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Dkt. 25 MOT

NO. SCPW-25-0000419

IN THE SUPREME COURT OF THE STATE OF HAWAII

PUBLIC FIRST LAW CENTER,

Petitioner,

vs.

THE HONORABLE KEVIN T.
MORIKONE, Tax Appeal Court Judge,

Respondent.

) ORIGINAL PROCEEDING

) NO. 1CTX-21-1613

)

) PETITION FOR WRIT OF

) PROHIBITION AND WRIT OF

) MANDAMUS

)

) TAX APPEAL COURT, STATE OF HAWAII

)

)

) The Honorable Kevin T. Morikone, Tax Appeal
) Court, State of Hawaii

)

)

**BOOKING.COM B.V.'S MOTION TO SEAL CERTAIN TRANSCRIPTS;
APPENDIX A; CERTIFICATE OF SERVICE**

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BOOKING.COM B.V.’S MOTION TO SEAL CERTAIN TRANSCRIPTS

BOOKING.COM B.V., Taxpayer-Appellant (“**Taxpayer**”) in the underlying Tax Appeal Court case captioned In the Matter of Tax Appeal of Booking.com, B.V., Case No.: 1CTX-21-0001613 (“**Tax Appeal Case**”), by and through its attorneys Chun Kerr LLP, a Limited Liability Law Partnership, hereby moves this Court to seal from public access the April 10, 2023 hearing transcript [Dkt. 11] and May 6, 2024 hearing transcript [Dkt. 15] (the “**Transcripts**”) filed in this instant matter.

This motion is made pursuant to Rules 3.3 and 10.4 of the Hawai‘i Court Records Rules and Rule 27 of the Rules of Appellate Procedure. Pursuant to Rule 3.3, the “Clerk may temporarily seal any document or record or mark any document for in-camera review pending review and a determination of accessibility by the court for which the record is maintained or by the Hawai‘i Supreme Court.” Because the Transcripts are the subject of a pending motion to seal filed in the Tax Appeal Case, Taxpayer requests that they be temporarily sealed pending decision by the Tax Appeal Court.

On May 23, 2025, after filing its Petition for Writ of Prohibition and Writ of Mandamus [Dkt. 1], Petitioner Public First Law Center filed a Request for Transcript(s) of Proceedings regarding summary judgment hearings in the Tax Appeal Case, which included the Transcripts. The Transcripts had never previously been requested and no member of the public was present during the related hearings.

The April 10, 2023 hearing transcript was filed in this matter on May 28, 2025 at Dkt. 11. The May 6, 2024 hearing transcript was filed in this matter on May 29, 2025 at Dkt. 15.

On June 18, 2025, Taxpayer, filed its Motion to Seal Transcripts (“**Motion**”) in the Tax Appeal Case. The Motion is incorporated by reference into the request herein and is attached

hereto as Appendix A. The Motion requests the Tax Appeal Court to seal and/or redact portions of the April 10, 2023 and the May 6, 2024 hearing transcripts, on the basis that the discussion at these hearings of certain filings therein constitutes confidential business information and/or trade secrets as defined by Apple Inc. v. Samsung Elecs. Co., 727 F.3d 1214 (Fed. Cir. 2013) and Primus Grp., Inc. v. Inst. for Env'tl. Health, Inc., 395 F.Supp.3d 1243 (N.D. Cal. 2019), and is consistent with the Tax Appeal Court's Findings of Fact, Conclusions of Law and Order entered April 22, 2025 in the Tax Appeal Case at Tax Appeal Court Dkt. 311.

Based on the above, Taxpayer respectfully requests this Court to temporarily seal from public access the hearing transcripts filed at Dkt. 11 and Dkt. 15, until such time as the Motion is ruled upon in the underlying Tax Appeal Case and/or the Petition for Writ of Mandamus and Prohibition is adjudicated.

DATED: Honolulu, Hawai'i, June 23, 2025.

/s/ Nathaniel A. Higa
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APPENDIX A

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FIRST CIRCUIT
1CTX-21-0001613
18-JUN-2025
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Dkt. 324 MOT

IN THE TAX APPEAL COURT OF THE
STATE OF HAWAII

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| In the Matter of the Tax Appeal |) | Case No. 1CTX-21-0001613 |
| |) | |
| of |) | TAXPAYER-APPELLANT |
| |) | BOOKING.COM B.V.'S MOTION TO |
| Booking.com B.V. |) | SEAL TRANSCRIPTS; |
| |) | MEMORANDUM IN SUPPORT OF |
| Taxpayer-Appellant |) | MOTION; DECLARATION OF |
| |) | NATHANIEL A. HIGA; EXHIBIT A; |
| |) | NOTICE OF HEARING AND |
| |) | CERTIFICATE OF SERVICE |
| |) | |
| |) | |
| |) | <u>Hearing:</u> |
| |) | Date: Monday, August 11, 2025 |
| |) | Time: 1:30 p.m. |
| |) | Judge: Hon. Kevin T. Morikone |
| |) | |



TAXPAYER-APPELLANT BOOKING.COM B.V.’s
MOTION TO SEAL TRANSCRIPTS

Taxpayer-Appellant, BOOKING.COM B.V. (“**Taxpayer**”), by and through its attorneys Chun Kerr LLP, a Limited Liability Law Partnership, hereby moves this Court, pursuant to Rule 10.4 of the Hawai‘i Court Records Rules (“**HCCR**”) to: (1) redact portions of the transcript from the April 10, 2023 hearing on Taxpayer’s Motion for Summary Judgment, filed July 7, 2022 [Dkt. 31]¹ (the “**April 2023 Hearing Transcript**”); and (2) seal portions of the transcript from the May 6, 2024 hearing on Taxpayer’s Motion for Summary Judgment, filed December 1, 2023 [Dkt. 140] and Defendant-Appellee Director of Taxation, State of Hawai‘i’s (the “**Director**”) Cross Motion for Partial Summary Judgment, filed February 29, 2024 [Dkt. 154]² (the “**May 2024 Hearing Transcript**”) (collectively referred to herein as the “**Hearing Transcripts**”). Taxpayer requests closure of these certain, limited portions of the Hearing Transcripts on the basis that the discussion of and/or quotes from Dkt. 110, 204, 207 and 224 therein constitutes confidential business information and/or trade secrets as defined by Apple Inc. v. Samsung Elecs. Co., 727 F.3d 1214 (Fed. Cir. 2013) and Primus Grp., Inc. v. Inst. for Env’tl. Health, Inc., 395 F.Supp.3d 1243 (N.D. Cal. 2019), and consistent with this Court’s Findings of Fact, Conclusions of Law and Order entered April 22, 2025. Dkt. 311.

In the alternative and pursuant to HCCR Rule 10.5, Taxpayer respectfully requests to submit full copies of the Hearing Transcripts to this Court for *in camera* review and determination of Taxpayer’s redaction requests.

¹ Only page/line 19:24 – 20:8; 20:17 – 18 and 35:14 – 36:1 (both regarding Dkt. 110) of the April 2023 Hearing Transcript are requested to be sealed.

² Only page/line 5:20 – 8:19 (regarding Dkt. 224), 9:18 – 10:16 (regarding Dkt. 224), 35:1 – 13 (regarding Dkt. 207), 37:25 – 38:16 (regarding Dkt. 204), and 39:7 – 41:8 (regarding Dkt. 207) of the May 2024 Hearing Transcript are requested to be sealed.

