by the Disciplinary Board.

31. On December 3, 2014, the ODC Lawyers named in the Complaint filed a malicious and selective complaint against me, using a combination of trivial and false allegations, for the purpose of forcing me to resign from the Bar, pursuant to their campaign to suppress foreclosure-defense in this State. My attorney, Mr. Eric Seitz, advised me that it would cost $40,000 to defend against the malicious accusations, and all defense would be futile because I would not receive a fair trial. This case is an example of selective prosecution and retaliation against a member of the bar, that these are very serious

abuses of power. These action of the ODC Lawyers wrongfully deprived the Plaintiffs of their choice of counsel and harmed them in their defense of their property against wrongful "foreclosures." (See the "Declaration of Chester N. Abing," the "Declaration of Dennis Duane DeShaw," and the 'Declaration of Susan Kay Broer-DeShaw," attached to the Complaint.)

32. Upon information and belief, the ODC Lawyers named in the Complaint have filed other malicious and selective complaints against other foreclosure-defense attorneys, thereby causing injury to the Plaintiffs.

33. On or about August 14, 2018, the OCP Lawyers and the ODC Lawyers named in the Complaint, working together, maliciously threatened Attorney R. Steven Geshell (who was representing Mr. Abing and Mr. and Mrs. DeShaw) and caused him to turn on his own clients and to file

unauthorized and inferior pleadings in their "foreclosure" cases, in defiance of clear instructions from Mr. Abing and from the DeShaws.

34. These actions of the Conspirators wrongfully deprived Mr. Abing and Mr. and Mrs. DeShaw of their choice of counsel and harmed them in their defense of their property against wrongful "foreclosures." (See the "Declaration of Chester N. Abing," the "Declaration of Dennis Duane DeShaw," and the "Declaration of Susan Kay Broer-DeShaw," attached hereto.)

35. The Supervisors of the OCP Lawyers named in the Complaint either authorized the unlawful acts of the OCP Lawyers described above or negligently failed to supervise them properly, thereby causing Mr. Abing and Mr. and Mrs. DeShaw to suffer injury.

36. Likewise, on or about December 10, 2017, the OCP Lawyers and ODC Lawyers named

in the Complaint, conspiring together, threatened Attorney Jason B. McFarlin, who accepted the Plaintiffs as his clients but then, pursuant to instructions from the Conspirators, failed to represent them vigorously. This failure wrongfully depriving Mr. Abing and Mr. and Mrs. DeShaw of their choice of counsel and harmed them in their defense of their properties against wrongful "foreclosures.' (See the "Declaration of Chester N. Abing," the "Declaration of Dennis Duane DeShaw," and the "Declaration of Susan Kay Broer-DeShaw," attached hereto.)

37. The Supervisors of the OCP Lawyers named in the Complaint either authorized the unlawful acts of the OCP Lawyers in threatening Attorney McFarlin or negligently failed to supervise them properly, thereby causing all three Plaintiffs to suffer injury.

38. Both the OCP Lawyers and the ODC

Lawyers work closely with lawyers representing the Dummy Corporations in furtherance of their conspiracy.

39. On or about October 28, 2020, the Conspirators in the OCP sent letters to Mr. Abing and to Mr. and Mrs. DeShaw. Therein the Conspirators offered to pay them large bribes ($34,016.00 in the case of the DeShaws) if they would inform against, and file false complaints against, me--so the OCP Lawyers could show the false complaints to their fellow Conspirators in the First Circuit, and they in turn could order the paralegal off of the Plaintiffs' "foreclosure" cases in that Circuit. The purpose of this trick was to block Mr. Abing and Mr. and Mrs. DeShaw from appealing to the Supreme Court of this State, to help the Dummy Corporations steal their homes.

40. No payment was ever made. It was all just another dirty trick by the Conspirators. (See

the "Declaration of Susan Kay Broer-DeShaw," the "Declaration of Dennis Duane DeShaw," and the "Declaration of Chester Noel Abing.")

41. Bert I. Ayabe and Jeannette H. Castagnetti (designated foreclosure Judges in the Circuit Court of the First Circuit, in Honolulu) work closely with the other Conspirators, awarding huge prizes to the Dummy Corporations without requiring them to provide evidence of ownership. Jeannette H. Castagnetti also gives free rein to certain rude and unethical lawyers such as David B. Rosen, who works for the Dummy Corporations, to harass, trick, threaten, and "investigate" *pro se* defendants who are defenseless because they cannot afford attorneys. Accordingly, David B. Rosen acts the way someone does when he knows he has complete immunity from the rules of decency and fairness. (See the "Declaration of Susan Kay Broer-DeShaw.")

42. In all of the actions alleged above, the Conspirators have made it virtually impossible for the Plaintiffs to defend themselves. The Conspirators have worked together pursuant to an unwritten agreement among them all to commit unlawful acts (for the purpose of suppressing the foreclosure- defense bar in this State), and they all intend to achieve the agreement's objective. And they already have committed overt acts together in furtherance of the agreement's objective in a coordinated campaign: by threatening homeowners and their attorneys with criminal prosecutions and trying to bribe them (Plaintiffs' Exhibit "A"), by trying to steal funds from consumers' bank accounts (Plaintiffs' Exhibit "B"), by maliciously and selectively prosecuting defense attorneys (Plaintiffs' Exhibit "C"), by intervening in a defense law firm in a conspiratorial manner to break it up, and by granting huge financial awards to Dummy

Corporations while not requiring them to present evidence of ownership, in defiance of the Supreme Court of this State.

43. It is well known that there is a mortgage-foreclosure crisis in this State. Since the Great Financial Crisis of 2008-2009, far too many homeowners have lost their homes to "fore-closures" by Dummy Corporations.

44. One example of a Dummy Corporation is the plaintiff in the ongoing lawsuit against Mr. Abing, currently in the Circuit Court of the First Circuit: *PennyMac v. Chester N. Abing*, 1CC12-1-003115. Mr. Abing has been a special target of the Conspirators. (See the "Declaration of Chester N. Abing.")

45. Another example, among thousands, of a Dummy Corporation is an entity called "The Bank of New York Mellon FKA the Bank of New York, as Trustee (CWALT 2006-32CB," which is

attempting to take the home of the DeShaw plaintiffs using *The Bank of New York Mellon FKA the Bank of New York, as Trustee (CWALT 2006-32CB) v. DeShaw*, Case No. 1CC161-001821 (1st Cir. 2016). There are hundreds or thousands more of these cases in this State.

46. The Supreme Court has attempted to deal with this crisis by ruling clearly that foreclosure-plaintiffs must own the mortgages they want to foreclose before they can take the homes that secure those mortgages. See, for example, *Bank of America v. Reyes-Toledo*, SCWC15-5 (October 9, 2018). Only this way can homeowners negotiate with a party that has the authority to modify the mortgage and agree to reasonable offers to reinstate payments due. And only this way are foreclosure-plaintiffs not unjustly enriched at the expense of homeowners. (See the "Declaration of Chester N. Abing," the "De-

claration of Dennis Duane DeShaw," and the "Declaration of Susan Kay Broer-DeShaw," attached hereto.)

47. So the law of this State is clear. Dummy Corporations with no interest in the properties taken are not allowed legally to foreclose. But that does not stop them at all. They take the homes anyway because they have enormous resources to use both in and out of court, and because the foreclosure-defense bar has been decimated by the Conspirators.

48. The Dummy Corporations are not banks. They have no employees, they do not lend money, and have not purchased the mortgages on the homes they are stealing. So, their profit is equal to the total market value of all the homes they steal, with no subtraction for any expenses.

49. Before the pandemic, there were about 1,450 new foreclosures on homes each year in this

State.(https://www.realtytrac.com/statsandtrends/foreclosuretrends/hi/) And about half of those are by Dummy Corporations instead of by legitimate banks. If the average value of their victims' homes, including their land, is about $500,000, that means that the Dummy Corporations have an annual profit of about three hundred and sixty-two million dollars ($362,000,000), and that is just in this State. And as soon as the pandemic is under control and the temporary freeze on evictions is lifted, there will be many more foreclosures.

50. No homeowners have the resources to defend themselves in court against the resources of a $362,000,000 enterprise (not counting its resources in the other forty-nine States). (See the "Declaration of Chester N. Abing," the "Declaration of Dennis Duane DeShaw," and the "Declaration of Susan Kay Broer-DeShaw," attached hereto.)

51. Also, there are no public defenders in

foreclosure cases in this State. So, without foreclosure-defense attorneys, the wrongful "foreclosures" by the Dummy Corporations sail through the legal system. There are fewer than 5,000 active attorneys in this State, and most of them aspire to work for the banks, for the Dummy Corporations, or for the real-estate developers who buy land from the Dummy Corporations. There are only a handful of attorneys that aspire to work for distressed homeowners. In this situation, justice depends heavily upon the size and vigor of the defense bar. (See the "Declaration of Chester N. Abing," the "Declaration of Dennis Duane DeShaw," and the "Declaration of Susan Kay Broer-DeShaw," attached hereto.)

52. The Dummy Corporations, with so much money at stake and with the law of this State not favorable to them, are using extra-judicial methods. One of these methods is to forge documents and file them in court, as they have done in both the Abing case and the DeShaw case. Another such method is to use the Conspirators to suppress the foreclosure-defense bar. In other words, the Conspirators in the OCP and the ODC and in the First Circuit are working together with the Dummy Corporations' attorneys in the Plaintiffs' bar to suppress the foreclosure-defense bar.

53. Meanwhile, the Conspirators, who are charged with protecting consumers, are maliciously taking no action whatsoever against the massive fraud committed daily by the Conspirators together with the Dummy Corporations as they steal the homes of residents of this State and reap unearned profits of hundreds of millions of dollars each year (not counting the other forty-nine States). (See the "Declaration of Chester N. Abing," the "Declaration of Dennis Duane DeShaw," and the "Declaration of

Susan Kay Broer-DeShaw," attached hereto.) This too is an abuse of power.

54. In spite of the concerted efforts of the Conspirators, a small number of defense lawyers continued, until recently, to attempt to represent homeowners at considerable expense to themselves and considerable risk to their careers. (See the "Declaration of Chester N. Abing," the "Declaration of Dennis Duane DeShaw," and the "Declaration of Susan Kay Broer-DeShaw," attached hereto.)

55. One such courageous defense attorney is Keoni K. Agard, Mr. Abing's attorney in *PennyMac v. Abing*. Another such defense attorney is Gary V. Dubin, the dean of the foreclosure-defense bar. Mr. Dubin was, and is, the victim of a malicious ongoing campaign by the Conspirators to disbar him permanently. Mr. Dubin is the most competent and knowledgeable foreclosure lawyer in this State (and arguably in the entire country). He has a long record of success in the Intermediate Court of Appeals and before the Supreme Court of this State. And, upon information and belief, he has done nothing that

would normally merit disbarment. And he spends considerable time and effort on educating the public about the ongoing foreclosure crisis.

56. Mr. Dubin, therefore, is a high-value target for malicious prosecution by the Conspirators. His disbarment has thoroughly and finally chilled foreclosure-defense in this State and has harmed many consumers, including Mr. Abing and Mr. and Mrs. DeShaw. Whether or not Mr. Agard and others will be disbarred like Attorney Dubin depends entirely on whether or not they have learned to obey the Conspirators. (See "Declaration of Chester N. Abing," "Declaration of Dennis Duane DeShaw," and "Declaration of Susan Kay Broer-DeShaw.")

57. It is a well-known fact that every time a family loses its home, the loss is a disaster for many people. Usually, the family's life savings (the equity in their home) is destroyed, the marriage that holds the family together is ruined, the children are pulled out of school, the elderly are not cared for, the value of all of the neighbors' homes is negatively affected, medical bills and violence increase, thereby causing

the homeowner to suffer injuries.

58. As a result of the foregoing acts of the Conspirators, Mr. Abing and Mr. DeShaw and Mrs. DeShaw have suffered financial injury and severe emotional injury, both proximately caused by the misconduct of the Conspirators. (See "Declaration of Chester N. Abing," "Declaration of Dennis Duane DeShaw," and "Declaration of Susan Kay Broer-DeShaw.")

59. The Conspirators have maliciously prosecuted Attorney Gary Dubin and me, thereby harming Plaintiffs.

60. The Conspirators have threatened, maliciously "investigated," intimidated, and corrupted Lawyers Sandra D. Lynch, R. Stephen Geshell and Lawyer Jason Blake McFarlin, frightening them into aiding the Conspiracy against their own clients, thereby chilling all foreclosure-defense in this State and thereby harming the Plaintiffs. (See the "Declaration of Chester N. Abing," the "Declaration of Dennis Duane DeShaw," and the "Declaration of Susan Kay Broer-DeShaw.")

61. The misconduct described above and in each of the above Counts was undertaken pursuant to the policy and practice of the Conspirators, in the manner described more in the Complaint.

62. I, Robert L. Stone, do declare under penalty of perjury under the laws of the United States of America that the foregoing Declaration is true and correct.

Executed on: February 12, 2021

/ss/ Robert L. Stone
Robert L. Stone

THE DISTRICT COURT'S
FIRST ORDER
DISMISSING THE COMPLAINT

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

CHESTER NOEL ABING, DENNIS DUANE DESHAW, and SUSAN KAY BROER-DESHAW,

Plaintiffs,

vs.

JAMES F. EVERS, JOHN N. TOKUNAGA, STEPHEN H. LEVINS, LISA P. TONG, MELINDA D. SANCHES, CATHERINE AWAKUNI COLON, JO ANN UCHIDA TAKE-UCHI, MICHAEL J.S. MORIYAMA, BRUCE B. KIM, BRADLEY R. TAMM, RYAN SUMMERS LITTLE, REBECCA SALWIN, YVONNE R. SHINMURA, CHARLENE M. NORRIS, ROY F. HUGHES, GAYLE J. LAU, JEFFREY P. MILLER, PHILIP H. LOWENTHAL, CLIFFORD NAKEA, BERT I. AYABE, and JEANETTE H. CASTAGNETTI,

Defendants.

Case No. 21-cv095 JAO-WRP

ORDER GRANTING IN PART AND DENYING

IN PART (1) MOTION TO DISMISS PLAINTIFFS' COMPLAINT FILED ON FEBRUARY 16, 2021 [ECF NO. 141; AND (2) DEFENDANTS BRUCE B. KIM, BRADLEY R. TAMM, RYAN SUMMERS LITTLE, REBECCA SALWIN, YVONNE R. SHINMURA, CHARLENE M. NORRIS, ROY F. HUGHES, GAYLE J. LAU, JEFFREY P. MILLER, PHILIP H. LOWENTHAL, CLIFFORD NAKEA, THE HONORABLE BERT I. AYABE AND THE HONORABLE JEANNETTE H. CASTAGNETTI'S SUBSTANTIVE JOINDER AND MOTION TO DISMISS WITH PREJUDICE COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF AND DAMAGES [ECF NO. 461

Pro se Plaintiffs Chester Noel Abing ("Abing"), Dennis Duane DeShaw ("DeShaw"), and Susan Kay Broer-DeShaw ("Broer-DeShaw") (collectively, "Plaintiffs") are each homeowners who have faced or are facing foreclosure in state court proceedings. Plaintiffs filed a Verified Class-Action Complaint ("Complaint"), ECF No. 1, against various individuals affiliated with Hawaii's Office of Consumer Protection ("OCP") and Office of Disciplinary Counsel ("ODC") and two state court

judges, all of whom allegedly engaged in a far ranging conspiracy to unlawfully deprive various homeowners in Hawaii of their homes.

Defendants James F. Evers, John N. Tokunaga, Stephen H. Levins, Lisa P. Tong, Melina D. Sanchez,[1] Catherine Awakuni Colon,[2] Jo Ann M. Uchida Takeuchi, and Michael J.S. Moriyama (collectively, the "OCP Defendants")[3] move to dismiss Plaintiffs' Complaint for lack of subject matter jurisdiction and failure to state a claim. ECF No. 14 ("Motion"). Defendants Bruce B. Kim,

---

[1] Plaintiffs refer to Sanchez as Melinda D. Sanches in the caption of the Complaint.

[2] Plaintiffs omit the diacritical mark in the Complaint.

[3]Plaintiffs identify OCP Defendants James F. Evers, John N. Tokunaga, Stephen H. Levins, Lisa P. Tong, and Melina D. Sanchez as the "OCP Lawyers," ECF No. 1 ¶ 23(a), and OCP Defendants Catherine Awakuni Collin, Jo Ann Uchida Takeuchi, and Michael J.S. Moriyama, as the "Supervisors of the OCP Lawyers." Id. ¶ 23(b).

