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BOARD OF DIRECTORS

**Electronically Filed**  
**FIRST CIRCUIT**  
**1CCV-24-0000050**  
**11-JUL-2025**  
**04:57 PM**  
**Dkt. 218 MSJ**

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)

DEFENDANT AGRIBUSINESS  
DEVELOPMENT CORPORATION BOARD  
OF DIRECTORS' MOTION FOR  
SUMMARY JUDGMENT REGARDING  
COUNT XIV; MEMORANDUM IN  
SUPPORT OF MOTION; DECLARATION  
OF DAVID N. MATSUMIYA; EXHIBIT A;  
APPENDICES A-C; NOTICE OF HEARING;  
CERTIFICATE OF SERVICE

**HEARING:**

Date: July 29, 2025

Time: 10:00 a.m.

Judge: Honorable Jordon J. Kimura

Judge: Honorable Jordon J. Kimura

Trial: September 22, 2025

**DEFENDANT AGRIBUSINESS DEVELOPMENT CORPORATION BOARD OF  
DIRECTORS' MOTION FOR SUMMARY JUDGMENT REGARDING COUNT XIV**

Defendants AGRIBUSINESS DEVELOPMENT CORPORATION BOARD OF DIRECTORS (“**Defendant ADC**”), DEFENDER COUNCIL (“**Defendant DC**”) and JON N. IKENAGA (hereinafter collectively referred to as the “**State Defendants**”) by and through Anne E. Lopez, Attorney General for the State of Hawai‘i, and their attorneys Amanda J. Weston and David N. Matsumiya, Deputy Attorneys General, hereby respectfully move this Honorable Court for an order granting summary judgment as to the claims made against Defendant ADC by Plaintiff PUBLIC FIRST LAW CENTER (“**Plaintiff**”) in Count XIV of the *Complaint* filed on January 10, 2024 as Dkt. 1 (the “**Complaint**”).

*Defendant Agribusiness Development Corporation Board of Directors' Motion for Summary Judgment Regarding Count XIV* (“**Defendant ADC’s MSJ**”) should be granted because: 1) Plaintiff’s statement of its claims for Count XIV of the *Complaint* (“**Count XIV**”) clearly indicate that Count XIV is asserted solely against Defendant ADC; 2) Plaintiff’s claim for relief in Count XIV was filed after the expiration of the deadline mandated by Hawaii Revised Statutes (“**HRS**”) §§ 92-12 and 92-11 (2012 Replacement); and 3) Defendant ADC is not the proper party to defend the State of Hawai‘i Office of Information Practices’ (“**OIP**”) *Opinion Letter No. F24-03* (“**OIP’s Opinion Letter No. F24-03**”).

Count XIV cannot be viewed as providing the State Defendants with notice that Count XIV is asserted against a party other than Defendant ADC. Plaintiff’s inability to provide evidence to refute its admission, that Defendant ADC is the only defendant that Count XIV is asserted against, does not change the notice that the State Defendants were provided by the *Complaint*. Based on these facts, it is clear that Count XIV is asserted solely against Defendant ADC.

The *Complaint* was filed after the expiration of HRS § 92-11’s 90-day deadline. Plaintiff’s inability to provide evidence to impute the actions of OIP and/or Defendant DC onto Defendant ADC prevents Plaintiff from extending HRS § 92-11’s 90-day deadline. Based on these facts, it is clear that this Honorable Court does not possess jurisdiction to rule upon Count XIV because Count XIV is asserted solely against Defendant ADC and Plaintiff did not meet the deadline to file an action against Defendant ADC.

Defendant ADC is not the appropriate party to defend OIP's Opinion Letter No. F24-03. Defendant ADC is clearly not in a position to properly defend OIP's Opinion Letter No. F24-03 because OIP's Opinion Letter No. F24-03 was issued after Defendant ADC's actions were taken, Defendant ADC never relied upon OIP's Opinion Letter No. F24-03 in determining its actions, and Defendant ADC is not the party attempting to have OIP's Opinion Letter No. F24-03 entered into this actions. Based on these facts, it is clear that this Honorable Court should decline to rule on whether OIP's Opinion Letter No. F24-03 is "palpably erroneous" until an appropriate party is named in this action, or in a separate action, in order to protect the integrity of OIP's opinions.

Defendant ADC's MSJ is being brought pursuant to Rules 7 and 56 of the Hawai'i Rules of Civil Procedure, in accordance with Rules 7, 7.1, 7.2 and 8 of the Rules of the Circuit Courts of the State of Hawai'i, and is supported by the attached Memorandum in Support of Motion, the Declaration of David N. Matsumiya, Exhibit A, Appendices A-C, and the records and files contained herein.

DATED: Honolulu, Hawai'i, July 11, 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  
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PUBLIC FIRST LAW CENTER,

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MEMORANDUM IN SUPPORT OF  
MOTION

**MEMORANDUM IN SUPPORT OF MOTION**

Defendants AGRIBUSINESS DEVELOPMENT CORPORATION BOARD OF DIRECTORS (“**Defendant ADC**”), DEFENDER COUNCIL (“**Defendant DC**”) and JON N. IKENAGA (hereinafter collectively referred to as the “**State Defendants**”), by and through Anne E. Lopez, Attorney General for the State of Hawai‘i, and their attorneys Amanda J. Weston and David N. Matsumiya, Deputy Attorneys General, hereby submit their memorandum in support of *Defendant Agribusiness Development Corporation Board of Directors’ Motion for Summary Judgment Regarding Count XIV* (“**Defendant ADC’s MSJ**”).

**I. STATEMENT OF RELEVANT FACTS**

On January 10, 2024, Plaintiff PUBLIC FIRST LAW CENTER (“**Plaintiff**”) filed its *Complaint* (the “**Complaint**”). *See* Dkt. 1 at p. 1. For ease of reference, a true and correct copy of the Complaint is attached hereto as Exhibit A. *See* Declaration of David N. Matsumiya (“**Matsumiya Declaration**”) at p. 1, ¶¶ 5-6. In Count XIV of the Complaint (“**Count XIV**”), Plaintiff seeks an order declaring the State of Hawai‘i Office of Information Practices’ (“**OIP**”) *Opinion Letter No. F24-03* (“**OIP’s Opinion Letter No. F24-03**”) to be “palpably erroneous.” *See* Exhibit A at p. 35, ¶ 260. The Plaintiff’s short and plain statements of its claim for Count XIV are as follows:

257. At the August 8 meeting, the ADC Board relied on the personnel-privacy exemption, in blanket fashion, to justify its closed-door deliberations and decision-making concerning the hiring of a new ADC Executive Director.
258. The ADC Board did so in disregard of plain law. *E.g.*, *Civil Beat Law*, 144 Hawai‘i 466, 445 P.3d 47 (providing required case-specific analysis to properly invoke the personnel-privacy exemption).

259. OIP Opinion Letter No. F24-03 is palpably erroneous to the extent it held that the ADC Board properly conducted an executive session on August 8.
260. Public First is entitled to an order declaring that Opinion Letter No. F24-03 is palpably erroneous to the extent it held that the ADC Board properly conducted an executive session on August 8.

*See Exhibit A at p. 35.*

The Plaintiff's factual allegations regarding OIP's Opinion Letter No. F24-03 and Defendant ADC's action at Defendant ADC's August 8, 2023 meeting, as stated in the Complaint, are as follows:

119. At the August 8 meeting, the Chair of the ADC Board invited public testimony on the Hiring PIG's recommendations, despite the fact that the identities of the candidates remained secret.
120. The ADC Board then voted to accept the recommendations of the Hiring PIG without public deliberation or comment.
121. After approving the Hiring PIG's mostly secret recommendations, the ADC Board entered executive session and interviewed candidates, discussed salary, and deliberated on the selection for the ADC Executive Director for almost three hours.
122. Upon reconvening in open session, the Chair of the ADC Board announced that the ADC Board had deliberated on and selected a specific candidate.
123. The ADC Board did not announce the identity of the selected candidate on August 8 when it reconvened in public session.
124. The ADC Board never publicly deliberated or explained the reasons for its selection of the ADC Executive Director.
125. The ADC Board publicly announced its selection on August 17.
126. Days later, on August 21, an anonymous member of the public asked the State of Hawai'i Office of Information Practices . . . whether the ADC Board complied with the Sunshine Law in its hiring of the ADC Executive Director.
127. On November 3, OIP issued Opinion Letter No. F24-03 in response to the August 21 anonymous request, holding among other things that the ADC Board's executive sessions during the selection of the ADC Executive Director did not violate the Sunshine Law.
128. On November 20, Public First asked OIP to reconsider Opinion Letter No. F24-03 because it contradicted clear guidance from the Hawai'i Supreme Court.
129. On November 29, OIP declined to reconsider its decision and advised Public First that it could pursue judicial relief.

See Exhibit A at pp. 17-18. With regard to Defendant DC, Plaintiff's relevant factual allegations, as stated in the Complaint, are as follows:

48. The published November 2 agenda provided that the Council would discuss and possibly select the new State Public Defender in executive session.
49. On October 24, Public First notified the Council that the Sunshine Law required the Council to conduct its selection of the next State Public Defender openly and, at minimum, prohibited the Council from conducting the entire selection process in executive session.
- ...
51. On October 25, the Council responded, through counsel: "We agree that the position of the Public Defender is a high-level position, but given the nature of the applicants (three of the four candidates are currently members of the Office of the Public Defender) and their backgrounds, we believe that it would be appropriate to hold the selection discussions in an executive session."
52. On October 26, Public First again urged the Council to reconsider its decision to deliberate entirely in secret and notified the applicants that the Council's selection process did not comply with the Sunshine Law.
53. On November 2, Public First testified before the Council and once again notified the Council that the Sunshine Law required their discussion and selection of the State Public Defender to be conducted openly.
54. The Council closed its doors anyway.
55. The Council deliberated on the selection of the State Public Defender entirely in executive session.
56. The Council selected Defendant Ikenaga as State Public Defender.
57. When it announced its decision, the Council did not discuss the candidates or the reasons for selection; the Chair simply asked for a vote, and the members voted to select Defendant Ikenaga.
- ...
60. The Council's selection of Defendant Ikenaga is timely challenged here pursuant to HRS § 92-11.

See Exhibit A at pp. 8-9.

With regard to Defendant ADC, Defendant DC, and their possible relationship to one another, Plaintiff's factual allegations, as stated in the Complaint, clearly assert that Defendant ADC and Defendant DC are two separate and distinct entities. See Exhibit A at p. 1, ¶ 2; p. 2, ¶ 4; p. 4, ¶¶ 13-14; p. 9, ¶ 61; and p. 10, ¶ 64. In addition, Plaintiff's factual allegations, as stated in the Complaint, clearly assert that Defendant ADC's actions and Defendant DC's actions

occurred at different times and were independent from each other. *See* Exhibit A at pp. 4-9, ¶¶ 13-59; and pp. 9-17, ¶¶ 61-125.

