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REVELSTOKE INVESTMENT CORP., INC.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

IN RE:	MDL NO. 840
	No. 86-390
ESTATE OF FERDINAND E. MARCOS HUMAN RIGHTS LITIGATION	No. 86-330
	MOTION OF REVELSTOKE INVESTMENT CORPORATION, INC. RESPECTFULLY REQUESTING RECUSAL OF THE HONORABLE JUDGE MANUEL REAL; MEMORANDUM IN SUPPORT OF MOTION; ORDER; CERTIFICATE OF SERVICE
THIS DOCUMENT RELATES TO:	
Hilao et al v. Estate of Ferdinand E. Marcos, and DeVera et al v. Estate of Ferdinand E. Marcos	Judge: Manuel Real

MOTION OF REVELSTOKE INVESTMENT CORPORATION, INC. RESPECTFULLY REQUESTING RECUSAL OF THE HONORABLE JUDGE MANUEL REAL

Pursuant to 28 U.S.C. § 455(a), Revelstoke Investment Corporation, Inc. respectfully requests that the judge presiding over cases being handled in MDL 840 recuse himself from proceedings involving the Class's "Second Renewed Motion for Entry of Final Judgment For Civil Contempt Against Imelda R. Marcos and Ferdinand R. Marcos and the Estate of Ferdinand E. Marcos" (Doc. 10568), including Revelstoke's accompanying motion to intervene, and any other proceeding in which the Class and/or Class Counsel requests or may be granted entry, modification, or resurrection of a judgment. In support of this motion, Revelstoke relies upon the accompanying memorandum of law. A proposed Order is attached.

DATED: Honolulu, Hawaii, March 17, 2009.

/s/ Thomas Benedict
THOMAS BENEDICT

Attorney for REVELSTOKE INVESTMENT CORPORATION, INC.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

IN RE:	MDL NO. 840
	No. 86-390
ESTATE OF FERDINAND E. MARCOS HUMAN RIGHTS LITIGATION	No. 86-330
	MEMORANDUM IN SUPPORT OF MOTION
THIS DOCUMENT RELATES TO:	Judge: Manuel Real
Hilao et al v. Estate of Ferdinand E. Marcos, and DeVera et al v. Estate of Ferdinand E. Marcos	

MEMORANDUM IN SUPPORT OF MOTION

Pursuant to 28 U.S.C. § 455, Revelstoke Investment Corporation, Inc. ("Revelstoke") respectfully requests that the judge presiding over cases being handled in MDL 840 recuse himself from proceedings involving the Class's "Second Renewed Motion for Entry of Final Judgment For Civil Contempt Against Imelda R. Marcos and Ferdinand R. Marcos and the Estate of Ferdinand E. Marcos" (Doc. 10568) (the "Class's Motion") and any other proceeding in which the Class and/or Class Counsel requests or may be granted entry, modification, or resurrection of a judgment. The requested recusal also extends to Revelstoke's motion to intervene being filed today.

As shown herein, the presiding judge has made a series of manifestly erroneous and unreasonable rulings in favor of the Class's attempts to enforce a judgment entered in this case on February 3, 1995 (the "1995 Class Judgment"). In a decision reversing the presiding judge, the Ninth Circuit recently ruled that the 1995 Class Judgment has expired and is unenforceable. The presiding judge then "certified" to the Hawai'i Supreme Court the same question of state-law interpretation on which the Ninth Circuit had ruled in reversing the presiding judge. Taken together, this and other cases involving efforts to enforce the 1995 Class Judgment raise grounds on which the presiding judge's "impartiality might reasonably be questioned" in relation to the parties and issues presented. 28 U.S.C. § 455(a). Indeed, two Justices of the U.S. Supreme Court recently expressed concerns in written opinions about the presiding judge's impartiality in matters involving the 1995 Class Judgment.

The Class's Motion represents another back-door attempt to enforce the 1995 Class Judgment. The motion seeks a new money judgment based on a 1995 Contempt Judgment that was entered to assist enforcement of the now-expired 1995 Class Judgment. Revelstoke respectfully requests that the presiding judge recuse himself from deciding the Class's Motion and all related matters.

