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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI`I

IN RE: PUBLIC FIRST LAW CENTER, Objector.	MISC. NO. 25-383 [CIV. NO. 21-00063 SASP-RT] OBJECTION TO STATE DEFENDANTS' MOTION TO SEAL SUMMARY JUDGMENT EXHIBITS; and CERTIFICATE OF SERVICE

OBJECTION TO STATE DEFENDANTS' MOTION TO SEAL SUMMARY JUDGMENT EXHIBITS [DKT. 191]

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Pursuant to the public right of access guaranteed by the First Amendment of the United States Constitution, Local Rule 5.2(c), and this Court's Minute Order entered October 15, 2025 [Dkt. 205], Public First Law Center (Public First) objects to Defendants Lena Kakehi, Lita Jyring, and Natasha Combs' (collectively, State Defendants) Motion for Leave to File Exhibits "E," "I," "J," "K," "L," "M," "N," and "P" Under Seal [Dkt. 191] filed in *Archie John McCoy, and "A.A" v. Lena Kakehi, et al.*, Civ. No. 21-63 SASP-RT.[1]

State Defendants' motion to seal cites the common law right to access court records, but ignores the stronger *constitutional* right. The State Defendants fail to provide a sufficient basis to overcome the constitutional presumption of public access to judicial records. The compelling interest identified by State Defendants—protecting the identity of a minor—can be adequately protected through limited redaction. The motion to seal should be denied in all other respects, for the reasons discussed below.

I. FACTUAL BACKGROUND

Plaintiff filed his third amended complaint on December 10, 2021, asserting claims related to the minor identified as "A.A." Dkt. 53.

On September 29, 2025, State Defendants moved for summary judgment and separately moved to seal certain supporting exhibits in their entirety. Dkt. 191,

[1] "Dkt." refers to the corresponding docket entry in the *McCoy* matter.

193. The subject exhibits are Department of Human Services (DHS) and Family Court records related to A.A. Dkt. 191-1 at PageID.3495.

Also on September 29, Defendants Effective Planning and Innovative Communication, Inc. d.b.a. Epic 'Ohana and Kathleen Shimabukuro (together, Epic Defendants) moved for summary judgment. Dkt. 188, 189. Unlike State Defendants, Epic Defendants did not move to seal any of its supporting exhibits. Instead, Epic Defendants redacted limited personal information such as dates of birth, home addresses, and names of minors. *E.g.*, Dkt. 190 at PageID.3002-06; *accord* Fed. R. Civ. P. 5.2(a).[2]

Plaintiff also moved for summary judgment. Dkt. 195.

On October 15, 2025, this Court granted State Defendant's motion to seal as to Exhibits "E," "I," "J," "K," "L," and "M". Dkt. 205 at PageID.4048. The Court allowed any interested party to object to the order. *Id*.

The parties' respective summary judgment motions are set for hearing on December 2, 2025. Dkt. 202.

[2] In contrast, State Defendants did not consistently comply with Fed. R. Civ. P. 5.2(a). *E.g.*, Dkt. 194-5 at PageID.3691 (date of birth) & Dkt. 194-6 at PageID.3714 (names of minors).

II. THE PUBLIC HAS A PRESUMED CONSTITUTIONAL RIGHT OF ACCESS TO SUMMARY JUDGMENT RECORDS.

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. Super. 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").

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-Enterprise Co. v. Super. Ct.*, 464 U.S. 501, 509 (1984). "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-Enterprise*, 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). 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.*; *accord Courthouse News Serv. v. Planet*, 947 F.3d 581, 591 (9th Cir. 2020) (First Amendment right of access attaches to civil complaints); *see also, e.g.*, *U.S. ex rel. Oberg v. Nelnet, Inc.*, 105 F.4th 161, 171-72 (4th Cir. 2024) ("[T]he First Amendment protects the right to access summary judgment motions and documents 'filed in connection with' those motions."); *Lugosch v. Pyramid Co.*, 435 F.3d 110, 124 (2d Cir. 2006) ("We therefore conclude that there exists a qualified First Amendment right of access to documents submitted to the court in connection with a summary judgment motion.").

