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**FIRST CIRCUIT**  
**1CCV-20-0000762**  
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**Dkt. 103 PSTMT**

Attorney for Appellant  
DAVID ALAN LOPEZ

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

DAVID ALAN LOPEZ,

Appellant,

vs.

DIANE R. CORN, Hearing Officer,  
Administrative Appeals Office, State of  
Hawaii Department of Human Services; and  
STATE OF HAWAII DEPARTMENT OF  
HUMAN SERVICES,

Appellees.

Civil No. 1CCV-20-0000762

**APPELLANT DAVID ALAN LOPEZ'S  
POSITION STATEMENT RE:  
MOVANT CIVIL BEAT LAW CENTER  
FOR THE PUBLIC INTEREST'S  
MOTION TO UNSEAL FILED ON  
JUNE 27, 2023; CERTIFICATE OF  
SERVICE**

**CONTINUED HEARING:**

Date: October 12, 2023

Time: 1:00 p.m.

**INITIAL HEARING:**

Date: September 1, 2023

Time: 8:30 a.m.

Judge: Honorable James H. Ashford

**APPELLANT DAVID ALAN LOPEZ'S POSITION  
STATEMENT RE: MOVANT CIVIL BEAT LAW CENTER  
FOR THE PUBLIC INTEREST'S MOTION TO UNSEAL FILED ON JUNE 27, 2023**

Appellant DAVID ALAN LOPEZ ("Mr. Lopez") respectfully submits this Position

Statement regarding Movant CIVIL BEAT LAW CENTER FOR THE PUBLIC INTEREST'S



(“Civil Beat”) Motion to Unseal, filed herein on June 27, 2023 [Dkt. 27](“Motion”).

Mr. Lopez appreciates the opportunity to make his position known. At the hearing, the Court conveyed its inclination to grant the Motion in part and unseal two documents: (1) the docket<sup>1</sup>; and (2) the two-page Notice of Appeal, filed on May 20, 2020)[Dkt. 1](without attachments<sup>2</sup>). Civil Beat’s Motion would then be denied as to the remainder of the case file.

As the underlying proceeding at issue involves a personal family matter, Mr. Lopez has a strong desire to maintain confidentiality and have the entire file remain sealed. At the hearing, Civil Beat represented that it is not seeking to unseal the file for any specific purpose involving or relating to Mr. Lopez or his family. Civil Beat filed this Motion, and many similar motions in other proceedings, to challenge decisions related to the confidentiality of cases, and the sealing of court records and other documents. While Mr. Lopez acknowledges and understands the Court’s interpretation of Hawai‘i law, Mr. Lopez’s position is to keep the entire case file sealed because Civil Beat has not set forth any legitimate interest (other than the public’s general right of access to judicial proceedings) to justify its access to and/or the public disclosure of any case information or records.

Civil Beat’s Motion arises from an agency appeal of a family court proceeding under Chapter §587A of the Hawai‘i Revised Statutes (“CPA”). *See* also Haw. Rev. Stat. §587A-36. The family court has exclusive jurisdiction in proceedings “for the protection of any child under §587A.” Haw. Rev. Stat. §571-11(9). The section of Chapter 91 (Administrative Procedure) that governs the public availability of final agency opinions and orders explicitly provides, “[n]othing in this section shall affect the confidentiality of records as provided by statute.” Haw. Rev. Stat.

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<sup>1</sup> The docket from 1CCV-20-0000762, *Lopez v. Corn, et al.*

<sup>2</sup> “Attachments” includes the statement of the case, Exhibit “A”, designation of record on appeal, and order for certification and transmission of record.

§ 91-2.

HRS § 571-84(a) provides that documents are to be withheld from public inspection in proceedings under HRS § 571-11 (2018 & Supp. 2020):

The court shall maintain records of all cases brought before it. Except as provided in sections 571-84.6 and 584-20.5<sup>3</sup>, in proceedings under section 571-11 and in paternity proceedings under chapter 584, the following records shall be withheld from public inspection: the court docket, petitions, complaints, motions, and other papers filed in any case; transcripts of testimony taken by the court; and findings, judgments, orders, decrees, and other papers other than social records filed in proceedings before the court. The records other than social records shall be open to inspection: by the parties and their attorneys, by an institution or agency to which custody of a minor has been transferred, and by an individual who has been appointed guardian; with consent of the judge, by persons having a legitimate interest in the proceedings from the standpoint of the welfare of the minor; and, pursuant to order of the court or the rules of court, by persons conducting pertinent research studies, and by persons, institutions, and agencies having a legitimate interest in the protection, welfare, treatment, or disposition of the minor.

