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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JARED JAMES,

Plaintiff,

vs.

PATRICK J. O'DONNELL, M.D.;
SUSAN TAN, M.D.; SELENA PETERS,
M.D.; MERLA TAKENAKA RN;
KAPIOLANI MEDICAL SPECIALISTS;
KAPIOLANI MEDICAL CENTER FOR
WOMAN AND CHILDREN; HAWAII
PACIFIC HEALTH,

Defendants,

CIVIL NO. 1CCV-21-0000683 (SMK)

MOTION TO UNSEAL;
MEMORANDUM OF LAW IN
SUPPORT OF MOTION TO UNSEAL;
APPENDIX "1"; and CERTIFICATE OF
SERVICE

JUDGE: Hon. Shirley M. Kawamura

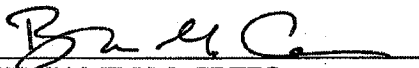
MOTION TO UNSEAL

Pursuant to the constitutional right of access provided by the First Amendment of the U.S. Constitution; article I, section 4 of the Hawai'i Constitution; the common law right of access; and Hawai'i Court Records Rule (HCRR) 10.10¹, Public First Law Center respectfully requests that the Court unseal the following court records:

¹ Public First conventionally filed and served this motion because, if added as an electronic filer to the case, it would have electronic access to the documents that it is seeking to unseal. HCRR 10.4.

- Dkt. 115 Memorandum in Opposition to Motion for Declaratory Judgment, in the Alternative Motion for Judgment on the Pleadings and Exhibit B;
- Dkt. 347 Supplemental Memorandum in Support of Motion to Compel Discovery and Exhibits A-B;
- Dkt. 358 Memorandum in Support of Motion for Summary Judgment and Exhibits B-D and H-I;
- Dkt. 387 and 388 Memorandum in Support of Motion for Summary Judgment and Exhibits B, C-2, D-2, E, I, J, and K; and
- Dkt. 474 Memorandum in Opposition to Motion for Partial Summary Judgment and Exhibits D and F.

DATED: Honolulu, Hawai'i, April 27, 2026


BENJAMIN M. CREPS
Public First Law Center
Attorney for Movant Public First Law Center

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JARED JAMES,

Plaintiff,

vs.

PATRICK J. O'DONNELL, M.D.;
SUSAN TAN, M.D.; SELENA PETERS,
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WOMAN AND CHILDREN; HAWAII
PACIFIC HEALTH,

Defendants,

CIVIL NO. 1CCV-21-0000683 (SMK)

MEMORANDUM OF LAW IN
SUPPORT OF MOTION TO UNSEAL

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO UNSEAL

Public First Law Center (Public First) respectfully moves for access to the sealed records. The constitutional standards for sealing have not been met.

Even medical records, when filed for consideration by a court, must satisfy the procedural and substantive requirements for sealing. *E.g., Civil Beat Law Ctr. for the Pub. Int., Inc. v. Maile*, 117 F.4th 1200, 1211-12 (9th Cir. 2024) (“[W]e are not persuaded that mandatory, categorical sealing of all medical and health records is the least restrictive means of protecting Hawai‘i residents’ privacy rights.”). In striking down HCRR 9 in part as unconstitutional, the Ninth Circuit recognized that courts cannot reflexively seal records, including medical records, because—among other reasons—the patient, as here, may not want the records sealed. *Id.* at 1211 (“Not everything that might qualify as a medical or health record necessarily contains information that is private, and *not everyone may care to keep every medical or health record private.*” (emphasis added)).

Moreover, procedurally, the public (and Plaintiff) lacked sufficient notice and opportunity to be heard before the Court granted the motions to seal—most of which

were *ex parte*. The *ex parte* motions also did not comply with the requirements of Rule 7.2(f)(1) and (2) of the Rules of the Circuit Courts of the State of Hawaii (RCCH).²

The sealed records concerning Plaintiff's medical documents (Dkt. 115, 347, 358, 387, 388, and 474) should be unsealed consistent with Plaintiff's express and repeated waivers.

I. Factual Background

Plaintiff commenced this action by complaint filed May 25, 2021, as amended on May 26, 2023, alleging among other claims medical malpractice. Dkt. 1, 92.

