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IN THE FAMILY COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

**SPECIAL PROCEEDING TO  
UNSEAL PORTIONS OF CHILD  
PROTECTIVE ACT PROCEEDING**

) Case Number: 1FFM-24-0000019  
) **REDACTED**  
) **DECISION AND ORDER RE:**  
) **MOTION TO UNSEAL PORTIONS**  
) **OF CHILD PROTECTIVE ACT**  
) **PROCEEDING OF ISABELLA P.**  
) **KALUA F.K.A. ARIEL SELLERS,**  
) **FILED JANUARY 12, 2024**  
)  
) **Judge: Matthew J. Viola**

**REDACTED**

**DECISION AND ORDER RE: MOTION TO UNSEAL  
PORTIONS OF CHILD PROTECTIVE ACT PROCEEDING OF  
ISABELLA P. KALUA F.K.A. ARIEL SELLERS, FILED JANUARY 12, 2024**

Movant Civil Beat Law Center for the Public Interest (now known as Public First Law Center) ("Movant") filed a Motion To Unseal Portions Of Child Protective Act Proceeding Of Isabella P. Kalua F.K.A. Ariel Sellers on January 12, 2024 (the "Motion"). The court having determined that all interested parties have had notice and an opportunity to be heard through written submissions and that there is a full and sufficient record to decide the Motion, the court designates the Motion as a non-hearing motion in order to expedite this matter.

Having fully and carefully considered the Motion, the records and files herein, including the written submissions, and the applicable law, and being fully advised in the premises, the court finds, concludes and orders as follows:

**Procedural Background**

1. On or about December 13, 2023, via a letter addressed to the Chief Judge of the Circuit Court of the First Circuit, Movant submitted the Motion for filing. A related motion to unseal an adoption proceeding was also submitted for filing. Both motions are collectively referred to herein as the “Motions”.
2. Because proceedings under Hawai‘i Revised Statutes (HRS) Chapter 587A, the Child Protective Act (CPA), are confidential in nature, the attorneys for Movant stated that they did not know the case number of the CPA proceeding and therefore could not file the Motion themselves in the case. *See* Letter from Movant, dated December 13, 2023, filed herein on February 20, 2024.
3. On or about January 12, 2024, this court determined that, because Movant was not a party to the confidential CPA case and because non-parties generally do not have access to the court files and records in CPA cases, it would not be appropriate to file the Motion in the CPA case, but rather it was appropriate to open this new special proceeding and file the Motion herein.
4. On February 21, 2024, the court held a consolidated hearing on the Motions, at which the attorneys for Movant were present.
5. At the hearing, the court made several findings and orders, which were reflected in a written order filed on February 21, 2024 (“Order Continuing Hearing On Motion To Unseal Portions Of Child Protective Act Proceeding, Filed January 12, 2024”). The court made certain findings regarding disclosure of information related to the CPA and adoption cases and set forth a process to ensure that there would be a meaningful hearing on the Motion and to give all interested persons/entities notice and an opportunity to be heard:

In order to have a meaningful hearing on the merits of the Motion, there is good cause to disclose the fact that there is an underlying adoption proceeding. Similarly, the court finds that disclosing the fact that there is an underlying Chapter 587A case serves the legitimate purpose of having a meaningful hearing on the merits of the Motion. These findings do not extend, pending

further order of the court, to the disclosure of any specific records in the adoption case or the Chapter 587A case.

In order to have a meaningful hearing on the Motion and to afford interested parties and entities notice and an opportunity to be heard, Movant shall personally serve the following persons/entities with the Motion, including any attachments and exhibits, and a certified copy of this Order:

Lehua Kalua  
Isaac Kalua  
Melanie Joseph, aka Melanie Sellers  
Adam Sellers  
The Department of Human Services, State of Hawai'i  
(through the Department of the Attorney General)  
Court Appointed Special Advocates Program  
Nicole Cummings, Esq.  
Dean Nagamine, Esq.  
Arlene Harada-Brown, Esq.  
Francis T. O'Brien, Esq.  
Brett A. Ritter, Esq.  
Stephen Lane

Upon proper service of the Motion and this Order on each of the above-identified persons/entities, Movant shall file a Proof of Service.

Any of the above-identified persons/entities who opposes or objects to the Motion shall file a written opposition, stating the basis therefor, within twenty (20) days of the date they are served with the Motion and this Order. The failure to file a timely written opposition will be construed by the court as a statement of no opposition to the Motion.

