CARLSMITH BALL LLP

IAN L. SANDISON 5597
TIM LUI-KWAN 2271
JOHN P. MANAUT 3989
ASB Tower, Suite 2100
1001 Bishop Street
Honolulu, HI 96813
Tel No. 808.523.2500
Fax No. 808.523.0842

Attorneys for Applicant
UNIVERSITY OF HAWAI'I AT HILO

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DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

IN THE MATTER OF	CASE NO. BLNR-CC-16-002
Contested Case Hearing Re Conservation District Use Application (CDUA) HA-3568 for the Thirty Meter Telescope at the Mauna Kea Science Reserve, Ka'ohe Mauka, Hāmakua, Hawai'i, TMK (3) 4-4-015:009	THE UNIVERSITY OF HAWAI'I AT HILO'S MEMORANDUM IN **OPPOSITION TO MAELANI LEE'S MOTION TO INTERVENE FILED JULY 13, 2016** [DOC. 84]; DECLARATION OF COUNSEL; EXHIBIT "1"; CERTIFICATE OF SERVICE

THE UNIVERSITY OF HAWAI'I AT HILO'S MEMORANDUM IN OPPOSITION TO MAELANI LEE'S MOTION TO INTERVENE FILED JULY 13, 2016 [DOC. 84]

Applicant UNIVERSITY OF HAWAI'I AT HILO ("**University**") submits its Memorandum in Opposition to Maelani Lee's Motion to Intervene filed July 13, 2016 [Doc. 84] ("**Motion**").

I. INTRODUCTION

Maelani Lee ("**Lee**") was admitted as a party in the above-captioned matter at the hearing on June 17, 2016. This was confirmed by Minute Order No. 13. Minute Order No. 13 [Doc. 115] at 4. Lee's status as a party to this proceeding has not changed. Accordingly, to the extent that the Motion is one to intervene, as captioned, it is unnecessary.

Though presented as a "Motion to Intervene," however, the Motion appears to ask the Board of Land and Natural Resources ("**Board**") or Hearing Officer to take judicial notice of certain facts not directly related to the subject matter of the contested case hearing—that is, the Conservation District Use Application ("**CDUA**") for the Thirty-Meter Telescope project ("**Project**"). As best as the University can ascertain, the Motion asks the Board or Hearing Officer to take judicial notice of purported "congressional facts" related to the sovereignty of the Hawaiian Islands, arguing that the Hawaiian Islands are not part of the United States or the State of Hawai'i. The Motion then states that the State of Hawai'i has no clear title to the Hawaiian Islands and asks the State to provide clear title. Specifically, Lee asks the Board to:

> **Take Judicial Notice**: A Joint Resolution is a United States Domestic Law, confined only to the boundaries within the United States, not outside the United States like the Islands of Hawai'i. **This is a Congressional Fact**.
>
> * * *
>
> **Take Judicial Notice: The Joint Resolution & The Admissions Act have no Hawaiian Islands or metes and bounds to make the Kingdom of Hawai'i part of the United States of American Inc. This is a Congressional Fact!**

Motion at 1-2 (emphases in original).

Putting aside that Lee's arguments ignore and contradict decades of ***controlling*** legal precedent, the Motion nonetheless should be denied because the supposed "facts" have no bearing on the issues to be decided by the Board. The issues in the contested case should be limited to those that relate to whether or not the CDUA for the Project is consistent with the criteria set forth in Hawai'i Administrative Rules ("**HAR**") § 13-5-30(c). All other issues, and particularly those raised in the Motion, are (1) irrelevant to the matter before the Board and therefore will not assist the Board in its decision-making on the CDUA, and (2) not within the Board's jurisdiction. For those reasons, the Motion should be denied.

II. ARGUMENT

A. THE MATTERS ASSERTED BY THE MOTION WILL NOT ASSIST THE BOARD OR HEARING OFFICER IN DECISION-MAKING ON THE CDUA

As Perpetuating Unique Educational Opportunities ("**PUEO**") argues in its Motion to Set the Issues filed on July 18, 2016 ("**Motion to Set Issues**"), the only issue properly before the Board in this contested case is whether or not the Project is consistent with the eight criteria set forth in HAR Section 13-5-30(c) (referred to as the "**Eight Criteria**"). *See* PUEO Mot. to Set Issues [Doc. 99] at 4.[1] Lee, however, asks the Board to take judicial notice of certain "facts" that assert that the Hawaiian Islands are not part of the State of Hawai'i or the United States; and, therefore, that the Board and the State of Hawai'i do not have clear title to the Mauna Kea lands and cannot take action on the CDUA. Those issues do not relate to consideration of the Eight Criteria. Lee presents no evidence of the relevance of those "facts" to the Board's consideration of the CDUA. Lee's request therefore will not assist the Board in its decision-making on the CDUA.

Under HAR § 13-1-35:

> ***Official notice may be taken of such matters as may be judicially noticed by the courts of the State of Hawai'i.*** Official notice may also be taken of generally recognized technical or scientific facts within the specialized knowledge of the board when parties are given notice either before or during the hearing of the material so noticed and afforded the opportunity to contest the facts so noticed.

HAR § 13-1-35(i) (emphasis added). Hawai'i Rules of Evidence ("**HRE**") Rule 201 provides that a State court may take judicial notice of a fact that is "not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court, or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot

[1] The University, by its Substantive Joinder to PUEO's Motion to Set the Issues filed on August 1, 2016 ("**Joinder**"), supports PUEO's motion and substantively joins in its arguments. To the extent applicable the University incorporates those arguments herein.

reasonably be questioned." HRE Rule 201(b). None of the "facts" that the Motion requests to be noticed are of the sort that the State courts may take notice, and no court has.

Both of Lee's proposed "facts" assert that Hawai'i is not a part of the United States:

> **Take Judicial Notice**: A Joint Resolution is a United States Domestic Law, confined only to the boundaries within the United States, not outside the United States like the Islands of Hawai'i. **This is a Congressional Fact**.[2]
>
> **Take Judicial Notice: The Joint Resolution & The Admissions Act have no Hawaiian Islands or metes and bounds to make the Kingdom of Hawai'i part of the United States of American Inc. This is a Congressional Fact!**

Motion at 1-2 (emphases in original). Those purported facts, however, are ***disputed.*** Hawai'i Courts never have taken judicial notice of an existing or continued sovereign governing entity. Instead, they have held that "there is no factual (or legal) basis for concluding that the Hawaiian Kingdom exists as a state in accordance with recognized attributes of a state's sovereign nature." *State v. French*, 77 Hawai'i 222, 228, 883 P.2d 644, 650 (App. 1994) (parentheses in original; citation and brackets omitted); *see also* note 3 below (citing additional cases). The U.S. Supreme Court has also rejected the notion that the State of Hawai'i is not a part of the United States or that there is any cloud on the State's title to the public lands it holds within the State. *See Hawaii v. Office of Hawaiian Affairs,* 556 U.S. 163, 173, 176 (2009) (finding that the Hawaii Supreme Court erred in reading section of Congress's Apology Resolution as recognizing claims inconsistent with the title held in "absolute fee" by the United States (30 Stat. 750) and conveyed to the ***State of Hawaii*** at statehood; holding that Hawaii Supreme Court incorrectly held that Congress, by adopting the Apology Resolution, took away from the citizens of the ***State of Hawaii*** the authority to resolve an issue that is of great importance to the people of the ***State of***

[2] It is unclear what Lee means when it uses the term "Congressional Fact." To the extent, Lee is referring to Congress's fact-finding authority underlying enactment of a statute, Lee cites to no such statutes or congressional findings that support her positions.

Hawaii) (Alito, J; unanimous court, 9-0). It therefore is inappropriate for the Lee to seek judicial notice of political arguments that have "no factual (or legal) basis." *See id.*

Furthermore, even if the "facts" proposed to be noticed are of the type that may be noticed under HRE Rule 201, the Board and Hearing Officer have the discretion to reject "immaterial, irrelevant, or unduly repetitious evidence as provided by law with a view of doing substantial justice." HAR § 13-1-35(a). Because these "facts" do not concern the CDUA, they are immaterial and irrelevant to this proceeding. Consequently, taking notice of these "facts" will not assist the Board in its decision-making. Accordingly, the University objects to any such notice by the Board of these matters.