STATEMENT OF THE CASE

In July 2008 the U.S. Court of Appeals for the Ninth Circuit unanimously

vacated this Court's June 2006 rulings purporting to "extend" the 1995 Class Judgment pursuant to Haw. Rev. Stat. § 657-5 and denying Revelstoke's motions to intervene. *In re Estate of Ferdinand E. Marcos Human Rights Litig.*, 536 F.3d 980 (9th Cir. 2008) (the "*Ninth Circuit Ruling*"). The judge presiding over this action granted the "extension" of the 1995 Class Judgment before addressing and summarily denying Revelstoke's request for intervention. As a result, no one opposed the Class's "extension" motion in this Court.

The *Ninth Circuit Ruling* undercuts the basis for a Texas action and other lawsuits in which the Class seeks to execute on the 1995 Class Judgment based on allegations that property owned by Revelstoke actually belongs to the Marcos Estate. Since the *Ninth Circuit Ruling*, Class Counsel have made various attempts to obtain a judgment that can substitute for the expired 1995 Class Judgment as a basis for the Texas Action and other enforcement proceedings. The Class's Motion is their most recent such attempt, and the second attempt involving this Court.

The day after rehearing of the *Ninth Circuit Ruling* was denied, this Court heard a motion that had been filed pursuant to HRS § 657-5 nearly a year earlier in *Sison v. Marcos*, Civ. A. No. 86-225 (D. Haw.), and *Piopongco v. Marcos*, Civ. A. No. 87-138 (D. Haw.) (collectively, "*Sison-Piopongco*"), two other cases being handled in MDL 840. Class Counsel appeared in person but counsel for the *Sison-*

Piopongco plaintiffs did not, as he "didn't have notice of the hearing" and was "on vacation." (Doc. 10557, Tr. of Hr'g on Sept. 12, 2008, at 5:19 – 6:2, 7:1-3.) Although no party in *Sison-Piopongco* had asked for certification of any issue of Hawai'i law, this Court ruled that it would "certify" a question concerning the interpretation of HRS § 657-5 and asked Class Counsel to "prepare . . . suggested language" for transmission to the Supreme Court of Hawai'i. (*Id.* at 9:3-10.)

The "language" prepared by Class Counsel and "certified" by this Court asks the Supreme Court of Hawai'i to opine on the same Hawai'i state law issue that the *Ninth Circuit Ruling* decided in favor of Revelstoke and against the Class: whether the limitations period under § 657-5 "begin[s] after the appellate process is completed." (Doc. 10560-3, Order & Certified Question at 2-3 (D. Haw. Sept. 26, 2008).)[1] This broad issue is not presented in *Sison-Piopongco* because the original judgment in those cases was *reversed* on appeal, a *new judgment* was entered on remand, and the motion to extend was filed less than ten years after entry of the new judgment. This Court's certification order thus seeks an advisory opinion from the Supreme Court of Hawai'i that allows relitigation of issues decided in the *Ninth Circuit Ruling*. Moreover, the Court entered this order even though the Class (i) tendered the same Hawai'i state law issue to this Court in June 2006; (ii)

[1] The Class tendered this same Hawai'i state law issue to this Court in June 2006 and never requested certification to the Supreme Court of Hawai'i until after the *Ninth Circuit Ruling*.

successfully moved the Texas court to stay resolution of Revelstoke's motion to dismiss the Texas action on the ground that "the Hawaiian Federal Court has more experience in interpreting and applying [HRS § 657-5] than a Texas court"; and (iii) did not request certification to the Supreme Court of Hawai'i until after the *Ninth Circuit Ruling.*

The Class is now asserting in other courts that the certification order is a basis for further delaying the end of the litigation involving Revelstoke.[2] Most notably, it has asked the U.S. Supreme Court to "hold" the Class's petition for review of the *Ninth Circuit Ruling* until after the Supreme Court of Hawai'i decides whether, and if so how, it will answer the question certified by this Court. Revelstoke has filed an opposition to the petition.

As explained below, the presiding judge's actions in this case should be viewed in the larger context of a series of other rulings he has made in favor of the Class relating to enforcement of the 1995 Class Judgment and that "'manifest a persistent disregard of the federal rules.'" *In re Philippine Nat'l Bank*, 397 F.3d 768, 774 (9th Cir. 2005) (quoting *Credit Suisse v. U.S. Dist. Ct. for the Cent. Dist. of Cal.*, 130 F.3d 1342, 1345 (9th Cir. 1997)). Indeed, these rulings fall so far outside judicial norms that Justices of the U.S. Supreme Court have raised

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[2] The Class has made this assertion in the U.S. Supreme Court, federal and state courts in Texas, and a federal court in Illinois.

concerns in written opinions about whether the presiding judge can impartially adjudicate matters involving the Class's efforts to enforce the 1995 Class Judgment.