Missing from Plaintiff's factual allegations and/or Plaintiff's statements of its claim, as stated in the Complaint, are any allegations asserting that Defendant ADC and/or Defendant DC relied upon and/or followed OIP's Opinion Letter No. F24-03 in their respective decisions to conduct the selection of their respective "Executive Director" and "State Public Defender." *See* Exhibit A at pp. 1-38.

As for OIP's Opinion Letter No. F24-03, OIP publishes its formal opinions to the public on its website at <https://oip.hawaii.gov/laws-rules-opinions/opinions/formal-opinion-letter-summaries-and-full-text/>. A summary of OIP's Opinion Letter No. F24-03 can be found at <https://oip.hawaii.gov/f24-03/>. A complete copy of OIP's Opinion Letter No. F24-03 can be downloaded at <https://oip.hawaii.gov/wp-content/uploads/2023/11/OIP-Op.-Ltr.-No.-F24-03-Anonymous-re-ADC-Board.pdf>. For ease of reference, a true and correct copy of OIP's Opinion Letter No. F24-03 is attached hereto as Appendix A. *See* Matsumiya Declaration at pp. 1-2, ¶¶ 7-10. As noted in OIP's Opinion Letter No. F24-03, OIP was asked to decide "whether the Agribusiness Development Corporation . . . Board of Directors . . . violated the Sunshine Law during its selection of a new executive director . . . ." *See* Appendix A at p. 1. OIP broke this request down as follows:

1. Whether the Board gave proper notice that the location of an executive session would be solely the in-person location listed on a remote meeting notice, with no indication that the executive portion of the meeting was in-person only; and whether this allowed the Board to require board members to attend in-person only for the executive session portions of the agenda.
2. Whether a board may discuss an item in executive session without having first allowed public testimony on the agenda item to be discussed in the executive session.
3. Whether the Board properly considered and voted on the hire of an officer or employee in an executive session.
4. Whether the Board was authorized under the Sunshine Law to take a secret ballot vote on an item of board business.
5. Whether the executive session summary provided after the Board's executive session on August 8, 2023, complied with Act 19 of 2023, to be codified at section 92-4(b), HRS . . . .

6. Whether the Board has options to remedy Sunshine Law violations, including taking a subsequent vote to ratify selection of the ED.

See Appendix A at p. 2.

## 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.” Hawai‘i Rules of Civil Procedure (“**HRCP**”) 56(c).

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)). 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).

“A summary judgment motion ‘challenges the very existence or legal sufficiency of the claim or defense to which it is addressed.’” *First Hawaiian Bank v. Weeks*, 70 Haw. 392, 396, 772 P.2d 1187, 1190 (1989) (quoting 10 Wright, Miller & Kane, *Federal Practice and Procedure: Civil 2d* § 2711, at 555–56 (1983)). In other words, “the moving party takes the position that [he or she] is entitled to prevail because his opponent has no valid claim for relief or defense to the action, as the case may be.” *First Hawaiian Bank*, 70 Haw. at 396, 772 P.2d at 1190 (quoting 10 Wright, Miller & Kane, *Federal Practice and Procedure: Civil 2d* § 2711, at 555–56 (1983) (original ellipse omitted)). As a result, the moving party “has the burden of demonstrating that there is no genuine issue as to any material fact relative to the claim or defense and [that he or she] is entitled to judgment as a matter of law. *First Hawaiian Bank*, 70 Haw. at 396, 772 P.2d at 1190 (quoting 10 Wright, Miller & Kane, *Federal Practice and Procedure: Civil 2d* § 2711, at 555–56 (1983)).

“The moving party ‘may discharge his or her burden by demonstrating that if the case went to trial there would be no competent evidence to support a judgment for his or her opponent.’” *Young v. Planning Comm’n of Cty. of Kauai*, 89 Hawai‘i 400, 407, 974 P.2d 40, 47



(1999) (quoting *First Hawaiian Bank*, 70 Haw. at 396, 772 P.2d at 1190) (original brackets omitted).

If the moving party satisfies his or her burden, “then the burden shifts to the [non-moving party] to demonstrate ‘specific facts, as opposed to general allegations, that present a genuine issue worthy of trial.’” *Garcia v. Robinson*, 137 Hawai‘i 388, 397, 375 P.3d 167, 176 (2016) (quoting *French v. Haw. Pizza Hut, Inc.*, 105 Hawai‘i 462, 470, 99 P.3d 1046, 1054 (2004)). The non-moving party “may not rest upon the mere allegations or denials of the [non-moving] party’s pleading, but the [non-moving] party’s response, by affidavits or as otherwise provided in [HRCP 56], must set forth specific facts showing that there is a genuine issue for trial.” HRCP 56(e). A non-moving party “cannot discharge his or her burden by alleging conclusions, ‘nor is he [or she] entitled to a trial on the basis of a hope that he [or she] can produce some evidence at that time.” *Henderson v. Professional Coatings Corp.*, 72 Haw. 387, 400-401, 819 P.2d 84, 92 (1991) (quoting 10A Wright, Miller & Kane, *Federal Practice and Procedure: Civil* 2d § 2727 (1983)).

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**

Defendant ADC's MSJ should be granted because: 1) Plaintiff's statements of its claim for Count XIV clearly indicate that Count XIV is asserted solely against Defendant ADC; 2) Plaintiff's claim for relief in Count XIV was filed after the expiration of the deadline mandated by Hawaii Revised Statutes ("HRS") §§ 92-12 and 92-11 (2012 Replacement); and 3) Defendant ADC is not the proper party to defend OIP's Opinion Letter No. F24-03.

#### **A. COUNT XIV IS ASSERTED SOLELY AGAINST DEFENDANT ADC**

Based on Plaintiff's statements of its claim for Count XIV, it is clear that Count XIV is asserted solely against Defendant ADC.

##### **1. Count XIV Only Provides Notice of Defendant ADC's Involvement**

"A pleading which sets forth a claim for relief . . . shall contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief[.]" HRCp 8(a). "This requirement under our pleading system provides defendant with fair notice of what the plaintiff's claim is and the grounds upon which the claim rests." *Au v. Au*, 63 Haw. 210, 221, 626 P.2d 173, 181 (1981) (citing *Conley v. Gibson*, 355 U.S. 41, 47, 78 S.Ct. 99, 102, 2 L.Ed.2d 80 (1957); *Hall v. Kim*, 53 Haw. 215, 491 P.2d 541 (1971)).

Plaintiff's statements of its claim for Count XIV only reference Defendant ADC. *See* Exhibit A at p. 35, ¶¶ 257-260. Plaintiff's statements of its claims for Count XIV do not reference or allude to Defendant DC. *See* Exhibit A at p. 35, ¶¶ 257-260.

Based on the lack of any indication that Defendant DC was associated with or had anything to do with OIP's Opinion Letter No. F24-03, Count XIV cannot be viewed as providing the State Defendants with notice that Count XIV is asserted against Defendant DC. As a result, Plaintiff may not now assert that Count XIV is asserted against Defendant DC.

##### **2. Plaintiff's Factual Allegations, as Stated in the Complaint, Admit that Defendant ADC was the Only State Defendant Associated OIP's Opinion Letter No. F24-03**

"[I]t is well established that a party's factual allegation in a complaint or other pleading is a judicial admission which binds the party." *Lee v. Puamana Cmty. Ass'n*, 109 Hawai'i 561, 573, 128 P.3d 874, 886 (2006) (quoting *Int'l Bhd. of Elec. Workers, Local 1357 v. Hawaiian Tel. Co.*, 68 Haw. 316, 320 n. 2, 713 P.2d 943, 949 n. 2 (1986)). "A judicial admission is 'a formal statement, either by a party or his or her attorney, in the course of a judicial proceeding that removes an admitted fact from the field of controversy. It is a voluntary concession of fact by a

party or a party's attorney during judicial proceedings.'" *Lee*, 109 Hawai'i at 573, 128 P.3d at 886 (quoting *Han v. Yang*, 84 Hawai'i 162, 174 n. 18, 931 P.2d 604, 616 n. 18 (App.1997) (original brackets omitted).

Plaintiff's factual allegations regarding OIP's Opinion Letter No. F24-03, as stated in the Complaint, only references Defendant ADC. *See* Exhibit A at p. 18, ¶¶ 126-129. Based on the above-referenced rule, this means that Plaintiff admits that Defendant ADC was the only State Defendant associated with OIP's Opinion Letter No. F24-03.

In addition, Plaintiff's factual allegations regarding OIP's Opinion Letter No. F24-03, as stated in the Complaint, are totally devoid of any reference to Defendant DC. *See* Exhibit A at p. 18, ¶¶ 126-129. The reason why the Plaintiff's factual allegations, as stated in the Complaint, only reference Defendant ADC is because Plaintiff can provide no evidence to indicate that Defendant DC was associated with or had anything to do with OIP's Opinion Letter No. F24-03.

As a result of Plaintiff's admission that Defendant ADC was the only State Defendant associated with OIP's Opinion Letter No. F24-03 and Plaintiff's inability to produce evidence to indicate that Defendant DC was associated with or had anything to do with OIP's Opinion Letter No. F24-03, it is clear that Plaintiff cannot refute its admission that Defendant ADC was the only State Defendant associated with OIP's Opinion Letter No. F24-03.

Based on the fact that Count XIV cannot be viewed as providing the State Defendants with notice that Count XIV is asserted against Defendant DC and that Plaintiff cannot refute its admission that Defendant ADC was the only State Defendant associated with OIP's Opinion Letter No. F24-03, it is clear that Count XIV is asserted solely against Defendant ADC.

**B. COUNT XIV WAS FILED AFTER THE DEADLINE MANDATED BY HRS §§ 92-12 AND 92-11**

Defendant ADC's MSJ regarding Count XIV should be granted because Plaintiff's claim for relief in Count XIV was filed after the expiration of the deadline mandated by HRS §§ 92-12 and 92-11.

**1. Governing Law for Plaintiff's Claims Against Defendant ADC**

The laws governing Plaintiff's ability to challenge the actions of Defendant ADC are HRS §§ 92-12 and 92-11.