This Motion is brought pursuant to Rule 3.3 and 10.4 of the HCCR and Rule 7 of the Hawai'i Rules of Civil Procedure ("**HRC**P") and Rule 7 of the Rules of the Circuit Courts of the State of Hawai'i. This Motion is supported by the attached memorandum, declarations, exhibits, and the file and pleadings herein.

DATED: Honolulu, Hawai'i, June 18, 2025.

/s/ Nathaniel A. Higa

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a Limited Liability Law Partnership

Attorneys for Taxpayer-Appellant

Booking.com B.V

IN THE TAX APPEAL COURT OF THE
STATE OF HAWAII

| | | |
|---------------------------------|---|--------------------------|
| In the Matter of the Tax Appeal |) | Case No. 1CTX-21-0001613 |
| |) | |
| of |) | MEMORANDUM IN SUPPORT OF |
| |) | MOTION |
| Booking.com B.V. |) | |
| |) | |
| Taxpayer-Appellant |) | |
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**TAXPAYER-APPELLANT BOOKING.COM B.V.’S
MEMORANDUM IN SUPPORT OF MOTION TO SEAL**

I. FACTUAL AND PROCEDURAL BACKGROUND

On December 28, 2022, Taxpayer and the Director filed their proposed stipulated protective order (“**SPO**”). Dkt. 86. A week later and after due consideration by the Honorable Gary W.B. Chang (Ret.), this Court entered the SPO. Dkt. 88. Pursuant to and in reliance on the SPO, certain of Taxpayer’s and the Director’s filings in this tax appeal were made under seal, including but not limited to, the following:

1. **Dkt. 110:** Exhibit “B” (Part 1 of 2) to the Director’s Second Supplemental Memorandum in Opposition to Taxpayer’s Motion for Partial Summary Judgment Filed on July 7, 2022 (“**Taxpayer’s July 2022 MPSJ**”), filed March 28, 2023;
2. **Dkt. 204:** Exhibit “19” to the Director’s Supplemental Memorandum in Support of His (1) Cross Motion for Partial Summary Judgment, Filed February 29, 2024 (“**Director’s February 2024 MPSJ**”), and (2) Memorandum in Opposition to Taxpayer’s Motion for Summary Judgment Filed December 1, 2023 (“**Taxpayer’s December 2023 MSJ**”), filed April 5, 2024;
3. **Dkt. 207:** Exhibit “22” to the Director’s Supplemental Memorandum in Support of His (1) Cross Motion for Partial Summary Judgment, Filed February 29, 2024, and (2) Memorandum in Opposition to Taxpayer’s Motion for Summary Judgment, Filed December 1, 2023 (“**Director’s Suppl. Memorandum**”), filed April 5, 2024; and
4. **Dkt. 224:** (Part 1 of 2) - Taxpayer’s Supplemental Memorandum in Response to the Director’s Supplemental Memorandum Filed April 5, 2024 (“**Taxpayer’s Suppl. Memorandum**”), filed April 17, 2024³.

³ Dkt. 224 includes Exhibits 9 – 13 to Taxpayer’s Suppl. Memorandum.

On April 10, 2023 and May 6, 2024, this Court held hearings (the “**April 2023 Hearing**” and the “**May 2024 Hearing**”, respectively) on Taxpayer’s July 2022 MPSJ, Taxpayer’s December 2023 MSJ and the Director’s February 2024 MPSJ, respectively. Declaration of Nathaniel A. Higa attached hereto (the “**Higa Decl.**”, at ¶¶ 4-7). At the April 2023 Hearing and the May 2024 Hearing, there was no one present in the courtroom at either hearing other than Judge Chang, court personnel, and counsel for both Taxpayer and the Director. *Id.*, at ¶¶ 8-9.

During the April 2023 Hearing arguments on Taxpayer’s July 2022 MPSJ, counsel discussed certain portions of Dkt. 110⁴, a contract between Taxpayer and an accommodation provider, which included Section 2.5.3. *Id.*, at ¶¶ 10, 11.

During the May 2024 Hearing arguments on Taxpayer’s December 2023 MSJ and the Director’s February 2024 MPSJ, counsel discussed and/or quoted verbatim from Dkt. 204⁵, 207⁶ and 224⁷. Dkt. 204 involved Taxpayer’s amended discovery responses. *Id.*, at ¶¶ 10, 12. Dkt. 207 and Exhibit 10 of Dkt. 224 involved contracts between Taxpayer and accommodation providers and included the following sections therein:

- **Dkt. 207:** Sections 1.2.1, 4.1.1, 4.1.3, 4.3.1, 4.5.1, 4.5.2 and 4.5.3; and
- **Exhibit 10 of Dkt. 224:** Sections 2.1.1, 2.2.2, 2.3.1, 2.3.2 and 2.5.1.

Id., at ¶¶ 10, 12.

⁴ Specifically, counsel discussed the pages bates labeled as BOOKING000005-8. *Id.*, at ¶ 11.

⁵ Specifically, counsel paraphrased and/or quoted directly from pages bates labeled A0009-10. *Id.*, at ¶ 12(a).

⁶ Specifically, counsel paraphrased and/or quoted directly from pages bates labeled BOOKING000028, BOOKING000030-31 and BOOKING000034. *Id.*, at ¶ 12(b).

⁷ Specifically, counsel paraphrased and/or quoted directly from Exhibit 10 which are pages bates labeled BOOKING000002-3 and BOOKING000005. *Id.*, at ¶ 12(c).

While both Taxpayer and the Director requested transcripts of the April 2023 Hearing and the May 2024 Hearing from this Court, neither party filed them in the public record. Higa Decl., at ¶ 13. At no time were the Hearing Transcripts ever part of the public record. Id., at ¶ 13.

On September 18, 2024, Public First Law Center (“**Public First**”) filed its Motion to Unseal Court Records, seeking the unsealing of, among other dockets, Dkt. 110, 204, 207 and 224. See Dkt. 252. In response, Taxpayer filed its Motion to Seal in which it sought to maintain the sealing of Dkt. 110, 204,⁸ 207 and 224.⁹ Id., at ¶ 14; See Dkt. 265. Following extensive briefing on both motions and a hearing on February 10, 2025, this Court entered its Findings of Fact and Conclusions of Law and Order on April 22, 2025 [Dkt. 311] (the “**Order**”). Id., at ¶ 15 Pursuant to the Order, Dkt. 110 and 207 were to remain sealed, and Dkt. 204 and 224 were to be filed with redactions of certain information. Order ¶ 22, pp.20-28. On May 22, 2025, Taxpayer timely filed the redacted version of Dkt. 204. Higa Decl. at ¶ 16; Dkt. 316.

On May 23, 2025, Public First filed a Petition for Writ of Prohibition and Writ of Mandamus against the Honorable Judge Kevin T. Morikone in the Supreme Court of State of Hawai‘i (the “**Petition**”). Sup. Ct. Dkt. 1.¹⁰ The Petition identifies six issues and corresponding requests of relief from this Court’s grant of Taxpayer’s Motion to Seal. Id., at 5-7. Subsequent to filing its Petition, Public First filed two requests for transcripts of proceedings held in Tax Appeal Court, including the April 2023 Hearing Transcript and the May 2024 Hearing Transcript.¹¹ [Sup. Ct. Dkt. 6, 7] As a non-party to the present matter, Public First did not seek

⁸ Only those documents bates labeled A0004-17 were requested to be redacted.

⁹ Only Exhibits 9-13 were requested to remain sealed.

¹⁰ The denotation “Sup. Ct. Dkt.” refers to filings filed in the matter Public First Law Center, v. The Honorable Kevin T. Morikone, Tax Appeal Court Judge, No. SCPW-25-0000419, Supreme Court, State of Hawai‘i.