B. THE BOARD CANNOT PROVIDE THE RELIEF REQUESTED BY LEE

The Board should also decline to take notice of Lee's facts because the Board does not have jurisdiction to provide the relief that Lee seeks. Lee asks the State, the University, and "any person or representative related to this case, who are pro TMT" to provide proof that the State and the United States have clear title to the Mauna Kea lands and a "treaty to show jurisdiction of their metes & bounds." Mot. at 2-3. The Board, however, does not have jurisdiction to adjudicate matters concerning a nation's sovereignty, a nonjusticiable political question left to the executive branch for resolution.[3] Additionally, neither the Board nor the Hearing Officer can

[3] *See Baker v. Carr*, 369 U.S. 186, 212 (1962) ("[T]he judiciary ordinarily follows the executive as to which nation has sovereignty over a disputed territory, once sovereignty over an area is politically determined and declared, courts may examine the resulting status and decide independently whether a statute applies to that area."); *Wang v. Masaitis*, 416 F.3d 992 (9th Cir. 2005) (for the proposition that a nation's sovereignty is a political question); *Sai v. Clinton*, 778 F.Supp.2d 1 (D. D.C. 2011), *aff'd sub. nom., Sai v. Obama*, 2011 WL 4917030, at *3 (D.C. Cir. Sept. 26, 2011) ("Since its annexation in 1898 and admission to the Union as a State in 1959, Hawaii has been firmly establish as part of the United States. The passage of time and the significance of the issue of sovereignty present an unusual need for unquestioning adherence to a political decision already made.") (citations omitted); *Williams v. United States*, CIV. No. 08-00547 SOM-KSC, 2008 WL 5225870 (D. Haw. Dec. 15, 2008) (dismissing plaintiff's claims challenging the legality of the overthrow for lack of subject matter jurisdiction); *Algal Partners,*

order the State of Hawai'i and the United States to provide proof that Hawai'i is part of the United States, because that is beyond the scope of the powers granted to the Board.[4]

The Board has the discretion to outright deny a contested case when the subject matter is not within the jurisdiction of the Board and therefore has the inherent power to limit issues that it hears during a contested case only to those issues that fall within its adjudicatory jurisdiction. *See* HAR § 13-1-29.1; *see also* HAR § 13-1-35(a) ("The presiding officer may exercise discretion in the admission or rejection of evidence and the exclusion of immaterial, irrelevant, or unduly repetitious evidence as provided by law with a view of doing substantial justice."). As such, the University requests that the Board deny Lee's request to notice the proposed "facts" because they: (1) do not satisfy the requirements for judicial notice under HRE Rule 201; (2) are irrelevant to the Board's decision on whether or not the CDUA is consistent with the criteria set forth in HAR § 13-5-30(c); and (3) beyond the jurisdiction of either the Board or the Hearing Officer to determine.

L.P. v. Santos, Civ. No. 13-00562 LEM-BMK, 2014 WL 1653084, at *2-3 (D. Haw. Apr. 23, 2014) (declining jurisdiction over assertion that the Hawaiian Kingdom continues to exist); *Yellen v. U.S.*, Civ. No. 14-00134 JMS-KSC, 2014 WL 2532460 (D. Haw. June 4, 2014) (granting State of Hawai'i's motion to dismiss plaintiff's claims that the overthrow of the Hawaiian Kingdom was wrongful and that Hawaii is not a valid state for lack of subject matter jurisdiction under the political question doctrine). Citation to unpublished dispositions are permitted under Hawai'i Rules of Appellate Procedure Rule 35(c)(2). Copies of the unpublished cases are attached hereto as Exhibit 1.

[4] *See* Hawai'i Revised Statutes § 183C-3 (Powers and duties of the board and department); *see also Morgan v. Planning Dep't, Cnty. of Kauai*, 104 Hawai'i 173, 184, 86 P.3d 982, 993 (2004) ("An administrative agency can only wield powers expressly or implicitly granted to it by statute. However, it is well established that an administrative agency's authority includes those implied powers that are reasonably necessary to carry out the powers expressly granted.") (citations and quotation marks omitted); *Public Util. Comm'n of Texas v. City Pub. Serv. Bd. of San Antonio*, 53 S.W.3d 310, 315 (Tex. 2001) ("The basic rule is that a state administrative agency has only those powers that the Legislature expressly confers upon it."); *D.A.B.E., Inc. v. Toledo-Lucas Cnty. Bd. of Health*, 96 Ohio St.3d 250, 773 N.E.2d 536, 545-46 (2002) (providing that a while an agency's grant of power may be express or implied, "the limitation put upon the implied power is that it is only such as may be reasonably necessary to make the express power effective").

III. CONCLUSION

For the foregoing reasons, the University respectfully requests the Board to deny Lee's Motion.

DATED: Honolulu, Hawai'i, August 1, 2016.

JAN L. SANDISON
TIM LUI-KWAN
JOHN P. MANAUT

Attorneys for Applicant
UNIVERSITY OF HAWAI'I AT HILO

EXHIBIT 1

Westlaw.

Not Reported in F.Supp.2d, 2008 WL 5225870 (D.Hawai'i)
(Cite as: 2008 WL 5225870 (D.Hawai'i))

C
Only the Westlaw citation is currently available.

United States District Court, D. Hawai'i.
Joseph Ken WILLIAMS, Plaintiff,
v.
UNITED STATES of America, et al., Defendants.

CIV. No. 08–00547 SOM–KSC.
Dec. 15, 2008.

West KeySummary**Constitutional Law 92 ⚿ 2580**

92 Constitutional Law
92XX Separation of Powers
92XX(C) Judicial Powers and Functions
92XX(C)5 Political Questions
92k2580 k. In general. Most Cited Cases

Constitutional Law 92 ⚿2588

92 Constitutional Law
92XX Separation of Powers
92XX(C) Judicial Powers and Functions
92XX(C)5 Political Questions
92k2588 k. Foreign policy and national defense. Most Cited Cases

An inmate's § 1983 claim presented nonjusticiable political questions. The complaint challenged the legality of the overthrow of the Kingdom of Hawaii in 1893 and Hawaii's admission to the Union in 1959. Since these were issues constitutionally committed to Congress, the court lacked jurisdiction to consider the claim. 42 U.S.C.A. § 1983; Article IV, Section 3 of the Constitution.

Joseph Ken Williams, Aiea, HI, pro se.

ORDER OF DISMISSAL

SUSAN OKI MOLLWAY, District Judge.

*1 On December 4, 2008, pro se Plaintiff Joseph Ken Williams ("Plaintiff"), a prisoner incarcerated at Halawa Correctional Facility in Aiea, Hawaii, filed a prisoner civil rights complaint pursuant to 42 U.S.C. § 1983, as well as an application to proceed *in forma pauperis*. Plaintiff names the United States of America, the State of Hawaii, former President William McKinley, Robert Wilcox, former Governor of the State of Hawaii Sanford Dole, the White House and the Office of the Governor for the State of Hawaii as Defendants. Plaintiff seeks compensatory damages in the form of cash, gold, and property including a hotel in Las Vegas. For the following reasons, Plaintiff's Complaint and action are DISMISSED.

LEGAL STANDARD

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.*; 28 U.S.C. § 1915A(b)(1), (2).

The court must construe pro se pleadings liberally and afford the pro se litigant the benefit of any doubt. *Morrison v. Hall*, 261 F.3d 896, 899 n. 2 (9th Cir.2001); *Balistreri v. Pacifica Police Dep't.*, 901 F.2d 696, 699 (9th Cir.1990). "Unless it is absolutely clear that no amendment can cure the defect ..., a pro se litigant is entitled to notice of the complaint's deficiencies and an opportunity to amend prior to dismissal of the action." *Lucas v. Dep't of Corr.*, 66 F.3d 245, 248 (9th Cir.1995); *see also Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir .2000) (en banc).

DISCUSSION

Plaintiff's Complaint is not a model of clarity and is nearly incomprehensible. Although Plaintiff sets forth three grounds for relief, each count is

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composed of nonsensical rambling, save for one or two comprehensible sentences. For this reason, Plaintiff's Complaint is subject to dismissal.

Giving Plaintiff the benefit of every doubt and very liberally interpreting the Complaint, to the court concludes that Plaintiff is attempting to challenge the lawfulness of the overthrow of the Kingdom of Hawaii in 1893 and Hawaii's admission to the Union in 1959. These claims, however, present nonjusticiable political questions. Thus, to the extent Plaintiff makes these claims, his Complaint is dismissed for lack of jurisdiction.

A. Plaintiff's Complaint Fails to State a Claim Under 42 U.S.C. § 1983.

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege 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 color of law. *West v. Atkins*, 487 U.S. 42, 48, 108 S.Ct. 2250, 101 L.Ed.2d 40 (1988).

