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Attorneys for Plaintiff Public First Law Center

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

PUBLIC FIRST LAW CENTER,

Plaintiff,

vs.

UNIVERSITY OF HAWAII,

Defendant.

CIVIL NO. 1CCV-26-0000569 (KLH)
(Other Civil Action)

MOTION FOR PARTIAL JUDGMENT
ON THE PLEADINGS AND
ALTERNATIVELY, FOR LEAVE TO
AMEND; MEMORANDUM IN
SUPPORT; NOTICE OF HEARING; and
CERTIFICATE OF SERVICE

JUDGE: Hon. Karin L. Holma
TRIAL DATE: January 10, 2028

HEARING MOTION

HEARING DATE: October 19, 2026
HEARING TIME: 2:00 p.m.

**MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS AND
ALTERNATIVELY, LEAVE TO AMEND COMPLAINT**

Pursuant to Rule 12(c) of the Hawai‘i Rules of Civil Procedure (HRCP), Plaintiff Public First Law Center (Public First) moves for judgment on the pleadings against Defendant University of Hawai‘i (UH) on its Seventh Defense to the Complaint filed April 15, 2026 (Complaint). Dkt. 47 at 15-16 ¶ 152.

UH asserts this case cannot proceed in the absence of additional parties – Wendy Hensel, Dr. Julian Heilig, and Kim Siegenthaler (collectively, Individuals). *Id.* This defense fails on the pleadings and should be denied. Public First respectfully requests that the Court either declare the Individuals not “necessary” under HRCP 19(b) or order informal notice to the Individuals with a deadline for the Individuals to express an interest in this case.

In the alternative, Public First requests leave to amend the Complaint pursuant to HRCP Rule 15(a)(2) to join additional defendants.

Resolving this issue at this stage promotes judicial economy and will streamline the issues in dispute.

DATED: Honolulu, Hawai‘i, August 31, 2026

/s/ Benjamin M. Creps
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Public First Law Center

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MEMORANDUM IN SUPPORT

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UH asserts as its Seventh Defense that this litigation cannot proceed in the absence of the Individuals due to the constitutional right of privacy. Dkt. 47 at 15-16 ¶ 152 (citing *Civil Beat Law Ctr. for the Pub. Interest, Inc. v. City & County of Honolulu [CBLC]*, 144 Hawai‘i 466, 445 P.3d 47 (2019)). That defense fails on the pleadings. Because joinder should not be required, Public First is moving well in advance of the deadline for joining parties (Dkt. 61 at 3) to avoid additional delays in this litigation.

The Individuals do not need to be joined in this action as defendants because Public First does not seek disclosure of any constitutionally protected information. The Complaint seeks disclosure of the UH Board of Regents’ (Regents) discussions from three meetings to hire and evaluate the UH President and Senior Advisor to the UH President. If, as UH claims, those discussions are protected by the constitutional right of privacy, then the Individuals’ interests are not affected because protected information will be withheld. If, as Public First alleges, those discussions are not protected by the constitutional right of privacy, then the Individuals are not affected because there are no protected interests. The Individuals are not “necessary” under HRCF Rule 19(a).

The constitutional right protects “reasonable expectations” of privacy – an *objective* standard. The Individuals’ subjective beliefs about what is protected by the right are not relevant, and thus the scope of the constitutional right of privacy can be decided in their absence if they choose not to intervene. The case concerns minutes of a

government proceeding that can be redacted if appropriate – not “highly personal and intimate” information of no public concern, as protected by the constitutional right.

Even if the Court grants the relief requested in the Complaint and orders disclosure of the executive session minutes (with appropriate redaction), that will not prejudice the Individuals’ interests; complete relief can be afforded without their participation; and UH will not be exposed to a substantial risk of incurring “double, multiple, or otherwise inconsistent obligations by reason of the claimed interest” by proceeding in their absence.

