ANNE E. LOPEZ 7609
Attorney General for the State of Hawai‘i

AMANDA J. WESTON 7496
DAVID N. MATSUMIYA 9640
Deputy Attorneys General
Department of the Attorney General
State of Hawai‘i
425 Queen Street
Honolulu, Hawai‘i 96813
Telephone: (808) 586-1300
Facsimile: (808) 586-8115
E-mail: amanda.j.weston@hawaii.gov
david.n.matsumiya@hawaii.gov

Attorneys for Defendants
DEFENDER COUNCIL, JON N. IKENAGA, and
AGRIBUSINESS DEVELOPMENT CORPORATION
BOARD OF DIRECTORS

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI‘I

PUBLIC FIRST LAW CENTER,

Plaintiff,

vs.

DEFENDER COUNCIL; JON N. IKENAGA; and AGRIBUSINESS DEVELOPMENT CORPORATION BOARD OF DIRECTORS,

Defendants.

CIVIL NO.: 1CCV-24-0000050
(Other Civil Action)

DEFENDANTS DEFENDER COUNCIL, JON N. IKENAGA, AND AGRIBUSINESS DEVELOPMENT CORPORATION BOARD OF DIRECTORS' MEMORANDUM IN OPPOSITION TO PLAINTIFF PUBLIC FIRST LAW CENTER'S *MOTION FOR PARTIAL SUMMARY JUDGMENT ON COUNTS I-IX*, FILED ON OCTOBER 23, 2024 AS DKT. 60; EXHIBITS 1-2; DECLARATION OF DAVID N. MATSUMIYA; CERTIFICATE OF SERVICE

HEARING:
Date: November 25, 2024
Time: 9:00 a.m.
Judge: Honorable Jordan J. Kimura

Judge: Honorable Jordan J. Kimura
Trial: June 23, 2025

DEFENDANTS DEFENDER COUNCIL, JON N. IKENAGA, AND AGRIBUSINESS DEVELOPMENT CORPORATION BOARD OF DIRECTORS' MEMORANDUM IN OPPOSITION TO PLAINTIFF PUBLIC FIRST LAW CENTER'S *MOTION FOR PARTIAL SUMMARY JUDGMENT ON COUNTS I-IX*, FILED ON OCTOBER 23, 2024 AS DKT. 60

Defendants DEFENDER COUNCIL ("**Defendant DC**"), JON N. IKENAGA ("**Defendant Ikenaga**"), and AGRIBUSINESS DEVELOPMENT CORPORATION BOARD OF DIRECTORS ("**Defendant ADC**") (hereinafter collectively referred to as the "**State Defendants**"), by and through Anne E. Lopez, Attorney General for the State of Hawai'i, and its attorneys Amanda J. Weston and David N. Matsumiya, Deputy Attorneys General, hereby submits their memorandum in opposition to Plaintiff PUBLIC FIRST LAW CENTER's ("**Plaintiff**") *Motion for Partial Summary Judgment on Counts I-IX*, which was filed herein on October 23, 2024 as Docket 60 ("**Pltf's Partial MSJ – Counts 1-9**").

I. STATEMENT OF FACTS

Plaintiff's filed Pltf's Partial MSJ – Counts 1-9 on October 23, 2024. *See* Docket 60. Attached to and made a part of Pltf's Partial MSJ – Counts 1-9 are: 1) *Plaintiff's Memorandum of Law in Support of Motion for Partial Summary Judgement* ("**Pltf's Memo in Support**"); 2) Plaintiff's *Declaration of Counsel* ("**Pltf's Counsel's Declaration**"); and 3) Plaintiff's *Exhibit 5*, which according to paragraph 6 of Pltf's Counsel's Declaration is a true and correct copy of an email correspondence from October 25 – 26, 2023, between Benjamin M. Creps and legal counsel for Defendant DC ("**Pltf's Exhibit 5**"). *See* Docket 60. Attached hereto and made a part hereof as Exhibit 1 is a true and correct copy of Pltf's Memo in Support, which has been highlighted and page-numbered for ease of reference. Attached hereto and made a part hereof as Exhibit 2 is a true and correct copy of Pltf's Counsel's Declaration, which has been highlighted and page-numbered for ease of reference. Attached hereto and made a part hereof as Exhibit 3 is a true and correct copy of Pltf's Exhibit 5, which has been highlighted and page-numbered for ease of reference. *See* Declaration of David N. Matsumiya at pp. 1-2, ¶¶ 5-9.