Within forty (40) days of the date of service of the Motion and this Order on the last of the above-identified persons (*i.e.*, after all of the above-identified persons/entities have been served), Movant may file a written reply to any written oppositions filed.

The court will set any further hearings as necessary, and the court reserves the right to treat the Motion as a non-hearing motion.

6. The court also entered an order temporarily sealing the records and filings in this proceeding:

Pursuant to HRS § 571-11, the family court has exclusive original jurisdiction over adoption proceedings and Chapter 587A proceedings. The records in proceedings brought under HRS § 571-11 are confidential and shall be withheld from public inspection. HRS §571-84. Insofar as the Motions are based on and inextricably intertwined with the underlying adoption and Chapter 587A cases, these proceedings will be placed under seal and be closed to the public subject to further order of the court. HRS §§ 571-84, 578-15 and 587A-40. In addition and for the same reasons, any documents filed in this case shall be filed under seal and may not be released to third parties subject to further order of the court. *Id.*

7. On March 5, 2024, Frances O'Brien, Esq., on behalf of Isaac Kalua, filed a Memorandum In Opposition To Motion To Unseal Portions Of Child Protective Act Proceedings, Filed January 24, 2024, objecting to and opposing the granting of the Motion on a number of grounds, including that the disclosure sought would not be in the best interests of the children involved, relying on *Kema v. Gaddis*, 91 Hawai'i 200 (1999).
8. On March 21, 2024, Nicole Cummings, guardian ad litem (GAL), filed through counsel a Statement Of No Objection To The Motion To Unseal Portions Of The Child Protective Act Proceedings, Filed By Civil Beat Law Center For The Public Interest On January 12, 2024, taking the position that she had no objection to the Motion "so long as the documents and other items produced in response to the Motion are properly redacted to protect the identities of the minor children contained therein."
9. On March 22, 2024 Dean Nagamine, court-appointed GAL, filed a Response To Motion To Unseal Portions Of The Child Protective Act Proceeding Of Isabella P. Kalua FKA Ariel Sellers, stating that he had no objection to the Motion and noting that the Motion "already provides for the redaction of names of other minors who might be included in such documents."
10. On March 25, 2024, Arlene Harada-Brown, court appointed GAL, filed a Response To The Motion To Unseal Portions Of Child Protective Act Proceeding, taking no position on the Motion on the grounds that she was not a party to the underlying case.
11. On April 1, 2024, the Department of Human Services (DHS), filed a Memorandum In Opposition To Motion To Unseal Portions Of The Child Protective Act Proceeding Of Isabella P. Kalua FKA Ariel Sellers, objecting to and opposing the granting of the Motion and relying primarily on *Kema*, *supra*.

12. On April 12, 2024, Movant filed a Combined Reply To Oppositions Of Respondents (1) Isaac Kalua, Filed March 5, 2024 And (2) Department of Human Services, Filed April 1, 2024.
13. On April 22, 2024, the Court Appointed Special Advocates Program (CASA) filed a Substantive Joinder To Department Of Human Services' "Memorandum In Opposition To Motion To Unseal Portions Of The Child Protective Act Proceeding Of Isabella P. Kalua FKA Ariel Sellers" Filed April 1, 2024, objecting to and opposing the granting of the Motion. Movant filed a reply to the CASA joinder on May 10, 2024.
14. After being served the following did not file any response to the Motion: Stephen Lane (court-appointed special master); Lehua Kalua; Melanie Joseph, aka Melanie Sellers; Adam Sellers. Brett Ritter, Esq., did not submit a response, but indicated to Movant that he was Mr. O'Brien's associate and would defer to him as Isaac Kalua's lead counsel in the CPA case.

#### **Background – CPA and Adoption Cases**

15. The court takes judicial notice of the records and files in Child Protective Act Case No. FC-S 18-00280 (the "CPA case").
16. The court finds that the disclosure in this Decision and Order of the existence of the CPA case and of certain information contained in the court's files and records in the CPA case is necessary to decide the Motion, to make the necessary findings, and to enter this Decision and Order; the disclosure of the existence of the CPA case and of said information in the CPA case files and records therefore serves a legitimate purpose under HRS § 587A-40.
17. On November 2, 2018, DHS filed in the CPA case a Petition For Temporary Foster Custody And Family Supervision in the First Circuit Family Court.
18. The petition sought orders placing Ariel Sellers and an older sibling under family supervision and awarding temporary foster custody of a younger sibling of Ariel. Collectively, the children subject to the CPA case are referred to herein as the "Children". Ariel's siblings are referred to herein as the "Siblings".
19. On November 7, 2018, the Family Court of the First Circuit entered orders placing Ariel and her older sibling under family supervision and awarding DHS foster custody of Ariel's younger sibling. Ariel's younger sibling was placed by DHS in the home of Isaac and Lehua Kalua.

