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AGRIBUSINESS DEVELOPMENT CORPORATION
BOARD OF DIRECTORS

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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' REPLY TO PLAINTIFF
PUBLIC FIRST LAW CENTER'S
*MEMORANDUM OF LAW IN OPPOSITION
TO DEFENDANT AGRIBUSINESS
DEVELOPMENT CORPORATION BOARD
OF DIRECTORS' MOTION FOR SUMMARY
JUDGMENT REGARDING COUNT XIV
[DKT. 218]; CERTIFICATE OF SERVICE*

HEARING:

Date: August 20, 2025

Time: 1:00 p.m.

Judge: Honorable Jordon J. Kimura

Judge: Honorable Jordon J. Kimura

Trial: September 22, 2025

**DEFENDANT AGRIBUSINESS DEVELOPMENT CORPORATION BOARD
OF DIRECTORS’ REPLY TO PLAINTIFF PUBLIC FIRST LAW CENTER’S
MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT AGRIBUSINESS
DEVELOPMENT CORPORATION BOARD OF DIRECTORS’ MOTION
FOR SUMMARY JUDGMENT REGARDING COUNT XIV [DKT. 218]**

Defendant AGRIBUSINESS DEVELOPMENT CORPORATION BOARD OF DIRECTORS (“**Defendant ADC**”), by and through Anne E. Lopez, Attorney General for the State of Hawai‘i, and its attorneys Amanda J. Weston and David N. Matsumiya, Deputy Attorneys General, hereby submits its reply memorandum to Plaintiff PUBLIC FIRST LAW CENTER’s (“**Plaintiff**”) *Memorandum of Law in Opposition to Defendant Agribusiness Development Corporation Board of Directors’ Motion for Summary Judgment Regarding Count XIV [DKT. 218]*, which was filed herein on July 21, 2025, as Dkt. 228 (“**Plaintiff’s MIO**”).

I. ARGUMENT

In Plaintiff’s MIO, Plaintiff argues that: 1) If State of Hawai‘i Office of Information Practices’ (“**OIP**”) *Opinion Letter No. F24-03* (“**OIP’s Opinion Letter No. F24-03**”) is not palpably erroneous, then this Court’s ruling conflicts with binding precedent; 2) Defendant ADC is the proper party to defend the OIP Opinion Letter No. F24-03; and 3) There is no statute of limitations to declare OIP decisions palpably erroneous.

The problem with Plaintiff’s second and third arguments are that they are so focused on trying to force Defendant ADC to defend OIP’s Opinion Letter No. F24-03 that they lose sight of the true purpose of Plaintiff’s Count XIV – to declare OIP’s Opinion Letter No. F24-03 “palpably erroneous,” which is another way of saying to invalidate OIP’s Opinion Letter No. F24-03. As will be shown below, Defendant ADC is not the appropriate defendant to defend against an action to invalidate OIP’s Opinion Letter No. F24-03 as being “palpably erroneous,” because Defendant ADC did not use OIP’s Opinion Letter No. F24-03 in an attempt to justify its actions.

A. OIP’S OPINION LETTER NO. F24-03 WAS NOT ENTERED INTO THIS ACTION AS BINDING PRECEDENT

Plaintiff took the offensive on this issue and asserted, as part of its complaint, that “OIP Opinion Letter No. F24-03 is palpably erroneous to the extent it held that the ADC Board property conducted an executive session on August 8.” *See* Dkt. 1 at p. 35, ¶ 259. A review of the records of this case will show that Defendant ADC did not attempt to enter OIP Opinion

Letter No. F24-03 into this action as binding precedent. Defendant ADC has simply been fighting a finding that OIP Opinion Letter No. F24-03 is “palpably erroneous.”

Defendant ADC has been fighting a finding that OIP Opinion Letter No. F24-03 is “palpably erroneous” because such a finding by this court, although not precedent for another Circuit Court, will be viewed as persuasive. Defendant ADC believes it must continue with this fight, even though it did not rely on OIP Opinion Letter No. F24-03 when it conducted its executive session meeting on August 8, 2023, because it will be unfair to those departments and/or agencies, who relied upon OIP Opinion Letter No. F24-03, to add another hurdle for them to get over. The hard truth of this issue is: the party who should be battling with Plaintiff over the “palpably erroneous” status of OIP Opinion Letter No. F24-03 is a department and/or agency who actually relied upon OIP Opinion Letter No. F24-03 in its decision making.

B. DEFENDANT ADC IS NOT THE PROPER PARTY TO DEFEND OIP OPINION LETTER NO. F24-03

Plaintiff argues that Defendant ADC is the proper party to defend OIP Opinion Letter No. F24-3 because an amendment to Hawaii Revised Statutes (“HRS”) § 92-12(c), which was enacted after this lawsuit was started and does not have any retroactive effect, changed HRS § 92-12(c) to read as follows:

- (c) Any person may commence a suit against a board or alleged board in the circuit court of the circuit in which a prohibited act occurs for the purpose of:
 - (1) Requiring compliance with or preventing violations of this part;
 - (2) Determining the applicability of this part to discussions or decisions of the public body; or
 - (3) Challenging an opinion or ruling of the office of information practices concerning a complaint by that person.

