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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

IN RE: PUBLIC FIRST LAW  
CENTER,

Objector.

MISC. NO. 25-257  
[CIV. NO. 24-215 DKW-RT]

OBJECTION TO AMENDED  
MOTION TO SEAL  
DEFENDANTS' SUMMARY  
JUDGMENT EXHIBITS; and  
CERTIFICATE OF SERVICE

**OBJECTION TO AMENDED MOTION TO SEAL DEFENDANTS'  
SUMMARY JUDGMENT EXHIBITS [DKT. 58]**

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Pursuant to the public right of access guaranteed by the First Amendment of the United States Constitution and the common law, and in accordance with Local Rule 5.2(c), Public First Law Center (Public First) objects to Defendants City and County of Honolulu and Damien Desas’ (together, Defendants) amended motion to seal [Dkt. 58] Exhibits “A” and “I” to Defendants’ summary judgment motions [Dkt. 51 & 52] filed in *Patrick Andrew Wieland v. City and County of Honolulu, et al.*, Civ. No. 24-215 DKW-RT.<sup>1</sup>

Defendants’ amended motion to seal fails to satisfy the “compelling reasons” test for sealing judicial records. Defendants argue that sealing is appropriate because Exhibits “A” and “I” have been marked confidential under a stipulated protective order. It is well-established that stipulated protective orders do not override the First Amendment’s strong presumption of public access.

Defendants also rely on irrelevant legal authorities. Hawai’i Revised Statutes (HRS) chapter 92F is a state *disclosure* statute, not a basis for sealing key evidence in federal court.

Defendants have thus failed to provide a sufficient basis to deny the strong constitutional presumption of public access to judicial records. Their amended motion to seal should be denied.

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<sup>1</sup> “Dkt.” refers to the corresponding docket entry in the *Wieland* matter.

## **I. FACTUAL BACKGROUND**

On May 10, 2024, Plaintiff Patrick Andrew Weiland commenced suit against Defendants, alleging civil rights violations. Dkt. 1.

On June 6, 2025, Defendant City and County of Honolulu and Defendant Desa each moved for summary judgment in their favor on all claims. Dkt. 51, 52.

On June 7, Defendants moved to seal all of the exhibits to their motions for summary judgment. Dkt. 54. On June 12, this Court denied Defendants' motion to seal, without prejudice, for failure to comply with Local Rule 5.2. Dkt. 56.

On June 27, Defendants filed an "amended" motion to seal seeking to seal two exhibits—"A" and "I"—to their summary judgment motions. Dkt. 58. Exhibit "A" is body worn camera (BWC) footage of Plaintiff's arrest. Dkt. 58-1 at PageID.276. Plaintiff was arrested on or around a public highway. Dkt. 1 at PageID.4 ¶ 14. Exhibit "I" is a copy of the Honolulu Police Department's internal policy regarding extradition requests. Dkt. 58-1 at PageID.277. Defendants assert the BWC footage and internal policy should be sealed entirely based on Hawai'i's state public records law. *Id.*

## **II. THE PUBLIC HAS A PRESUMED RIGHT OF ACCESS TO JUDICIAL PROCEEDINGS, INCLUDING JUDICIAL RECORDS IN CIVIL CASES.**

The constitutional right of public access to court proceedings is among those rights that, "while not unambiguously enumerated in the very terms of the [First]

Amendment, are nonetheless necessary to the enjoyment of other First Amendment rights.” *Globe Newspaper Co. v. Superior Ct.*, 457 U.S. 596, 604 (1982). “A major purpose of that Amendment was to protect the free discussion of governmental affairs.” *Id.*; *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 575 (1980) (plurality opinion) (the freedoms in the First Amendment “share a common core purpose of assuring freedom of communication on matters relating to the functioning of government”).

“By offering such protection, the First Amendment serves to ensure that the individual citizen can effectively participate in and contribute to our republican system of self-government.” *Globe Newspaper*, 457 U.S. at 604. “[Openness] gave assurance that the proceedings were conducted fairly to all concerned, and it discouraged perjury, the misconduct of participants, and decisions based on secret bias or partiality.” *Id.* at 569; *accord Press-Enter. Co. v. Superior Ct.*, 464 U.S. 501, 508 (1984) [*Press-Enter. I*] (“[T]he sure knowledge that *anyone* is free to attend gives assurance that established procedures are being followed and that deviations will become known.”).

