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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAI'I

JOHN ROE NO. 121,

Plaintiff,

vs.

STATE OF HAWAI'I; JOHN A. TEIXEIRA;
JOHN DOES 1-10; DOE CORPORATIONS
1-10; DOE PARTNERSHIPS 1-10; DOE
NON-PROFIT ENTITIES 1-10; and DOE
GOVERNMENTAL ENTITIES 1-10,

Defendants.

CIVIL NO.: 1CC191001419
(Other Non-Motor Vehicle Tort)

DEFENDANT STATE OF HAWAII'S
REPLY TO *NONPARTY PUBLIC FIRST LAW*
CENTER'S MEMORANDUM IN
OPPOSITION TO MOTION TO SEAL TRIAL
EXHIBITS FILED ON OCTOBER 8, 2025, AS
DKT. 522; CERTIFICATE OF SERVICE

HEARING

Date: October 21, 2025
Time: 10:00 a.m.
Judge: Honorable Kevin T. Morikone

Judge: Honorable Kevin T. Morikone
Trial: April 22, 2024

**DEFENDANT STATE OF HAWAII'S REPLY TO NONPARTY PUBLIC
FIRST LAW CENTER'S MEMORANDUM IN OPPOSITION TO MOTION
TO SEAL TRIAL EXHIBITS FILED ON OCTOBER 8, 2025, AS DKT. 522**

Defendant STATE OF HAWAII (the “State”), by and through Anne E. Lopez, the Attorney General for the State of Hawai‘i, and its attorneys Amanda J. Weston and David N. Matsumiya, Deputy Attorneys General, hereby submits its reply memorandum to *Nonparty Public First Law Center’s Memorandum in Opposition to Motion to Seal Trial Exhibits*, which was filed herein on October 8, 2025 as Dkt. 522 (“**Public First’s MIO**”).

I. STATEMENT OF ADDITIONAL RELEVANT FACTS

On August 2, 2024, this Honorable Court executed and filed the court’s *Findings of Fact, Conclusions of Law, and Order* (the “**Court’s FOF/COL**”). *See* Dkt. 463. The Court’s FOF/COL issued 173 findings of facts. *See* Dkt. 463 at pp. 2-23. In addition, the Court’s FOF/COL issued 44 conclusions of law. *See* Dkt. 463 at pp. 23-31.

II. ARGUMENT

Public First’s MIO makes the following arguments: 1) Stipulated protective order for discovery are irrelevant; 2) Statutes do not override the constitutional rights of public access; 3) the Hawai‘i Court Records Rule (“**HCRR**”) cannot require blanket sealing of “Social Service Reports;” 4) the State failed to provide a compelling interest for sealing properly redacted trial exhibits; 5) the State failed to establish substantial probability of harm to a compelling interest; and 6) sealing is not a narrowly tailored solution to any concern here.

A. STIPULATED PROTECTIVE ORDERS ENTERED IN THIS ACTION ARE RELEVANT

The Stipulated protective orders that were entered in this action are relevant because: 1) they provide a mechanism for the State to designate documents as confidential, in line with the confidentiality requirements of Hawaii Revised Statutes (“**HRS**”) § 346-10, HRS § 350-1.4, HRS § 587A-40, and Hawai‘i Administrative Rule (“**HAR**”) § 17-1601-6; 2) they restrict the usage of the documents in accordance with HRS § 346-10, HRS § 350-1.4, HRS § 587A-40, and HAR § 17-1601-6; and 3) they provide a mechanism by which an individual or entity may seek to have the documents declassified and removed from the protections to the protective orders. *See* Dkt. 12; Dkt. 34; Dkt. 90; and Dkt. 163. In short, the stipulated protective orders bind all the individuals and/or entities that receive the documents to the same confidentiality requirements that the State is obligated to uphold. This is in line with HAR § 17-1601-6, which states

“[d]isclosure of all or a portion of the record without consent or court order shall be authorized when made pursuant to a legitimate state purpose and in accordance with 17-1601-4.” HAR § 17-1601-6. HAR § 17-1601-4 states “[r]ecipients of confidential information shall be bound by the same confidentiality restrictions as the department and shall maintain confidentiality and prevent unauthorized re-disclosure.” HAR § 17-1601-4(b).

As this Honorable Court is an entity that has received the confidential documents for a legitimate state purpose, this Honorable Court, pursuant to HAR § 17-1601-4(b) and Hawai‘i Court Records Rule (“HCRR”) 10.4, has an obligation to limit the access to the confidential records to the court and court personnel in the performance of their duties.