In Pltf's Memo in Support, Plaintiff states "[t]his case concerns the Council's series of closed-door session in 2023 to the application process, screen and interview candidates, and ultimately select the State Public Defender." *See* Exhibit 1 at p. 4 of 24. Plaintiff then argues: "The Council claims that it properly entered executive sessions to discuss hiring the State Public Defender. It relies on the exceptions to the Sunshine Law, but utterly failed to comply with the terms of those exceptions . . .. *See* Exhibit 1 at p. 12 of 24.

With regard to its support or evidence for Plaintiff's claim that the State Defendants "utterly failed to comply with the terms of those exceptions," Plaintiff states as follows:

> The Council did not have a valid basis for the executive sessions held on June 16 and August 4 to discuss the general hiring process for the next State Public Defender. *Id.* Ex. 10 – 14. [*See* Exhibit 1 at p. 15 of 24].
>
> The Council did not have a valid basis for the executive sessions held on October 4 and November 2 – where it interviewed candidates, evaluated their qualifications and management plans, and deliberated on its ultimate selection of Defendant Ikenaga. Creps Decl. Ex. 15 – 19. [*See* Exhibit 1 at p. 16 of 24].
>
> The Council did not conduct any privacy analysis – and could not justify a sweeping privacy concern – to the extent that it invoked the personnel-privacy exemption to close the June 16, August 4, October 4, and November 2 meetings. *Id.* Ex. 10 – 19. [*See* Exhibit 1 at p. 16 of 24].
>
> Instead, to the extent it has provided any explanation, the Council based its decision to enter executive session on the "nature of the applicants (three of the four candidates are currently members of the Office of the Public Defender) and their backgrounds[.]". Creps Decl. Ex. 5 at 1. [*See* Exhibit 1 at p. 17 of 24; Exhibit 2 at p. 2 of 5, ¶ 6; and Exhibit 3 at p. 2 of 3].

With regard to the State Defendants position on the issue of whether executive sessions were warranted, legal counsel for Defendant DC stated:

> We agree that the position of the Public Defender is a high-level position, but given the nature of the applicants (three of the four candidates are currently members of the Office of the Public Defender) and their backgrounds, **we believe that it would be appropriate to hold the selection discussions in an executive session.** We believe that each position is different, and that each board will have to make its own determination on whether to hold a hiring selection in an open session or in an executive session.

See Exhibit 3 at p. 2 of 3 (bold emphasis added).

II. APPLICABLE STANDARDS

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is **no genuine issue as to any material fact** and that the moving party is entitled to a judgment as a matter of law." HRCP 56(c) (bold emphasis added).

> A fact is material if proof of that fact would have the effect of establishing elements of a cause of action or defense asserted by the parties. **The evidence must be viewed in the light most favorable to the non-moving party. In other words, we must view all of the evidence and the inferences drawn from them in the light most favorable to the non-moving party opposing the motion.**

Lansdell v. Cnty. of Kauai, 110 Hawai‘i 189, 194, 130 P.3d 1054, 1059 (2006) (quoting *Hawaii Cmty. Fed. Credit Union v. Keka*, 94 Hawai‘i 213, 221, 11 P.3d 1, 9 (2000)) (bold emphasis added). *See also Field, Tr. of Est. of Aloha Sports Inc. v. Nat'l Collegiate Athletic Ass'n*, 143 Hawai‘i 362, 372, 431 P.3d 735, 745 (2018).

> In deciding a motion for summary judgment, a circuit court must keep in mind an important distinction:
>
> > **A judge ruling on a motion for summary judgment cannot summarily try the facts**; his [or her] role is limited to applying the law to the facts that have been established by the litigants' papers. Therefore, a party moving for summary judgment is not entitled to a judgment merely because the facts he offers appear more plausible than those tendered in opposition or because it appears that the adversary is unlikely to prevail at trial. This is true even though both parties move for summary judgment. Therefore, if the evidence presented on the motion is subject to conflicting interpretations, or reasonable men [and women] might differ as to its significance, summary judgment is improper. [Citations omitted.]