To preserve the societal values reflected in the First Amendment, the U.S. Supreme Court held that “[c]losed proceedings, although not absolutely precluded, must be rare and only for cause shown that outweighs the value of openness.” *Press-Enter. I*, 464 U.S. at 509. “The presumption of openness may be overcome

only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest.” *Id.* at 510; *accord Globe Newspaper*, 457 U.S. at 606-07.

In the decades since the United States Supreme Court decided *Richmond Newspapers*, *Globe Newspaper*, and *Press-Enter. I*, the Ninth Circuit has “concluded that the presumptive First Amendment right of public access attaches broadly to criminal *and civil* proceedings.” *Civil Beat Law Ctr. for the Pub. Int., Inc. v. Maile*, 113 F.4th 1168, 1176 (9th Cir. 2024) (emphasis added). In doing so, it has “joined the nationwide consensus” in concluding that the First Amendment right of access “reaches civil judicial proceedings and records.” *Id.*; *see also Courthouse News Serv. v. Planet*, 947 F.3d 581, 591 (9th Cir. 2020) (First Amendment right of access attaches to civil complaints); *United States ex rel. Oberg v. Nelnet, Inc.*, 105 F.4th 161, 172 (4th Cir. 2024) (“[T]he First Amendment does apply to documents attached to dispositive motions.”)

For the constitutional right of access, the proponent of sealing has the burden to overcome the presumption of access. *Oregonian Publ’g Co. v. U.S. Dist. Court*, 920 F.2d 1462, 1467 (9th Cir. 1990). Defendants thus have the burden to prove that: “(1) 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.” *Phoenix Newspapers, Inc. v. U.S. Dist. Ct.*, 156 F.3d 940, 949 (9th Cir. 1998). The findings may not be based on “conclusory assertions.” *Id.*

The Ninth Circuit also has held that the public has a common law right of access to civil judicial proceedings and records. When—as here—a filing is “more than tangentially related to the underlying cause of action,” the “compelling reasons” standard applies. *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1101 (9th Cir. 2016). For the common law analysis, the “party seeking to seal a judicial record then bears the burden of overcoming this strong presumption by . . . articulating compelling reasons . . . that outweigh the general history of access and the public policies favoring disclosure.” *United States v. Bus. of the Custer Battlefield Museum & Store*, 658 F.3d 1188, 1194-95 (9th Cir. 2011). A court presented with a motion to seal must balance the competing interests and “base its decision on a compelling reason and articulate the factual basis for its ruling, without relying on hypothesis or conjecture.” *Id.* at 1195. “[T]he court may not restrict access to the documents without articulating both a compelling reason and a factual basis for its ruling.” *Id.* at 1196.

#### **IV. THE MOTION TO SEAL DOES NOT PROVIDE A BASIS FOR DENYING THE PUBLIC’S RIGHT OF ACCESS.**

The amended motion to seal [Dkt. 58] does not satisfy either the constitutional or common law standards.

**A. The Stipulated Protective Order [Dkt. 29] is not sufficient reason to seal judicial records.**

Defendants argue sealing is warranted because the materials are subject to a stipulated protective order. Dkt. 58-1 at PageID.273. Parties, however, cannot override the First Amendment by agreement. *E.g., Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1136 (9th Cir. 2003) (“[T]he presumption of access is not rebutted where, as here, documents subject to a protective order are filed under seal as attachments to a dispositive motion.”); *San Jose Mercury News v. U.S. Dist. Ct.*, 187 F.3d 1096, 1101 (9th Cir. 1999) (“The right of access to court documents belongs to the public, and the Plaintiffs were in no position to bargain that right away.”). Stipulated protective orders are based on “good cause” for discovery purposes as provided in Fed. R. Civ. P. 26(c), not “compelling reasons”. *Pintos v. Pac. Creditors Ass’n*, 565 F.3d 1106, 1116 (9th Cir. 2009). As the stipulated protective order in this case expressly recognizes, confidentiality for discovery purposes under the order does not justify sealing if a document is filed with the court. Dkt. 29 at PageID.122 ¶ 6 (“Notwithstanding any agreement among the parties, the party seeking to file a paper under seal bears the burden of overcoming the presumption in favor of public access to papers filed in court”).

The parties’ confidentiality designation under the stipulated protective order is not a “compelling reason” for sealing.

