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Attorney for Respondents  
S. LAWRENCE SCHLESINGER, MD, FACS;  
PHOENIX GROUP, LLC dba THE BREAST IMPLANT CENTER  
OF HAWAII AND MOMMY MAKEOVER INSTITUTE OF HAWAII

SCPW-24-0000484

IN THE SUPREME COURT OF THE STATE OF HAWAII

CIVIL BEAT LAW CENTER FOR THE  
PUBLIC INTEREST

Petitioner,

v.

THE HONORABLE JAMES S.  
KAWASHIMA,  
Judge of the Circuit Court of the First Circuit,  
State of Hawaii,  
Respondent

Judge,

and

M.K.; S. LAWRENCE SCHLESINGER, MD,  
FACS; PHOENIX GROUP, LLC dba THE  
BREAST IMPLANT CENTER OF HAWAII  
and MOMMY MAKEOVER INSTITUTE OF  
HAWAII

Respondents.

ORIGINAL  
PROCEEDING CIV. NO.  
1CCV-19-2164

**SCPW-24-0000484**

PETITION FOR WRIT OF  
PROHIBITION AND WRIT OF  
MANDAMUS  
CIRCUIT COURT OF THE FIRST  
CIRCUIT, STATE OF HAWAII

**SCPW-24-0000484**

RESPONDENTS S. LAWRENCE  
SCHLESINGER, MD, FACS;  
PHOENIX GROUP, LLC. DBA THE  
BREAST IMPLANT CENTER OF  
HAWAII AND MOMMY MAKEOVER  
INSTITUTE OF HAWAII MOTION  
FOR RECONSIDERATION

DECLARATION OF COUNSEL

CIRCUIT COURT OF THE FIRST  
CIRCUIT, STATE OF HAWAII

The Honorable James S. Kawashima,  
Circuit Court of the First Circuit State of  
Hawaii

**RESPONDENTS S. LAWRENCE SCHLESINGER, MD, FACS; PHOENIX GROUP, LLC.  
DBA THE BREAST IMPLANT CENTER OF HAWAII AND MOMMY MAKEOVER  
INSTITUTE OF HAWAII MOTION FOR RECONSIDERATION**

Come now Respondents S. LAWRENCE SCHLESINGER, MD, FACS; PHOENIX GROUP, LLC dba THE BREAST IMPLANT CENTER OF HAWAII AND MOMMY MAKEOVER INSTITUTE OF HAWAII by their undersigned counsel, Joseph Fagundes III, Attorney at Law, A Law Corporation and respectfully move this Honorable Court pursuant to Hawaii Rules of Appellate Procedure Rule 40(a) for Reconsideration of this Court's Order filed January 5, 2026. This motion is supported by the Memorandum in support of motion which follows.

Honolulu, Hawaii, January 15, 2026

/s/ Joseph Fagundes, III  
Joseph Fagundes, III  
Attorney for Respondents

## MEMORANDUM IN SUPPORT OF MOTION

### I. SUPREME COURT FINDING OF ERROR IN TRIAL COURT'S DECISION CAN BE CORRECTED BY ORDERING REMAND

This Honorable Court has held that the circuit court erred by not issuing findings to support the decision to seal the record. SC Dkt 48 ORD. The case below had the complication that the Honorable Judge Gary W.B. Chang retired during the proceedings. Successor the Honorable Judge James S. Kawashima order has been found in error due to omitting the necessary findings. Judge Kawashima's decision was arguably made without the benefit of the entire record, by hearing the motions, by simply relying upon Judge Chang's minute Order (cc Dkt. 59) and by relying upon counsels' submitted.

While this application is not within the context of an appeal, Respondents do suggest that Hawaii Revised Statutes § 641-2 (2024) is helpful in supporting Respondents request that the decision should be remanded to the trial court for further proceedings.

According to Hawai'i law, "§ 641-2 Review on and disposition of appeal...the appellate court...may remand the case to the trial court for the entry of the same or for other or further proceedings as in its opinion the facts and law warrant." Here the Supreme Court identified the trial court as the source of error. SC Dkt. 48 ORD at page 7. The issue is the lack of appropriate factual justification for its decision. In order to correct the error, remand can be made to an appropriate trial court who will have access to the complete record. This may require briefing and/or a hearing.

It is interesting that the procedure discussed in *Roy v. Gov't Emps. Ins. Co.*, 152 Hawai'i 225, 524 P.3d 1249 (2023), may be helpful and illustrative here where formal written findings were first discussed in an appellate decision. The Intermediate Court of Appeals wrote:

The Supreme Court and this court have indicated that these procedural and substantive prerequisites for sealing court documents should be applied in at least some, if not all, civil proceedings. See, e.g., *Civil Beat Law Ctr. For Pub. Interest v. Chang*, No. SCPW-21-0000511, 2022 WL 1490412, at \*2 (Haw. May 11, 2022) (denying modified writ petition seeking to prohibit the trial judge from enforcing a sealing order: At this time, ...the more appropriate course of action is for petitioner to seek relief, as modified, in the underlying case, and for the respondent judge, after all parties are heard on the matter, to thereafter enter

formal written findings consistent with constitutional standards and case law, specifically Ahn and Grube.) Roy, supra, at pages 1257-1258.

