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Attorneys for Appellee  
DIRECTOR OF TAXATION,  
STATE OF HAWAII

**Electronically Filed**  
**FIRST CIRCUIT**  
**1CTX-21-0001613**  
**14-NOV-2024**  
**10:22 AM**  
**Dkt. 259 RESP**

IN THE TAX APPEAL COURT OF THE  
STATE OF HAWAII

IN THE MATTER OF THE TAX APPEAL

Case No. 1CTX-21-0001613

of

BOOKING.COM B.V.,

Taxpayer-Appellant.

APPELLEE DIRECTOR OF TAXATION,  
STATE OF HAWAII'S RESPONSE TO PACIFIC  
FIRST LAW CENTER'S MOTION TO UNSEAL  
COURT RECORDS FILED ON SEPTEMBER  
18, 2024; DECLARATION OF MARY BAHNG  
YOKOTA; EXHIBIT A; CERTIFICATE OF  
SERVICE

HEARING MOTION:

DATE: November 25, 2024

TIME: 1:30 p.m.

JUDGE: The Honorable KEVIN T. MORIKONE

No Trial Date Set Yet

APPELLEE DIRECTOR OF TAXATION, STATE OF HAWAII'S RESPONSE  
TO PACIFIC FIRST LAW CENTER'S MOTION TO UNSEAL  
COURT RECORDS FILED ON SEPTEMBER 18, 2024

In Pacific First Law Center's ("PFLC") MOTION TO UNSEAL COURT RECORDS filed on September 18, 2024 [Dkt. 252] ("Motion"), PFLC moves this Court to unseal Taxpayer-Appellant Booking.com B.V.'s ("Taxpayer") court filings docketed 166-167 and 223-225 ("Taxpayer's Filings") and Appellee Director of Taxation, State of Hawaii's ("Director") court filings docketed 108-111, 183, 186-188, 202-208, 210-215, and 228 ("Director's Filings").

The Taxpayer's Filings and the Director's Filings (collectively the "Subject Records") were filed under seal pursuant to the STIPULATED PROTECTIVE ORDER filed on January 4, 2023 [Dkt. 88] ("Stipulated Protective Order"). Under the Stipulated Protective Order, Taxpayer may designate information as confidential if it in "good faith" believes the information is confidential. See Exhibit A at 3, ¶1. Any filing of such designated information with the Court is required to be under seal. See Exhibit A at 6, ¶7. Further, "[a]ny enforcement of the Stipulated Protective Order shall be the basis for awarding sanctions and reasonable attorneys' fees and cost as this Court shall deem proper" and the "non-breaching Party will be entitled to see [sic] injunctive relief under this Stipulated Protective Order, as well as such further relief as may be granted by a court of competent jurisdiction." See Exhibit A at 9, ¶¶ 18 and 19. The Director filed the Director's Filings under seal as it contained information *Taxpayer* designated (or attempted to designate) as confidential under the Stipulated Protective Order as well as references thereto.<sup>1</sup> Accordingly, the Director leaves Taxpayer to show why and to what extent the Subject Records should remain sealed.

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<sup>1</sup> In its application for oral hearing on the Motion, Taxpayer claims the Subject Records (both the Taxpayer's Filings and the Director's Filings) "contain information regarding Taxpayer's financial information, trade practices and services, client contact information, business

If, however, this Court is inclined to order the unsealing of any of the Subject Records, the Director respectfully asks this Court for guidance as to how such an order will affect the Stipulated Protective Order going forward, if at all.

DATED: Honolulu, Hawaii November 14, 2024.

/s/ Mary Bahng Yokota

Nathan S.C. Chee

Mary Bahng Yokota

Deputy Attorneys General

Attorneys for Appellee

DIRECTOR OF TAXATION,

STATE OF HAWAII

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agreements and confidential commercial proprietary business information,” the public disclosure of which “would result in irreparable harm to the Taxpayer.” See TAXPAYER-APPELLANT BOOKING.COM B.V.’S APPLICATION FOR ORAL HEARING ON MOVANT PUBLIC FIRST LAW CENTER’S MOTION TO UNSEAL COURT RECORDS filed on September 26, 2024 [Dkt. 254], Declaration of Nathaniel A. Higa, ¶ 7.