Chuck Jones & MacLaren v. Williams, 101 Hawai‘i 486, 497, 71 P.3d 437, 448 (Ct. App. 2003) (quoting *Kajiya v. Department of Water Supply*, 2 Haw. App. 221, 224, 629 P.2d 635, 638-39 (1981) (quoting 10A Wright, Miller and Kane, *Federal Practice and Procedure: Civil* § 2725 (1973)) (brackets original) (bold emphasis added).

"[S]ummary judgment must be used with due regard for its purpose and should be cautiously invoked **so that no person will be improperly deprived of a trial of disputed factual issues**." *Bhakta v. Cnty. of Maui*, 109 Hawai‘i 198, 207-208, 124 P.3d 943, 952-953 (2005), as amended (Dec. 30, 2005) (quoting *Miller v. Manuel*, 9 Haw. App. 56, 65-66, 828 P.2d 286, 292 (1991)) (bold emphasis added).

III. ARGUMENT

Pltf's Partial MSJ – Counts 1-9 should be denied because Plaintiff has not met and cannot meet its burden of proof for summary judgment with the fact and/or evidence presented in Pltf's Partial MSJ – Counts 1-9. The facts and/or evidence presented by Plaintiff does not meet its burden of proof for summary judgment because the facts as stated by Plaintiff is conclusory, the facts stated in Plaintiff's exhibits are subject to different interpretations, and there is a question of fact as to which applicant was the reason for why the State Defendants believed that meeting in executive session was warranted.

A. PLAINTIFF'S BURDEN OF PROOF

With regard to a moving party's burden of proof for a motion for summary judgment, the Supreme Court of the State of Hawai'i (the "**Hawai'i Supreme Court**") has stated:

> **The burden is on the party moving for summary judgment (moving party) to show the absence of any genuine issue as to all material facts**, which, under applicable principles of substantive law, entitles the moving party to judgment as a matter of law. This burden has two components.
>
> First, **the moving party has the burden of producing support for its claim** that: **(**1) no genuine issue of material fact exists with respect to the essential elements of the claim or defense which the motion seeks to establish or which the motion questions; and (2) based on the undisputed facts, it is entitled to summary judgment as a matter of law. **Only when the moving party satisfies its initial burden of production does the burden shift to the non-moving party to respond to the motion for summary judgment** and demonstrate specific facts, as opposed to general allegations, that present a genuine issue worthy of trial.
>
> Second, the moving party bears the ultimate burden of persuasion. This burden always remains with the moving party and requires the moving party to convince the court that no genuine issue of material fact exists and that the moving part is entitled to summary judgment as a matter of law.

French v. Hawaii Pizza Hut, Inc., 105 Hawai'i 462, 470, 99 P.3d 1046, 1054 (2004) (quoting *GECC Fin. Corp. v. Jaffarian*, 79 Hawai'i 516, 521, 904 P.2d 530, 535 (App. 1995)) (bold emphases added). The Hawai'i Supreme Court has further stated that:

> [T]his court's case law indicates that a summary judgment movant may satisfy their initial burden of production by either (1) presenting evidence negating an element of the non-movant's claim, or (2) demonstrating that the nonmovant will be unable to carry [their] burden of proof at trial.
>
> Where the movant attempts to meet their burden through the latter means, they must show not only that the non-movant has not placed proof in the record, but also that the movant will be unable to offer proof at trial. Accordingly, in general, a summary judgment movant cannot merely point to the non-moving party's lack of evidence to support their initial burden of production if discovery has not concluded. ("[M]erely asserting that the non-moving party has not come forward with evidence to support its claims is not enough.").

Mobley v. Kimura, 146 Hawai'i 311, 321, 463 P.3d 968, 978 (2020) (quoting *Ralston v. Yim*, 129 Hawai'i 46, 60-61, 292 P.3d 1276, 1290-1291 (2013)).

Based on the fact that the discovery cutoff for this action is April 24, 2025, Plaintiff is clearly not attempting to demonstrate that the State Defendants will be unable to carry their burden of proof at trial. This is especially true because the State Defendants have no burden of

proof in this action – Plaintiff has the burden of proof at trial and, as the moving party here, Plaintiff has the burden of proof regarding Pltf's Partial MSJ – Counts 1-9 .