On August 20, 2024, Defendants Patrick J. O'Donnell, M.D., Susan Tan, M.D., and Kapi'olani Medical Specialists (collectively, Kapiolani Defendants) filed a sealed memorandum in opposition to Plaintiff's motion for declaratory judgment. Dkt. 115. The basis for the sealed filing was Plaintiff's health and medical information.³ Dkt. 114, 116. On March 4, 2026, Kapiolani Defendants filed a motion to seal an unredacted memoranda in support of their motion to compel, together with its supporting exhibits. Dkt. 267. The sole justification for sealing was Plaintiff's medical privacy. *Id.* at 3.⁴ The motion was granted that same day, merely reciting the substantive constitutional elements for sealing without any specific findings to support closure, other than reference to Plaintiff's medical privacy as a compelling interest. Dkt. 273. Kapiolani Defendants then filed those documents under seal. Dkt. 347.

On March 27, Kapiolani Defendants filed an *ex parte* motion to seal an unredacted copy of the memorandum and Exhibits "B", "C-2", "D-2", "E", "I", "J", and

² RCCH 7.2(f) in relevant part provides:

(f) *Ex parte* motions. A motion entitled to be heard *ex parte* shall:

(1) cite the statute, rule, or other authority authorizing the court to entertain the motion *ex parte*;

(2) be supported by an affidavit or declaration stating the reason(s) for filing the motion *ex parte*, the efforts made to notify parties

³ The Kapiolani Defendants filed the document under seal without a motion to seal as required by HCRR 9 at the time—before ruled unconstitutional by the Ninth Circuit.

⁴ Pinpoint citations reference the corresponding pages of the PDF.

"K" submitted in support of their motion for summary judgment. Dkt. 352. The sole justification for sealing was Plaintiff's medical privacy. *Id.* at 6. The court granted the motion on the following business day, March 30, merely reciting the substantive constitutional elements for sealing without any specific findings to support closure other than reference to Plaintiff's medical privacy as a compelling interest. Dkt. 368. Kapiolani Defendants then filed those documents under seal. Dkt. 387, 388.

On March 30, Defendants Merla Takenaka, RN, Kapiolani Medical Center for Women and Children, and Hawaii Pacific Health (collectively, Pacific Health Defendants) filed an *ex parte* motion to seal an unredacted copy of the memorandum and Exhibits "B," "C," "D," "H," and "I" submitted in support of their motion for summary judgment. Dkt. 359. The sole justification for sealing was Plaintiff's medical privacy. *Id.* at 5. The court granted the motion the following business day, on March 31, merely reciting the substantive constitutional elements for sealing without any specific findings to support closure, other than reference to Plaintiff's medical privacy as a compelling interest. Dkt. 382.

On April 21, Kapiolani Defendants moved *ex parte* to seal an unredacted memorandum in opposition to Plaintiff's motion for summary judgment, together with Exhibits "D" and "F". Dkt. 473. The sole justification for sealing was Plaintiff's medical privacy. Dkt. 473 at 3. The Court granted the motion on April 23, merely reciting the substantive constitutional elements for sealing without any specific findings to support closure, other than reference to Plaintiff's medical privacy as a compelling interest. Dkt. 483.

Notwithstanding these concerns about Plaintiff's medical privacy, Plaintiff has repeatedly stated that he is not asserting any such privacy rights. On February 21, Plaintiff filed a motion to unseal the Kapiolani Defendants' answer (Dkt. 84) and vacate the HCRR 9 confidentiality designations. Dkt. 243. Plaintiff expressly and broadly waived his rights to medical information privacy:

Plaintiff Jared James unequivocally states to this Court that he does not seek confidentiality for his medical records in this litigation, and he explicitly waives any privacy objection to their disclosure. . . . Where the patient affirmatively waives confidentiality and places the medical

condition in controversy, a defendant does not possess an independent privacy interest sufficient to overcome the presumption of public access.

