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MITCHELL, AKA ANGUS S. P. MITCHELL AND  
ANGUS MITCHELL, JOLINA MITCHELL, AND  
MARA GOURDINE

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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

ZACHARY G. SHUMAN, as Special  
Administrator for the ESTATE OF ANGUS  
SHANE PAUL MITCHELL, AKA ANGUS S.  
P. MITCHELL AND ANGUS MITCHELL,  
JOLINA MITCHELL, AND MARA  
GOURDINE,

Plaintiffs,

vs.

THE DEPARTMENT OF THE MEDICAL  
EXAMINER, CITY AND COUNTY OF  
HONOLULU, AND DOES 1-10,

Defendants.

CIVIL NO. 1CCV-24-0000407  
(Injunctive Relief)

**PLAINTIFFS *EX PARTE* MOTION FOR  
TEMPORARY RESTRAINING ORDER;  
MEMORANDUM IN SUPPORT OF  
MOTION; DECLARATION OF  
COUNSEL; DECLARATION OF ZACH  
MITCHELL; EXHIBITS “A”-“C”;  
[PROPOSED] ORDER GRANTING *EX  
PARTE* MOTION FOR TEMPORARY  
RESTRAINING ORDER; CERTIFICATE  
OF SERVICE**

No Trial Date Set

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**PLAINTIFFS *EX PARTE* MOTION FOR TEMPORARY RESTRAINING ORDER**

Plaintiffs ZACHARY G. SHUMAN, as Special Administrator for the ESTATE OF ANGUS SHANE PAUL MITCHELL, AKA ANGUS S. P. MITCHELL AND ANGUS MITCHELL, JOLINA MITCHELL, AND MARA GOURDINE (collectively, “**Plaintiffs**”), by and through its attorneys, Goodsill Anderson Quinn & Stifel LLP, urgently moves this Court for a temporary restraining order (“**TRO**”) prohibiting the Department of the Medical Examiner, City and County of Honolulu from releasing the autopsy report and any related investigatory information related to the deceased, Angus Mitchell.

This motion is made pursuant to Rules 7 and 65 (which allows the Motion to be filed ex parte) of the *Hawaii Rules of Civil Procedure* (“**HRCP**”) and Rules 7 and 7.2 of the *Rules of the Circuit Courts of the State of Hawaii* (“**HRCC**”), and is supported by the attached Memorandum in Support, declarations and exhibits, and by such other matters as may be presented to this Court at any related hearing. The instant motion complies with HRCC Rule 7.2(f) and HRCP Rule 65(b). *See* Declaration of Counsel.

DATED: Honolulu, Hawaii, March 28, 2024.

*/s/ Christopher P. St. Sure*

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JASON M. TANI  
CHRISTOPHER P. ST. SURE

Attorneys for Plaintiffs  
ZACHARY G. SHUMAN, as Special  
Administrator for the ESTATE OF ANGUS  
SHANE PAUL MITCHELL, AKA ANGUS S.  
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DEPARTMENT OF THE MEDICAL  
EXAMINER, CITY AND COUNTY OF  
HONOLULU, AND DOES 1-10,

Defendants.

CIVIL NO. 1CCV-24-0000407  
(Contract)

MEMORANDUM IN SUPPORT OF  
MOTION

**MEMORANDUM IN SUPPORT OF MOTION**

Plaintiffs ZACHARY G. SHUMAN, as Special Administrator for the ESTATE OF ANGUS SHANE PAUL MITCHELL, AKA ANGUS S. P. MITCHELL AND ANGUS MITCHELL, JOLINA MITCHELL, and MARA GOURDINE (collectively, “**Plaintiffs**”), by and through their attorneys, Goodsill Anderson Quinn & Stifel LLP, hereby submits their memorandum in support of Plaintiffs’ *Ex Parte* Motion for Temporary Restraining Order (“**Motion**”).

**I. INTRODUCTION**

Plaintiffs have been forced to file this Motion because the DEPARTMENT OF THE MEDICAL EXAMINER (“**Medical Examiner’s Office**”), CITY AND COUNTY OF

HONOLULU (“City”) intends to disclose Angus’ autopsy report and related confidential information uncovered during the City’s investigation, to the media, presumably to be used in an upcoming gossip piece about Angus Mitchell’s sudden passing.

As demonstrated herein, Plaintiffs have significant privacy interests, as set forth in *Hawaii Revised Statutes* (“**Haw. Rev. Stat.**”) § 92F-14(b), which should prohibit the Medical Examiner’s office from releasing the autopsy report and related confidential information to any requesting party, including the media. First, the autopsy report and any accompanying document generated as a result of the Medical Examiner’s examination of the body of Angus Mitchell contains protected health information that Plaintiffs have a significant privacy interest in. Second, there is an ongoing investigation by Honolulu Police Department. Third, there is a real risk of physical and emotional injury to members of the Mitchell family should this information be released. Ms. Jolina Mitchell is still grieving the death of her only son, something that no parent should have to endure, and is seeking professional care to cope with the anguish. In addition, consideration needs to be given to the impact of the information contained in the report could have on the family members, including Angus’ Mitchell’s minor child. These significant privacy interests outweigh the public’s perceived thirst for gossip.

The undisputed evidence of the foregoing leaves no doubt that Plaintiffs are entitled to injunctive relief because it is likely to prevail on the merits of its claims against Defendants. Hawaii statutory law specifically provides an exception that prevents disclosure of a public record under precisely such as this. The other elements for injunctive relief, as demonstrated below, are supported by well-established Hawaii law, warranting the immediate issuance of an injunction prohibiting the Medical Examiner’s Office from releasing the autopsy report or any information discovered during its investigation and examination of Angus Mitchell.