Plaintiff fails to identify any right secured by the Constitution or law of the United States that was violated by any Defendant acting under color of state law. In short, Plaintiff has failed to allege any violation of his civil rights. Plaintiff's Complaint, therefore, fails to state a cognizable claim under § 1983. Plaintiff's Complaint is DISMISSED for failure to state a claim pursuant to 28 U.S.C. § 1915A.

B. Plaintiff's Complaint Fails to Comply with Rule 8 of the Federal Rules of Civil Procedure.

*2 Rule 8 of the Federal Rules of Civil Procedure ("Fed. R. Civ.P.") requires a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed.R.Civ.P. 8(a)(2). Although the Federal Rules adopt a flexible pleading policy, a complaint must give fair notice and state the elements of the claim plainly and succinctly. *Jones v. Cmty. Redev. Agency*, 733 F.2d 646, 649 (9th Cir.1984). "The Federal Rules require that averments 'be simple, concise and direct.' " *McHenry v. Renne*, 84 F.3d 1172, 1177 (9th Cir.1996) (quoting Fed.R.Civ.P. 8(e)(1)). Simply put, "[a] ll that is required [by Fed.R.Civ.P. 8(a)] is that the complaint gives 'the defendant fair notice of what the plaintiff's claim is and the ground upon which it rests.' " *Kimes v. Stone*, 84 F.3d 1121, 1129 (9th Cir.1996) (quoting *Datagate, Inc. v. Hewlett-Packard Co.*, 941 F.2d 864, 870 (9th Cir.1991)).

The court is aware of its duty to construe the pleadings of a pro se plaintiff liberally. *Thompson v. Davis*, 295 F.3d 890, 895 (9th Cir.2002). This rule of liberal construction is particularly important in civil rights cases. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir.1992). In giving liberal interpretation to a pro se civil rights complaint, however, the court is not permitted to "supply essential elements of the claim that were not initially pled." *Ivey v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir.1982).

The court is unable to discern the underlying facts of Plaintiff's claims sufficiently to even liberally construe any claim as identifying a constitutional violation, or more importantly, indicating that any named Defendant, three of whom are deceased, is responsible for such a violation. Plaintiff's Complaint consists entirely of incoherent sentences, without providing sufficient specific facts for the court, or Defendants, to have notice of who did what to Plaintiff, and how any of Defendants' actions allegedly violated the Constitution or any law. As Plaintiff fails to allege sufficient facts to state a claim against any Defendant, his claims are DISMISSED.

C. Plaintiff Presents Nonjusticiable Political Questions.

As noted, giving Plaintiff the benefit of every doubt and very liberally interpreting the Complaint, the court reads the Complaint as challenging the legality of the overthrow of the Kingdom of Hawaii in 1893 and Hawaii's admission to the Union in 1959. To the extent Plaintiff makes these claims, he presents nonjusticiable political questions.

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"Federal courts are courts of limited jurisdiction." *Kahawaiolaa v. Norton,* 222 F.Supp.2d 1213, 1218 (D.Haw.2002). If a case presents a political question, the federal court lacks subject matter jurisdiction to decide that question. *Corrie v. Caterpillar, Inc.,* 503 F.3d 974, 981 (9th Cir.2007); *see also Schlesinger v. Reservists Comm. to Stop the War,* 418 U.S. 208 (1974) ("[T]he concept of justiciability, which expresses the jurisdictional limitations imposed upon federal courts by the 'case or controversy' requirement of Art. III, embodies ... the political question doctrine [ ]."). The landmark case of *Baker v. Carr* developed the political question doctrine. *Baker,* 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed.2d 663 (1962). *Baker* outlined six independent tests for determining whether courts should defer to the political branches on an issue:

> *3 Prominent on the surface of any case held to involve a political question is found [1] a textually demonstrable constitutional commitment of the issue to a coordinate political department; or [2] a lack of judicially discoverable and manageable standards for resolving it; or [3] the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or [4] the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or [5] an unusual need for unquestioning adherence to a political decision already made; or [6] the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Id. at 217.

Plaintiff's claims raise nonjusticiable political questions because they involve matters that have been constitutionally committed to Congress. Under Article IV, Section 3 of the Constitution, "[n]ew States may be admitted by the Congress into this Union[.]" U.S. Const. art. IV, § 3. By an act of Congress, Hawaii was admitted to the Union in 1959. This court, therefore, lacks jurisdiction to decide any issue regarding the legality of Hawaii's statehood including the lawfulness of events leading to statehood. Thus, as to Plaintiff's claim challenging the lawfulness of the overthrow of the Kingdom of Hawaii in 1893, the Intermediate Court of Appeals for the State of Hawaii aptly stated, "Whatever may be said regarding the lawfulness of the Provisional Government in 1893, the Republic of Hawaii in 1894, and the Territory of Hawaii in 1898, the State of Hawaii ... is now, a lawful government." *State v. Fergerstrom,* 106 Hawai'i 43, 55, 101 P.3d 652, 664 (Haw.App.2004).

Adjudication of Plaintiff's claims would essentially place this court in the shoes of Congress. Thus, this court lacks jurisdiction over said claims. Accordingly, Plaintiff's claims are DISMISSED.

CONCLUSION

Plaintiff's pleading fails to set forth allegations from which the court can find that any Defendant deprived him of a protected right. In addition, Plaintiff fails to allege sufficient facts to state a claim against any Defendant pursuant to Rule 8 of the Fed.R.Civ.P. Plaintiff's claims are, therefore, **DISMISSED** for failure to state a claim. *See* 28 U.S.C. § 1915A.

Although the court must construe pro se pleadings liberally and afford the pro se litigant the benefit of any doubt, this court is unable to determine how any amendment to this pleading could be anything but futile. The court concludes that Plaintiff's apparent challenges to the legality of the overthrow of the Kingdom of Hawaii in 1893 and Hawaii's admission to the Union in 1959 are nonjusticiable political questions. Accordingly, Plaintiff's claims are **DISMISSED** for lack of jurisdiction. Leave to amend is not granted. All pending motions before the court are **DENIED.** The Clerk of Court is **DIRECTED** to enter Judgment and close this action.

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*4 IT IS SO ORDERED.

D.Hawai'i,2008.
Williams v. U.S.
Not Reported in F.Supp.2d, 2008 WL 5225870 (D.Hawai'i)

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2014 WL 1653084
Only the Westlaw citation is currently available.
United States District Court,
D. Hawai'i.

ALGAL PARTNERS, L..P., a Delaware limited partnership, Plaintiff,

v.

Jon Freeman Eleu SANTOS, aka Sir Jon Freeman Eleu Santos, aka Jon Santos, Defendant.

Civil No. 13–00562 LEK–BMK.

Signed April 23, 2014.

Attorneys and Law Firms

David Dana Day, William C. McCorriston, McCorriston Miller Mukai MacKinnon LLP, Honolulu, HI, for Plaintiff.

Jon Freeman Eleu Santos, Kahului, Maui, HI, pro se.

ORDER GRANTING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON COUNT I OF THE COMPLAINT AND MOTION TO DISMISS, OR IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT ON DEFENDANT JON FREEMAN ELEU SANTOS, AKA SIR JON FREEMAN ELEU SANTOS, AKA JON SANTOS'S COUNTERCLAIM FILED ON JANUARY 14, 2014; *AND DENYING DEFENDANT'S MOTIONS TO DISMISS*

LESLIE E. KOBAYASHI, District Judge.

*1 Before the Court are: (1) Plaintiff Algal Partners, L.P.'s ("Plaintiff") Motion for Partial Summary Judgment on Count I of the Complaint and Motion to Dismiss, or in the Alternative, for Summary Judgment on Defendant Jon Freeman Eleu Santos, AKA Sir Jon Freeman Eleu Santos, AKA Jon Santos's Counterclaim Filed on January 14, 2014 ("Plaintiff's Motion"), filed January 22, 2014; [dkt. no. 9;] (2) pro se Defendant Jon Santos's ("Defendant") Motion to Dismiss Complaint, filed January 31, 2014 ("Defendant's 1/31/14 Motion"); [dkt. no. 13;] and (3) Defendant's Motion to Dismiss, filed February 18, 2014 ("Defendant's 2/18/14 Motion," collectively "Defendant's Motions") [dkt. no. 24]. Defendant filed his memorandum in opposition to Plaintiff's Motion on February 18, 2014, and Plaintiff filed its reply on February 20, 2014. [Dkt. nos. 20, 23.] Plaintiff filed its two memoranda in opposition to Defendant's Motions on March 17, 2014, and Defendant filed two documents on that same day, which the Court construes as a supplemental memorandum in support of Defendant's Motions and a supplemental memorandum in support of his opposition to Plaintiff's Motion. [Dkt. nos. 30–33.]