Bradley R. Tamm, Ryan Summers Little, Rebecca Salwin, Yvonne R. Shinmura, Charlene M. Norris, Roy F. Hughes, Gayle J. Lau, Jeffrey P. Miller, Philip H. Lowenthal, and Clifford Nakea (collectively, the "Disciplinary Defendants");[4] and the Honorable Bert I. Ayabe[5] and the Honorable Jeannette H. Castagnetti[6] (collectively, the "Judge Defendants") substantively join in the OCP Defendants' Motion and seek dismissal on additional grounds. ECF No. 6 ("Substantive Joinder and Motion to Dismiss" or "Substantive Joinder"). The Court elects to decide

---

[4] Plaintiffs identify Disciplinary Defendants Bruce B. Kim, Bradley R. Tamm, Ryan Summers Little, Rebecca Salwin, Yvonne R. Shinmura, and Charlene M. Norris as the "ODC Lawyers," ECF No. 1 ¶ 23(c), and Disciplinary Defendants Roy F. Hughes, Gayle J. Lau, Jeffrey P. Miller, Philip H. Lowenthal, and Clifford Nakea as the "Disciplinary Board Lawyers." Id. ¶ 23(d).

[5] Plaintiffs refer to Judge Ayabe as "Bert I. Ayabe" in the caption of the Complaint.

[6] Plaintiffs refer to Judge Castagnetti as "Jeannette H. Castagnetti" in the caption of the Complaint.

this matter without a hearing pursuant to Rule 7.1(c) of the Local Rules of Practice for the U.S. District Court for the District of Hawaii. For the reasons set forth below, the Court GRANTS IN PART AND DENIES IN PART the OCP Defendants' Motion and the Disciplinary Defendants and Judge Defendants' Substantive Joinder and Motion to Dismiss.

I. BACKGROUND

A. Facts[7]

Plaintiffs are each homeowners whose homes are or have been subject to foreclosure by "Dummy Corporations" that allegedly pretended (1) to lend money to homeowners and (2) to own their mortgages, when they had no legal interest in the mortgaged properties. ECF No. 1 ¶ 1. Plaintiffs have been involved in seven separate lawsuits against the Dummy Corporations that have initiated foreclosure

---

[7] The Court's recitation of facts is based on the allegations in the Complaint, which are taken as true for purposes of the OCP Defendants' Motion and the Disciplinary Defendants and Judge Defendants' Substantive Joinder and Motion to Dismiss.

proceedings against them. *Id.* ¶ 31. Plaintiffs allege that the Judge Defendants wrongfully granted summary judgment to the respective mortgagees in foreclosure cases involving Plaintiffs' respective homes, and that they routinely grant summary judgment in favor of mortgagees without evidence that the mortgagee owns the mortgage and associated note. *Id.* ¶¶ 1-3.

According to Plaintiffs, wrongful foreclosures occur because there are no longer any attorneys in Hawaii who are willing and competent to represent defendants in foreclosure actions in a zealous manner. *Id.* ¶ 5. The various government officials named in the Complaint (whom Plaintiffs believe are former employees of and/or attorneys for the Dummy Corporations and reference in the Complaint as the "Conspirators" and to whom the Court will refer as "Defendants") have allegedly entered into a "confederacy ... to assist the Dummy Corporations in taking thousands of homes in this State." *Id.* Defendants intimidate members of the foreclosure defense bar by disbarring its members for minor or

trumped-up offenses, threatening to disbar them, subpoenaing their records, offering to bribe their former clients to complain about them, and suing them under consumer protection laws. *Id.* Plaintiffs further allege that Defendants have acted together to "blacklist" and discriminate against homeowners like Plaintiffs who defend against foreclosure proceedings by intervening in foreclosure cases without leave of court, threatening and intimidating homeowners, harassing them by subpoenaing their records, assisting the mortgagees' attorneys, and stealing funds from one of the Plaintiffs' bank accounts. *Id.* ¶ 8.

On January 24, 2013, the ODC Lawyers and OCP Lawyers allegedly approached attorney Sandra D. Lynch, then an associate at a foreclosure defense law firm, and ordered her to "steal" 27 of the firm's clients and then stop working zealously on those clients' cases. *Id.* ¶ 35. As a result, most of those 27 clients lost their homes to the Dummy Corporations, and the law firm dissolved. *Id.* Abing and DeShaw were clients of that law firm and therefore were

harmed by this sequence of events. *Id.* Plaintiffs maintain that the Supervisors of the OCP Lawyers either authorized the theft of clients from Lynch's law firm and the subsequent break-up of the firm, or negligently failed to supervise the OCP Lawyers. *Id.* ¶ 36.

On December 3, 2014, the ODC Lawyers filed a complaint against attorney Robert L. Stone ("Stone") that Plaintiffs describe as "malicious and selective" for the purpose for forcing Stone to resign from the State bar, thereby depriving Plaintiffs of their choice of counsel and harming them in their efforts to defend against foreclosure actions. *Id.* ¶ 40.

The OCP Lawyers and ODC Lawyers allegedly threatened attorney R. Steven Geshell, which caused Geshell to turn on his clients and file unauthorized and inferior pleadings in foreclosure cases, including pleadings that defied Plaintiffs' clear instructions. *Id.* ¶ 42. The Supervisors of the OCP Lawyers authorized the OCP Lawyers' conduct or negligently failed to supervise the OCP Lawyers. *Id.* ¶ 43.

On August 30, 2018, the OCP Lawyers intervened without leave of court in a state court foreclosure proceeding to which Abing was a party. *Id.* ¶ 30. The OCP Lawyers subpoenaed Abing and his attorney, Keoni Agard, and questioned them both. *Id.* Plaintiffs alleged the OCP Lawyers threatened to prosecute Abing for an unspecified felony, bullied him, attempted to bribe him "with a (fake) offer of $10,000," and ordered him to "discharge his attorney's paralegal assistant"[8] and stop defending against the foreclosure action. *Id.* Plaintiffs maintain that the OCP Lawyers did this to trick Abing into making false statements that could be used against him in the foreclosure action. *Id.*

Plaintiffs assert that on December 10, 2018, the OCP Lawyers and ODC Lawyers threatened attorney Jason

---

[8] Although not alleged in the Complaint, this "paralegal assistant" appears to be Stone based on Plaintiffs' use of this exact term to refer to Stone in their other filings. See generally ECF Nos. 58-60. This observation does not affect the Court's ruling herein.

B. McFarlin, who had accepted Plaintiffs as clients, but, pursuant to instructions from Defendants, failed to represent them vigorously. *Id.* ¶ 44. The Supervisors of the OCP Lawyers either authorized the OCP Lawyers' actions or negligently failed to supervise them properly. *Id.* ¶ 45.

On December 13, 2018, the ODC Lawyers conducted a hearing before the Disciplinary Board regarding a complaint against attorney Gary V. Dubin ("Dubin"), which complaint Plaintiffs allege contained trivial and false accusations. *Id.* ¶ 37. Plaintiffs allege that the purpose of the complaint was to disbar Dubin to suppress the foreclosure defense bar, thereby depriving Plaintiffs of their choice of counsel and harming them in their efforts to defend against foreclosure actions. *Id.* On February 13, 2019, the Disciplinary Board Lawyers disbarred Dubin. *Id.* ¶ 38. Plaintiffs contend that on February 8, 2019, the OCP Lawyers again intervened in Abing's state court case by stealing $800 from his credit card account to prevent Abing from using that sum to pay his legal fees, and then stole an additional $500 on March 23, 2019. *Id.* ¶¶

32-33. Plaintiffs assert that the Super-visors of the OCP Lawyers either authorized the OCP Lawyers' conduct or negligently failed to supervise the OCP Lawyers. *Id.* ¶ 34.

Plaintiffs allege that on October 28, 2020 the OCP Defendants sent letters to Plaintiffs offering to pay large bribes to them if they would inform and file a false complaint against "their paralegal assistant" so the OCP Lawyers could show the false complaints to other Defendants in state court. *Id.* ¶ 47. Plaintiffs contend that the purpose of this scheme was to have the paralegal removed from Plaintiffs' foreclosure cases and thereby block Plaintiffs from filing appeals to the Hawai[8]i Supreme Court. *Id.* The payment was never made. *Id.*

Plaintiffs further assert that the Judge Defendants work closely with the other Defendants and award "huge prizes" to the Dummy Corporations without requiring them to provide evidence of ownership in foreclosure cases, and that Judge Castagnetti gives foreclosure attorneys free rein to harass, trick, threaten, and investigate pro se

defendants. *Id.* ¶ 48.

Plaintiffs allege that the Dummy Corporations forge documents in order to prevail in foreclosure actions and did so in Abing and DeShaw's respective foreclosure actions. *Id.* ¶ 58. Plaintiffs state that Defendants, who are charged with protecting consumers, have taken no action to stop the alleged fraud the Dummy Corporations are perpetrating. *Id.* ¶ 59.

B. Procedural History

Plaintiffs commenced this action by filing the Complaint on February 16, 2021, asserting the following claims against all Defendants:

- Count I- Abuse of Power or Malfeasance
- Count II - 42 U.S.C. § 1983: Due Process
- Count III - 42 U.S.C. § 1983: Threatening Homeowners
- Count IV- 42 U.S.C. § 1983: Equal Protection
- Count V- 42 U.S.C. § 1985(2) and (3): Conspiracy to Deprive Constitutional Rights
- Count VI - 42 U.S.C. § 1983: Denial of Access to Courts

- Count VII - 42 U.S.C. § 1983: Failure to Intervene
- Count VIII - Malicious Prosecution
- Count IX - Civil Conspiracy
- Count X - Intentional Infliction of Emotional Distress ("IIED')
- Count XI - 42 U.S.C. § 1986: Action for Neglect to Prevent a Harm.

Plaintiffs pray for declaratory relief, injunctive relief, compensatory damages, punitive damages, costs, attorneys' fees, the appointment of counsel to represent the putative class, and the appointment of a special master to supervise foreclosure actions and related activities in state court. *Id.* at 47-48.

The OCP Defendants filed a motion to dismiss on April 1, 2021. ECF No. The Disciplinary Defendants and the Judge Defendants filed a substantive joinder in the OCP Defendants' Motion on April 19, 2021, and also sought dismissal on additional grounds. ECF No. 46. Plaintiff filed his opposition to both the Motion and the Substantive Joinder on May 7, 2021. ECF No. 49. The OCP Defendants, and the Disciplinary Defendants

and Judge Defendants, filed their respective reply memoranda on May 14, 2021. ECF Nos. 50, 51. Pursuant to the Court's entering order dated June 18, 2021, ECF No. 57, the parties filed supplemental memoranda regarding claim preclusion and issue preclusion. ECF Nos. 62-64.

II. LEGAL STANDARDS

A. Rule 12(b)(1)

Parties may challenge a court's subject matter jurisdiction under Federal Rule of Civil Procedure ("FRCP") 12(b)(1). "If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." Fed. R. Civ. P. 12(h)(3). A jurisdictional challenge may either be "facial" or "factual." *Wolfe v. Strankman*, 392 F.3d 358, 362 (9th Cir. 2004).

A facial attack challenges the sufficiency of the allegations contained in a complaint to invoke federal jurisdiction, while a factual attack "disputes the truth of the allegations that, by themselves, would otherwise invoke federal jurisdiction." *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). District courts may review evidence beyond the complaint in

resolving a factual attack on jurisdiction without converting a motion to dismiss into a motion for summary judgment. See *Id.* (citation omitted). In such instances, courts "need not presume the truthfulness of the plaintiff's allegations." *Id.* (citation omitted); *see Courthouse News Serv. v. Planet*, 750 F.3d 776, 780 (9th Cir. 2014) ("A factual challenge `relies on affidavits or any other evidence properly before the court' to contest the truth of the complaint's allegations." (brackets and citations omitted)). "Once the moving party has converted the motion to dismiss into a factual motion by presenting affidavits or other evidence properly brought before the court, the party opposing the motion must furnish affidavits or other evidence necessary to satisfy its burden of establishing subject matter jurisdiction." *Safe Air*, 373 F.3d at 1039 (internal quotation marks and citation omitted).

B. Rule 12(b)(6)

FRCP 12(b)(6) authorizes dismissal of a complaint that fails "to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). On a Rule 12(b)(6) motion to dismiss, "the court accepts the facts alleged

in the complaint as true," and "[d]ismissal can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged." *UMG Recordings, Inc. v. Shelter Capital Partners LLC*, 718 F.3d 1006, 1014 (9th Cir. 2013) (quoting *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988)) (alteration in original). However, conclusory allegations of law, unwarranted deductions of fact, and unreasonable inferences are insufficient to defeat a motion to dismiss. See *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001); *Nat'l Ass'n for the Advancement of Psychoanalysis v. Cal. Bd. of Psychology*, 228 F.3d 1043, 1049 (9th Cir. 2000) (citation omitted). Furthermore, the court need not accept as true allegations that contradict matters properly subject to judicial notice. See *Sprewell*, 266 F.3d at 988.

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570

(2007)). Facial plausibility exists "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556). The tenet that the court must accept as true all the allegations contained in the complaint does not apply to legal conclusions. See *Id.* As such, "[t]hread-bare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* (citing *Twombly*, 550 U.S. at 555). "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged-but it has not 'show[n]"-'that the pleader is entitled to relief."" *Id.* at 679 (quoting Fed. R. Civ. P. 8(a)(2)) (some alterations in original). If dismissal is ordered, the plaintiff should be granted leave to amend unless it is clear that the claims could not be saved by amendment. See *Swartz v. KPMG LLP*, 476 F.3d 756, 760 (9th Cir. 2007) (citation omitted).

III. DISCUSSION[9]

---

[9]Both the OCP Defendants and the Disciplinary Defendants and Judge Defendants attached extrinsic evidence to their respective motions, and, in the case of the OCP Defendants, their reply. See generally ECF Nos. 14, 46, and 50. While the general rule is that a court may not consider extrinsic evidence in evaluating a motion to dismiss, "[a] court may, however, consider certain materials-documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice-without converting the motion to dismiss into a motion for summary judgment." *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003) (citations omitted) (emphasis added). The Court may take judicial notice of some public records and "adjudicative facts that are `not subject to reasonable dispute.'" *Id.* at 908-09 (quoting Fed. R. Evid. 201(b)). Under the incorporation by reference doctrine, the Court may consider a document not attached to a complaint where "the complaint necessarily relies upon a document or the contents of the document are alleged in a complaint, the document's authenticity is not in question and there are no disputed issues as to the document's relevance." *Coto Settlement v. Eisenberg*, 593 F.3d 1031, 1038 (9th Cir. 2010) (citations omitted). "[T]he mere mention of the existence of a document is insufficient to incorporate the contents of a document." *Id.* (citation omitted). The parties have neither requested judicial notice nor explained why any of the extrinsic evidence they attached are subject to the incorporation by reference doctrine. In any event,

For the reasons detailed below, the Court GRANTS IN PART AND DENIES IN PART the OCP Defendants' Motion and the Disciplinary Defendants and Judge Defendants' Substantive Joinder and Motion to Dismiss. The Court concludes that: (1) the Eleventh Amendment bars the federal claims (Counts II through VII and XI) insofar as those claims seek money damages; (2) the State Tort Liability Act prevents Plaintiffs from asserting state law claims against Defendants in their official capacities in federal court (Counts I, VIII, IX, and X); (3) the Court does not have jurisdiction over claims relating to the attorney discipline process and, in any event, Rule 2.8 of the Rules of the Supreme Court of Hawaii ("RSCH") offers some immunity to the Disciplinary Defendants (Count VIII); (4) judicial immunity precludes the claims against the Judge Defendants (all Counts); (5) Plaintiffs fail to meet federal pleading standards as to

---

because the Court need not rely on the extrinsic materials in order to decide the Motion and the Substantive Joinder and Motion to Dismiss, the Court declines to consider the extrinsic materials.

the Due Process, Denial of Access to Courts, Threatening Homeowners, Equal Protection, and Failure to Intervene claims (Counts II, III, IV, VI, and VII); and (6) Defendants are entitled to qualified immunity as to the § 1985 and § 1986 claims (Counts V and XI).

A. Defendants' Capacities

Plaintiffs do not identify in the caption of the Complaint whether they are suing Defendants -- each of whom are government officials -- in their individual or official capacities. ECF No. 1 at 1. In their prayer for relief, however, Plaintiffs request the Court enter judgment against Defendants "both individually and in their official capacities" for various forms of money damages. *Id.* at 48. The OCP Defendants, joined by the Disciplinary Defendants and Judge Defendants, interpret the Complaint as against Defendants in "both their individual and official capacities," but argue that the Court should construe the Complaint as against Defendants only in their official capacities because the factual allegations in the Complaint concern official actions rather than individual

misconduct. ECF No. 14-1 at 24-26.