## II. FACTUAL BACKGROUND RELEVANT TO THIS MOTION

Angus Mitchell was born on October 16, 1970, the only child of Jolina Mitchell and Mr. Paul Mitchell, who, along with Mr. John Paul DeJoria, founded John Paul Mitchell Systems, a worldwide leader in the beauty products industry. With the untimely death of Paul Mitchell in 1989, his son Angus acquired a beneficial interest in John Paul Mitchell Systems, and this interest ripened into a co-ownership of the company, along with John Paul DeJoria, in 2005.

Although not in the public eye to the degree of his father, Angus was deeply involved in philanthropy, particularly with pancreatic cancer research and environmental preservation. His efforts extended to donating a historic coastal property in Hawaii to the Nature Conservancy.

Unexpectedly, on January 3, 2024, Angus Mitchell passed away in his home located at 3703 Poka Place, Honolulu, Hawaii 96813. *See Declaration of Zachary G. Shuman (“Shuman Decl.”) at ¶ 2.*

Due to, among other things, the circumstances of Angus Mitchell’s death, which media outlets have already touched upon, Honolulu Police Department opened an investigation and had an autopsy performed in furtherance of its investigation. *Shuman Decl. ¶ 4.*

Angus is survived by his minor child, his mother, Jolina, and his fiancé Mara Gourdine. He was loved by many close friends and relatives who are still grieving with the suddenness and recency of his passing.

On March 21, 2024, the Special Administrator and Jolina learned through counsel, Paul Takakjian, Esq., that a request was made to the Medical Examiner by the media for a copy of the autopsy report. *Shuman Decl ¶ 7.* Unsurprisingly, the impending release of this information was very troubling to the Mitchell family.

By telephone call and a confirming email later that day, the Estate requested that the Medical Examiner's Office restrain from releasing the autopsy report to the media or any other third-party who requested such information. Mr. Inoue confirmed to withhold the release of the autopsy report for "one week." Shuman Decl. ¶ 9.

On March 22, 2024, Paul Takakjian, Esq., on behalf of the Estate, requested that "we have decided to seek a preliminary injunction against the Department of the Medical Examiner to prevent the public release of any information on the autopsy report or the toxicology report regarding Angus Mitchell." See Exhibit "A". Mr. Takakjian further noted and requested that "[w]e will move with all deliberate speed in preparing our pleadings, but I ask you and your Department to continue to refrain from any release of this information until such time as we have a ruling from the Hawaii court." *Id.*

In response, Mr. Inoue agreed to temporarily withhold the autopsy report: "As of now we have put a hold on the release of the autopsy report (including the toxicology report) as well as the release of cause and manner of death to media." See Exhibit "B".

Despite this agreement, on March 28, 2024, the Medical Examiner's Office, by and through Corporation Counsel, notified Plaintiffs' counsel that it intended to release the autopsy report later today. Declaration of Counsel ¶ 3. Plaintiffs requested that the Medical Examiner's Office honor their prior agreement and enter into stipulation for the TRO until a hearing on the preliminary injunction could be held. *Id.* at ¶ 4.

If this information is released, it will constitute a painful and unwarranted invasion of Plaintiffs' privacy. Zach Decl. ¶¶ 15-16.

### III. LEGAL STANDARD

This Court has the power and jurisdiction to issue a TRO, *ex parte*, pursuant to Rule 65 of the Hawai‘i Rules of Civil Procedure (“HRCP”). Rule 65 provides the standard for the issuance of a TRO:

A temporary restraining order may be granted without written or oral notice to the adverse party or that party’s attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party’s attorney can be heard in opposition, and (2) the applicant’s attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required.

Haw. R. Civ. P. 65(b) (emphases added). The purpose of a TRO is to preserve the status quo until the Court can conduct a hearing on a request for a preliminary injunction. *Life of the Land v. Ariyoshi*, 59 Haw. 156, 158, 577 P.2d 11, 16 (1978); *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981). A motion for a TRO is addressed to the sound discretion of the Court. *See Penn v. Trans. Lease Haw., Ltd.*, 2 Haw. App. 272, 275, 630 P.2d 646, 649 (1981); *Synanon Foundation, Inc. v. Cal.*, 444 U.S. 1307 (1979).

In deciding whether to grant a TRO, Hawai‘i courts generally apply a three-element test:

1. Is the party seeking the injunctive relief likely to prevail on the merits?
2. Does the balance of irreparable damage favor issuance of an interlocutory injunction?
3. To the extent that the public interest is involved, does it support granting the injunction?

*Penn*, 2 Haw. App. At 276, 630 P.2d at 649-50 (citing *Life of the Land*, 59 Haw. at 158, 577 P.2d at 16). These three elements are considered together. *See Hall v. Dep’t of Land & Nat. Res.*,

2012 Haw. App. LEXIS 894, at \*6 (App. Sep. 28, 2012). Thus, “if a court is able to conclude that a prima facie case has been made in support of the movant’s position on the merits of a case, the weight attached to the various elements may vary, and a strong showing of irreparable harm may reduce the weight given to any lack of likelihood of success on the merits.” *Stop Rail Now*, 120 Hawai‘i at 244, 203 P.3d at 664. Similarly, “[a] strong showing on the merits may reduce, but not eliminate, the moving party’s burden on the issues of irreparable harm and public interest.” *Id.*

#### **IV. LEGAL ARGUMENT**

##### **A. Plaintiffs Are Likely To Prevail On The Merits**

The main question before the Court is whether there is sufficient evidence to support a likelihood of success on the merits on the critical issue of whether Plaintiffs have a significant privacy interest which prohibits disclosure of a government record such as the autopsy report. In this regard, the evidence before this Court proves that the City’s release of Angus Mitchell’s autopsy report would be a violation of statute and Plaintiffs’ privacy.