20. On February 8, 2019, DHS removed Ariel and her older sibling from their family placement and placed them with the Kaluas. On February 11, 2019, the Family Court of the First Circuit entered an order revoking family supervision and awarding DHS foster custody of Ariel and her older sibling.
21. On January 12, 2021, DHS filed a Petition For Adoption Pursuant To The Child Protection Act in the Family Court of the First Circuit (FC-A No. 21-1-6010) (the “adoption case”). The court takes judicial notice of the records and files in the adoption case.
22. The court finds that the disclosure in this Decision and Order of the existence of the adoption case and of certain information contained in the court’s files and records in the adoption case is necessary to decide the Motion, to make the necessary findings, and to enter this Decision and Order; therefore there is good cause under HRS § 578-15 to disclose the existence of the adoption case and said information in the adoption case files and records.
23. The petition filed in the adoption case requested that the court grant the adoption of the Children by the Kaluas.
24. On February 11, 2021, the Family Court of the First Circuit Court granted the adoption petition and the Kaluas became the legal parents of the Children. In connection with the adoption case, Ariel’s name was changed to Isabella P. Kalua.
25. On August 16, 2023, the Circuit Court of the First Circuit, made a finding that Ariel died on or about August 18, 2021. 1CLP-23-0000509 (Order Granting In Part And Continuing In Part Petition For Adjudication Of Intestacy And Appointment Of Personal Representative).
26. The Kaluas have been charged with a number of criminal offenses, including murder in the second degree, in connection with Ariel’s death. *State v. Lehua Kalua, Isaac Kalua III, aka “Sonny”*, 1CPC-21-0001427 (the “criminal case”).

### **The Motion**

27. In its Motion, Movant specifically asks the Court to unseal:

- (1) The case docket -- *i.e.*, the index of pleadings;
- (2) Records sufficient to understand the factual and legal record on which the Court approved Isabella’s foster placement with Isaac K. Kalua, III and Lehua Kalua (together, the Kaluas);

(3) Records sufficient to understand the factual record presented to the Court by the Department of Human Services (DHS) and any other person or party regarding the Kaluas' fitness as foster parents; and

(4) Any reports filed in this matter by Special Master Stephen W. Lane.

28. In making its request for access to the court records and files, Movant stated that it acknowledged that certain confidential information might have to be redacted from the court records and that it was not seeking information regarding the Siblings:

The Law Center [Movant] acknowledges that portions of the subject records may contain information that must be kept confidential by law, such as the identities of Isabella's siblings or mandatory reporters. In that case, redactions provide an appropriate solution to narrowly address legitimate privacy concerns. Redaction, however, should be altogether unnecessary for certain documents, such as DHS assessments and recommendations that focus on the Kaluas' fitness as parents. The Law Center is not asking to unseal the identities of Isabella's siblings or personal information about them.

29. Movant also offered an "alternative" to allowing it direct access to the court records:

[I]f the Court declines to release redacted court records, the Law Center [Movant] respectfully requests that the Court unseal the case docket and order Special Master Lane to prepare, for public disclosure, a synopsis of the factual and legal record presented to the Court for [Ariel]'s foster placement with the Kaluas and any other information relevant to understand how this case was handled by government authorities.

30. As stated, the requests in the Motion are delimited to the time period that the Kaluas were the Children's resource caregivers/foster parents, that is, the period up to the adoption of the Children by the Kaluas.

### **Request for Access to CPA Case Court Records**

31. HRS §587A-40 governs non-party access to the court's records in CPA cases:

#### **Court records.**

(a) The court shall keep a record of all child protective proceedings under this chapter. Written reports, photographs, x-rays, or other information that are submitted to the court may be made available to other appropriate persons, who are not parties, only upon an order of the court. The court may issue this order upon determining that such access is in the best interests of the child or serves some other legitimate purpose.