In recognizing that the distinction between individual-and official-capacity suits "continues to confuse lawyers and confound lower courts," the Supreme Court has explained that "[p]ersonal-capacity suits seek to impose personal liability upon a government official for actions he takes under color of state law," while official-capacity suits "`generally represent only another way of pleading an action against an entity of which an officer is an agent.'"[10] *Kentucky v. Graham*, 473 U.S. 159, 165 (1985) (citation omitted). Thus, a suit may be characterized as an official-capacity suit when it seeks "the prevention or discontinuance, in rem, of the wrong." *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 688 (1949). Ultimately, the test for determining whether a defendant is sued in an individual or official capacity is "whether, by obtaining relief against the officer, relief

[10]The Court uses the term "personal capacity" rather than "individual capacity." See *Graham*, 473 U.S. at 165.

will not, in effect, be obtained against the [public entity]." *Id.*; see also *Fodor v. L.A. Unified Sch. Dist.*, No. CV 12-08090 DMG-CW, 2013 WL 12130260, at *5 (C.D. Cal. Mar. 1, 2013) (citing *Id.*). The Court must look to the nature of the suit, rather than how it is labeled by Plaintiffs, in order to determine whether the suit is an individual-capacity suit or official-capacity suit, or both. See *Larson*, 337 U.S. at 687-88.

Plaintiffs are certainly suing Defendants in their individual capacities as Plaintiffs seek to hold them individually liable for wrongs Plaintiffs allege they committed as government officials. See generally ECF No. 1. Because Plaintiffs also ask the Court to "enjoin [Defendants] from continuing the actions alleged in [the] Complaint," *Id.* at 48, and pro se pleadings are to be liberally construed, see *Erickson v. Pardus*, 551 U.S. 89, 94 (2007), it is reasonable to conclude that Plaintiffs also sue Defendants in their official capacities, as Defendants concede.

The Court therefore construes Plaintiffs' claims as claims against Defendants in both their individual and official capacities.

B. Sovereign Immunity and Eleventh Amendment Immunity

The OCP Defendants[11] argue that they have immunity from suit in their official capacities under the Eleventh Amendment to the United States Constitution and under the doctrine of sovereign immunity.[12] ECF

---

[11]Only the OCP Defendants raise this argument, which was not addressed in the Substantive Joinder by the Disciplinary Defendants or Judge Defendants. However, as indicated herein, the Court concludes that the immunity applies to all Defendants.

[12]The OCP Defendants distinguish between Eleventh Amendment Immunity and sovereign immunity, citing the Eleventh Amendment and the State Tort Liability Act, codified at Hawaii Revised Statutes "("HRS chapter 662, as independent bases for the State's immunity from suit. See ECF No. 14-1 at 24-28. The Eleventh Amendment grants states immunity from suit, and the State Tort Liability Act serves as a limited waiver of the State's immunity from suit. See *Charley 's Taxi Radio Dispatch Corp. v. SIDA of Haw., Inc.*, 810 F.2d 869, 873-74 & n.4 (9th Cir. 1987). The Court further construes the OCP Defendants' argument relating to Eleventh Amendment and sovereign immunity as a jurisdictional argument, as the OCP Defendants do in their Motion, ECF No. 14-1 at 26,

No. 14-1 at 24-28. The Eleventh Amendment provides: "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. Const. amend. XI. The Eleventh Amendment "'bars suits against a state or its agencies, regardless of the relief sought, unless the state unequivocally consents to a waiver of its immunity.'" *Wilbur v. Locke*, 423 F.3d 1101, 1111 (9th Cir. 2005) (quoting *Yakama Indian Nation v. Wash. Dept of Revenue*, 176 F.3d 1241, 1245 (9th Cir. 1999)), abrogated on other grounds by *Levin v. Commerce Energy, Inc.*, 560 U.S. 413 (2010). The Court may find

---

though the issue of whether sovereign immunity is jurisdictional is not settled law. Cf. *Wis. Dept of Corr. v. Schacht,* 524 U.S. 381, 391 (1998) (stating that the Supreme Court has not decided whether Eleventh Amendment immunity concerns subject matter jurisdiction); *Agua Caliente Band of Cahuilla Indians v. Hardin*, 223 F.3d 1041, 1045 (9th Cir. 2000) ("Though not jurisdictional in the traditional sense, whether the Tribe's claims are barred by the Eleventh Amendment presents threshold issues for our review.").

such "unequivocal consent" only if: (1) the state expressly consents to federal jurisdiction in the context of the litigation; (2) a state statute or constitutional provision expressly provides for suit in federal court; or (3) Congress clearly abrogates the Eleventh Amendment. See *Charley's Taxi Radio Dispatch,* 810 F.2d at 873 (citation omitted); see also *Doe v. Maher*, 793 F.2d 1470, 1494 (9th Cir. 1986).

Insofar as a suit against a state official in his or her official capacity is equivalent to a suit against the state, see Graham, 473 U.S. at 165, Defendants are indeed entitled to Eleventh Amendment immunity in their official capacities only so long as the State has unequivocally consented to a waiver of its immunity. See *Pena v. Gardner*, 976 F.2d 469, 472 (9th Cir. 1992), as amended (Oct. 9, 1992) ("It is thus clear that the eleventh amendment will bar Pena from bringing his claims in federal court against the state officials in their official capacities. It will not, however, bar claims against the state officials their personal capacities." (citing *Hafer v. Melo*, 502 U.S. 21 (1991);

DeNieva v. Reyes, 966 F.2d 480, 48384 (9th Cir. 1992)) (footnote omitted)).

1. Plaintiffs' Federal Claims (Counts II through VII and XI)

The State has not waived its sovereign immunity with respect to the federal claims asserted in the Complaint. Under the State Tort Liability Act, "The State. . . waives its immunity for liability for the torts of its employees and shall be liable in the same manner and to the same extent as a private individual under like circumstances[.]" HRS ' 662-2. The State Tort Liability Act, however, contains an exception for claims "based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a state officer or employee, whether or not the discretion involved has been abused." HRS ' 662-15(1). The Hawaii Supreme Court has nevertheless "f[ound] no provision in the State Tort Liability Act that expressly makes the State liable in money damages for constitutional violations." *Figueroa v. State*, 61 Haw. 369, 383, 604 P.2d 1198, 1206 (1979). Accordingly, the

State has not waived its sovereign immunity with respect to the federal claims asserted in the Complaint, which include Count II (Due Process); Count III (Threatening Homeowners); Count IV (Equal Protection); Count V (Conspiracy to Deprive Constitutional Rights); Count VI (Denial of Access to Courts); Count VII (Failure to Intervene); and Count XI (Action for Neglect to Prevent a Harm).
Eleventh Amendment immunity, however, only applies to claims for retrospective relief and not prospective relief. Under *Ex parte Young*, 209 U.S. 123 (1908), a suit against a state official for prospective declaratory or injunctive relief is not considered to be a claim against the State and is instead considered a suit against a person under 42 U.S.C. § 1983. See *Wolfe*, 392 F.3d at 365 (citing *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 n.10 (1989)).

The Court therefore DISMISSES WITH PREJUDICE Counts II through VII and Count XI insofar as each seeks money damages, i.e., retrospective relief, against Defendants in their official capacities, but

DENIES the Motion regarding these counts to the extent prospective relief is sought. See ECF No. 1 at 48.[13]

2. Plaintiffs' State Law Claims (Counts I, VIII, IX, and X)

The State Tort Liability Act requires that Plaintiffs prosecute their state law claims against Defendants in their official capacities in state court:

> The circuit courts of the State and, except as otherwise provided by statute or rule, the state district courts shall have original jurisdiction of all tort actions on claims against the State, for money damages, accruing on and after July 1, 1957, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the State while acting within the scope of the employee's office or employment.

HRS § 662-3. Courts in this District have consistently construed § 662-3 to bar tort claims against the State in federal court. *See, e.g., Sherez v. Hawaii Dep't of Educ.*, 396 F. Supp. 2d 1138, 1144 (D. Haw. 2005) ("Although Hawaii has waived its sovereign immunity as to some

[13] As explained infra in Sections III.C., III.F.1-2, III.G., and III.H., Counts II, III, V, VI, and XI are also dismissed with prejudice in their entirety for other reasons.

state tort and statutory claims, it has done so solely with respect to state court actions."); *Lindsey v. Matayoshi*, 950 F. Supp. 2d 1159, 1171 (D. Haw. 2013) (same); *Kruse v. Hawaii*, 857 F. Supp. 741, 752 (D. Haw. 1994) ("In section 662-2 of the Hawaii Revised Statutes, the State waived its immunity for the common law torts of its employees, and in section 662-3, H.R.S., the State vested original jurisdiction of all tort actions against the State in the circuit courts of the State."). As Plaintiffs may not bring state tort claims against the State in federal court, the Court DISMISSES WITHOUT LEAVE TO AMEND Count I (Abuse of Power or Malfeasance), Count VIII (Malicious Prosecution), Count IX (Civil Conspiracy), and Count X (IIED) as to each Defendant in their official capacities.[14]

C. Jurisdiction over State Attorney Disciplinary Proceedings and Related Immunities

1. Jurisdiction over State Attorney Disciplinary

---

[14] As explained infra in Section III.C.1, Count VIII is also dismissed with prejudice in its entirety.

Disciplinary Proceedings

The Disciplinary Defendants and Judge Defendants argue that the Court lacks jurisdiction over Plaintiffs' Complaint because the Hawaii Supreme Court has exclusive jurisdiction over attorney disciplinary proceedings. ECF No. 46-1 at 21-24. The Disciplinary Defendants and Judge Defendants maintain that Plaintiffs' allegations and claims are based in part on the Disciplinary Defendants' actions and conduct and have a direct bearing on attorney disciplinary proceedings, and, as such, the entire Complaint should be dismissed. *Id.* at 23-24.

The Ninth Circuit has held that "orders of a state court relating to the admission, discipline, and disbarment of members of its bar may be reviewed only by the Supreme Court of the United States on certiorari to the state court, and not by means of an original action in a lower federal court." *MacKay v. Nesbett*, 412 F.2d 846, 846 (9th Cir. 1969) (per curiam), *cert. denied*, 396 U.S. 960 (1969); *see also Doe v. State Bar of Calif.*, 582 F.2d 25, 26 (9th Cir. 1978) ("[F]ederal courts do not have jurisdiction to interfere with disciplinary

proceedings of the State Bar of California[.]" (citations omitted)) (per curiam).

The Hawaii Supreme Court has further made clear that along with the Disciplinary Board, it has exclusive jurisdiction over matters involving attorney discipline in Hawaii:

> Any attorney admitted to practice law in this state, any attorney specially admitted by a court of his state for a particular proceeding, and any attorney specially admitted [to] appear in an arbitration proceeding under Rule 1.9A of these Rules is subject to the exclusive disciplinary jurisdiction of the supreme court and the Board hereinafter established.

RSCH Rule 2.1.

The Court therefore concludes that it lacks jurisdiction to review disciplinary proceedings involving attorneys barred in Hawaii. However, the allegations in the Complaint involve more than simply an appeal of disciplinary decisions, and so a wholesale dismissal of the Complaint is unwarranted based on the Court's lack of jurisdiction over state attorney disciplinary proceedings.

Nonetheless, the Court lacks jurisdiction over

Count VIII, Plaintiffs' malicious prosecution claim. In Count VIII, Plaintiffs allege that Defendants "caused Attorneys Gary Dubin and Robert Stone (and unknown other members of the foreclosure-defense bar) to be subjected to judicial proceedings for which there was insufficient probable cause." ECF No. 1 ¶ 102. Even assuming Plaintiffs had standing to assert a claim for malicious prosecution on behalf of Dubin, Stone, and other unnamed attorneys--which the Court has not yet decided--the Court could not adjudicate Plaintiffs' malicious prosecution claim without reviewing the merits of the disciplinary proceedings at issue. *See Young v. Allstate Ins. Co.*, 119 Hawaii 403, 417, 198 P.3d 666, 680 ("The tort of malicious prosecution permits a plaintiff to recover when the plaintiff shows that the prior proceedings were (1) terminated in plaintiff's favor, (2) *initiated without probable cause*, and (3) initiated with malice." (emphasis added) (citations omitted)). The remainder of Plaintiffs' claims at least arguably encompass conduct beyond the disciplinary proceedings involving Dubin and Stone. Count VIII (malicious prosecution) is therefore

DISMISSED WITH PREJUDICE because the Court lacks jurisdiction to review Hawaii attorney disciplinary proceedings.

2. RSCH Rule 2.8 Immunity

The Disciplinary Defendants also argue that they are immune from suit under two rules: (1) RSCH Rule 2.8 ("Rule 2.8") and (2) quasi-judicial immunity. ECF No. 46 at 32-34. The Court addresses only Rule 2.8 because it offers broader immunity to the Disciplinary Defendants than quasi-judicial immunity.[15]

Rule 2.8 provides:

---

[15]Quasi-judicial immunity extends judicial immunity to "'certain others who perform functions closely associated with the judicial process.'" *Duvall v. County of Kitsap*, 260 F.3d 1124, 1133 (9th Cir. 2001), *as amended on denial of reh'g* (Oct. 11, 2001) (citations omitted). "Administrative law judges and agency prosecuting attorneys are entitled to quasi-judicial immunity so long as they perform functions similar to judges and prosecutors in a setting like that of a court." *Hirsh v. Justs. of the Sup. Ct. of Cal.*, 67 F.3d 708, 715 (9th Cir. 1995) (per curiam) (citation omitted).

> *Complaints submitted to the Board*[[16]] *or Counsel or testimony given with respect thereto or trustee proceedings conducted pursuant to Rule 2.20 shall be absolutely privileged and no lawsuit predicated thereon may be instituted.* Members of the Board, members of the hearing committees, hearing officers, Counsel, counsel to the Board, staff, volunteers, experts appointed pursuant to Rule 2.19, trustees and assistants appointed pursuant to Rules 2.20 and 2.5, and mentors appointed pursuant to Rule 2.7(b)(4) *shall be immune from suit and liability for any conduct in the course of their* official duties.

RSCH Rule 2.8 (emphases added). The plain language of Rule 2.8 precludes lawsuits for malicious prosecution based on alleged misconduct in the course of the attorney disciplinary process. See *Kamaka v. Goodsill Anderson Quinn & Stifel*, 117 Hawaii 92, 107, 176 P.3d 91, 106 (2008). As such, Count VIII (Malicious Prosecution) is DISMISSED WITH PREJUDICE as to the Disciplinary Defendants on this ground as well.

The Court is also persuaded that Rule 2.8 provides the

---

[16]The Board referenced in Rule 2.8 is the Disciplinary Board of the Supreme Court of Hawaii. See RSCH Rule 2.4(a).

Disciplinary Defendants, each of whom are employees and officers specifically referenced in the rule, with immunity from suit for their behavior committed in the execution of official duties. However, the Disciplinary Defendants are not entitled to blanket immunity from any possible claim Plaintiffs may assert because Plaintiffs have at least arguably alleged facts relating to conduct taken by the Disciplinary Defendants outside of their official duties. See, e.g., ECF No. 1 ¶¶ 35-36, 42-45 (alleging threats and directives given to various attorneys regarding their representation of foreclosure defendants); *Id.* ¶ 46 (asserting the conspiracy alleged in the Complaint was furthered by working with the Dummy Corporations' lawyers). The Court therefore declines at this stage to conclude that Rule 2.8 confers immunity to the Disciplinary Defendants for the other counts, which are dismissed for other reasons in any event.

3. Judicial Immunity

The Judge Defendants argue that they are entitled to absolute immunity under the doctrine of judicial immunity. ECF No. 46-1 at 28-32. "[C]ommon law has

long recognized judicial immunity, a `sweeping form of immunity' for acts performed by judges that relate to the `judicial process." *In re Castillo*, 297 F.3d 940, 947 (9th Cir. 2002), *as amended* (Sept. 6, 2002) (quoting *Forrester v. White*, 484 U.S. 219, 225 (1988)) (other citation omitted); *see also Duvall*, 260 F.3d at 1133 ("It is well settled that judges are generally immune from suit for money damages." (citing *Mireles v. Waco*, 502 U.S. 9, 9-10 (1991)). "[A]bsolute judicial immunity does not apply to non-judicial acts, i.e.[,] the administrative, legislative, and executive functions that judges may on occasion be assigned to perform." *Id.* (citing *Forrester*, 484 U.S. at 227). In addition to common law, § 1983 further limits the circumstances under which judges may be subject to suit: "[I]n any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable." 42 U.S.C. § 1983; see also *Wolfe*, 392 F.3d at 366 ("Section 1983 only contemplates judicial immunity from suit for injunctive relief for acts taken in a judicial capacity."). Under

Hawaii law, judges are likewise "absolutely immune from suit for their judicial actions." *Seibel v. Kemble,* 63 Haw. 516, 521, 631 P.2d 173, 177 (1981) (citations omitted).