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. Ct.*, 920 F.2d 1462, 1467 (9th Cir. 1990). State 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 must be supported by specific facts and may not be based on "conclusory assertions."[3] *Id.*

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

State Defendants' motion to seal does not satisfy the constitutional standard to seal presumptively open summary judgment exhibits.

A. State DHS and Family Court Statutes Do Not Override the Constitutional Right of Public Access.

State Defendants argue that Hawai`i Revised Statutes (HRS) §§ 346-10 and 350-1.4 require this Court to seal the subject exhibits in their entirety. Dkt. 191-1 at PageID.3495-97. The Hawai`i State Legislature, however, cannot force a federal court to seal court records contrary to the U.S. Constitution. Moreover, contrary to State Defendants' arguments, those statutes do not require sealing.

The public's constitutional right of access derives from a higher authority than state law: the First Amendment of the United States Constitution. Conflicting state law is unconstitutional. *E.g., Maile*, 117 F.4th at 1212 (automatic

[3] The State Defendants' motion to seal erroneously focused solely on the broader, but less stringent right of public access under the common law. Dkt. 191-1 at PageID.3495; *see Ctr. for Auto Safety v. Chrysler Grp.*, 809 F.3d 1092, 1104-05 (9th Cir. 2016) (discussing "common law right of access"); *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) (same); *see generally United States v. Kaczynski*, 154 F.3d 930, 932 (9th Cir. 1998) (Reinhardt, J., concurring) ("there is a significant difference between the common law and constitutional inquiries.").

sealing of "medical records" pursuant to state court rule "unconstitutionally overbroad"). Thus, when, as here, the constitutional right of access attaches, other sources of law such as statutes and rules do not justify sealing without more case-specific analysis. *Id.* at 1210 (acknowledging right of privacy in Hawai`i Constitution as a compelling interest, but holding that it does not justify sealing medical records in every context). At best, state statutes—if applicable—might provide a compelling interest relevant to the first prong of the constitutional analysis.

By their plain language, however, the statutes cited by the State Defendants do not apply here. None impose any obligation of confidentiality outside Hawai`i family courts, much less require secrecy in federal district courts. *E.g.*, HRS § 346-10(a) (confidentiality applicable to "department [DHS] and its agents"); HRS § 350-1.4 (reports made to DHS confidential); *accord* HRS § 587A-4 (defining "Court" under Chapter 587A as "one of the family courts established pursuant to chapter 571"). The Hawai`i State Legislature does not have authority to dictate access to court records. *See State v. Rogan*, 156 Hawai`i 233, 245, 573 P.3d 616, 628 (2025) ("nothing suggests the legislature has the unilateral authority to determine how the judiciary maintains its own records.").

Even if state laws could impose confidentiality requirements on the judicial records of the federal courts—they cannot—there are three independent reasons

that the summary judgment exhibits fall outside the strict confines of the cited confidentiality statutes.

First, HRS § 346-10 broadly provides, in relevant part, that DHS records may be disclosed in any civil proceeding connected to the administration of social services. HRS § 346-10(a)(2); *see* HRS §§ 346-10(a)(10), 350-1.4(c). This civil case directly concerns DHS's administration of the foster care system. Nothing in the legislative history of these statutes reflects an intent to protect DHS from criticism for its shortcomings in a civil case. As discussed below, narrower concerns to preserve privacy can be served by redacting names.

Second, each of the relevant statutes expressly provides for disclosure authorized by DHS rules. HRS §§ 346-10(c), 350-1.4(a), (c), 587A-40(b). DHS rules provide for disclosure to the public without consent or court order when:

- "a state's attorney, or a judge of the state court system has publicly disclosed in a report, as part of his or her official duty, information regarding the investigation of a report, or the provision of services by the department"; or
- "legal custodian of the child, the alleged perpetrator, or other party has voluntarily made a public disclosure concerning a child abuse and neglect report, investigation of a report, or the provision of services by the department."

