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BOARD OF DIRECTORS

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI‘I

PUBLIC FIRST LAW CENTER,

Plaintiff,

vs.

DEFENDER COUNCIL; JON N. IKENAGA; and AGRIBUSINESS DEVELOPMENT CORPORATION BOARD OF DIRECTORS,

Defendants.

CIVIL NO.: 1CCV-24-0000050
(Other Civil Action)

EXHIBIT A

[RE: Statement of Errata re: *Defendants Defender Council, Jon N. Ikenaga, and Agribusiness Development Corporation Board of Directors' Memorandum in Opposition to Plaintiff Public First Law Center's Motion for Partial Summary Judgment on Counts I-VIII, Filed on March 25, 2025 as Dkt. 129*]

HEARING:
Date: May 9, 2025
Time: 10:30 a.m.
Judge: Honorable Jordan J. Kimura

Judge: Honorable Jordan J. Kimura
Trial: June 23, 2025

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DEFENDER COUNCIL, JON N. IKENAGA, and
AGRIBUSINESS DEVELOPMENT CORPORATION
BOARD OF DIRECTORS

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI‘I

PUBLIC FIRST LAW CENTER,

Plaintiff,

vs.

DEFENDER COUNCIL; JON N. IKENAGA; and AGRIBUSINESS DEVELOPMENT CORPORATION BOARD OF DIRECTORS,

Defendants.

CIVIL NO.: 1CCV-24-0000050
(Other Civil Action)

DEFENDANTS DEFENDER COUNCIL, JON N. IKENAGA, AND AGRIBUSINESS DEVELOPMENT CORPORATION BOARD OF DIRECTORS' MEMORANDUM IN OPPOSITION TO PLAINTIFF PUBLIC FIRST LAW CENTER'S *MOTION FOR PARTIAL SUMMARY JUDGMENT ON COUNTS I-VIII*, FILED ON MARCH 25 AS DKT. 129; DECLARATION OF CRYSTAL GLENDON; CERTIFICATE OF SERVICE

HEARING:
Date: May 9, 2025
Time: 10:30 a.m.
Judge: Honorable Jordan J. Kimura

Judge: Honorable Jordan J. Kimura
Trial: June 23, 2025

DEFENDANTS DEFENDER COUNCIL, JON N. IKENAGA, AND AGRIBUSINESS DEVELOPMENT CORPORATION BOARD OF DIRECTORS' MEMORANDUM IN OPPOSITION TO PLAINTIFF PUBLIC FIRST LAW CENTER'S *MOTION FOR PARTIAL SUMMARY JUDGMENT ON COUNTS I-VIII*, FILED ON MARCH 25 AS DKT. 129

Defendants DEFENDER COUNCIL ("**Defendant DC**"), JON N. IKENAGA ("**Defendant Ikenaga**"), and AGRIBUSINESS DEVELOPMENT CORPORATION BOARD OF DIRECTORS ("**Defendant ADC**") (hereinafter collectively referred to as the "**State Defendants**"), by and through Anne E. Lopez, Attorney General for the State of Hawai'i, and its attorneys Amanda J. Weston and David N. Matsumiya, Deputy Attorneys General, hereby submits their memorandum in opposition to Plaintiff PUBLIC FIRST LAW CENTER's ("**Plaintiff**") *Motion for Partial Summary Judgment on Counts I-VII*, which was filed herein on March 25, 2025 as Docket 129 ("**Plaintiff's Partial MSJ – Counts 1-8**").

I. STATEMENT OF RELEVANT FACTS

With regard to the Executive Session on June 16, 2023, it is my recollection that Defendant DC did not discuss the selection process for the appointment of the Public Defender during the Executive Session on June 16, 2023. *See* Declaration of Crystal Glendon (the "**Glendon Declaration**") at pp. 2-3, ¶¶ 12-13. Defendant DC was simply reminded that the current State Public Defender's term would be expiring in January 2024. *See* Glendon Declaration at p. 3, ¶ 13.