B. THE CITED STATUTES MAY OVERRIDE THE CONSTITUTIONAL RIGHTS OF PUBLIC ACCESS

The protection of records section, codified in HRS § 346-10, has been in existence since 1941. *See* Act 213 (1941) at Part 1, Section 10. There are no opinions finding that HRS § 346-10, or its other iterations (Act 213, Part 1, Section 10, Revised Laws of Hawai‘i § 4825, or Laws of Hawai‘i § 1953) is unconstitutional. HRS § 346-10 currently states:

All applications and records concerning any applicant or recipient shall be confidential. The use or disclosure of information concerning applicants and recipients shall **be limited to**: . . .

(2) Purposes directly connected with any investigation, prosecution, . . . or civil proceeding conducted in connection with the administration of any form of . . . social services, including disclosure by the department of information and documents to . . . any other state . . . agency engaged in the detection, investigation, or prosecution of violations of applicable state . . . laws or regulations . . .; provided that disclosure by recipient agencies and personnel shall be permitted under this section to the extent reasonably necessary to carry out the functions for which the information was provided; . . .

(10) Disclosure of reports and records relating to child abuse or neglect to the extent allowed by rules adopted under section 350-1.4; and

(11) Disclosure pursuant to a court order, after an in camera review of the records by the court, upon a showing of good cause by the party seeking the release of the records.

HRS § 346-10(a) (2015 Replacement) (bold emphasis added). HRS § 350-1.4 states:

Confidentiality. (a) All reports to the department concerning child abuse or neglect made pursuant to this chapter, as well as all records of such reports, are confidential. The director may adopt rules, pursuant to chapter 91, to provide for the confidentiality of reports and records and for the authorized disclosure of reports and records. Any person who intentionally makes an unauthorized

disclosure of a report or record of a report made to the department shall be guilty of a misdemeanor.

(b) Every reasonable good faith effort shall be made by the department to maintain the confidentiality of the name of a reporter who requests that the reporter's name be confidential.

(c) Notwithstanding subsection (a) and section 346-10, the director may adopt rules pursuant to chapter 91 to provide for the release of information required by federal statute or regulation.

HRS § 350-1.4 (2015 Replacement) (bold emphasis original).

With regard to HAR § 17-1601-6, it states:

Disclosure of all or a portion of the record without consent or court order shall be authorized when made pursuant to a legitimate state purpose and in accordance with 17-1601-4. A legitimate state purpose shall include but is not limited to disclosure to the persons listed below . . . :

(16) Disclosure to the public when: . . . (B) A law enforcement agency or official, 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; (C) A 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.

Public First's MIO argues that HRS § 346-10 allows Department of Human Services' ("DHS") records to be disclosed by DHS in connection with any civil proceeding connected to the administration of social services. *See* Public First's MIO at p. 7. A complete reading of HRS § 346-10 clearly indicates that this is not the case. The use or disclosure of information concerning applicants and recipients **is limited to purposes directly connected** with any investigation, prosecution, or civil proceeding conducted in connection with the administration of any form of social services. HRS § 346-10(a). This means that the trial exhibits in this action can only be disclosed for the purposes of the adjudication of this action.

Public First's MIO also argues that the rules for DHS allow for the disclosure of the trial exhibits to the public without consent or court order. *See* Public First's MIO at pp. 7-8. Once again, a complete reading indicates that this is not exactly true. HAR § 17-1601-6 states that the disclosure of all or a portion of the record without consent or court order shall be authorized when made pursuant to a legitimate state purpose and in accordance with 17-1601-4. HAR § 17-1601-6. HAR § 17-1601-4 states "[r]ecipients of confidential information shall be bound by the

same confidentiality restrictions as the department and shall maintain confidentiality and prevent unauthorized re-disclosure.” HAR § 17-1601-4(b). As a result, any disclosure to Public First Law Center and/or Civil Beat shall include a prohibition of Public First Law Center and/or Civil Beat from unauthorized re-disclosure. Because Public First Law Center and Civil Beat seek disclosure for the express purpose of making the information publicly available, releasing the information to these entities and simultaneously prohibiting them from re-disclosure would defeat their ultimate purpose.

Furthermore, HAR § 17-1601-6(16)(B) and (C)’s requirement that the state’s attorney or a judge publicly disclosed the information in a report and/or made a public disclosure clearly indicates that the report and/or public disclosure are what is allowed to be disclosed to the public, but it does not include information, like the trial exhibits in this case, that was not publicly disclosed. The rules obviously contemplate that portions of a record related to a report of abuse may be disclosed without requiring the release of every document related to that report. Here, the trial exhibits were submitted to the court for the adjudication of Plaintiff’s claim with the intent that this Honorable Court would treat the exhibits as confidential information. The trial exhibits were not filed into the court’s public docket for this action. As a result, the trial exhibits were not public disclosures.