(b) As set forth in rules adopted pursuant to chapter 91 by the department of human services and consistent with applicable laws, the department may disclose information in the court record without order of the court, unless otherwise ordered by the court.

32. Under the plain language of HRS § 587A-40(a), the court may issue an order making its records and files in a CPA case available to appropriate persons who are not parties to the CPA case only if it makes a determination that allowing "such access is in the best interests of the child *or* serves some other legitimate purpose." (Emphasis added.)

33. Movant is not a party to the CPA case and is an appropriate person to whom access to the court's records may be given if this court determines "that such access is in the best interests of the child or serves some other legitimate purpose."

34. Under the particularly tragic and unusual circumstances concerning Ariel's death, allowing Movant access to the court's CPA case records – which would be tantamount to public disclosure of the records<sup>1</sup> -- would serve a legitimate purpose insofar as it would "contribute to public understanding and awareness" of the response of agencies and the family court to problems of child abuse and neglect (*Kema*, 91 Hawai'i at 204) and, specifically, as to how and why the Kaluas were deemed appropriate resource caregivers<sup>2</sup> and

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<sup>1</sup> See *Kema*, 91 Hawai'i at 205 n.6 (with regard to what constitutes "legitimate purposes" relevant to HRS Chapter 587, "the interests of the press are no different from the interests of the general public.").

<sup>2</sup> See, e.g., HRS § 587A-30(b)(2) (at each periodic review hearing in a CPA case, the court shall "[d]etermine the continued need for and appropriateness of the out-of-home placement[.]").

ultimately adoptive parents.<sup>3</sup> See Hawai'i Administrative Rules § 17-1601-6(16) (setting forth legitimate state purposes for which disclosure of the record by DHS to third parties, including the public, is authorized without a court order); see also *In re: FG*, 142 Hawai'i 497, 505 n.9 ("In assessing Parents' First Amendment rights, we note that this is a case in which a child has died while in foster care. State statutes which provide for review of child deaths that occur in state custody demonstrate that Hawai'i has an interest in ensuring accountability in the foster care system." (Citing HRS §§ 321-341 and 321-345.5)).

35. The best interests of the children are the paramount concern in CPA cases. See HRS § 587A-2 ("This chapter shall be liberally construed to serve the best interests of the children affected and the purpose and policies set forth therein.").
36. Under HRS § 587A-40, the legitimate purposes that allow the court to grant access to otherwise confidential records in CPA cases "are limited to those that further the best interests of the children who come within the jurisdiction of the family court, pursuant to the Child Protective Act, *i.e.*, purposes that will safeguard, treat, and provide services and plans for children in need of protection." *Kema*, 91 Hawai'i at 205.<sup>4</sup>
37. Thus, even if the court finds that permitting a non-party such as Movant access to the court's records would serve a legitimate purpose, such access must be denied if it would be contrary to the best interests of any of the children involved in the case. *Id.* at 206 ("[A]lthough we acknowledge that the release of further family court documents to the media might serve *some* legitimate purpose, the overriding concern of the Child Protective Act in determining whether to release such information remains the best interest of the children involved. Under the Child Protective Act, the interests of other parties or non-parties seeking information are not as compelling as the interests of the children involved.").

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<sup>3</sup> In order to grant an adoption, a court must find that "the petitioners are fit and proper persons and financially able to provide the individual a proper home and education, if the individual is a child[.]". HRS § 578-8(a).

<sup>4</sup> In *Kema* the Supreme Court construed HRS § 587-81 (1993), the predecessor to HRS § 587A-40, which provided in pertinent part:

**Court records.** The court shall keep a record of all child protective proceedings under this chapter. The written reports, photographs, x-rays, or other information of any nature which are submitted to the court may be made available to other appropriate persons, who are not parties, only upon order of the court after the court has determined that such access is in the best interest of the child or serves some other legitimate purpose[.]

This language is almost identical to the language in HRS § 587A-40(a).