Defendant DC interviewed and considered the candidates for the State Public Defender position on October 4, 2023 and November 2, 2023. *See* Glendon Declaration at p. 3, ¶ 15. Defendant DC chose to conduct their interviews and consideration of the candidates for the State Public Defender position in Executive Session for the following reasons: 1) The majority of the candidates for the State Public Defender position were public employees, who would have a limited expectation of privacy regarding his/her prior work history and salaries, however, one of the candidates was not a public employee who would have a reasonable expectation of privacy regarding his/her prior work history and his/her salary; 2) The public comments submitted for one of the candidates for the State Public Defender position indicated that the candidate may have had an inappropriate relationship with an employee at the Office of the Public Defender, which meant that Defendant DC would need to question the candidate about his/her personal relationship with the individual; 3) The public comments submitted for one of the candidates for the State Public Defender position indicated that the candidate may be unstable, which meant

that Defendant DC would need to question the candidate about the claim, which in turn could lead to the disclosure of confidential medical and/or psychological treatment; 4) The public comments submitted for one of the candidates for the State Public Defender position indicated that the candidate had a harassment complaint filed against him/her, which meant that Defendant DC would need to question the candidate about the claim, which in turn could lead to the disclosure of confidential medical and/or psychological treatment; 5) Defendant DC decided to conduct the interviews in Executive Session because the allegations made in public comments referenced above were made against the three (3) public employees and the fourth candidate for the State Public Defender Position was not a public employee; and 6) With regard to Defendant DC's discussions regarding the candidates for the State Public Defender position, it was anticipated, and it turned out to be true, that Defendant DC would be discussing the non-public worker's prior work history and salary and the public employees' responses to Defendant DC's inquiries regarding the alleged inappropriate relationship, the alleged unstableness, and the alleged harassment claim. *See* Glendon Declaration at pp. 3-4, ¶¶ 15 – 15.f.

II. APPLICABLE STANDARDS

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is **no genuine issue as to any material fact** and that the moving party is entitled to a judgment as a matter of law." HRCP 56(c) (bold emphasis added).

> A fact is material if proof of that fact would have the effect of establishing elements of a cause of action or defense asserted by the parties. **The evidence must be viewed in the light most favorable to the non-moving party. In other words, we must view all of the evidence and the inferences drawn from them in the light most favorable to the non-moving party opposing the motion.**

Lansdell v. Cnty. of Kauai, 110 Hawai'i 189, 194, 130 P.3d 1054, 1059 (2006) (quoting *Hawaii Cmty. Fed. Credit Union v. Keka*, 94 Hawai'i 213, 221, 11 P.3d 1, 9 (2000)) (bold emphasis added). *See also Field, Tr. of Est. of Aloha Sports Inc. v. Nat'l Collegiate Athletic Ass'n*, 143 Hawai'i 362, 372, 431 P.3d 735, 745 (2018).

> In deciding a motion for summary judgment, a circuit court must keep in mind an important distinction:
>
> > **A judge ruling on a motion for summary judgment cannot summarily try the facts**; his [or her] role is limited to applying the law to the facts that have been established by the litigants' papers. Therefore, a party moving for summary judgment is not entitled to a judgment merely

> because the facts he offers appear more plausible than those tendered in opposition or because it appears that the adversary is unlikely to prevail at trial. This is true even though both parties move for summary judgment. Therefore, if the evidence presented on the motion is subject to conflicting interpretations, or reasonable men [and women] might differ as to its significance, summary judgment is improper. [Citations omitted.]

Chuck Jones & MacLaren v. Williams, 101 Hawai'i 486, 497, 71 P.3d 437, 448 (Ct. App. 2003) (quoting *Kajiya v. Department of Water Supply*, 2 Haw. App. 221, 224, 629 P.2d 635, 638-39 (1981) (quoting 10A Wright, Miller and Kane, *Federal Practice and Procedure: Civil* § 2725 (1973)) (brackets original) (bold emphasis added).

"[S]ummary judgment must be used with due regard for its purpose and should be cautiously invoked **so that no person will be improperly deprived of a trial of disputed factual issues**." *Bhakta v. Cnty. of Maui*, 109 Hawai'i 198, 207-208, 124 P.3d 943, 952-953 (2005), as amended (Dec. 30, 2005) (quoting *Miller v. Manuel*, 9 Haw. App. 56, 65-66, 828 P.2d 286, 292 (1991)) (bold emphasis added).