Id. at 5. On March 30, Plaintiff reaffirmed that waiver by publicly filing his medical records as exhibits to his motion for partial summary judgment. *E.g.*, Dkt. 370, 371, 372. And again on April 6, Plaintiff asked to unseal various documents under seal based on his medical privacy (Dkt. 115, 269, 347, 353, 354, 358, 387, and 388). Dkt. 405. He explained: "Plaintiff has previously stated on the record in open court that he waives any and all privacy rights in his medical records and related case documents." *Id.* at 4. He then concludes: "Defendants cannot assert Plaintiff's personal privacy rights over Plaintiff's express objection and waiver." *Id.*

II. Legal Standards

The Hawai'i Supreme Court has recognized that the public has the constitutional right to access judicial proceedings and records, including records filed in civil cases. *Grube v. Trader*, 142 Hawai'i 412, 422, 420 P.3d 343, 353 (2018); *see also Oahu Public's, Inc. v. Ahn*, 133 Hawai'i 482, 493 & n.14, 496 & n.18, 507, 331 P.3d 460, 471 & n.14, 474 & n.18, 485 (2014); *Estate of Campbell*, 106 Hawai'i 453, 462-63, 106 P.3d 1096, 1105-06 (2005) (observing that the public generally has the right "to inspect and copy public records and documents, including judicial records"). "[T]here is a strong presumption that court proceedings and the records thereof shall be open to the public." *Grube*, 142 Hawai'i at 428, 420 P.3d at 359. The proponent of sealing has the burden to overcome this presumption of access. *Oregonian Publ'g Co. v. U.S. Dist. Court*, 920 F.2d 1462, 1467 (9th Cir. 1990).

To safeguard the public's right of access, there are "procedural prerequisites" to closure that must be met in order to preserve the presumption of openness. *Ahn*, 133 Hawai'i at 497-98, 331 P.3d at 475-76; *accord Grube*, 142 Hawai'i at 423, 420 P.3d at 354.

First, the public must be provided notice and an opportunity to be heard before closure occurs. *Grube*, 142 Hawai'i at 423, 420 P.3d at 354 ("motions requesting closure must be docketed a reasonable time before they are acted upon."). Courts must provide the public "a meaningful opportunity to object or offer alternatives to the closure." *Id.* at 424, 420 P.3d at 355.

Second, the court must enter an order and "the reasons supporting closure must be articulated in findings." *Ahn*, 133 Hawai'i at 497-98, 331 P.3d at 475-76. "Requiring specific findings on the record enables the trial court to address each element necessary for closure and allows an appellate court to review the reasoning of the trial judge to ensure that protection of the public right was adequately considered." *Id.* at 498, 331 P.3d at 476. The order must provide "findings that 'the closure is essential to preserve higher values' and that the closure is 'narrowly tailored' to serve that interest." *Grube*, 142 Hawai'i at 424, 420 P.3d at 355; *Ahn*, 133 Hawai'i at 507, 331 P.3d at 485. The court thus must address specifically 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." *Grube*, 142 Hawai'i at 424, 420 P.3d at 355.

The trial court may not rely on "generalized concerns" but *must indicate facts* demonstrating "a compelling interest justifying the continued sealing of the hearing transcript." Additionally, the court must "specifically explain the necessary connection between unsealing the transcript" and the infliction of irreparable damage resulting to the compelling interest.

Ahn, 133 Hawai'i at 507, 331 P.3d at 485 (emphasis added) (citations omitted).

Without these procedural protections, the public's qualified right of access under the First Amendment is an empty guarantee.

The procedural and substantive safeguards of the public's right of access are not mere punctilios, to be observed when convenient. Those safeguards provide the essential, indeed only, means by which the public's voice can be heard. All too often, parties to the litigation are either indifferent or antipathetic to disclosure requests. This is to be expected: it is not their charge to represent the rights of others. However, balancing interests cannot be performed in a vacuum. Thus, providing the public notice and an opportunity to be heard ensures that the trial court will have a true opportunity to weigh the legitimate concerns of all those affected by a closure decision. Similarly, entry of specific findings allows fair assessment of the trial judge's reasoning by the public and the appellate courts, enhancing trust in the judicial process and minimizing fear that justice is being administered clandestinely.

Ahn, 133 Hawai'i at 498, 331 P.3d at 476 (cleaned up) (alterations in original).

The constitutional right of access attaches to medical court records. *Maile*, 117 F.4th at 1211-12. While medical privacy can be a compelling reason to deny public access in particular circumstances, it does not warrant automatic sealing. *Id.* at 1212 (“[W]e are not persuaded that mandatory, categorical sealing of all medical and health records is the least restrictive means of protecting Hawai’i residents’ privacy rights.”); accord *Globe Newspaper Co. v. Super. Ct.*, 457 U.S. 596, 607-08 (1982) (“But as compelling as that interest is, it does not justify a mandatory closure rule, for it is clear that the circumstances of the particular case may affect the significance of the interest.”). Accordingly, motions to seal medical and health records must be made and considered by judges “on a case-by-case basis.” *Maile*, 117 F.4th at 1212-13.