ARGUMENT

Section 455(a) requires a judge to "disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a). The "very purpose of § 455(a) is to promote confidence in the judiciary by avoiding even the appearance of impropriety whenever possible." *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 865 (1988). "Quite simply and quite universally, recusal [is] *required* whenever 'impartiality *might* reasonably be questioned.'" *Liteky v. United States*, 510 U.S. 540, 548 (1994) (quoting 28 U.S.C. § 455(a)) (emphases added).

An objective standard determines whether recusal is required under 28 U.S.C. § 455(a). Specifically, a judge must disqualify himself where "a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned." *Pesnell v. Arsenault*, 543 F.3d 1038, 1043 (9th Cir.); *United States v. Hernandez*, 109 F.3d 1450, 1453 (9th. Cir. 1997). Moreover, "any reasonable doubts about the partiality of the judge" ordinarily "ought to be resolved in favor of recusal." *In re United States*, 441 F.3d 44, 56-57 (1st Cir. 2006) (citations omitted); *accord, e.g., Republic of Panama v. Am.*

Tobacco Co., 217 F.3d 343, 347 (5th Cir. 2000); *Nichols v. Alley*, 71 F.3d 347, 352 (10th Cir. 1995); *United States v. Dandy*, 998 F.2d 1344, 1349 (6th Cir. 1993).

A judge's conduct or rulings made during the course of the proceedings can "evidence the degree of favoritism or antagonism required for recusal" under 28 U.S.C. § 455(a). *Liteky*, 510 U.S. at 555. In some rare circumstances, a judge's pattern of manifestly incorrect rulings may "display a deep-seated favoritism or antagonism that would make fair judgment impossible." *Id.* at 554-55; *Hernandez*, 109 F.3d at 1454.

This is one of the rare situations envisioned in *Liteky*. The presiding judge's clear and persistent pattern of strikingly erroneous rulings concerning enforcement of the 1995 Class Judgment provides reasonable grounds for questioning his impartiality in matters relating to the Class's efforts to enforce the 1995 Class Judgment. These rulings "display a deep-seated favoritism" for the Class "that would make fair judgment impossible" here. *Liteky*, 510 U.S. at 554-55. On repeated occasions, this Court's rulings for the Class in execution proceedings involving the 1995 Class Judgment have been so unreasonable as to require exercise of the Ninth Circuit's supervisory authority by issuing writs of mandamus and otherwise:

- *In re Philippine Nat'l Bank*, 397 F.3d at 775 (issuing writ of mandamus and directing the presiding judge "to refrain from any further action against the Philippine National Bank in this action or any other action

involving" Marcos Estate assets that the Philippine Supreme Court had held were forfeited to Philippine Republic).

- *In re Republic of the Philippines*, 309 F.3d 1143, 1149, 1153 (9th Cir. 2002) (reversing ruling that Philippine Republic "had no claim to" Marcos Estate assets sought by plaintiffs in "an interpleader action that has as its core purpose the resolution of all competing claims").

- *Credit Suisse*, 130 F.3d at 1348 (issuing writ of mandamus directing the presiding judge "to dismiss [this] action," "further directing [him] to refrain from taking any further action in [this] action or any other case involving [Plaintiffs] and any assets of the Estate of Ferdinand E. Marcos held or claimed to be held by [two Swiss] Banks," and "retain[ing] jurisdiction over this case").

As demonstrated by his June 2006 rulings against Revelstoke, the presiding judge's rulings in support of the Class's efforts to collect on the 1995 Class Judgment "'manifest a persistent disregard of the federal rules.'" *In re Philippine Nat'l Bank*, 397 F.3d at 774 (quoting *Credit Suisse*, 130 F.3d at 1345). Indeed, the Ninth Circuit has reversed the presiding judge in two cases where – as with the June 2006 "extension" motion – he disregarded Rule 69(a) and declined to apply the law of the forum state in an execution proceeding involving the 1995 Class Judgment. *See Hilao*, 95 F.3d at 853-56 (Rule 69(a) required application of California law to proceeding to enforce the 1995 Class Judgment in the Central District of California and reversal of ruling that would have enabled Class to reach alleged Marcos Estate assets in violation of California law).