**a. HRS § 92-12**

HRS § 92-12 was amended during the 2024 Legislative Session and the amended version became effective on July 2, 2024. *See* 2024 Haw. Sess. Laws Act 160. For ease of reference, a

true and correct copy of 2024 Haw. Sess. Laws Act 160 is attached hereto as Appendix B. *See* Matsumiya Declaration at p. 2, ¶¶ 11-13. There is nothing in Act 160 to indicate that Act 160 may be applied retroactively. *See* Appendix B. The Complaint was filed herein on January 10, 2024. *See* Exhibit A at p. 1. As a result, the law applicable to Plaintiff's ability to challenge the actions of Defendant ADC is the version of HRS § 92-12 that existed prior to July 2, 2024.

Prior to July 2, 2024, HRS § 92-12 stated:

- (a) The attorney general and the prosecuting attorney shall enforce this part.
- (b) The circuit courts of the State shall have jurisdiction to enforce the provisions of this part by injunction or other appropriate remedy.
- (c) Any person may commence a suit in the circuit court of the circuit in which a prohibited act occurs for the purpose of requiring compliance with or preventing violations of this part or to determine the applicability of this part to discussions or decisions of the public body. The court may order payment of reasonable attorney's fees and costs to the prevailing party in a suit brought under this section.
- (d) Opinions and rulings of the office of information practices shall be admissible in an action brought under this part and shall be considered as precedent unless found to be palpably erroneous.
- (e) The proceedings for review shall not stay the enforcement of any agency decisions; but the reviewing court may order a stay if the following criteria have been met:
  - (1) There is likelihood that the party bringing the action will prevail on the merits;
  - (2) Irreparable damage will result if a stay is not ordered;
  - (3) No irreparable damage to the public will result from the stay order; and
  - (4) Public interest will be served by the stay order.

HRS § 92-12. Of particular importance for this Honorable Court is HRS § 92-12(c).

The relevant portion of HRS § 92-12(c) is: "Any person may commence a suit . . . for the purpose of requiring compliance with or preventing violations of this part . . ." HRS § 92-12(c). In order for the circuit court to require compliance with and/or prevent violations of the Sunshine Law, the circuit court must necessarily void the actions of the public body if the public body's action are found to be in violation of the Sunshine Law. This voiding of the public body's action requires the circuit court to also consider the requirements of HRS § 92-11.

**b. HRS § 92-11**

HRS § 92-11, which was not amended during the 2024 Legislative Session, states: “Any final action taken in violation of [HRS] sections 92-3 and 92-7 may be voidable upon proof of violation. A suit to void any final action **shall be commenced within ninety days of the action.**” HRS § 92-11 (bold emphasis added).

The Supreme Court of the State of Hawai‘i (the “**Hawai‘i Supreme Court**”) has defined “‘final action’ in the context of HRS § 92-11 to mean ‘the final vote required to carry out the board’s authority on a matter.’” *Kanahele v. Maui Cnty. Council*, 130 Hawai‘i 228, 259, 307 P.3d 1174, 1205 (2013), as corrected (Aug. 30, 2013).

**2. Count XIV was Filed After the 90-Day Deadline Expired**

“[I]t is well established that a party’s factual allegation in a complaint or other pleading is a judicial admission which binds the party.” *Lee*, 109 Hawai‘i at 573, 128 P.3d at 886 (quoting *Int’l Bhd. of Elec. Workers, Local 1357*, 68 Haw. at 320 n. 2, 713 P.2d at 949 n. 2). “A judicial admission is ‘a formal statement, either by a party or his or her attorney, in the course of a judicial proceeding that removes an admitted fact from the field of controversy. It is a voluntary concession of fact by a party or a party’s attorney during judicial proceedings.’” *Lee*, 109 Hawai‘i at 573, 128 P.3d at 886 (quoting *Han*, 84 Hawai‘i at 174 n. 18, 931 P.2d at 616 n. 18 (original brackets omitted)).

Plaintiff’s factual allegations, as stated in the Complaint, indicate that Defendant ADC’s final action was taken on August 17, 2023, when it publicly announced its selection of the ADC Executive Director because it indicates that a vote was taken on or before August 17, 2023. *See* Exhibit A at p. 17, ¶ 125. Plaintiff can provide no evidence to establish that Defendant ADC took any action after August 17, 2023. Based on the above-referenced rule, Plaintiff’s inability to provide any evidence to establish that Defendant ADC took any action after August 17, 2023 coupled with its factual allegation that August 17, 2023 was the last date that Defendant ADC took any action clearly establish and admit that Defendant ADC’s final action occurred on August 17, 2023.

Based on a final action date of August 17, 2023, HRS § 92-11’s 90-day deadline to commence an action against Defendant ADC expired on November 15, 2023. The Complaint was filed on January 10, 2024. *See* Exhibit A at p. 1. January 10, 2024 is 146 days after Defendant ADC’s final action and 56 days after the expiration of the 90-day deadline. Because

Plaintiff filed the Complaint after the expiration of the 90-day deadline, this Honorable Court does not have jurisdiction to decide Plaintiff's claims against Defendant ADC, which according to the Complaint, includes Count XIV because, as shown above, Count XIV is asserted solely against Defendant ADC.

With regard to any potential argument that OIP's Opinion Letter No. F24-03 extended the start date of the 90-day deadline, such an argument has no merit. This argument has no merit because OIP's Opinion Letter No. F24-03 establishes the actions taken by OIP. Because Defendant ADC did not take any vote during OIP's investigation into Defendant ADC's action, OIP's Opinion Letter No. F24-03 cannot be viewed as a final action of Defendant ADC.

With regard to any potential argument that Defendant DC's final action extends the start date of the 90-day deadline, such an argument has no merit. Plaintiff's factual allegations, as stated in the Complaint, which are deemed as admissions by Plaintiff, clearly assert and establish that Defendant ADC and Defendant DC are two separate and distinct entities. *See Exhibit A* at p. 1, ¶ 2; p. 2, ¶ 4; p. 4, ¶¶ 13-14; p. 9, ¶ 61; and p. 10, ¶ 64. Furthermore, Plaintiff's factual allegations, as stated in the Complaint, which are deemed as admissions by Plaintiff, clearly assert and establish that Defendant ADC's actions and Defendant DC's actions occurred at different times and were independent from each other. *See Exhibit A* at pp. 4-9, ¶¶ 13-59; and pp. 9-17, ¶¶ 61-125. Finally, Plaintiff is unable to produce any evidence to indicate and/or establish that Defendant ADC and Defendant DC are the same entity and/or that the actions of Defendant ADC and Defendant DC are intertwined.

Based on the fact that the Complaint was filed after the expiration of HRS § 92-11's 90-day deadline and the fact that the actions of OIP and Defendant DC cannot be imputed upon Defendant ADC, it is clear that this Honorable Court does not possess jurisdiction to rule upon Count XIV because Count XIV is asserted solely against Defendant ADC.

**C. DEFENDANT ADC IS NOT THE PROPER PARTY TO DEFEND OIP'S OPINION LETTER NO. F24-03**

Defendant ADC is not the proper party to defend OIP's Opinion Letter No. F24-03.

"HRS § 92-12 contemplates that **the proper party for a suit to review an OIP opinion is the agency that followed the OIP opinion** in alleged violation of the Sunshine Law and against whom the Sunshine Law will eventually be enforced." *In re Off. of Info. Pracs. Opinion Letter No. F16-01*, 144 Hawai'i 389, 442 P.3d 452 (Ct. App. 2019), vacated, 147 Hawai'i 286, 465 P.3d 733 (2020) (Unpublished Disposition). Pursuant to Hawai'i Rules of Appellate

Procedure 35(c)(2), a true and correct copy of *In re Off. of Info. Pracs. Opinion Letter No. F16-01*, 144 Hawai‘i 389, 442 P.3d 452 is attached hereto as Appendix C. See Matsumiya Declaration at p. 2, ¶¶ 14-16. The Hawai‘i Supreme Court granted *certiorari* of *In re Off. of Info. Pracs. Opinion Letter No. F16-01* and issued an opinion vacating the judgment on May 31, 2019. In its opinion, the Hawai‘i Supreme Court stated:

With respect to HRS § 92-12, the ICA concluded that “just as an appeal of a circuit court decision does not name the circuit court as a party when it alleges the circuit court erred in interpreting and applying a particular law, but instead names the party against whom enforcement is proper,” **the appropriate party against whom to bring a suit pursuant to HRS § 92-12 is “the agency that followed the OIP opinion** in alleged violation of the Sunshine Law and against whom the Sunshine Law will eventually be enforced.” . . . The ICA added that HRS § 92-12 “does not confer jurisdiction on the circuit court to order OIP to render a new decision, only to rule a decision non-precedential if palpably erroneous.” . . . The ICA characterized the HRS § 92-12 procedure as the “mechanism” by which Smith could “seek direct review of an OIP opinion.”

*In re Off. of Info. Pracs. Opinion Letter No. F16-01*, 147 Hawai‘i 286, 292-93, 465 P.3d 733, 739-40 (2020) (original brackets omitted) (original citations omitted) (bold emphasis added). In its opinion, the Hawai‘i Supreme Court took issue with the Intermediate Court of Appeals’ (“ICA”) statement that “the proper defendant and subject of the suit, *i.e.*, the ‘prohibited act,’ is delineated in HRS § 92-12(c), and therefore does not include OIP or its opinions.” *In re Off. of Info. Pracs. Opinion Letter No. F16-01*, 147 Hawai‘i at 296, 465 P.3d at 743. As evidenced in its opinion, the focus of the Hawai‘i Supreme Court’s issue with the ICA’s opinion was on the ICA’s holding that OIP could not be named as a defendant. *In re Off. of Info. Pracs. Opinion Letter No. F16-01*, 147 Hawai‘i at 296-297, 465 P.3d at 743-744. Although the Hawai‘i Supreme Court stated “[t]he phrase ‘in which a prohibited act occurs’ simply refers to the proper venue of the action and does not limit the substance or nature of the action or the party against whom the action may be brought[.]” the Hawai‘i Supreme Court did not expressly overrule its version of the ICA’s statement, which is “the appropriate party against whom to bring a suit pursuant to HRS § 92-12 is ‘the agency that followed the OIP opinion . . .’” – it overruled the ICA’s determination that OIP could not be named as a defendant.

The State Defendants believe that the Hawai‘i Supreme Court did not specifically overrule its version of the ICA’s statement, which is “the appropriate party against whom to bring a suit pursuant to HRS § 92-12 is ‘the agency that followed the OIP opinion . . .’” because it makes perfect sense. If a party is going to sue an agency to determine if an OIP opinion letter

is “palpably erroneous,” then the defendant best equipped to defend the opinion is an agency that followed the opinion letter because it reviewed the opinion, agreed with it, and changed its procedures to follow it. An agency that did not follow the OIP opinion nor relied upon it to establish or change its procedures is not an appropriate party because there is nothing to indicate that the agency agrees with and/or supports the opinion, which will affect the agency’s ability to properly defend the OIP opinion.