“Where the presumptive First Amendment right of access attaches, such a procedure ensures the protection of the individual right to privacy without unnecessarily burdening the constitutional rights of the public.” *Id.* And where a “litigant wishes to make their private information public” sealing “serves to protect no interest at all.” *Id.* at 1211 (emphasis added).

III. The Procedural Requirements for Sealing Were Not Met.

As noted, prior to sealing, the public must be afforded a “reasonable time” to state their objections. *Grube*, 412 Hawai’i at 423, 420 P.3d at 354. The time required “must generally be sufficient to afford the public an opportunity to intervene prior to the sealing.” *Id.* The court must also enter “specific findings on the record.” *Ahn*, 133 Hawai’i at 497-98, 331 P.3d at 475-76. None of the sealed records comply with the procedural requisites.

None of the sealed filings provided sufficient notice and opportunity to be heard. The Court provided—at best—two business days in one instance (Dkt. 483). The public had no opportunity to intervene prior to sealing. E.g., RCCH 7.2(c) (affording 10 days for opposition to a non-hearing motion). Worse, depriving even Plaintiff of an opportunity to respond, most of the motions were filed *ex parte* without complying with RCCH 7.1(f). RCCH 7.2(f)(1)-(2); see also *Acopan v. Elegant Concepts, LLC*, No. CAAP-16-609, 2020 Haw. App. LEXIS 251, at *7 (Haw. App. June 29, 2020) (mem.) (“Pacific’s *Ex Parte* Motion did not comply with RCCH Rule 7.2(f) because it did not cite any statute,

rule, or other authority allowing the circuit court to entertain the motion *ex parte*, and because it was not supported by an affidavit or declaration stating a reason for filing the motion *ex parte*." [footnote omitted]) (Attached as Appendix "1").

Also, the sealing orders contained only boilerplate recitations of the law and lacked "specific findings" addressing each element necessary for closure. Dkt. 273, 368, 382, 483. The orders do not address Plaintiff's waiver of medical privacy—expressed before any of the 2026 motions to seal. *E.g.*, Dkt. 243. And, even without the Plaintiff's waiver, the orders fail to explain how medical privacy justifies hiding the most important information at the heart of a medical malpractice case when dispositive motions have been filed. Absent case-specific facts finding a compelling interest, substantial probability of harm to that interest, and lack of alternatives, blanket and conclusory assertions of privacy protections do not usurp the constitutional right of access to court records.

IV. The Substantive Requirements for Sealing Have Not Been Met.

A compelling interest sufficient to overcome the right of access, based on medical privacy, cannot exist where, as here, the person it belongs to has explicitly waived it.

When medical records are at issue, the presumption of public access still applies. *Maile*, 117 F.4th at 1212. As noted, privacy interests in medical information can constitute a compelling interest, but such interests belong to the subject of the medical information. *E.g.*, *id.* at 1210 ("The individual right to privacy may justify closure where such a right is asserted *by the affected individual* and the court makes pre-closure findings as to the significance of the interest and necessity of closure.") (emphasis added); *accord*, *e.g.*, *Franklin v. Arguello*, No. 3:15-cv-196-RCJ-WGC, 2017 U.S. Dist. LEXIS 31254, at *6 (D. Nev. Mar. 6, 2017) (after plaintiff waiver of privacy interest in medical records, "compelling reasons no longer exist for sealing the records"); *see also* Dkt. 344 (Kapiolani Defendants "recognize that these privacy rights belong to Plaintiff").

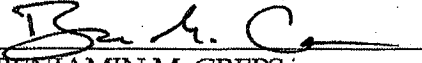
Here, the holder of the relevant privacy interests, Plaintiff, has repeatedly waived his privacy interests in the sealed records. *See, e.g.*, Dkt. 243, 405. He has also publicly filed several of his medical records in this case. *E.g.*, Dkt. 370, 371, 372. Despite the clarity of this waiver, the Kapiolani Defendants and Pacific Health Defendants have

sealed, and continue to seal, records based solely on Plaintiff's medical privacy. Dkt. 267 at 3; Dkt. 352 at 6; Dkt. 359 at 5; Dkt. 473 at 3. There is no basis to maintain these records under seal.

V. Conclusion

For the foregoing reasons, Public First respectfully requests that this Court unseal Dkt. 115, 347, 358, 387, 388, and 474.