HAR § 17-1601-6(16)(B). Those rules clearly apply to these circumstances in light of the disclosures made by Plaintiff, State Defendants, and Epic Defendants. *E.g.*, Dkt. 193-1 at PageID.3541-46 (state's attorney disclosing information

regarding DHS investigation and provision of services related to minor "A.A."); Dkt. 194 at PageID.3565-69 (same; concise statement of facts); Dkt. 194-3 at PageID.3579-83 (DHS expert report opining on propriety of DHS action based on DHS and family court records); Dkt. 194-6 at PageID.3721-29 (mother of A.A. deposition; discussing DHS intervention), Dkt. 194-8 at PageID.3736-41 (social worker deposition; discussing investigation and records), Dkt. 194-9 at PageID.3744 (police report describing factual basis for removal of A.A.); Dkt. 194-10 at PageID.3748-61 (DHS social worker deposition; discussing investigation and records); Dkt. 194-17 at PageID.3773-98 (DHS social worker deposition; discussing investigation and records); *see also* Dkt. 190 at PageID.2983-92 (Epic Defendants' concise statement of facts and party declaration; other party's disclosure of information regarding DHS provision of services); Dkt. 190-9 at PageID.3236 (Epic Defendants' referral form for DHS services); Dkt. 190-12 at PageID.3292 (e-mail regarding DHS referral for services); Dkt. 190-13 at PageID.3294-341; Dkt. 190-14 to -15 at PageID.3343-51 (family court filings regarding DHS services); Dkt. 190-16 at PageID.3353-56 (Epic Defendants' form related to DHS provision of services); Dkt. 195 at PageID.3822-26 (Plaintiff's concise statement of facts; alleged perpetrator disclosing information about allegations, investigation, and provision of DHS services); Dkt. 195-5 at PageID.3876-87 (Plaintiff disclosing Safe Family Home Report); Dkt. 195-6 at

PageID.3889-91 (log of DHS contacts); Dkt. 195-7 at PageID.2893-900 (police reports); Dkt. 195-8 at PageID.3902 (e-mail regarding DHS referral for services); Dkt. 195-9 at PageID.3904-06 (summary of DHS investigation); Dkt. 195-10 at PageID.3908 (Epic Defendants' referral form for DHS services); Dkt. 195-16 at PageID.3944-51 (transcript of family court proceeding); Dkt. 195-22 to -23 at PageID.3993-95 (DHS contact logs); Dkt. 195-25 at PageID.4005 (update to Safe Family Home Report).[4]

Third, separate from any other standards for access, each of the relevant statutes contemplates that this Court could simply order disclosure. HRS §§ 346-10(a)(11) ("upon showing of good cause"), 587A-40 ("is in the best interests of the child or serves some other legitimate purpose"); HAR § 17-1601-2 (defining "Authorized recipient of confidential information" to include persons authorized by "court order to receive information contained in the reports and records maintained by the department"); *cf. Pub. First Law Ctr. v. Viola*, No. SCPW-24-464, 2025 Haw. LEXIS 262, at *9-11 (Haw. Sept. 30, 2025) (clarifying standard for public access when requested from *Hawai`i Family Court records*). There is abundant good cause and legitimate purpose to disclosing summary

[4] Plaintiff and the Epic Defendants—similar to State Defendants—also attached numerous deposition excerpts that discussed at length the provision of DHS services related to this case.

judgment exhibits—redacted to protect the identity of minors and mandated reporters—that will be considered by this Court in deciding whether DHS employees judicially deceived the family court in connection with the removal of A.A. from his biological parents. *See, e.g., Pub. First*, 2025 Haw. LEXIS 262 at *12 (explaining that judicial transparency is a necessary means to build public trust and understanding); s*ee also* Sarah A. Font and Elizabeth T. Gershoff, *Foster Care and Best Interests of the Child: Integrating Research, Policy, and Practice (Advances in Child and Family Policy and Practice)* at 88 (2020) ("The path toward greater accountability and transparency is not entirely clear, but finding it is a crucial step toward ensuring child safety and well-being and increasing public confidence in the child welfare system.").

In the end, while this Court may examine the question of constitutional access in light of the cited statutes, contrary to the State's arguments, those statutes are not dispositive of the constitutional issues.