III. ARGUMENT

Plaintiff's Partial MSJ – Counts 1-810-14 should be denied because: 1) Defendant DC use of Executive Sessions for the interviewing and consideration of candidates for the State Public Defender position were/are allowed under Hawaii Revised Statutes ("**HRS**") § 92-5 (2024 Cumulative Supplement); 2) Defendant DC did not improperly amend its Agenda for the June 16, 2023 meeting; 3) Defendant DC did not fail to record legally sufficient minutes; and 4) Defendant DC's did not fail to properly take public testimony at its Regular Session meetings.

A. Defendant DC's use of Executive Sessions were/are allowed under HRS § 92-5

> (a) A board may hold a meeting closed to the public pursuant to section 92-4 for one or more of the following purposes:
>
> . . .
>
> (2) To consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be **involved**; provided that if the individual concerned requests an open meeting, an open meeting shall be held;

See HRS § 92-5 (bold emphasis added).

With regard to this exception, the Supreme Court of the State of Hawai'i (the "**Hawai'i Supreme Court**") has stated "[f]or 'matters affecting privacy' to be **involved** in a personnel discussion . . . the person at issue must have a 'legitimate expectation of privacy' in the

information . . .." *Civ. Beat L. Ctr. for the Pub. Int., Inc. v. City & Cnty. of Honolulu*, 144 Hawai'i 466, 480, 445 P.3d 47, 61 (2019) (bold emphasis added) (internal citations omitted). "People have a legitimate expectation of privacy in 'highly personal and intimate' information." *Civ. Beat L. Ctr. for the Pub. Int., Inc.*, 144 Hawai'i at 480, 445 P.3d at 61 (internal citations omitted). "Generally, 'highly personal and intimate' information may include "**medical, financial, educational, or employment records**." *Civ. Beat L. Ctr. for the Pub. Int., Inc.*, 144 Hawai'i at 480, 445 P.3d at 61 (bold emphasis added) (internal citations omitted). The Hawai'i Supreme Court also stated:

> When the personnel-privacy exception applies, **a government board may decide to close a meeting to engage in deliberations without risking the invasion of fundamental privacy rights**. Understanding that "the proverbial bell cannot be 'unrung' with regard to protecting individual privacy interests," . . . **boards may properly make this decision before such deliberations take place**.

Civ. Beat L. Ctr. for the Pub. Int., Inc., 144 Hawai'i at 480, 445 P.3d at 61 (bold emphases added) (internal citation omitted) (footnote omitted).

Based on terminology used in HRS § 92-5(a)(2) (2024 Cumulative Supplement) and the Hawai'i Supreme Court's opinion in *Civ. Beat L. Ctr. for the Pub. Int., Inc. v. City & Cnty. of Honolulu* (the "**Civil Beat Opinion**"), Defendant ADC may decide, prior to the Executive Meeting, to conduct the Annual Performance Review of the Executive Director, the interviews of the candidates for the Executive Director position, and the consideration of the candidates for the Executive Director position in Executive Session because all three of these events "include or contain as a part"[1] information that the Executive Director and the candidates for the Executive Director position have a legitimate expectation of privacy over.

Here, with regard to the interviews and consideration of the candidates for the State Public Defender position, Defendant DC chose to conduct its interviews and consideration of the candidates for the Executive Director position in Executive Session for the following because: 1) The majority of the candidates for the State Public Defender position were public employees, who would have a limited expectation of privacy regarding his/her prior work history and salaries, however, one of the candidates was not a public employee who would have a reasonable expectation of privacy regarding his/her prior work history and his/her salary; 2) The public

[1] The term "involved" is defined by *Webster's New College Dictionary (Third Edition)* ("**Webster's**") as "to include or contain as a part." *See* Webster's at p. 598.