**B. Hawai'i Revised Statutes chapter 92F is not a basis for sealing.**

Defendants argue Exhibits “A” and “I” both “implicate either invasion of personal privacy or potential frustration of a legitimate government function under HRS § 92F and should be exempt from disclosure.” Dkt. 58 at 9. But HRS chapter 92F—Hawaii’s freedom of information law—is a disclosure statute applicable to state agencies, not a basis for sealing federal court records. *E.g.*, *Hawai'i Police Dep't v. Kubota*, 155 Hawai'i 136, 153, 557 P.3d 865, 882 (2024) (“We conclude that [HRS chapter 92F] neither creates an evidentiary privilege nor applies to civil litigation.”).<sup>2</sup>

**C. Defendants have not identified any compelling interest that will be irreparably harmed by disclosure of Exhibits “A” and “I”.**

Defendants offer only vague and conclusory assertions alluding to general privacy interests and a “potential” (and unspecified) frustration of government function to justify sealing. Dkt. 58-2 at PageID.280 ¶ 6. That is insufficient to overcome the strong presumption of public access to judicial records. *E.g.*, *Phoenix Newspapers*, 156 F.3d at 949-50 (requiring “specific factual findings”

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<sup>2</sup> Even if the UIPA applied—it does not—the UIPA does not *require* nondisclosure simply because a record falls within a category of records that is exempt from mandatory disclosure. *E.g.*, *SHOPO v. City & County of Honolulu*, 149 Hawai'i 492, 508-09, 494 P.3d 1225, 1241-42 (2021) (“[N]ondisclosure is only mandatory under UIPA where another law—for instance, a state or federal statute, the constitution, or a court order—independently requires an agency to withhold the sought records.”).

explaining, in part, the “necessary connection between unsealing” the subject records and the infliction of irreparable damage to justify sealing).

Defendants also assert sealing is justified to “shield” the involved officers “from any possible negative effects of disclosure of the recording.” Dkt. 58-2 at PageID.280 ¶ 7. Under Hawaii’s public records law, police acting in their official capacity do not have a significant privacy interest in footage of those actions. OIP Op. No. F22-01 at 11-14. Body worn camera footage is routinely disclosed publicly and is capable of redaction to protect legitimate privacy interests. *E.g., id.* (body worn camera footage subject to public disclosure); Marisa Yamane, *HPD releases redacted bodycam footage showing DUI arrest of Officer Mariah Ah Tou*, KITV (July 3, 2024); Lynn Kawano, *HPD officer faces termination as newly released bodycam footage shows alleged brutality*, Hawaii News Now (July 15, 2022); HNN Staff, *HPD releases body cam footage of police shooting in Nuuanu that left man dead*, Hawaii News Now (April 17, 2021). And although privacy rights may in some instances rise to the level of compelling, simply preserving the comfort or official reputations of the parties is not a sufficient justification. *E.g., In re McClatchy Newspapers, Inc.*, 288 F.3d 369, 374 (9th Cir. 2002).

Last, although Defendants describe Exhibit “I” as an “internal” and nonpublic policy, they identify no compelling interest that would be harmed by its disclosure. This policy is at the *core* of the pattern and practice claims against

Defendants. *E.g.*, Dkt. 58-1 at PageID.277 (“This document is relevant to Plaintiff’s Monell claim against the City (based on a failure-to-train/*inadequate policy theory*) and the City’s defense against said claim.”) (emphasis added). Because the policy is central to understanding the Court’s resolution of the controversy, and not tangential to the dispute, it is subject to the strong presumption of constitutional and common law openness. Defendants have not overcome the presumption.

**C. Nothing supports sealing the entirety of Exhibits “A” and “I”.**

Even if Defendants could articulate a compelling interest that justifies sealing and prove that disclosure will harm such an interest, the scope of sealing must be narrowly tailored to address the purported harm. Defendants must prove that no other less drastic alternatives exist other than sealing the entire filing. *E.g.*, *Phoenix Newspapers*, 156 F.3d at 950-51 (holding insufficient the court’s conclusory observation concerning redactions “that so much of the transcript would have to be redacted that the remaining portion would be unintelligible and/or would shed little, if any, light on the proceeding.”).

The need for disclosure here is obvious. A case alleging serious civil rights violations by the police should not be terminated on the basis of secret evidence. Police wield significant government power and resources. The public deserves access to know that such power is applied lawfully. And because the Court will

consider Exhibits “A” and “I” in deciding the summary judgment motions, the public needs access to those exhibits to understand the Court’s ruling.

### **CONCLUSION**

Based on the foregoing, the Law Center respectfully requests that the Court deny Defendants’ amended motion to seal [Dkt. 58].

DATED: Honolulu, Hawai`i, July 18, 2025

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MISC. NO. 25-257  
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CERTIFICATE OF SERVICE

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document will  
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