Under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (“UIPA”), agencies are not required to disclose government records – such as an autopsy report prepared by the Medical Examiner’s Office – that would constitute a “clearly unwarranted invasion of personal privacy.” Haw. Rev. Stat. § 92F–13(1). UIPA clarifies that a “clearly unwarranted invasion of personal privacy” occurs if there is a “significant privacy interest” that outweighs public interest in disclosure. *Id.*

The evidence will demonstrate that (1) Plaintiffs have a significant privacy interest in keeping the autopsy report confidential that (2) outweighs the limited public interest in disclosure.



**1. *Plaintiffs Have a Significant Privacy Interest In Keeping The Autopsy Report Confidential***

The autopsy report and related investigatory information constitute information in which Plaintiffs have a significant privacy interest in. UIPA defines information in which an individual has a “significant privacy interest” as information: (1) relating to “medical, psychiatric, or psychological history, diagnosis, condition, treatment or evaluation. . .”, (2) is “part of an investigation into a possible violation of criminal law, and (3) that “if disclosed would create a substantial and demonstrable risk of physical harm to an individual.”

**a. *The Estate and Family of Angus Mitchell Have Significant Privacy Interests in Keeping the Medical Information Contained on the Autopsy Report Confidential.***

In section 92F–14(b)(1), Hawaii Revised Statutes, the Legislature recognized that individuals have a significant privacy interest in information relating to their medical history, condition, treatment, or diagnosis. An autopsy report clearly falls within this exception. Given that the autopsy report clearly contains medical information, the issue is whether the Estate and/or Mitchell’s family have an exercisable protectable privacy right in the medical information of the deceased.

While Hawaii has not addressed this issue, other jurisdictions have and have held that this right extends to the Mitchell family. *See Reid v. Pierce County*, 136 Wash.2d 195, 212, 961 P.2d 333, 342 (1998) (“[T]he immediate relatives of a decedent have a protectable privacy interest in the autopsy records of the decedent”); *Accuracy in Media, Inc. v. Nat’l Park Serv.*, 194 F.3d 120, 123 (D.C. Cir. 1999) (recognizing the privacy interests of surviving family members and holding that “the release of photos of the decedent at the scene of his death and autopsy qualifies” as an unwarranted invasion of privacy).

The United States Supreme Court in *National Archives and Records*

*Administration v. Favish*, 541 U.S. 157, 124 S.Ct. 1570 (2004), addressed the scope of “personal privacy” rights in connection with the federal Freedom of Information Act. The Court held that “personal privacy” permits “family members to assert their own privacy rights against public intrusions long deemed impermissible under the common law and in our cultural traditions.” *Id.* 541 U.S. at 167; 124 S.Ct. at 1578. The Court noted:

[f]amily members have a personal stake in honoring and mourning their dead and objecting to unwarranted public exploitation that, by intruding upon their own grief, tends to degrade the rites and respect they seek to accord to the deceased person who was once their own.

*Id.* 541 U.S. at 168; 124 S.Ct. at 1578.

Similarly, in *Katz v. National Archives & Records Admin.*, 862 F.Supp. 476

(D.D.C.1994), *aff'd*, 68 F.3d 1438 (1995), the court held:

[T]he Kennedy family has a clear privacy interest in preventing the disclosure of both the x-rays and the optical photographs taken during President Kennedy's autopsy.... However, there can be no mistaking that the Kennedy family has been traumatized by the prior publication of the unauthorized records and that further release of the autopsy materials will cause additional anguish....

... [T]he Court finds that allowing access to the autopsy photographs would constitute a clearly unwarranted invasion of the Kennedy family's privacy.

*Katz*, 862 F.Supp. at 485–86. *See also* *Badhwar v. United States Dep't of Air Force*, 829 F.2d

182, 185–86 (D.C.Cir.1987) (families of deceased aircraft pilots have a privacy interest in

autopsy reports); *New York Times Co. v. NASA*, 782 F.Supp. 628 (D.D.C.1991) (reporter's

request to obtain disclosure of tape-recorded voice communications aboard the Challenger space

shuttle on date of accident killing seven astronauts denied as unwarranted invasion of the

personal privacy of the astronauts' families).

Thus, the Estate and the Mitchell Family, including Angus' surviving mother, clearly have a privacy right in need of protection. *See also Baker v. City of Westland*, 627 N.W.2d 27 (Mich. App. 2001) (holding families of deceased individual have privacy interests). The release of the autopsy report and/or the information contained therein would clearly violate the family's privacy rights. During this tragic time, the family should be permitted to enjoy their found and loving memories without interference from the public. The Mitchell family is entitled to mourn and cope with his death in private.

**b. The Ongoing Investigation Into the Death of Angus Mitchell Requires Confidentiality.**

The premature disclosure of an autopsy report “could reasonably be expected to interfere with law enforcement proceedings” as set forth in Haw. Rev. Stat. § 92F-14(b)(2). Because Honolulu Police Department’s investigation is ongoing, and information contained in this report or related documents, may contain sensitive information that should remain confidential.

Plaintiffs’ position is also supported by Exemption 7 of the federal Freedom of Information Act, 5 U.S.C. § 552(b)(7), and case law from other jurisdictions. *See* 5 U.S.C. § 552(b)(7) (§ 552(b)(7) pertains to an exemption under FOIA, which allows the government to withhold “records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy. . .”).

Principally, the United States Supreme Court’s decision in *Favish*, while

construing the Federal Freedom of Information Act, is illustrative with respect to the similar investigation exception to public disclosure. The United States Supreme Court observed the rationale for the confidentiality of investigatory records and held that a family, such as the Mitchell family, has its own privacy right that can be protected:

Law enforcement documents obtained by Government investigators often contain information about persons interviewed as witnesses or initial suspects but whose link to the official inquiry may be the result of mere happenstance. There is special reason, therefore, to give protection to this intimate personal data, to which the public does not have a general right of access in the ordinary course. . . In this class of cases where the subject of the documents “is a private citizen,” “the privacy interest ... is at its apex.” . . .