Consequently, it is clear that Plaintiff, via Pltf's Partial MSJ – Counts 1-9, is attempting to present evidence to negate the State Defendants' claim that they were entitled to hold the selection process discussions in an executive session. As a result, Plaintiff must support Pltf's Partial MSJ – Counts 1-9 with evidence that is not subject to conflicting interpretations, in other words, reasonable men and women may differ as to the significance of Plaintiff's evidence.

B. PLAINTIFF'S STATEMENT OF THE EVIDENCE IS CONCLUSORY

In 2018, the Hawai'i Supreme Court discussed the issue of conclusory statements/assertions and held as follows:

> "Conclusory" is defined as "expressing a factual inference without stating the underlying facts on which the inference is based." . . . An "inference" in turn is "a conclusion reached by considering other facts and deducing a logical consequence from them." . . . **Thus, when an assertion in an affidavit expresses an inference without setting forth the underlying facts on which the conclusion is based or states a conclusion that is not reasonably drawn from the underlying facts, the assertion is considered conclusory and cannot be utilized in support of or against a motion for summary judgment.** . . .
>
> . . . [T]he underlying facts and the inference must be based on personal knowledge and otherwise admissible in evidence. . . . Inferences that amount to opinions thus must satisfy relevant evidentiary rules that would apply were the evidence offered through witness testimony. Lay opinions must be both "rationally based on the perception of the" affiant and "helpful to a clear understanding of the affiant's testimony or the determination of a fact in issue." . . . An affiant generally may "give an opinion on an ultimate fact involved in the case" when such an opinion is properly supported by facts personally perceived. . . . But the affiant "may not give opinions on questions of law as that would amount to legal conclusions." . . . Indeed, any legal conclusions drawn by the affiant are not admissible evidence, regardless of whether they are couched as the affiant's opinion.

Nozawa v. Operating Engineers Loc. Union No. 3, 142 Hawai'i 331, 339-340, 418 P.3d 1187, 1195-1196 (2018) (original citations omitted) (original brackets omitted) (bold emphasis added). Therefore, conclusory allegations and unwarranted inferences are not sufficient to defeat a motion to dismiss. *See Kealoha*, 131 Hawai'i at 74, 315 P.3d at 225.

Based on this holding, it is the State Defendant's position that Plaintiff's statements of fact are conclusory and cannot be utilized in support of Pltf's Partial MSJ – Counts 1-9.

Plaintiff's first statement of fact is "[t]he Council did not have a valid basis for the executive sessions held on June 16 and August 4 to discuss the general hiring process for the next State Public Defender." *See* Exhibit 1 at p. 15 of 24. Plaintiff supports this statement with Plaintiff's Exhibits 10-14. *See* Exhibit 1 at p. 15 of 24. Plaintiff's second statement of fact is "[t]he Council did not have a valid basis for the executive sessions held on October 4 and November 2 – where it interviewed candidates, evaluated their qualifications and management plans, and deliberated on its ultimate selection of Defendant Ikenaga." *See* Exhibit 1 at p. 16 of 24. Plaintiff supports this statement with Plaintiff's Exhibits 15-19. *See* Exhibit 1 at p. 16 of 24. Plaintiff's third statement of fact is "[t]he Council did not conduct any privacy analysis – and could not justify a sweeping privacy concern – to the extent that it invoked the personnel-privacy exemption to close the June 16, August 4, October 4, and November 2 meetings." *See* Exhibit 1 at p. 16 of 24. Plaintiff supports this statement with Plaintiff's Exhibits 10-19. *See* Exhibit 1 at p. 16 of 24. Plaintiff's final statement of fact is "the Council based its decision to enter executive session on the "nature of the applicants (three of the four candidates are currently members of the Office of the Public Defender) and their backgrounds[.]"[1] *See* Exhibit 1 at p. 17 of 24; Exhibit 2 at p. 2 of 5, ¶ 6; and Exhibit 3 at p. 2 of 3. Plaintiff supports this statement with Plaintiff's Exhibits 5. *See* Exhibit 1 at p. 17 of 24; Exhibit 2 at p. 2 of 5, ¶ 6; and Exhibit 3 at p. 2 of 3.