The Court finds these matters suitable for disposition without a hearing pursuant to Rule LR7.2(d) of the Local Rules of Practice of the United States District Court for the District of Hawai'i ("Local Rules"). After careful consideration of the motions, supporting and opposing memoranda, and the relevant legal authority, Plaintiff's Motion is HEREBY GRANTED and Defendant's Motions are HEREBY DENIED for the reasons set forth below.

BACKGROUND

Plaintiff, a Delaware limited partnership, filed its Complaint on October 28, 2013, asserting diversity jurisdiction against Defendant, a Hawai'i resident, related to Defendant's claim of title to property that Plaintiff allegedly owns on and near Kalanikahua Lane in Haiku, Maui ("the Property"). [Complaint at ¶¶ 1–2, 11–17, 25–26.] Plaintiff alleges that on June 18, 2012, it listed the Property, comprised of two parcels ("Parcel 1" and "Parcel 2"), for sale. [*Id.* at ¶¶ 23–24.] Subsequently, Defendant, who at one time did construction on the Property, recorded or caused to be recorded a "Notice of Ownership" of each Parcel ("Notice 1" and "Notice 2") as "representative and agent for the Hawaiian Kingdom Nation". [1] [*Id.* at ¶¶ 25–27.] Plaintiff alleges that, on or about September 20, 2013, it learned of the Notices when its agent received certified copies of them from Defendant, along with a two-page handwritten letter, entitled, "A message to you as owner of the land." [*Id.* at ¶¶ 32–34.]

Plaintiff further alleges that, on or about October 14, 2013, a prospective buyer made an offer on the Property for the asking price of $9.9 million, but subsequently, during negotiations, Defendant's Notices "proximately caused Prospective Buyer to choose not to purchase the Haiku Property." [*Id.* at ¶¶ 24, 35–36.] Plaintiff has not been

able to find another buyer and has incurred expenses to "counteract the effect of Defendant's slanderous publications" and to maintain the Property. [*Id.* at ¶¶ 37–40.] In preliminary title reports from October 2013, Title Guaranty of Hawai'i, stated its belief that Defendant's Notices do not have any legal effect on Plaintiff's title to either parcel. [*Id.* at ¶¶ 41–42 (citing *id.*, Exhs. E, F (reports)).]

*2 The Complaint alleges the following claims: quiet title ("Count I"); preliminary injunction/permanent injunction ("Count II"); slander of title ("Count III"); and punitive damages ("Count IV").[2] Plaintiff seeks the following relief: quiet title as to the Property; preliminary and permanent injunctive relief; special, general and punitive damages; attorneys' fees and costs; and any other appropriate relief.

In his Answer to Complaint and Counterclaim ("Counterclaim"), filed January 14, 2014, Defendant appears to allege that the Property belongs to the Hawaiian Kingdom of King Kamehameha I ("the Kingdom"), and thus Defendant, as the Kingdom's representative, is the proper owner and is due all rents on the Property. [Dkt. no. 8, at pgs. 22–23.]

DISCUSSION

I. *Defendant's Motions*

The Court first turns to Defendant's Motions, which challenge the Court's jurisdiction. All of Defendant's filings consist of short legal statements, interspersed with long paragraphs of Hawaiian words and their apparent translations that amount to un-punctuated narratives that appear to have little to do with the Property or the specific facts of this case. Since Defendant is pro se, however, the Court construes his filings liberally. *See Welsh v. Wilcox Mem'l Hosp.*, Civil No. 12–00609 LEK–KSC, 2012 WL 6047745, at *1 (D. Hawai'i Dec. 4, 2012) ("[P]ro se litigants are held to less stringent standards than those of their legal counterparts." (citing *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam); *Jackson v. Carey*, 353 F.3d 750, 757 (9th Cir.2012)); *see also, e.g., Ogeone v. United States*, Civil No. 13–00166 SOM/RLP, 2013 WL 3807798, at *3 (D. Hawai'i July 19, 2013) ("A pro se litigant's filings must be read more liberally than those drafted by counsel." (citations omitted)).

Taken together, Defendant's Motions appear to contend that this Court does not have jurisdiction over the present case because it concerns land belonging to a foreign sovereign, the Kingdom, and seeks judgment against a foreign subject, Defendant. These arguments against federal court jurisdiction have been repeatedly rejected by this district court and others that have considered them.

First, Defendant argues, by citing lengthy materials authored by David Keanu Sai, Ph.D., that "the Hawaiian Kingdom continues to exist and is under a prolonged and illegal occupation by the United States." [Mem. in Supp. of Def.'s 2/18/14 Motion, at 11.] This Court, however, does not have jurisdiction to rule on this political question. As this district court explained,

> Plaintiff's claims raise nonjusticiable political questions because they involve matters that have been constitutionally committed to Congress. Under Article IV, Section 3 of the Constitution, "[n]ew States may be admitted by the Congress into this Union[.]" U.S. Const. art. IV, § 3. By an act of Congress, Hawaii was admitted to the Union in 1959. This court, therefore, lacks jurisdiction to decide any issue regarding the legality of Hawaii's statehood including the lawfulness of events leading to statehood. Thus, as to Plaintiff's claim challenging the lawfulness of the overthrow of the Kingdom of Hawaii in 1893, the Intermediate Court of Appeals for the State of Hawaii aptly stated, "Whatever may be said regarding the lawfulness of the Provisional Government in 1893, the Republic of Hawaii in 1894, and the Territory of Hawaii in 1898, the State of Hawaii ... is now, a lawful government." *State v. Fergerstrom*, 106 Hawai'i 43, 55, 101 P.3d 652, 664 (Haw.App.2004).
>
> *3 Adjudication of Plaintiff's claims would essentially place this court in the shoes of Congress. Thus, this court lacks jurisdiction over said claims.

Williams v. United States, CIV. No. 08–00547 SOM–KSC, 2008 WL 5225870, at *3 (D. Hawai'i Dec. 15, 2008) (alterations in *Williams*). Moreover, courts have rejected these same arguments made by Dr. Sai in other cases. *See e.g., Sai v. Clinton*, 778 F.Supp.2d 1, 6 (D.D.C.) ("Plaintiff's claims present this Court with a nonjusticiable political question."), *aff'd sub nom. Sai v. Obama*, No. 11–5142, 2011 WL 4917030 (D.C.Cir. Sept. 26, 2011). Since this Court does not have the jurisdiction to adjudge foreign affairs constitutionally delegated to

Congress, it may not rule on whether the United States "[i]llegally usurp[ed] Hawaiian sovereignty." *See* Mem. in Supp. of Def.'s 2/18/14 Motion at 8. It does, however, have jurisdiction to quiet title to land situated in the State of Hawai'i. *See United States v. Byrne,* 291 F.3d 1056, 1060 (9th Cir.2002) ("The federal district courts' jurisdiction over actions concerning real property is generally coterminous with the states' political boundaries.").

Second, insofar, as this Court has jurisdiction to resolve disputes between citizens of diverse states, *see* 28 U.S.C. § 1332, it has jurisdiction over Defendant. "Federal cases have also rejected claims based on the argument that a person is a member of the Kingdom of Hawaii." *Kupihea v. United States,* Civ. No. 09–00311 SOM/KSC, 2009 WL 2025316, at *2 (D. Hawai'i July 10, 2009) (citations omitted). Specifically,

> the Ninth Circuit, this district court, and Hawai'i state courts have all held that the laws of the United States and the State of Hawai'i apply to all individuals in this State. *See United States v. Lorenzo,* 995 F.2d 1448, 1456 (9th Cir.1993) (holding that the Hawai'i district court has jurisdiction over Hawai'i residents claiming they are citizens of the Sovereign Kingdom of Hawai'i); *Kupihea v. United States,* 2009 WL 2025316, at *2 (D.Haw. July 10, 2009) (dismissing complaint seeking release from prison on the basis that plaintiff is a member of the Kingdom of Hawai'i); *State v. French,* 77 Hawai'i 222, 228, 883 P.2d 644, 649 (Haw.App.1994) ("[P]resently there is no factual (or legal) basis for concluding that the [Hawaiian] Kingdom exists as a state in accordance with recognized attributes of a state's sovereign nature.") (quotations omitted).

Moniz v. Hawaii, No. CIV. 13–00086 DKW, 2013 WL 2897788, at *2 (D. Hawai'i June 13, 2013) (alterations in *Moniz*); *see also Rice v. Cayetano,* 528 U.S. 495, 524 (2000) ("The Constitution of the United States, too, has become the heritage of all the citizens of Hawaii."). Defendant admits the allegation that he is a United States citizen and/or domiciliary of the State of Hawai'i. [Answer at ¶ 3.] Thus, whether or not Defendant maintains that he is also a citizen of the Kingdom of Hawai'i, this Court has jurisdiction over him. For the foregoing reasons, Defendant's Motions, arguing that this Court lacks jurisdiction over Plaintiff's claims, are DENIED.