DATED: Honolulu, Hawai'i, April 27, 2026


BENJAMIN M. CREPS
Public First Law Center
Attorney for Movant Public First Law Center

APPENDIX "1"

Acopan v. Elegant Concepts, LLC

Intermediate Court of Appeals of Hawai'i

June 29, 2020, Decided; June 29, 2020, Electronically Filed

NO. CAAP-16-0000609

Reporter

2020 Haw. App. LEXIS 251 *; 147 Haw. 628; 465 P.3d 1075; 2020 WL 3499281

YOUNG ACOPAN, Plaintiff/Counterclaim Defendant-Appellee, v. ELEGANT CONCEPTS, LLC dba PACIFIC CRAFTWORKS, Defendant/Counterclaimant-Appellant, and JOHN DOES 1-10; JANE DOES 1-10; DOE CORPORATIONS 1-10; DOE PARTNERSHIPS 1-10; OR OTHER ENTITIES 1-10, Defendants

Notice: MEMORANDUM OPINIONS OF THIS COURT DO NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED. SEE HAWAII RULES OF APPELLATE PROCEDURE FOR GUIDELINES RESTRICTING PUBLICATION AND CITATION OF MEMORANDUM OPINIONS.

PUBLISHED IN TABLE FORMAT IN THE HAWAII REPORTER.

PUBLISHED IN TABLE FORMAT IN THE PACIFIC REPORTER.

Subsequent History: Writ of certiorari denied Acopan v. Elegant Concepts, LLC, 2020 Haw. LEXIS 362 (Haw., Nov. 27, 2020)

Prior History: [*1] APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT. Case No. 1CC131000247.

Case Summary

Overview

HOLDINGS: [1]-Appellate court lacked jurisdiction over the appeal, because appellant's notice of appeal was not filed within thirty days after entry of the order denying appellant's ex parte motion and the hearing motion did not toll the time for appellant to file a notice of appeal.

Outcome

Judgment affirmed.

Counsel: On the briefs: Keith M. Kiuchi, for Plaintiff/Counterclaim Defendant-Appellee.
Joseph N. A. Ryan, Jr., for Defendant/Counterclaimant-Appellant.

Judges: By: Ginoza, Chief Judge and Hiraoka, J., with Leonard, J., dissenting.

Opinion

MEMORANDUM OPINION

Defendant/Counterclaimant-Appellant Elegant Concepts, LLC, doing business as Pacific Craftworks (**Pacific**), appeals from the "Final Judgment" (**Judgment**) entered by the Circuit Court of the First Circuit¹ on February 22, 2016. When an appellate court perceives a jurisdictional defect in an appeal the court must, *sua sponte*, dismiss the appeal. *Ciesla v. Reddish*, 78 Hawai'i 18, 20, 889

¹The Honorable Jeannette H. Castagnetti presided.

P.2d 702, 704 (1995). We lack jurisdiction over Pacific's appeal from the Judgment because: (1) Pacific's notice of appeal (filed on September 2, 2016) was not filed within thirty days after entry of the March 14, 2016 order denying Pacific's "Ex Parte Motion to Amend and Supplement Findings of Fact and Conclusions of Law and/or Motion for New Trial or to Alter or Amend Judgment" (Ex Parte Motion); and (2) Pacific's "Motion for Order to Amend and Supplement Findings of Fact and Conclusions of Law and/or Motion for New Trial or to Alter or Amend Judgment" (filed on March [*2] 15, 2016) (Hearing Motion) did not toll the time for Pacific to file a notice of appeal from the Judgment because the Hearing Motion was not filed within the time required by Hawai'i Rules of Civil Procedure (HRCP) Rules 52 and 59. Pacific's notice of appeal was timely only as to the circuit court's August 15, 2016 order denying the Hearing Motion; however, the points of error² in Pacific's amended opening brief do not address that order, and Pacific presents no discernible argument concerning the circuit court's denial of the Hearing Motion.