B. State Defendants Fail to Establish a Substantial Probability of Harm to a Compelling Interest.

Relevant both to whether a compelling interest exists and the probability of harm to that interest, this Court must consider the extensive amount of information already in the public domain concerning this case. *E.g.*, *In re Copley Press*, 518 F.2d 1022, 1025 (9th Cir. 2008) ("Once information is published, it cannot be made secret again."); *see also Gambale v. Deutsche Bank AG*, 377 F.3d 133, 144

(2d Cir. 2004) ("We simply do not have the power, even were we of the mind to use it if we had, to make what has thus become public private again."); *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1184 (9th Cir. 2006) (affirming an unsealing order because the information at issue was "already publicly available"); *see also MD Spa Shop LLC v. Med-Aesthetic Sols, Inc.*, No. 21-CV-1050, 2021 U.S. Dist. LEXIS 210552 at *18-19 (S.D. Cal. Oct. 29, 2021) ("A request to seal information that was publicly disclosed involves 'an inherent logical dilemma' in that 'information that has already entered the public domain cannot in any meaningful way be later removed from the public domain.'"). As this Court observed, the confidentiality concerns are not served by sealing when "the document has been made available to the public." Dkt. 205 at PageID.4048.

As noted above, the substance of the subject exhibits has already been disclosed and extensively discussed in public filings in connection with the summary judgment briefings.

Exhibit	Public Filings[5]
E: Log of DHS Contacts	Dkt. 195-6 at PageID.3889-91; Dkt. 195-22 to -23 at PageID.3993-95
I: CPS Intake Form	Dkt. 190-16 at PageID.3353-56
J: Safe Family Report	Dkt. 195-5 at PageID.3876-87
K: Report to Court	Dkt. 195-25 at PageID.4005
L: Hearing Transcript on Petition for Temporary Foster Custody[6]	
M: Petition for Temporary Foster Custody dated December 7, 2016	Dkt. 190-14 at PageID.3343-45

See also In the Interest of AA, 150 Hawai`i 270, 273-79, 500 P.3d 455, 458-64 (2021) (identifying foster-adoptive parents of A.A. and describing Family Court proceedings). State Defendants' offer no argument or explanation why—given the extensive public disclosures to date—complete sealing of the exhibits is necessary to avoid harm to a compelling interest. There is no irreparable harm from publicly disclosing information that is already public. The bell cannot be unrung now.

[5] This column does not identify the rampant examples from parties' publicly filed memoranda or deposition transcripts discussing the same information contained in these documents. And because Public First does not have access to the sealed documents to verify that documents are identical, the referenced documents may only be similar to the documents that the State Defendants filed under seal.

[6] According to the State Defendants' filings, this transcript is offered solely to prove that the family court granted DHS temporary foster custody at a hearing on December 9, 2016, after Arseny Aliwis consented—facts discussed at length throughout the parties' filings. Dkt. 193-1 at PageID.3552; Dkt. 194 at PageID.3568 ¶ 48.

C. The State Defendants Fail to Provide a Compelling Interest for Sealing Properly Redacted Summary Judgment Exhibits.

The only compelling interest offered by the State Defendants is the right of privacy for A.A., the minor involved. Dkt. 191 at PageID.3497 ¶ 8. Properly redacted, the summary judgment exhibits preserve the privacy interests of the minor while allowing the public sufficient access to understand the parties' arguments and this Court's potentially dispositive decision.

Privacy concerns focus on information that (a) would be regarded as highly offensive to a reasonable person if disclosed, and (b) is not of legitimate concern to the public. *E.g.*, *Popa v. Microsoft Corp.*, No. 24-14, 2025 U.S. App. LEXIS 21946, at *16 (9th Cir. Aug. 26, 2025) ("a claim for public disclosure of private facts requires that a defendant 'gives publicity' to a matter that concerns 'the private life of another,' that the information is 'highly offensive to a reasonable person,' and that the information is not of legitimate public concern."); *Pac. Radiation Oncology, LLC v. Queen's Med. Ctr.*, 138 Hawai`i 14, 19, 375 P.3d 1252, 1257 (2016) (referencing Restatement (Second) of Torts § 652D); *see also Cox Broadcasting Co. v. Cohn*, 420 U.S. 469, 492 (1975) (no invasion of privacy for information that is a matter of "legitimate concern to the public").