¹¹ None of the other hearing transcripts requested by Public First are at issue in the present motion as they either did not paraphrase or quote from sealed and/or redacted dockets or was already sealed pursuant to the Order. Higa Decl. at ¶ 18.

either the April 2023 Hearing Transcript or the May 2024 Hearing Transcript directly from this Court, and neither transcript was publicly available prior to Public First's request following its filing of the Petition. Higa Decl. at ¶ 17.

Taxpayer respectfully requests this Court redact certain portions of the April 2023 Hearing transcript¹² and the May 2024 Hearing transcript¹³ as those portions involve confidential business information and/or trade secrets previously sealed or redacted by this Court pursuant the Order. A list detailing portions of the Hearing Transcripts requested to be redacted is attached as **Exhibit A. Id.**, at ¶19.

II. ARGUMENT

A. References to Dkt. 110, 204, 207 and 224 in the Hearing Transcripts Should Be Sealed Pursuant to the Court's Findings in the Order

The issue of the confidential nature of the information requested to be sealed in the Hearing Transcripts has already been resolved – by this Court's findings in the Order specific to Dkt. 110, 204, 207 and 224. Order at Conclusions of Law ¶¶ 12-14, 16, 19-24. This should end the inquiry and Taxpayer's Motion should be granted.

Moreover, the discussion of aspects of Dkt. 110, 204, 207 and 224 during the April 2023 Hearing and the May 2024 Hearing never entered the public realm such that Taxpayer's request for closure of certain portions of the hearing transcripts should be denied. Here, no one – other than this Court, its personnel and counsel for Taxpayer and the Director – were present at either of the hearings at issue. Higa Decl. at ¶ 9. Moreover, prior to Public First's request for the transcripts in the Hawai'i Supreme Court subsequent to its filing of its Petition, the Hearing

¹² Only page:line 19:24 – 20:8; 20:17 – 18 and 35:14 – 36:1 (both regarding Dkt. 110) are requested to be sealed. Id., at ¶ 11.

¹³ Only page:line 5:20 – 8:19 (regarding Exhibit 10 of Dkt. 224), 9:18 – 10:16 (regarding Exhibit 10 of Dkt. 224), 35:1 – 13 (regarding Dkt. 207), 37:25 – 38:16 (regarding Dkt. 204), and 39:7 – 41:8 (regarding Dkt. 207) are requested to be sealed. Id., at ¶ 12.

Transcripts were never filed publicly or provided to non-parties. *Id.*, at ¶ 13. Thus, no one from the public has ever had direct access to the paraphrasing and/or quoting from Dkt. 110 at the April 2023 Hearing or from Dkt. 204, 207 and 224 at the May 2024 Hearing such that that information had “in any meaningful sense, entered the public sphere”. *See e.g., Trust for Gore*, 2011 Del. Ch. LEXIS 3, at *9 (Del. Ch., Jan. 5, 2011) (denying a newspaper reporter’s motion to vacate the lower court’s order redacting the trust’s valuation information, finding that said information discussed at an open hearing, without anyone from the public present, had not been publicly disclosed to warrant vacatur of the redaction order). Therefore, this Court should grant Taxpayer’s request to seal certain portions of the April 2023 Hearing transcript and the May 2024 Hearing transcript on this basis.

B. Taxpayer Meets the Standards for Closure of Certain Portions of the Hearing Transcripts

Assuming *arguendo* that Taxpayer must again establish that closure of certain portions of Dkt. 110, 204, 207 and 224 discussed in the Hearing Transcripts is warranted – despite this Court already having determined that such information required closure in the Order – Taxpayer satisfies the standard. Therefore, certain, limited portions of the April 2023 Hearing Transcript¹⁴ and the May 2024 Hearing Transcript¹⁵ must be redacted.

1. Legal Standard for Closure

The Hawai’i Supreme Court states that the public has a right to access judicial proceedings and records, including records filed in civil cases. *Grube v. Trader*, 142 Haw. 412, 422, 420 P.3d 343, 353 (2018); *In re Estate of Campbell*, 106 Haw. 453, 462, 106 P.3d 1096, 1105 (2005)

¹⁴ Only page:line 19:24 – 20:8; 20:17 – 18 and 35:14 – 36:1 (both regarding Dkt. 110) are requested to be sealed.

¹⁵ Only page:line 5:20 – 8:19 (regarding Exhibit 10 of Dkt. 224), 9:18 – 10:16 (regarding Exhibit 10 of Dkt. 224), 35:1 – 13 (regarding Dkt. 207), 37:25 – 38:16 (regarding Dkt. 204), and 39:7 – 41:8 (regarding Dkt. 207) are requested to be sealed.

(observing that “the reasons underlying openness in the criminal context...are equally compelling in the civil context.”). But that right “is not absolute”, and in certain circumstances, “court proceedings may be closed to protect an interest that outweighs the value of openness.” Roy v. Gov’t Emples. Ins. Co. (Roy), 152 Haw. 225, 233, 524 P.3d 1249, 1257 (2023). The standard for determining whether the sealing of records involves both procedural and substantive requirements. Grube, 142 Haw. at 423, 420 P.3d at 354.¹⁶

The procedural requirements to seal documents or information contained in documents involve: (1) a reasonable opportunity to state objections; and (2) reasons supporting closure articulated by findings. OAHU Publs., Inc. v. Ahn (Ahn), 133 Haw. 482, 498, 331 P.3d 460, 476 (2014). The substantive requirements are whether “(1) the closure serves a compelling interest; (2) there is a substantial probability that, in the absence of closure, this compelling interest would be harmed; and (3) there are no alternatives to closure that would adequately protect the compelling interest.” Id. at 497-98, 331 P.3d at 475-76, quoting Oregonian Pub. Co. v. U.S. Dist. Court for the Dist. of Or., 920 F.2d 1462, 1466 (9th Cir. 1990). In the context of business records, courts have made clear when and how these substantive requirements can be met:

Confidential business information in the form of “license agreements, financial terms, details of confidential licensing negotiations, and business strategies” can be “compelling reasons” to prevent competitors from leveraging this information to harm the designating parties in future negotiations. If publicly disclosing that information would harm a designating party’s competitive standing and divulge terms of confidential contracts or contract negotiations, compelling reasons may exist to seal that information.

¹⁶ See e.g., Civil Beat Law Ctr. for Pub. Interest v. Chang, No. SCPW-21-0000511, 2022 Haw. LEXIS 73, 2022 WL 1490412, *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.”).

(internal quotations and citations omitted).

2. Taxpayer Meets the Procedural Requirements for Closure of Certain Portions of the Hearing Transcripts

As noted above, the filing of this Motion fulfills the procedural requirements of sealing filings by providing a reasonable opportunity to state objections and reasons supporting the closure of the records. Taxpayer requests that the Court grant this Motion with the requisite findings.

3. Taxpayer Meets the Substantive Requirements for Closure of Certain Portions of the Hearing Transcripts

a. There is a Compelling Interest Requiring Closure

First, there are compelling interests to support sealing the requested portions of the Hearing Transcripts to prevent public disclosure based on Taxpayer's commercially sensitive business information contained therein. Under the "first substantive requirement to close court proceedings or seal court records, the asserted government interest...must be compelling." Grube, 142 Haw. at 425, 420 P.3d at 356. Simply, the "asserted interest must be of such consequence as to outweigh both the right of access of individual members of the public and the general benefits to public administration afforded by open trials." Id.

i. The Hearing Transcripts Containing Taxpayer's Trade Secrets and/or Confidential Business Information from Dkt. 110, 204, 207 and 224 Justify Sealing Those Portions of the Hearing Transcripts

The protection of trade secrets is a compelling reason to seal documents. Kamakana v. City & Cnty. of Honolulu (Kamakana), 447 F.3d 1172, 1179 (9th Cir. 2006). A "trade secret" is defined as:

information, including a formula, pattern, compilation, program device, method, technique, or process that: (1) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Hawai'i Revised Statutes (“**HRS**”) § 482B-2.

