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Attorneys for Appellee
STATE OF HAWAI'I,
DEPARTMENT OF HUMAN SERVICES

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

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| DAVID ALAN LOPEZ, |) | 1CCV-20-0000762 |
| |) | |
| Appellant, |) | DEPARTMENT OF HUMAN SERVICES' |
| |) | MEMORANDUM IN OPPOSITION TO |
| vs. |) | MOTION TO UNSEAL; DECLARATION |
| |) | OF LYNNE M. YOUMANS; CERTIFICATE |
| DIANE R. CORN, Hearing Officer, |) | OF SERVICE |
| Administrative Appeals Office, State of |) | |
| Hawai'i Department of Human Services, and |) | DATE: September 1, 2023 |
| STATE OF HAWAI'I DEPARTMENT OF |) | TIME: 8:30 a.m. |
| HUMAN SERVICES, |) | JUDGE: Honorable James H. Ashford |
| |) | |
| Appellees. |) | |
| |) | |
| |) | |

DEPARTMENT OF HUMAN SERVICES' MEMORANDUM IN
OPPOSITION TO MOTION TO UNSEAL

I. PERTINENT FACTS

On June 5, 2020, Appellee Department of Human Services (DHS) filed Appellee Department of Human Services' Motion to Seal the Circuit Court Record (Motion to Seal) in the above-captioned case. The Motion to Seal included a Memorandum in Support of Motion citing to the relevant sections of the Hawai'i Revised Statutes which make the proceedings confidential. Because of the COVID-19 pandemic emergency, the Motion to Seal was heard as a non-hearing motion by the Court on July 1, 2020. After careful review of the relevant legal authority cited in the Motion to Seal, the Motion to Seal was granted. Attorneys for Movant Civil Beat Law Center for the Public Interest (Movants) are aware of this history. Movants have indicated that the existence of a carefully reviewed and argued motion on the issue of sealing the Circuit Court record does not change their position in this case.

On December 22, 2020, the Court filed a final Judgment in the above-captioned case. The Judgment was not appealed and the case was terminated in early 2021. Appellant David Alan Lopez was represented in the case by two attorneys of record, neither of whom continues to reside in Hawai'i. DHS does not know if Mr. Lopez continues to reside in Hawai'i. There is no evidence that he is aware of Movants' attempt to unseal this case. Movants are aware that their efforts to unseal this case are being done without proper notice to Mr. Lopez and they have indicated that this does not change their position in this case.

On August 16, 2023, Deputy Attorney General Lynne M. Youmans spoke with Movant's attorney, Benjamin M. Creps. He confirmed that, based on the information that he had already received in response to his motion, he was able to determine the nature of the case in the Circuit Court. He confirmed that he understood that the nature of the case in the Circuit Court was confidential and would be sealed in all other Courts in the State of Hawai'i including the

Family Courts, the Intermediate Court of Appeals, and the Supreme Court. He confirmed that the granting of his Motion to Unseal filed on June 27, 2023 will allow any member of the public to determine the nature of the case in the Circuit Court, thereby defeating the confidentiality of the nature of the case. He indicated that his understanding of that does not change his position in this case.

Movants take the position that accessing the courts in the State of Hawai‘i constitutes an almost complete waiver of a citizen’s right to privacy. That position is not consistent with the law.

II. ARGUMENT

The Hawai‘i State Constitution recognizes “[t]he right of the people to privacy.” Article I, Section 6. This right has been recognized to include a right to “informational privacy.” As explained in the 1978 Constitutional Convention of Hawaii:

[T]he [article I, section 6] right of privacy encompasses the common law right of privacy or tort privacy. This is a recognition that the dissemination of private and personal matters, be it true, embarrassing or not, can cause mental pain and distress far greater than bodily injury. For example, the right can be used to protect an individual from invasion of [the individual’s] private affairs, public disclosure of embarrassing facts, and publicity placing the individual in a false light. In short, this right of privacy includes the right of an individual to tell the world to “mind your own business.”

Stand. Comm. Rep. No. 69, in *Proceedings of the Constitutional Convention of Hawaii of 1978* (Proceedings), Vol I, at 674 quoted in Brende v. Hara, 113 Hawai‘i 424, 430, 153 P.3d 1109, 1115 (Sup. Ct. 2007).

Citizens do not give up their right to privacy simply by filing a lawsuit. Id. at 431 and 1116. That is especially true in the instant case where there is statutory protection for the type of action at issue. The Hawai‘i State Constitution and the Hawai‘i Revised Statutes both

support the decision of the Circuit Court in this case to seal the record. Movant's Motion to Unseal should be denied.

III. CONCLUSION.

DHS requests that the Motion to Unseal be denied.

DATED: Honolulu, Hawai'i, August 24, 2023.

/s/ Lynne M. Youmans
LYNNE M. YOUMANS
Deputy Attorney General
Attorney for Department of Human Services

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

DAVID ALAN LOPEZ,) 1CCV-20-0000762
)
 Appellant,) DECLARATION OF LYNNE M. YOUMANS
)
 vs.)
)
 DIANE R. CORN, Hearing Officer,)
 Administrative Appeals Office, State of)
 Hawai'i Department of Human Services, and)
 STATE OF HAWAI'I DEPARTMENT OF)
 HUMAN SERVICES,)
)
 Appellees.)
)
 _____)

DECLARATION OF LYNNE M. YOUMANS

STATE OF HAWAI'I)
) SS.
 CITY AND COUNTY OF HONOLULU)

I, LYNNE M. YOUMANS, declare under penalty of perjury as follows:

1. I am an attorney licensed to practice law in the State of Hawai'i.
2. I am a Deputy Attorney General and the attorney of record for the State of Hawai'i, Department of Human Services (DHS), in the above-entitled action.
3. I am competent to make this declaration and do so on personal knowledge of the facts herein, except as to matters averred to upon information and belief, which I am informed and believe to be true. I submit this Declaration in support of Department of Human Services' Motion to Dismiss Administrative Proceedings.

4. The facts laid out in the section entitled “Pertinent Facts” are true and correct to the best of my knowledge.

Executed at Honolulu, Hawai‘i, August 24, 2023.

/s/ Lynne M. Youmans
LYNNE M. YOUMANS
Deputy Attorney General
Attorney for Department of Human Services

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was
duly served this date on the following parties at the address listed below:

ROBERT BRIAN BLACK. ESQ.
BENJAMIN M. CREPS, ESQ.
Civil Beat Law Center for the Public Interest
700 Bishop Street, Suite 1701
Honolulu, Hawai'i 96813

Attorneys for Movant

DATED: Honolulu, Hawai'i, August 24, 2023.

/s/ Lynne M. Youmans
LYNNE M. YOUMANS
Deputy Attorney General
Attorney for Department of Human Services