38. Here, given the judicial determination in the probate case (1CLP-23-0000509) that Ariel is deceased, which this court accepts, what is in her best interests presently is, sadly, no longer relevant for purposes of this proceeding. Ariel, however, has siblings who were subjects of the CPA case. Their interests remain paramount. Thus, if allowing non-parties access to the records would be contrary to the Siblings' best interests, such access must be denied.
39. The court has closely reviewed the entire CPA case file. The file contains a great deal of information relating to the Siblings --- information that is relevant to the purposes for which access is sought. Some of the information relates to: 
40. The Children were all placed with the Kaluas and all lived together with the Kaluas. The Kaluas were deemed appropriate caregivers to all of the Children. They adopted all of the Children together. Therefore, all of the information regarding the Siblings is relevant and necessary to understand and to make a fair and informed assessment of how and why the Kaluas were deemed appropriate resource caregivers and ultimately adoptive parents for the Children, individually and collectively. Stated otherwise, the factual and legal record that underpinned the determinations that the Kaluas were appropriate resource caregivers for Ariel necessarily includes information about the Siblings.
41. Although Movant asserts that it is not seeking the disclosure of personal information regarding the Siblings, the disclosure of information regarding the Siblings is necessary to serve the legitimate purpose that would be served by granting Movant access to the court's CPA case file. In other words, granting access to an incomplete CPA case file with information regarding the Siblings redacted would not serve the legitimate purpose of helping the public fully understand the basis for the DHS and family court determinations that the Kaluas were an appropriate placement for the Children.
42. Public disclosure of information related to the Siblings, especially information that is not yet public, would be harmful to them and contrary to their best interests.
43. If possible, redaction of information in the court's CPA case file related to the Siblings could eliminate the harm that would result from public disclosure of such information.

44. The court has made a determined effort to redact information in the court's file relating to the Siblings. However, information in the court's file pertaining to Ariel is inextricably intertwined with information regarding the Siblings.
45. Redaction of information regarding the Siblings is not possible, at least in a manner that would serve the legitimate purpose proffered.
46. There are a number of documents in the court's case file that contain statements and information that pertain to both Ariel and the Siblings. In order to protect the best interests of the Siblings, the entire statements would have to be redacted if the file were opened for inspection. Similarly, information that pertains just to the Siblings would also have to be redacted to protect their best interests.
47. Redaction of this information, however, would render the disclosed information significantly incomplete -- and misleadingly so. Omission of material and relevant information from the court record would create a distorted and misleading picture of contents of the court record and specifically of the factual and legal record on which agency and court decisions placing the Children with the Kaluas were made. Stated otherwise, in order to help the public understand the basis for the DHS and family court determinations that the Kaluas were an appropriate placement for the Children, the entire file would have to be disclosed, not just selected portions of the file.
48. Disclosure of an incomplete and misleading record would not advance but would disserve the legitimate purposes of contributing to public understanding and awareness of the response of agencies and the family court to problems of child abuse and neglect and, specifically, as to how and why the Kaluas were deemed appropriate resource caregivers and eventually adoptive parents.
49. Accordingly, the court denies Movant's request for access to the CPA case file, including the docket. *See Kema*, 91 Hawai'i at 206. ("Because the cases are so interrelated and release of information would be harmful to Peter Boy's siblings, granting the *Advertiser* access to the family court's record is not in their best interest. Inasmuch as the redactions do not delete all information related to the other children, we conclude that Judge Gaddis's ruling violated the applicable legal standard in allowing access to even a redacted version of the old file.").

### **Request for CPA Case File Synopsis**

50. In the event that direct access to the CPA case file was denied, Movant requested “that the Court unseal the case docket and order Special Master Lane to prepare, for public disclosure, a synopsis of the factual and legal record presented to the Court for Ariel's foster placement with the Kaluas and any other information relevant to understand how this case was handled by government authorities.”
51. The request is based on something similar that the family court ordered in the *Kema* case when it “directed DHS to prepare a synopsis of the allegations contained in the safe family home guidelines submitted in the DHS case concerning Peter Boy[.]” *Kema*, 91 Hawai’i at 202.
52. Nothing in the law, including the CPA, requires the court to allow such an option in this case.
53. Moreover, any synopsis could not include information regarding the Siblings, as public disclosure of that information would be harmful to them and contrary to their best interests. For the reasons noted above, any synopsis of the court records that did not contain information about the Siblings would be misleadingly incomplete and therefore would not serve a legitimate purpose.
54. Accordingly, Movant’s request to have the court order Mr. Lane to prepare a synopsis of the court’s CPA case file is denied.

