ROBERT BRIAN BLACK 7659
BENJAMIN M. CREPS 9959
700 Bishop Street, Suite 1701
Honolulu, Hawai`i 96813
brian@publicfirstlaw.org
ben@publicfirstlaw.org
Telephone: (808) 531-4000
Facsimile: (808) 380-3580

Attorneys for Public First Law Center

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' SECOND MOTION TO SEAL SUMMARY JUDGMENT EXHIBITS [DKT. 216]

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Pursuant to the public right of access guaranteed by the First Amendment of the United States Constitution and Local Rule 5.2(c), 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", "F," "G," and "H" Under Seal [Dkt. 216] filed November 17, 2025, in *Archie John McCoy, and "A.A" v. Lena Kakehi, et al.*, Civ. No. 21-63 SASP-RT (motion).[1]

State Defendants' motion to seal is a near carbon-copy of its prior motion to seal summary judgment exhibits filed September 29, 2025. Dkt. 191. They again (1) cite the common law right to access court records, but ignore the stronger *constitutional* right; (2) fail to provide a sufficient basis to overcome the constitutional presumption of public access to judicial records; (3) fail to address the fact that the information in the subject exhibits has already been publicly disclosed throughout the extensive record before this court; and (4) fail to address the fact that limited redaction can adequately protect the compelling interest of protecting the identity of a minor. The motion to seal should be denied in all other respects, for the reasons discussed below.[2]

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[1] "Dkt." refers to the corresponding docket entry in *McCoy v. Kakehi*, Civ. No. 21-CV-63 SASP-RT, unless otherwise specified.

[2] As reflected in the filings by EPIC Defendants, the State Defendants did not need to file a motion to seal to redact the identity of minors—either pursuant to Fed. R. Civ. P. 5.2(a) or because such identifying information is not necessary for this Court's determination.

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.

There are three summary judgment motions before the court—State Defendants, Defendants Effective Planning and Innovative Communication, Inc. d.b.a. EPIC 'Ohana and Kathleen Shimabukuro (together, EPIC Defendants), and Plaintiff. Dkt. 188, 189, 193, 195.

Only State Defendants have sought to seal their supporting exhibits, asserting the records were confidential Department of Human Services (DHS) and Family Court records related to A.A. Dkt. 191.

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*. Public First filed an objection on October 24. Dkt. 1 (Misc. No. 25-383).

On November 17, State Defendants filed the motion to seal four exhibits submitted in opposition to Plaintiff's motion for summary judgment. Dkt. 216.

- Exhibit "F" is a family court order that has been described and quoted in the record. *E.g.*, Dkt. 217 at PageID.5379, 5384-85; Dkt. 218 at PageID.5410; *see also In re AA*, 150 Hawai`i 270, 274, 280-282, 285, 500 P.3d 455, 459, 465-67, 470 (2021).

- Exhibit "E", "G" and "H" are family court orders that have been disclosed. Dkt. 190 at PageID. 3347-51 (Ex. "E"); Dkt. 214 at PageID.4660-65 ("Ex. G"), PageID.4599-610 (Ex. "H").

Additionally, the factual substance of subject exhibits has been disclosed in the public record through DHS and family court records, deposition testimonies, and other summary judgment filings. *E.g.*, Dkt. 190 at PageID.3343-56 (petition for removal, order defaulting Arseny Alwis and "unknown natural father" and placing A.A. in foster care); Dkt. 218 at PageID.4569-672 (family court orders, safe family home reports, social service records).

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.

[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. 216-5 at PageID.5362; *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.").

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. 216-5 at PageID.5363-94. The Hawai`i State Legislature, however, cannot force a federal court to seal court records contrary to the U.S. Constitution. And those statutes by their own terms 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 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 subject 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, as discussed above. *See also In re Public First Law Center*, No. 25-MC-383 Dkt. 1 at PageID.11-13 (outlining a multitude of factual disclosures in parties' summary judgment submissions in this case).

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 (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 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, three of the four exhibits at issue have already been filed publicly and the substance of all of them has, ostensibly, been disclosed already and extensively discussed in public filings in connection with the summary judgment briefings.

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.

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. 216-5 at PageID.5365 ¶ 9. 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 are 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).[4] And as the Hawai`i Supreme Court recently held, redaction of

[4] *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

minors' names can address privacy concerns in Family Court records. *Id.* at *13-14 ("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. 216-5 at PageID.5364. 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. 216-5 at PageID.5364. First, EPIC Defendants demonstrated that redaction is in fact

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that absolute confidentiality is not the rule, even in family court cases concerning child protective act proceedings and adoption. *Id*.

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' opposition to Plaintiff's motion for summary judgment 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 insufficient justification to seal).

CONCLUSION

Based on the foregoing, the Public First respectfully requests that the Court deny the motion to seal, except to allow State Defendants to properly redact the identities of minors.

DATED: Honolulu, Hawai`i, November 21, 2025

/s/ Benjamin M. Creps
ROBERT BRIAN BLACK
BENJAMIN M. CREPS
Attorneys for Public First Law Center