II. ***Plaintiff's Motion***

*4 Since this Court finds that it has jurisdiction to hear Plaintiff's claims, it now turns to the merits of Plaintiff's Motion.

A. ***Partial Summary Judgment***

On January 22, 2014, along with its Motion, Plaintiff filed its Concise Statement of Facts in Support of Plaintiff's Motion ("Plaintiff's CSOF"). [Dkt. no. 10.] Although Defendant did file a memorandum in opposition to Plaintiff's Motion, [dkt. no. 20,] he did not file his own concise statement of facts. According to Local Rule 56.1(g), "material facts set forth in the moving party's concise statement will be deemed admitted unless controverted by a separate concise statement of the opposing party." Thus, the material facts set forth in Plaintiff's CSOF are deemed admitted for the purposes of Plaintiff's Motion.

Plaintiff argues that there is no genuine issue of material fact that it owns the Property in fee simple, and that Defendant has no interest in the Property, and thus Plaintiff is entitled to judgment as a matter of law on its quiet title claim against Defendant. *See* Fed.R.Civ.P. 56(a) ("The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.").

Haw.Rev.Stat. § 669–1 governs quiet title actions in Hawai'i, and states, in pertinent part, "[a]ction may be brought by any person against another person who claims, or who may claim adversely to the plaintiff, an estate or interest in real property, for the purpose of determining the adverse claim." Plaintiff argues that it owns the Property outright and that Defendant has no interest in the Property in spite of the Notices.

The Hawai'i Supreme Court has explained the burdens in a quiet title action:

> In an action to quiet title, the burden is on the plaintiff to prove title in and to the land in dispute, and, absent such proof, it is unnecessary for the defendant to make any showing. *State v. Zimring,* 58 Haw. 106, 110, 566 P.2d 725, 729 (1977)

> (citations omitted). The plaintiff has the burden to prove either that he has paper title to the property or that he holds title by adverse possession. *Hustace v. Jones,* 2 Haw.App. 234, 629 P.2d 1151 (1981); *see also Harrison v. Davis,* 22 Haw. 51, 54 (1914). While it is not necessary for the plaintiff to have perfect title to establish a prima facie case, he must at least prove that he has a substantial interest in the property and that his title is superior to that of the defendants. *Shilts v. Young,* 643 P.2d 686, 689 (Alaska 1981). *Accord Rohner v. Neville,* 230 Or. 31, 35, 365 P.2d 614, 618 (1961), *reh'g denied,* 230 Or. 31, 368 P.2d 391 (1962).

Maui Land & Pineapple Co. v. Infiesto, 76 Hawai'i 402, 407–08, 879 P.2d 507, 512–13 (1994). A plaintiff may prove a substantial interest in a property by offering a deed.

> Recitals of fact in a deed purporting to establish an interest in real property are admissible to prove that such an interest existed "unless the circumstances indicate lack of trustworthiness." *See* [*Maui Land & Pineapple,* 76 Hawai'i at] 406–07, 879 P.2d at 511–12; Haw. R. Evid. 803(b)(15). For instance, in *Maui Land & Pineapple,* the Supreme Court held that the circuit court did not abuse its discretion in considering a recital in a deed that a grantor of real property was "lawfully seized in fee simple" and that the property was "clear and free of all encumbrances." 76 Hawai'i at 406–07, 879 P.2d at 511–12 (internal quotation marks omitted).

*5 Here, in the February 1912 Deed, S. Hakuole and O.H. Hakuole declared that they were "lawfully seized of the [Subject Property]" and that they had "a good and lawful right to sell the same[.]" Appellants do not address these statements, and nothing in the record indicates that they are untrustworthy; S. Hakuole and O.H. Hakuole share the same last name as H.W. Hakuole, leading to a reasonable inference that they inherited an interest in the Subject Property. As Makila claims paper title through mesne conveyances arising from the February 1912 Deed, Makila has made a prima facie showing that it has a substantial interest in the Subject Property.

Makila Land Co., LLC v. Dizon, No. 30294, 2013 WL 1091721, at *2–3 (Hawai'i Ct.App.2013) (some alterations in *Makila Land*).

To rebut a plaintiff's showing of a substantial interest in the property, the defendant must prove that its title is superior to the plaintiff's. However, at summary judgment, defendant need not prove perfect title. *Alexander & Baldwin, Inc. v. Silva,* 124 Hawai'i 476, 487, 248 P.3d 1207, 1218 (Ct.App.2011). "[I]n an action to quiet title, only the relative interests of the parties to the action may be considered." *Omerod v. Heirs of Kaheananui,* 116 Hawai'i 239, 268, 172 P.3d 983, 1012 (2007) (citations omitted).

Here, Plaintiff has offered undisputed evidence that it owns the Property in fee simple. The Property is comprised of two parcels of abutting land in Haiku, Maui, with a residence ("the Haiku House"). [Pltf.'s CSOF at ¶¶ 2–4, 6; *id.*, Exh. A (warranty deed describing parcels, including metes and bounds) at 301–05.] On October 18, 1989, First American Title Insurance Company issued a Policy of Title Insurance on behalf of Alham, Inc., insuring that Alham, Inc. had a fee simple estate in the Property. [*Id.* at ¶ 7; *id.*, Exh. E (policy).]

On November 29, 1989, Alham, Inc. conveyed by warranty deed all right, title and interest in the Property to Plaintiff, covenanting that it "is seized of the said premises in fee simple, and has good right to convey the same." [*Id.* at ¶¶ 8–9; *id.*, Exh. A at 299.] Plaintiff recorded the deed with the Land Court on December 19, 1989 as Liber Number 24018, page 298. [*Id.*, Exh. A .] These facts alone are sufficient under *Maui Land & Pineapple* and its progeny to prove a substantial interest in the Property. *See, e.g.,* 76 Hawai'i at 406–08, 879 P.2d at 511–13; *Makila Land,* 2013 WL 1091721, at *2–3.

In addition, to support its substantial interest, Plaintiff provides undisputed evidence that: the Property is "a cherished family retreat for members of Plaintiff's [President's] family[;]" [Pltf.'s CSOF at ¶ 10;] Plaintiff has paid property taxes every year since it acquired the Property; [*id.* at ¶ 11;] no one (including Defendant) has ever asserted that the warranty deed was invalid or that it did not convey title to Plaintiff; [*id.* at ¶ 12;] and Title Guaranty of Hawaii prepared a Preliminary Report on January 6, 2014 showing that Plaintiff is the fee simple owner of the Property [*id.* at ¶¶ 13–14].

*6 Similarly, there is no genuine issue of material fact that Defendant's alleged interest in the Property is inferior to Plaintiff's substantial interest. His sole claim to the Property is the Notices. In both notices, which are identical except for the land descriptions, Defendant claims "[a]ll Right, Title, and Interest" in the Parcel "as a representative and agent for the Hawaiian Kingdom Nation With his Executive Authority[.]" [*Id.* at ¶¶ 16–17; *id.*, Exhs. B (Notice 1), C (Notice 2).] The Notices, however, likely have no valid or enforceable effect on title, as stated by Title Guaranty of Hawaii. [*Id.* at ¶ 20; *id.*, Exh. D (preliminary report) at 2–3.]

Further, Defendant has admitted that he does not own the Property. On or about April 1, 2011, Defendant contacted Plaintiff's agent and stated that his company was interested in *renting* the Haiku House on behalf of his company's senior executives.[3] [*Id.* at ¶ 15.] Further, Defendant addressed Plaintiff as the "owner of the land" in the handwritten letter he included with the certified copies of Notice 1 and Notice 2 received by Plaintiff on or about September 20, 2013. [*Id.* at ¶¶ 18–19.] These facts, which are deemed admitted, show that Defendant's alleged interest in the Property is inferior to Plaintiff's, and that Defendant has no interest in the Property.

These undisputed facts are consistent with Defendant's filings. Although he clearly feels strongly about Hawai'i and its history, Defendant does not state once, in the hundreds of pages he has filed, a single connection between himself and the Property that would give him a basis for a claim of a legally recognizable interest in the Property.[4] Even viewing the evidence in the light most favorable to Defendant, there is no dispute that Defendant has no legal interest in the Property. *See Crowley v. Bannister*, 734 F.3d 967, 976 (9th Cir.2013) (holding that at summary judgment, the test is, "viewing the facts in the light most favorable to the nonmoving party, whether there are any genuine issues of material fact") (citations and quotation marks omitted)).