Plaintiff/Counterclaim Defendant-Appellee Young Acopan (**Acopan**) filed a complaint against Pacific. The complaint alleged claims for unjust enrichment and deceptive trade practices. Pacific answered the complaint and asserted a counterclaim for breach of contract. The circuit court conducted a jury-waived trial and entered findings of fact, conclusions of law, and an order. Acopan moved for clarification of the findings and conclusions. An order granting Acopan's motion for clarification was entered. The Judgment was entered on February 22, 2016. It stated, in relevant part:

1. Judgment is entered as to Count I (Unjust Enrichment) in favor of Plaintiff Young Acopan ("Acopan") as against Defendant [*3] Elegant Concepts, LLC dba Pacific Craftworks ("Pacific Craftworks") in the amount of \$11,007.50.
2. Judgment is entered as to Count II (Deceptive Trade Practices) in favor of Defendant Pacific Craftworks as against Plaintiff Acopan.
3. Judgment is entered as to the counterclaim filed by Defendant Pacific Craftworks in favor of Defendant Pacific Craftworks as against Plaintiff Acopan in that Defendant Pacific Craftworks may retain \$28,192.50 of the deposit of \$39,200.00 paid by Plaintiff Acopan. This portion of the judgment shall not be construed to entitle [sic] Defendant Pacific Craftworks to any additional amount, but should be construed to allow Defendant Pacific Craftworks to retain the amount of \$28,192.50 of the amount that they have already received.

When the Judgment was entered on February 22, 2016, Rule 4 of the Hawai'i Rules of Appellate Procedure (eff. July 1, 2015) (HRAP) provided, in relevant part:

APPEALS - WHEN TAKEN.

(a) Appeals in civil cases.

(1) **TIME AND PLACE OF FILING.** When a civil appeal is permitted by law, the notice of appeal shall be filed within 30 days after entry of the judgment or appealable order.

....

(3) **TIME TO APPEAL AFFECTED BY POST-JUDGMENT MOTIONS.** If any party files a timely motion . . . to amend [*4] findings or make additional findings, for a new trial, to reconsider, alter or amend the judgment or order, or for attorney's fees or costs, the time for filing the notice of appeal is extended until 30 days after entry of an order disposing of the motion; provided, that the failure to dispose of any motion by order entered upon the record within 90 days after the date the motion was filed shall constitute a denial of the motion.

Thus, a notice of appeal from the Judgment was due by Wednesday, March 23, 2016, unless a timely motion "to amend findings or make additional findings, for a new trial, [or] to reconsider, alter or amend the judgment" was filed.

²We construe the section of the amended opening brief titled "Issues Presented for Review" as the statement of points of error, even though it does not fully comply with Rule 28(b)(4) of the Hawai'i Rules of Appellate Procedure (HRAP).

On February 26, 2016 (four days after entry of the Judgment), Pacific's Ex Parte Motion was stamped "received" by the circuit court.³ The Ex Parte Motion sought relief pursuant to HRCR Rules 52(b), 59(a), and 59(e), and included a proposed form of order. HRCR Rule 52 provides, in relevant part:

(b) **Amendment.** Upon motion of a party made not later than 10 days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59.

(Underscoring added.) HRCR Rule 59 provides, [*5] in relevant part:

NEW TRIALS; AMENDMENT OF JUDGMENTS.

....

(b) **Time for motion.** A motion for a new trial shall be filed no later than 10 days after entry of the judgment.

....

(e) **Motion to alter or amend judgment.** Any motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment.

(Underscoring added.) Because the Judgment was entered on February 22, 2016, motions under HRCR Rules 52 or 59 were due by Thursday, March 3, 2016. The Hawai'i Supreme Court has held that submission of a document to a circuit court clerk and the clerk's acceptance and date stamping of it as "received" constitutes a filing sufficient to satisfy jurisdictional requirements. See Doe v. Doe, 98 Hawai'i 144, 151, 44 P.3d 1085, 1092 (2002) (holding that the family court had jurisdiction over a motion for new trial and reconsideration based on the date that the clerk accepted and date stamped the document as "received"). In this case Pacific's timely submission of the Ex Parte Motion to the circuit court on February 26, 2016, extended the time for it to file a notice of appeal "until 30 days after entry of an order disposing of the motion." HRAP Rule 4(a) (3).

Under the language of the rule in effect at the time, if the circuit court failed to dispose of the motion within 90 days after the motion was filed, the motion would be deemed denied and the 30-day deadline for filing the notice of appeal would be triggered when a written order denying the motion was filed. Deutsche Bank Nat'l Tr. Co. v. Amasol, 135 Hawai'i 357, 358-59, 351 P.3d 584, 585-86 (2015) (citing Ass'n of Condo. Homeowners of Tropics at Waialeale v. Sakuma, 131 Hawai'i 254, 256, 318 P.3d 94, 96 (2013) (holding that when timely post-judgment tolling motion is deemed denied, 30-day deadline for filing notice of appeal is not triggered until entry of a judgment or appealable order)).