Plaintiff's Exhibits 10-19 are *Notices of Meetings*, *Meeting Minutes of the Defender Council*, and a *Meeting Minutes of the Defender Council Executive Session*. *See* Plaintiff's Exhibits 10-19 in Docket 60. None of these documents are intended to be a detailed description of everything that transpired during the meetings.

Hawaii Revised Statutes ("**HRS**") § 92-7 states "[t]he notice shall include an agenda that lists all of the items to be considered at the forthcoming meeting; . . . and in the case of an executive meeting, the purpose shall be stated." HRS § 92-7(a) (2023 Cumulative Supplement). HRS § 92-9 states "a full transcript nor a recording of the meeting is required, but the minutes shall give a true reflection of the **matters discussed** at the meeting and **the views of the participants** . . .." HRS § 92-9(a) (2023 Cumulative Supplement) (bold emphasis added).

Based on these requirements it is clear that none of the documents relied upon by Plaintiff are intended to detail everything that occurred during an executive session. Without

[1] It should be noted by this Honorable Court that Plaintiff's statement of fact is not a complete statement of the State Defendants statement. *See* Exhibit 3 at p. 2 of 3.

knowing what transpired during the executive sessions, no one, including Plaintiff, this Honorable Court, and reasonable men and women, can determine whether or not the State Defendants had a "valid basis" to meet in executive session. Because Plaintiff has not provided any evidence as to what actually transpired at the executive sessions, Plaintiff's statements of fact are conclusory and, as such, cannot be used to support summary judgment.

With regard to Plaintiff's Exhibit 5, the information relied upon by Plaintiff only supports a finding that Plaintiff and the State Defendants do not agree on whether the executive sessions were warranted. Plaintiff's Exhibit 5 does not purport to detail everything that transpired during the executive session. However, it does indicate that candidate, who was not a public defender, may have privacy interests to protect. As a result of this potential privacy interest that may need protecting, no one, including Plaintiff, this Honorable Court, and reasonable men and women, can determine whether or not the State Defendants had a "valid basis" to meet in executive session. Because Plaintiff has not provided any evidence as to what actually transpired at the executive sessions, Plaintiff's statements of fact are conclusory and, as such, cannot be used to support summary judgment.

C. PLAINTIFF'S EXHIBITS 5 AND 10-19 ARE SUBJECT TO DIFFERENT INTERPRETATIONS

Based on Plaintiff's apparent belief that the evidence it submitted supports its statements of fact and the arguments that the State Defendants presented above, it is clear that Plaintiff's Exhibits 5 and 10-19 are all subject to different interpretations.

As held by the Hawai‘i Supreme Court, "if the evidence presented on the motion is subject to conflicting interpretations, or reasonable men and women might differ as to its significance, **summary judgment is improper**." *Chuck Jones & MacLaren*, 101 Hawai‘i at 497, 71 P.3d at 448 (quoting *Kajiya*, 2 Haw. App. at 224, 629 P.2d at 638-39 (quoting 10A Wright, Miller and Kane, *Federal Practice and Procedure: Civil* § 2725 (1973)) (original brackets omitted) (bold emphasis added).

In this motion, Plaintiff's believe that these exhibits definitive proves that the State Defendants had no "valid basis" for meeting in executive session and the State Defendants believe these exhibits prove nothing. Without actual evidence (e.g. testimony of a person who participated in the executive session, a reasonable men or women will have deferring interpretations on how these exhibits should be interpreted and on what these exhibits prove.

The State Defendants believe that Plaintiff's Exhibit 5 is a prime example of how reasonable people may interpret the exhibit differently.

> The language relied upon by Plaintiff's states, in its entirety:
>
> > We agree that the position of the Public Defender is a high-level position, but given the nature of the applicants (three of the four candidates are currently members of the Office of the Public Defender) and their backgrounds, we believe that it would be appropriate to hold the selection discussions in an executive session.