Last year, in an opinion issued a month before the *Ninth Circuit Ruling*, the U.S. Supreme Court held that the presiding judge again violated the Federal Rules

of Civil Procedure when he ruled in favor of the Class in its attempt to obtain "approximately $35 million" in assets to satisfy, in part, the 1995 Class Judgment. *Republic of the Philippines v. Pimentel*, 128 S. Ct. 2180, 2184-85 (2008). Two Justices wrote to express their concerns that the presiding judge's "actions bespeak a level of personal involvement and desire to control the Marcos proceedings that create at least a colorable basis for . . . concern about the District Judge's impartiality." *Id.* at 2196 (Stevens, J., concurring in part and dissenting in part); *see also id.* at 2198 (Souter, J., concurring in part and dissenting in part) ("For reasons given by Justice Stevens, I would order that any further proceedings in the District Court be held before a judge fresh to the case."). The opinion for the Court did not expressly question the presiding judge's impartiality, but pointedly stated that if parties "elect to commence further litigation in light of changed circumstance, it would not be necessary to file the new action in the District Court where this action arose." *Id.* at 2194.

In sum, as demonstrated by the series of cases discussed above, a "reasonable person with knowledge of all the facts" would question the presiding

judge's impartiality in matters relating to the Class's efforts to recover the damages it was awarded by the expired 1995 Class Judgment. *Pesnell*, 543 F.3d at 1043.[3]

CONCLUSION

For the foregoing reasons, the presiding judge's "impartiality might reasonably be questioned" with regard to the Class's Motion because it offers another opportunity improperly to promote the Class's efforts to execute on the 1995 Class Judgment. *See* 28 U.S.C. § 455(a). Accordingly, Revelstoke respectfully requests that the presiding judge in this action recuse himself from the Class's Motion and any other proceeding in which the Class and/or Class Counsel requests or may be granted entry, modification, or resurrection of a judgment.

DATED: Honolulu, Hawaii, March 17, 2009.

/s/ Thomas Benedict
THOMAS BENEDICT

Attorney for REVELSTOKE
INVESTMENT
CORPORATION, INC.

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[3] In this context, it bears noting that the Ninth Circuit has exercised its supervisory power, *see* 28 U.S.C. § 2106, to direct reassignment of a number of cases from the judge presiding here. *See, e.g., Living Designs, Inc. v. E.I. DuPont de Nemours & Co.*, 431 F.3d 353, 361-73 (9th Cir. 2005); *United Nat'l Ins. Co. v. R & D Latex Corp.*, 141 F.3d 916, 920 (9th Cir. 1998); *Brown v. Baden*, 815 F.2d 575, 576 (9th Cir. 1987); *United States v. Sears, Roebuck & Co., Inc.*, 785 F.2d 777, 781 (9th Cir. 1986).

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

IN RE:	MDL NO. 840
	No. 86-390
ESTATE OF FERDINAND E. MARCOS HUMAN RIGHTS LITIGATION	No. 86-330
	ORDER
THIS DOCUMENT RELATES TO:	Judge: Manuel Real
Hilao et al v. Estate of Ferdinand E. Marcos, and DeVera et al v. Estate of Ferdinand E. Marcos	

ORDER

After consideration of Revelstoke Investment Corp., Inc.'s motion that I recuse myself from the Class's "Second Renewed Motion for Entry of Final Judgment For Civil Contempt Against Imelda R. Marcos and Ferdinand R. Marcos and the Estate of Ferdinand E. Marcos" (the "Class's Motion") and any other proceeding in which the Class and/or Class Counsel requests or may be granted entry, modification, or resurrection of a judgment,

IT IS HEREBY ORDERED that Revelstoke Investment Corp., Inc.'s motion is GRANTED pursuant to 28 U.S.C. § 455(a); and

IT IS FURTHER ORDERED that I, Judge Manuel Real, hereby recuse myself from presiding over the Class's Motion and any other proceeding in which the Class and/or Class Counsel requests or may be granted entry, modification, or resurrection of a judgment.