Information falls within the definition of a trade secret where disclosure of such information would give competitors an advantage over the moving party. Apple Inc. v. Samsung Elecs. Co., 727 F.3d 1214, 1221-22 (Fed. Cir. 2013) (applying Ninth Circuit law regarding “sealing documents when the release of the documents will cause competitive harm to a business,” and defining “trade secret” for purposes of a motion to seal as “information which is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.”). Confidentiality provisions within a contract serve as a means of supporting a showing that the information is secretive in nature and falls within the definition of a trade secret. Stafford v. Rite Aid Corp., 2019 U.S. Dist. LEXIS 137609, *4 (S.D. Cal. Aug 14, 2019); see also, Delashaw v. Seattle Times Co., 2020 U.S. Dist. LEXIS 93506, *10 (W.D. Wash. May 28, 2020) (the court granted the motion to seal certain contracts on the basis that “each contract specifically agreed that the contract is confidential and shall be maintained in strict confidence.”).

Another compelling reason to keep documents under seal is that they contain “sources of business information that might harm a litigant’s competitive standing.” Ctr. for Auto Safety v. Chrysler Grp., LLC, 809 F.3d 1092, 1097 (9th Cir. 2016).¹⁷ The information in the documents

¹⁷ The Ninth Circuit has recognized that confidential business information contained in a party’s commercial contracts is sufficient to meet the compelling reasons standard. See e.g., In re Elec. Arts, Inc., 298 F. App’x 568, 569 (9th Cir. 2008) (disclosure of “pricing terms, royalty rates and guaranteed minimum payment terms” in a licensing agreement satisfied the “compelling reasons” standard necessary to seal records); see also Aya Healthcare Servs. v. Amn Healthcare, Inc., 2020 U.S. Dist. LEXIS 68855, *17 (S.D. Cal. Apr. 20, 2020) (the court granted the defendant’s request

sought to be sealed must be confidential, not publicly available and would reasonably result in injury if disclosed. Primus Grp., Inc. v. Inst. for Envtl. Health, Inc., 395 F.Supp. 3d 1243, 1269 (N.D. Cal. 2019) (“revealing the identity of customers and the specific services provided to them would harm its competitive standing because competitors would more effectively be able to target their marketing efforts ... disclosure would provide its competitors and its customers’ competitors with valuable insights ... in particular product categories without conducting similar tests themselves.”).

Courts in the Ninth Circuit distinguish between “trade secrets” and confidential business information. Mirroring the Federal Rules of Civil Procedure, HRCF Rule 26(c)(7), provides that a court may enter a protective order which states that “a trade secret **or** other confidential research, development, or commercial information not be revealed or be revealed only a designated way.” HRCF 26(c)(7) (emphasis added). Citing the equivalent rule in the Federal Rules of Civil Procedure, courts have ruled that a “trial court has broad discretion to permit sealing of court documents for ... the protection of trade secret **or other confidential research, development or commercial information.**” FTC v. Qualcomm Inc., Case No. 17-CV-00220, 2019 U.S. Dist. LEXIS 1289, at *10, *15 (N.D. Cal. Jan. 3, 2019) (granting motion to seal, in part, “to the extent that the [] motion seeks to seal information that, if published, may harm [the party’s] or third parties’ competitive standing and divulges terms of confidential contracts, contract negotiations, or trade secrets”) (emphasis added); see also, Barnett v. Cass, Case No. 20- 00440, 2021 U.S. Dist. LEXIS 263895, *7 (D. Haw. Feb. 19, 2021) (granting a motion to seal and holding that “[a]n

to seal a report and depositions that contained “references to information detailing Defendants’ sensitive financial terms, proprietary business strategies, and confidential negotiations and agreements with third parties.”), and Stout v. Hartford Life & Accident Ins. Co., 2012 U.S. Dist. LEXIS 172088, *7 (N.D. Cal. Dec. 4, 2012) (“litigants may file under seal their contracts with third parties that contain proprietary and confidential information”).

entity’s interest in keeping proprietary business information confidential can rise to the level of a compelling interest.”); Uluwehi Sai v. H&R Block Enters., Case No. 09-00154, 2009 U.S. Dist. LEXIS 119038, *3 (D. Haw. Dec. 21, 2021) (granting motion to seal “confidential and proprietary financial information” where “compelling reasons” existed for doing so).

Here, the Hearing Transcripts paraphrase and/or quote from Dkt. 110, 204, 207 and 224 which contain both trade secrets and confidential business information of Taxpayer. Dkt. 265 at Halimi-Guez Decl. at ¶ 9. Specifically, Dkt. 110, 207 and 224 contain Taxpayer’s contracts with Taxpayer’s accommodation providers and Dkt. 204 contains Taxpayer’s discovery responses that outline Taxpayer’s proprietary information – all of which were paraphrased in and/or quoted directly from the Hearing Transcripts. Id.; Higa Decl. at ¶ 10. As outlined below and in Exhibit “A” of Dkt. 265, each document is supported by a factual basis for sealing in that they involve Taxpayer’s: (1) agency and business model information; (2) commission and payment information; (4) platform operations and information; and (6) parties’ business relationship information and terms. Dkt. 265 at Halimi-Guez. at ¶ 10. The information in Dkt. 110, 204, 207 and 224 fall under protected trade secrets and/or confidential business information that serve the compelling interest for sealing the portions of the Hearing Transcripts that discuss those documents from public disclosure.

First, the agency and business model information contained in the Hearing Transcripts¹⁸ involve Taxpayer’s trade secrets and confidential business information related to its specific

¹⁸ Page 35:14 – 36:1 of the April 2023 Hearing Transcript quotes directly from Section 2.5.3 of Dkt. 110 (document bates labeled BOOKING000005). Higa Decl. at ¶ 11. Page 37:25 – 38:16 of the May 2024 Hearing Transcript quotes directly from Booking’s amended supplemental response to Request for Admission No. 14 in Dkt. 204 (document bates labeled A0009-10). Id., at ¶ 12(a). Pages 35:1 – 13 and 39:7 – 41:8 of the May 2024 Hearing Transcript quotes directly from Section 1.2.1 of Dkt. 207 (document bates labeled BOOKING000028) and Sections 4.5.2 and 4.5.3 of Dkt. 207 (document bates labeled BOOKING000034). Id., at ¶ 12(b).

method and process for organizing and structuring its business. See, HRS § 482B-2; Dkt. 265 at Halimi-Guez Decl. at ¶ 11. This information must remain confidential in order for Taxpayer to distinguish its business model from that of its competitors and to remain competitive with those competitors. Id.; see also, Apple Inc., 727 F.3d at 1221-22 (for purposes of a motion to seal, a trade secret is “information which is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.”). Additionally, Dkt. 110, 207 and 224 discussed in the Hearing Transcripts include Taxpayer’s specific contracts with its accommodation providers, all of which require confidentiality and nondisclosure to the public. Dkt. 265 at Halimi-Guez Decl. at ¶ 11; see, Aya Healthcare, 2020 U.S. Dist. Lexis 68855, *17; see also, Delashaw, 2020 U.S. Dist. LEXIS 93506, *10, Stout, 2012 U.S. Dist. LEXIS 172088, *7.