HRS § 92-12(c) (2024 Cumulative Supplement) (bold emphases added).

The problem with Plaintiff’s argument is that this version of HRS § 92-12(c) is not applicable to this action because this action was initiated prior to the enactment of this amendment and this version of HRS § 92-12(c) does not have any retroactive effect.

Even if this version HRS § 92-12(c) were applicable, Plaintiff is seeking its relief against the wrong entity. Plaintiff admits that it is not seeking to void any final action of Defendant ADC. *See* Plaintiff’s MIO at p. 7, second full paragraph under the heading “Count XIV is timely.” In fact, Plaintiff admits that it is seeking to void OIP Opinion Letter No. F24-3. *See* Plaintiff’s MIO at p. 7, third paragraph under the heading “Count XIV is timely.” Based on

these admissions, it is clear that Plaintiff is not seeking Defendant ADC's compliance with the current version of HRS § 92-12(c), nor is it seeking a determination of the applicability of HRS § 92-12(c) to Defendant ADC. Finally, Plaintiff is not challenging an opinion or ruling of OIP concerning a complaint by Plaintiff – Plaintiff is challenging the ruling of OIP concerning a complaint by an anonymous person. Based on these facts, it is clear that Plaintiff does not meet the requirements of the current version of HRS § 92-12(c).

With regard to the applicable version of HRS § 92-12(c):

[T]he only limitation to an action brought pursuant to HRS § 92-12(c) is that the “purpose” of the suit be to: “1 require compliance with or 2 prevent violations of this part or 3 to determine the applicability of this part to discussions or **decisions of the public body.**” HRS § 92-12(c) (emphases added). Therefore, HRS § 92-12(c) does not prevent “any person” from bringing a suit against OIP regarding one of its decisions. The statute merely requires that a prohibited act allegedly occur, and that the suit meet one of the three enumerated purposes.

In re Off. of Info. Pracs. Opinion Letter No. F16-01, 147 Hawai‘i 286, 296-297, 465 P.3d 733, 743-44 (2020) (underlined emphasis original) (original brackets omitted) (bold emphasis added).

As admitted by Plaintiff, Plaintiff is not seeking to void any final action of Defendant ADC. See Plaintiff's MIO at p. 7, second full paragraph under the heading “Count XIV is timely.” Plaintiff admits that it is seeking to void OIP Opinion Letter No. F24-3. See Plaintiff's MIO at p. 7, third paragraph under the heading “Count XIV is timely.” Based on these admissions, the only portion of the *In re Off. of Info. Pracs. Opinion Letter No. F16-01* rule that is applicable to this action is the third rule – to determine the applicability of this part to discussions or decisions of the public body. As Plaintiff admits that it is not seeking the void any final action of Defendant ADC, the public body in question is OIP. This means that Plaintiff's action should be against OIP and not Defendant ADC. As a result, OIP, not Defendant ADC is the proper defendant to Plaintiff's cause of action.

C. THERE MAY BE NO STATUTE OF LIMITATIONS TO DECLARE OIP DECISIONS PALPABLY ERRONEOUS, BUT THERE ARE LIMITATIONS ON WHO SHOULD BE REQUIRED TO DEFEND SUCH A CLAIM

Plaintiff argues that “there is no limitations period for claims to declare OIP decisions palpably erroneous.” See Plaintiff's MIO at p. 7, third paragraph under the heading “Count XIV is timely.” There are, however, limitations on who should be required to defend such an action.

According to the Supreme Court of the State of Hawai‘i, “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.” *In re Off. of Info. Pracs. Opinion Letter No. F16-01*, 147 Hawai‘i 286, 292-93, 465 P.3d 733, 739-40 (2020). In this action, Defendant ADC clearly did not follow OIP Opinion Letter No. F24-03 because Defendant ADC took no action after OIP Opinion Letter No. F24-03 was issued.

II. CONCLUSION

Plaintiff’s MIO is clearly trying to blur the lines for this Honorable Court. Plaintiff’s MIO argues that statutes, which were enacted after Defendant ADC took its actions somehow should have controlled the actions taken by Defendant ADC. This argument makes no sense and is without merit because the statutes in question were not enacted with retroactive effect.

In addition, Plaintiff’s MIO attempts to require Defendant ADC, who did not rely upon OIP’s Opinion Letter No. F24-03 in its decision making, to defend and justify OIP’s Opinion Letter No. F24-03. This is clearly unwarranted. The appropriate party to defend such an action is a party who actually acted in reliance upon OIP’s Opinion Letter No. F24-03. Defendant ADC did not and there is no evidence to even remotely tie Defendant ADC’s actions to OIP’s Opinion Letter No. F24-03.

Finally, Plaintiff is attempting to force Defendant ADC to defend an OIP opinion that Defendant ADC did not rely upon when taking its actions. A better party to defend against this claim is a party who actually relied upon OIP’s Opinion Letter No. F24-03 in performing its action, not a party who performed the actions that were later analyzed by OIP Opinion Letter No. F24-03.

DATED: Honolulu, Hawai‘i, August 14, 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

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CERTIFICATE OF SERVICE

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

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DATED: Honolulu, Hawai'i, August 14, 2025.

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

/s/ David N. Matsumiya

AMANDA J. WESTON
DAVID N. MATSUMIYA
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