IN THE TAX APPEAL COURT OF THE  
STATE OF HAWAII

IN THE MATTER OF THE TAX APPEAL

of

BOOKING.COM B.V.,

Taxpayer-Appellant.

Case No. 1CTX-21-0001613

DECLARATION OF MARY BAHNG  
YOKOTA

DECLARATION OF MARY BAHNG YOKOTA

1. I, Mary Bahng Yokota, am a deputy attorney general with the Department of the Attorney General, State of Hawaii, Tax & Charities Division. I am one of the deputies assigned to represent the Director of Taxation, State of Hawaii (“Director”), in this matter. I am duly licensed to practice law before this Court, and I make this declaration based on personal knowledge.

2. For the Court’s convenience, attached hereto as **Exhibit A** is a true and correct copy of the STIPULATED PROTECTIVE ORDER filed on January 4, 2023 in this case, which I printed from the Hawaii State Judiciary Electronic Filing and Service System.

I do declare under penalty of law that the foregoing is true and correct to the best of my knowledge.

Dated: Honolulu, Hawaii, November 14, 2024.

/s/ Mary Bahng Yokota  
Mary Bahng Yokota

# EXHIBIT A

CHUN KERR LLP  
A Limited Liability Law Partnership

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**Electronically Filed**  
**FIRST CIRCUIT**  
**1CTX-21-0001613**  
**04-JAN-2023**  
**09:49 AM**  
**Dkt. 88 STIP**

Attorneys for Taxpayer-Appellant  
Booking.com B.V.

IN THE TAX APPEAL COURT OF THE  
STATE OF HAWAII

In the Matter of the Tax Appeal	)	CASE NO. 1CTX-21-0001613
	)	
of	)	STIPULATED PROTECTIVE ORDER;
	)	EXHIBIT A
Booking.com B.V.	)	
	)	
Taxpayer-Appellant.	)	
	)	
	)	JUDGE: Honorable Gary W.B. Chang
	)	
	)	
	)	

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STIPULATED PROTECTIVE ORDER

WHEREAS the Appellee Director of Taxation, State of Hawaii (“the Director”) has requested and may request the production of documents, materials, items, testimony, and/or information from Taxpayer-Appellant Booking.com B.V., a Netherlands corporation (“Booking.com”);

WHEREAS, some of Booking.com's materials, items, testimony, and/or information may contain or be comprised of information that is confidential, commercially sensitive, subject to protection under Hawaii law, including the Hawaii Uniform Trade Secrets Act; confidential pursuant to contract or agreement; or otherwise deserving of protection from public disclosure and/or is nonpublic information ("the Confidential Information");

WHEREAS, the Confidential Information may include, but is not limited to: confidential commercial and/or proprietary business information of Booking.com including but not limited to financial records; contracts and contract negotiation; documents relating to business operations, commissions, finances, sales, marketing and/or strategic planning.

WHEREAS the Director and Booking.com intend that this Stipulated Protective Order shall govern the production of Confidential Information in the above captioned case (collectively "the Action").

THEREFORE, pursuant to Hawaii Rules of Civil Procedure Rule 29, the Director and Booking.com hereby stipulate and agree to entry of the following Stipulated Protective Order:

1. Any documents, materials, items, testimony, and/or information, or portion thereof, produced by Booking.com as part of discovery in the above-captioned Action may be designated by Booking.com as "Confidential," under the terms of this Stipulated Protective Order, where Booking.com in good faith believe that the information therein is or contains Confidential Information.

2. Information or material(s) designated as "Confidential," or extracts therefrom or compilations or summaries thereof (hereinafter "Confidential Material"), shall be used, disclosed, summarized, described, characterized, or otherwise communicated or made

available in whole or in part only to counsel and their support staff for the receiving party, except as otherwise provided hereinafter, solely in connection with the Action, and not for any other purpose, including without limitation, any business or competitive or regulatory purpose or function.

3. In no instance shall counsel for the receiving party allow any third party to see or possess any copy of any of the Confidential Material, or inform any third party of any of the information contained therein, unless (a) the third party first acknowledges and agrees to be bound by this Stipulated Protective Order by signing the acknowledgment form attached hereto as *Exhibit A* (an executed copy of which shall be provided to counsel for the producing party); or (b) so ordered by the Court herein. Any person receiving such items shall not disclose the Confidential Material therein to any person who is not entitled to such information and shall not retain copies thereof, or extracts therefrom or compilations or summaries thereof.