In the end, requiring joinder of ultimately unnecessary persons would only delay resolution of the merits and increase litigation cost, contrary to the intent of the Sunshine Law. It would be unfair and impractical to force the public to find and join every possible individual who may claim a privacy interest in nonpublic discussions held by government boards.

Should the Court decide otherwise, Public First asks in the alternative for leave to amend to add the Individuals as defendants.

I. Factual Background

Public First alleges the Regents held discussions in three executive sessions, concerning the hiring and evaluation of the UH President and a “Senior Advisor” to the UH President, that exceeded the permissible bounds of executive session. Dkt. 1 at 2-12, 16-17. In Counts I - III, Public First asks for an order compelling disclosure of the minutes of these discussions. *Id.*

As relevant to Counts I - III, UH’s Seventh Defense asserts the case cannot proceed without joining the Individuals:

Plaintiff has failed to name or join indispensable parties in accordance with Rule 19 of [HRCF]. The individuals whose privacy interests are at stake in the executive sessions at issue, including Wendy F. Hensel, Dr. Julian Vasquez, Heilig, and the candidate for Senior Advisor to the UH President [Siegenthaler], are necessary parties whose interests would be directly and adversely affected by the relief Plaintiff seeks. The Hawai’i Supreme Court recognized that individuals whose privacy interests are implicated by Sunshine law claims may be indispensable parties. [. . .]

Dkt. 47 at 15-16 ¶ 152.

II. Legal Standards

A. Judgment on the Pleadings

A judgment on the pleadings under HRCP 12(c) is warranted where a movant establishes the absence of material issues of fact and the movant is entitled to judgment as a matter of law. *Ruf v. Honolulu Police Dep't*, 89 Hawai'i 315, 319, 972 P.2d 1081, 1085 (1999). "In considering a motion for judgment on the pleadings, the court is required to view the facts presented in the pleadings and the inferences to be drawn therefrom in the light most favorable to the nonmoving party." *Id.*

B. Necessary Parties

HRCP Rule 19(a) provides:

Persons to be joined if feasible. A person who is subject to service of process shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (A) as a practical matter impair or impede the person's ability to protect that interest or (B) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff.

C. Constitutional Right of Privacy

The privacy right under article 1, section 6 of the Hawai'i Constitution mirrors the tort law standard for invasion of privacy.¹ "[I]t is appropriate, when determining whether disclosure of information implicates the constitutional right to privacy, to consider whether the disclosure would result in tort liability for invasion of privacy." *State Org. of Police Officers v. Soc'y of Prof'l Journalists-University of Haw. Chapter [SHOPO v. SPJJ]*, 83 Haw. 378, 398, 927 P.2d 386, 406 (1996). Tort liability arises "if the matter

¹ Section 6 provides: "The right of the people to privacy is recognized and shall not be infringed without the showing of a compelling state interest. The legislature shall take affirmative steps to implement this right."

publicized is of a kind that (a) would be regarded as highly offensive to a reasonable person, and (b) is not of legitimate concern to the public.” *Id.* (citing *Restatement (Second) of Torts* § 652D, 383 (1977) (Restatement)).

To illustrate the “highly personal and intimate information” that is protected by the constitutional right, the Hawai‘i Supreme Court cited the following commentary to the Restatement:

Every individual has some phases of his [or her] life and his [or her] activities and some facts about himself [or herself] that he [or she] does not expose to the public eye, but keeps entirely to himself [or herself] or at most reveals only to his [or her] family or to close personal friends. Sexual relations, for example, are normally entirely private matters, as are family quarrels, many unpleasant or disgraceful or humiliating illnesses, most intimate personal letters, most details of a man's [or woman's] life in his [or her] home, and some of his [or her] past history that he [or she] would rather forget. When these intimate details of his [or her] life are spread before the public gaze in a manner highly offensive to the ordinary reasonable [person], there is an actionable invasion of his [or her] privacy, unless the matter is one of legitimate public interest.