Here, Plaintiffs' allegations regarding the Judge Defendants relate to their judicial conduct, namely their handling of the foreclosure docket, and not to any administrative, legislative, and executive functions that they may have performed, nor other extrajudicial conduct. *See generally* ECF No. 1. And Plaintiffs have not alleged that the Judge Defendants violated any declaratory decree.

The Judge Defendants are therefore entitled to absolute judicial immunity. Because Plaintiffs' allegations against the Judge Defendants exclusively pertain to their actions within their judicial capacities, the Court DISMISSES WITH PREJUDICE all federal and state law claims against the Judge Defendants.

D. The Rooker-Feldman Doctrine

Defendants argue that the *Rooker-Feldman* doctrine prevents the Court from exercising jurisdiction over the Complaint because the Complaint amounts to a de

facto appeal of the Hawaii Supreme Court's Order Allowing Plaintiff's attorney to Resign and because Plaintiffs' claims are inextricably intertwined with the state court decision at issue. See ECF No. 46-1 at 24-28; ECF No. 14-1 at 36-37.

"Under *Rooker-Feldman*, lower federal courts are without subject matter jurisdiction to review state court decisions, and state court litigants may therefore only obtain federal review by filing a petition for a writ of certiorari in the Supreme Court of the United States." *Mothershed v. Justs. of the Sup. Ct.*, 410 F.3d 602, 606 (9th Cir. 2005) (citations omitted). District courts are barred from exercising jurisdiction over not only direct appeals of state court decisions, "but also over the `de facto equivalent' of such ... appeal[s]." *Cooper v. Ramos*, 704 F.3d 772, 777 (9th Cir. 2012) (citation omitted). Courts "pay close attention to the relief sought by the federal-court plaintiff" in determining whether an action is a de facto appeal. *Id.* at 777-78 (internal quotation marks and citation omitted). A de facto appeal is found "when the plaintiff in federal district court complains of a legal wrong allegedly

committed by the state court, and seeks relief from the judgment of that court." *Id.* at 778 (internal quotation marks and citations omitted); see also *Henrichs v. Valley View Dev.*, 474 F.3d 609, 613 (9th Cir. 2007) (explaining that a plaintiff's claims must arise from the state court judgment, not merely "when a party fails to obtain relief in state court" (citation omitted)); *Bianchi v. Rylaarsdam*, 334 F.3d 895, 900 (9th Cir. 2003) (explaining that *Rooker-Feldman* precludes adjudication of claims when the redress sought by the plaintiff is an "undoing" of the prior state court judgment). *Rooker-Feldman*'s "applicability `is confined to cases of the kind from which the doctrine acquired its name: 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.'" *Mothershed*, 410 F.3d at 606 (quoting *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005)). Moreover, "[t]he *Rooker-Feldman* doctrine does not bar actions by nonparties to the earlier state-court judgment simply because, for

purposes of preclusion law, they could be considered in privity with a party to the judgment." *Lance v. Dennis*, 546 U.S. 459, 466 (2006) (footnote omitted).

Focusing on the relief sought here--including a request that the Court appoint a special master to supervise state foreclosure actions--it is clear that this case does not amount to an appeal of the Hawaii Supreme Court's Order. Indeed, Plaintiffs were not the "state-court losers" in the attorney disciplinary proceedings. Plaintiffs' primary challenge is to Defendants' execution of state foreclosure proceedings, not the court-permitted resignation from the bar. The Court therefore rejects Defendants' *Rooker-Feldman* arguments.

E. Claim Preclusion and Issue Preclusion

The Court ordered the parties to brief the issue of whether United States District Judge Derrick K. Watson's Order Granting in Part and Denying in Part Plaintiff/Counterclaim Defendant's Motion to Dismiss Counterclaim, Strike Jury Demand, and Strike Portions of the Answer in *Hawaii v. Stone*, Case No. 19-cv00272-DKW-RT (D. Haw.) ("*Stone*"), *see Id.*, 2019

WL 5058910 (D. Haw. Oct. 8, 2019) ("*Stone I*"), *aff'd*, 830 F. App'x 964 (9th Cir. 2020), has preclusive effect on any of the claims in the Complaint under the doctrines of claim preclusion/res judicata and/or issue preclusion/collateral estoppel.[17] ECF No. 57. In *Stone I*, which concerned an enforcement action OCP commenced against Stone, Judge Watson dismissed a twelve-count counterclaim Stone filed against OCP, the State, and various individuals associated with OCP and ODC. See *Stone I*, 2019 WL 5058910, at *1-2. That counterclaim alleged claims substantially similar to those in the Complaint here.[18] Compare ECF No. 1, with ECF No. 16 in *Stone* ("Counterclaim'). In that same action, Plaintiffs moved to intervene under FRCP 24, which motion Judge Watson denied, finding that Plaintiffs identified no protectable interest of theirs in

---

[17] For the sake of clarity, the Court will use the terms claim preclusion and issue preclusion in lieu of res judicata and collateral estoppel, respectively.

[18] Stone asserted his counterclaim on behalf of himself and other non-parties, including Abing. See Stone I, 2019 WL 5058910, at *2.

Stone's case, and that even if they had such an interest, Stone adequately represented those interests. *See Stone*, 2020 WL 1643856, at *1-2 (D. Haw. Apr. 2, 2020) ("*Stone II*").

The Court applies federal common law in determining the preclusive effect of the judgment arising out of Judge Watson's ruling in *Stone I* because that judgment is a federal-court judgment. *See Int'l Bhd. of Teamsters v. U.S. Dep't of Transp.*, 861 F.3d 944, 955 (9th Cir. 2017) ("`The preclusive effect of a federal court judgment is determined by federal common law." (quoting *Taylor v. Sturgell*, 553 U.S. 880, 891 (2008))).

1. Claim Preclusion

"Claim preclusion . .. applies where: (1) the same parties, or their privies, were involved in the prior litigation, (2) the prior litigation involved the same claim or cause of action as the later suit, and (3) the prior litigation was terminated by a final judgment on the merits." *Cent. Delta Water Agency v. United States*, 306 F.3d 938, 952 (9th Cir. 2002) (citing *Blonder-Tongue Laboratories v. Univ. of Ill. Found.*, 402 U.S.

313, 323-24 (1971)).

Plaintiffs were not parties in *Stone* I. Nonetheless, the OCP Defendants cite *In re Schimmels,* 127 F.3d 875 (9th Cir. 1997), in support of their argument that "Plaintiffs' relationship with Stone satisfies the privity requirement in numerous ways." ECF No. 62 at 4. In *In re Schimmels*, the Ninth Circuit explained that under the doctrine of privity, "[o]ne who prosecutes or defends a suit in the name of another to establish and protect his own rights, or who assists in the prosecution or defense of an action in aid of some interest of his own is as much bound as he would be if he had been a party to the record." *In re Schimmels*, 127 F.3d at 881 (quoting *Montana v. United States*, 440 U.S. 147, 154 (1979)) (emphasis and alterations omitted). The Court cannot conclude based on the record before it that *Plaintiffs* assisted in *Stone*'s efforts to prosecute a counterclaim against OCP in *Stone I.* While Stone has provided certain assistance to Plaintiffs in *this* case, see ECF Nos. 58-60, the relevant inquiry for purposes of claim preclusion is limited to whether Plaintiffs provided Stone with substantial assistance in Stone's

case, not whether Stone is providing Plaintiffs with assistance in this case. *See In re Schimmels*, 127 F.3d at 881 (explaining that the party who assists in the prior action is bound by the judgment issued in that action).

The Ninth Circuit further recognized that "`privity' has been found where there is a `substantial identity' between the party and nonparty; where the nonparty `had a significant interest and participated in the prior action ; and where the interests of the nonparty and party are `so closely aligned as to be virtually representative." *Id.* (some internal quotation marks and citations omitted). Here, there is no "substantial identity' between Stone and Plaintiffs because Plaintiffs are not "`so identified in interest with [Stone] that [they] represent[] precisely the same right in respect to the subject matter involved." *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency,* 322 F.3d 1064, 1081 (9th Cir. 2003) (quoting *Stratosphere Litig. L.L.C. v. Grand Casinos, Inc.,* 298 F.3d 1137, 1142 n.3 (9th Cir. 2002)). *Stone I* concerned OCP's enforcement of consumer protection

statutes against Stone and Stone's related counterclaim that alleged a conspiracy involving lawyers associated with OCP and ODC (some, but not all of whom, are Defendants here); while Plaintiffs' action here deals with a larger conspiracy involving the Judge Defendants and efforts to deprive homeowners of their rights to the benefit of Dummy Corporations. Simply put, the conspiracy alleged here exceeds the scope of the conspiracy alleged in Stone's counterclaim.

Even assuming Plaintiffs had an interest in *Stone I* to the extent they opposed OCP's enforcement efforts against Stone, there is no indication Plaintiffs participated in that case; in fact, Plaintiffs' motion to intervene was denied. See generally *Stone II*, 2020 WL 1643856; see also *Candler v. Palko*, No. 2:19-CV-0394-MCE-DMC-P, 2021 WL 859060, at *7 (E.D. Cal. Mar. 8, 2021) (explaining that there must be "some direct financial or proprietary link between [the nonparty's] interests and those of the [parties] to the prior action" and that the nonparty must have exercised "some kind of assumption of control of these interests" in order for the nonparty to be bound by the

prior action's judgment under In re Schimmels). Moreover, Plaintiffs' lack of participation in *Stone I* and the differing interests at stake in this case prevent the Court from finding that Stone was a virtual representative of Plaintiffs in *Stone I*. *See Headwaters Inc. v. U.S. Forest Serv.*, 399 F.3d 1047, 1053-54 (9th Cir. 2005) ("`A non-party can be bound by the litigation choices made by his virtual representative' only if certain criteria are met: `[a] close relationship, substantial participation, and tactical maneuvering all support a finding of virtual representation; identity of interests and adequate representation are necessary to such a finding.'" (quoting *Irwin v. Mascott*, 370 F.3d 924, 930 (9th Cir. 2004))). The Court therefore concludes that Plaintiffs" claims are not barred by the doctrine of claim preclusion.

2. Issue Preclusion

"The doctrine of issue preclusion prevents relitigation of all `issues of fact or law that were actually litigated and necessarily decided" in a prior proceeding." *Robi v. Five Platters, Inc.*, 838 F.2d 318, 322 (9th Cir. 1988) (quoting *Segal v. Am. Tel. & Tel. Co.*,

606 F.2d 842, 845 (9th Cir. 1979)). "[I]ssue preclusion `bars successive litigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to [a] prior judgment, even if the issue recurs in the context of a different claim.'" *Int'l Bhd. of Teamsters,* 861 F.3d at 955 (quoting *Taylor*, 553 U.S. at 892) (some brackets in original). "'In both the offensive and defensive use situations the party against whom . . . [issue preclusion] is asserted has litigated and lost in an earlier action.'" *Robi*, 838 F.2d at 322 (quoting *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 329 (1979)) (brackets in original). "It is a violation of due process for a judgment to be binding on a litigant who was not a party or a privy and therefore has never had an opportunity to be heard." *Parklane Hosiery Co.*, 439 U.S. at 327 n.7 (citing *Blonder-Tongue Laboratories, Inc.*, 402 U.S. at 329; *Hansberry v. Lee*, 311 U.S. 32, 40 (1940)).

Setting aside the remaining requirements of issue preclusion, Plaintiffs' status as neither Stone's privies nor as parties in *Stone I* prevents the Court from giving preclusive effect to *Stone I* here. In *Taylor*,

the Supreme Court rejected the concept of "virtual representation" in the context of issue preclusion, but explained that there are six general exceptions to the requirement that the party against whom issue preclusion is sought was a party in the prior action: (1) the party agreed to be bound by the prior determination; (2) the nonparty was in a "substantive legal relationship[]" with the party in the previous action, such as "preceding and succeeding owners of property, bailee and bailor, and assignee and assignor"; (3) "`in certain limited circumstances,' a nonparty may be bound by a judgment because she was `adequately represented by someone with the same interests who [wa]s a party' to the suit'"; (4) the nonparty "`assume[d] control' over the litigation in which that judgment was rendered'"; (5) "a party bound by a judgment may not avoid its preclusive force by relitigating through a proxy"; and (6) a statutory scheme may "`expressly foreclose[e] successive litigation by nonlitigants," such as bankruptcy, probate, quo warranto actions, or other suits that may be brought only on behalf of the public at large. *Taylor*, 553 U.S. at 893-95, 898 (citations omitted)

(some alterations in original). The third and fifth exceptions warrant closer examination here. Regarding the third exception, the Supreme Court explained: "Representative suits with preclusive effect on nonparties include properly conducted class actions, and suits brought by trustees, guardians, and other fiduciaries." *Id.* at 894-95 (citations omitted). Even though Stone's counterclaim asserted injuries Stone's former clients (including Abing) suffered as a result of OCP's conduct, see *Stone I*, 2019 WL 5058910, at *2, Judge Watson ruled that Stone did not have standing to prosecute those claims on his former clients' behalves because there was not a sufficiently close relationship between Stone and his former clients. *See Id.* at *5. Judge Watson further explained that "there is no alleged hindrance to [Stone's former clients] enforcing their own rights." *Id.* It would be inconsistent with Judge Watson's ruling for the Court to now conclude that Plaintiffs were adequately represented by Stone in *Stone I.*

Regarding the fifth exception, relitigation through a proxy, "[p]reclusion is . . .in order when a

person who did not participate in a litigation later brings suit as the designated representative of a person who was a party to the prior adjudication." *Taylor*, 553 U.S. at 895 (citing *Chicago, R.I. & P. Ry. Co. v. Schendel*, 270 U.S. 611, 620 (1926); 18A Wright & Miller § 4454, at 433-34). Preclusion under this exception is "appropriate when a nonparty later brings suit as an agent for a party who is bound by a judgment." *Id.* (citing 18AWright & Miller § 4449, at 335). While Plaintiffs certainly object to the discipline to which Stone was subjected, at this stage, the Court cannot find that Plaintiffs bring this action as the representative of Stone, their former attorney, nor that Plaintiffs are acting as Stone's agent in this action. The Court therefore concludes that neither claim preclusion nor issue preclusion bars Plaintiffs' Complaint or any portion thereof. The Court's ruling, to be clear, is without prejudice. If Plaintiffs put forth an amended complaint that cures the other defects identified in this Order, Defendants may raise either defense in a subsequent motion.

F. Section 1983 Claims (Counts II, III, IV, VI, and VII)

In Counts II, III, IV, VI, and VII, Plaintiffs assert constitutional violations pursuant to ' 1983. To prevail on their § 1983 claims, Plaintiffs must prove two essential elements: "(1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of State law." *Long v. County of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006) (citation omitted).

1. Due Process and Denial of Access to Courts (Counts II and VI)

In Count II, Plaintiffs allege that Defendants are liable under § 1983 for a due process violation. Specifically, Plaintiffs allege that Defendants "harass[ed] and suppress[ed] the foreclosure-defense bar . .. for the purpose of depriving the homeowners of access to the courts of this State." ECF No. 1 ¶ 79. Plaintiffs assert a similar claim in Count VI, arguing that Defendants are liable under § 1983 for denying Plaintiffs access to the courts. *Id.* ¶¶ 96-97.

There are two kinds of due process claims: procedural due process claims and substantive due process claims. "To obtain relief on a procedural due process claim, the plaintiff must establish the existence of `(1) a liberty or property interest protected by the Constitution; (2) a deprivation of the interest by the government; [and] (3) lack of process.'" *Shanks v. Dressel*, 540 F.3d 1082, 1090 (9th Cir. 2008) (citation omitted) (brackets in original). At its core, procedural due process requires notice and an opportunity to be heard. See *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

"The guarantee of substantive due process provides heightened protection against government interference with certain fundamental rights and liberty interests." *Krainski v. Nevada ex rel. Bd. of Regents of the Nev. Sys. of Higher Educ.*, 616 F.3d 963, 969 (9th Cir. 2010) (internal quotation marks and citation omitted). "To state a substantive due process claim, the plaintiff must show as a threshold matter that a state actor deprived it of a constitutionally protected life, liberty or property interest." *Shanks*, 540 F.3d at 1087 (citing *Action Apt. Assn, Inc. v. Santa Monica Rent Control Bd.*, 509 F.3d

1020, 1026 (9th Cir. 2007)).