In this action, Defendant ADC is not the proper defendant to defend OIP’s Opinion Letter No. F24-03 because: 1) Defendant ADC actions occurred prior to OIP’s Opinion Letter No. F24-03 being issued; 2) OIP’s Opinion Letter No. F24-03 found fault with Defendant ADC’s actions; and 3) Defendant ADC is not the party attempting to enter OIP’s Opinion Letter No. F24-03 into this action as precedent.

**1. Defendant ADC Actions Occurred Prior to OIP’s Opinion Letter No. F24-03 Being Issued**

As shown above and admitted in the Complaint, Defendant ADC’s final action occurred on August 17, 2023. *See* Exhibit A at p. 17, ¶ 125. OIP’s Opinion Letter No. F24-03 was issued on November 3, 2023, which is 78 days after Defendant ADC’s final action.

Based on these facts, it is crystal clear that Defendant ADC did not follow OIP’s Opinion Letter No. F24-03 when it selected ADC’s Executive Director.

Because Defendant ADC did not follow OIP’s Opinion Letter No. F24-03 when it selected ADC’s Executive Director, it would be highly prejudicial to the integrity of OIP’s opinions to require Defendant ADC to defend OIP’s Opinion Letter No. F24-03.

**2. OIP’s Opinion Letter No. F24-03 Found Fault with Defendant ADC’s Actions**

OIP was asked to decide “whether [Defendant ADC] violated the Sunshine Law during its selection of a new executive director[.]” *See* Appendix A at p. 1. OIP broke this request into six (6) questions. *See* Appendix A at p. 2. In OIP’s Opinion Letter No. F24-03, OIP found that Defendant ADC violated three (3) of the six (6) questions that OIP was asked to determine. *See* Appendix A at pp. 3-5.

Based on these facts, it is clear that Defendant ADC does not completely agree with OIP’s Opinion Letter No. F24-03. This is especially true with regard to OIP’s questions 1, 2, and 4. *See* Appendix A at pp. 3-4.



Because Defendant ADC does not completely agree with OIP's Opinion Letter No. F24-03, it would be highly prejudicial to the integrity of OIP's opinions to require Defendant ADC to defend OIP's Opinion Letter No. F24-03.

**3. Defendant ADC is Not Attempting to Enter OIP's Opinion Letter No. F24-03 into This Action as Precedent**

When read together, HRS § 92F-42(3) (2024 Cumulative Supplement) and HRS § 92-12(d) indicate that the appropriate party to defend OIP's Opinion Letter No. F24-03 is the party attempting to enter it into the action as precedent. HRS § 92F-42(3) states: "The director of the office of information practices . . . may provide **advisory opinions** or other information regarding that person's rights and the functions and responsibilities of agencies under this chapter[.]" HRS § 92F-42(3) (bold emphasis added). HRS § 92-12(d) states: "Opinions and rulings of the office of information practices **shall be admissible in an action brought under this part and shall be considered as precedent** unless found to be palpably erroneous." HRS § 92-12(d) (bold emphasis added).

HRS § 92F-42(3) allows OIP to issue advisory opinions, which means that OIP's opinions are non-binding. HRS § 92-12(d) allows a party to enter OIP's non-binding opinions into an action brought under HRS Chapter 92, Part I. HRS § 92-12(d) further allows OIP's non-binding opinions to become precedent if it is not found to be "palpably erroneous."

In this case, the party attempting to enter OIP's Opinion Letter No. F24-03 into the case is Plaintiff – Defendant ADC has never attempted to enter OIP's Opinion Letter No. F24-03 into this case nor has it ever attempted to use OIP's Opinion Letter No. F24-03 as justification for its actions. The oddity here is that Plaintiff is attempting to enter OIP's Opinion Letter No. F24-03 into this case to have it declared "palpably erroneous." This does not appear to meet the purpose of HRS § 92-12(d).

Based on the way HRS § 92-12(d) is worded, HRS § 92-12(d)'s purpose is to allow a party who followed OIP's non-binding opinion to enter OIP's non-binding opinion into the action as justification for the party's actions. It then allows the party to justify, to the court, why OIP's non-binding opinion should be precedent for the case.

As stated above, Plaintiff is attempting to enter OIP's Opinion Letter No. F24-03 into this action to have it declared "palpably erroneous." It is also attempting to force Defendant ADC, who has shown no interest or desire to have OIP's Opinion Letter No. F24-03 entered into this action, to convince this Honorable Court that OIP's Opinion Letter No. F24-03 is not "palpably

erroneous.” This begs the question: Is it fair to the integrity of OIP’s opinions to require a party who is not interested in entering OIP’s Opinion Letter No. F24-03 into the action to prove that OIP’s Opinion Letter No. F24-03 is not “palpably erroneous?” The answer is clearly “NO.”

Based on the foregoing, it is clear that Defendant ADC is not the appropriate party to defend OIP’s Opinion Letter No. F24-03. As a result, this Honorable Court should decline to rule on whether OIP’s Opinion Letter No. F24-03 is “palpably erroneous” until an appropriate party is made a defendant in this action or in a separate action.

#### **IV. CONCLUSION**

Based on the foregoing, Defendant ADC believe that there is a good faith basis for this Honorable Court to grant Defendant ADC’s MSJ based on the following:

1. Count XIV is asserted against Defendant ADC and does not provide any notice that any of the other defendants are involved;
2. The Complaint, and Count XIV, was filed after the expiration of HRS § 92-11’s 90-day deadline for any action to be filed against Defendant ADC; and
3. Defendant ADC is not the appropriate party to defend OIP’s Opinion Letter No. F24-03 because: (a) OIP’s Opinion Letter No. F24-03 was issued after Defendant ADC’s actions were taken; (b) Defendant ADC never relied upon OIP’s Opinion Letter No. F24-03 when it took its actions; and (c) Defendant ADC is not the party attempting to enter OIP’s Opinion Letter No. F24-03 into this action.

As a result, this Honorable Court should decline to rule on whether OIP’s Opinion Letter No. F24-03 is “palpably erroneous” until an appropriate party is named in this action, or in a separate action, in order to protect the integrity of OIP’s opinions.

DATED: Honolulu, Hawai‘i, July 11, 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 DAVID N.  
MATSUMIYA

**DECLARATION OF DAVID N. MATSUMIYA**

I, DAVID N. MATSUMIYA, 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. I am a Deputy Attorney General for the State of Hawai‘i.
3. I am the attorney for Defendants AGRIBUSINESS DEVELOPMENT CORPORATION BOARD OF DIRECTORS, DEFENDER COUNCIL, and JON N. IKENAGA in the above-captioned action.
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. On January 10, 2024, Plaintiff PUBLIC FIRST LAW CENTER filed its *Complaint; Summons* (the “**Complaint**”) herein as Dkt. 1.
6. For ease of reference, attached hereto and made a part hereof as Exhibit A is a true and correct copy of the Complaint.
7. The State of Hawai‘i Office of Information Practices (“**OIP**”) publishes its formal opinions to the public on its website at <https://oip.hawaii.gov/laws-rules-opinions/opinions/formal-opinion-letter-summaries-and-full-text/>.
8. A summary of OIP’s *Opinion Letter No. F24-03* (“**OIP’s Opinion Letter No. F24-03**”) can be found at <https://oip.hawaii.gov/f24-03/>.

9. A complete copy of OIP's Opinion Letter No. F24-03 can be downloaded at <https://oip.hawaii.gov/wp-content/uploads/2023/11/OIP-Op.-Ltr.-No.-F24-03-Anonymous-re-ADC-Board.pdf>.

10. For ease of reference, a true and correct copy of OIP's Opinion Letter No. F24-03 is attached hereto as Appendix A.

11. Hawaii Revised Statutes ("**HRS**") § 92-12 was amended during the 2024 Legislative Session.

12. The amendment to HRS § 92-12 was codified in 2024 Haw. Sess. Laws Act 160.

13. For ease of reference, a true and correct copy of 2024 Haw. Sess. Laws Act 160 is attached hereto as Appendix B.

14. *In re Off. of Info. Pracs. Opinion Letter No. F16-01*, 144 Hawai'i 389, 442 P.3d 452 (Ct. App. 2019), vacated, 147 Hawai'i. 286, 465 P.3d 733 (2020) is an unpublished disposition by the Intermediate Court of Appeals.

15. Pursuant to Hawai'i Rules of Appellate Procedure 35(c)(2), a party citing to an unpublished disposition must append a copy of the unpublished disposition to the parties memorandum.

16. Attached hereto as Appendix C is a true and correct copy of *In re Off. of Info. Pracs. Opinion Letter No. F16-01*, 144 Hawai'i 389, 442 P.3d 452.

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, July 11, 2025.

/s/ David N. Matsumiya  
DAVID N. MATSUMIYA

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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)

**EXHIBIT A**

[Re: Defendant Agribusiness Development  
Corporation Board of Directors' Motion for  
Summary Judgment Regarding Count XIV]

**HEARING:**

Date: July 29, 2025

Time: 10:00 a.m.

Judge: Honorable Jordon J. Kimura

Judge: Honorable Jordon J. Kimura

Trial: September 22, 2025

ROBERT BRIAN BLACK 7659  
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**Electronically Filed**  
**FIRST CIRCUIT**  
**1CCV-24-0000050**  
**10-JAN-2024**  
**03:27 PM**  
**Dkt. 1 CMPS**

*Attorneys for Plaintiff Public First Law Center*

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT  
STATE OF HAWAII

PUBLIC FIRST LAW CENTER,

Plaintiff,

vs.

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

Defendants.

CIVIL NO. \_\_\_\_\_  
(Other Civil Action)

COMPLAINT; SUMMONS

JUDGE: NONE

TRIAL DATE: NONE

**COMPLAINT**

Plaintiff Public First Law Center (Public First) alleges as follows:

**PARTIES**

1. Public First is a Hawai`i nonprofit organization dedicated to promoting government transparency.

2. Defendant Defender Council (Council) is an agency, board, commission, authority, or committee of the State of Hawai`i within the definition of "Board" under



Hawai'i Revised Statutes (HRS) § 92-2, headquartered at 1130 North Nimitz Highway, Suite A-254, Honolulu, Hawai'i 96817.

3. Defendant Jon N. Ikenaga was appointed State Public Defender by the Council on November 2, 2023, for a term of four years, commencing January 2024. Pursuant to *Civil Beat Law Center for the Public Interest v. City & County of Honolulu*, 144 Hawai'i 466, 445 P.3d 47 (2019), Defendant Ikenaga is made a party to this action because the requested relief includes a request to void his selection as State Public Defender based solely on the Council's numerous violations of the Sunshine Law during the selection process.