Second, the commission and payment information contained on pages 5:20 – 8:19 and 39:13 – 41:8 of the May 2024 Hearing Transcript – specifically the discussion of Sections 2.3.1 and 2.3.2 from Dkt. 224¹⁹ and the quotes from section 4.3.1 of Dkt. 207²⁰ – are from Taxpayer’s contracts with accommodation providers and which involve formulas and algorithms describing how Taxpayer calculates its commissions and payments. See HRS § 482B-2; Dkt. 265 at Halimi-Guez Decl. at ¶ 12; Higa Decl. at ¶ 10. This qualifies as both a trade secret and confidential business information specific to Taxpayer as these portions of the May 2024 Hearing Transcript contains Taxpayer’s pricing terms, rates and fees used in calculating earned commission for its services that were included in Dkt. 224. Dkt. 265 at Halimi-Guez Decl. at ¶ 12; see also, In re Elec. Arts, Inc., 298 F. App’x at 569; see also, Aya Healthcare, 2020 U.S. Dist. Lexis 68855, *17. Such contracts contain pricing terms, rates and fees used to calculate Taxpayer’s income and

¹⁹ Document bates labeled BOOKING000003.

²⁰ Document bates labeled BOOKING000034.

which were to remain confidential pursuant to the confidentiality clauses contained therein. Dkt. 265 at Halimi-Guez Decl. at ¶ 13; see, Delashaw, 2020 U.S. Dist. LEXIS 93506, *10 (“...the parties to each contract specifically agreed that the contract is confidential and shall be maintained in strict confidence.”); see also, In re Elec. Arts, Inc., 298 F. App’x at 569, Aya Healthcare, 2020 U.S. Dist. Lexis 68855, *17.

Third, information describing Taxpayer’s platform operations contained in certain of the Hearing Transcripts²¹, including sections of specific contracts with its accommodation providers, involve the website(s), apps, tools, platforms and/or other devices Taxpayer and its affiliated companies and business partners use or facilitate to conduct its proprietary business operations. Dkt. 265 at Halimi-Guez Decl. at ¶ 14. Platform operations and information falls squarely within the parameters of protected trade secrets and confidential business information because this information provides details into how Taxpayer maintains, administers and operates not only the online platform itself, but the services it provides through the online platform. See, HRS § 482B-2; Dkt. 265 at Halimi-Guez Decl. at ¶ 14; see also, Aya Healthcare, 2020 U.S. Dist. Lexis 68855, *17.

Lastly, business relationship information and terms between Taxpayer and its accommodation providers outlined in certain of the Hearing Transcripts²², which consist of

²¹Page 37:25 – 38:16 of the May 2024 Hearing Transcript quotes directly from Booking’s amended supplemental response to Request for Admission No. 14 in Dkt. 204 (document bates labeled A0009-10). Higa Decl. at ¶ 12(a). Page 39:13 – 41:8 of the May 2024 Hearing Transcript quotes directly from Sections 4.1.1, 4.1.2 and 4.5.1 of Dkt. 207 (document bates labeled BOOKING000030 and BOOKING000034) and Section 4.5.3 of Dkt. 207 (document bates labeled BOOKING000034). Id., at ¶ 12(b). Page 5:20 – 8:19 of the May 2024 Hearing Transcript quotes directly from Section 2.1.1 of Dkt. 224 (document bates labeled BOOKING000002) and page 9:18 – 10:16 quotes directly from Section 2.5.1 of Dkt. 224 (document bates labeled BOOKING000005). Id., at ¶ 12(c).

²²Page 19:24 – 20:8; 20:17 – 18 of the April 2023 Hearing Transcript paraphrases from Dkt. 110 (documents bates labeled BOOKING000005-8) and page 35:14 – 36:1 of the April 2023 Hearing Transcript quotes directly from Section 2.5.3 of Dkt. 110 (document bates labeled

portions of Taxpayer's contracts with accommodation providers, and obligations and duties of both Taxpayer and its clients that were written based on the agreed upon business relationship. See, HRS § 482B-2; Dkt. 265 at Halimi-Guez Decl. at ¶ 16. The information and terms of these business relationships highlight Taxpayer's process and business strategies when entering into these confidential negotiations and agreements with third parties. Dkt. 265 at Halimi-Guez Decl. at ¶ 16; see also, Aya Healthcare, 2020 U.S. Dist. Lexis 68855, *17., Delashaw, 2020 U.S. Dist. LEXIS 93506, *10, Stout, 2012 U.S. Dist. LEXIS 172088, *7.

Accordingly, there are sufficient and justifiable compelling reasons – e.g., inclusion of Taxpayer's trade secrets and confidential business information – that warrant sealing references to those documents found in the Hearing Transcripts and as detailed *supra*.

b. The Compelling Interest Would Be Harmed Absent Sealing

Disclosure of the portions of Dkt. 110 discussed in the April 2023 Hearing Transcript and of Dkt. 204, 207 and 224 discussed in the May 2024 Hearing Transcript would substantially and irreparably harm the compelling interest in protecting Taxpayer's trade secrets, confidential business information and/or tax return information. Dkt. 265 at Halimi-Guez Decl. at ¶ 20. In order to satisfy the second requirement to seal documents, the movant must demonstrate with specificity that these compelling reasons exist and pose significant danger or harm if not properly sealed. See, Grube, 142 Haw. at 426, 420 P.3d at 357.

BOOKING000005). Higa Decl. at ¶ 11. Page 37:25 – 38:16 of the May 2024 Hearing Transcript quotes directly from Booking's amended supplemental response to Request for Admission No. 14 in Dkt. 204 (document bates labeled A0009-10). Id., at ¶ 12(a). Pages 35:1 – 13 and 39:7 – 12 of the May 2024 Hearing Transcript quotes directly from Section 1.2.1 of Dkt. 207 (document bates labeled BOOKING000028), page 39:13 – 41:8 of the May 2024 Hearing Transcript quotes directly from Sections 4.1.3, 4.5.2 and 4.5.3 of Dkt. 207 (document bates labeled BOOKING000030 and BOOKING000034), page 5:20 – 8:19 quotes directly from Section 2.2.2 of Dkt. 224 (document bates labeled BOOKING000003), and page 9:18 – 10:16 quotes directly from Section 2.2.2 of Dkt. 224 (document bates labeled BOOKING000003). Id., at ¶ 12(b)-(c).

Here, allowing the portions of the April 2023 Hearing and May 2024 Hearing transcripts containing paraphrasing and/or quoting of Dkt. 110, 204, 207 and 224 to be placed into the eyes of the public will provide Taxpayer's competitors with an inside look into Taxpayer's trade secrets and confidential business information that its competitors would not otherwise have or be able to obtain. Dkt. 265 at Halimi-Guez Decl. at ¶ 21; see, Apple Inc., 727 F.3d at 1221-22. For example, any disclosure of Taxpayer's agency and business model information contained in the Hearing Transcripts²³ would benefit Taxpayer's competitors and its customers' competitors with valuable insights on how Taxpayer models its business and operations without engaging in their own research or investigative practices. Dkt. 265 at Halimi-Guez Decl. at ¶ 22; see also, Aya Healthcare, 2020 U.S. Dist. LEXIS 68855, *17. Additionally, placing the Taxpayer's platform operations and information as found in the April 2023 Hearing and May 2024 Hearing transcripts²⁴ into the public realm would give its competitors an advantage over Taxpayer in understanding the inner workings of Taxpayer's platform without expending time and resources in developing its own platform. Dkt. 265 at Halimi-Guez Decl. at ¶ 23; see also, Aya Healthcare, 2020 U.S. Dist. LEXIS 68855, *17.