Thus, regardless of whether Plaintiffs intended to assert a procedural or a substantive due process claim, Plaintiffs must allege the deprivation of a constitutionally protected property or liberty interest. The Court understands Plaintiffs' allegations in Count II to be that Defendants deprived Plaintiffs of their right to access the courts based on a theory that they were deprived of counsel, which mirrors the denial of the right to access the courts claim in Count VI. See ECF No. 1, ¶¶ 79, 96-97. And while "'[t]he right of access to the courts is a fundamental right protected by the Constitution,'" *Ringgold-Lockhart v. County of Los Angeles,* 761 F.3d 1057, 1061 (9th Cir. 2014) (quoting *Delew v. Wagner*, 143 F.3d 1219, 1222 (9th Cir. 1998)), Plaintiffs cannot state a claim based on the alleged denial of their right to counsel in foreclosure actions. As Judge Watson explained in *Stone II*, "in a civil case, such as foreclosure, there is no right to representation by a lawyer," let alone by Stone, a non-lawyer. *Stone II*, 2020 WL 1643856, at *2 (citing *Nicholson v. Rushen*, 767 F.2d 1426, 1427 (9th Cir. 1985)). Because Plaintiffs do not have a right to counsel (or a

non-lawyer), it cannot be the basis for a claim of denial of access to the courts. Thus, having failed to identify a constitutionally protected property or liberty interest, Plaintiffs do not state a due process claim.

Counts II and VI are DISMISSED WITH PREJUDICE. Amendment of these claims would be futile because Plaintiff's theory that they were deprived counsel cannot serve as a basis for a plausible procedural due process or substantive due process claim or a claim of denial of access to the courts.

2. Threatening Homeowners (Count III)

In Count III, Plaintiffs assert a claim for "Threatening Homeowners" under § 1983. Specifically, Plaintiffs allege that Defendants "directly harass[ed] and threaten[ed] . .. [Plaintiffs] ... for the purpose of depriving them of access to the courts of this State." ECF No. 1 ¶ 83. The Ninth Circuit has ruled that "`verbal harassment or abuse is not sufficient to state a constitutional deprivation under 42 U.S.C. ' 1983.'" *Oltarzewski v. Ruggiero*, 830 F.2d 136,139 (9th Cir. 1987) (quoting *Collins v. Cundy*, 603 F.2d 825, 827 (10th Cir. 1979))

(alterations and other citations omitted).

The Ninth Circuit has further held that a plaintiff who alleged he was "`threatened with bodily harm' by the defendants `to convince him to refrain from pursuing legal redress' for beatings" he sustained by prison guards did not state a claim under § 1983. *Gaut v. Sunn*, 810 F.2d 923, 925 (9th Cir. 1987); *see also Berman v. Dep't of Police & City of Vacaville*, Case No. 18-cv-03108-MMC, 2019 WL 1283934, at *3 n.7 (N.D. Cal. Mar. 20, 2019) ("[The plaintiff]'s § 1983 claim fails for the additional reason that a threat alone, even if to commit an act that would, if performed, violate the Constitution, is not actionable." (citing *Gaut*, 810 F.2d at 925)). Thus, Count III fails to state a claim because neither harassment nor threats are bases for a § 1983 claim.

Count II is DISMISSED WITH PREJUDICE. Amendment would be futile because neither the Ninth Circuit nor the Supreme Court has recognized a remedy under § 1983 for threats or harassment.

3. Equal Protection (Count IV)

In Count IV, Plaintiffs assert an equal protection claim under § 1983. Despite acknowledging that they may

not have a constitutional right to an attorney in all cases, Plaintiffs maintain that they have such a right in foreclosure proceedings if the dummy Corporations also have such a right. See ECF No. 1 ¶ 89.

"The Equal Protection Clause of the Fourteenth Amendment commands that no State shall 'deny to any person within its jurisdiction the equal protection of the laws," which is essentially a direction that all persons similarly situation should be treated alike." *Sampson v. County of Los Angeles*, 974 F.3d 1012, 1022 (9th Cir. 2020) (quoting *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985)) (some internal quotation marks omitted). Equal protection claims may be class-based or based on a class-of-one. Compare *Lazy Y Ranch Ltd v. Behrens*, 546 F.3d 580, 589 (9th Cir. 2008)(holding that a class-based equal protection arises when the "law is applied in a discriminatory manner or imposes different burdens on different classes of people" (internal quotation marks and citation omitted)), with *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (holding that an equal protection claim may be "brought by a `class of one' where

the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment" (citations omitted)). Plaintiffs' equal protection claim appears to be class-based[19] as Plaintiffs identify two classes of Plaintiffs that they argue Defendants treat differently in legal proceedings: homeowners and Dummy Corporations. See ECF No. 1 ¶ 89.

In analyzing Equal Protection claims, [the] `first step . .. is to identify the state's classification of groups.'"

---

[19] Unless a classification implicates a suspect class or quasi-suspect class or infringes on a fundamental right, a legal classification is valid so long as it satisfies rational basis review, under which the court must examine whether "`there is any reasonably conceivable state of facts that could provide a rational basis for the classification.'" *Fowler Packing Co. v. Lanier*, 844 F.3d 809, 814-15 (9th Cir. (quoting *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 313 (1993)). Suspect classes include race, religion, and national origin, and quasi-suspect classes include gender and illegitimacy. See *Ball v. Massanari*, 254 F.3d 817, 823 (9th Cir. 2001) (citations omitted).

Gallinger v. Becerra, 898 F.3d 1012, 1016 (9th Cir. 2018) (quoting *Country Classic Dairies, Inc. v. Milk Control Bureau*, 847 F.2d 593, 596 (9th Cir. 1988)) (second alteration in original). "To accomplish this, a plaintiff can show that the law is applied in a discriminatory manner or imposes different burdens on different classes of people." *Freeman v. City of Santa Ana*, 68 F.3d 1180, 1187 (9th Cir. 1995) (citation omitted). After identifying a "classified group," the Court must look for a "control group composed of individuals who are similarly situated to those in the classified group in respects that are relevant to the state's challenged policy," and "[i]f the two groups are similarly situated, [the Court] determine[s] the appropriate level of scrutiny and then appl[ies] it." *Gallinger*, 898 F.3d at 1016 (citing *Freeman*, 68 F.3d at 1187; *Ariz. Dream Act Coal. v. Brewer*, 855 F.3d 957, 966 (9th Cir. 2017)).

The Court concludes that Plaintiffs have failed to satisfy the first step of a class-based equal protection claim. Even if homeowners constitute a class and Dummy Corporations constitute a control group, Plaintiffs have

not alleged any facts showing that Defendants applied any law in a different manner with respect to these two groups. Unlike individuals, corporations cannot appear in state or federal court in Hawaii as prose litigants. See LN 81.1(b) ("Entities other than individuals, including but not limited to corporations, partnerships, limited liability partnerships or corporations, trusts, community associations, and unions, must be represented by an attorney."); *Oahu Plumbing & Sheet Metal, Ltd. v. Kona Constr., Inc.*, 60 Haw. 372, 374, 590 P.2d 570, 572 (1979) ("The prevailing rule is that a corporation cannot appear and represent itself either in proper person or by its officers, but can do so only by an attorney admitted to practice law." (citations omitted)). That said, the *requirement* that corporations appear in court through counsel is not equivalent to a *right* to counsel. Plaintiffs have not alleged that Defendants engaged in any affirmative efforts to provide Dummy Corporations with counsel nor is there any law providing for the appointment of counsel to plaintiffs in foreclosure actions or to corporations generally. Plaintiffs therefore fail to state an equal protection claim.

Because it is theoretically possible that Plaintiffs could plead facts that give rise to an equal protection claim, Count IV is DISMISSED WITH LEAVE TO AMEND so that Plaintiffs can cure the defects identified in this Order.

4. Failure to Intervene Count VII)

In Count VII, Plaintiffs assert that Defendants violated § 1983 when they failed to intervene in order to prevent each other from violating their constitutional rights. ECF No. 1 ¶ 99. "[T]he general rule is that [a] state is not liable for its omissions[.]" *Munger v. City of Glasgow Police Dep't*, 227 F.3d 1082, 1086 (9th Cir. 2000) (citing *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 195 (1989)). "As a corollary, the Fourteenth Amendment typically `does not impose a duty on the state to protect individuals from third parties.'" *Patel v. Kent Sch. Dist.*, 648 F.3d 965, 971 (9th Cir. 2011) (quoting *Morgan v. Gonzales*, 495 F.3d 1084, 1093 (9th Cir. 2007)) (brackets omitted). There are two recognized exceptions to this rule: (1) when there is a "special relationship" between the plaintiff and the state; and (2) when the state affirmatively places the plaintiff in

danger by acting with "deliberate indifference" to a "known or obvious danger." *Id.* at 971-72 (citing *DeShaney*, 489 U.S. at 198-202; *L.W. v. Grubbs*, 92 F.3d 894, 900 (9th Cir. 1996)) (internal quotation marks omitted). For example, "police officers have a duty to intercede when their fellow officers violate the constitutional rights of a suspect or other citizen" when the officers have a "realistic opportunity to intercede." *Cunningham v. Gates*, 229 F.3d 1271, 128990 (9th Cir. 2000) (quoting *United States v. Koon,* 34 F.3d 1416, 1447 n.25 (9th Cir. 1994), *rev'd on other grounds*, 518 U.S. 81 (1996)) (internal quotation marks omitted).

Here, Plaintiffs have alleged no facts showing that there was a special relationship between themselves and any of Defendants. Nor have Plaintiffs alleged facts showing that the State placed Plaintiffs in danger by acting with deliberate indifference to a known or obvious danger. Count VII therefore fails to state a claim because Defendants cannot be liable for its omissions in the absence of an affirmative duty to act.

Because it is theoretically possible that Plaintiffs could plead facts giving rise to a duty to intervene and

facts showing a breach of that duty, Count VII is DISMISSED WITH LEAVE TO AMEND.

G. Plaintiffs' 42 U.S.C. § 1985 Claim (Count V)

In Count V, Plaintiffs allege that the various defendants conspired to deter Plaintiffs by intimidation and threat from testifying freely, fully, and truthfully and that Defendants conspired to deny Plaintiffs the equal protection of law in state court in violation of 42 U.S.C. " 1985(2) and (3). Subsections (2) and (3) of Sec. 1985 state:

> **(2) Obstructing justice; intimidating party, witness, or juror** ... [I]f two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;
>
> **(3) Depriving persons of rights or privileges** If two or more persons in any State or Territory conspire . . . for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or

> securing to all persons within such State or Territory the equal protection of the laws; . .. in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

42 U.S.C. § 1985(2)P(3).

The Court need not reach the merits of Plaintiffs' ' 1985 claim because qualified immunity and a separate defense raised by the 0CP Defendants—the intracorporate-conspiracy doctrine--together prevent Plaintiffs from pleading a viable claim under ' 1985 against Defendants. ECF No. 14-1 at 32-33.

"Government officials enjoy qualified immunity from civil damages unless their conduct violates `clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Jeffers v. Gomez*, 267 F.3d 895, 910 (9th Cir. 2001) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)) (other citation

omitted). "The threshold inquiry in a qualified immunity analysis is whether the plaintiff's allegations, if true, establish a constitutional violation." *Wilkins v. City of Oakland*, 350 F.3d 949, 954 (9th Cir. 2003) (citing *Saucier v. Katz*, 533 U.S. 194, 201 (2001)) (other citation omitted). "'A public official is not entitled to qualified immunity when the contours of the allegedly violated right were sufficiently clear that a reasonable official would understand that what he [was] doing violate[d] that right.'" *Jeffers*, 267 F.3d at 910 (quoting *Osolinski v. Kane*, 92 F.3d 934, 936 (9th Cir. 1996)) (alterations in original).[20] Although there need not be a case "directly on point" establishing the right in question, "existing precedent must have placed the statutory or constitutional question

---

[20]The Court has the discretion to choose which step of *Saucier*'s two-step sequence for resolving government officials' qualified immunity claims is first addressed, and opts to address the second step at the outset, as it is dispositive. See Pearson v. Callahan, 555 U.S. 223, 242 (2009) ("[J]udges of the district courts and the courts of appeals are in the best position to determine the order of decision-making that will best facilitate the fair and efficient disposition of each case.).

beyond debate." *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011) (citations omitted).

"Under . .. the intracorporate-conspiracy doctrine[,] an agreement between or among agents of the same legal entity, when the agents act in their official capacities, is not an unlawful conspiracy." *Ziglar v. Abbasi*, 582 U.S. ///, 137 S. Ct. 1843, 1867 (2017) (citing *Copperweld Corp. v. Indep. Tube Corp.*, 467 U.S. 752, 769-771 (1984)). The Supreme Court "has not given its approval to this doctrine in the specific context of ' 1985(3)." *Id.* at ___, 137 S. Ct. at 1868 (citing *Great Am. Fed. Sav. & Loan Assn. v. Novotny*, 442 U.S. 366, 372 n.11 (1979)). "Most, but not all, circuit courts have applied the doctrine to bar claims against public entities. The Ninth Circuit has noted the split but declined to address the issue." *Wagner v. County of Plumas,* No. 2:18-cv-03105-KJM-DB, 2020 WL 820241, at *6 (E.D. Cal. Feb. 19, 2020) (citing *Portman v. City of Santa Clara*, 995 F.2d 898, 910 (9th Cir. 1993)) (other citation omitted). And the Ninth Circuit in *Portman* declined to decide whether the intracorporate-conspiracy doctrine applied to § 1985(2) claims. See *Portman*, 995 F.2d at 910. In *Ziglar*, the Court concluded that federal officials were

entitled to qualified immunity because the fact that "the courts are divided as to whether a ' 1985(3) conspiracy can arise from official discussions between or among agents of the same entity demonstrates that the law on the point is not well established." *Ziglar*, 582 U.S. ___, 137 S. Ct. at 1868. Thus, so long as each Defendant here is an agent of the same entity, i.e., the State, they, too, are entitled to qualified immunity as to Plaintiffs' § 1985(3) claim. And because the law is similarly unsettled with respect to the applicability of the intracorporate-conspiracy doctrine to § 1985(2) claims, see *Portman*, 995 F.2d at 910, the same holds true for Plaintiffs' § 1985(2) claim.

Each Defendant here is an agent of the same entity-- the State of Hawaii. The OCP Defendants are agents of the State as OCP is a unit of the State Department of Commerce and Consumer Affairs. See HRS § 487-2 (OCP's enabling statute); see also *Stone I*, 2019 WL 5058910, at *6 (treating OCP as an "arm of the State of Hawaii"); *Stone*, 2021 WL 67314 (D. Haw. Jan. 7, 2021) (granting the State's motion for entry of final judgment). The Disciplinary Defendants are each agents of the State of Hawaii insofar as the Disciplinary Board is

appointed by the Supreme Court of Hawaii, and the Disciplinary Board in turn has the authority to hire the staff that comprise ODC, including a Chief Disciplinary Counsel and his or her deputies and staff. See RSCH Rule 2.4(a), (e)(2). Finally, the Judge Defendants are agents of the judiciary of the State of Hawaii. See HRS § 601-1 ("There shall be a branch of government, styled the judiciary."); see also *Shorb v. Josephine Cnty,* Cir. Ct., No. 1:17-cv-00449-AA, 2017 WL 4553410, at *3 (D. Or. Oct. 11, 2017) (explaining that a state court is a state entity entitled to sovereign immunity).

As each Defendant is an agent of the State of Hawaii, each is entitled to qualified immunity in their individual capacities for claims brought under § 1985(2) or (3). For the reasons stated above, it is not "sufficiently clear that a reasonable official would understand" that he or she was violating the rights guaranteed by these statutes. Count V is therefore DISMISSED WITH PREJUDICE. Amendment would be futile because Defendants are entitled to qualified immunity on this claim as state agents.

H. Plaintiffs' 42 U.S.C. § 1986 Claim (Count XI)

In Count XI, Plaintiffs assert a claim for action for neglect to prevent a harm under 42 U.S.C. § 1986.[21] However, a claim under § 1986 "depends on the existence of a claim under § 1985." *Mollnow v. Carlton*, 716 F.2d 627, 632 (9th Cir. 1983) (citing *Williams v. St. Joseph Hosp.*, 629 F.2d 448, 452 (7th Cir. 1980)). As Defendants are entitled to qualified immunity on Plaintiffs' § 1985 claim, they are further entitled to qualified immunity as to Plaintiffs' § 1986 claim. See

---

[21] Section 1986 states:

> Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action[.]