Finally, Public First’s MIO argues that this Honorable Court may simply order the disclosure of the trial exhibits upon Public First Law Center’s showing of good cause. *See* Public First’s MIO at p. 8. *See* HRS § 346-10(a)(11) (conditioning the disclosure upon a showing of good cause by the party seeking the release of the records). Unfortunately for Public First Law Center and Civil Beat, other than a conclusory statement that “[t]here is abundant good cause and legitimate purpose to disclosing the trial exhibits . . . considered by this court before finding DHS grossly negligent in its care of Roe[,]” Public First’s MIO only argument for its good cause is that judicial transparency is a necessary means to build public trust and understanding. *See* Public First’s MIO at p. 8. This supposed “good cause” was taken care of by this Honorable Court when it issued and filed the Court’s FOF/COL, which issued 173 findings of fact and 44 conclusions of law. *See* Dkt. 463. The Court’s FOF/COL clearly establishes the facts that this Honorable Court found relevant to the issue of the case and further stated its justifications for its findings. The Court’s FOF/COL clearly provides Public First Law Center and Civil Beat with all the information they need to understand how and why this Honorable

Court awarded a nearly \$500,000.00 judgment against the State. Public First Law Center and/or Civil Beat have not provided any good cause as to why they need the trial exhibits. The Court has a duty, consistent with HRS § 346-10 and HRS § 350-1.4, to protect the confidentiality and privacy of victims and witnesses of child abuse and neglect. Public First Law Center and Civil Beat need to provide a compelling reason to overcome the Court's duty to those victims and witnesses in this case. They have failed to meet that burden.

C. CIV. BEAT L. CTR. FOR PUB. INT., INC. V. MAILE DOES NOT MANDATE THE RELEASE OF THE RECORDS

Public First's MIO argues that the State asks this Court to make the "same error" that was at issue in *Civ. Beat L. Ctr. For Pub. Int., Inc. v. Maile*, 117 F.4th 1200 (9th Cir. 2014). In that case, the Ninth Circuit held that the HCRR could not impose a blanket seal on all medical records. *Maile*, 117 F.4th at 1212. In so holding, it recognized that "protecting an individual's constitutional and statutory right to privacy is a compelling interest that may justify sealing a particular medical or health record." *Maile*, 117 F.4th at 1210. However, it recognized that blanket sealing could not be justified for all medical records because an individual's privacy interest implicated by a particular record may vary. *Maile*, 117 F.4th at 1210-1211.

The holding in *Maile* does not mandate the release of the records in this case. As an initial matter, the Ninth Circuit did not discuss the privacy interests implicated by social service reports, which are a much narrower category of records than all medical records. And as discussed in the State's Motion, the State has a compelling interest in keeping social service reports private beyond protecting the privacy interests of the specific parties involved – ensuring privacy allows victims and witnesses of abuse to speak freely.

In any case, *Maile* did not hold that medical records can never be sealed; it merely held that "Hawai'i courts [must] consider motions to seal medical and health records on a case-by-case basis[.]" *Maile*, 117 F.4th at 1212. That is *exactly* what the Court is doing in this case. As *Maile* articulates, sealing is appropriate if "necessitated by a compelling government interest, and is narrowly tailored to serve that interest[.]" *Maile*, 117 F.4th at 1212 (cleaned up). As the State argues in its Motion, these requirements are clearly satisfied in this case.¹

¹ The State cited to the HCRR in Section D. of its Motion not to argue for a "blanket sealing" of all social service reports, but to emphasize that the records were submitted to the court as confidential records and sealed pursuant to the Protective Orders and thus, are not currently public records under the court rules until the Court decides to unseal them.

D. THE STATE PROVIDED A COMPELLING INTEREST FOR SEALING TRIAL EXHIBITS

The State's compelling interest in protecting the privacy and dignity of the victims, witnesses, and families experiencing the trauma of child abuse and neglect is expressed in multiple State laws including HRS § 346-10, HRS § 350-1.4, and HRS § 587A-40. These laws represent the codification of the compelling State interest in protecting these families from public scrutiny of the most intimate and painful parts of their lives.