### **Request for Special Master’s Report**

55. Movant asks the court to unseal “[a]ny reports filed in this matter by Special Master Stephen W. Lane.”
56. On April 20, 2022, a Petition To Appoint Special Master was filed in family court case, *In the Interest of* [REDACTED], I.K. (DOB: 2014), [REDACTED] case no. FC-M No. 22-1-0191. Petitioner Stephen W. Lane sought an *ex parte* order appointing him as special master to determine whether any of the subject children had “actionable tort claims[.]”<sup>5</sup>
57. Among other things, the petitioner alleged that the “Special Master will have to investigate the circumstances under which DHS approved [the Kaluas] to become foster parents” and eventually adoptive parents, and “will have to investigate the facts related to possible abuse of” the children.

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<sup>5</sup> The child identified as [REDACTED] was not the subject of the CPA or adoption cases.

58. On May 5, 2022, the family court entered an Order Re: Petition to Appoint Special Master. Although the order denied the petition without prejudice, the court found that, based on a First Circuit Family Court Protocol Re: Possible Torts Arising in Chapter 587A cases, there was a basis to appoint a special master for the minor children.
59. On June 22, 2022, the Family Court entered an Order Appointing Special Master. The order provided that Stephen W. Lane “is appointed Special Master in this matter, without compensation, to determine on behalf of the [subject] minor children whether an actionable tort claims exists, or not[.]”
60. The order also authorized Mr. Lane to “subpoena documents and records from individuals, medical providers, agencies, and public and/or private entities in furtherance of his investigation and evaluation[.]” Significantly, the order did not authorize or direct Mr. Lane to review the court’s CPA case file, nor did it direct Mr. Lane to summarize, evaluate, or address the information contained in the court’s CPA case file; it simply appointed Mr. Lane as special master for the limited purpose of “determin[ing] on behalf of the [subject] minor children whether an actionable tort claims exists, or not[.]”
61. The order also provided that “[a]ll documents and records obtained during the investigation shall remain confidential and, if necessary for use in any litigation, shall be filed under seal; and upon the cessation of legal proceedings, said documents and records shall be returned and/or destroyed by the Special Master[.]”
62. On January 4, 2023, the special master’s report (the “Report”) was filed. The special master concluded that Ariel and her siblings had actionable civil claims against the State of Hawai’i and the Kaluas.
63. On February 14, 2023, the court entered an order that appointed Nicole Cummings as guardian ad litem for the children “for the purpose of pursuing any and all actionable tort claim(s) related to the child(ren)’s placement in foster custody and/or subsequent adoption.”
64. On August 14, 2023, a civil complaint was filed in the Circuit Court of the First Circuit by plaintiff Nicole K. Cummings, as personal representative of the estate of Ariel and as conservator of Ariel’s siblings against Defendants the Department of Human Services of the State of Hawai’i, the Kaluas, and Catholic Charities Hawaii (1CCV-23-0001049) (the “Civil Complaint”). On August 31, 2023, a First Amended Complaint was filed (“First Amended Civil Complaint”).
65. As of the filing of this Decision and Order, the civil case is still pending, although defaults have been entered against the Kaluas.

66. The court has carefully reviewed the factual allegations in the Civil Complaint and the First Amended Civil Complaint. It is apparent that the material factual assertions in the complaints were based almost entirely on the statements contained in the Report – in a number of instances the complaints contain virtually verbatim recitations of portions of the Report.
67. The Report and its contents are clearly based, at least in part, on information and documents that are in the court’s CPA case file. The Report refers to information contained in the “court records”. Subpoenas duces tecum issued to DHS required the production of DHS reports. See HRS § 587A-18 (requiring DHS to file written reports with the court).
68. Because the Report essentially arose out of, was based on, and is inextricably intertwined with the underlying CPA case, in determining whether to allow Movant access to the Report, the court will follow the provisions, standards and framework applicable under HRS § 587A-40– *i.e.*, access will be allowed if it serves a legitimate purpose and access to/disclosure of the Report would not be contrary to the best interests of the children involved. *Cf. In re KK*, Nos. CAAP-22-0000162 and CAAP 22-0000675, 2023 WL 3533553 at \*5 (Haw. May 18 2023) (mem. op.) (provisions of CPA must be applied in deciding related guardianship case).
69. Under the tragic and unusual circumstances concerning Ariel’s death, allowing Movant access to the Report would serve a legitimate purpose insofar as it would contribute to public understanding and awareness of the response of agencies and the family court to problems of child abuse and neglect and, specifically, as to how and why the Kaluas were deemed appropriate resource caregivers and ultimately adoptive parents.
70. Notwithstanding the legitimate purpose disclosure of the Report would serve, disclosure must be denied if it would be harmful to the Siblings, *i.e.*, contrary to their best interests.
71. Public disclosure of information in the Report related to the Siblings, especially information that is not yet public, would be harmful to them and contrary to their best interests.
72. If possible, redaction of information in the Report related to the Siblings could eliminate the harm that would result from public disclosure of such information.
73. Having reviewed the Report (including the exhibits) in detail, the court finds that information regarding the Siblings can be redacted.