comments submitted for one of the candidates for the State Public Defender position indicated that the candidate may have had an inappropriate relationship with an employee at the Office of the Public Defender, which meant that Defendant DC would need to question the candidate about his/her personal relationship with the individual; 3) The public comments submitted for one of the candidates for the State Public Defender position indicated that the candidate may be unstable, which meant that Defendant DC would need to question the candidate about the claim, which in turn could lead to the disclosure of confidential medical and/or psychological treatment; 4) The public comments submitted for one of the candidates for the State Public Defender position indicated that the candidate had a harassment complaint filed against him/her, which meant that Defendant DC would need to question the candidate about the claim, which in turn could lead to the disclosure of confidential medical and/or psychological treatment; 5) Defendant DC decided to conduct the interviews in Executive Session because the allegations made in public comments referenced above were made against the three (3) public employees and the fourth candidate for the State Public Defender Position was not a public employee; and 6) With regard to Defendant DC's discussions regarding the candidates for the State Public Defender position, it was anticipated, and it turned out to be true, that Defendant DC would be discussing the non-public worker's prior work history and salary and the public employees' responses to Defendant DC's inquiries regarding the alleged inappropriate relationship, the alleged unstableness, and the alleged harassment claim. *See* Glendon Declaration at pp. 3-4, ¶¶ 15 – 15.f.

Based on the argument presented by Plaintiff in Section III.A. (*see* Plaintiff's Partial MSJ – Counts 1-8 at pp. 15-22 of the PDF), Plaintiff appears to believe that HRS § 92-5(a)(2) and the Civil Beat Opinion require that every piece of information disclosed during the Executive Session must have a legitimate expectation of privacy. This is not correct.

The Civil Beat Opinion states:

> If the circuit court finds that the Commission had a proper basis for invoking the **personnel-privacy exception** at the executive sessions under review, the court must conduct a two-step analysis. First, the court will determine to what extent the Commission's discussions and deliberations therein fell within the scope of the **personnel-privacy exception**. That is, the court must determine to what extent the Commission's discussions and deliberations were "directly related to" the purpose of closing the meeting pursuant to the **personnel-privacy exception**.

Civ. Beat L. Ctr. for the Pub. Int., Inc., 144 Hawai‘i at 480, 445 P.3d at 61 (bold emphases added) (internal citation omitted). This statement clearly indicates that it is the personnel-privacy exception that must be maintained throughout the Executive Session. As noted by the use of the term "involved" by the Hawai‘i State Legislature in HRS § 92-5(a)(2) and the Hawai‘i Supreme Court in the Civil Beat Opinion , the personnel-privacy exception only requires that the hire, evaluation, dismissal, or discipline of an officer "involved" or, as defined by Webster's, "include or contain as a part" (Webster's at p. 598) the consideration of matters affecting privacy. Had the Hawai‘i State Legislature and the Hawai‘i Supreme Court intended that the entire Executive Session required the disclosure of information affecting privacy, and nothing else, then they would have bypassed the phrase "personnel-privacy exception" and simply stated "matters affecting privacy." Because the Hawai‘i State Legislature and the Hawai‘i Supreme Court use the phrase "personnel-privacy exception," it is clear that the requirement that they are invoking is that the Executive Session should not go beyond the issue of the hire, evaluation, dismissal, or discipline of an officer.

Here, based on the evidence before this Honorable Court, it is clear that Defendant DC has a justifiable basis to conduct the interviews and consideration of the candidates for the State Public Defender in Executive Session because each candidate was going to be questioned on claims that were made about them and the claims indicated that a disclosure of some medical and/or psychological issue could be disclosed. *See* Plaintiff's Exhibits 23 – 29.

Based on the foregoing, this Honorable Court should find that Defendant DC use of Executive Sessions for the interviewing and consideration of candidates for the State Public Defender Position were/are allowed under Hawaii Revised Statutes ("**HRS**") § 92-5 (2024 Cumulative Supplement).

B. DEFENDANT DC DID NOT IMPROPERLY AMEND ITS AGENDA FOR THE JUNE 16, 2023 MEETING"

As admitted by Plaintiff, "[a] board does have the limited ability to add minor items to its agenda at a meeting." *See* Plaintiff's Partial MSJ – Counts 1-8 at p. 22 of the PDF (underlined emphasis and bracket original). As further admitted by Plaintiff, "[a]n item may be added if the item 'is not 'of reasonably major importance' and does not 'affect a significant number of persons.'" *See* Plaintiff's Partial MSJ – Counts 1-8 at p. 22 of the PDF.