Dated: Honolulu, Hawai'i, _____.

IT IS SO ORDERED.

In Re: Estate of Ferdinand E. Marcos
Human Rights Litigation
MDL No. 840, No. 86-390, No. 86-330, U.S. District Court-Hawai'i

Order

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

IN RE:	MDL NO. 840
	No. 86-390
ESTATE OF FERDINAND E. MARCOS HUMAN RIGHTS LITIGATION	No. 86-330
	CERTIFICATE OF SERVICE
THIS DOCUMENT RELATES TO:	Judge: Manuel Real
Hilao et al v. Estate of Ferdinand E. Marcos, and DeVera et al v. Estate of Ferdinand E. Marcos	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the within document was served on this date in the following manner:

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DATED: Honolulu, Hawaii, March 17, 2009.

/s/ Thomas Benedict
THOMAS BENEDICT

Attorney for REVELSTOKE INVESTMENT CORPORATION, INC.

Motions

1:03-cv-11111-MLR In Re: MDL 840 MARCOS, et al v. , et al

U.S. District Court

District of Hawaii

Notice of Electronic Filing

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/s/ Thomas Benedict
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vacated this Court's June 2006 rulings purporting to "extend" the 1995 Class Judgment pursuant to Haw. Rev. Stat. § 657-5 and denying Revelstoke's motions to intervene. *In re Estate of Ferdinand E. Marcos Human Rights Litig.*, 536 F.3d 980 (9th Cir. 2008) (the "*Ninth Circuit Ruling*"). The judge presiding over this action granted the "extension" of the 1995 Class Judgment before addressing and summarily denying Revelstoke's request for intervention. As a result, no one opposed the Class's "extension" motion in this Court.

The *Ninth Circuit Ruling* undercuts the basis for a Texas action and other lawsuits in which the Class seeks to execute on the 1995 Class Judgment based on allegations that property owned by Revelstoke actually belongs to the Marcos Estate. Since the *Ninth Circuit Ruling*, Class Counsel have made various attempts to obtain a judgment that can substitute for the expired 1995 Class Judgment as a basis for the Texas Action and other enforcement proceedings. The Class's Motion is their most recent such attempt, and the second attempt involving this Court.

The day after rehearing of the *Ninth Circuit Ruling* was denied, this Court heard a motion that had been filed pursuant to HRS § 657-5 nearly a year earlier in *Sison v. Marcos*, Civ. A. No. 86-225 (D. Haw.), and *Piopongco v. Marcos*, Civ. A. No. 87-138 (D. Haw.) (collectively, "*Sison-Piopongco*"), two other cases being handled in MDL 840. Class Counsel appeared in person but counsel for the *Sison-*

Piopongco plaintiffs did not, as he "didn't have notice of the hearing" and was "on vacation." (Doc. 10557, Tr. of Hr'g on Sept. 12, 2008, at 5:19 – 6:2, 7:1-3.) Although no party in *Sison-Piopongco* had asked for certification of any issue of Hawai'i law, this Court ruled that it would "certify" a question concerning the interpretation of HRS § 657-5 and asked Class Counsel to "prepare . . . suggested language" for transmission to the Supreme Court of Hawai'i. (*Id.* at 9:3-10.)

The "language" prepared by Class Counsel and "certified" by this Court asks the Supreme Court of Hawai'i to opine on the same Hawai'i state law issue that the *Ninth Circuit Ruling* decided in favor of Revelstoke and against the Class: whether the limitations period under § 657-5 "begin[s] after the appellate process is completed." (Doc. 10560-3, Order & Certified Question at 2-3 (D. Haw. Sept. 26, 2008).)[1] This broad issue is not presented in *Sison-Piopongco* because the original judgment in those cases was *reversed* on appeal, a *new judgment* was entered on remand, and the motion to extend was filed less than ten years after entry of the new judgment. This Court's certification order thus seeks an advisory opinion from the Supreme Court of Hawai'i that allows relitigation of issues decided in the *Ninth Circuit Ruling*. Moreover, the Court entered this order even though the Class (i) tendered the same Hawai'i state law issue to this Court in June 2006; (ii)

[1] The Class tendered this same Hawai'i state law issue to this Court in June 2006 and never requested certification to the Supreme Court of Hawai'i until after the *Ninth Circuit Ruling*.

successfully moved the Texas court to stay resolution of Revelstoke's motion to dismiss the Texas action on the ground that "the Hawaiian Federal Court has more experience in interpreting and applying [HRS § 657-5] than a Texas court"; and (iii) did not request certification to the Supreme Court of Hawai'i until after the *Ninth Circuit Ruling*.