See Exhibit 3 at p. 2 of 3. The first item that is subject to different interpretations is "three of the four candidates are currently members of the Office of the Public Defender[.]" *See* Exhibit 3 at p. 2 of 3. Does this mean that the State Defendants believe that the executive session is warranted because three of the applicants are members of the Office of the Public Defender? Or does it mean that the State Defendants believe that the executive session is warranted because of the applicant who is not a member of the Office of the Public Defender? In addition, does the entire statement mean that the State Defendants believe this is the only reason for meeting in executive session or does it just mean that it is the main reason? It is the State Defendants' position that neither of these potential interpretations can be definitively determined based simply on the sentence. The State Defendants believe the only way a determine whether or not the sentence will be interpreted by all reasonable men and women in the same manner is to have witness testimony about the belief of the writer. No such evidence is presented here. As a result, multiple interpretations are possible and are likely to occur.

It is important to keep in mind that the Hawai‘i Supreme Court has held that "[a] judge ruling on a motion for summary judgment cannot summarily try the facts." *Chuck Jones & MacLaren*, 101 Hawai‘i at 497, 71 P.3d at 448 (quoting *Kajiya*, 2 Haw. App. at 224, 629 P.2d at 638-39 (quoting 10A Wright, Miller and Kane, *Federal Practice and Procedure: Civil* § 2725 (1973)).

Based on the foregoing, it is clear that a definitive answer regarding a single interpretation is not possible. As a result, this Honorable Court should deny Pltf's Partial MSJ – Counts 1-9.

D. THERE IS A QUESTION OF FACT AS TO WHICH APPLICANT WAS THE REASON WHY THE STATE DEFENDANTS BELIEVE MEETING IN EXECUTIVE SESSION WAS WARRANTED

As touched on above, there is a question of fact as to which applicant was the reason why the State Defendants believed that meeting in executive session was warranted.

Plaintiff's Exhibit 5 states:

> We agree that the position of the Public Defender is a high-level position, but given the nature of the applicants (three of the four candidates are currently members of the Office of the Public Defender) and their backgrounds, we believe that it would be appropriate to hold the selection discussions in an executive session.

See Exhibit 3 at p. 2 of 3. The statement "three of the four candidates are currently members of the Office of the Public Defender" does not make it clear which of the applicants was the person or people of concern. There is nothing in Plaintiff's Exhibit 5 that clarifies this question of fact. The only way to remove this question of fact is to provide additional evidence in the form of witness testimony as to which applicant was the point of concern.

Until this question of fact is resolved, summary judgment is not warranted.

IV. CONCLUSION

Based on the foregoing, the State Defendants believe that there is a good faith basis for this Honorable Court to deny Pltf's Partial MSJ – Counts 1-9 at this time. Without Plaintiff providing additional evidence (e.g. witness testimony on what actually transpired during he executive sessions), Plaintiff has not and cannot meet its burden of proof.

With regard to the evidence produced by Plaintiff in support of Pltf's Partial MSJ – Counts 1-9, the State Defendants believe that the statements of fact are conclusory, which means that cannot be taken by this Honorable Court as supporting Plaintiff's claims, and they are subject to multiple interpretation.

Because Plaintiff have not met it burden of proof and the evidence submitted by Plaintiffs are conclusory and subject to multiple interpretation, the State Defendants believe that Pltf's Partial MSJ – Counts 1-9 should be denied.

Finally, because there is a question of fact that is evidenced by Plaintiff's Exhibit 5 (whether the reason for the executive session is because of the three members of the Office of the Public Defender or the one applicant who is not a member of the Office of the Public Defender), summary judgment is not warranted.

DATED: Honolulu, Hawai‘i, November 15, 2024.

ANNE E. LOPEZ
Attorney General for the State of Hawai‘i

/s/ David N. Matsumiya
AMANDA J. WESTON
DAVID N. MATSUMIYA
Deputy Attorneys General
Attorneys for Defendants
DEFENDER COUNCIL, JON N. IKENAGA, AND AGRIBUSINESS DEVELOPMENT CORPORATION BOARD OF DIRECTORS

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAIʻI

PUBLIC FIRST LAW CENTER, Plaintiff, vs. DEFENDER COUNCIL; JON N. IKENAGA; and AGRIBUSINESS DEVELOPMENT CORPORATION BOARD OF DIRECTORS, Defendants.	CIVIL NO.: 1CCV-24-0000050 (Other Civil Action) DECLARATION OF DAVID N. MATSUMIYA

