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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 X-XIV*, FILED ON OCTOBER 23,
2024 AS DKT. 64; EXHIBIT 1;
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 X-XIV, FILED ON OCTOBER 23, 2024 AS DKT. 64***

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 X-XIV*, which was filed herein on October 23, 2024 as Docket 60 (“**Pltf’s Partial MSJ – Counts 10-14**”).

I. STATEMENT OF FACTS

Plaintiff’s filed Pltf’s Partial MSJ – Counts 10-14 on October 23, 2024. *See* Docket 64. Attached to and made a part of Pltf’s Partial MSJ – Counts 10-14 is *Plaintiff’s Memorandum of Law in Support of Motion for Partial Summary Judgement* (“**Pltf’s Memo in Support**”). *See* Docket 64. 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. *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 ADC Board’s series of closed-door sessions in 2022 and 2023 to evaluate the performance of then-Executive Director James Nakatani and subsequently hire his successor.” *See* Exhibit 1 at p. 5 of 24.

Plaintiff argues “[t]he ADC Board violated chapter 92 in multiple respects in the course of conducting its annual performance review of Executive Director Nakatani and in hiring his successor.” *See* Exhibit 1 at p. 13 of 24. In support of this argument, Plaintiff stated as follows:

The ADC Board thus did not have a valid basis for the executive sessions held on August 17, September 21, and November 2, 2022 and March 16 and April 20, 2023 – where it discussed the post-Audit, statutorily-required, annual performance evaluation of Executive Director Nakatani. Creps Decl. Ex. 5, 6, 7, 9, 10, and 11.

. . .

The ADC Board similarly did not have a valid basis for the executive sessions held on July 20 and August 8, 2023, when it discussed and deliberated on the hiring of a new ADC Executive Director. Creps Decl. Ex. 14, 15, 16, and 17.

See Exhibit 1 at p. 17 of 24.

Plaintiff then argues “[f]or the reasons already outlined, OIP Opinion Letter No. F24-03 is palpably erroneous because it is irreconcilable with the plain [sic] text and intent of HRS § 92-5(a)(2) as interpreted by the Hawai‘i Supreme Court in CBLC.” See Exhibit 1 at p. 21 of 24. Other than to say “[f]or the reasons already outlined,” Plaintiff’s provide not facts to support this argument. See Exhibit 1 at p. 20 of 24 – p. 21 of 24.

Plaintiff then argues that “[t]he ADC Board violated the Sunshine Law by improperly using committees to circumvent the open meetings requirements when evaluating Executive Director Nakatani.” See Exhibit 1 at p. 21 of 24. In support of this argument, Plaintiff stated as follows:

The Ad Hoc Committee and the Hiring PIG improperly discussed the investigative PIG’s findings and recommendations in the same meeting that the PIG made its report. *Id.* Ex. 10 [3/16/23 exec. sess. minutes] at 1 - 8 (committee presentation and ostensible board discussion of “draft evaluation report”); Ex. 9 [3/16/23 reg. sess. minutes] at 8; and Ex. 15 [7/20/23 exec. sess. minutes] at 1-5 (Hiring PIG presentation of its findings and recommendations and board discussion of same).

The ADC Board even took action on the Hiring PIG’s report at the same meeting by following the recommendation to interview the top two candidates selected by the Hiring PIG and scheduling those interviews for its next meeting. Ex. 14 [7/20/23 minutes] at 4-5, 9-10.

See Exhibit 1 at p. 22 of 24 – p. 23 of 24.

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 10-14 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 10-14. 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 Plaintiff makes arguments without supplying any facts.

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 party 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 10-14.

Consequently, it is clear that Plaintiff, via Pltf’s Partial MSJ – Counts 10-14, 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 10-14 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 10-14.

Plaintiff's first statement of fact is “[t]he ADC Board thus did not have a valid basis for the executive sessions held on August 17, September 21, and November 2, 2022 and March 16 and April 20, 2023 – where it discussed the post-Audit, statutorily-required, annual performance evaluation of Executive Director Nakatani.” *See* Exhibit 1 at p. 17 of 24. Plaintiff supports this statement with Plaintiff's Exhibits 5, 6, 7, 9, and 10. *See* Exhibit 1 at p. 17 of 24. Plaintiff's second statement of fact is “[t]he ADC Board similarly did not have a valid basis for the

executive sessions held on July 20 and August 8, 2023, when it discussed and deliberated on the hiring of a new ADC Executive Director.” See Exhibit 1 at p. 17 of 24. Plaintiff supports this statement with Plaintiff’s Exhibits 14, 15, 16, and 17. See Exhibit 1 at p. 17 of 24.

Plaintiff’s Exhibits 5, 6, 7, 9, 10, 14, 15, 16, and 17 are *Minutes of the Board of Directors Meeting*. See Plaintiff’s Exhibits 5, 6, 7, 9, 10, 14, 15, 16, and 17 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 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.

C. PLAINTIFF’S EXHIBITS 5, 6, 7, 9, 10, 14, 15, 16, and 17 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, 6, 7, 9, 10, 14, 15, 16, and 17 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.

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 10-14.

