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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

DAVID ALAN LOPEZ,

Plaintiff,

v.

DIANE R. CORN, HEARING OFFICER,
et al.

Defendant.

CIVIL NO. 1CCV-20-0000762

RESPONSE TO POSITION
STATEMENT OF DAVID ALAN
LOPEZ FILED NOVEMBER 13, 2023
[DKT. 103]

**RESPONSE TO POSITION STATEMENT OF DAVID ALAN LOPEZ FILED
NOVEMBER 13, 2023 [DKT. 103]**

Non-party movant Civil Beat Law Center for the Public Interest (Law Center) files this response to the position statement filed November 13, 2023, by Petitioner David Alan Lopez (Petitioner) [Dkt. 103].

1. Petitioner has not met his burden to justify continued sealing.

Petitioner contends this Court should "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." Dkt. 103 at 2. This position is legally unsupported and flips the *constitutional* presumption of openness on its head.

The Law Center does not have the burden to justify unsealing. It is the proponent of closure who must overcome the presumption of openness and justify continued secrecy. Law Center Motion to Unseal, Memo. in Support at § 1; Law Center Reply Memo. at § 2. The constitutional standard requires Petitioner to prove (1) a “compelling interest”, (2) a substantial probability that the compelling interest will be irreparably harmed by disclosure, and (3) a showing that lesser alternatives to complete closure are not adequate to protect that interest. *Id.* Petitioner offers no argument that this standard is met here to keep the subject records (the case docket and a portion of the initial pleading) under seal.

Petitioner’s reliance on provisions of chapters 587A and 571 of the Hawaii Revised Statutes (HRS) is misplaced. Petitioner provides no authority to suggest those authorities apply to this civil action or require complete closure of this case, which was not filed in family court. They do not. *See* Law Center Resp. to Surreply at § 1-2. At the October 12 hearing, the Department of Human Services (DHS) was similarly unable to identify any such authority – and ultimately conceded that it was asking the Court to “create a rule” to support its otherwise unsupported position of maximum secrecy. Neither DHS nor Petitioner have identified any law authorizing the Court to do so.

Notably, while Petitioner acknowledges “the Court’s reasoning that the two documents it is inclined to unseal do not contain the type of sensitive information that requires confidentiality,” he offers no legal or factual rebuttal. *Cf.* Law Center Resp. to Surreply at § 1-2 (arguing limited subject of requested unsealing is not confidential).

Citing HRS § 91-2, Petitioner asserts: “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.’” Dkt. 103 at 2. But HRS § 91-2 concerns agency rule-making; it has no relevance to this case.

Finally, as previously noted, “two family court TRO actions [FC-DA No. 18-1-0235; FC-DA No. 18-1-0195], and related appeal [CAAP-18-0000451], involving petitioner Lopez are open, and extensive substantive portions of the court record in those matters are public.” Law Center Reply Mem. at 6; *see also* Law Center Resp. to

Surreply at § 3. Neither party has grappled with the fact that this public information far exceeds the disclosure requested here or confronted the legal ramifications of that publicly accessible information. *Id.*

2. Conclusion

The Law Center respectfully requests that the Court unseal the case docket and a portion of initial pleading – which are attached as Exhibit 4 and Exhibit 5, respectively, to the Law Center’s Reply Memorandum filed August 29, 2023.

DATED: Honolulu, Hawai‘i, November 20, 2023



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