Rule 7.2 of the Rules of the Circuit Courts of the State of Hawai'i (eff. July 1, 2014) (RCCH) provides, in relevant part:

(f) **Ex parte motions.** A motion entitled to be heard ex parte shall

(1) cite the statute, rule, or other authority authorizing the court to entertain the motion ex parte;

(2) be supported by an affidavit or declaration stating the reason(s) for filing the motion ex parte, the efforts made to notify parties, and, if the motion is to shorten time or advance a hearing pursuant to subsection (g) (5) of this rule, the efforts made to obtain a stipulation or response from the other parties in the case or the reason(s) [*7] why no attempt was made;

(3) be accompanied by a proposed order; and

³ Pacific's Ex Parte Motion should have been filed as a non-hearing noticed motion under Rule 7.2(b) of the Rules of the Circuit Courts of the State of Hawai'i (eff. July 1, 2014) (RCCH), which provides:

(b) **Designation as hearing or non-hearing motion.** All written motions, other than motions entitled [*6] to be heard ex parte or those listed in Exhibit B attached to these rules, shall be designated as hearing motions and calendared for oral hearing[.]

Exhibit B to the RCCH (eff. Jan 1, 2012) lists "Alter or Amend Order or Judgment" as a non-hearing motion.

(4) be served on the date that the motion was presented to the court.

Pacific's Ex Parte Motion did not comply with RCCH Rule 7.2(f) because it did not cite any statute, rule, or other authority allowing the circuit court to entertain the motion ex parte,⁴ and because it was not supported by an affidavit or declaration stating a reason for filing the motion ex parte. Because the motion was lodged ex parte the circuit court followed the RCCH Rule 7.2 (eff. Jan. 1, 2012) procedure for processing ex parte motions:

(g) **Presentation of motions; copies for judge.** Unless otherwise provided by Rule 6 of the Hawai'i Court Records Rules ["Docketing documents from self-represented parties.'], the following rules shall apply:

(3) EX PARTE MOTIONS.

(A) Cases Assigned to a Judge. An ex parte motion accompanied by a proposed order shall be dated and stamped "lodged" or "received" by the Legal Documents Branch/Section clerk, listed on the docket, and transmitted to the assigned judge. Upon the judge's action on the motion, it shall be transmitted to the Legal Documents Branch/Section for filing[.]

On March 14, 2016, Pacific's Ex Parte Motion, stamped "DENIED 5th Division[.]" [*8] with an attached order signed by the circuit court and containing handwritten changes, was filed. Accordingly, Pacific's notice of appeal from the judgment became due 30 days later, on Wednesday, April 13, 2016. HRAP Rule 4(a)(3).

The dissent takes the view that what was entered by the circuit court on March 14, 2016, was not "an order disposing of the motion" as those words are used in HRAP Rule 4(a)(3), reasoning that "the Circuit Court's March 14, 2016 order denied the ex parte manner in which Pacific initially presented its motion," but not its substance. Dissent at 15 (italics in dissent). Respectfully, HRAP Rule 4(a)(3) does not restrict its application to a "substantive" order, or an order disposing of the motion "on its merits." Under the plain language of the rule, an order denying a motion on procedural grounds "disposes" of that motion, just as the failure to "dispose of any motion by order entered upon the record within 90 days after the date the motion was filed" would constitute a disposition under the version of the rule then in effect. Treating the Hearing Motion in the manner suggested by the dissent — as "an amendment" to the Ex Parte Motion — could result in procedural confusion; the Hearing [*9] Motion was not heard until June 1, 2016, but if it were treated as an amendment to the Ex Parte Motion, it would have been deemed denied on May 26, 2016 (90 days after the Ex Parte Motion was submitted and received). No hearing would have been necessary, because the circuit court at that point could only have entered an order denying the motion. Amason, 135 Hawai'i at 358-59, 351 P.3d at 585-86.