As noted by the minutes for Defendant DC's June 16, 2023 regular session meeting, the discussion regarding the selection process to appoint the State Public Defender was simply to

establish the various deadlines for the various actions that Defendant DC would take and to appoint members to the working group who consider the advertisement of the State Public Defender position. *See* Docket 61, Exhibit 11 at p. 69 of the PDF. These items are not of reasonably major importance and do not affect a significant number of persons because the establishment of deadlines and the assignment of members to a committee to consider the advertisement of the State Public Defender position have no effect on the quality of the person chosen for the State Public Defender – they do not establish any qualifications for the State Public Defender.

With regard to any potential arguments that Defendant DC discussed the selection process for the State Public Defender during its Executive Session on June 16, 2023, the evidence before this Honorable Court indicates that there was no discussion – Defendant DC was simply reminded that the current State Public Defender's term would be expiring in January 2024. *See* Glendon Declaration at p. 3, ¶¶ 13.

Based on the foregoing, this Honorable Court should decline to find that Defendant DC improperly amended the Agenda for its June 16, 2023 meeting.

C. DEFENDANT DC DID NOT FAIL TO RECORD LEGALLY SUFFICIENT MINUTES

HRS § 92-9(a) states:

> Written minutes shall include at minimum:
>
> (1) The date, time, and place of the meeting;
>
> (2) The members of the board recorded as either present or absent;
>
> (3) **The substance of all matters proposed, discussed, or decided**; and a record, by individual member, of any votes taken;
>
> (4) If an electronic audio or video recording of the meeting is available online, a link to the electronic audio or video recording of the meeting, to be placed at the beginning of the minutes; and
>
> (5) Any other information that any member of the board requests be included or reflected in the minutes.

HRS § 92-9(a) (bold emphasis added). The term "substance" is defined by Webster's as "the most central and material part: essence." *See* Webster's at p. 1126.

With regard to Plaintiff's argument that the minutes did not identify the purpose or legal basis for entering into Executive Session, a plain reading of the minimum requirements for written minutes clearly indicate that such an identification is not required.

With regard to Plaintiff's argument that HRS § 92-4(a) requires that the reasons for holding an executive session shall be entered into the minutes of the meeting, Plaintiff use of an ellipse distorts the actual rule. The complete sentence states: "The reason for holding such a meeting shall be publicly announced and **the vote of each member on the question of holding a meeting that is closed to the public shall be recorded and entered into the minutes of the meeting**." HRS § 92-4(a). Based on the complete statement of HRS § 92-4(a), it is clear that the reason for holding a meeting in Executive Session shall simply be publicly announced. The vote of the members is what is required to be in the meeting minutes. A review of the Agendas for the meeting that Plaintiff complains of, clearly show that the reasons for holding a meeting in Executive Session was publicly announced. *See* Docket 61, Exhibit 10 at p. 64 of the PDF, Exhibit 12 at p 73 of the PDF, Exhibit 15 at p. 82 of the PDF, and Exhibit 17 at p. 88 of the PDF.

With regard to Plaintiff's argument that the Executive Session meeting minutes, the meeting minutes provide the most central and material part or essence of the meetings. *See* Docket 61, Exhibit 16 at pp. 84-85 of the PDF, and Exhibit 19 at p 97 of the PDF. There is nothing in HRS § 92-9(a) that requires a detailed transcription of the everything discussed. Such a requirement, a detailed transcription, would defeat the purposes of discussing private and/or confidential information in an Executive Session, if the minutes must detail everything discussed.

Based on the foregoing, it is clear that Defendant DC recorded legally sufficient minutes and this Honorable Court should decline to find that Defendant DC failed to record legally sufficient minutes.

D. DEFENDANT DC'S DID NOT FAIL TO PROPERLY TAKE PUBLIC TESTIMONY AT ITS REGULAR SESSION MEETINGS

HRS § 92-3 states "[t]he boards shall also afford all interested persons an opportunity to present oral testimony on any agenda item; provided that the oral testimonies of interested persons shall not be limited to the beginning of a board's agenda or meeting." HRS § 92-3.