DECLARATION OF DAVID N. MATSUMIYA

I, DAVID N. MATSUMIYA, declare under penalty of law that the following is true and correct to the best of my knowledge, information, and belief:

1. I am an attorney licensed to practice law before all of the courts in the State of Hawaiʻi.

2. I am a Deputy Attorney General for the State of Hawaiʻi.

3. I am one of the attorneys for Defendants DEFENDER COUNCIL ("**Defendant DC**"), JON N. IKENAGA, and AGRIBUSINESS DEVELOPMENT CORPORATION BOARD OF DIRECTORS (hereinafter collectively referred to as the "**State Defendants**"), in the above-captioned action.

4. I have personal knowledge of the matters discussed herein, am competent to testify as to the matters stated herein, and I make this Declaration upon personal knowledge except and unless stated to be upon information and belief.

5. On October 23, 2024, Plaintiff PUBLIC FIRST LAW CENTER ("**Plaintiff**") filed its *Motion for Partial Summary Judgment on Counts I-IX* as Docket 60 (hereinafter referred to as "**Plaintiff's Partial MSJ – Counts 1-9**").

6. The following documents were attached to and made a part of Plaintiff's Partial MSJ – Counts 1-9:

a. *Plaintiff's Memorandum of Law in Support of Motion for Partial Summary Judgement* ("**Pltf's Memo in Support**");

b. Plaintiff's *Declaration of Counsel* ("**Pltf's Counsel's Declaration**"); and

c. Plaintiff's Exhibit 5, which according to paragraph 6 of Pltf's Counsel's Declaration is a true and correct copy of an email correspondence from October 25 – 26, 2023, between Benjamin M. Creps and legal counsel for Defendant DC ("**Pltf's Exhibit 5**").

7. Attached hereto and made a part hereof as Exhibit 1 is a true and correct copy of Pltf's Memo in Support, which has been highlighted and page-numbered for ease of reference.

8. Attached hereto and made a part hereof as Exhibit 2 is a true and correct copy of Pltf's Counsel's Declaration, which has been highlighted and page-numbered for ease of reference.

9. Attached hereto and made a part hereof as Exhibit 3 is a true and correct copy of Pltf's Exhibit 5, which has been highlighted and page-numbered for ease of reference.

I do declare under penalty of law that the foregoing is true and correct.

This declaration is made in lieu of an affidavit pursuant to Rule 7(g) of the Rules of the Circuit Courts of the State of Hawai‘i.

DATED: Honolulu, Hawai‘i, November 15, 2024.

/s/ David N. Matsumiya
DAVID N. MATSUMIYA

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI‘I

PUBLIC FIRST LAW CENTER, Plaintiff, vs. DEFENDER COUNCIL; JON N. IKENAGA; and AGRIBUSINESS DEVELOPMENT CORPORATION BOARD OF DIRECTORS, Defendants.	CIVIL NO.: 1CCV-24-0000050 (Other Civil Action) CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date stated below, the original of *Defendants' Defender Council, Jon N. Ikenaga, and Agribusiness Development Corporation Board of Directors' Initial Disclosure* was duly served upon the party named below, via the method indicated below, at their respective last-known address.

Robert Brian Black, Esq.
Benjamin M. Creps, Esq.
PUBLIC FIRST LAW CENTER
700 Bishop Street, Suite 1701
Honolulu, Hawai‘i 96813
Attorneys for Plaintiff
PUBLIC FIRST LAW CENTER

brian@publicfirstlaw.org
ben@publicfirstlaw.org

☒ JEFS
☐ Personal Service
☐ U.S. Postal Service

DATED: Honolulu, Hawai‘i, November 15, 2024.

ANNE E. LOPEZ
Attorney General for the State of Hawai‘i

/s/ David N. Matsumiya
AMANDA J. WESTON
DAVID N. MATSUMIYA
Deputy Attorneys General
Attorneys for Defendants
DEFENDER COUNCIL, JON N. IKENAGA, AND AGRIBUSINESS DEVELOPMENT CORPORATION BOARD OF DIRECTORS