The procedure recommended may be a fair alternative for both the parties and the Court, allowing the error to be corrected. In fact, Civil Beat has raised the issue of inadequacy with the trial court's decision. Arguably, both it and the Respondents would be in agreement that a remand is highly advisable to require the trial court to fulfill its obligations under the law.

Subsequent to the remand, Respondents respectfully ask that this Court review the trial court's decision and then determine whether it is sufficient within the law. If not, the decision to release the record, or a portion thereof, will go forward.

#### A. Choice of Law

While this Court's opinion is very clear, it is noted that it has relied upon certain precedent which did not exist at the time both Judge Chang and Judge Kawashima filed their order. While Oahu Public's Inc. v. Ahn, 132 Hawai'i 482, 331 P.3d 460 (2014) and Grube v. Trader, 142 Hawai'i 412, 420 P.3d 343 were decided recently before the instant case was settled and sealed, other relevant cases referred to were not decided until years after the settlement and sealing. For example, Roy v. Gov't Emps. Ins. Co., 152 Hawai'i 225, 524 P.3d 1249 (2023), State v. Rogan, 156 Hawai'i 233, 573 P.3d 616 (2025), and Womble Bond Dickinson (US) LLP v. Kim, 153 Hawai'i 307, 537 P.3d 1154 (2023) are not precedents which the circuit court Judges had the benefit of prior to making their decisions. Nor should they have retroactive impact and effect upon this present case.

The sealing in this matter is subject to the law, though this matter is very distinguishable from the fact and procedural circumstances at play in Hawaii precedent in 2025-2026. In Oahu Public's Inc. v. Ahn, supra, the sealing of juror misconduct inquiries being sealed occurred mid criminal trial. This Court noted that the qualified First Amendment right of access attaches to criminal trials during the evidence and testimony taking phase. Ahn, supra, at 472. In the instant matter, there was no trial and as argued in the Answer to the Petition, it never was at issue due to a settlement prior to any service of the complaint. A review of the circuit court docket makes it apparent that the complaint was filed in November 2019, a settlement was reached in December 2019 and no other activity occurred in the circuit court until Civil Beat began filing for unsealing

some four years later in December 2023. There was no mid trial request for access and unsealing as in Ahn.

In *Grube v. Trader*, *supra*, the challenged sealing again occurred during an ongoing criminal trial. This Court held that the procedural requirements for sealing of a record included giving the public (or interested parties) notice of the intent to seal and to make findings to identify the irreparable interest sought to be protected. This Court relied upon the case of *In re: McClatchy Newspapers, Inc.* 288 F.3d 369, 374 (9th Cir. 2002) for the proposition that “preserving the comfort or official reputation of the parties is not a sufficient justification”. *Grube*, *supra* at 356. However, the “official reputation” which the Ninth Circuit was reviewing in *McClatchy* was that of a high government official of the California Coastal Commission, not the professional reputation of a physician whose practice and profession was demonstrated to be highly probably irreparably damaged by publication of scandalous and unproven allegations. SC Dkt 14 (transcript of May 28 hearing) testimony at pages 9-17, as previously supplied this Court in the Answer to the Petition.

#### B. Plaintiff’s and Respondents’ Privacy Interests

Respondents, in settling and sealing the complaint, were seeking to protect a practice and livelihood, not seeking to preserve the “official” reputation of a government official. It is relevant to note that Plaintiff M.K. below was also desirous of protecting her privacy and her counsel requested that only her initials be utilized rather than her name. While M.K. is not identified by her full name, Maui is a small community and the publication of information and documents regarding the case below may impinge upon her privacy as well.

Although not pled before this Court, it would be significant to include M.K.’s perspective on the unsealing and its impact on her rights of privacy.

## II. WHICH COMPLAINT IS TO BE UNSEALED

On January 5, 2026 this Court issued its Order partially granting Petitioner’s requested relief (SC Dkt. 48 ORD).<sup>1</sup> In this Court’s Order at page 2 it states:

We grant the Law Center’s petition for a writ of mandamus in part and order the circuit court to unseal the docket and complaint filed at Docket 1, subject to the stay set forth below.

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<sup>1</sup> References used to the circuit court docket are designated cc Dkt. and Supreme Court docket are SC Dkt.

In the circuit court's ruling of June 21, 2024 (cc Dkt. 73 ORDD), referred to at page 3 of the Order, Judge Chang ordered, inter alia, that:

1. The Complaint be amended to delete those words which the Court deemed scandalous pursuant to Hawaii Rules of Civil Procedure.