Plaintiff argues that Defendant DC refused to allow public testimony and/or limited public testimony to the beginning of the meeting, but Plaintiff provides not evidence to indicate that Defendant DC refused to allow testimony or limited the testimony to the beginning of the meeting. The only thing that the evidence produced by Plaintiff shows is that Defendant DC did not actively seek public testimony after it initially opened the meeting up for public testimony at the beginning of the meeting. Not actively seeking public testimony is totally different from

refusing or limiting public testimony. In order to refuse and/or limit public testimony, a request to provide public testimony must be made to Defendant DC, then Defendant DC must decline to accept the public testimony. Not actively seeking public testimony simply means that Defendant DC did not ask the public if they had any further comments. There is nothing in HRS § 92-3 that requires Defendant DC to seek oral testimony throughout the meeting. HRS § 92-3 states that oral testimony cannot be limited to the beginning of the meeting – meaning, if a member of the public speaks up and asks to provide public comment on the issue currently before Defendant DC, then Defendant DC cannot decline to hear the public comment. Once again, Plaintiff has not provided any evidence to even remotely show that Defendant DC refused to accept public testimony and/or attempted to limit the public testimony to the beginning of the meeting.

Based on the foregoing, it is clear that Defendant DC did not refuse to accept public testimony and/or attempted to limit public testimony to the beginning of the meeting. Because the evidence simply indicates that Defendant DC did not actively seek public testimony after the public testimony at the beginning of the meeting, which is not required by HRS § 92-3, this Honorable Court should decline to find that Defendant DC violated HRS § 92-3.

IV. CONCLUSION

Based on the foregoing, the State Defendants believe that there is a good faith basis for this Honorable Court to deny Plaintiff's Partial MSJ – Counts 1-8. If this Honorable Court does not believe that the facts indicate that Defendant DC did not violate the Sunshine Law and/or the Civil Beat Opinion, then Defendant DC believes that the facts, at a minimum, create a question of fact for the trier of fact to determine.

DATED: Honolulu, Hawai'i, May 1, 2025.

ANNE E. LOPEZ
Attorney General for the State of Hawai'i

/s/ David N. Matsumiya
AMANDA J. WESTON
DAVID N. MATSUMIYA
Deputy Attorneys General
Attorneys for Defendants
DEFENDER COUNCIL, JON N. IKENAGA, AND
AGRIBUSINESS DEVELOPMENT CORPORATION
BOARD OF DIRECTORS

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

PUBLIC FIRST LAW CENTER, Plaintiff, vs. DEFENDER COUNCIL; JON N. IKENAGA; and AGRIBUSINESS DEVELOPMENT CORPORATION BOARD OF DIRECTORS, Defendants.	CIVIL NO.: 1CCV-24-0000050 (Other Civil Action) DECLARATION OF CRYSTAL GLENDON

DECLARATION OF CRYSTAL GLENDON

I, CRYSTAL GLENDON, declare under penalty of law that the following is true and correct to the best of my knowledge, information, and belief:

1. I am an attorney licensed to practice law before all of the courts in the State of Hawai'i.

2. At all times relevant to the above-referenced action, I was a member of Defendant DEFENDER COUNCIL ("**Defendant DC**").

3. I became the Chair for Defendant DC at the June 16, 2023 Regular Session meeting of Defendant DC.

4. I have personal knowledge of the matters discussed herein, am competent to testify as to the matters stated herein, and I make this Declaration upon personal knowledge except and unless stated to be upon information and belief.

5. As the Chair of Defendant DC, I have knowledge of and experience with the documents kept by Defendant DC and I actively participated in the review and production of documents relevant to the above-referenced action to the Department of the Attorney General ("**ATG**").

6. I have reviewed the documents, which have been bates-numbered DC 000001 – DC 000320.

7. The documents, which have been bates-number DC 000001 – DC 000320, are true and correct copies of the documents that were produced to the ATG.

8. The documents, which have been bates-number DC 000001 – DC 000320, are copies of records made by Defendant DC in the regular course of its business.

9. The documents, which have been bates-number DC 000001 – DC 000320, are copies of records that were made at or near the time of the events that are noted in the documents.

10. To the best of my knowledge, the documents, which have been bates-numbered DC 000001 – DC 000320, have always been in the care, custody, and control of Defendant DC and have never left the care, custody, and control of Defendant DC.

11. With the exception of the redactions added to the documents, the documents , which have been bates-numbered DC 000001 – DC 000320, have not been altered.