Since there is no genuine issue of material fact that Plaintiff owns the Property in fee simple, and that Defendant has no interest in the Property, the Court GRANTS Plaintiff's Motion to the extent it seeks summary judgment as to Count I of the Complaint.

B. *Dismissal of Defendant's Counterclaim*

In his Counterclaim, Defendant states, in part,

> 2. Property has been Established as under the Hawaiian Kingdom of Kamehameha I.
>
> Property was wrongfully Transferred.
>
> Ownership and Title to property should be held in the Name of Hawaiian Kingdom of King Kamehameha I of Monarch
>
> Defendant its Representative and Agent Jon Santos Prays as Follows:
>
> A. That Judgment he [sic] entered in Favor of Defendant its Representative and Agent Jon Santos.
>
> B. Defendant its Representative and Agents Jon Santos Claims Ownership and Titles to its Rightful Owner as Heir upon the Heavens as His Principality of this Hawaiian Kingdom of King Kamehameha I of Monarch.
>
> *7 C. That all Cash that resides as Rent Occupying of this Property be Awarded to the Defendant who's has the Executive Power and Authority of the Representative and Agent of this Hawaiian Kingdom of King Kamehameha I as Monarch.

[Answer at pgs. 22–23.[5]] Even construing this pleading liberally, *see Ogeone*, 2013 WL 3807798, at *3, Defendant's argument is essentially the same as in his other filings: that the Property actually belongs to the Kingdom and, more particularly, to its agent—Defendant. As discussed above, whether the Kingdom has a right to the Property is a nonjusticiable political question, which this Court has no jurisdiction to resolve. *See Williams*, 2008 WL 5225870, at *3; *Sai*, 778 F.Supp.2d at 6. For this reason, the Court GRANTS Plaintiff's Motion to the extent that it seeks dismissal of Defendant's Counterclaim for lack of subject matter jurisdiction. The Court FINDS that amendment of the Counterclaim would be futile, and thus dismissal of Defendant's Counterclaim is WITH PREJUDICE. *See Cal. ex rel. Cal. Dep't of Toxic Substances Control v. Neville Chem. Co.*, 358 F.3d 661, 673 (9th Cir.2004) ("denial of leave to amend is appropriate if the amendment would be futile" (internal quotations and citations omitted)).

CONCLUSION

On the basis of the foregoing, Defendant's Motion to Dismiss Complaint, filed January 31, 2014, and his Motion to Dismiss, filed February 18, 2014, are HEREBY DENIED. Plaintiff's Motion for Partial Summary Judgment on Count I of the Complaint and Motion to Dismiss, or in the Alternative, for Summary Judgment on Defendant Jon Freeman Eleu Santos, AKA Sir Jon Freeman Eleu Santos, AKA Jon Santos's Counterclaim Filed on January 14, 2014, filed January 22, 2014 is HEREBY GRANTED in its entirety. Defendant Jon Santos's Counterclaim, filed January 14, 2014, is DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.

All Citations

Not Reported in F.Supp.2d, 2014 WL 1653084

Footnotes

1 Although Plaintiff alleges that Notice 1 was recorded on or about June 18, 2012, there is no indication from the face of the Notice that it was recorded on that date. Notice 1 was signed twice by Defendant on August 7, 2013, notarized on August 7, 2013, and stamped as recorded by the Bureau of Conveyances on August 8, 2013 as Document Number A–49680869. The same dates appear on Notice 2, which was recorded as Document Number A–49680868.

2 The Court notes that Counts II and IV-the claims for injunctive relief and punitive damages-are remedies and not independent causes of action. *See e.g., Billete v. Deutsche Bank Nat ' l Trust Co.*, Civil No. 13–00061 LEK–KSC, 2013 WL 2367834, at *7 (D. Hawai'i May 29, 2013) (injunctive relief); *Lee v. Gov't Emps. Ins. Co.*, 911 F.Supp.2d 947, 971–72 (D. Hawai'i 2012) (punitive damages). As such, the only claims that Plaintiff makes are to quiet title and for slander of title.

3 On or about April 12, 2011 he informed the agent that his company would not rent the Haiku House. [Complaint at ¶ 22.]

4 The closest Defendant comes to stating an interest in any specific land whatsoever (and that he is not claiming right to all of the Hawaiian islands) is the following:

> There are a few pieces Aina "Land" from Maui, Lanai, Big Island, Oahu, and Kauai Ni'ihau that I must take back and be recognized under my principality, we need not all these Lands in Hawaii just a few and the rest of these lands stay as the way they are here in Hawaii.

[Def.'s 2/18/14 Motion, Exh. 1 at 8.]

5 The page numbers in the Court's citation to the Answer refer to the pages as they appear in the district court's cm/ecf system.

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Citing References (6)

Treatment	Title	Date	Type	Depth	Headnote(s)
Discussed by	**1. Algal Partners, L.P. v. Santos** 2014 WL 2800771, *1+ , D.Hawai'i Before the Court is Plaintiff Algal Partners L.P.'s ("Plaintiff") Motion for FRCP Rule 54(b) Certification ("Motion"), filed on May 12, 2014. [Dkt. no 47.] The Court finds this...	June 19, 2014	Case		—
Cited by	**2. Shayefar v. Kaleleiki** 2015 WL 9412111, *9 , D.Hawai'i Plaintiffs Mehrdad and Gina Shayefar are a husband and wife who assert that they have clear title to a 7.846 acre lot of undeveloped land located on the island of Maui. On January...	Dec. 22, 2015	Case		—
Cited by	**3. Amsterdam v. Hawaii** 2015 WL 6510351, *4 , D.Hawai'i Before the Court are pro se Plaintiff C. Kaui Jochanan Amsterdam's ("Plaintiff") "Motion for an Immediate Temporary Injunction Regarding the Thirty Meter Telescope or TMT Project...	Oct. 27, 2015	Case		—
Cited by	**4. Riley v. National Ass'n of Marine Surveyors, Inc.** 2014 WL 3579651, *4 , D.Hawai'i Before the Court is Defendant Society of Accredited Marine Surveyors, Inc.'s ("SAMS") Motion to Dismiss Complaint Filed March 17, 2014 ("Motion"), filed on April 25, 2014. [Dkt....	July 21, 2014	Case		—
Cited by	**5. Shinn v. EWM Enterprises, LP** 2014 WL 2696640, *2 , D.Hawai'i On May 1, 2014, Plaintiff pro se David Shinn filed a complaint and Application to Proceed in District Court Without Prepaying Fees or Costs ("Application"). On May 8, 2014, the...	June 12, 2014	Case		—
Mentioned by	**6. Yellen v. U.S.** 2014 WL 2532460, *3 , D.Hawai'i On November 15, 2013, Plaintiff Mike Yellen ("Plaintiff") filed this action against the United States, the "United States Military," United States President Barack Obama, the State...	June 05, 2014	Case		—

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2014 WL 2532460
Only the Westlaw citation is currently available.
United States District Court,
D. Hawai'i.

Mike YELLEN, Plaintiff,
v.
UNITED STATES of America; State of Hawaii; Neil Abercrombie; Jane/John Does 1–1000; President Barack Obama; United States Military, Defendants.

Civ. No. 14–00134 JMS–KSC. | Signed June 4, 2014. | Filed June 5, 2014.

Attorneys and Law Firms

Mike Yellen, Hilo, HI, pro se.

Deirdre Marie–Iha, Marissa Hime Iolana Luning, Department of the Attorney General–State of Hawaii, Honolulu, HI, for Defendants.

ORDER GRANTING STATE OF HAWAII AND GOVERNOR ABERCROMBIE'S MOTION TO DISMISS, DOC. NO. 9

J. MICHAEL SEABRIGHT, District Judge.

I. *INTRODUCTION*

*1 On November 15, 2013, Plaintiff Mike Yellen ("Plaintiff") filed this action against the United States, the "United States Military," United States President Barack Obama, the State of Hawaii (the "State"), and Hawaii State Governor Neil Abercrombie ("Governor Abercrombie") (collectively "Defendants"), asserting violations of the Constitution and international law committed in the overthrow of the Hawaiian monarchy in 1893 and Hawaii's subsequent annexation by the United States. Plaintiff seeks injunctive and declaratory relief (1) declaring Defendants' actions void such that the Hawaii government is restored back to the Kingdom of Hawaii; and (2) prohibiting Defendants from selling public lands within Hawaii, which were ceded by the Republic of Hawaii to the United States upon annexation.