Certain amici in support of *Favish* rely on the modifier “personal” before the word “privacy” to bolster their view that the family has no privacy interest in the pictures of the decedent. This, too, misapprehends the family's position and the scope of protection the exemption provides. The family does not invoke Exemption 7(C) on behalf of Vincent Foster in its capacity as his next friend for fear that the pictures may reveal private information about Foster to the detriment of his own posthumous reputation or some other interest personal to him. If that were the case, a different set of considerations would control. Foster's relatives instead invoke their own right and interest to personal privacy. They seek to be shielded by the exemption to secure their own refuge from a sensation-seeking culture for their own peace of mind and tranquility, not for the sake of the deceased.

*Favish*, 541 U.S. at 158, 124 S. Ct. at 1572.

Plaintiffs are aware of photographs contained in the autopsy report and other related information gathered during the investigation that they wish to remain confidential. Undoubtedly, the media wants the autopsy report to place, among other things, the photographs or, worse a video capturing the final moments of Angus Mitchell’s life, on the internet for the public’s consumption. This coverage may likely dishonor the deceased, but more importantly

for the purposes of this Motion, invade the privacy of Jolina and Mara, subjecting their own lives to unwanted media coverage. Certainly Mara, who was present at the house when Angus passed away, is grieving at the loss of her fiancé and should not need be subjected to an unwarranted invasion of privacy.

Accordingly, autopsy reports and any related investigatory reports that are connected with a pending or prospective law enforcement investigation should, respectfully, be withheld from disclosure under the clear language set forth in Haw. Rev. Stat. § 92F-14(b)(2), and the case law construing its federal counterpart.

**c. There Is A Concrete Risk That Release Of This Information May Cause Further Unwarranted Injury to the Mitchell Family.**

Plaintiffs have a significant privacy interest in preventing the Medical Examiner from disclosing the autopsy report because of the risk of further emotional damage that it could cause to the Mitchell family, particularly to Jolina and Angus' minor child. While "physical injury" is not defined by UIPA, in claims such as negligent infliction of emotional distress, Hawaii courts have recognized the seriousness of mental stress in moving away from a physical injury requirement. *See e.g., Rodrigues v. State*, 52 Haw. 156, 173, 472 P.2d 509, 520 (Haw. 1970) (allowing recovery without physical injury "where a reasonable [person], normally constituted, would be unable to adequately cope with the mental stress engendered by the circumstances of the case."). The impact that wrongful disclosure of private information can have on an individual in an already fragile state should not be understated. Jolina and Mara are seeking professional care during this difficult time. The risk that further distress and harm will occur if this information is released is substantial and significant.

**B. Plaintiffs' Significant Privacy Issues Outweigh the Public's Interest In Disclosure**

In light of the significant privacy interests involved, this Court is tasked to weigh the public's interest in disclosure of the autopsy report with the significant privacy interests of the Plaintiffs. Respectfully, Plaintiffs' significant privacy interest demonstrably outweigh any public interest in disclosure.

In assessing the public interest in the instant disclosure, the purpose of UIPA and FOIA is central to the analysis – often described as a means for citizens to know “ ‘what their Government is up to.’ ” *U.S. Dep't of Just. v. Repts. Comm. For Freedom of Press*, 489 U.S. 749, 773, 109 S. Ct. 1468, 1481, 103 L. Ed. 2d 774 (U.S.1989); *see* Haw. Rev. Stat. § 92-1 (the purpose of this Chapter observes that “[o]pening up the governmental processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest. Therefore, the legislature declares that it is the policy of this State that the formation and conduct of public policy--the discussions, deliberations, decisions, and action of governmental agencies--shall be conducted as openly as possible.”). An autopsy and related investigatory information into the death of a civilian, without something more sinister at play, obviously does not further the checks and balances on the Hawai'i government. Where privacy concerns exist, the exemption contained in Haw. Rev. Stat. § 92F-14 require a requesting party to show more than a need to know for ones own sake. *See Favish*, 541 U.S. at 172, 124 S. Ct. at 1580–81 (“the citizen must show that the public interest sought to be advanced is a significant one, an interest more specific than having the information for its own sake. Second, the citizen must show the information is likely to advance that interest. Otherwise, the invasion of privacy is unwarranted.”).

Here, as set forth above, the invasion of privacy *is* unwarranted. Angus Mitchell passed away suddenly in January and his family is still grieving and deserves privacy. The Honolulu Police Department has not completed its investigation. There is no criminal on the loose that the public needs to be warned of and no suspected government cover up is at play. *This is entirely a private matter.* Respectfully, these considerations do not warrant the disclosure of the requested autopsy report and, therefore, the interests of nondisclosure clearly outweigh the need for public access of a non-celebrity figure.

As such, there is a substantial likelihood that Plaintiffs will prevail on the merits.

**C. The Balance of Hardships is in Favor of Plaintiffs**

Given the high probability that Plaintiffs will succeed on the merits, the mere possibility of irreparable harm is enough to warrant the requested injunctive relief. *See Penn v. Transp. Lease Haw.*, 2 Haw. App. 272, 276, 630 P.2d 646, 650 (Haw. App. 1981); *see also UARCO Inc. v. Lam*, 18 F. Supp. 2d 1116, 1120 (D. Haw. 1998) (“If the plaintiff can show probable success on the merits then the plaintiff needs only to show . . . the possibility of irreparable harm.”) (quotation omitted).