4. The designation of documents, materials, items, testimony, and/or information, or portion thereof, as “Confidential” for purposes of this Stipulated Protective Order shall be made in the following manner by the party seeking protection:

a. In the case of documents, exhibits, briefs, memoranda, interrogatory responses, responses to requests for admission, or other materials (apart from deposition or hearing testimony): by affixing the legend “CONFIDENTIAL - SUBJECT TO STIPULATED PROTECTIVE ORDER” to each page containing any Confidential Material, at the time such item is produced or disclosed, or within ten (10) days of production or disclosure of such item in the event the party seeking protection becomes aware of the confidential nature of the item subsequent to the date the item was disclosed or produced; in no event shall the confidentiality legend interfere with the legibility of information contained in an item.



b. In the case of deposition or hearing testimony, by written notice of such designation sent by counsel to all parties within ten (10) days after the delivery to counsel of the transcript of the deposition or hearing. However, during a deposition or hearing, the deponent or his or her counsel, or any other counsel of record present, may invoke the provisions of this Stipulated Protective Order in a timely manner, giving adequate warning to counsel for the party or parties that testimony about to be given or just given is deemed “Confidential.” The court reporter shall mark the cover of the original and all copies of the transcript or the portion of the transcript containing testimony designated as “Confidential-Subject to Stipulated Protective Order” as requested by the designating party, and it shall be treated in accordance with the terms of this Stipulated Protective Order. The parties may modify this procedure for any particular deposition or proceeding through agreement on the record at such deposition or proceeding, or otherwise by written stipulation, without further order by this Court. The invoking of this provision may require exclusion of certain persons from the deposition or hearing as appropriate.

5. Any person who is a party to the above-captioned action intends to examine as a witness -- being identified in the party’s respective pre-trial statement and/or disclosure of lay witnesses -- shall have access to Confidential Material or the person may be examined, at hearing or deposition, concerning such Confidential Material under the following circumstances:

a. Any person may be examined as a witness, at hearing or deposition, concerning Confidential Material which that person had lawfully received or authored prior to and apart from the Action. During examination, any such witness may be shown Confidential Material if it appears on its face, or from other documents or testimony, to have been received, authored, or communicated to such person during the relevant time frame.

b. Any witness or potential witness may have access to Confidential Material after executing the acknowledgment form attached hereto as *Exhibit A*.

6. This Stipulated Protective Order has no effect upon, and shall not apply to, a party's use or disclosure of its own Confidential Material for any purpose.

7. If a party intends to attach or include any Confidential Material in any pleading, motion, memorandum, or other document filed in the Action, the party shall make such filing under seal. No further order of this Court will be required to permit the filing of any of the Confidential Material or any pleading, motion, memorandum, or other document filed in the Action under seal.

8. Any party objecting to another party's designation of particular information or documents as Confidential Material may move the Court for relief from such designation, subject to the following conditions:

a. Before seeking any relief from the Court under this paragraph, the Parties shall make a good faith effort to resolve any dispute concerning the confidential treatment of any document or portion thereof; and

b. In the event that a motion or application is filed under this paragraph following a good faith meet and confer, the Confidential Material in question shall remain subject to this Stipulated Protective Order until the Court rules on the motion or application.

9. If a party inadvertently produces documents, materials, or information containing Confidential Information not marked as such in accordance with this Stipulated Protective Order, the failure to so mark the documents, materials, or information shall not be deemed to waive its confidentiality. In such an event, the producing party shall promptly, upon

discovery of such inadvertent disclosure, inform the receiving party in writing and the receiving party shall thereafter treat the documents, materials, or information as confidential under this Stipulated Protective Order. To the extent such documents, materials, or information may have been disclosed to persons other than authorized persons described in this Stipulated Protective Order, the receiving party shall make every reasonable effort to retrieve the documents, materials, or information promptly from such persons and to limit any further disclosure to non-authorized persons.