²³ Page 35:14 – 36:1 of the April 2023 Hearing Transcript quotes directly from Section 2.5.3 of Dkt. 110 (document bates labeled BOOKING000005). Higa Decl. at ¶ 11. Page 37:25 – 38:16 of the May 2024 Hearing Transcript quotes directly from Booking's amended supplemental response to Request for Admission No. 14 in Dkt. 204 (document bates labeled A0009-10). Id., at ¶ 12(a). Pages 35:1 – 13 and 39:7 – 41:8 of the May 2024 Hearing Transcript quotes directly from Section 1.2.1 of Dkt. 207 (document bates labeled BOOKING000028) and Sections 4.5.2 and 4.5.3 of Dkt. 207 (document bates labeled BOOKING000034). Id., at ¶ 12(b).

²⁴ Page 37:25 – 38:16 of the May 2024 Hearing Transcript quotes directly from Booking's amended supplemental response to Request for Admission No. 14 in Dkt. 204 (document bates labeled A0009-10). Higa Decl. at ¶ 12(a). Page 39:13 – 41:8 of the May 2024 Hearing Transcript quotes directly from Sections 4.1.1, 4.1.2 and 4.5.1 of Dkt. 207 (document bates labeled BOOKING000030 and BOOKING000034) and Section 4.5.3 of Dkt. 207 (document bates labeled BOOKING000034). Id., at ¶ 12(b). Page 5:20 – 8:19 of the May 2024 Hearing Transcript quotes directly from Section 2.1.1 of Dkt. 224 (document bates labeled BOOKING000002) and page 9:18 – 10:16 quotes directly from Section 2.5.1 of Dkt. 224 (document bates labeled BOOKING000005). Id., at ¶ 12(c).

Generally speaking, the disclosure of the any portions of the April 2023 Hearing and May 2024 Hearing transcripts referencing Dkt. 110, 204, 207 and 224 constitutes a significant danger and harm to Taxpayer's current and future business. Dkt. 265 at Halimi-Guez Decl. at ¶ 26; see, Grube, 142 Haw. at 426, 420 P.3d at 357. Additionally, if one of Taxpayer's competitors accesses and misappropriates the information contained in the Hearing Transcripts, Taxpayer will likely suffer significant loss of its business without a clear legal remedy. Dkt. 265 at Halimi-Guez Decl. at ¶ 27; see also, H.Q. Milton, Inc. v. Webster, 2017 U.S. Dist. LEXIS 193646, *12 (N.D. Cal. Nov. 22, 2017) (the court found a likelihood of significant harm would occur if defendants were not enjoined from using the plaintiff's trade secrets, including customer and pricing information based on the arguments that this information undermined the plaintiff's competitive advantage and allowed for specific targeting of the plaintiff's clients and customers). Accordingly, Taxpayer can establish with specific evidence that a connection exists between unsealing of the portions of Dkt. 110, 204, 207 and 224 in the April 2023 Hearing and May 2024 Hearing transcripts and the resulting infliction of irreparable harm. See, Grube, 142 Haw. at 425-25, 420 P.3d at 355-56.

c. Redaction is a Reasonable Alternative To Sealing To Protect The Compelling Interest

Taxpayer believes redaction of all paraphrases and quotes from Dkt. 110, 204, 207 and 224 in the April 2023 Hearing and May 2024 Hearing transcripts is a reasonable alternative to complete sealing of them. As part of this third substantive requirement, a court will consider potential alternatives that would adequately protect the compelling interest before it grants a motion to seal the entire document. See, Ahn, at 497-98, 331 P.3d at 475-76. Redaction is a common alternative when courts find full sealing of a document unnecessary. In re Civ. Beat Law Ctr. for the Pub. Int., 2023 U.S. Dist. LEXIS 86167, *14 (D. Haw. May 17, 2023). A court will consider this alternative where sealing information therein serves a compelling interest and

the proposed redactions are narrowly tailored. See, Grube, 142 Haw. at 427, 420 P.3d at 358; see also, In re Civ. Beat, 2023 U.S. Dist. LEXIS 86167, *21.

The April 2023 Hearing and May 2024 Hearing transcripts contain paraphrasing of and/or quoting from Dkt. 110, 204, 207 and 224 which are of Taxpayer's contracts with accommodation providers and one set of discovery responses. Higa Decl. at ¶ 10. These portions of the April 2023 Hearing and May 2024 Hearing transcripts contain information constituting trade secrets and confidential business information that must remain confidential and sealed from public access for the exact same reasons as discussed in Section II.B.3.a.i *supra*. See, id. (setting forth the reasoning for closure of portions of the Hearing Transcripts); Dkt. 265 at Halimi-Guez at ¶ 31. Disclosure of this specific information contained in the Hearing Transcripts would cause the same irreparable harm to the compelling interest in protecting Taxpayer's trade secrets and confidential business information as discussed in Section II.B.3.b *supra*. See, id. (setting forth the substantiation for closure of portions of the Hearing Transcripts); Dkt. 265 at Halimi-Guez Decl. at ¶ 32.

Additionally, redactions of those portions of the Hearing Transcripts discussing Dkt. 110, 204, 207 and 224 are an adequate remedy where confidential business information and trade secrets are discussed in an open court proceeding. Particularly relevant to the situation presented in this matter, a court within the Ninth Circuit granted plaintiff's request to redact portions of the transcripts that involved interest rates but denied unsealing of the rest of the hearing transcripts. Vesta Crop. v. Amdocs Mgmt, 312 F.Supp.3d 966, 973, 2018 U.S. Dist. LEXIS 75573, **13-14 (D. Ore., May 4, 2018). The Vesta court reasoned that plaintiff did not take steps to prevent disclosure and its general assertions to seal the transcript did not sufficiently demonstrate a compelling reason to restrict the public's access to the judicial records. Id.

Here, Taxpayer requests this Court to redact specific, limited portions of the Hearing Transcripts, discussing Dkt. 110, 204, 207 and 224 that involves certain confidential business information and trade secrets that were presented at an open court proceeding. Unlike the plaintiff in Vesta, here, Taxpayer filed a Motion to Seal a number of documents, including Dkt. 110, 204, 207 and 224. See Dkt. 265. And, this Court granted Taxpayer’s Motion to Seal, allowing for the sealing of Dkt. 110 and 207 and redactions of certain portions of Dkt. 204 and 224. See Order ¶ 22, pp. 20-28. Although, certain documents were presented at open court proceedings (and notwithstanding that no member of the public was present at either the April 10, 2023 or May 6, 2024 hearings), this Court had previously found that Taxpayer satisfied the compelling reason standard for closure of Dkt. 110, 204, 207 and 224 – in whole or in part – and such closure should apply to the Hearing Transcripts which paraphrase or quote from these documents. The Hearing Transcripts from such proceedings are now requested to be filed by Public First and if left unsealed, Taxpayer will suffer the same irreparable harm as argued in its first Motion to Seal. See generally, Dkt. 265. Taxpayer has taken steps to prevent disclosure of the information contained in Dkt. 110, 204, 207 and 224 as outlined in the Hearing Transcripts and satisfied the compelling reason standard to close these documents as well as portions of the Hearing Transcripts. See, Vesta, 312 F.Supp 3d at 973, 2018 U.S. Dist. LEXIS 75573, **13-14.