12. I attended the following meetings for Defendant DC:

a. Regular Session on June 16, 2023;

b. Executive Session on June 16, 2023;

c. Regular Session on August 4, 2023;

d. Executive Session on August 4, 2023;

e. Regular Session on October 4, 2023;

f. Executive Session on October 4, 2023;

g. Regular Session on November 2, 2023; and

h. Executive Session on November 2, 2023.

13. With regard to the Executive Session on June 16, 2023, it is my recollection that Defendant DC did not discuss the selection process for the appointment of the Public Defender – Defendant DC was simply reminded that the current State Public Defender's term would be expiring in January 2024.

14. With regard to the Executive Session on August 4, 2023, it is my recollection that Defendant DC discussions regarding the dates for the selection process of the Public Defender included verification from our legal counsel that the proposed dates would not present any Sunshine Law issue, regarding proper notice, and that the use of Survey Money for public comment would not create any legal problems.

15. With regard to the Executive Sessions where Defendant DC interviewed and considered the candidates for the State Public Defender position, specifically the October 4, 2023 and November 2, 2023 Executive Session meeting, Defendant DC chose to conduct its interviews and considerations of the candidates for the State Public Defender position in Executive Session for the following reasons:

a. The majority of the candidates for the State Public Defender position were public employees, who would have a limited expectation of privacy regarding his/her prior work history and salaries, however, one of the candidates was not a public employee who would have a reasonable expectation of privacy regarding his/her prior work history and his/her salary;

b. The public comments submitted for one of the candidates for the State Public Defender position indicated that the candidate may have had an inappropriate relationship with an employee at the Office of the Public Defender, which meant that Defendant DC would need to question the candidate about his/her personal relationship with the individual;

c. The public comments submitted for one of the candidates for the State Public Defender position indicated that the candidate may be unstable, which meant that Defendant DC would need to question the candidate about the claim, which in turn could lead to the disclosure of confidential medical and/or psychological treatment;

d. The public comments submitted for one of the candidates for the State Public Defender position indicated that the candidate had a harassment complaint filed against him/her, which meant that Defendant DC would need to question the candidate about the claim, which in turn could lead to the disclosure of confidential medical and/or psychological treatment;

e. Defendant DC decided to conduct the interviews in Executive Session because the allegations made in public comments referenced above were made against the three (3) public employees and the fourth candidate for the State Public Defender Position was not a public employee; and

f. With regard to Defendant DC's discussions regarding the candidates for the State Public Defender position, it was anticipated, and it turned out to be true, that Defendant DC would be discussing the non-public worker's prior work history and salary and the public employees' responses to Defendant DC's inquiries regarding the alleged inappropriate relationship, the alleged unstableness, and the alleged harassment claim.

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

This declaration is made in lieu of an affidavit pursuant to Rule 7(g) of the Rules of the Circuit Courts of the State of Hawai'i.

DATED: Honolulu, Hawai'i, May 1, 2025.

Crystal Glendon

CRYSTAL GLENDON

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAIʻI

PUBLIC FIRST LAW CENTER, Plaintiff, vs. DEFENDER COUNCIL; JON N. IKENAGA; and AGRIBUSINESS DEVELOPMENT CORPORATION BOARD OF DIRECTORS, Defendants.	CIVIL NO.: 1CCV-24-0000050 (Other Civil Action) CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date stated below, a copy of the foregoing document was duly served upon the party named below, via the method indicated below, at their respective last-known addresses.

Robert Brian Black, Esq.
Benjamin M. Creps, Esq.
PUBLIC FIRST LAW CENTER
700 Bishop Street, Suite 1701
Honolulu, Hawaiʻi 96813
Attorneys for Plaintiff
PUBLIC FIRST LAW CENTER

brian@publicfirstlaw.org
ben@publicfirstlaw.org

☒ JEFS
☐ Personal Service
☐ U.S. Postal Service

DATED: Honolulu, Hawaiʻi, May 1, 2025.

ANNE E. LOPEZ
Attorney General for the State of Hawaiʻi

/s/ David N. Matsumiya
AMANDA J. WESTON
DAVID N. MATSUMIYA
Deputy Attorneys General
Attorneys for Defendants
DEFENDER COUNCIL, JON N. IKENAGA, AND AGRIBUSINESS DEVELOPMENT CORPORATION BOARD OF DIRECTORS