10. If a producing party inadvertently discloses to a receiving party information that is privileged or otherwise immune from discovery, said producing party shall promptly upon discovery of such inadvertent disclosure so advise the receiving party in writing and request that the items or information be returned. It is further agreed that the receiving party will return such inadvertently produced items or information and all copies thereof within ten (10) business days or the earliest of: (a) discovery by the receiving party of its inadvertent production, or (b) receipt of a written request for the return of such items or information.

11. The parties agree and understand that if a party inadvertently produces documents, materials, or information statutorily protected from disclosure, such production shall not in any way constitute a waiver of said statutory protection of the produced documents, materials, or information and/or any non-produced documents, materials, or information.

12. The terms of this Stipulated Protective Order shall apply to all manner and means of discovery, including without limitation entry onto land or premises, and inspection of books, records, documents, and tangible things.

13. This Stipulated Protective Order shall not abrogate or diminish any contractual, statutory, or other legal obligation or right of any party or person, nor obligate any party or person to provide any discovery to which it asserts objections.

14. Each of the parties hereto shall be entitled, for good cause, to seek modification of this Stipulated Protective Order, provided, however, that any such modification shall only be permitted in writing and ordered by this Court after a hearing requesting such modification, or by stipulation executed by both parties.

15. The provisions of this Stipulated Protective Order shall, absent further order of this Court, or by stipulation executed by both parties, continue to be binding until ninety (90) days after the final disposition of this Action. Final disposition shall be deemed to be the later of: (a) dismissal of all the claims and defenses in this Action, with or without prejudice; or (b) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials or any proceedings arising therefrom. Within ninety (90) days after final disposition, all persons having received Confidential Material or documents containing Confidential Material hereunder shall either:

a. return such items, including without limitation all copies thereof as well as any extracts, compilations, summaries, or excerpts thereof, to counsel for the producing party at that party's expense; or

b. destroy such items, including without limitation all copies thereof as well as any extracts, compilations, summaries or excerpts thereof and certify in writing that all such copies have been destroyed.

To the extent that any copy of any of the Confidential Material or documents containing Confidential Material has handwritten or other notations made by counsel, that copy

may be destroyed rather than returned to counsel for the producing party; counsel so destroying any such copies shall certify in writing that all such copies have been destroyed. The above notwithstanding, counsel of record shall be entitled to retain documents filed in the Action, deposition and hearing transcripts, and attorney work product.

16. Nothing herein shall be deemed to be an admission regarding the admissibility into evidence, or lack thereof, of any of the Confidential Material.

17. Nothing herein shall be deemed to affect in any way the production, objection to production, or admissibility into evidence of any other documents requested in discovery in the Action, unless specifically and expressly agreed to herein.

18. Any enforcement of the Stipulated Protective Order shall be the basis for awarding sanctions and reasonable attorneys' fees and costs as this Court shall deem proper. In the event that such a motion for sanctions or other relief against a receiving party is filed, a party may defend against the request for sanctions by challenging whether the information in question was properly designated as confidential, which challenge shall be treated in the same manner as an objection to such designation under Paragraph 8 of this Stipulated Protective Order.

19. Each party acknowledges that a breach of this Stipulated Protective Order may cause irreparable damage to Booking.com for which monetary damages would not be an adequate remedy and agrees that the non-breaching Party will be entitled to see injunctive relief under this Stipulated Protective Order, as well as such further relief as may be granted by a court of competent jurisdiction. The rights and remedies provided to each party herein are cumulative an in addition to any other rights and remedies available to such party at law or in equity; however each party agrees to waive any requirement for securing or posting of any bond in connection with any such remedy.

20. If a party is served with a subpoena or a court order issued in another litigation that compels disclosure of any Confidential Material in this action that party must:

a. promptly notify in writing the producing party. Such notification shall include a copy of the subpoena or order;

b. promptly notify in writing the party who caused the subpoena or order to issue in another litigation that some or all of the material covered by the subpoena or order is subject to this Stipulated Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

c. cooperate with respect to all reasonable procedure sought to be pursued by the producing party whose Confidential Material may be affected.<sup>1</sup>

If the producing party timely seeks a protective order, the party served with the subpoena or court order shall not produce any Confidential Material before a determination by the court from which the subpoena or order issued, unless the party has obtained the producing party's permission. The producing party shall bear the burden and expense of seeking protection

If the producing party timely seeks a protective order, the party served with the subpoena or court order shall not produce any Confidential Material before a determination by the court from which the subpoena or order issued, unless the party has obtained the producing party's permission. The producing party shall bear the burden and expense of seeking protection in that court of its Confidential Material - nothing in these provisions should be construed as authorizing or encouraging a receiving party in this action to disobey a lawful directive from another court.