Id.; see also *CBLIC*, 144 Hawai‘i at 480, 445 P.3d at 61 (“People have a legitimate expectation of privacy in ‘highly personal and intimate’ information.”).

III. The Individuals Are Not “Necessary” Parties under HRCP Rule 19.

First, under prong (1) of Rule 19(a), complete relief can be afforded without the Individuals. All claims for relief are factually and legally directed at *UH*. Dkt. 1. The declaratory relief claims ask only for this Court to make a legal determination regarding *UH*’s Sunshine Law compliance. *Id.* at 16-17. The injunctive relief asks the Court to order disclosure of minutes in *UH*’s possession. *Id.* at 17.

Second, disclosure of records redacted to remove constitutionally protected information will not prejudice Individuals’ privacy interests. Because constitutional privacy is an objective “reasonable person” standard, as a practical matter, the Individuals’ personal views are irrelevant to this proceeding.² Public First is not

² Constitutional privacy rights are the same for every person similarly situated. The analysis considers, for example: the type of the information to be disclosed; the discretionary and fiscal authority of the government position at issue; laws or regulations concerning the matters at issue; and whether the information is already

interested in Individuals’ constitutionally protected private information, and such information will not be disclosed.

As an example, after an *in camera* review of executive session minutes in *Pub. First Law Ctr. v. Defender Council*, the circuit court ordered disclosure with *limited* redaction—less than two full sentences out of forty-four pages of minutes—based on the privacy interests of a non-party. No. 1CCV-24-000050, Dkt. 226 at 6 (“Upon a careful review of the August 8, 2023 executive session minutes, the Court concludes that two sentences of the minutes fall within the personnel-privacy exception.”).

Third, UH is not subject to a “substantial risk of incurring double, multiple, or otherwise inconsistent obligations” by reason of any arguable privacy interest held by the Individuals. Again, no constitutionally protected information would be disclosed because the executive session records would be redacted consistent with the right of privacy.

Last, even if the Court concludes that the Individuals might otherwise qualify as “necessary” under Rule 19(a)(2)—they do not—there is a threshold issue that could avoid exposing these potentially disinterested persons to the expense and rigors of litigation. Under prong (2), the non-party must claim an interest. HRCp 19(a)(2) (“the person claims an interest”). Contrary to the plain language of the rule, Public First acknowledges that *CBLC* held that requirement met if the person “could claim” an interest.³ *CBLC*, 144 Hawai‘i at 485, 445 P.3d at 66. But the Court need not

publicly available. *CBLC*, 144 Hawai‘i at 481-82, 445 P.3d at 62-63 (highlighting, as an example, the diminished privacy expectations for the position of UH President). That analysis objectively assesses reasonable expectations of whether the information is highly personal and intimate and of no legitimate public concern. On *in camera* review of the minutes, the Court will be able to readily determine whether UH improperly entered executive session—irrespective of any input from the Individuals.

³ To preserve the issue, Public First observes that *CBLC* (*sua sponte* and without briefing) erroneously relied on *Kellberg*, which concerned real property ownership interests that are obvious “claims”. *Kellberg v. Yuen*, 135 Hawai‘i 236, 252-53, 349 P.3d 343, 359-60 (2015). Such interests are materially different from the privacy concerns in these Sunshine Law cases. Also, factually, the necessary party determination in *CBLC* is distinguishable. There, in addition to disclosure of executive session minutes, the

automatically imply that the person claims an interest and order joinder without first checking with the person. “In some situations it may be desirable to advise a person who has not been joined of the fact that the action is pending, and in particular cases the court in its discretion may itself convey this information by directing a letter or other informal notice to the absentee.” Fed. R. Civ. P. 19 cmt. (1966).