Accordingly, this Court should grant Taxpayer’s Motion and permit Taxpayer to submit the Hearing Transcripts with the proposed redactions to this Court for *in camera* review to determine redaction status. The proposed redactions are narrowly tailored to prevent disclosure of Taxpayer’s trade secrets and confidential business information. See, Roy, 152 Haw. at 234, 524 P.3d at 1258; Dkt. 265 at “Exhibit A” at pp.7-16; see generally, Section II.B.3.

III. CONCLUSION

For the foregoing reasons, Taxpayer respectfully requests that this Court grant its Motion and issue an order permitting Taxpayer to temporarily seal and/or redact the April 2023 Hearing Transcript²⁵ and the May 2024 Hearing Transcript²⁶ filed in the Supreme Court of the State of Hawai'i.

DATED: Honolulu, Hawai'i, June 18, 2025.

/s/ Nathaniel A. Higa

NATHANIEL A. HIGA

MICHELLE K. CORREIA

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a Limited Liability Law Partnership

Attorneys for Taxpayer-Appellant

Booking.com B.V

²⁵ Only page:line 19:24 – 20:8; 20:17 – 18 and 35:14 – 36:1 (both regarding Dkt. 110) of the April 2023 Hearing Transcript are requested to be sealed.

²⁶ Only page:line 5:20 – 8:19 (regarding Dkt. 224), 9:18 – 10:16 (regarding Dkt. 224), 35:1 – 13 (regarding Dkt. 207), 37:25 – 38:16 (regarding Dkt. 204), and 39:7 – 41:8 (regarding Dkt. 207) of the May 2024 Hearing Transcript are requested to be sealed.

IN THE TAX APPEAL COURT OF THE
STATE OF HAWAII

| | | |
|---------------------------------|---|--------------------------|
| In the Matter of the Tax Appeal |) | Case No. 1CTX-21-0001613 |
| |) | |
| of |) | DECLARATION OF |
| |) | NATHANIEL A. HIGA |
| Booking.com B.V. |) | |
| |) | |
| Taxpayer-Appellant |) | |
| _____ |) | |

DECLARATION OF NATHANIEL A. HIGA

1. I am NATHANIEL A. HIGA, a partner in the law firm of Chun Kerr LLP, a Limited Liability Law Partnership, counsel for Taxpayer-Appellant, Booking.com B.V. ("**Taxpayer**") in the above-captioned action. I am duly licensed to practice law before this Court, and I make this declaration based on personal knowledge.

2. I am fully familiar with the facts of this matter. In connection with my representation, I have reviewed the pertinent documents, including the referenced transcripts, filings and the exhibits attached hereto.

3. Unless indicated otherwise, all terms herein have the same meaning as set forth in the instant motion and memorandum in support.

4. On December 28, 2022 and with approval from counsel for the Director, I caused my office to file the proposed SPO [Dkt.86] via the Hawaii Judiciary Electronic Filing and Service System ("**JEFS**").

5. On January 4, 2023, the SPO was entered by the Honorable Gary W.B. Chang (Ret.) [Dkt. 88], without any revisions to the terms outlined by the parties. I received notice of said entry via JEFS.

6. During the course of my representation of Taxpayer, I reviewed the Director's various filings including:

- (a) Dkt. 110: Exhibit B to the Taxpayer's July 2022 MPSJ;
- (b) Dkt. 204: Exhibit 19 to the Director's February 2024 MPSJ and Taxpayer's December 2023 MSJ; and
- (c) Dkt. 207: Exhibit 22 to the Director's Supplemental Memorandum.

7. During the course of my representation of Taxpayer, I prepared or assisted in the preparation of various memoranda, including Dkts. 223-225 - Taxpayer's Suppl. Memorandum. Dkt. 224 (Part 1 of 2) includes Exhibits 9-13, of which Exhibit 10 is at issue in the instant matter.

8. I participated in the April 2023 Hearing and the May 2024 Hearing on Taxpayer's July 2022 MPSJ (April 2023), Taxpayer's December 2023 MSJ (May 2024) and the Director's February 2024 MPSJ (May 2024), respectively.

9. No members of the public were present in the courtroom at the April 2023 Hearing or the May 2024 Hearing. At the April 2023 Hearing, attendees included the Honorable Gary W.B. Chang, courtroom personnel, myself, a former associate Winston Wong, and counsel for the Director Joshua Michaels and Nathan Chee. At the May 2024 Hearing, attendees included the Honorable Gary W.B. Chang, courtroom personnel, myself, and counsel for the Director Mary Yokota and Nathan Chee.

10. At both hearings, certain confidential information contained in Taxpayer's contracts with accommodation providers and one set of discovery responses was discussed by either paraphrasing or quoting from these confidential documents.

11. During arguments at the April 2023 Hearing, counsel for the Director discussed portions of Exhibit B to Dkt. 110, which is a contract between Taxpayer and an

accommodation provider, bates labeled BOOKING000005-8, and inclusive of Section 2.5.3. This discussion is found at 4/10/23 Tr. pp. 19:24-20:8, 19:17-18 and 35:14-36:1.

12. During arguments at the May 2024 Hearing, myself and/or counsel for the Director discussed and/or quoted verbatim from the following:

(a) Dkt. 204 (Exhibit 19) involves Taxpayer's amended supplemental discovery response to Request for Admission No. 14, specifically pages bates labeled A0009-10. This discussion is found at 5/6/24 Tr. pp. 37:25-38:16 (Higa).

(b) Dkt. 207 (Exhibit 22) involves contracts between Taxpayer and accommodation providers, specifically pages bates labeled BOOKING000028, BOOKING000030-31 and BOOKING000034 regarding sections 1.2.1, 4.1.1, 4.1.3, 4.3.1, 4.5.1, 4.5.2, and 4.5.3. This discussion is found at 5/6/24 Tr. pp. 35:1-13 (Yokota) and 39:7-41:8 (Higa).

(c) Dkt. 224 (Exhibit 10) involves contracts between Taxpayer and accommodation providers, specifically pages bates labeled BOOKING000002-3 and BOOKING000005 regarding sections 2.1.1, 2.2.2, 2.3.1, 2.3.2 and 2.5.1. This discussion is found at 5/6/24 Tr. pp. 5:20-8:19 (Higa) and 9:18-10:16 (Higa).

13. On April 20, 2023 and May 9, 2024, I caused to be filed requests for the April 2023 Hearing Transcript and the May 2024 Hearing Transcripts, respectively. I received notice via JEFS that counsel for the Director filed its requests on May 16, 2023 and May 10, 2024, respectively. The Hearing Transcripts have not been utilized in any subsequent public filings by either party, or provided to non-parties.

14. I received by mail and reviewed Public First's Motion to Unseal Court Records, filed September 18, 2024 [Dkt. 252]. My office then prepared Taxpayer's Motion to Seal, which I caused to be filed on November 22, 2024. See Dkt. 265. Both motions were set for hearing on February 10, 2025, which I attended.

15. After the February 10, 2025 hearing and pursuant to the Court's request, I prepared Findings of Fact and Conclusions of Law and Order, which were entered by this Court on April 22, 2025.

16. On May 22, 2025, I caused to be filed Taxpayer's Submission of Certain Redacted Material Pursuant to Findings of Fact and Conclusions of Law and Order, in which the redacted version of Dkt. 204 was filed. See Dkt. 316.