4. Defendant Agribusiness Development Corporation Board of Directors (ADC Board) is an agency, board, commission, authority, or committee of the State of Hawai'i within the definition of "Board" under HRS § 92-2, headquartered at 235 S. Beretania Street, Room 205, Honolulu, Hawai'i 96813.

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over this action to enforce the provisions of the Sunshine Law, HRS chapter 92, by injunction or other appropriate remedy pursuant to HRS §§ 92-12(b) and 603-21.5(3).

6. Venue is proper in this Court pursuant to HRS §§ 92-12(c) and 603-36(5) for any one of the following: the prohibited act occurred in this circuit; the claim for relief arose in this circuit; and the Defendants are domiciled in this circuit.

## FACTUAL BACKGROUND

7. The Sunshine Law exists to provide the people of Hawai`i the opportunity to observe and participate meaningfully in government processes and to promote trust in government.

8. The Sunshine Law provides that every meeting of every board “shall” be open to the public and that the deliberations, decisions, and actions of these boards “shall” be conducted as openly as possible, subject to narrowly construed exceptions. HRS §§ 92-1, -3, -4, and -5.

9. Among other concerns, the Council and ADC Board recently hired two high-level government employees – the State Public Defender and the Executive Director of the Agribusiness Development Corporation (ADC) – after holding a series of improper closed-door meetings.

10. These actions violate the Sunshine Law and erode public trust in government.

11. Future violations of this sort will continue, unabated, absent judicial intervention.

12. This suit seeks declaratory and injunctive relief to help prevent future violations, afford the public proper access to board meetings, and build trust in government.

\* \* \*



**A. Council Appoints Ikenaga as State Public Defender in a Process Riddled with Months of Sunshine Law Violations**

13. The Council oversees the Office of the Public Defender (OPD) and appoints the State Public Defender pursuant to HRS §§ 802-9 and -11.

14. OPD is tasked with providing constitutionally-required indigent criminal legal defense in all State courts in Hawai'i and employs more than 130 individuals, most of whom are attorneys.

15. The State Public Defender serves a term of four years and has a salary set by statute, HRS § 802-11.

16. The State Public Defender is a high-ranking government official.

17. The State Public Defender has a high level of fiscal discretion.

18. Selection of the State Public Defender is an important government process and a critical responsibility of the Council.

19. The public has a legitimate interest in observing and participating in the Council's selection of the State Public Defender.

20. The public has a legitimate interest in understanding how the Council carries out its statutory duties of appointment and oversight, including how it interviews, evaluates, and selects candidates for State Public Defender.

21. The Council held four meetings related to its selection of the State Public Defender: June 16, August 4, October 4, and November 2, 2023.

22. In violation of the Sunshine Law, the Council met *in executive session* to set the process for selecting the next State Public Defender, interview candidates, evaluate

candidate qualifications, assess candidates' respective visions for OPD, and deliberate on who would be the next State Public Defender.

23. Nothing in the Sunshine Law allows the Council to close the door, as it did, on the *entire* selection process for the State Public Defender.

**June 16: Council's Unagendized and Improper Executive Session to Create a Selection Process for the State Public Defender Without Public Input**

24. The Council's published June 16 agenda did not identify, as an item to be discussed at the meeting, the selection process for the next State Public Defender.

25. On June 16, however, the Council moved into executive session to discuss an unspecified agenda item.

26. On information and belief, the Council discussed and deliberated on the selection process for the next State Public Defender during the June 16 executive session.

27. When the Council reconvened in open session, it amended the June 16 agenda to "add the following discussion: selection process to appoint and hire Public Defender position."

28. After amending the agenda, the Council approved a detailed selection process, specifying deadlines and creating a working group, without any deliberation or opportunity for public comment.

29. The Council failed to publish the minutes of the June 16 meeting on or before July 26.

**August 4: Council's Improper Executive Session to Amend the Selection Process for the State Public Defender**

30. The Council's published August 4 agenda provided that it would convene in executive session "to consult with the Council's attorney" pursuant to HRS § 92-5(a)(4) about "personnel complaints" and the "selection process for the Public Defender."

31. On August 4, the Council moved into executive session to discuss an unspecified agenda topic.

32. The Council deliberated on the selection process for the State Public Defender during the executive session, but did not consult an attorney on the topic.

33. When it reconvened in open session, the Council announced an amended selection process.

34. The Council announced: "The list of candidates will be made public. The public will be able to submit comments on the candidates; comments will be confidential."

35. On or about September 13, the Council publicly identified the candidates for State Public Defender.

36. The Council subsequently received roughly ninety comments on the candidates.

37. The Council failed to publish the minutes of the August 4 meeting on or before September 13.

**October 4: Council's Improper Executive Session to Interview Candidates and Failure to Properly Record the Proceedings**

38. The published agenda for the October 4 meeting stated that the Council would interview candidates in executive session.

39. On information and belief, the Council did not hold a public session before or after convening an executive session to interview the candidates.

40. On information and belief, the Council did not provide the public an opportunity to comment on the agenda items at the October 4 meeting.

41. On information and belief, the Council did not vote to enter an executive session at the October 4 meeting.

42. On information and belief, the Council did not report to the public on the discussions that occurred in executive session at the October 4 meeting.

43. On information and belief, the Council did not vote to adjourn any public session at the October 4 meeting.

44. On information and belief, the Council did not deliberate, announce, or do anything publicly at the October 4 meeting.

45. As of the date of this filing, the Council has not publicly posted regular session minutes for the October 4 meeting.

46. The October 4 executive session minutes are cryptic and generalized and do not truly reflect the matters discussed or the views of the participants.

47. For the Council's forty-minute discussion after the candidate interviews, the October 4 executive session minutes only provide: "Discussion regarding candidates held."



**November 2: Council's Improper Executive Session to Select the State Public Defender and Failure to Properly Record the Proceedings**

48. The published November 2 agenda provided that the Council would discuss and possibly select the new State Public Defender in executive session.

49. On October 24, Public First notified the Council that the Sunshine Law required the Council to conduct its selection of the next State Public Defender openly and, at minimum, prohibited the Council from conducting the entire selection process in executive session.

50. Public First also notified the Council that it was delinquent in posting minutes for numerous meetings; no minutes for any Council meeting were publicly available at that time.

51. On October 25, the Council responded, through counsel: "We agree that the position of the Public Defender is a high-level position, but given the nature of the applicants (three of the four candidates are currently members of the Office of the Public Defender) and their backgrounds, we believe that it would be appropriate to hold the selection discussions in an executive session."

52. On October 26, Public First again urged the Council to reconsider its decision to deliberate entirely in secret and notified the applicants that the Council's selection process did not comply with the Sunshine Law.

53. On November 2, Public First testified before the Council and once again notified the Council that the Sunshine Law required their discussion and selection of the State Public Defender to be conducted openly.

54. The Council closed its doors anyway.

55. The Council deliberated on the selection of the State Public Defender entirely in executive session.

56. The Council selected Defendant Ikenaga as State Public Defender.

57. When it announced its decision, the Council did not discuss the candidates or the reasons for selection; the Chair simply asked for a vote, and the members voted to select Defendant Ikenaga.

58. The November 2 executive session minutes are cryptic and generalized and do not truly reflect the matters discussed or the views of the participants.

59. On November 15, the Council disclosed to Public First the public comments on the candidates, the candidates' application materials, and the Council's candidate scoring sheets.

60. The Council's selection of Defendant Ikenaga is timely challenged here pursuant to HRS § 92-11.

\* \* \*

**B. ADC Board Evaluates Former Executive Director Nakatani and Appoints a New Executive Director in Secret Processes that Violated the Sunshine Law**

61. ADC manages and controls thousands of acres of agricultural State land and has the power to acquire land and agricultural infrastructure.

62. ADC has received substantial amounts of taxpayer funds over the course of its thirty-year existence.

63. Between 2013 and 2018, for example, the State Legislature appropriated more than a quarter of a billion dollars to ADC, including about \$23.4 million for operations and another \$238 million for capital investments.

64. The ADC Board appoints ADC's Executive Director and sets the salary for the Executive Director, pursuant to HRS § 163D-3.

65. The ADC Executive Director is a high-ranking government official.

66. The ADC Executive Director has a high level of fiscal discretion.

67. The ADC Executive Director runs and manages ADC, statewide, subject to ADC Board oversight.

68. The ADC Board's annual performance evaluation of the ADC Executive Director is an important government process and a critical responsibility of the board.

69. The public has a legitimate interest in observing and participating in the ADC Board's annual performance evaluation of the ADC Executive Director.

70. The public has a legitimate interest in understanding how the ADC Board carries out its statutory duties of appointment and oversight, including how it evaluates the annual performance of the ADC Executive Director.

71. Selection of the ADC Executive Director is an important government process and a critical responsibility of the ADC Board.

72. The public has a legitimate interest in observing and participating in the ADC Board's selection of the ADC Executive Director.

73. The public has a legitimate interest in understanding how the ADC Board carries out its statutory duties of appointment and oversight, including how it interviews, evaluates, and selects candidates for the ADC Executive Director.

**Annual Performance Evaluation of Former Executive Director James Nakatani  
for Fiscal Years 2020-2021 and 2021-2022**

74. The Office of the State Auditor published its audit of ADC, Report No. 21-01, in January 2021.

75. That audit concluded that ADC, after a decade under the stewardship of Executive Director James Nakatani, had made no real progress toward its central purpose: “ADC has done little – if anything – to facilitate the development of agricultural enterprises to replace the economic loss created by the demise of the sugar and pineapple industries.” Report No. 21-01 (summary).

76. The State Auditor noted further that ADC’s recordkeeping and filing system were in “disarray” and key documents – “such as board approvals, license agreements, and proof of insurance” – were often missing.

77. After the release of the ADC audit, the Hawai‘i House of Representatives convened a committee to investigate the findings of the ADC audit, commencing public hearings in September 2021.

78. Months later, at the ADC Board’s January 26, 2022 meeting, in regular session, the ADC Board Chair assigned three members to the ADC Board’s “Standing Administration Committee” to conduct the annual performance evaluation of the Executive Director.

79. In assigning the three members, the Chair invoked Article IV, Section I of the ADC bylaws, which purportedly authorizes “standing committees” to conduct board business outside of the public view and Sunshine Law requirements.



80. At the ADC Board's June 15 meeting, in regular session, the Standing Administration Committee reported that two of its members interviewed Executive Director Nakatani and that the committee planned to conduct more interviews and report its findings to the ADC Board.