The interest is so compelling that the Supreme Court of the State of Hawai'i (the "**Hawai'i Supreme Court**"), in its ruling on Child Welfare Services records, recognized that it could only be overcome when the public interest was in learning what went wrong when a child went missing, died, nearly died, or suffered a critical injury. *Pub. First L. Ctr. v. Viola*, No. SCPW-24-0000464, 2025 WL 2779088 at *3–5 (Haw. Sept. 30, 2025). Even in those cases, the Hawai'i Supreme Court continued to recognize that the siblings of those children suffering tragic fates do not lose their right to privacy and dignity because of what happened to their sibling. *Viola*, No. SCPW-24-0000464, 2025 WL 2779088 at *3–5. The Hawai'i Supreme Court crafted a narrow exception to the common understanding that these children and families deserve privacy. *Viola*, No. SCPW-24-0000464, 2025 WL 2779088 at *5.

Public First's MIO makes the following argument: "Trial exhibits concerning DHS's gross negligence in caring for a foster child – leading to a \$500,000 judgment – are obviously of legitimate concern to the public for numerous reasons." *See* Public First's MIO at p. 10. Public First's MIO fails to state what the numerous reasons are. Because Public First Law Center and/or Civil Beat were provided with an opportunity provide the undisclosed "numerous reasons" and chose not to do so, thus depriving the State the opportunity to contest the undisclosed "numerous reasons," this Honorable Court should not allow Public First Law Center and/or Civil Beat to raise these undisclosed "numerous reasons" during the oral hearing for this motion. Allowing Public First Law Center and/or Civil Beat to raise these undisclosed "numerous reasons" will deprive the State of a fair opportunity to research and dispute the undisclosed "numerous reasons."

That being said, assuming Public First Law Center's and/or Civil Beat's conclusory statement that "[t]here is abundant good cause and legitimate purpose to disclosing the trial exhibits . . . considered by this court before finding DHS grossly negligent in its care of Roe[.]" is their "good cause" for the disclosure of the trial exhibits, then the court should keep in mind

that the trial exhibits reflect the private and painful details of the personal childhoods of the victims and witnesses in this case. Those victims and witnesses are not responsible for the behavior of DHS or the accused foster father. The legitimate concern about DHS action should not be used to violate the privacy and confidentiality of the truly innocent victims who have not consented to be used as case studies in what DHS did wrong.

E. THE STATE ESTABLISHED A SUBSTANTIAL PROBABILITY OF HARM TO A COMPELLING INTEREST

As noted above, the State's compelling interest in protecting the privacy and dignity of the victims, witnesses, and families experiencing the trauma of child abuse and neglect is expressed in multiple State laws including HRS § 346-10, HRS § 350-1.4, and HRS § 587A-40. These laws represent the codification of the compelling State interest in protecting these families from public scrutiny of the most intimate and painful parts of their lives. Disclosing the trial exhibits, which reflect the private and painful details of the personal childhoods of the victims and witnesses in this case, will harm the State's compelling interest by making public all of the victims', witnesses', and families' private and painful details.

HRS § 346-10 mandates that "[a]ll applications and records concerning any applicant or recipient shall be confidential." HRS § 346-10(a). Which means, if the trial exhibits are disclosed, then a violation of HRS § 346-10 will occur. This violation is a harm the Hawai'i State Legislature's stated purpose for HRS § 346-10.

As for the argument presented in Public First's MIO, many of the filings in this action contain information from the trial exhibits, said disclosures were allowed by HRS § 346-10 because they were limited to a purpose directly connected to this action and were required for the proper adjudication of this action. HRS § 346-10(a)(2). Furthermore, HAR § 17-1601-6 allows for these disclosures because the disclosures were made for a legitimate state purpose and were made as part of the court's and the parties' official duty. HAR § 17-1601-6(16)(B).

Furthermore, not all of the evidence contained in the trial exhibits was found to be pertinent, by the court, for its decision. The pertinent evidence from the trial exhibits are detailed in the Court's FOF/COL, which as noted above provides Public First Law Center and/or Civil Beat with all the information it needs to know about as to why this Honorable Court awarded a nearly \$500,000.00 judgment against the State.

As a result, just because some of the information in the trial exhibits was used by the court to make its determination, it does not mean that all of the information contained in the trial

exhibits should be made public. For example, the trial exhibits contain information about issues that John Roe had in other prior foster homes, which were not found to be pertinent to the court's ruling. So, the question becomes why should this information become public? The answer is it should not.

As for Public First Law Center and/or Civil Beats argument "nothing about the plain language or history of the cited confidentiality statutes reflects legislative intent to help cover-up DHS nonfeasance in this context[.]" (Public First's MIO at p. 11) no such cover-up is being attempted. The Court's FOF/COL clearly states why DHS were found to be grossly negligent. If the State were attempting to cover this up, then it would be seeking to have all for the documents filed in this case sealed. The State is not seeking to have all of the documents filed in this case sealed. The State is simply seeking to seal the trial exhibits, which contain statutorily protected confidential information.