17. I also represent Taxpayer in the matter captioned Public First Law Center v. The Honorable Kevin T. Morikone, Tax Appeal Court Judge, No. SCPW-25-0000419, Supreme Court, State of Hawai'i, in which Public First filed its Petition for Writ of Prohibition and Writ of Mandamus. I received notice of these filings via JEFS. As part of my representation, I have reviewed all filings, including Public First's Request for Transcript(s) of Proceedings filed on May 23, 2025 at Sup. Ct. Dkt. 6, 7. The April 2023 Hearing Transcript and the May 2024 Hearing Transcript were filed at Sup. Ct. Dkt. 11, 15, respectively, prior to my being able to object to Public First's requests at Sup. Ct. Dkt. 6, 7 with the filing of the present motion. As a non-party to the present matter, Public First did not first seek either the April 2023 Hearing Transcript or the May 2024 Hearing Transcript directly from this Court, and neither transcript was publicly available prior to Public First's request following its filing of the Petition.

18. None of the other hearing transcripts requested by Public First are at issue in the present motion as they either did not paraphrase or quote from sealed and/or redacted dockets or was already sealed pursuant to the Order.

19. For the Court's convenience, attached as **Exhibit "A"** is a list detailing portions of the transcripts requested to be sealed and/or redacted, which was prepared by my office at my direction and under my supervision.

20. A copy of the April 2023 Hearing Transcript and the May 2024 Hearing Transcript, with relevant portions bracketed, will be provided to chambers.

I, Nathaniel A. Higa, do declare under penalty of law that the foregoing is true and correct.

DATED: Honolulu, Hawai'i, June 18, 2025.

/s/ Nathaniel A. Higa
NATHANIEL A. HIGA

In The Matter of The Tax Appeal of Booking.com B.V., Case No. 1CTX-21-0001613,
Tax Appeal Court, State of Hawaii.

I. April 10, 2023 Hearing Date

| CC Dkt # | Description | Page: line |
|-----------------|--|-------------------|
| Dkt 110 | Ex.B-contracts between Taxpayer and accommodation provider | 19:24-20:8 |
| | | 20:17-18 |
| | | 35:14-36:1 |

II. May 6, 2024 Hearing Date

| CC Dkt # | Page: line | Page:line |
|-----------------|---|------------------|
| Dkt. 204 | Ex.19-Taxpayer's amended supplemental discovery response | 37:25-38:16 |
| | | |
| Dkt. 207 | Ex.22-contracts between Taxpayer and accommodation providers | 35:1-13 |
| | | 39:7-12 |
| | | 39:13-41:8 |
| | | |
| Dkt. 224 | Ex.10- contracts between Taxpayer and accommodation providers | 5:20-8:19 |
| | | 9:18-10:16 |

EXHIBIT A

IN THE TAX APPEAL COURT OF THE
STATE OF HAWAII

| | | |
|---------------------------------|---|--------------------------|
| In the Matter of the Tax Appeal |) | Case No. 1CTX-21-0001613 |
| |) | |
| of |) | NOTICE OF HEARING |
| |) | |
| Booking.com B.V. |) | |
| |) | |
| Taxpayer-Appellant |) | |

NOTICE OF HEARING

TO: ANNE E. LOPEZ, ESQ. (via JEFS)
Attorney General
NATHAN S.C. CHEE, ESQ. (*nathan.s.chee@hawaii.gov*)
MARY H. Y. BAHNG YOKOTA, ESQ. (*mary.b.yokota@hawaii.gov*)
MICHAEL DAVID DUNFORD, ESQ. (*michael.d.dunford@hawaii.gov*)
Deputy Attorneys General
Department of the Attorney General, State of Hawaii
425 Queen Street
Honolulu, HI 96813

Attorneys for Appellee
Director of Taxation, State of Hawaii

NOTICE IS HEREBY GIVEN that the foregoing Motion shall come on for hearing before The Honorable Kevin T. Morikone, Judge of the above-entitled Court, in his courtroom at Kaahumanu Hale, 777 Punchbowl Street, 4th Floor, Courtroom 18, Honolulu, Hawaii, on **Monday, August 11, 2025 at 1:30 p.m.**, or as soon thereafter as counsel may be heard, or as further instructed by the Court.

DATED: Honolulu, Hawai'i, June 18, 2025.

/s/ Nathaniel A. Higa
NATHANIEL A. HIGA
MICHELLE K. CORREIA

of CHUN KERR LLP
a Limited Liability Law Partnership

Attorneys for Taxpayer-Appellant
Booking.com B.V.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing document was or will be served upon the parties identified above, on this date, through the Judiciary Electronic filing System (“JEFS”).

DATED: Honolulu, Hawai‘i, June 18, 2025.

/s/ Nathaniel A. Higa

NATHANIEL A. HIGA

MICHELLE K. CORREIA

of CHUN KERR LLP

a Limited Liability Law Partnership

Attorneys for Taxpayer-Appellant
Booking.com B.V.

NOTICE OF ELECTRONIC FILING

Electronically Filed
FIRST CIRCUIT
1CTX-21-0001613
18-JUN-2025
01:07 PM
Dkt. 325 NEF

An electronic filing was submitted in Case Number 1CTX-21-0001613. You may review the filing through the Judiciary Electronic Filing System. Please monitor your email for future notifications.

Case ID: 1CTX-21-0001613

Title: In the Matter of the Tax Appeal of Booking.com B.V.

Filing Date / Time: WEDNESDAY, JUNE 18, 2025 01:07:18 PM

Filing Parties: Nathaniel Higa

Case Type: Tax Appeal

Lead Document(s):

Supporting Document(s): 324-Motion for _____

Document Name: 324-TAXPAYER-APPELLANT BOOKING.COM B.V.'S MOTION TO SEAL TRANSCRIPTS; MEMORANDUM IN SUPPORT OF MOTION; DECLARATION OF NATHANIEL A. HIGA; EXHIBIT A; NOTICE OF HEARING AND CERTIFICATE OF SERVICE

If the filing noted above includes a document, this Notice of Electronic Filing is service of the document under the Hawai'i Electronic Filing and Service Rules.

This notification is being electronically mailed to:

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I do hereby certify that the foregoing is a full, true and correct copy of the Official Court Record of the Courts of the State of Hawai'i.
Dated at: Honolulu, Hawai'i 23-June-2025. Nathaniel Atsushi Higa (nhiga@chunkerr.com), State of Hawai'i



NO. SCPW-25-0000419

IN THE SUPREME COURT OF THE STATE OF HAWAII

| | | |
|-----------------------------------|---|---|
| PUBLIC FIRST LAW CENTER, |) | ORIGINAL PROCEEDING |
| |) | NO. 1CTX-21-1613 |
| Petitioner, |) | |
| |) | PETITION FOR WRIT OF |
| vs. |) | PROHIBITION AND WRIT OF |
| |) | MANDAMUS |
| THE HONORABLE KEVIN T. |) | |
| MORIKONE, Tax Appeal Court Judge, |) | TAX APPEAL COURT, STATE OF HAWAII |
| |) | |
| Respondent. |) | |
| |) | The Honorable Kevin T. Morikone, Tax Appeal |
| |) | Court, State of Hawaii |
| |) | |
| |) | |

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing document was or will be served upon the parties identified below, on this date, through the Judiciary Electronic filing System ("JEFS") as follows:

| | |
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| Public First Law Center | |

Attorneys for Petitioner

-and-

| | |
|---|---|
| ANNE E. LOPEZ, ESQ. | |
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| Deputy Attorneys General | |
| Department of the Attorney General, State of Hawaii | |

Attorneys for Appellee Director of Taxation, State of Hawaii
Appellee in underlying Tax Appeal Case

DATED: Honolulu, Hawai'i, June 23, 2025.

/s/ Nathaniel A. Higa
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MICHELLE K. CORREIA

of CHUN KERR LLP
a Limited Liability Law Partnership

Attorneys for Booking.com B.V.
Taxpayer-Appellant