Haw. Rev. Stat. § 571-84(a). However, Hawai'i law does not prevent disclosure of such information in all circumstances. HRS §587A-40 provides a limited exception to the confidentiality of CPA records:

Written reports, photographs, x-rays, or other information that are submitted to the court may be made available to *other appropriate persons, who are not parties, only upon an order of the court.* The court may issue this order upon determining that such access is in the best interests of the child or serves some other legitimate purpose.

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<sup>3</sup> The judiciary shall post on its website the titles of all court filings and the minutes of court proceedings in cases brought under this chapter; provided that the judiciary shall redact information that has been made confidential by any statute, rule of court, or court order; provided further that, on request of a party and for good cause, the court may close a proceeding and records to the public except that the titles of all court filings for the case and the contents of a final order shall be available for public inspection, with other papers and records available for public inspection only with the consent of the parties or by court order. Haw. Rev. Stat. § 584-20.5 (2021).

Haw. Rev. Stat. §587A-40(a). In other words, the court may consider releasing certain information to non-parties, if there is a showing that the release of said information is either in the best interests of the child or serves some other legitimate purpose.

Here, the issue is whether (and to what extent) this statutory protection of confidentiality extends to administrative appeals. The Hawai‘i Supreme Court has recognized the compelling state interest in keeping CPA information confidential:

The purpose of the CPA is to serve the best interests of children. *See* HRS § 587A-2 (Supp. 2016) (“This chapter shall be liberally construed to serve the best interests of the children[.]”). The CPA provides for the confidentiality of records, and requires that its proceedings be closed to the general public and held without a jury. HRS § 587A-40; HRS § 587A-25 (Supp. 2016). Further, family court records in many types of cases involving children are not available for public inspection. HRS § 571-84 (Supp. 2016).

*In Int. of FG*, 142 Haw. 497, 505, 421 P.3d 1267, 1275 (Haw. 2018). Therefore, this is not a case where a state statute grants the State absolute authority to shield its files from all eyes. Rather, Hawai‘i law provides that the information shall be disclosed in certain circumstances. While the strong public interest in protecting this information does not necessarily prevent disclosure in all circumstances, requiring the public disclosure of information incorporated as part of an administrative appeal (which would otherwise be kept confidential) would unnecessarily frustrate the purpose of the CPA and override the State’s compelling interest in confidentiality.

Here, the public interest in open access to judicial proceedings does not outweigh the State’s interest in confidentiality. Civil Beat initially moved to unseal this case file as part of its ongoing effort to challenge the judiciary’s use of the confidential flag to seal case information and court records. However, as identified above, the confidential designation of the instant case file is supported by law and *not* in furtherance of an improper purpose (i.e., “secrecy,” to “hide”, etc.).

The Court granted Mr. Lopez additional time to review the documents requested by Civil Beat and permitted Mr. Lopez to file a response to Civil Beat's Motion. While Mr. Lopez believes that there is a statutory basis and compelling justification for the continued sealing of the instant case file, he acknowledges the Court's interpretation of the applicable statutes and the Court's reasoning that the two documents it is inclined to unseal do not contain the type of sensitive information that requires confidentiality.

DATED: Honolulu, Hawai'i, November 13, 2023.

/s/ Lyle S. Hosoda  
LYLE S. HOSODA

Attorney for Appellant  
DAVID ALAN LOPEZ

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Civil No. 1CCV-20-0000762

**CERTIFICATE OF SERVICE**

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The undersigned hereby certifies that on the date noted below, a true and correct copy of the foregoing document was duly served on the following parties via the Judiciary

Electronic Filing and Service System (JEFS):

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DATED: Honolulu, Hawai'i, November 13, 2023.

/s/ Lyle S. Hosoda

LYLE S. HOSODA

Attorney for Appellant  
DAVID ALAN LOPEZ