42 U.S.C. § 1986.

Nguyen v. Yolo Cnty. Dist. Atty's Off., No. 2:21-cv-00239-TLN-KJN PS, 2021 WL 929558, at *3 (E.D. Cal. Mar. 11, 2021) ("[D]ismissal of Section 1985 conspiracy claims ipso facto requires dismissal of [any related] 1986 claim[.]" (citing *Wagar v. Hasenkrug*, 486 F. Supp. 47, 50 (D. Mont. 1980))), *report and recommendation adopted by* No. 2:21-cv-00239-TLN-KJN, 2021 WL 1404754 (E.D. Cal. Apr. 14, 2021).

Count XI is therefore DISMISSED WITH PREJUDICE.

I. Statute of Limitations

The OCP Defendants argue that each of Plaintiffs' claims are barred by a two-year statute of limitations, with the exception of Plaintiffs' 42 U.S.C. § 1986 claim, which outlines a one-year statute of limitations. ECF No. 14-1 at 33.

The Court agrees with the OCP Defendants' calculation of the applicable limitations periods. Plaintiffs' tort claims against Defendants in their individual capacities is governed by the two-year statute of limitations for tort actions in HRS § 657-7. Plaintiffs' tort claims against Defendants in their official capacities

(which the Court construes as claims against the State, *see supra* Section III.A.) are governed by the two-year statute of limitations in the State Tort Liability Act. HRS § 662-4.[22] Plaintiffs' claims under 42 U.S.C. §§ 1983 and 1985 are also subject to Hawaii's two-year statute of limitations for personal injury actions. See *Taylor v. Regents of the Univ. of Cal.*, 993 F.2d 710, 711-12 (9th Cir. 1993) (explaining that the state personal injury statute of limitations governs actions under 42 U.S.C. §§ 1981, 1983 and 1985). And finally, 42 U.S.C. § 1986 provides that "no action under the provisions of this section shall be sustained which is not commenced within one year after

---

[22]The OCP Defendants also cite HRS § 661-5 in support of their argument that there is a two-year statute of limitations for claims against the State. ECF No. 14-1 at 33. Section 661-5, however, is inapplicable because it relates to actions brought under HRS chapter 661, which relates to claims against the State based on a state statute; an executive department's rule; article I, section 20, of the Hawaii State Constitution; a contract with the state; claims referred to the court by the legislature; and any counterclaim brought by the State in response to such a claim. See HRS § 661-1.

the cause of action has accrued." 42. U.S.C. § 1986.
For the reasons detailed in this Order, Plaintiffs have not yet stated a viable claim against any Defendants. Should Plaintiffs choose to file an amended complaint, Plaintiffs will be unable to state a viable claim if the claim accrued prior to February 16, 2019 (two years prior to the date of the Complaint). For example, if Plaintiffs attempt to amend their equal protection claim, the claim must have accrued on or after February 16, 2019.

J. Plaintiffs' Remaining State Law Claims

Plaintiffs invoke federal question and supplemental jurisdiction for their federal and state claims. Aside from Plaintiffs' federal claims and their malicious prosecution claim, which claims the Court has dismissed, *see supra* Sections III.B., C.1, F., G., H., Plaintiffs assert state law claims for abuse of power or malfeasance (Count I), civil conspiracy (Count IX), and intentional infliction of emotional distress (Count X), each of which the Court has dismissed as to each Defendant in their official capacities. *See supra* Section III.B.2. Because the Court's jurisdiction over these remaining state law claims against Defendants in their individual capacities (except for claims against the Judge Defendants, which are all

dismissed with prejudice, *see supra* Section III.C.3) is supplemental, see 28 U.S.C. § 1367(a), and Plaintiffs have yet to present a viable federal claim, the Court declines to address the remaining state law claims at this time.

IV. CONCLUSION

For the reasons set forth above, the Court GRANTS IN PART AND DENIES IN PART the OCP Defendants' Motion to Dismiss and the Disciplinary Defendants and Judge Defendants' Substantive Joinder and Motion to Dismiss as follows:

All claims against the Judge Defendants are DISMISSED WITH PREJUDICE.

Count I (Abuse of Power or Malfeasance) is DISMISSED WITHOUT LEAVE TO AMEND as to Defendants in their official capacities.

COUNT II (42 U.S.C. § 1983: Due Process) is DISMISSED WITH PREJUDICE.

Count III (42 U.S.C. § 1983: Threatening Homeowners) is DISMISSED WITH PREJUDICE.

Count IV (42 U.S.C. § 1983: Equal Protection) is

DISMISSED WITH PREJUDICE as to all Defendants[23] in their official capacities to the extent it seeks money damages and is otherwise DISMISSED WITH LEAVE TO AMEND.

Count V (42 U.S.C. § 1985(2) and (3): Conspiracy to Deprive Constitutional Rights) is DISMISSED WITH PREJUDICE.

Count VI (42 U.S.C. § 1983: Denial of Access to Courts) is DISMISSED WITH PREJUDICE.

Count VII (42 U.S.C. § 1983: Failure to Intervene) is DISMISSED WITH PREJUDICE as to all Defendants in their official capacities to the extent it seeks money damages and otherwise DISMISSED WITH LEAVE TO AMEND.

---

[23]Although, as explained above, the claims against the Judge Defendants cannot survive, the Court alternatively dismisses Counts IV and VII against the Judge Defendants as indicated herein.

Count VIII (Malicious Prosecution) is DISMISSED WITH PREJUDICE.

Count IX (Civil Conspiracy) is DISMISSED WITHOUT LEAVE TO AMEND as to Defendants in their official capacities.

Count X (IIED) is DISMISSED WITHOUT LEAVE TO AMEND as to Defendants in their official capacities.

Count XI (42 U.S.C. § 1986: Action for Neglect to Prevent a Harm) is DISMISSED WITH PREJUDICE.

In sum, the Court precludes Plaintiffs from amending the Complaint to rehabilitate Counts II, III, V, VI, VIII, and XI. Counts I, IX, and X may not be brought in federal court against the Judge Defendants nor against any of the other Defendants in their official capacities and the Court declines to address at this time the viability of those claims against the non-Judge Defendants in their personal capacities. Plaintiffs may amend Counts IV and VII but they may not: (1) assert those claims against the Judge Defendants; (2) seek money damages or other retrospective relief for those counts; or (3) assert any

claim in violation of the statute of limitations. Plaintiffs may file an amended complaint by September 30, 2021 curing the defects identified in this Order. Plaintiff may not add parties or claims without obtaining leave of court. Failure tó comply with this Order may result in the dismissal of this action.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, August 30, 2021.

Seal of the
United States
District Court
District of Hawaii

/s / Jill A. Otake
United States District
Judge

Civil No. 21-00095 JAO-WRP, *Abing v. Evers*, ORDER GRANTING IN PART AND DENYING IN PART (1) MOTION TO DISMISS PLAINTIFFS' COMPLAINT FILED ON FEBRUARY 16, 2021 [ECF NO. 14]; AND (2) DEFENDANTS BRUCE B. KIM, BRADLEY R. TAMM, RYAN SUMMERS LITTLE, REBECCA SALWIN, YVONNE R. SHINMURA, CHARLENE M. NORRIS, ROY F. HUGHES, GAYLE J. LAU, JEFFREY P. MILLER, PHILIP H. LOWENTHAL, CLIFFORD NAKEA, THE HONORABLE BERT I. AYABE AND THE HONORABLE JEANNETTE H. CASTAGNETTI'S SUBSTANTIVE JOINDER AND MOTION TO DISMISS WITH PREJUDICE COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF AND DAMAGES [ECF 46]

THE DISTRICT COURT'S
SECOND ORDER
DISMISSING THE COMPLAINT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

CHESTER NOEL ABING,
DENNIS DUANE DESHAW, AND
SUSAN KAY BROER-DESHAW,

Plaintiffs

vs.

21-cv-95

JAMES F. EVERS, JOHN N. TOKUNAGA, STEPHEN H. LEVINS, LISA P. TONG, MELINDA D. SANCHES, CATHERINE AWAKUNI COLON, JO ANN UCHIDA TAKEUCHI, MICHAEL J.S. MORIYAMA, BRUCE B. KIM, BRADLEY R. TAMM, RYAN SUMMERS LITTLE, REBECCA SALWIN, YVONNE R. SHINMURA, CHARLENE M. NORRIS, ROY F. HUGHES, GAYLE J. LAU, JEFFREY P. MILLER, PHILIP H. LOWENTHAL, and CLIFFORD NAKEA, BERT I. AYABE, and JEANNETTE H. CASTAGNETTI,

Defendants, both Individually and in their Official Capacities.

ORDER GRANTING IN PART AND DENYING

IN PART (1) OCP DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT FILED ON SEPTEMBER 30, 2021 [ECF NO. 75]; AND (2) DEFENDANTS BRUCE B. KIM, BRADLEY R. TAMM, RYAN SUMMERS LITTLE, REBECCA SALWIN, YVONNE R. SHINMURA, CHARLENE M. NORRIS, ROY F. HUGHES, GAYLE J. LAU, JEFFREY P. MILLER, PHILIP H. LOWENTHAL, CLIFFORD NAKEA, THE HONORABLE BERT I. AYABE AND THE HONORABLE JEANNETTE H. CASTAGNETTI'S SUBSTANTIVE JOINDER AND MOTION TO DISMISS WITH PREJUDICE FIRST AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF AND DAMAGES [ECF NO. 76]

Pro se Plaintiffs Chester Noel Abing ("Abing"), Dennis Duane DeShaw ("DeShaw"), and Susan Kay Broer-DeShaw ("Broer-DeShaw") (collectively, "Plaintiffs") are homeowners who have each faced or are facing foreclosure in state court proceedings. In February 2021, Plaintiffs filed a Verified Class-Action Complaint ("Complaint"), ECF No. 1, against various individuals affiliated with Hawaii's Office of Consumer Protection ("OCP") and Office of Disciplinary Counsel ("ODC") and two state court judges, all of whom allegedly engaged in a far-ranging

conspiracy to unlawfully deprive various home-owners in Hawaii of their homes. Plaintiffs now repeat most of the same allegations in their First Amended Verified Class-Action Complaint ("FAC").

Defendants James F. Evers, John N. Tokunaga, Stephen H. Levins, Lisa P. Tong, Melinda D. Sanchez[24] Catherine Awakuni Colón,[25] Jo Ann M. Uchida Takeuchi, and Michael J.S. Moriyama (collectively, the "OCP Defendants")[26] move to dismiss Plaintiffs'" FAC. ECF No. 75 Amotion").

---

[24]Plaintiffs refer to Sanchez as Melinda D. Sanches in the caption of the FAC.

[25] Plaintiffs omit the diacritical mark in the FAC.

[26]Plaintiffs identify OCP Defendants James F. Evers, John N. Tokunaga, Stephen H. Levins, Lisa P. Tong, and Melina D. Sanchez as the "OCP Lawyers," ECF No. 74 at 23(a), and OCP Defendants Catherine Awakuni Colón, Jo Ann Uchida Takeuchi, and Michael J.S. Moriyama, as the "Supervisors of the OCP Lawyers." *Id.* ¶ 23(b).

Defendants Bruce B. Kim, Bradley R. Tamm, Ryan Summers Little, Rebecca Salwin, Yvonne R. Shinmura, Charlene M. Norris, Roy F. Hughes, Gayle J. Lau, Jeffrey P. Miller, Philip H. Lowenthal, and Clifford Nakea (collectively, the "Disciplinary Defendants")[27]; and the Honorable Bert I. Ayabe and the Honorable Jeannette H. Castagnetti (collectively, the "Judge Defendants") substantively join in the OCP Defendants' motion to dismiss. ECF No. 76 -1 at 8-9. ("Substantive Joinder and Motion to Dismiss" or "Substantive Joinder"). The Judge Defendants also move the Court to strike all the allegations against them. See ECF No. 76-1 at 8-9.

For the reasons set forth below, the Court

27Plaintiffs identify Disciplinary Defendants Bruce B. Kim, Bradley R. Tamm, Ryan Summers Little, Rebecca Salwin, Yvonne R. Shinmura, and Charlene M. Norris as the "ODC Lawyers," ECF No. 74 ¶ 23(c), and Disciplinary Defendants Roy F. Hughes, Gayle J. Lau, Jeffrey P. Miller, Philip H. Lowenthal, and Clifford Nakea as the "Disciplinary Board Lawyers." *Id.* ¶ 23(d).

GRANTS IN PART AND DENIES IN PART the OCP Defendants' Motion and the Disciplinary Defendants and Judge Defendants' Substantive Joinder and Motion to Dismiss. The Court DISMISSES WITH PREJUDICE Counts IV and VII but declines to exercise supplemental jurisdiction to address the surviving state law claims. The remaining state law claims are DISMISSED WITHOUT LEAVE TO AMEND in federal court. The Court DENIES the Judge Defendants' request to strike the allegations against them.

I. Background

A. FACTS

The facts alleged in the FAC are nearly identical to those in the Complaint but for a few exceptions. For ease of reference, the Court repeats its fact section from the Order here and notes where an allegation is new to the FAC. Plaintiffs are each homeowners whose homes are or have been subject to foreclosure by "Dummy Corporations" that allegedly pretended (1) to lend money to homeowners and (2) to own their mortgages, when they had no

legal interest in the mortgaged properties. ECF No. 74 ¶ 1. Plaintiffs have been involved in seven separate lawsuits against the Dummy Corporations that have initiated fore-closure proceedings against them. *Id.* ¶ 31. Plain-tiffs allege that the Judge Defendants wrongfully granted summary judgment to the respective mortgagees in foreclosure cases involving Plaintiffs' respective homes, and that they routinely grant summary judgment in favor of mortgagees without evidence that the mortgagee owns the mortgage and associated note. *Id.* ¶¶ 1-3.

According to Plaintiffs, wrongful foreclosures occur because there are no longer any attorneys in Hawaii who are willing and competent to represent defendants in foreclosure actions in a zealous manner. *Id.* ¶ 5. The various government officials named in the FAC (whom Plaintiffs believe are former employees of and/or attorneys for the Dummy Corporations and reference in the FAC as the "Conspirators" and to whom the Court will refer as "Defendants") have allegedly entered into a "con-federacy . . . to assist the Dummy Corporations in

taking thousands of homes in this State." *Id.* Defendants intimidated members of the foreclosure defense bar by disbarring its members for minor or trumped-up offenses, threatening to disbar them, subpoenaing their records, offering to bribe their former clients to complain about them, and suing them under consumer protection laws. *Id.*

Plaintiffs further allege that Defendants have acted together to "blacklist" and discriminate against homeowners like Plaintiffs who defend against foreclosure proceedings by intervening in foreclosure cases without leave of court, threatening and intimidating homeowners, harassing them by subpoenaing their records, assisting the mortgagees' attorneys, and stealing funds from one of the Plaintiffs' bank accounts. *Id.* ¶ 8.

On January 24, 2013, the ODC Lawyers and OCP Lawyers allegedly approached attorney Sandra D. Lynch, then an associate at a foreclosure defense law firm, and ordered her to "steal" 27 of the firm's clients and then stop working zealously on those clients' cases. *Id.* ¶ 35. As a result, most of those 27

clients lost their homes to the Dummy Corporations, and the law firm dissolved. *Id.* Abing and DeShaw were clients of that law firm and therefore were harmed by this sequence of events. *Id.* Plaintiffs maintain that the Supervisors of the OCP Lawyers either authorized the theft of clients from Lynch's law firm and the subsequent break-up of the firm, or negligently failed to supervise the OCP Lawyers. *Id.* ¶ 36.

On December 3, 2014, the ODC Lawyers filed a complaint against Plaintiff's paralegal assistant that Plaintiffs describe as "malicious and selective" for the purpose for forcing him to resign from the State bar, thereby depriving Plaintiffs of their choice of counsel and harming them in their efforts to defend against foreclosure actions. *Id.* ¶ 40.

The OCP Lawyers and ODC Lawyers allegedly threatened attorney R. Steven Geshell, which caused Geshell to turn on his clients and file unauthorized and inferior pleadings in foreclosure cases, including pleadings that defied Plaintiffs' clear instructions. *Id.* ¶ 42. The Supervisors of the

OCP Lawyers authorized the OCP Lawyers' conduct or negligently failed to supervise the OCP Lawyers. *Id.* ¶ 43.