The Class is now asserting in other courts that the certification order is a basis for further delaying the end of the litigation involving Revelstoke.[2] Most notably, it has asked the U.S. Supreme Court to "hold" the Class's petition for review of the *Ninth Circuit Ruling* until after the Supreme Court of Hawai'i decides whether, and if so how, it will answer the question certified by this Court. Revelstoke has filed an opposition to the petition.

As explained below, the presiding judge's actions in this case should be viewed in the larger context of a series of other rulings he has made in favor of the Class relating to enforcement of the 1995 Class Judgment and that "'manifest a persistent disregard of the federal rules.'" *In re Philippine Nat'l Bank*, 397 F.3d 768, 774 (9th Cir. 2005) (quoting *Credit Suisse v. U.S. Dist. Ct. for the Cent. Dist. of Cal.*, 130 F.3d 1342, 1345 (9th Cir. 1997)). Indeed, these rulings fall so far outside judicial norms that Justices of the U.S. Supreme Court have raised

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[2] The Class has made this assertion in the U.S. Supreme Court, federal and state courts in Texas, and a federal court in Illinois.

concerns in written opinions about whether the presiding judge can impartially adjudicate matters involving the Class's efforts to enforce the 1995 Class Judgment.

ARGUMENT

Section 455(a) requires a judge to "disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a). The "very purpose of § 455(a) is to promote confidence in the judiciary by avoiding even the appearance of impropriety whenever possible." *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 865 (1988). "Quite simply and quite universally, recusal [is] *required* whenever 'impartiality *might* reasonably be questioned.'" *Liteky v. United States*, 510 U.S. 540, 548 (1994) (quoting 28 U.S.C. § 455(a)) (emphases added).

An objective standard determines whether recusal is required under 28 U.S.C. § 455(a). Specifically, a judge must disqualify himself where "a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned." *Pesnell v. Arsenault*, 543 F.3d 1038, 1043 (9th Cir.); *United States v. Hernandez*, 109 F.3d 1450, 1453 (9th. Cir. 1997). Moreover, "any reasonable doubts about the partiality of the judge" ordinarily "ought to be resolved in favor of recusal." *In re United States*, 441 F.3d 44, 56-57 (1st Cir. 2006) (citations omitted); *accord, e.g., Republic of Panama v. Am.*

Tobacco Co., 217 F.3d 343, 347 (5th Cir. 2000); *Nichols v. Alley*, 71 F.3d 347, 352 (10th Cir. 1995); *United States v. Dandy*, 998 F.2d 1344, 1349 (6th Cir. 1993).

A judge's conduct or rulings made during the course of the proceedings can "evidence the degree of favoritism or antagonism required for recusal" under 28 U.S.C. § 455(a). *Liteky*, 510 U.S. at 555. In some rare circumstances, a judge's pattern of manifestly incorrect rulings may "display a deep-seated favoritism or antagonism that would make fair judgment impossible." *Id.* at 554-55; *Hernandez*, 109 F.3d at 1454.

This is one of the rare situations envisioned in *Liteky*. The presiding judge's clear and persistent pattern of strikingly erroneous rulings concerning enforcement of the 1995 Class Judgment provides reasonable grounds for questioning his impartiality in matters relating to the Class's efforts to enforce the 1995 Class Judgment. These rulings "display a deep-seated favoritism" for the Class "that would make fair judgment impossible" here. *Liteky*, 510 U.S. at 554-55. On repeated occasions, this Court's rulings for the Class in execution proceedings involving the 1995 Class Judgment have been so unreasonable as to require exercise of the Ninth Circuit's supervisory authority by issuing writs of mandamus and otherwise:

- *In re Philippine Nat'l Bank*, 397 F.3d at 775 (issuing writ of mandamus and directing the presiding judge "to refrain from any further action against the Philippine National Bank in this action or any other action

involving" Marcos Estate assets that the Philippine Supreme Court had held were forfeited to Philippine Republic).