The Mitchell family will unquestionably be irreparably harmed if the City is not restrained from releasing the autopsy report. Once the information is disclosed, the potential harm cannot be undone. *See Brende v. Hara*, 113 Haw. 424, 431, 153 P.3d 1109, 1116 (Haw. 2007) (“The disclosure outside of the underlying litigation, without petitioners' consent, of petitioners' health information produced in discovery will violate petitioners' constitutional right to informational privacy, and, once the information is disclosed, the potential harm cannot be undone.”); *See also Stirling Investment Holdings, Inc. v. Glenoit Universal, Ltd.*, 1997 WL

74659, \*2 (February 12, 1997, Del.Ch.) (finding irreparable harm because right to confidentiality irretrievably lost if prohibited information was publicly disclosed).

It is clear that monetary compensation falls short of addressing the damage that would ensue from the public release of the autopsy report. Therefore, the assessment of the balance of hardships unequivocally tilts in favor of the Plaintiffs, underscoring the necessity for injunctive relief to prevent the irreversible breach of privacy.

**D. The Public Interest Favors Injunctive Relief**

The public interest supports granting the TRO, particularly where there are significant privacy interests which prevent disclosure. In balancing the public interest, it certainly is outweighed by the family's privacy interests. There is no public interest served by releasing Mr. Mitchell's autopsy report or the information contained therein to the public. Mr. Mitchell was not a public figure. There are no unsolved crimes or suspects on the loose and the only victims as a result of Mr. Mitchell's death are his remaining family members who are still grieving and should not be victimized further.

**V. CONCLUSION**

Based on the foregoing, Plaintiffs respectfully request that this Court grant an immediate temporary injunction that restrains the Medical Examiner's Office from releasing the autopsy report and any information related to the cause of death of Angus Mitchell to the media and/or any third-party.

DATED: Honolulu, Hawaii, March 28, 2024.



/s/ Christopher P. St. Sure

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JASON M. TANI

CHRISTOPHER P. ST. SURE

Attorneys for Plaintiffs

ZACHARY G. SHUMAN, as Special

Administrator for the ESTATE OF ANGUS

SHANE PAUL MITCHELL, AKA ANGUS

S. P. MITCHELL AND ANGUS

MITCHELL, JOLINA MITCHELL, AND

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Defendants.

CIVIL NO. 1CCV-24-0000407  
(Injunctive Relief)

DECLARATION OF COUNSEL

**DECLARATION OF COUNSEL**

I, JASON M. TANI, declare under penalty of law that the following facts are true and correct to the best of my knowledge, information, and belief:

1. I am an attorney at the Goodsill Anderson Quinn & Stifel law firm (“Goodsill”). I am one of the attorneys from the Goodsill law firm representing Plaintiffs ZACHARY G. SHUMAN, as Special Administrator for the ESTATE OF ANGUS SHANE PAUL MITCHELL, AKA ANGUS S. P. MITCHELL AND ANGUS MITCHELL, JOLINA MITCHELL, AND MARA GOURDINE (“Plaintiffs”) in the above-captioned lawsuit.

2. The instant motion for temporary injunctive relief was file *ex parte* to maintain the status quo and provide immediate emergency relief up to and until a hearing can be

held for preliminary injunctive relief. A temporary restraining order is necessary to prevent further irreparable harm.

3. On March 28, 2024, the undersigned received a call from Ernest H. Nomura, Esq. on behalf of the City stating that they were going to release the autopsy report today due to concern regarding an award of attorney's fees and costs for a failure to release the information.

4. On March 28, 2024, at approximately 1:43 p.m., the undersigned sent a letter on behalf of Plaintiffs to inform Ernest H. Nomura, Esq. with the Corporation Counsel of Goodsill's intention to file the instant motion given the City's intention to release the autopsy report later today, provided Corporation Counsel with a courtesy copy of our filings, and requested a stipulation to the TRO until a hearing on the preliminary injunction could be held.

5. As of the date of this filing, I have not heard back from Mr. Nomura. Without knowing the time of the intended release by the Medical Examiner's Office, we could not wait any longer for a response before filing this Motion ex parte with this Court.

6. Given the nature of the irreparable harm faced by Plaintiffs, immediate efforts had to be taken to secure injunctive relief to preserve the status quo until a hearing can be held on Plaintiffs anticipated motion for preliminary injunctive relief.

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

DATED: Honolulu, Hawaii, March 28, 2024.

/s/ Jason M. Tani  
JASON M. TANI

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

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Administrator for the ESTATE OF ANGUS  
SHANE PAUL MITCHELL, JOLINA  
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Plaintiffs,

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DEPARTMENT OF THE MEDICAL  
EXAMINER, CITY AND COUNTY OF  
HONOLULU, AND DOES 1-10,

Defendants.

CIVIL NO. \_\_\_\_\_  
(Injunction)

DECLARATION OF ZACHARY G.  
SHUMAN; EXHIBITS "A"- "B"

**DECLARATION OF ZACHARY G. SHUMAN**

I, ZACHARY G. SHUMAN, declare under penalty of law that the following facts are true and correct to the best of my knowledge, information, and belief:

1. I am the appointed Special Administrator of the Estate of Angus Shane Paul Mitchell and the Successor Trustee of the Angus Shane Paul Mitchell Living Trust dated 5-11-2005, as amended and restated, and make this declaration upon personal knowledge.
2. On or about January 3, 2024, Mr. Mitchell unexpectedly and suddenly died at his home located at 3703 Poka Place, Honolulu, Hawaii 96813.
3. After his death, Mr. Mitchell was survived by his minor child and his mother, Jolina Mitchell.

4. The Honolulu Police Department (“HPD”) opened an investigation into the death of Mr. Mitchell.

5. Despite the fact that there was no evidence of foul play in the death of Mr. Mitchell, his body was delivered to the Medical Examiner so that an autopsy could be performed as part of the HPD’s investigation.