81. The published agenda for the ADC Board's August 17 meeting provided that the ADC Board would meet in executive session pursuant to HRS §§ 92-5(a)(2) and (4) to discuss the annual performance evaluation of the Executive Director.

82. At the August 17 meeting, the Standing Administration Committee orally presented its findings to the ADC Board entirely in closed session.

83. Upon exiting executive session, the ADC Board announced that "the vote will be taken up at the next meeting."

84. The published agenda for the ADC Board's September 21 meeting provided that the ADC Board would meet in executive session pursuant to HRS § 92-5(a)(2) to discuss the annual performance evaluation of the Executive Director.

85. At the September 21 meeting, the ADC Board met entirely in executive session to evaluate the Executive Director.

86. Upon reconvening in open session, the ADC Board announced that it "deferred the acceptance of the annual performance evaluation of the ADC Executive Director James Nakatani until the next meeting."

87. The published agenda for the ADC Board's November 2 meeting provided that the ADC Board would meet in executive session pursuant to HRS § 92-5(a)(2) to discuss the annual performance evaluation of the Executive Director.

88. On November 2, the ADC Board met entirely in closed session to evaluate the Executive Director.

89. Upon reconvening in open session, the ADC Board approved the “updated October 12, 2022 annual performance evaluation” of Executive Director Nakatani without any public discussion or deliberation.

90. The ADC Board did not publicly disclose anything about the approved report or its evaluation deliberations.

91. At the ADC Board’s January 25, 2023 meeting, in regular session, the ADC Board established an “ad hoc” committee to evaluate Executive Director Nakatani’s performance for fiscal year 2021-2022, and the ADC Board Chair appointed three members to the “ad hoc” committee.

92. The published agenda for the ADC Board’s March 16 meeting provided that the ADC Board would meet in executive session pursuant to HRS § 92-5(a)(2) for the “Presentation of the Draft Annual Performance Review” of Executive Director Nakatani.

93. At the March 16 meeting, the ADC Board met entirely in executive session to discuss the ad hoc committee’s draft annual performance review.

94. The published agenda for the ADC Board’s April 20 meeting provided that the ADC Board would meet in executive session pursuant to HRS § 92-5(a)(2) to deliberate on approval of the draft annual performance review of Executive Director Nakatani.

95. At the April 20 meeting, the ADC Board met entirely in executive session to deliberate on approval of the draft performance review of Executive Director Nakatani.

96. Upon reconvening in open session, the ADC Board Chair “called for a motion to adopt the Evaluation Committees’ report and recommendation to retain the Executive Director at his present salary.”

97. The ADC Board approved the report and recommendation without any public discussion or deliberation.

98. The ADC Board did not disclose the approved report or the ADC Board’s evaluation deliberations.

99. Executive Director Nakatani passed away unexpectedly on April 23.

#### **Selection of New Executive Director**

100. The ADC Board held six meetings to select a new Executive Director: May 30, July 20, August 8, August 17, September 21, and October 3, 2023.

101. Throughout the selection process, the ADC Board kept the identities of candidates secret, interviewed them in secret, and deliberated on and selected a candidate for ADC Executive Director in secret.

102. On May 30, the ADC Board formed a permitted interaction group to develop an application process, solicit and interview candidates, rank applications, and narrow the selection to two or three candidates (Hiring PIG).

103. The published agenda for the June 15 meeting provided that the ADC Board would receive an “[u]pdate on the progress of the Executive Director Search Committee.”

104. The board packet for the June 15 meeting included a report titled “Update on the progress of the Executive Director Search Committee” (Interim Report), which stated that the Hiring PIG had developed an application process, position description, and process for soliciting applications.

105. The Interim Report also provided that the Hiring PIG was in the process of drafting criteria to rank applications and would meet around June 27 to “review the applications, schedule and hold interviews, narrow the candidate selection to three individuals, then complete and present its report with findings and recommendations to the full Board.”

106. At the June 15 meeting, the Hiring PIG summarized the Interim Report for the ADC Board in open session.

107. The published agenda for the July 20 meeting provided that the Hiring PIG would present their findings and recommendations to the ADC Board and that the ADC Board might enter executive session pursuant to HRS § 92-5(a)(2).

108. The board packet for the July 20 meeting included a report titled “Summary of Activities Conducted by the ADC Executive Director Selection Committee” (Summary Report).

109. The Summary Report provided that the Hiring PIG met on June 28, deliberated on and selected the criteria it would consider to evaluate candidates,



reviewed fourteen applications, narrowed the field to seven, and interviewed those candidates on July 6.

110. The Summary Report further provided the Hiring PIG's anonymous ranking of candidates – anonymizing both the identities of candidates and members of the Hiring PIG – and its selection of three unidentified candidates for further consideration by the ADC Board.

111. The Summary Report indicated that the Hiring PIG would complete its report and provide its recommendations to the ADC Board “during executive session” at the ADC Board’s July 20 meeting.

112. At the July 20 meeting, the Hiring PIG referenced the Summary Report as containing the entirety of its “public findings.”

113. The ADC Board then announced it would enter into executive session to receive the Hiring PIG’s full findings and recommendations pursuant to HRS § 92-5(a)(2).

114. On information and belief, the ADC Board discussed and deliberated on the Hiring PIG’s findings and recommendations in executive session on July 20.

115. Upon exiting executive session, the ADC Board effectively adopted the Hiring PIG’s recommendation – to interview the top two candidates selected by the Hiring PIG – but announced it would hold the vote on it at the next meeting.

116. The ADC Board then invited comments from the public on the Hiring PIG’s recommendations at the next meeting – still without identifying the candidates under consideration.

117. The published agenda for the August 8 meeting provided that the ADC Board would conduct Executive Director candidate interviews, discuss Executive Director salary, and select an Executive Director in closed session pursuant to HRS § 92-5(a)(2).

118. The August 8 agenda also provided that the ADC Board would deliberate and engage in decision-making “on the recommendation(s) of the [Hiring PIG] submitted to the Board at the July 20, 2023 regular meeting.”

119. At the August 8 meeting, the Chair of the ADC Board invited public testimony on the Hiring PIG’s recommendations, despite the fact that the identities of the candidates remained secret.

120. The ADC Board then voted to accept the recommendations of the Hiring PIG without public deliberation or comment.

121. After approving the Hiring PIG’s mostly secret recommendations, the ADC Board entered executive session and interviewed candidates, discussed salary, and deliberated on the selection for the ADC Executive Director for almost three hours.

122. Upon reconvening in open session, the Chair of the ADC Board announced that the ADC Board had deliberated on and selected a specific candidate.

123. The ADC Board did not announce the identity of the selected candidate on August 8 when it reconvened in public session.

124. The ADC Board never publicly deliberated or explained the reasons for its selection of the ADC Executive Director.

125. The ADC Board publicly announced its selection on August 17.

126. Days later, on August 21, an anonymous member of the public asked the State of Hawai'i Office of Information Practices (OIP) whether the ADC Board complied with the Sunshine Law in its hiring of the ADC Executive Director.

127. On November 3, OIP issued Opinion Letter No. F24-03 in response to the August 21 anonymous request, holding among other things that the ADC Board's executive sessions during the selection of the ADC Executive Director did not violate the Sunshine Law.

128. On November 20, Public First asked OIP to reconsider Opinion Letter No. F24-03 because it contradicted clear guidance from the Hawai'i Supreme Court.

129. On November 29, OIP declined to reconsider its decision and advised Public First that it could pursue judicial relief.

**COUNT I**  
**THE DEFENDER COUNCIL VIOLATED THE SUNSHINE LAW BY IMPROPERLY**  
**AMENDING THE JUNE 16 AGENDA**

130. The paragraphs above are incorporated and realleged here.

131. The Sunshine Law requires boards to publish an agenda six days ahead of a meeting to provide reasonable notice of what will be discussed at the meeting and permit the public the opportunity to provide testimony. HRS § 92-7.

132. "No board shall change the agenda, less than six calendar days prior to the meeting, by adding items thereto without a two-thirds recorded vote of all members to which the board is entitled; provided that no item shall be added to the agenda if it is of reasonably major importance and action thereon by the board will affect a significant number of persons." HRS § 92-7(d).



133. The selection process to appoint and hire the State Public Defender is an item of reasonably major importance for which action thereon would affect a significant number of persons.

134. The Council violated the Sunshine Law by amending the June 16 agenda to add discussion regarding the selection process for the next State Public Defender.

135. Public First is entitled to an order declaring that the Council violated the Sunshine Law by improperly amending the June 16 agenda.

136. Public First is entitled to an order compelling disclosure of the June 16 executive session minutes and recordings.

137. Public First is entitled to an order voiding the Council's selection of Defendant Ikenaga for State Public Defender, pursuant to HRS § 92-11.

## **COUNT II**

### **THE DEFENDER COUNCIL VIOLATED THE SUNSHINE LAW BY MEETING IN EXECUTIVE SESSION ON JUNE 16 TO DISCUSS THE SELECTION PROCESS FOR THE STATE PUBLIC DEFENDER**

138. The paragraphs above are incorporated and realleged here.

139. The Council did not publicly announce the reason for entering executive session on June 16 as required by HRS § 92-4.

140. The entirety of the Council's June 16 executive session to discuss the process for hiring the State Public Defender was not directly related to a purpose stated in HRS § 92-5.

141. The Council's closed-door discussions concerning the general process for hiring the State Public Defender on June 16 exceeded the scope of any permissible exception.



142. The Council violated the Sunshine Law by meeting in executive session on June 16 to discuss and decide the general process for hiring the State Public Defender.

143. Public First is entitled to an order declaring that the Council violated the Sunshine Law by meeting in executive session on June 16 to discuss and decide the general process for hiring the State Public Defender.

144. Public First is entitled to an order voiding the Council's selection of Defendant Ikenaga for State Public Defender, pursuant to HRS § 92-11.

**COUNT III**  
**THE DEFENDER COUNCIL VIOLATED THE SUNSHINE LAW BY MEETING IN**  
**EXECUTIVE SESSION ON AUGUST 4 TO DISCUSS THE SELECTION PROCESS**  
**FOR THE STATE PUBLIC DEFENDER**

145. The paragraphs above are incorporated and realleged here.

146. The published agenda for the August 4 meeting provided, in relevant part, that the Council would meet in executive session "pursuant to section 92-5(a)(4), Hawai'i Revised Statutes, *to consult with the Council's attorney* on questions and issues pertaining to the. . . Selection process for the Public Defender." (Emphasis added).

147. The Council did not consult with its attorney during the August 4 executive session.

148. The entirety of the Council's August 4 executive session to discuss the general process for hiring the State Public Defender was not directly related to consultation with the Council's attorney.