On August 30, 2018, the OCP Lawyers intervened without leave of court in a state court foreclosure proceeding to which Abing was a party. *Id.* ¶ 30. The OCP Lawyers subpoenaed Abing and his attorney, Keoni Agard, and questioned them both. *Id.* Plaintiffs alleged the OCP Lawyers threatened to prosecute Abing for an unspecified felony, bullied him, attempted to bribe him "with a (fake) offer of $10,000," and ordered him to "discharge his attorney's paralegal assistant"[28] and stop defending against the foreclosure action. *Id.* Plaintiffs maintain that the OCP Lawyers did this to trick Abing into making false statements that could be

---

[28]Although not alleged in the Complaint, this "paralegal assistant" appears to be Stone based on Plaintiffs' use of this exact term to refer to Stone in their other filings. See generally ECF Nos. 58B60. This observation does not affect the Court's ruling herein .

used against him in the foreclosure action. *Id.*

Plaintiffs assert that on December 10, 2018, the OCP Lawyers and ODC Lawyers threatened attorney Jason B. McFarlin, who had accepted Plaintiffs as clients, but, pursuant to instructions from Defendants, failed to represent them vigorously. *Id.* ¶ 44. The Supervisors of the OCP Lawyers either authorized the OCP Lawyers' actions or negligently failed to supervise them properly. *Id.* ¶ 45. On December 13, 2018, the ODC Lawyers conducted a hearing before the Disciplinary Board regarding a complaint against attorney Gary V. Dubin ("Dubin"), which complaint Plaintiffs allege contained trivial and false accusations. *Id.* ¶ 37. Plaintiffs allege that the purpose of the complaint was to disbar Dubin to suppress the foreclosure defense bar, thereby depriving Plaintiffs of their choice of counsel and harming them in their efforts to defend against foreclosure actions. *Id.* On February 13, 2019, the Disciplinary Board Lawyers disbarred Dubin. *Id.* ¶ 38.

Plaintiffs contend that on February 8, 2019,

the OCP Lawyers again intervened in Abing's state court case by stealing $800 from his credit card account to prevent Abing from using that sum to pay his legal fees, and then stole an additional $500 on March 23, 2019. *Id.* ¶¶ 32-33. Plaintiffs assert that the Supervisors of the OCP Lawyers either authorized the OCP Lawyers' conduct or negligently failed to supervise the OCP Lawyers. *Id.* ¶ 34.

Plaintiffs allege that on October 28, 2020 the OCP Defendants sent letters to Plaintiffs offering to pay large bribes to them if they would inform against and file a false complaint against "their paralegal assistant" so the OCP Lawyers could show the false complaints to other Defendants in state court. *Id.* ¶ 47. Plaintiffs contend that the purpose of this scheme was to have the paralegal removed from Plaintiffs' foreclosure cases and thereby block Plaintiffs from filing appeals to the Hawaii Supreme Court. *Id.* The payment was never made. *Id.*

Plaintiffs further assert that the Judge Defendants work closely with the other Defendants and award "huge prizes" to the Dummy Corpora-

tions without requiring them to provide evidence of ownership in foreclosure cases, and that Judge Castagnetti gives foreclosure attorneys free rein to harass, trick, threaten, and investigate pro se defendants. *Id.* ¶ 48.

Plaintiffs allege that the Dummy Corporations forge documents in order to prevail in foreclosure actions and did so in Abing's and DeShaws' respective foreclosure actions. *Id.* ¶ 60. Plaintiffs state that Defendants, who are charged with protecting consumers, have taken no action to stop the alleged fraud the Dummy Corporations are perpetrating. *Id.* ¶ 61.

New to the FAC, Plaintiffs allege that they contacted dozens of lawyers and asked them to accept this case but that they all declined. *Id.* ¶ 69. Plaintiffs also allege that Defendant Evers intervened in DeShaws' case to help a Dummy Corporation. *Id.* ¶ 124.

B. Procedural History

Plaintiffs commenced this action by filing the Complaint on February 16, 2021, asserting the

following claims against all Defendants:

- Count I - Abuse Of Power Or Malfeasance
- Count II - 42 U.S.C. § 1983: Due Process
- Count III - 42 U.S.C. § 1983: Threatening Homeowners
- Count IV - 42 U.S.C. § 1983: Equal Protection
- Count V - 42 U.S.C. § 1985(2) and (3): Conspiracy to Deprive Constitutional Rights
- Count VI - 42 U.S.C. § 1983: Denial of Access To Courts
- Count VII - 42 U.S.C. § 1983: Failure To Intervene
- Count VIII - Malicious Prosecution
- Count IX - Civil Conspiracy
- Count X - Intentional Infliction Of Emotional Distress ("IIED")
- Count XI - 42 U.S.C. § 1986: Action For Neglect To Prevent A Harm.

The OCP Defendants filed a motion to dismiss on April 1, 2021. ECF No. 14. The Disciplinary Defendants and the Judge Defendants filed a substantive joinder in the OCP Defendants' Motion and also sought dismissal on additional grounds. ECF No. 46. Plaintiff opposed both the Motion and the Substantive Joinder. ECF No. 49.

The Court granted in part and denied in part the motion to dismiss ("Order"). *See* ECF No. 68. The Order dismissed all claims and only allowed limited leave to amend Count IV (42 U.S.C. § 1983: Equal Protection) and Count VII (42 U.S.C. § 1983: Failure To Intervene). *Id.* at 54-57.[29] Specifically, the Court dismissed those counts with prejudice as to the Judge Defendants and as to the other Defendants to the extent they were acting in their official capacities and to the extent Plaintiffs were seeking

---

[29]The Court declined to rule on the state-law counts -- Counts I (Abuse of Power or Malfeasance), IX (Civil Conspiracy), and X (IIED) -- as to the non-Judge Defendants in their individual capacities. ECF No. 68 at 56.

money damages. *Id.* at 55. Thus, Plaintiffs had leave to amend Counts IV and VII but could not: assert those claims against the Judge Defendants; (2) seek money damages or other retrospective relief for those counts; or (3) assert any claim in violation of the statute of limitations. *Id.* at 56. The Court also stated that Plaintiffs "may not add parties or claims without obtaining leave of court." *Id.* And that "[f]ailure to comply with this Order may result in the dismissal of this action." *Id.*

Plaintiffs largely ignored the Court's Order. In the FAC, they reasserted the dismissed of claims, changed Count III from "42 U.S.C. § 1983: Threatening Homeowners" to "42 U.S.C. § 1985(2) and (3): "Threatening Homeowners to Deprive Them Of Equal Protection," and added a new Count XII (Fourteenth Amendment: Equal Protection). *See generally* ECF No. 74.

OCP Defendants now move to dismiss the FAC. ECF No. 75. The Disciplinary and Judge Defendants again substantively join the Motion. ECF No. 76. The Judge Defendants also move the

Court to strike all the allegations against them. *See* ECF No. 76-1 at 8-9. Plaintiffs oppose the Motion. *See* ECF No. 78.

II. Legal Standard

Federal Rule of Civil Procedure ("FRCP") 12(b)(6) authorizes dismissal of a complaint that fails "to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). On a Rule 12(b)(6) motion to dismiss, "the court accepts the facts alleged in the complaint as true," and "[d]ismissal can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged." *UMG Recordings, Inc. v. Shelter Capital Partners LLC*, 718 F.3d 1006, 1014 (9th Cir. 2013) (quoting *Balistreri v. Pacifica Police Dep't* , 901 F.2d 696, 699 (9th Cir. 1988)) (alteration in original). However, conclusory allegations of law, unwarranted deductions of fact, and unreasonable inferences are insufficient to defeat a motion to dismiss. *See Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001); *Nat'l Ass'n for the Advancement of Psychoanalysis v. Cal. Bd. of Psychology*, 228 F.3d

1043, 1049 (9th Cir. 2000) (citation omitted). Furthermore, the court need not accept as true allegations that contradict matters properly subject to judicial notice. *See Sprewell*, 266 F.3d at 988.

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Facial plausibility exists "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556). The tenet that the court must accept as true all the allegations contained in the complaint does not apply to legal conclusions. *See id.* As such, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* (citing *Twombly*, 550 U.S. at 555). "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the

complaint has alleged – but it has not 'show[n]' – 'that the pleader is entitled to relief.'" *Id.* at 679 (quoting Fed. R. Civ. P. 8(a)(2)) (some alterations in original).

A claim may be dismissed at this stage on the basis that it is untimely. However, "[a] claim may be dismissed under Rule 12(b)(6) on the ground that it is barred by the applicable statute of limitations only when 'the running of the statute is apparent on the face of the complaint.'" *Von Saher v. Norton Simon Museum of Art*, 592 F.3d 954, 969 (9th Cir. 2010) (citation omitted). In fact, "[a] complaint cannot be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts that would establish the timeliness of the claim." *Id.* (quoting *Supermail Cargo, Inc. v. United States*, 68 F.3d 1204, 1206 (9th Cir. 1995)).

If dismissal is ordered, the plaintiff should be granted leave to amend unless it is clear that the claims could not be saved by amendment. *See Swartz v. KPMG LLP*, 476 F.3d 756, 760 (9th Cir. 2007) (citation omitted).

III. Discussion

The Court will only address the two counts for which it granted Plaintiffs leave to amend: Counts IV and Counts VII. To the extent the FAC attempts to rehabilitate the other counts pleaded in the Complaint, it violates the Court's explicit instructions in its previous Order. The disposition of the other counts as described in the Order remains effective. Similarly, the Court DISMISSES WITH PREJUDICE the newly added Count XII because Plaintiffs did not obtain leave to add a claim. *See* ECF No. 68 at 56.

A. Count IV: Equal Protection

In Count IV, Plaintiffs assert an equal protection claim under § 1983. Despite again acknowledging that they may not have a constitutional right to an attorney in all cases, Plaintiffs maintain that they have such a right in foreclosure proceedings if the Dummy Corporations also have such a right. ECF No. 74 ¶ 104. Plaintiffs add to the FAC that Defendants apply various consumer protection statutes differently to homeowners and Dummy

Corporations because they use the laws "to fine and harass and intimidate the defense bar." *Id.* ¶ 106.

"The Equal Protection Clause of the Fourteenth Amendment commands that no State shall 'deny to any person within its jurisdiction the equal protection of the laws,' which is essentially a direction that all persons similarly situated should be treated alike." *Sampson v. County of Los Angeles ex rel. L.A. Cnty. Dep't of Child. & Fam. Servs.*, 974 F.3d 1012, 1022 (9th Cir. 2020) (quoting *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985)) (some internal quotation marks omitted). Equal protection claims may be class-based or based on a class-of-one. *Compare Lazy Y Ranch Ltd v. Behrens*, 546 F.3d 580, 589 (9th Cir. 2008) (holding that a class-based equal protection claim arises when the "law is applied in a discriminatory manner or imposes different burdens on different classes of people" (internal quotation marks and citation omitted)), *with Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (holding that an equal protection claim may be "brought by a 'class of one[]' where the plaintiff alleges that she has been

intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment" (citations omitted)). Plaintiffs' equal protection claim appears to be class-based as Plaintiffs identify two classes that they argue Defendants treat differently in legal proceedings: homeowners and Dummy Corporations.[30] *See* ECF No. 74 ¶ 105.

"In analyzing Equal Protection claims, [the] 'first step . . . is to identify the state's classification

---

[30] Plaintiffs' opposition may propose an alternative classification of those homeowners who cooperate with organized crime and those homeowners (like Plaintiffs) that refuse to pay organized crime. See ECF No. 78 at 8B10. The argument seems to be a metaphor rather than an attempt to change their pleadings. See ECF No. 74 ¶ 105 ("The two different classes in this case at bar are homeowners and Dummy Corporations."). But, to the extent Plaintiffs propose a different theory for their equal protection claim, it also fails. Plaintiffs assert no facts to support this new proposed classification and have consistently challenged Defendants' treatment of them compared to the Dummy Corporations rather than other homeowners.

of groups.'" *Gallinger v. Becerra*, 898 F.3d 1012, 1016 (9th Cir. 2018) (quoting *Country Classic Dairies, Inc. v. Milk Control Bureau*, 847 F.2d 593, 596 (9th Cir. 1988)) (second alteration in original). "To accomplish this, a plaintiff can show that the law is applied in a discriminatory manner or imposes different burdens on different classes of people." *Freeman v. City of Santa Ana*, 68 F.3d 1180, 1187 (9th Cir. 1995) (citation omitted). After identifying a "classified group," the Court must look for a "control group composed of individuals who are similarly situated to those in the classified group in respects that are relevant to the state's challenged policy," and "[i]f the two groups are similarly situated, [the Court] determine[s] the appropriate level of scrutiny and then appl[ies] it." *Gallinger*, 898 F.3d at 1016 (citing *Freeman*, 68 F.3d at 1187; *Ariz. Dream Act Coal. v. Brewer*, 855 F.3d 957, 966 (9th Cir. 2017)).

Plaintiffs' added allegation that Defendants apply consumer protection laws to "fine and harass and intimidate the [foreclosure] defense bar" to deprive Plaintiffs of available attorneys to benefit

Dummy Corporations is insufficient to state an equal protection claim. Reading the FAC in a generous light, Plaintiffs suggest that the various consumer protection laws create a classification of homeowners facing foreclosure. *See* ECF No. 74 ¶ 106 (citing various consumer protection laws authorizing the state to bring enforcement actions against those who take advantage of vulnerable mortgage holders); *see also* Hawaii Revised Statutes ("HRS") § 480E-1. But the consumer protection laws do not grant Dummy Corporations any benefits. Thus, the Court again concludes that Plaintiffs have failed to satisfy the first step of a class-based equal protection claim. Even if homeowners constitute a class and Dummy Corporations constitute a control group, Plaintiffs have not alleged any facts showing that the two groups are similarly situated.[31]

---

[31] To the extent Plaintiffs are attempting to allege a selective prosecution equal protection case on behalf of attorneys or practitioners that have been targeted under the consumer protection laws, such as Stone and Dubin, they lack third-party standing because they have failed to allege a cognizable injury

Plaintiffs' theory that Defendants deprived them of attorneys while allowing Dummy Corporations to be represented does not constitute an equal protection violation. The two groups are distinct in significant respects. Unlike individuals, corporations cannot appear in state or federal court in Hawaii as pro se litigants. *See* LR 81.1(b) ("Entities other than individuals, including but not limited to

---

and have failed to allege why those attorney cannot represent their own interest. See *Bugin v. Sup. Ct. of Hawaii*, Civil No. 21-00175 JAO-KJM, 2021 WL 4496946, at *11-12 (D. Haw. Sept. 30, 2021). "'Although courts have 'generally acknowledged a civil litigant's Fifth Amendment due process right to retain and fund the counsel of their choice,'" this right applies 'only in extreme scenarios where the government substantially interferes with a party's ability to communicate with his or her lawyer or actively prevents a party who is willing and able to obtain counsel from doing so.'" *Id.*, 2021 WL 4496946, at *12 (quoting *Adir Int'l, LLC v. Starr Indem. & Liab. Co.*, 994 F.3d 1032, 1039-40 (9th Cir. 2021)). The instant situation is not one of those limited scenarios because Stone and Dubin's "disbarment prohibits [Stone's and Dubin's] participation in Hawaii state court proceedings." *Dubin*, 2021 WL 4496946, at *12.

corporations, partnerships, limited liability partnerships or corporations, trusts, community associations, and unions, must be represented by an attorney."); *Oahu Plumbing & Sheet Metal, Ltd. v. Kona Constr., Inc.*, 60 Haw. 372, 374, 590 P.2d 570, 572 (1979) ("The prevailing rule is that a corporation cannot appear and represent itself either in proper person or by its officers, but can do so only by an attorney admitted to practice law." (citations omitted)). That said, the *requirement* that corporations appear in court through counsel is not equivalent to a *right* to counsel. Plaintiffs have not alleged that Defendants engaged in any affirmative efforts to provide Dummy Corporations with counsel nor is there any law providing for the appointment of counsel to plaintiffs in foreclosure actions or to corporations generally. Plaintiffs therefore fail to state an equal protection claim.

Plaintiffs have already had an opportunity to amend their Complaint and failed to allege any additional facts. Instead, they filed an FAC that was nearly identical to the Complaint. That they declined

to add, clarify, or modify their allegations in any substantive way demonstrates that further leave to amend would prove futile. Count IV is DISMISSED WITH PREJUDICE.