6. The undersigned and Ms. Jolina Mitchell did not object to the autopsy because the Medical Examiner’s Office represented to us that the report and investigation would be strictly confidential.

7. On March 20, 2024, the undersigned was informed that that the Medical Examiner’s Office intended to release the autopsy report and related investigatory reports as to the cause of death of Mr. Mitchell to the media.

8. Paul Takakjian, Esq., on behalf of the Estate, objected to the release of any such information, asserting that it was strictly confidential/privileged information.

9. During the course of the above telephone conversation, it is my understanding that Mr. Inouye agreed that the Medical Examiner’s Office would hold off on releasing the autopsy report for one week.

10. Mr. Takakjian, Esq. confirmed this agreement in an email I was copied on dated March 20, 2024. Attached hereto as Exhibit “A” is a true and correct copy of Mr. Takakjian’s email dated March 20, 2024 to Mr. Inouye of the Medical Examiner’s Office.

11. On March 21, 2024, the Estate then requested, through Mr. Takakjian, that the Medical Examiner’s Office withhold the release of any information until a Court ruled on our request for an injunction restraining the Medical Examiner’s Office from releasing the autopsy report and any related investigatory reports.

12. Later that day, Mr. Inouye confirmed that a hold was placed on the release of the autopsy report, including the toxicology report, as well as the cause of death to the media. Attached hereto as Exhibit "B" is a true and correct copy of Mr. Chris Inouye's email dated March 21, 2024.

13. Given the recency of Mr. Mitchell's passing and the fact that HPD's investigation remains open, there is no compelling reason why any additional information should be released to the general public or media over the objection of Mr. Mitchell's family.

14. The Mitchell family will suffer immediate and irreparable harm for which there is no adequate remedy at law if this extremely confidential information is released since, once released, it cannot be reclaimed and reconstituted as undisclosed confidential information. Moreover, there is no prejudice or harm to enjoining the release of this information until such time as a hearing is held on Plaintiff's motion.

15. In particular, the undersigned is concerned about the release of any photographs and/or video that may have been obtained by the City and County of Honolulu during its investigation. Should this information be released, it will have a devastating effect on the Mitchell Family, who will be subjected to unwarranted intrusion from the media.

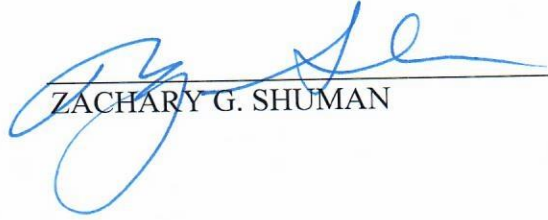
16. Specifically, Ms. Jolina Mitchell is still in the grieving process and, understandably, is inconsolable over the unexpected passing of her only child. I fear that the release of the autopsy report or any information related to the cause of death so soon after Mr. Mitchell's passing will have unimaginable consequences.

17. It is my understanding that Mara Gourdine, Mr. Mitchell's fiancé, is also seeking grief counseling to cope with Mr. Mitchell's passing.

18. In addition to the substantial and demonstrable risk of harm the release of

this information will cause the Mitchell family, the information may also be used to damage the Estate's business and financial interests prior to an unrelated legal action in California.

DATED: ~~Honolulu, Hawaii~~, March 28, 2024.  
SAN DIEGO, CA

  
\_\_\_\_\_  
ZACHARY G. SHUMAN

# **EXHIBIT "A"**



**From:** ptakakjian@aol.com <ptakakjian@aol.com>  
**To:** cinoue@honolulu.gov <cinoue@honolulu.gov>; Rosemarie S. J. Sam <rsam@goodsill.com>  
**Sent:** Wednesday, March 20, 2024 at 11:33:10 AM PDT  
**Subject:** Angus Mitchell autopsy report

Hi Chris,

Thank you for speaking with me this morning regarding the autopsy and toxicology report for my deceased client, Angus Mitchell. This morning, I was troubled to hear from my client's mother that your office was preparing to release both the autopsy and toxicology reports to the media, the release of which would be contrary to certain information I had been given by our Hawaii counsel, Rose Marie Sam, who is copied on this message.

I appreciate your commitment to withholding release of this information for at least a week while we explore our legal options here. Please let me know if I can assist you in any further manner.

Kind regards,

Paul

Paul Takakjian, Esq.

Law Office of Paul Takakjian  
15332 Antioch Street #162  
Pacific Palisades, Calif. 90272-3603

tel. (310) 312-8055

cell (818) 519-6882

fax (310) 454-7098

**EXHIBIT "A"**

# **EXHIBIT "B"**

**From:** [ptakakjian@aol.com](mailto:ptakakjian@aol.com)  
**To:** [Inoue, Christopher G](#)  
**Cc:** [Zach Shuman](#); [Sam, Rosemarie S. J.](#); [Okada, Raymond K.](#); [Tani, Jason M.](#); [St. Sure, Christopher P.](#); [Yamamoto, Joelle B.](#)  
**Subject:** Re: Upcoming autopsy report - Angus Mitchell  
**Date:** Thursday, March 21, 2024 5:39:22 PM

---

**Caution: external email**

Thank you Chris,

I am copying our Hawaii counsel and welcome communications to remain open and robust.

Cordially,

Paul

Paul Takakjian, Esq.

Law Office of Paul Takakjian  
15332 Antioch Street #162  
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tel. (310) 312-8055

cell (818) 519-6882

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On Thursday, March 21, 2024 at 06:52:28 PM PDT, Inoue, Christopher G <[cinoue@honolulu.gov](mailto:cinoue@honolulu.gov)> wrote:

Dear Mr. Takakjian,

I received your email and have passed it on to the appropriate personnel in my department, who have contacted the Corporation Counsel for the City & County of Honolulu. As of now we have put a hold on the release of the autopsy report (including the toxicology report) as well as the release of cause and manner of death to media.