149. The Council's closed-door discussions concerning the general process for hiring the State Public Defender on August 4 exceeded the scope of any permissible exception.

150. The Council violated the Sunshine Law by meeting in executive session on August 4 to discuss and decide the general process for hiring the State Public Defender.

151. Public First is entitled to an order declaring that the Council violated the Sunshine Law by improperly meeting in executive session on August 4 to discuss and decide the general process for hiring the State Public Defender.

152. Public First is entitled to an order voiding the Council's selection of Defendant Ikenaga for State Public Defender, pursuant to HRS § 92-11.

**COUNT IV  
THE DEFENDER COUNCIL VIOLATED THE SUNSHINE LAW BY MEETING IN  
EXECUTIVE SESSION ON OCTOBER 4 TO INTERVIEW AND DISCUSS  
CANDIDATES FOR STATE PUBLIC DEFENDER**

153. The paragraphs above are incorporated and realleged here.

154. The published agenda for the October 4 meeting provided, in relevant part, that the Council would meet in executive session "pursuant to section 92-5(a)(2), Hawai'i Revised Statutes, to interview candidates for the position of the State Public Defender."

155. HRS § 92-5(a)(2) permits a closed meeting "[t]o 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.*" (Emphasis added.)

156. This exception to the Sunshine Law's open meetings requirements — known as the "personnel-privacy exception" — requires a case-by-case analysis of whether the discussion directly involves "matters affecting privacy."

157. The Council exceeded the bounds of a permissible executive session by discussing and deliberating toward a decision in executive session on matters not “directly related” to consideration of matters affecting privacy.

158. Information concerning the qualifications and fitness of candidates for the State Public Defender is not “highly personal and intimate.”

159. There is a legitimate public interest in the disclosure of information concerning the qualifications and fitness of candidates for State Public Defender and the Council’s deliberations regarding the same.

160. The Council’s closed-door candidate interviews and post-interview discussions on October 4 exceeded the scope of any permissible exception.

161. The Council did not have a valid legal basis for conducting the entirety of its October 4 candidate interviews and post-interview discussion in executive session.

162. The Council violated the Sunshine Law by conducting the entirety of its October 4 candidate interviews and post-interview discussion in executive session.

163. Public First is entitled to an order declaring that the Council violated the Sunshine Law by conducting the entirety of its October 4 candidate interviews and post-interview discussion in executive session.

164. Public First is entitled to an order voiding the Council’s selection of Defendant Ikenaga for State Public Defender, pursuant to HRS § 92-11.



**COUNT V**  
**THE DEFENDER COUNCIL VIOLATED THE SUNSHINE LAW BY MEETING IN**  
**EXECUTIVE SESSION ON NOVEMBER 2 TO DELIBERATE ON AND SELECT**  
**THE STATE PUBLIC DEFENDER**

165. The paragraphs above are incorporated and realleged here.

166. The published agenda for the November 2 meeting provided that the Council would meet in executive session pursuant to the personnel-privacy exception “regarding discussion and possible selection of the Public Defender.”

167. The Council’s closed-door deliberations regarding candidates’ qualifications and fitness, and its ultimate selection, exceeded the bounds of a permissible executive session by discussing and deliberating toward a decision in executive session on matters not “directly related” to consideration of matters affecting privacy.

168. Information concerning the qualifications and fitness of candidates for the State Public Defender is not “highly personal and intimate.”

169. There is a legitimate public interest in the disclosure of information concerning the qualifications and fitness of candidates for State Public Defender and the Council’s deliberations regarding the same.

170. The Council’s closed-door candidate deliberations on November 2 exceeded the scope of any permissible exception.

171. The Council did not have a valid legal basis for conducting the entirety of its candidate deliberations on November 2 in executive session.

172. The Council violated the Sunshine Law by conducting the entirety of its candidate deliberations on November 2 in executive session.

173. Public First is entitled to an order declaring that the Council violated the Sunshine Law by conducting the entirety of its candidate deliberations on November 2 in executive session.

174. Public First is entitled to an order voiding the Council's selection of Defendant Ikenaga for State Public Defender, pursuant to HRS § 92-11.

**COUNT VI  
THE DEFENDER COUNCIL VIOLATED THE SUNSHINE LAW BY FAILING TO  
RECORD LEGALLY SUFFICIENT REGULAR SESSION MINUTES**

175. The paragraphs above are incorporated and realleged here.

176. HRS § 92-9(a) requires that boards "keep written or recorded minutes of all meetings."

177. On information and belief, the Council failed to keep written or recorded regular session minutes of the October 4 meeting.

178. HRS § 92-9(a) also requires that minutes "give a true reflection of the matters discussed at the meeting and the views of the participants" and include the "substance of all matters proposed, discussed, or decided" among other particulars.

179. The Council failed to record minutes that provided a true reflection of the matters discussed and the views of the participants for its June 16, August 4, and November 2 meetings.

180. The Council violated the Sunshine Law by failing to keep any written or recorded regular session minutes of the October 4 meeting.

181. The Council violated the Sunshine Law by failing to keep adequate minutes for its June 16, August 4, and November 2 meetings.

182. Public First is entitled to an order declaring that the Council violated the Sunshine Law by failing to keep legally sufficient minutes of its meetings.

183. Public First is entitled to an order compelling the Council for a period of four years to maintain audio recordings of all regular session meetings and publish the recordings online within forty days of the meeting.

**COUNT VII**  
**THE DEFENDER COUNCIL VIOLATED THE SUNSHINE LAW BY FAILING TO**  
**RECORD LEGALLY SUFFICIENT EXECUTIVE SESSION MINUTES FOR THE**  
**OCTOBER 4 AND NOVEMBER 2 MEETINGS**

184. The paragraphs above are incorporated and realleged here.

185. The October 4 executive session minutes do not provide a true reflection of the matters discussed at the meeting and the views of the participants.

186. The October 4 executive session minutes do not provide the substance of all matters proposed, discussed, or decided.

187. The Council violated the Sunshine Law by failing to record legally sufficient executive session minutes of the October 4 meeting.

188. The November 2 executive session minutes do not provide a true reflection of the matters discussed at the meeting and the views of the participants.

189. The November 2 executive session minutes do not provide the substance of all matters proposed, discussed, or decided.

190. The Council violated the Sunshine Law by failing to record legally sufficient executive session minutes of the November 2 meeting.



191. Public First is entitled to an order declaring that the Council violated the Sunshine Law by failing to record legally sufficient executive session minutes of the October 4 and November 2 meetings.

192. Public First is entitled to an order compelling the Council to maintain audio recordings of all executive session meetings for a period of four years.

**COUNT VIII**  
**THE DEFENDER COUNCIL VIOLATED THE SUNSHINE LAW BY LIMITING**  
**PUBLIC TESTIMONY TO THE BEGINNING OF THE COUNCIL'S AGENDAS**

193. The paragraphs above are incorporated and realleged here.

194. HRS § 92-3 provides: "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."

195. The Council limited public testimony to the beginning of the Council's agenda on June 16, August 4, October 4, and November 2, 2023.

196. The Council also failed to take public testimony on the selection process for the State Public Defender at the June 16 meeting.

197. The Council violated the Sunshine Law by failing to afford all interested persons an opportunity to present oral testimony on any agenda item and by limiting public testimony to the beginning of the Council's agenda on June 16, August 4, October 4, and November 2, 2023.

198. Public First is entitled to an order declaring that the Council violated the Sunshine Law by failing to take public testimony concerning its amended agenda on

June 16 and limiting public testimony to the beginning of the Council's meeting on June 16, August 4, October 4, and November 2, 2023.

199. Public First is entitled to an order voiding the Council's selection of Defendant Ikenaga for State Public Defender, pursuant to HRS § 92-11.

**COUNT IX  
THE DEFENDER COUNCIL VIOLATED THE SUNSHINE LAW BY FAILING TO  
TIMELY PUBLISH MEETING MINUTES**

200. The paragraphs above are incorporated and realleged here.

201. HRS § 92-9(a) requires boards to publish its meeting minutes online "within forty days after the meeting."

202. The Council failed to timely post minutes for all its public meetings through October 24, 2023.

203. Public First notified the Council of the missing minutes on October 24.

204. As of October 24, the Council had no meetings minutes published publicly online.

205. The Council has a history of not timely posting its meeting minutes online.

206. Public First previously raised this same issue with the Council in October 2020, and, in November 2020, the Council promised: "Minutes will be published within 40 days of a meeting."

207. Had the Council abided by the statutory requirement and its prior promise, the public would have been more informed as to the Council's hiring process for the State Public Defender.

208. The Council violated the Sunshine Law by failing to timely post minutes for all its public meetings, including the meetings concerning the selection of the State Public Defender on June 16 and August 4.

209. Public First is entitled to an order declaring that the Council violated the Sunshine Law by failing to timely post minutes for all its public meetings.

**COUNT X**  
**THE ADC BOARD OF DIRECTORS VIOLATED THE SUNSHINE LAW BY USING**  
**UNAUTHORIZED COMMITTEES TO EVALUATE THE EXECUTIVE DIRECTOR**  
**OUTSIDE OF PUBLIC VIEW**

210. The paragraphs above are incorporated and realleged here.

211. The Sunshine Law prohibits the discussion of board business among three or more members of a board outside of a duly held public meeting – unless the board follows the requirements of HRS § 92-2.5.

212. The ADC Board’s annual performance evaluation of the ADC Executive Director is board business.

213. Throughout 2021, three members of the ADC Board – the “Standing Administration Committee” – met outside of duly held public meetings to evaluate the ADC Executive Director’s performance for fiscal year 2020 to 2021, without following the requirements of HRS § 92-2.5.

214. That committee evaluated Executive Director Nakatani’s performance entirely in secret and without following the mandates of HRS § 92-2.5.

215. Throughout 2022, three members of the ADC Board – the “ad hoc” evaluation committee – met outside of duly held public meetings to evaluate the ADC



Executive Director's performance for fiscal year 2021 - 2022, without following the requirements of HRS § 92-2.5.

216. Public First is entitled to an order declaring that the ADC Board violated the Sunshine Law by using unauthorized committees of three members to evaluate the ADC Executive Director's annual performance.

**COUNT XI**  
**THE ADC BOARD OF DIRECTORS VIOLATED THE SUNSHINE LAW BY**  
**EVALUATING THE ADC EXECUTIVE DIRECTOR ENTIRELY IN SECRET**

217. The paragraphs above are incorporated and realleged here.

218. The published agendas for meetings held August 17, September 21, and November 2, 2022 and March 16 and April 20, 2023 identified the personnel-privacy exemption as the legal basis for holding an executive session to evaluate the ADC Executive Director's performance.