- *In re Republic of the Philippines*, 309 F.3d 1143, 1149, 1153 (9th Cir. 2002) (reversing ruling that Philippine Republic "had no claim to" Marcos Estate assets sought by plaintiffs in "an interpleader action that has as its core purpose the resolution of all competing claims").

- *Credit Suisse*, 130 F.3d at 1348 (issuing writ of mandamus directing the presiding judge "to dismiss [this] action," "further directing [him] to refrain from taking any further action in [this] action or any other case involving [Plaintiffs] and any assets of the Estate of Ferdinand E. Marcos held or claimed to be held by [two Swiss] Banks," and "retain[ing] jurisdiction over this case").

As demonstrated by his June 2006 rulings against Revelstoke, the presiding judge's rulings in support of the Class's efforts to collect on the 1995 Class Judgment "'manifest a persistent disregard of the federal rules.'" *In re Philippine Nat'l Bank*, 397 F.3d at 774 (quoting *Credit Suisse*, 130 F.3d at 1345). Indeed, the Ninth Circuit has reversed the presiding judge in two cases where – as with the June 2006 "extension" motion – he disregarded Rule 69(a) and declined to apply the law of the forum state in an execution proceeding involving the 1995 Class Judgment. *See Hilao*, 95 F.3d at 853-56 (Rule 69(a) required application of California law to proceeding to enforce the 1995 Class Judgment in the Central District of California and reversal of ruling that would have enabled Class to reach alleged Marcos Estate assets in violation of California law).

Last year, in an opinion issued a month before the *Ninth Circuit Ruling*, the U.S. Supreme Court held that the presiding judge again violated the Federal Rules

of Civil Procedure when he ruled in favor of the Class in its attempt to obtain "approximately $35 million" in assets to satisfy, in part, the 1995 Class Judgment. *Republic of the Philippines v. Pimentel*, 128 S. Ct. 2180, 2184-85 (2008). Two Justices wrote to express their concerns that the presiding judge's "actions bespeak a level of personal involvement and desire to control the Marcos proceedings that create at least a colorable basis for . . . concern about the District Judge's impartiality." *Id.* at 2196 (Stevens, J., concurring in part and dissenting in part); *see also id.* at 2198 (Souter, J., concurring in part and dissenting in part) ("For reasons given by Justice Stevens, I would order that any further proceedings in the District Court be held before a judge fresh to the case."). The opinion for the Court did not expressly question the presiding judge's impartiality, but pointedly stated that if parties "elect to commence further litigation in light of changed circumstance, it would not be necessary to file the new action in the District Court where this action arose." *Id.* at 2194.

In sum, as demonstrated by the series of cases discussed above, a "reasonable person with knowledge of all the facts" would question the presiding

judge's impartiality in matters relating to the Class's efforts to recover the damages it was awarded by the expired 1995 Class Judgment. *Pesnell*, 543 F.3d at 1043.[3]

CONCLUSION

For the foregoing reasons, the presiding judge's "impartiality might reasonably be questioned" with regard to the Class's Motion because it offers another opportunity improperly to promote the Class's efforts to execute on the 1995 Class Judgment. *See* 28 U.S.C. § 455(a). Accordingly, Revelstoke respectfully requests that the presiding judge in this action recuse himself from the Class's Motion and any other proceeding in which the Class and/or Class Counsel requests or may be granted entry, modification, or resurrection of a judgment.

DATED: Honolulu, Hawaii, March 17, 2009.

/s/ Thomas Benedict
THOMAS BENEDICT

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INVESTMENT
CORPORATION, INC.

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[3] In this context, it bears noting that the Ninth Circuit has exercised its supervisory power, *see* 28 U.S.C. § 2106, to direct reassignment of a number of cases from the judge presiding here. *See, e.g., Living Designs, Inc. v. E.I. DuPont de Nemours & Co.*, 431 F.3d 353, 361-73 (9th Cir. 2005); *United Nat'l Ins. Co. v. R & D Latex Corp.*, 141 F.3d 916, 920 (9th Cir. 1998); *Brown v. Baden*, 815 F.2d 575, 576 (9th Cir. 1987); *United States v. Sears, Roebuck & Co., Inc.*, 785 F.2d 777, 781 (9th Cir. 1986).