D. PLAINTIFF PROVIDE NO FACTS TO SUPPORT FOR ITS ARGUMENT THAT THE OIP OPINION LETTER NO. F24-03 IS PALPABLY ERRONEOUS

Plaintiff's entire argument for this issue is: "[f]or the reasons already outlined, OIP Opinion Letter No. F24-03 is palpably erroneous because it is irreconcilable with the plaint [sic] text and intent of HRS § 92-5(a)(2) as interpreted by the Hawai'i Supreme Court in CBLC." See Exhibit 1 at p. 21 of 24. As noted above, the only facts that Plaintiff outlined above are conclusory and subject to multiple interpretation. As a result, even if this Honorable Court were to apply the facts already presented by Plaintiff, Plaintiff still has not presented facts that can support summary judgement on this issue.

E. THE FACTS OFFERED BY PLAINTIFF IN SUPPORT PLAINTIFF'S ARGUMENT THAT "THE ADC BOARD VIOLATED THE SUNSHINE LAW BY IMPROPERLY USING COMMITTEES TO CIRCUMVENT THE OPEN MEETINGS REQUIREMENTS WHEN EVALUATING EXECUTIVE DIRECTOR NAKATANI" ARE SUBJECT TO MULTIPLE INTERPRETATIONS

Plaintiff made the following statements of fact regarding its argument that "[t]he ADC Board violated the Sunshine Law by improperly using committees to circumvent the open meetings requirements when evaluating Executive Director Nakatani:"

The Ad Hoc Committee and the Hiring PIG improperly discussed the investigative PIG's findings and recommendations in the same meeting that the

PIG made its report. *Id.* Ex. 10 [3/16/23 exec. sess. minutes] at 1 - 8 (committee presentation and ostensible board discussion of “draft evaluation report”); Ex. 9 [3/16/23 reg. sess. minutes] at 8; and Ex. 15 [7/20/23 exec. sess. minutes] at 1-5 (Hiring PIG presentation of its findings and recommendations and board discussion of same).

The ADC Board even took action on the Hiring PIG’s report at the same meeting by following the recommendation to interview the top two candidates selected by the Hiring PIG and scheduling those interviews for its next meeting. Ex. 14 [7/20/23 minutes] at 4-5, 9-10.

See Exhibit 1 at p. 22 of 24 – p. 23 of 24.

Plaintiff’s Exhibit 10 is subject to an interpretation different from “[t]he Ad Hoc Committee and the Hiring PIG improperly discussed the investigative PIG’s findings and recommendations in the same meeting that the PIG made its report” because Plaintiff’s Exhibit 10 states “Ms. Seddon state the draft evaluation report was previously distributed to the Board members.” *See* Docket 64, Plaintiff’s Exhibit 10 at p. 1. Without any additional testimony from a witness who participated in the meeting, reasonable men and women can differ in their interpretation of what “previously distributed” means.

Plaintiff’s Exhibit 9 is subject to an interpretation different from “[t]he Ad Hoc Committee and the Hiring PIG improperly discussed the investigative PIG’s findings and recommendations in the same meeting that the PIG made its report” because Plaintiff’s Exhibit 9 states “Chair stated that this was just a presentation by the Executive Director’s Evaluation Committee and the motion to adopt the evaluation committee’s report and recommendation will be heard at the next Board meeting.” *See* Docket 64, Plaintiff’s Exhibit 9 at p. 8. This statement clearly indicates that the Board will not take any action until the next meeting.

Plaintiff’s Exhibit 15 is subject to an interpretation different from “[t]he Ad Hoc Committee and the Hiring PIG improperly discussed the investigative PIG’s findings and recommendations in the same meeting that the PIG made its report” because Plaintiff’s Exhibit 15 states “Chair stated that the items to be discussed was Old Business Item E-2.” *See* Docket 64, Plaintiff’s Exhibit 15 at p. 1. Without any additional testimony from a witness who participated in the meeting, reasonable men and women can differ in their interpretation of what “Old Business” means – does it mean that the report was provided to the Board before the current meeting?

Plaintiff’s Exhibit 14 is subject to an interpretation different from “[t]he ADC Board even took action on the Hiring PIG’s report at the same meeting by following the

recommendation to interview the top two candidates selected by the Hiring PIG and scheduling those interviews for its next meeting.” because the facts that Plaintiff cited to in Exhibit 14 both use the phrase “Old Business.” *See* Docket 64, Plaintiff’s Exhibit 14 at pp. 4-5 and 9-10.

Without any additional testimony from a witness who participated in the meeting, reasonable men and women can differ in their interpretation of what the reference to “Old Business” means – does it mean that the report was provided to the Board before the current meeting?

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 10-14 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 10-14, 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.

Finally, Plaintiff has made arguments without any facts to support the arguments. With out facts to support its argument, Plaintiff cannot meet its burden of proof.

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 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)

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 Hawai‘i.
2. I am a Deputy Attorney General for the State of Hawai‘i.
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 X-XIV* as Docket 64 (hereinafter referred to as “**Plaintiff’s Partial MSJ – Counts 10-14**”).

6. Attached to and made a part of Plaintiff's Partial MSJ – Counts 10-14 is *Plaintiff's Memorandum of Law in Support of Motion for Partial Summary Judgement* (“**Pltf's Memo in Support**”);

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.

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.

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Defendants.

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(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.

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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
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