219. As noted, the personnel-privacy exception requires a case-by-case analysis of whether the personnel discussion directly involves "matters affecting privacy."

220. The ADC Board exceeded the bounds of a permissible executive session on August 17, September 21, and November 2, 2022 and March 16 and April 20, 2023 by discussing and deliberating toward a decision in executive session on matters not "directly related" to consideration of matters affecting privacy.

221. Information concerning the annual performance of the ADC Executive Director and ADC Board's evaluation of that performance is not "highly personal and intimate."

222. There is a legitimate public interest in understanding the annual performance of the ADC Executive Director and ADC Board's evaluation of that performance.

223. The ADC Board's closed-door deliberations concerning its annual evaluation of the ADC Executive Director's performance for fiscal years 2020 – 2021 and 2021 – 2022 exceeded the scope of any permissible exception.

224. The ADC Board did not have a valid legal basis for conducting the entirety of its performance review and evaluation of Executive Director Nakatani for fiscal years 2020 – 2021 and 2021 – 2022 in executive session.

225. The ADC Board violated the Sunshine Law by conducting the entirety of its performance review and evaluation of Executive Director Nakatani for fiscal years 2020 – 2021 and 2021 – 2022 in executive session.

226. Public First is entitled to an order declaring that the ADC Board violated the Sunshine Law by conducting the entirety of its performance review and evaluation of Executive Director Nakatani for fiscal years 2020 – 2021 and 2021 – 2022 in executive session.

227. Public First is entitled to an order compelling the ADC Board to disclose executive session minutes and recordings for the meetings held August 17, September 21, and November 2, 2022 and March 16 and April 20, 2023.

**COUNT XII**  
**THE ADC BOARD OF DIRECTORS VIOLATED THE SUNSHINE LAW BY**  
**SELECTING ADC'S EXECUTIVE DIRECTOR ENTIRELY IN SECRET**

228. The paragraphs above are incorporated and realleged here.

229. The published agenda for the July 20 meeting provided that the ADC Board would meet in executive session pursuant to the personnel-privacy exception for a presentation by the Hiring PIG regarding their findings and recommendations as to the ADC Executive Director position.

230. The published agenda for the August 8 meeting provided that the ADC Board would meet in executive session pursuant to the personnel-privacy exception for "Executive Director candidate interviews," "discussion of Executive Director Salary," and "Board selection of Executive Director."

231. The ADC Board exceeded the bounds of a permissible executive session on July 20 and August 8 by discussing and deliberating toward a decision in executive session on matters not "directly related" to consideration of matters affecting privacy.

232. Information concerning the identities, qualifications, and fitness of candidates for the ADC Executive Director is not "highly personal and intimate."

233. There is a legitimate public interest in the disclosure of information concerning the identities, qualifications, and fitness of candidates for the ADC Executive Director and the ADC Board's deliberations regarding the same.

234. Information concerning the salary of the ADC Executive Director is not "highly personal and intimate."



235. There is a legitimate public interest in the disclosure of information concerning the salary of the ADC Executive Director and the ADC Board's deliberations regarding the same.

236. The ADC Board's closed-door discussions of the Hiring PIG's recommendations, candidate interviews, evaluation of candidate qualifications and fitness, and candidate selection exceeded the scope of any permissible exception.

237. The ADC Board did not have a valid legal basis for conducting the entirety of its deliberations on the Hiring PIG's recommendations, candidate interviews, evaluation of candidate qualifications and fitness, discussion of Executive Director salary, and candidate selection in executive session on July 20 and August 8.

238. The ADC Board violated the Sunshine Law by conducting its executive sessions on July 20 and August 8.

239. Public First is entitled to an order declaring that the ADC Board violated the Sunshine Law by deliberating on the Hiring PIG's recommendations, interviewing candidates, evaluating their qualifications and fitness, and selecting the next ADC Executive Director entirely in executive session on July 20 and August 8.

240. Public First is entitled to an order compelling the ADC Board to disclose executive session minutes and recordings for the July 20 and August 8 meetings.

241. Public First is entitled to an order compelling the ADC Board to disclose the complete findings and recommendations of the Hiring PIG.

**COUNT XIII**  
**THE ADC BOARD OF DIRECTORS VIOLATED THE SUNSHINE LAW BY**  
**IMPROPERLY USING A PERMITTED INTERACTION GROUP**

242. The paragraphs above are incorporated and realleged here.

243. The ADC Board's hiring of the ADC Executive Director is board business.

244. As noted, the Sunshine Law prohibits the discussion of board business among three or more members of a board outside of a duly held public meeting — unless the board follows the requirements of HRS § 92-2.5.

245. To allow for substantive public participation, the Sunshine Law requires separate meetings for permitted interaction group reporting and decision-making on the same: "[d]eliberation and decisionmaking on the matter investigated, if any, occurs only at a duly noticed meeting of the board held *subsequent to the meeting at which the findings and recommendations of the investigation were presented* to the board." HRS § 92-2.5(b)(1)(C) (emphasis added).

246. Also, as soon as a permitted interaction group has presented a report, it is no longer authorized to continue acting as a permitted interaction group and is effectively dissolved.

247. At the ADC Board's June 15 meeting, the Hiring PIG presented a report on its actions.

248. At the ADC Board's July 20 meeting, the Hiring PIG presented its findings and recommendations to the ADC Board in executive session.

249. The ADC Board deliberated on the Hiring PIG's findings and recommendations on July 20 in executive session—the same meeting at which the findings and recommendations were presented to the ADC Board.

250. The ADC Board violated the Sunshine Law when the Hiring PIG presented multiple reports to the ADC Board without dissolving.

251. The ADC Board violated the Sunshine Law by deliberating on the Hiring PIG's findings and recommendations at the same meeting at which the findings and recommendations were presented to the ADC Board.

252. The ADC Board violated the Sunshine Law by engaging in decision-making on the Hiring PIG's findings and recommendations at the same meeting at which the findings and recommendations were presented to the ADC Board.

253. Public First is entitled to an order declaring that the ADC Board violated the Sunshine Law at the June 15 meeting by not dissolving the Hiring PIG after it presented a report to the ADC Board.

254. Public First is entitled to an order declaring that the ADC Board violated the Sunshine Law at the July 20 meeting by deliberating and engaging in decision-making on the Hiring PIG's findings and recommendations at the same meeting at which the findings and recommendations were presented to the ADC Board.

255. Public First is entitled to an order compelling the ADC Board to disclose the complete findings and recommendations of the Hiring PIG.

**COUNT XIV**  
**OIP OPINION LETTER NO. F24-03 IS PALPABLY ERRONEOUS**

256. The paragraphs above are incorporated and realleged here.

257. At the August 8 meeting, the ADC Board relied on the personnel-privacy exemption, in blanket fashion, to justify its closed-door deliberations and decision-making concerning the hiring of a new ADC Executive Director.

258. The ADC Board did so in disregard of plain law. *E.g., Civil Beat Law*, 144 Hawai`i 466, 445 P.3d 47 (providing required case-specific analysis to properly invoke the personnel-privacy exemption).

259. OIP Opinion Letter No. F24-03 is palpably erroneous to the extent it held that the ADC Board properly conducted an executive session on August 8.

260. Public First is entitled to an order declaring that Opinion Letter No. F24-03 is palpably erroneous to the extent it held that the ADC Board properly conducted an executive session on August 8.

**DEMAND FOR RELIEF**

Based on the foregoing, Public First respectfully asks this Court to grant the following relief:

A. Enter an order declaring that the Council violated the Sunshine Law by:

(1) Meeting in executive session on June 16 to discuss and decide the general process for hiring the State Public Defender;

(2) Meeting in executive session on August 4 to discuss and decide the general process for hiring the State Public Defender;



- (3) Conducting the entirety of its October 4 candidate interviews and post-interview discussion in executive session;
  - (4) Conducting the entirety of its candidate selection deliberations on November 2 in executive session;
  - (5) Failing to keep legally sufficient minutes of its meetings;
  - (6) Failing to record legally sufficient executive session minutes of the October 4 and November 2 meetings;
  - (7) Failing to take public testimony concerning its amended agenda on June 16 and limiting public testimony to the beginning of the Council's meeting on June 16, August 4, October 4, and November 2, 2023; and
  - (8) Failing to timely post minutes for all of its public meetings;
- B. Enter an order compelling the Council to disclose the June 16 executive session minutes and recordings.
- C. Enter an order compelling the Council, for a period of four years, to maintain audio recordings of all regular session meetings and publish the recordings online within forty days of the meeting;
- D. Enter an order compelling the Council, for a period of four years, to maintain audio recordings of all executive session meetings;
- E. Enter an order voiding the Council's selection of Defendant Ikenaga for State Public Defender, pursuant to HRS § 92-11;
- F. Enter an order declaring that the ADC Board violated the Sunshine Law by:

(1) Forming unauthorized committees of three members to evaluate the ADC Executive Director's annual performance;

(2) Evaluating the Executive Director's performance for fiscal years 2020-2021 and 2021-2022 entirely in executive session;

(3) Deliberating on the Hiring PIG's recommendations, interviewing candidates, evaluating candidate qualifications and fitness, discussing the ADC Executive Director's salary, and selecting the next ADC Executive Director entirely in executive session on July 20 and August 8;

(4) Failing to dissolve the Hiring PIG after it presented a report to the ADC Board; and

(5) Deliberating and engaging in decision-making on the Hiring PIG's findings and recommendations at the same meeting at which the findings and recommendations were presented to the ADC Board;

G. Enter an order compelling the ADC Board to disclose executive session minutes and recordings for the meetings held August 17, September 21, and November 2, 2022 and March 16 and April 20, 2023;

H. Enter an order compelling the ADC Board to disclose executive session minutes and recordings for the June 15 meeting;

I. Enter an order compelling the ADC Board to disclose executive session minutes and recordings for the July 20 and August 8 meetings;

J. Enter an order compelling the ADC Board to disclose the complete findings and recommendations of the Hiring PIG;



- K. Enter an order declaring that OIP Opinion Letter No. F24-03 is palpably erroneous to the extent it held that the ADC Board properly conducted an executive session on August 8;
- L. Enter an order requiring the Council and ADC Board to participate in annual Sunshine Law training;
- M. Enter judgment in favor of Plaintiff and against Defendants on all counts respectively brought against them;
- N. Award Plaintiff reasonable attorney's fees and all other expenses reasonably incurred in the litigation, pursuant to HRS § 92-12(c); and
- O. Grant such other and further relief as it deems reasonable and just.

DATED: Honolulu, Hawai'i, January 10, 2024

/s/ Benjamin M. Creps  
ROBERT BRIAN BLACK  
BENJAMIN M. CREPS  
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