The Court may order Public First to send a letter (or the Court may send its own notice) to the Individuals that provides an official informal notice regarding this lawsuit.⁴ That notice would inform the Individuals that UH claims the Individuals’ constitutional right of privacy is implicated by Public First’s Complaint. The notice would inform the Individuals that if they wish to be named as a party in the case, they should notify Public First by a court-ordered deadline, and that failure to respond shall be construed as deferring to UH’s arguments concerning any privacy claims.⁵ *E.g.*, *Jermstad v. McNelis*, 210 Cal. App. 3d 528, 541 & n.5 (1989). The form of notice could be resolved through the HCCR 23 process. Before dragging the Individuals into this case and multiplying the cost and expense for all involved, there is no harm in learning whether the Individuals want to be named as defendants. HRCP 1 (HRCP “shall be construed and administered to secure the just, speedy, and inexpensive determination of every action”).

plaintiff sought to invalidate a “retirement agreement” between the Honolulu Police Commission and Kealoha – a contractual property interest more closely tied to the real property interests in *Kellberg*. *CBL*, 144 Hawai‘i at 485, 445 P.3d at 66 (“Resolving this [request for invalidation] in Civil Beat’s favor would certainly appear to “impair or impede” Kealoha’s ability to protect his contractual interests.”). Here, by contrast, Public First does *not* seek to invalidate any final action. *E.g.*, Dkt. 1 ¶ 13.

⁴ Hensel and Siegenthaler are the current UH President and Senior Advisor, respectively, and presumably aware of this lawsuit. Public First has confirmed with Heilig by email that he is aware of the case and provided him a copy of the Complaint.

⁵ Public First only suggests that it receive the claims to preserve the Individuals’ rights to formal service of process and other potential objections.

IV. Requiring Joinder of the Individuals Is Contrary to the Intent of the Law.

The Sunshine Law skews decidedly in favor of openness. It is designed to “protect the people’s right to know.” HRS § 92-1. The Legislature plainly stated “it is the policy of this State that the formation and conduct of public policy – the discussions, deliberations, decisions, and action of governmental agencies – shall be conducted as openly as possible.” *Id.* To implement this policy, “[t]he provisions requiring open meetings shall be liberally construed,” and those “providing for exceptions to the open meeting requirements shall be strictly construed against closed meetings.” *Id.*

Consistent with this “as open as possible” framework, the law establishes “the *presumption* that all government board meetings will be open to the public.” *CBLC*, 144 Hawai‘i at 476, 445 P.3d at 57 (emphasis added); *see also* HRS § 92-3 (“Every meeting of all boards shall be open to the public . . .”).

This presumptive openness includes personnel discussions, including hirings and performance evaluations. *CBLC*, 144 Hawai‘i at 478-79, 445 P.3d at 59-60 (personnel discussions “should presumptively be discussed in an open meeting”). For a personnel discussion to be appropriately held in executive session, the person at issue must have a “legitimate expectation of privacy” in the information. *Id.* at 480-81, 445 P.3d at 61-62 (rejecting privacy standards under the public records law and defining legitimate expectation of privacy by reference to stricter constitutional privacy cases – *Nakano v. Matayoshi*; *Painting Industry v. Alm*; and *SHOPO v. SPJ*); *accord SHOPO v. City & County of Honolulu*, 149 Hawai‘i 492, 511, 494 P.3d 1225, 1244 (2021) (clarifying that *CBLC* cited *SHOPO v. SPJ* “for its constitutional principles”).

“Boards should keep in mind the Sunshine Law’s policy of openness and should not enter executive meetings unless necessary.” *CBLC*, 144 Hawai‘i at 477, 445 P.3d at 58. “If board members misconstrue the Sunshine Law and take action based on these misconceptions, their conduct undermines the intent of the Sunshine Law and impairs the public’s ‘right to know.’” *Id.*

Even where an open meeting exemption is implicated in a portion of board discussions, the board must immediately return to public session as soon as no exemption applies. In “no instance shall the board make a decision or deliberate

toward a decision in an executive meeting on matters not *directly related* to the purposes specified in subsection (a).” HRS § 92-5(b) (emphasis added).⁶

“Directly related” is *narrower* than “reasonably related.” *CBLC*, 144 Hawai‘i at 486, 445 P.3d at 67. Thus, even if a board has an initial basis for going into executive session, it must scrupulously adhere to the strictly construed limitations of the exemptions and return to open session for any discussion not “directly related” to an exemption. *Id.* at 487, 445 P.3d at 68 (describing the process for a court to evaluate such claims).