Currently before the court is the State's and Governor Abercrombie's ("State Defendants") Motion to Dismiss, Doc. No. 9, in which they argue, among other things,[1] that the court lacks subject matter jurisdiction because the Complaint raises the nonjusticiable political question as to the validity of Hawaii as a state of the United States. Plaintiff filed an Opposition on May 20, 2014, Doc. No. 18, and State Defendants filed a Reply on May 27, 2014, Doc. No. 19. Pursuant to Local Rule 7.2(d), the court determines this Motion without a hearing, and GRANTS State Defendants' Motion to Dismiss.

II. *STANDARD OF REVIEW*

A motion to dismiss based on the political question doctrine raises the court's subject matter jurisdiction and is therefore properly viewed under Federal Rule of Civil Procedure 12(b)(1). *See Corrie v. Caterpillar, Inc.*, 503 F.3d 974, 982 (9th Cir.2007) (construing motion seeking dismissal on the basis that the action raised a political question as a Rule 12(b)(1) motion).

Under Rule 12(b)(1), a defendant may challenge the plaintiff's jurisdictional allegations in one of two ways, "facial" or "factual." *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir.2004). A "facial" attack, as is the case here, accepts the truth of the plaintiff's allegations but asserts that they "are insufficient on their face to invoke federal jurisdiction ." *Id.* The court resolves a facial attack as it would a motion to dismiss under Rule 12(b)(6): Accepting the plaintiff's allegations as true and drawing all reasonable inferences in the plaintiff's favor, the court determines whether the allegations are sufficient invoke the court's jurisdiction. *Pride v. Correa*, 719 F.3d 1130, 1133 (9th Cir.2013).

III. *ANALYSIS*

State Defendants argue that this action raises a nonjusticiable political question—*i.e.*, whether the overthrow of the Hawaiian Kingdom was wrongful such that Hawaii is not a valid state of the United States. The court agrees that it lacks subject matter jurisdiction.

Under the political question doctrine, "[t]he conduct of the foreign relations of our government is committed by the Constitution to the executive and legislative [branches] ... and the propriety of what may be done in the exercise of this political power is not subject to judicial inquiry or decision."

Corrie, 503 F.3d at 982 (quoting *Oetjen v. Cent. Leather Co.,* 246 U.S. 297, 302 (1918)); *see also Koohi v. United States,* 976 F.2d 1328, 1331 (9th Cir.1992) ("The political question doctrine serves to prevent the federal courts from intruding unduly on certain policy choices and value judgments that are constitutionally committed to Congress or the executive branch."). The court does not lack jurisdiction, however, "merely because [a] decision may have significant political overtones." *Japan Whaling Ass'n v. Am. Cetacean Soc'y,* 478 U.S. 221, 230 (1986). Indeed, it is "error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance." *Baker v. Carr,* 369 U.S. 186, 211 (1962).

***2** The "classic" political question case, *Luther v. Borden,* 48 U.S. 1 (1849), addressed claims under the Guarantee Clause of the Constitution,[2] where two rival governments disputed which was the lawful government of Rhode Island. *See also Massachusetts v. Laird,* 400 U.S. 886, 895 n. 4 (1970) (discussing *Luther*). *Luther* held that "it rests with Congress," not the judiciary, "to decide what government is the established one in a State." 48 U.S. at 42. *Luther* explained:

> [W]hen the senators and representatives of a State are admitted into the councils of the Union, the authority of the government under which they are appointed, as well as its republican character, is recognized by the proper constitutional authority. And its decision is binding on every other department of the government, and could not be questioned in a judicial tribunal.
>
> *Id.*

The political question doctrine has since been applied to a number of different cases, and *Baker v. Carr,* 369 U.S. 186 (1962), identifies six independent factors, any one of which demonstrates the presence of a nonjusticiable political question:

> [1] a textually demonstrable constitutional commitment of the issue to a coordinate political department; or [2] a lack of judicially discoverable and manageable standards for resolving it; or [3] the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or [4] the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or [5] an unusual need for unquestioning adherence to a political decision already made; or [6] the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

369 U.S. at 217. Determining whether a case involves a nonjusticiable political question requires a "discriminating inquiry into the precise facts and posture of the particular case," *id.,* and an "evaluation of the particular question posed, in terms of the history of its management by the political branches, of its susceptibility to judicial handling in light of its nature and posture in the specific case, and of the possible consequences of judicial action." *Id.* at 211–12.

The entire basis of Plaintiff's Complaint is that the overthrow of the Hawaii Kingdom and Hawaii's annexation to the United States violated the United States Constitution and international law such that this court should declare these acts void and restore the Kingdom of Hawaii. These issues are squarely nonjusticiable political questions—as in *Luther,* "it rests with Congress," not the judiciary, to decide the governance of Hawaii, *see Luther,* 48 U.S. at 42, and both the Supreme Court and the Ninth Circuit have already determined, in a number of other contexts, that issues of sovereignty and/or recognition of foreign entities are not for the judiciary to determine. *See Baker,* 369 U.S. at 212 (stating that "recognition of foreign governments ... strongly defies judicial treatment ... and the judiciary ordinarily follows the executive as to which nation has sovereignty over disputed territory"); *Jones v. United States,* 137 U.S. 202, 212 (1890) ("Who is the sovereign, de jure or de facto, of a territory, is not a judicial, but a political, question, the determination of which by the legislative and executive departments of any government conclusively binds the judges, as well as all other officers, citizens, and subjects of that government."); *Wang v. Masaitis,* 416 F.3d 992, 995 (9th Cir.2005) ("China's sovereignty over Hong Kong (and by corollary Hong Kong's sub-sovereign status) has been resolved by the executive branch, and we do not question that judgment."); *Kahawaiolaa v. Norton,* 386 F.3d 1271, 1275–76 (9th Cir.2004) ("If the question before us were whether a remedy would lie against Congress to compel tribal recognition, the answer would be readily apparent.... A suit that sought to direct Congress to federally recognize an Indian tribe would be non justiciable as a political question.").

*3 And cases presented with this same issue—the constitutionality of Hawaii's annexation—have persuasively explained that a number *Baker* factors apply to this issue. For example, in *Sai v. Clinton,* 778 F.Supp.2d 1 (D.D.C.2011), *aff'd sub. nom., Sai v. Obama,* 2011 WL 4917030 (D.C.Cir. Sept. 26, 2011), the plaintiff sought a declaration that his Hawaii theft conviction violated federal and international law because Hawaii is not a valid state. *Id.* at 2–3. Rejecting this argument, *Sai* explained:

> Plaintiff's lawsuit challenges the United States's recognition of the Republic of Hawaii as a sovereign entity and the United States's exercise of authority over Hawaii following annexation. However, "[t]he conduct of the foreign relations of our Government is committed by the Constitution to the Executive and Legislative —'the political'—Departments of the Government, and the propriety of what may be done in the exercise of this political power is not subject to judicial inquiry or decision." *Oe jen v. Cent. Leather Co.,* 246 U.S. 297, 302 (1918). In addition, the Constitution vests Congress with the "Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." U.S. Const., Art. IV, § 3, cl. 2. Therefore, there is a textually demonstrable constitutional commitment of these issues to the political branches. Furthermore, it would be impossible for this Court to grant the relief requested by Plaintiff without disturbing a judgment of the legislative and executive branches that has remained untouched by the federal courts for over a century. Since its annexation in 1898 and admission to the Union as a State in 1959, Hawaii has been firmly established as part of the United States. The passage of time and the significance of the issue of sovereignty present an unusual need for unquestioning adherence to a political decision already made.

Id. at 6–7.

Similarly, in *Williams v. United States,* 2008 WL 5225870 (D.Haw. Dec. 15, 2008), United States District Chief Judge Susan Oki Mollway determined the court lacked jurisdiction over an inmate's civil rights claims challenging the legality of the overthrow of the Kingdom of Hawaii and Hawaii's admission as a state to the United States, explaining:

> Plaintiff's claims raise nonjusticiable political questions because they involve matters that have been constitutionally committed to Congress. Under Article IV, Section 3 of the Constitution, "[n]ew States may be admitted by the Congress into this Union[.]" U.S. Const. art. IV, § 3. By an act of Congress, Hawaii was admitted to the Union in 1959. This court, therefore, lacks jurisdiction to decide any issue regarding the legality of Hawaii's statehood including the lawfulness of events leading to statehood.

Id. at *3; *See also Algal Partners, L.P. v. Santos,* 2014 WL 1653084, at *2–3 (D.Haw. Apr. 23, 2014) (Kobayashi, J.) (adopting reasoning in *Williams* to decline jurisdiction over assertion that "the Hawaiian Kingdom continues to exist and is under a prolonged and illegal occupation by the United States"). The court joins these cases finding that this court lacks jurisdiction to address claims challenging the legality of Hawaii's annexation.