F. SEALING IS NARROWLY TAILORED TO PROTECT AGAINST A VIOLATION OF HRS § 346-10

Once again, this is not a situation where the court needs to balance a privacy interest against the public's right to access. HRS § 346-10 mandates that "[a]ll applications and records concerning any applicant or recipient shall be confidential." HRS § 346-10(a). Which means, if the trial exhibits are disclosed, then a violation of HRS § 346-10 will occur. Sealing the trial exhibits is the only way to protect against a violation of HRS § 346-10.

In this case, the portions of the trial exhibits most relevant to Public First Law Center's and/or Civil Beat's alleged public interest are reflected in the Court's FOF/COL. Any other information, especially information that could be used to identify innocent victims and witnesses, cannot be further disclosed. An appropriate redacted record would likely require redacting everything that is not already reflected in the Court's FOF/COL. Disclosing any further information, given the small number of victims who lived with Mr. Texeira, would lead to the unintentional disclosure of their identities, their personal histories, and the trauma they suffered as children. It would also lead to the unintentional disclosure of the struggles of their families in a way that would not further the alleged public interest articulated by Public First Law Center and/or Civil Beat.

With regard to Public First Law Center's and/or Civil Beat's argument that the "[u]nsealing court records in abuse and neglect cases enhances public understanding, discussion, and analysis on the practices and processes that occur in CPA proceeding" (*Pub. First L. Ctr. v.*

Viola, No. SCPW-24-0000464, 2025 WL 2779088 at **3-5 (Haw. Sept. 30, 2025)) is misleading. A complete reading of the case exposes the true ruling of the case, which is “a family court may find a ‘legitimate purpose’ to disclose information from a CPA proceeding where a foster child is missing, has suffered a near fatality, been critically injured, or has died.” *Viola*, No. SCPW-24-0000464, 2025 WL 2779088, at *5. In the case at hand, John Roe was not missing, did not suffer a near fatality, was not critically injured, and nor did he die. As a result, this Honorable Court is under no obligation to find that there is a legitimate purpose to disclose the information.

Furthermore, because the issue before this Honorable Court is whether the trial exhibits should be sealed pursuant to HRS § 346-10, this Honorable Court should keep in mind that HRS § 346-10 provides Public First Law Center and/or Civil Beat with a means to unseal the exhibits.

HRS § 346-10 allows the court, after an in-camera review of the records, to disclose the records to Public First Law Center and/or Civil Beat. HRS § 346-10(a)(11). However, HRS § 346-10 requires that such a disclosure may only happen upon a showing of good cause by the party seeking the release of the records. HRS § 346-10(a)(11).

In this motion, Public First Law Center and/or Civil Beat have not provided such a showing of good cause. Public First Law Center and/or Civil Beat make several conclusory statements regarding their good cause but fail to articulate what their good cause is (e.g. “Trial exhibits concerning DHS’s gross negligence in caring for a foster child – leading to a \$500,000 judgment – are obviously of legitimate concern to the public for numerous reasons.”). See Public First’s MIO at p. 10. As a result, Public First’s MIO cannot be viewed by this Honorable Court as a means to invoke HRS § 346-10(a)(11).

III. CONCLUSION

This Honorable Court should grant *Defendant State of Hawaii’s Motion to Seal Trial Exhibits* because: 1) the stipulated protective orders and HCRR 10.4 require this Honorable Court, as a recipient of the confidential records, to limit the access of the confidential documents to the court and court personnel in the performance of their duties; 2) HRS § 346-10 has not been found to be unconstitutional and until such a ruling is made, this Honorable Court is bound to uphold the protections mandated by HRS § 346-10; 3) the *Maile* decision does not require the records at issue to be unsealed; 4) HRS § 346-10 is the compelling interest for sealing the trial exhibits; 5) if the trial exhibits are disclosed, then a violation of HRS § 346-10 will occur and

said violation will harm the Hawai‘i State Legislature’s stated purpose for HRS § 346-10; and 6) sealing the trial exhibits if the only way to protect against a violation of HRS § 346-10, because Public First Law Center and/or Civil Beat have not provided enough information to establish a good cause for their need for the trial exhibits, which means Public First’s MIO cannot be view by this Honorable Court as a means to invoke HRS § 346-10(a)(11).

DATED: Honolulu, Hawai‘i, October 16, 2025.

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/s/ David N. Matsumiya

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CERTIFICATE OF SERVICE

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The undersigned hereby certifies that on the date stated below, a copy of the foregoing document was duly served upon the parties named below via the method indicated below.

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