Where an executive discussion extends beyond the permissible scope of an exemption – as alleged here – the minutes of that discussion are subject to public disclosure. *CBLC*, 144 Hawai‘i at 490, 445 P.3d at 71 (“Where an executive meeting, or a portion thereof, unlawfully took place behind closed doors, any minutes reflecting the discussions and deliberations that should have taken place openly will be subject to the minutes disclosure requirement in section 92-9(b).”).

And the Legislature created a robust private right of action for the public to ensure the promise and presumption of openness is honored:

(c) Any person may commence a suit against a board or alleged board in the circuit court of the circuit in which a prohibited act occurs for the purpose of:

- (1) Requiring compliance with or preventing violations of this part;
- (2) Determining the applicability of this part to discussions or decisions of the public body; or
- (3) Challenging an opinion or ruling of the office of information practices concerning a complaint by that person.

The person may bring the action within two years of a prohibited act; provided that a decision to appeal to the office of information practices for review shall not prejudice the person’s right to appeal to the circuit court after a decision is made by the office of information practices. If the person prevails, the court may order payment of reasonable attorney’s fees and costs by the board in a suit brought under this section.

⁶ HRS § 92-5(a) provides eight strictly-construed open meeting exceptions.

HRS § 92-12(c); *see also* HRS § 92-11 (“Any final action taken in violation of sections 92-3 and 92-7 may be voidable upon proof of violation. A suit to void any final action shall be commenced within ninety days of the action.”); HRS § 92-13 (“Any person who wilfully violates any provisions of this part shall be guilty of a misdemeanor, and upon conviction, may be summarily removed from the board unless otherwise provided by law.”).

As outlined above, the Legislature sought to encourage *open* meetings. It built that spirit into the law, from start to finish and in every nook and cranny. Requiring members of the public to engage in costly, multi-defendant compliance lawsuits runs counter to the spirit of the law – especially when, as is alleged here, the public is excluded from a presumptively open discussion. It should not take an expensive lawsuit filed by a member of the public (and paid for by the public if the board does not prevail) just to have a government board do what ought to have been done in the first place.

CONCLUSION

Based on the foregoing, Public First respectfully asks this Court to enter judgment on the pleadings against UH on its Seventh Defense to the Complaint.

DATED: Honolulu, Hawai‘i, August 31, 2026

/s/ Benjamin M. Creps
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NOTICE OF HEARING; and
CERTIFICATE OF SERVICE

NOTICE OF HEARING

TO: GREG H. TAKASE
JUSTIN M. LUNEY
244 Dole Street
Honolulu, HI 96822

*Attorneys for Defendant
University of Hawai'i*

NOTICE IS HEREBY GIVEN that Plaintiff's Motion for Partial Judgment on the Pleadings and Alternatively, for Leave to Amend shall come on for hearing before the Honorable Karin L. Holma, judge of the above-entitled court, in her courtroom at Ka'ahumanu Hale (First Circuit Court), 777 Punchbowl Street, 4th Floor, Courtroom No. 12, Honolulu, Hawai'i, on Monday, **October 19, 2026** at **2:00 p.m.** or as soon thereafter as counsel may be heard.

CERTIFICATE OF SERVICE

I, Benjamin M. Creps, certify that on the date set forth below, I served the foregoing documents on the following parties by electronic mail (JEFS):

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DATED: Honolulu, Hawai'i, August 31, 2026

/s/ Benjamin M. Creps
BENJAMIN M. CREPS