Until otherwise instructed by my department superiors and/or Corporation Counsel, I will keep the lines of communication open. Also, in case you are unable to reach me directly, our general phone line is 808-768-3090 and a more general email address is

**EXHIBIT "B"**

[medfax@honolulu.gov](mailto:medfax@honolulu.gov), which is accessible by all the investigators.

Sincerely,

Chris Inoue

***Christopher Inoue, Investigator***

*City & County of Honolulu*

*Department of the Medical Examiner*

*650 Iwilei Road, Suite 205*

*Honolulu, HI 96817*

*(808) 768-3090 office*

*(808) 768-3099 fax*

<http://www.honolulu.gov/med>

*Please note: my hours are variable. If you need immediate assistance, please call the phone number above and speak to an on-duty investigator.*

*Notice: This message may contain confidential information. It is intended for use only by the individual or entity to whom it is addressed. If you are not the intended recipient of this email, you are cautioned that use of its contents may be prohibited. If you receive this communication in error, please notify the sender immediately and return the message to the sender.*

---

**From:** ptakakjian@aol.com <ptakakjian@aol.com>

**Sent:** Thursday, March 21, 2024 12:10 PM

**To:** Zach Shuman <zach@angusspmitchelltrust.com>; Sam, Rosemarie S. J. <rsam@goodsill.com>; Inoue, Christopher G <cinoue@honolulu.gov>

**Cc:** Tani, Jason M. <jtani@goodsill.com>; St. Sure, Christopher P.

<cstsure@goodsill.com>; Yamamoto, Joelle B. <jyamamoto@goodsill.com>

**Subject:** Re: Upcoming autopsy report - Angus Mitchell

CAUTION: Email received from an **EXTERNAL** sender. Please confirm the content is safe prior to opening attachments or links.

Good afternoon Chris -

After speaking with our Hawaii counsel (who are copied on this message) as well as with Zach Shuman, (also copied), who is the executor of Angus Mitchell's estate, we have decided to seek a preliminary injunction against the Department of the Medical Examiner to prevent the public release of any information on the autopsy report or the toxicology report regarding Angus Mitchell.

We will move with all deliberate speed in preparing our pleadings, but I ask you and your Department to continue to refrain from any release of this information until such time as we have a ruling from the Hawaii court.

Please let me know if you have any questions or comments as we move forward.

Cordially,

Paul

Paul Takakjian, Esq.

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# **EXHIBIT "C"**



March 28, 2024

VIA EMAIL (enomura@honolulu.gov)

Ernest H. Nomura, Esq.  
Dept. of the Corporation Counsel  
Honolulu Hale  
530 S. King St. Rm. 110  
Honolulu, HI 96813

Re: Release of Autopsy of Angus Shane Paul Mitchell

Dear Mr. Nomura:

We are the attorneys for Zach Shuman, the appointed and acting Trustee of The Angus Shane Paul Mitchell Living Trust dated May 11, 2005, as amended, and nominated Executor under the Last Will and Testament of Angus Shane Paul Mitchell. Mr. Shuman has filed an Emergency Ex Parte Petition with the First Circuit Court requesting appointment as the Special Administrator of the Estate of Angus Shane Paul Mitchell, and we expect that Mr. Shuman's appointment will be effective today, with his powers relating back in time with respect to any actions taken by Mr. Shuman on behalf of Mr. Mitchell's estate.

We are writing in response to your call this morning informing us that the Honolulu Department of the Medical Examiner would be releasing a copy of Mr. Mitchell's autopsy report to the media today. **We urgently request that the City reconsider its position and honor its agreement to withhold the release of the autopsy report until a Court has had a chance to issue a ruling on the disclosure.**

Given the City's position, our client and Mr. Mitchell's family members will be filing a Complaint for Injunctive Relief and Ex Parte Motion moving for a temporary restraining order prohibiting the Department of the Medical Examiner, City and County of Honolulu from releasing the autopsy report and any related investigatory information related to Mr. Mitchell. Drafts of said Complaint and Ex Parte Motion are attached hereto. The pleadings will show sufficient legal bases for prohibiting disclosure of the autopsy report, including the need to protect the significant privacy interests of the Mitchell family, pursuant to Hawaii Revised Statutes ("HRS") § 92F-14(b), the risk of irreparable physical and emotional injury to the Mitchell family should this information be released, and because the autopsy report is connected with a pending Honolulu Police Department investigation, it must be withheld from disclosure, pursuant to HRS § 92F-14(b)(2).

Ernest H. Nomura. Esq.  
March 28, 2024  
Page 2

Based upon our client's communications with Chris Inoue at the Honolulu Medical Examiner's office, it was agreed and understood that the autopsy report would not be released until a decision was made by the court. Given our agreement and understanding with the Medical Examiner's office and the currently pending and forthcoming court proceedings, please let us know if you will agree to stipulate to a TRO until a Motion for Preliminary Injunction can be heard.

Please call me at (808) 547-5652 if you have any questions. Thank you.