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<sup>1</sup> The purpose of imposing these duties is to alert the interested parties to the existence of this Stipulated Protective Order and afford the producing party in this Action an opportunity to try to protect its confidentiality interest in the court from which the subpoena or order issued.

21. Nothing herein shall prevent the parties to the Action from entering into other confidentiality agreements or obtaining other protective orders by stipulation or other means.

22. This Stipulated Protective Order shall survive entry of final judgment herein unless it is set aside by written order of this Court for good cause upon notice and motion.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK-SIGNATURE PAGE FOLLOWS

DATED: Honolulu, Hawaii, December 28, 2022.

/s/ Nathaniel A. Higa

RAY K. KAMIKAWA  
NATHANIEL A. HIGA  
WINSTON I. WONG  
of Chun Kerr LLP  
a Limited Liability Law Partnership

Attorneys for Taxpayer-Appellant  
BOOKING.COM B.V.

DATED: Honolulu, Hawaii, /s/ Nathan S. C. Chee

ANNE E. LOPEZ  
Attorney General of Hawaii  
NATHAN S. C. CHEE  
JOSHUA J. MICHAELS  
Deputy Attorneys General  
Department of the Attorney General

Attorneys for Appellee  
DIRECTOR OF TAXATION,  
STATE OF HAWAII

APPROVED AND SO ORDERED:

/s/ Gary W. B. Chang



JUDGE OF THE ABOVE-ENTITLED COURT

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In the Matter of the Tax Appeal of Booking.com B.V.  
Case No. 1CTX-21-0001613; STIPULATED PROTECTIVE ORDER



**CERTIFICATION**

I hereby certify my understanding that Confidential Information is being provided to me pursuant to the terms and restrictions of the Stipulated Protective Order (“Order”) entered in the action entitled In the Matter of the Tax Appeal of Booking.com B.V., Case No. 1CTX-21-0001613, which matter is pending in the Tax Appeal Court of the State of Hawaii.

I have been given a copy of that Order and read it. I agree to be bound by the Order. I will not reveal the Confidential Information to anyone, except as allowed by the Order. I agree that unauthorized disclosure of Confidential Information constitutes contempt of Court.

I will maintain all such Confidential Information - including copies, notes, or other transcriptions made therefrom - in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information - including copies, notes or other transcriptions made therefrom - to the counsel who provided me with the Confidential Information. I hereby consent to the personal jurisdiction over me by this Court for the purposes of this litigation.

DATED: \_\_\_\_\_

\_\_\_\_\_  
NAME [Print]

\_\_\_\_\_  
NAME [Signature]

\_\_\_\_\_  
ADDRESS

**EXHIBIT A**

IN THE TAX APPEAL COURT OF THE  
STATE OF HAWAII

IN THE MATTER OF THE TAX APPEAL

of

BOOKING.COM B.V.,

Taxpayer-Appellant.

CASE NO. 1CTX-21-0001613

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that, on the date set forth below, a copy of the foregoing was duly served  
on the following via the Hawaii State Judiciary Electronic Filing and Service System:

NATHANIEL A. HIGA, ESQ.  
MICHELLE K. CORREIA, ESQ.  
CHUN KERR LLP  
A Limited Liability Law Partnership  
999 Bishop Street, Suite 2100  
Honolulu, Hawaii 96813-4443  
Attorneys for Taxpayer-Appellant  
BOOKING.COM B.V.

and on the following via hand delivery:

ROBERT BRIAN BLACK  
BENJAMIN M. CREPS  
Public First Law Center  
700 Bishop Street, Suite 1701  
Honolulu, Hawaii 96813  
Attorneys for Movant  
PUBLIC FIRST LAW CENTER

DATED: Honolulu, Hawaii, November 14, 2024.

/s/ Mary Bahng Yokota

Nathan S.C. Chee

Mary Bahng Yokota

Deputy Attorneys General

Attorneys for Appellee  
DIRECTOR OF TAXATION,  
STATE OF HAWAII