B. Count VII: Failure To Intervene

In the Order, the Court held that "Plaintiffs have alleged no facts showing that there was a special relationship between themselves and any. . . Defendants. Nor have Plaintiffs alleged facts showing that the State placed Plaintiffs in danger by acting with deliberate indifference to a known or obvious danger." ECF No. 68 at 46. In an attempt to address these deficiencies, Plaintiffs added two paragraphs in their FAC

> 123. The Fourteenth Amendment imposes a duty on agents of a State to protect individuals from their fellow agents. For example, police officers have a duty to intercede when their follow officers violate the Constitutional rights of a suspect or other citizen C if the agents have a realistic opportunity to intercede.
>
> 124. Defendant James F. Evers intervened in the case of the DeShaws to help a Dummy Corporation, without leave of court. And Evers

> interrogated Mr. Abing, threatened him, tried to bribe him, and ordered him to convey his home to a Dummy Corporation. This behavior was illegal and improper. Meanwhile, Evers's sidekick (John N. Tokunaga) and their supervisors in the OCP (Catherine Awakuni Colon, Jo Ann Uchida Takeuchi, and Michael J. S. Moriyama), all of whom have a special relationship with the State, knew exactly what Evers was doing, because they were assisting him and directing him to do it. But Tokunaga and the supervisors placed Plaintiffs into danger of suffering the loss of their homes by acting with deliberate indifference to a known or obvious danger.

ECF No. 74 ¶¶ 123-24. Neither allegation aids Plaintiffs' case.

The first paragraph simply misstates the legal standard for when a state official must intervene to prevent the violation of a constitutional right. As previously noted, "the general rule is that [a] state is not liable for its omissions." *Munger v. City of Glasgow Police Dep't* , 227 F.3d 1082, 1086 (9th Cir. 2000) (citing *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 195 (1989)). "As a corollary, the Fourteenth Amendment typically 'does not

impose a duty on the state to protect individuals from third parties.'" *Patel v. Kent Sch. Dist.*, 648 F.3d 965, 971 (9th Cir. 2011) (quoting *Morgan v. Gonzales*, 495 F.3d 1084, 1093 (9th Cir. 2007)) (brackets omitted). There are two recognized exceptions to this rule: (1) when there is a "special relationship" between the plaintiff and the state; and (2) when the state affirmatively places the plaintiff in danger by acting with "deliberate indifference" to a 'known or obvious danger." *Id.* at 971-72 (citing *DeShaney*, 489 U.S. at 198-202; *L.W. v. Grubbs*, 92 F.3d 894, 900 (9th Cir. 1996)) (internal quotation marks omitted).

To the extent the first paragraph is an attempt to plead a special relationship between the Plaintiffs and the state, it fails. As the Ninth Circuit explained in *Patel*, the special relationship exception "applies when a state takes a person into its custody and holds him there against his will. The types of custody triggering the exception are incarceration, institutionalization, or other similar restraint of personal liberty." *Patel*, 648 F.3d at 972 (citations

and internal quotation marks omitted). Plaintiff has pleaded nothing of the sort.

As to the so-called state-created danger exception, Plaintiffs claims also fail. First, Plaintiffs' allegations read more like they are challenging affirmative actions rather than the failure to act. The thrust of Plaintiffs' FAC is that Defendants are involved in a conspiracy with Dummy Corporations to deprive Plaintiffs of their homes. Thus, instead of taking umbrage with Defendants' lack of action, Plaintiffs challenge Defendants conduct as co-conspirators. For example, the only factual allegation Plaintiffs added to the FAC is that Defendant Evers *intervened* in DeShaw's case and that various other Defendants assisted him and directed him to do so. As such they have failed to plead a failure to intervene cause of action.

Even if the Court construed such allegations as Defendants' failure to act, Plaintiffs have not alleged sufficient facts to state a claim. They have not alleged which affirmative act placed them in danger. Nor have Plaintiffs alleged how the various

Defendants knew about and were indifferent to the danger. Without more factual detail Plaintiffs cannot state a plausible claim.[32]

Plaintiffs have failed to sufficiently amend their allegations to state a claim. And because their allegations in the FAC are virtually unchanged from those in the Complaint, they have demonstrated that any further leave to amend would be futile. Count VII is DISMISSED WITH PREJUDICE.

C. Statute of Limitations

Even if Plaintiffs had pleaded sufficient factual detail to pursue their § 1983 equal protection and failure to intervene claims, the Court alterna-

---

[32] The Court also notes that the Ninth Circuit cases addressing the state-created danger exception mostly, if not exclusively, relate to a person's interest in bodily security or safety. *See, e.g., Pauluk v. Savage*, 836 F.3d 1117, 1122 (9th Cir. 2016) ("Under the state-created danger doctrine, a state actor can be held liable for failing to protect a person's interest in his personal security or bodily integrity when the state actor affirmatively and with deliberate indifference placed that person in danger.)".

tively concludes that those claims are barred by the statute of limitations. Plaintiffs' § 1983 claims are subject to Hawaii's two-year statute of limitations for personal injury actions. *See* HRS § 657-7; *Taylor v. Regents of the Univ. of Cal.*, 993 F.2d 710, 711-12 (9th Cir. 1993) (explaining that the state personal injury statute of limitations governs actions under 42 U.S.C. § 1983). Therefore, Plaintiffs claims must have accrued before February 16, 2019 (two years prior to the date of the Complaint).

Plaintiffs only identify two alleged actions by non-Judge Defendants that occurred after February 16, 2019. First, Plaintiffs allege that OCP Defendants stole $500 dollars from Abing's credit card account on March 23, 2019 to prevent Abing from paying legal fees. ECF No. 74 ¶ 33. But the exhibits Plaintiffs attach to the FAC belie any theft. Plaintiff's Exhibit B includes a notice from Merchant Services of a disputed charge to GAH Law Group LLC. ECF No. 74-2 at 2. The dispute was initiated by Bank of Hawaii. *Id.* In response to the notice to GAH Law Group LLC, Abing sent a letter to Merchant Services explaining that the $500 charge

was one he personally made to the GAH Law Group on January 9, 2019. *Id.* at 3. Thus, Plaintiff's own exhibit contradicts his allegation that Defendants stole any money. That the bank disputed the charge bears no connection to the allegations in the FAC. Moreover, even if the Court accepted Plaintiffs' characterization of the credit card dispute as theft, why such theft amounts to a denial of equal protection or a failure to intervene violation under § 1983 is not sufficiently explained.

Second, Plaintiffs allege that OCP Defendants sent letters to Plaintiffs on or about October 28, 2020, "offer[ing] to pay large bribes to the Plaintiffs . . . if they would inform against" Stone. ECF No. 74 ¶ 47. But again Plaintiffs have failed to link this allegation to either an equal protection or failure to intervene violation. Standing alone this allegation cannot support Plaintiff's claims under Counts IV and VII and Plaintiffs have alleged no other facts to demonstrate that such claims accrued within the limitations period. Thus, the Court concludes, in the alternative, that these claims are barred by the

statute of limitations and that Counts V and VII are DISMISSED WITH PREJUDICE.

D. Judge Defendants' Request To Strike Allegations

The Judge Defendants seek an order striking all allegations of wrongdoing asserted against them because the Court ruled that they were protected by judicial immunity. *See* ECF No. 76 at 3. While Plaintiffs repeat the dismissed allegations against the Judge Defendants in violation of the Court's Order, the Judge Defendants have not presented any authority for their request. Further, because the Order remains effective, the Judge Defendants are not facing any live allegations. As such, the Court DENIES the request to strike.

E. Remaining State Law Claims

The OCP Defendants urge the Court to dismiss the remaining portions of the state law claims in the FAC: Count I (Abuse Of Power Or Malfeasance), Count IX (Civil Conspiracy), and Count X (IIED) against the non-Judge Defendants acting in their individual capacities. ECF No. 75-1 at 29; ECF

No. 68 at 56 (describing extent to which state law claims remain live).

Courts may decline to exercise supplemental jurisdiction over a state law claim if:

> (1) the claim raises a novel or complex issue of State law,
>
> (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
>
> (3) the district court has dismissed all claims over which it has original jurisdiction, or
>
> (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

28 U.S.C. § 1367(c). Courts declining to exercise supplemental jurisdiction "must undertake a case-specific analysis to determine whether declining supplemental jurisdiction 'comports with the underlying objective of most sensibly accommodating the values of economy, convenience, fairness and comity.'" *Bahrampour v. Lampert*, 356 F.3d 969, 978 (9th Cir. 2004) (citation, internal quotation

marks, and brackets omitted); *see City of Chicago v. Int'l Coll. of Surgeons*, 522 U.S. 156, 172-73 (1997). When a "'case in which all federal-law claims are eliminated before trial, the balance of factors . . . will point toward declining to exercise supplemental jurisdiction over the remaining state-law claims.'" *Acri v. Varian Assocs., Inc.*, 114 F.3d 999, 1001 (9th Cir. 1997) (quoting *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n.7 (1988)) (alteration in original).

Here, considerations of judicial economy, convenience, fairness, and comity weigh in favor of declining jurisdiction over Plaintiffs' state law claims. The Court dismissed the only claims over which it had original jurisdiction, and although the Court addressed Defendants' dispositive motions, the case is still in its earliest stages. There are no other factors compelling the Court to deviate from the common practice of declining supplemental jurisdiction when no federal claims remain. Accordingly, the Court declines to exercise supplemental jurisdiction over Plaintiffs' remaining state law claims.

IV. Conclusion

For the foregoing reasons, the OCP Defendants' Motion and the Disciplinary Defendants' and Judge Defendants' Joinder are GRANTED IN PART AND DENIED IN PART. The Motion and Joinder are GRANTED as to Counts IV, VII, and XII. The Motion and Joinder are also GRANTED as to the state law claims to the extent the claims remained live after the Court's first Order. *See* ECF No. 68 at 56. But the Court's dismissal of the remaining state law claims is only without leave to amend in federal court. The Judge Defendants' request to strike included in the Joinder is DENIED.

Counts IV, VII, and XII are DISMISSED WITH PREJUDICE.

The Court declines to exercise supplemental jurisdiction over Counts I, IX, and X. These counts are DISMISSED WITHOUT LEAVE TO AMEND in federal court.

The Court's previous Order disposes of Plaintiffs' other claims and remains effective. *See* ECF No. 68 at 54-56.

DATED: Honolulu, Hawaii, December 21, 2021.

Seal of the United States District Court for the District of Hawaii

Jill A. Otake
Jill A. Otake
United States District Judge

Civil No. 21-00095 JAO-WRP, *Abing, et. al v. Evers, et. al,* ORDER GRANTING IN PART AND DENYING IN PART (1) OCP DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT FILED ON SEPTEMBER 30, 2021 [ECF NO. 75]; AND (2) DEFENDANTS BRUCE B. KIM, BRADLEY R. TAMM, RYAN SUMMERS LITTLE, REBECCA SALWIN, YVONNE SHINMURA, CHARLENE M. NORRIS, ROY F. HUGHES, GAYLE J. LAU, JEFFREY P. MILLER, PHILIP H. LOWENTHAL, CLIFFORD NAKEA, THE HONORABLE BERT I. AYABE AND THE HONORABLE JEANNETTE H. CASTAGNETTI'S SUBSTANTIVE JOINDER AND MOTION TO DISMISS WITH PREJUDICE FIRST AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF AND DAMAGES [ECF NO. 76]

CIRCUIT COURT'S ORDER AFFIRMING THE DISTRICT COURT'S ORDERS OF DISMISSAL

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED May 12, 2021
MOLLY C. DWYER, CLERK
U.S.COURT OF APPEALS

CHESTER NOEL ABING; DENNIS DUANE DESHAW; SUSAN KAY BROER-DESHAW,

Plaintiff-Appellants,

v.

JAMES F. EVERS; JOHN N. TOKUNAGA; STEPHEN H. LEVINS; LISA P. TONG; MELINDA D. SANCHES; CATHERINE AWAKUNI COLON; JO ANN UCHIDA TAKEUCHI; MICHAEL

No. 22-15097

D.C. No. 1:21-cv-00095-JAO-WRP

MEMORANDUM*

J.S. MORIYAMS; BRUCE B. KIM; BRADLEY R. TAMM; RYAN SUMMERS LITTLE; REBECCA SALWIN; YVONNE R. SHINMURA; CHARLENE M. NORRIS; ROY F. HUGHES; GAYLE J. LAU; JEFFREY P. MILLER; PHILIP H. LOWENTHAL; CLIFFORD L. NAKEA; BERT I. AYABE; JEANNETTE H. CASTAGNETTI,

Defendants-Appellees

Appeal from the United States District Court
for the District of Hawaii
Jill Otake, District Judge, Presiding

Submitted May 10, 2023
San Francisco, California

Before: FERNANDEZ, SILVERMAN, and N.R.SMITH
Circuit Judges.

Plaintiffs Chester Abing, Dennis DeShaw, and Susan Broer-DeShaw appeal pro se from the district court's dismissal for failure to state a claim in their action alleging various federal civil rights and state law claims. We review the dismissal de novo,[33] and we review the denial of leave to amend and decision to decline supplemental jurisdiction for abuse of discretion.[34] We affirm.

The district court properly dismissed Plaintiffs' claims.[35] Hawaii's two-year statute of limitations bars some of Plaintiffs' state law claims,[36] 42

---

[33] *Burgert v. Lokelani Bernice Pauahi Bishop Tr.*, 200 F.3d 661, 663 (9th Cir. 2000).

[34] *United States ex rel. Cafasso v. Gen. Dynamics C4 Sys., In.*, 637 F.3d 1047, 1058 (9th Cir. 2011) (leave to amend); *Dyack v. Northern Mariana Islands,* 317 F.3d 1030, 1037 (9th Cir. 2003) (supplemental jurisdiction); *see also United States v. Hinkson*, 585 F.3d 1247, 1261-63 (9th Cir. 2009)(en banc).

[35] We may affirm dismissal on any ground supported by the record. *Gingery v. City of Glendale*, 831 F.3d 1222, 1226 (9th Cir. 2016).

[36] Haw.Rev.Stat. §§ 662-4, 657-7.

U.S.C. § 1983 claims,[37] and 42 U.S.C. § 1985 claim.[38] Plaintiffs' 42 U.S.C. § 1986 claim was barred by a one-year statute of limitations. 42 U.S.C. § 1986; *RK Ventures, Inc., v. City of Seattle*, 307 F.3d 1045, 1058 (9th Cir. 2002). The continuing violations doctrine does not apply because Plaintiffs failed to make any viable allegations of acts to further the alleged scheme occurring during the two-year period preceding filing of the complaint. See *Ellis v. Salt River Project Agric. Improvement & Power Dist.*, 24 F.4th 1262, 1273 (9th Cir. 2022). *Williams v. Owens-Illinois, Inc.*, 665 F.2d 918, 924 (9th Cir. 1982).

The district court did not abuse its discretion in denying Plaintiffs leave to amend their claims. Their claims are barred by the respective statutes of limitations, and no amendment could cure these

---

[37] Haw.Rev.Stat. § 657-7; *Bird v. Dep't of Hum. Servs.* 935 F.3d 738, 743 (9th Cir. 2019)(per curiam).

[38] Haw.Rev.Stat. § 657-7; see T*aylor v. Regents of Univ. of Cal.,* 993 F.2d 710, 711-12 (9th Cir. 1993).

deficiencies. See *Kroessler v. CVS Health Corp.*, 977 F.3d 803, 815 (9th Cir. 2020); *Nunes v. Ashcroft*, 375 F.3d 805, 808-10 (9th Cir. 2004). Despite having been previously granted leave to amend, Plaintiffs failed to remedy the deficiencies identified by the district court. See *Abagninin v. AMVAC Chem. Corp.*, 545 F.3d 733, 742 (9th Cir. 20-08); see also *Salameh v. Tarsadia Hotel*, 726 F.3d 1124, 1133 (9th Cir. 2013).

Because the district court properly dismissed each of Plaintiffs' federal claims, it did not abuse its discretion when it declined to exercise supplemental jurisdiction over Plaintiffs' remaining state law claims. See 28 U.S.C. § 1367(c)(3); *Dyack,* 317 F.3d at 1037-38; see also *San Pedro Hotel Co., Inc., v. City of Los Angeles,* 159 F.3d 470, 478-79 (9th Cir. 1998). We do not consider arguments raised for the first time on appeal or matters not specifically and distinctly raised and argued in the opening brief. See *Padgett v. Wright*, 587 F.3d 983, 985, 985 n.2 (9th Cir. 2009)(per curiam).

AFFIRMED.

---

*This disposition is not appropriate for publication and is not precedent except as provided by ninth circuit rule 36-3.