Very truly yours,

GOODSILL ANDERSON QUINN & STIFEL

*/s/ Jason M. Tani*

Jason M. Tani  
Christopher P. St. Sure

JMT/CPS

Enclosures:

1. *draft* - Complaint for Injunctive Relief
2. *draft* - Ex Parte Motion

cc: Mr. Zachary Shuman



GOODSILL ANDERSON QUINN & STIFEL  
A LIMITED LIABILITY LAW PARTNERSHIP LLP

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ZACHARY G. SHUMAN, as Special Administrator  
for the ESTATE OF ANGUS SHANE PAUL  
MITCHELL, AKA ANGUS S. P. MITCHELL AND  
ANGUS MITCHELL, JOLINA MITCHELL, AND  
MARA GOURDINE

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

ZACHARY G. SHUMAN, as Special  
Administrator for the ESTATE OF ANGUS  
SHANE PAUL MITCHELL, AKA ANGUS S.  
P. MITCHELL AND ANGUS MITCHELL,  
JOLINA MITCHELL, AND MARA  
GOURDINE

Plaintiffs,

vs.

THE DEPARTMENT OF THE MEDICAL  
EXAMINER, CITY AND COUNTY OF  
HONOLULU, AND DOES 1-10,

Defendants.

CIVIL NO. 1CCV-24-0000407  
(Injunctive Relief)

**[PROPOSED]** ORDER GRANTING EX  
PARTE MOTION FOR TEMPORARY  
RESTRAINING ORDER; CERTIFICATE  
OF SERVICE

Judge: Honorable \_\_\_\_\_

No Trial Date Set

**[PROPOSED] ORDER GRANTING EX PARTE MOTION  
FOR TEMPORARY RESTRAINING ORDER**

GOODSILL ANDERSON QUINN & STIFEL  
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ANGUS MITCHELL, JOLINA MITCHELL, AND  
MARA GOURDINE

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

ZACHARY G. SHUMAN, as Special  
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SHANE PAUL MITCHELL, AKA ANGUS S.  
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GOURDINE

Plaintiffs,

vs.

THE DEPARTMENT OF THE MEDICAL  
EXAMINER; CITY AND COUNTY OF  
HONOLULU, AND DOES 1-10,

Defendants.

CIVIL NO. 1CCV-24-0000407  
(Injunctive Relief)

ORDER GRANTING EX PARTE MOTION  
FOR TEMPORARY RESTRAINING  
ORDER; CERTIFICATE OF SERVICE

Judge: Honorable \_\_\_\_\_

No Trial Date Set

**ORDER GRANTING EX PARTE MOTION  
FOR TEMPORARY RESTRAINING ORDER**

This matter having come on before this Court upon Plaintiffs ZACHARY G. SHUMAN, as Special Administrator for the ESTATE OF ANGUS MITCHELL AND JOLINA MITCHELL's *Ex Parte* Motion for Temporary Restraining Order ("TRO Motion") and based upon the Memorandum in Support of Motion, the Declarations, and the Exhibits attached thereto, and good cause appearing that Defendant THE DEPARTMENT OF THE MEDICAL EXAMINER ("Office of the Medical Examiner") AND THE CITY AND COUNTY OF HONOLULU ("City") are hereby enjoined from releasing the autopsy report and related investigatory information in order to prevent immediate and irreparable harm to Plaintiffs.

IT IS HEREBY ORDERED, ADJUDGED and DECREED that, pursuant to Rule 65(b) of the Hawai'i Rules of Civil Procedure, Plaintiffs' TRO Motion is GRANTED; and it is further

ORDERED, ADJUDGED and DECREED that Defendants Office of the Medical Examiner and the City and their respective officers, agents, servants, managers, employees, attorneys, and other persons who are in active concert or participation with them, are hereby temporarily enjoined, restrained and prohibited from disclosing the autopsy report and any information related to the cause of death of Angus Mitchell as described in the TRO Motion.

This temporary restraining order shall take effect on the \_\_\_th day of July 2024, at \_\_\_\_\_.m., and shall expire on the \_\_\_\_ day of \_\_\_\_\_ 2024 at \_\_\_\_\_ .m., unless extended by further order of the Court.

DATED: Honolulu, Hawaii, \_\_\_\_\_, 2024.

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JUDGE OF THE ABOVE-ENTITLED COURT

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*Zachary G. Shuman, Personal Administrator et al., v. Office of the Medical Examiner*; Civil No. 1CCV-24-0000407; Order Granting *Ex Parte* Motion for Temporary Restraining Order; Circuit Court of the First Circuit, State of Hawaii

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MITCHELL, AKA ANGUS S. P. MITCHELL AND  
ANGUS MITCHELL, JOLINA MITCHELL, AND  
MARA GOURDINE

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

ZACHARY G. SHUMAN, as Special  
Administrator for the ESTATE OF ANGUS  
SHANE PAUL MITCHELL, AKA ANGUS S.  
P. MITCHELL AND ANGUS MITCHELL,  
JOLINA MITCHELL, AND MARA  
GOURDINE

Plaintiffs,

vs.

THE DEPARTMENT OF THE MEDICAL  
EXAMINER, CITY AND COUNTY OF  
HONOLULU, AND DOES 1-10,

Defendants.

CIVIL NO. 1CCV-24-0000407  
(Injunctive Relief)

CERTIFICATE OF SERVICE

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of foregoing document was duly served on this date by depositing same in the United States Mail, postage prepaid addressed to the following:

ERNEST H. NOMURA, ESQ.  
Dept. of the Corporation Counsel  
530 South King Street, Room 110  
Honolulu, Hawaii 96813

Attorneys for Defendant  
THE DEPARTMENT OF THE MEDICAL EXAMINER,  
CITY AND COUNTY OF HONOLULU

DATED: Honolulu, Hawaii, March 28, 2024.

/s/ Christopher P. St. Sure

JASON M. TANI  
CHRISTOPHER P. ST. SURE

Attorneys for Plaintiffs  
ZACHARY G. SHUMAN, as Special  
Administrator for the ESTATE OF ANGUS  
SHANE PAUL MITCHELL, AKA ANGUS  
S. P. MITCHELL AND ANGUS  
MITCHELL, JOLINA MITCHELL, AND  
MARA GOURDINE