At any rate, the circuit court's handwritten changes to the proposed order attached to Pacific's Ex Parte Motion included re-titling the proposed order to read: "Order Denying Ex Parte Motion to Amend and Supplement Findings of Fact and Conclusions of Law." The circuit court also added the following handwritten provisions (shown in bold italics) to the proposed order:

Defendant Pacific Craftworks ***Motion shall be set as a hearing*** shall be awarded reasonable attorney's fees and costs of suit. ***motion and presented to the court for a hearing date in accordance with Circuit Court Rule 7.2(g).***⁵
The circuit court rule cited by the circuit court, RCCH Rule 7.2 (eff. July 1, 2014) provided, in relevant part:

(b) **Designation as hearing or non-hearing motion.** All written motions, other than motions entitled to be heard ex parte or those listed in Exhibit B attached to these rules [*10] [listing non-hearing motions], shall be designated as hearing motions and calendared for oral hearing; provided that discovery motions brought pursuant to Rules 26 through 37 of the Hawai'i Rules of Civil Procedure shall be governed by subsection (e) of this rule.

⁴ See, e.g., HRAP Rule 4(a)(4)(A) (allowing ex parte motion to extend time to file notice of appeal if filed "before the expiration of the prescribed time[.]"); HRCF Rule 6(d) (allowing ex parte application to shorten time for hearing or to advance hearing date); RCCH Exhibit B (allowing ex parte motion for extension of time to file pretrial statement); RCCH Rule 7.2(g)(1)(A)(i)(b) (allowing ex parte motions for service by publication, examination of judgment debtor, and issuance of garnishee summons).

⁵ It appears that the circuit court may have intended to strike the phrase "shall be awarded reasonable attorney's fees and costs of suit" and the period that followed, but the filed document was worded as stated in the block quote.

....
(g) **Presentation of motions; copies for judge.** Unless otherwise provided by Rule 6 of the Hawai'i Court Records Rules ["Docketing documents from self-represented parties."], the following rules shall apply:

(1) HEARING MOTIONS.

(A) Cases Assigned to a Judge.

(i) In the First Circuit, . . . the assigned judge shall designate the date and time of a hearing motion[.] Upon presentation of the hearing motion . . . to the assigned judge, the motion . . . shall be date-stamped, indicating date of receipt. Upon designation of the hearing date and time, the motion . . . shall be transmitted to the Legal Documents Branch/Section for filing.

On March 15, 2016, (the day after the denied Ex Parte Motion was filed by the circuit court) Pacific filed the Hearing Motion. The Hearing Motion was a new motion, filed after the circuit court denied the Ex Parte Motion. The filing of the Hearing Motion did not toll the time for Pacific to file a notice of appeal because the Hearing Motion was not filed within 10 days after [*11] entry of the Judgment, as required by HRCP Rules 52 and 59.

The Hearing Motion was heard on June 1, 2016. An order denying the Hearing Motion was entered on August 15, 2016. Pacific's notice of appeal was filed on September 2, 2016, more than 30 days after entry of the March 14, 2016 order denying Pacific's Ex Parte Motion. "An appellant's failure to file a timely notice of appeal is a jurisdictional defect that can neither be waived by the parties nor disregarded by the court in the exercise of judicial discretion." Enos v. Pac. Transfer & Warehouse, Inc., 80 Hawai'i 345, 349, 910 P.2d 116, 120 (1996) (citation omitted). We lack appellate jurisdiction to review the Judgment.

Pacific's notice of appeal was timely as to the August 15, 2016 order denying Pacific's Hearing Motion, but the points of error in Pacific's amended opening brief do not address that order, and Pacific presents no discernible argument concerning the denial of the Hearing Motion. Accordingly, the "Order Denying Defendant Elegant Concepts, LLC dba Pacific Craftworks Ex Parte [sic] Motion to Amend and Supplement Findings of Fact and Conclusions of Law and/or Motion for New Trial or to Alter or Amend Judgment, Filed on March 15, 2016" entered by the circuit court on August 15, 2016, is affirmed.

DATED: Honolulu, Hawai'i, [*12] June 29, 2020.

/s/ Lisa M. Ginoza

Chief Judge

/s/ Keith K. Hiraoka

Associate Judge

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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JARED JAMES,

Plaintiff,

vs.

PATRICK J. O'DONNELL, M.D.; et al.

Defendants,

CIVIL NO. 1CCV-21-0000683 (SMK)

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I certify that on the date set forth below, I will serve the foregoing document on the following by electronic mail, at the addresses listed below:

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DATED: Honolulu, Hawai'i, April 27, 2026


BENJAMIN M. CREPS