If State Defendants truly had a concern about disclosing extraneous information that potentially invades privacy interests, they could excerpt the records provided to this Court. If the Court does not need certain information from

the documents beyond that already publicly revealed in State Defendants' memorandum and concise statement, then it could remove pages or redact the documents submitted to the Court. *See* Local Rule 56.1(b) (discouraging parties from attaching entire documents when not necessary for the court's resolution) ("Documents referenced in the concise statement may be filed in their entirety only if a party concludes that the full context would be helpful to the court."). The constitutional right of public access only extends to the documents in the form submitted to the Court.

Summary judgment exhibits relevant to allegations that DHS employees engaged in "judicial deception" in terminating parental rights is obviously of legitimate concern to the public. *E.g.*, *In re FG*, 142 Hawai`i 497, 505 n.9, 421 P.3d 1267, 1275 n.9 (2018) ("Hawai`i has an interest in ensuring accountability in the foster care system"); *Pub. First*, 2025 Haw. LEXIS 262 at *11-12 (legitimate public interest in understanding DHS and judiciary's operations concerning child welfare system).[7] And as the Hawai`i Supreme Court recently held, redaction of minors' names can address privacy concerns in Family Court records. *Id.* at *13-

[7] *Pub. First* is distinguishable insofar as it concerned statutory disclosure standards for family court records in the family court, not the constitutional right of access in civil proceedings. 2025 Haw. LEXIS 262, at *1-2. The case, however, confirms that absolute confidentiality is not the rule, even in family court cases concerning child protective act proceedings and adoption. *Id*.

14 ("Through redactions, the family court is able to disclose records while ensuring the protection of vulnerable children.").

D. Redaction is the Narrowly Tailored Solution for the State Defendants' Concerns.

State Defendants argue the "confidentiality of minor child A.A.'s [sic] is a compelling reason" that justifies sealing the entirety of the subject exhibits. Dkt. 191-1 at PageID.3497. But the scope of sealing must be narrowly tailored to address the purported harm—State Defendants must prove that no other less drastic alternatives exist other than sealing the entire filing. *E.g.*, *Phoenix Newspapers, Inc. v. U.S. Dist. Ct.*, 156 F.3d 940, 950-51 (9th Cir. 1998) (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").

State Defendants incorrectly asserts, "it is not feasible to file redacted versions" of the exhibits "because the entries and information in those records are the bases" for State Defendants' motion for summary judgment. Dkt. 191-1 at PageID.3497. First, Epic Defendants demonstrated that redaction is in fact feasible and sufficient to protect the identities of minors. *E.g.*, Dkt. 190-3 at PageID.3002-06; Dkt. 190-14 at PageID.3343-45; Dkt. 190-15 at PageID.3347-51. Second, the fact that the exhibits form the basis of State Defendants' motion for summary judgment, Dkt. 191 at PageID.3497, is not a basis to justify closure—it *heightens*

the presumption of access to those judicial records. The State Defendants have not provided this Court with a sufficient basis to find that there are no less restrictive alternatives to complete sealing of the exhibits.

In the end, the State Defendants' arguments do nothing to further the privacy interests of children and only serve to protect State Defendants from public accountability. That is not enough to overcome the presumption of access. *E.g., In re McClatchy Newspapers, Inc.*, 288 F.3d 369, 374 (9th Cir. 2002) (preserving the comfort or official reputations of the parties is not a sufficient justification to seal court records).

CONCLUSION

Based on the foregoing, the Public First respectfully requests that the Court unseal the summary judgment exhibits—after requiring the State Defendants to properly redact identities. Redaction is sufficient to address any legitimate privacy concerns.

DATED: Honolulu, Hawai`i, October 24, 2025

/s/ Benjamin M. Creps
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI`I

IN RE: PUBLIC FIRST LAW CENTER, Objector.	MISC. NO. 25-383 [CIV. NO. 21-00063 SASP-RT] CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing objection will be served electronically on the following, on the date set forth below:

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DATED: Honolulu, Hawai`i, October 24, 2025

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