Subsequent to the circuit court order, a revised complaint was filed (cc Dkt. 76 CAMD). In that revised complaint the words deemed scandalous by Judge Chang were redacted.<sup>2</sup> Respondents respectfully request reconsideration of this Court's designation of the "Docket 1" complaint for unsealing rather than the somewhat less scandalous cc Dkt 76 Revised Complaint which Judge Kawashima ordered. It is suggested that unsealing the Revised Complaint, rather than the original, more scandalous complaint is more appropriate for the public and for the anticipated publication by news organizations such as Civil Beat.<sup>3</sup> It is relevant to note that no provision would be made by Petitioner in its publication to insert information or commentary about the denial by Respondents to the allegations of the complaint, since Respondents did not have an opportunity to answer. See SC Dkt. 13 (transcript of May 1, 2024 hearing) at page 15 lines 13-22.

As argued here, it is the second redacted complaint that should be released in the event the Supreme Court so orders. Nonetheless, the redaction of that complaint continues to contain substantial aspects of MK's allegations and should be subject to further redaction. The suggestion for further redaction is up in the air and Respondents will, in all likelihood, bring a motion to broaden the redaction and to seek an opportunity to file their answer.

Respondents' procedural rights would have allowed them to answer a complaint once served upon them, which did not occur. Judge Chang did sign an order directing the complaint be dismissed with prejudice. Respondents are unaware if that pleading is part of the docket. Since that did not occur and premised upon the unsealing of the record, Respondents now ask for a period of time within which to answer the complaint. Both complaint and an answer should be part of the record and it then becomes incumbent upon Civil Beat to reveal both in its publication.

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<sup>2</sup> While the redactions do redact some of the scandalous language used by Plaintiff in the original complaint (dkt. 1), there remain many other words in both headings and text which Respondents consider scandalous.

<sup>3</sup> In interrogation by Judge Chang of counsel for Petitioner, it was admitted that Petitioner intended to publish on its website any documents and information which is unsealed. Dkt. 13 ATTCH at Page 13, lines 1-5.

### III. CLARIFICATION SOUGHT TO IDENTIFY THE RECORD TO BE UNSEALED

In the Supreme Court's Order, the docket is to be unsealed. The Caseview docket ordinarily contains a listing of all documents filed with the court, followed by an accessible list of said documents. According to the definitions contained on the Hawaii Judiciary website, "docket" is defined as "The docket lists what has occurred in a case, including documents filed and actions taken in court." [https://www.courts.state.hi.us/legal\\_references/records/courtconnect\\_faqs#3](https://www.courts.state.hi.us/legal_references/records/courtconnect_faqs#3)

It is unclear from the Order if the Docket to be unsealed is simply the list of filed documents or will also include the accessible copies of all the filed documents. A clarification would be greatly appreciated.

### IV. CONCLUSION

It is believed that the crux of the Supreme Court's decision is that the second decision by Judge Kawashima was in error. As such and in light of appellate statutory guidance, this Court may remand for findings of fact and conclusions of law in keeping with applicable authority. Pursuant to this Court's decision, the trial court below failed to issue findings sufficient under the law.

As previously argued, Judge Chang did make specific findings orally at the hearing of May 28, 2024. SC Dkt. 14 ATTCH at pages 23-28 which does explain his ruling. There is no requirement that his decision be in writing. Judge Chang did find that there were countervailing considerations. SC Dkt 14 at page 25, lines 12-25.

The revised complaint was prepared pursuant to those specific findings of Hawaii Rules of Civil Procedure Rule 12(f) violations and is in the record. Cc Dkt. 76 CAMD The Court is urged that if a complaint is to be unsealed, it should be the less scandalous one with an eye towards further redaction. Read alone, MK's allegations are inflammatory and will cause significant damage to the Respondents' medical practical.

Moreover, with a docket that was in its initial stages and outside of the Respondents' understanding about what it contained, they seek specificity about the contents to be released to avoid confusion. While Respondents do comprehend the public policy behind unsealing, they

will be the only party harmed. Everyone has moved on with the Plaintiff (M.K.) having received a significant settlement. All parties bargained for confidentiality which has now been set aside in the interest of disclosure. Given these set of facts, Respondents seek a thorough decision on remand, a designation as to which complaint is to be released and an opportunity to answer.

Honolulu, Hawaii, January 15, 2026

/s/ Joseph Fagundes III  
Joseph Fagundes, III  
Attorney for Respondents

## DECLARATION OF COUNSEL

I, Joseph Fagundes, III, do hereby declare:

1. That I am an attorney licensed to practice before the Federal and State Courts of the State of Hawai'i.
2. That I make this Declaration based upon my personal knowledge.
3. That the foregoing Motion for Reconsideration is filed in good faith and not interposed for purposes of delay.

Honolulu, Hawaii January 15, 2026

/s/ Joseph Fagundes III  
Joseph Fagundes, III  
Attorney for Respondents