74. Given the judicial determination in the probate case that Ariel is deceased, which this court accepts, what is in her best interests presently is, sadly, no longer relevant for purposes of these proceedings.
75. The court has considered the privacy interests of the Kaluas and biological parents of the Children in determining whether to disclose the Report. The court notes that some of the information in the Report regarding the Kaluas and the biological parents is already in public domain, insofar as a great deal of the information in the Report has already been made public in the pending civil case and other information has been made public in the criminal case and media reports (*see* the exhibits attached to the Motion).
76. The court finds and concludes that the privacy interests of the Kaluas and the biological parents in the information contained in the Report are outweighed by the legitimate purposes of increased accountability and transparency that will be served by disclosure of the Report.
77. Family court and public agencies such as DHS do not have significant privacy interests in the information in the Report. *See Kema*, 91 Hawai'i at 204.
78. The redaction of the information in the Report relating to the Siblings does not preclude disclosure of the remaining information in the Report in the same way that redaction of the information relating to the Siblings weighed against the disclosure of the court's CPA case file, as set forth above.
79. The Report was never intended to be and in fact was not a full and accurate summary and assessment of the contents of the court's CPA case file. Indeed, it is not even clear that Mr. Lane specifically reviewed the contents of the court's actual CPA case file in the course of preparing his Report. Accordingly, the redaction of the information in the Report regarding the Siblings would not create a misleading impression of all of the information that was available to the court and contained in the court records regarding the legal and factual basis for assessments, recommendations and findings that the Kaluas were an appropriate placement for the Children.
80. Based on the foregoing, the court will grant Movant access to a redacted version of the Report, including the exhibits that were attached to the Report. The information that will be redacted includes information regarding the Siblings, information that is irrelevant to the basis of the determinations regarding the appropriateness of the Kaluas as a placement for the Children, personal and confidential information, including names and contact information, of third parties, and post-adoption documents and information. Access shall be granted through the filing of the redacted Report in this case. An un-redacted version of the Report will be filed *in camera* herein to facilitate appellate review, if necessary.

**Unsealing of This Proceeding**

81. On February 21, 2024, this court entered the following order:

Pursuant to HRS § 571-11, the family court has exclusive original jurisdiction over adoption proceedings and Chapter 587A proceedings. The records in proceedings brought under HRS § 571-11 are confidential and shall be withheld from public inspection. HRS §571-84. Insofar as the Motions are based on and inextricably intertwined with the underlying adoption and Chapter 587A cases, these proceedings will be placed under seal and be closed to the public subject to further order of the court. HRS §§ 571-84, 578-15 and 587A-40. In addition and for the same reasons, any documents filed in this case shall be filed under seal and may not be released to third parties subject to further order of the court. *Id.*

(¶ 9 of the February 21, 2024 Order Continuing Hearing On Motion To Unseal Portions Of Child Protective Act Proceeding, Filed January 12, 2024.)

82. The order was entered primarily out of the court's concern that documents and information that would otherwise be confidential under HRS § 587A-40 or HRS § 578-15 would be available for public inspection were the case not sealed.

83. Having carefully reviewed the various submissions, the court will set aside the provisions in ¶ 9 of the February 21, 2024 Order; provided, however, that:

- (a) Information relating to confidential proceedings shall be redacted from any of the submissions and the un-redacted versions of any redacted submissions shall remain sealed;
- (b) The un-redacted version of the Report shall remain *in camera*; and
- (c) This order setting aside ¶ 9 of the February 21, 2024 Order is stayed until the 31<sup>st</sup> day following the entry of this Decision and Order, in order to allow interested parties to seek appellate review; if appellate review is sought, this stay shall remain in effect pending further order.

DATED: Kapolei, Hawai'i, June 10, 2024.

  
MATTHEW J. VIOLA  
Judge of the Above-Entitled Court