*4 In opposition, Plaintiff argues that the political question doctrine does not apply to this action given that numerous cases have addressed the annexation of Hawaii, and the application of United States laws to U.S. territories generally. *See* Doc. No. 18, Pl.'s Opp'n at 3–4. Plaintiff confuses cases raising the validity of Hawaii's annexation (such as in *Sai* and *Williams*), with cases in which Hawaii's annexation is not itself challenged but instead merely part of the historical background of the case. *See, e.g., Hawaii v. Office of Hawaiian Affairs,* 556 U.S. 163, 172–73 (2009) (holding that the Apology Resolution did not strip Hawaii of its sovereign authority to alienate the lands the United States held in absolute fee and granted to the State upon its admission to the Union); *Rice v. Cayetano,* 528 U.S. 495, 505 (2000) (explaining history of Hawaii as background in determinng that limiting voting for elected Office of Hawaiian Affairs trustees to Native Hawaiians violated the Fifteenth Amendment); *Doe v. Kamehameha Sch./Bernice Pauahi Bishop Estate,* 470 F.3d 827, 831 (9th Cir.2006) (discussing history of Hawaii as background for determining that private, non-profit school that receives no federal funds did not violate 42 U.S.C. § 1981 in preferring Native Hawaiians in its admissions policy).

For example, *Arakaki v. Lingle,* 477 F.3d 1048 (9th Cir.2007), rejected that the political question doctrine applied to an action challenging on equal protection grounds various state programs which gave preferential treatment to persons of Hawaiian ancestry. *Arakaki* explained: "Nothing in the claims Plaintiffs have asserted or the remedy they seek invites the district court to exercise powers reserved to Congress or to the President. The district court has not been asked to declare tribal status where Congress has declined." *Id.* at 1068; *see also Wang,* 416 F.3d at 995 ("China's sovereignty over Hong

Kong (and by corollary Hong Kong's subsovereign status) has been resolved by the executive branch, and we do not question that judgment. However, this court may examine the resulting status of Hong Kong, and decide whether the Treaty Clause applies to Hong Kong as a constitutionally cognizable treaty party."). In comparison to *Arakaki* and the cases cited by Plaintiff, the entire basis of this action is for the court to declare Hawaii's annexation null and void, which is a power not vested with the judiciary.

In sum, the court easily concludes that this action presents a nonjusticiable political question on which this court lacks jurisdiction. The court therefore GRANTS State Defendants' Motion to Dismiss. Because subject matter jurisdiction is an issue the court must raise sua sponte, *see Kwai Fun Wong v. Beebe,* 732 F.3d 1030, 1036 (9th Cir.2013), *and* Fed.R.Civ.P. 12(h)(3), and because this action presents a nonjusticiable political question as to all Defendants, this dismissal is as to all Defendants.

IV. *CONCLUSION*

*5 For the foregoing reasons, the court GRANTS State Defendants' Motion to Dismiss, and dismisses this action as to all Defendants. The Clerk of Court is directed to close this action.

IT IS SO ORDERED.

All Citations

Not Reported in F.Supp.2d, 2014 WL 2532460

Footnotes

1 Because the court finds that it lacks subject matter jurisdiction, the court does not address State Defendants' additional arguments for dismissal.

2 The Guarantee Clause directs the federal government to "guarantee to every State in this Union a Republican Form of Government," U.S. Const. Art. IV, § 4.

End of Document

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Citing References (1)

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	1. **Fuller v. Aila** 2015 WL 127887, *5 , D.Hawai'i Plaintiffs Harris M. Fuller, Jr., Darius M.K. Fuller, Landon K. Fuller, and Michael W.K. Eli (collectively, "Plaintiffs") allege that Defendants Department of Land and Natural...	Jan. 07, 2015	Case		—

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

IN THE MATTER OF Contested Case Hearing Re Conservation District Use Application (CDUA) HA-3568 for the Thirty Meter Telescope at the Mauna Kea Science Reserve, Ka'ohe Mauka, Hāmakua, Hawai'i, TMK (3) 4-4-015:009	CASE NO. BLNR-CC-16-002 DECLARATION OF COUNSEL; EXHIBIT "1"

DECLARATION OF COUNSEL

I, IAN L. SANDISON, declare:

1. I am an attorney with Carlsmith Ball LLP, counsel for Applicant University of Hawai'i at Hilo ("**University**") in the above-captioned matter.

2. I am authorized and competent to testify to the matters set forth herein, and unless otherwise indicated. I make this declaration based upon personal knowledge.

3. Attached hereto as **Exhibit 1** are a true and correct copies of the following unreported decisions obtained from Westlaw: *Williams v. United States*, CIV. No. 08-00547 SOM-KSC, 2008 WL 5225870 (D. Haw. Dec. 15, 2008); *Algal Partners, L.P. v. Santos*, Civ. No. 13-00562 LEM-BMK, 2014 WL 1653084 (D. Haw. Apr. 23, 2014); and *Yellen v. U.S.*, Civ. No. 14-00134 JMS-KSC, 2014 WL 2532460 (D. Haw. June 4, 2014).

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

DATED: Honolulu, Hawai'i, August 1, 2016.

IAN L. SANDISON

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

IN THE MATTER OF Contested Case Hearing Re Conservation District Use Application (CDUA) HA-3568 for the Thirty Meter Telescope at the Mauna Kea Science Reserve, Ka'ohe Mauka, Hāmakua, Hawai'i, TMK (3) 4-4-015:009	Case No. BLNR-CC-16-002 CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned certifies that the above-referenced document was served upon the following parties by email unless indicated otherwise:

JUDGE RIKI MAY AMANO (Ret.)
rma3cc@yahoo.com
Hearing Officer

JULIE H. CHINA, Deputy Attorney General
julie.h.china@hawaii.gov
Counsel for the BOARD OF LAND AND NATURAL RESOURCES

J. DOUGLAS ING, ESQ.
douging@wik.com
ROSS T. SHINYAMA, ESQ.
rshinyama@wik.com
Watanabe Ing LLP
Counsel for TMT INTERNATIONAL OBSERVATORY, LLC

MICHAEL CAIN
Office of Conservation and Coastal Lands
1151 Punchbowl Street, Room 131
Honolulu, HI 96813
michael.cain@hawaii.gov
Custodian of the Records
(original + digital copy)

RICHARD NAIWIEHA WURDEMAN, ESQ.
rnwurdeman@rnwlaw.com
Counsel for Petitioners MAUNA KEA ANAINA HOU; CLARENCE KUKAUAKAHI CHING; FLORES-CASE OHANA; DEBORAH J. WARD;PAUL K. NEVES; and KAHEA: THE HAWAIIAN ENVIRONMENTAL ALLIANCE

LINCOLN S.T. ASHIDA, ESQ.
isa@torkildson.com
NEWTON J. CHU, ESQ.
njc@torkildson.com
Torkildson, Katz, Moore, Hetherington & Harris
Counsel for PERPETUATING UNIQUE EDUCATIONAL OPPORTUNITIES (PUEO)

JOSEPH KUALII LINDSEY CAMARA
kualiic@hotmail.com

RICHARD L. DELEON
kekaulike@msn.com

HARRY FERGERSTROM
hankhawaiian@yahoo.com

CINDY FREITAS
hanahanai@hawaii.rr.com

WILLIAM FREITAS
pohaku7@yahoo.com

TIFFNIE KAKALIA
tiffniekakalia@gmail.com

BRANNON KAMAHANA KEALOHA
brannonk@hawaii.edu

GLEN KILA
makakila@gmail.com

JENNIFER LEINA'ALA SLEIGHTHOLM
leina.ala.s808@gmail.com

LANNY ALAN SINKIN, ESQ.
lanny.sinkin@gmail.com
Representative for the Temple of Lono

C. M. KAHO'OKAHI KANUHA
kahookahi@gmail.com

KALIKOLEHUA KANAELE
akulele@yahoo.com

MEHANA KIHOI
uhiwai@live.com

MAELANI LEE
maelanilee@yahoo.com

STEPHANIE-MALIA TABBADA
stabbada@hawaiiantel.net

DWIGHT J. VICENTE
2608 Ainaola Drive
Hilo, HI 96720-3538
(no email; mailing address only)

DATED: Honolulu, Hawai'i, August 1, 2016.

IAN L. SANDISON
TIM LUI-KWAN
JOHN P. MANAUT

Attorneys for Applicant
UNIVERSITY OF HAWAI'I AT HILO