NO. CAAP-22-0000506

IN THE INTERMEDIATE COURT OF APPEALS OF THE STATE OF HAWAI‘I

STATE OF HAWAI‘I

HAWAI‘I GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO; and, UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Plaintiffs-Appellants, vs. DEPARTMENT OF PUBLIC SAFETY, STATE OF HAWAI‘I; JOHN DOES 1-10; JANE DOES 1-10; DOE PARTNERSHIPS1-10; DOE CORPORATIONS 1-10; DOE GOVERNMENTAL AGENCIES AND DOE ENTITIES 1-10, Defendants-Appellees.	CIVIL NO. 1CCV-21-0001304 (DECLARATORY JUDGMENT) APPEAL FROM: (1) ORDER GRANTING DEFENDANT DEPARTMENT OF PUBLIC SAFETY, STATE OF HAWAI‘I’S AMENDED MOTION TO DISMISS, FILED ON NOVEMBER 29, 2021 [Dkt. 17], FILED ON MARCH 31, 2022 [Dkt. 37]; and (2) FINAL JUDGMENT FILED ON AUGUST 2, 2022 [Dkt. 48] JUDGE: HON. LISA W. CATALDO

DEFENDANT-APPELLEE DEPARTMENT OF PUBLIC SAFETY, STATE OF HAWAI‘I’S ANSWERING BRIEF

STATEMENT OF RELATED CASES

and

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DEFENDANT-APPELLEE DEPARTMENT OF PUBLIC SAFETY, STATE OF HAWAI‘I’S ANSWERING BRIEF

I. INTRODUCTION

Hawai‘i Revised Statutes ("HRS") ch. 92F was enacted to require the disclosure of government records, not to prevent such disclosure. Thus, the August 19, 2021 email from Department of Public Safety, State of Hawai‘i ("PSD") Departmental Human Resources Officer ("DRHO") Shelley Harrington, could not have constituted a violation of HRS § 92F-14, as alleged by the Hawai‘i Government Employees Association, AFSCME, Local 152, AFL-CIO and United Public Workers, AFSCME, Local 646 (collectively, "Unions"). On this topic the Hawai‘i Supreme Court is clear: HRS § 92F-14 does not provide a private right of action to prevent the disclosure of government information.

The Circuit Court did not err when it ruled that the Unions lacked organizational standing to bring their complaint, based on the lack of a private right of action under HRS ch. 92F. PSD therefore respectfully requests that this Court affirm the Circuit Court's grant of PSD's amended motion to dismiss.

II. STATEMENT OF THE CASE

On August 19, 2021, PSD's DRHO, Shelley Harrington, emailed approximately two hundred sixty PSD employees, at their government email addresses, to ensure their compliance with the Governor's Emergency Proclamation issued on August 5, 2021 ("Emergency Proclamation"), in part, "to protect the health, safety, and welfare of the people." JIMS 1 at PDF 6, JIMS 3 at PDF 2-4, JIMS 20 at PDF 2.[1] The PSD employees included in the email were

[1] Citations to the record from the circuit court are to the JIMS docket number as listed in the Case Detail Docket List contained in the Record on Appeal filed in the ICA, followed by the PDF page number. See ICA docket number 16 at PDF 4.

"cc'd," not "bcc'd," and could therefore see every other recipient of the email. JIMS 1 at PDF 6, JIMS 3 at PDF 2-4. There was no medical information, however, about any single recipient's vaccination status in the email itself or its attachments. JIMS 1 at PDF 6, JIMS 2 at PDF 6-8, JIMS 3 at PDF 2-4, JIMS 5 at PDF 2-3. Moreover, the email was addressed to both vaccinated and unvaccinated individuals. JIMS 1 at PDF 6, JIMS 5 at PDF 1-2. The Unions freely admit this in their appeal. ICA docket number 16 at PDF 8. Sending the same email to all 260 employees, regardless of their vaccination statuses, necessarily means that no one could infer the other's vaccination status.

Ms. Harrington meant to send this August 19, 2021 email with the recipients designated in the "bcc" field of the email, in an abundance of caution, so they could not be identified. JIMS 5 at PDF 2-3. This was her intent even though the email itself did not reveal the vaccination status of any PSD employee. JIMS 5 at PDF 2-3. However, Ms. Harrington accidentally "cc'd" the recipients rather than "bcc'd" them. JIMS 5 at PDF 2-3. Nonetheless, it cannot be reasonably disputed that no medical information was included in the email.

As soon as Ms. Harrington realized that she accidentally "cc'd" the email recipients rather than "bcc'd" them, she attempted to recall the email. JIMS 5 at PDF 2. She also sent an email apologizing for her mistake and promised to be diligent in ensuring the proper sending selection is made in the future. JIMS 5 at PDF 3. Regardless of Ms. Harrington's mistake, this error was harmless, as no individual's vaccination status was disclosed in the email, nor could anyone's vaccination status be inferred by the recipients. See JIMS 1 at PDF 6, JIMS 2 at PDF 6-8, JIMS 3 at PDF 2-4, JIMS 5 at PDF 2-3. Again, it is undisputed that the email was sent to *both* vaccinated and unvaccinated employees.

On October 25, 2021, the Unions file a Complaint against PSD based on the August 19, 2021 email, alleging the following claims: Count I – Invasion of Privacy (Sec. 92F-14, HRS), Count II – Negligent Supervision, Count III – Negligence, and Count IV – Injunctive Relief. JIMS 1.

On November 23, 2021, PSD filed a motion to dismiss. JIMS 15. On November 29, 2021, PSD filed an amended motion to dismiss. JIMS 17.

In its amended motion to dismiss, PSD argued, among other things, that the Unions lacked organizational standing, and neither HRS ch. 92F nor the Emergency Proclamation provided a private right of action to bring suit. JIMS 17.

On January 11, 2022, the Circuit Court held a hearing on the amended motion to dismiss and took the motion under advisement.

On March 31, 2022, the Circuit Court entered its Order Granting Defendant Department of Public Safety, State of Hawaii's Amended Motion to Dismiss, Filed on November 29, 2021 ("Order"). JIMS 37. Even though the Circuit Court granted the motion, the court granted the Unions leave to file an amended complaint within thirty (30) days. JIMS 37 at PDF 5. The Unions did not file an amended complaint.

Final judgment was entered on August 2, 2022. JIMS 48. The Unions filed their notice of appeal on October 19, 2022. JIMS 52. They filed their opening brief on January 26, 2023. ICA docket number 38.

On appeal, the Unions argue: (1) statutes should be interpreted to avoid absurd results, (2) HRS ch. 92F provides a private right of action based on unlawful disclosures, (3) the Circuit Court gravely erred by overextending Organization of Police Officers v. City and County of Honolulu, 149 Hawai'i 492, 494 P.3d 1225 (2021) ("SHOPO") to this case, (4) the Circuit Court

gravely erred when it dismissed the negligence based claims, and (5) the Unions had organizational standing. As set forth below, the Unions' arguments do not merit reversal of the Circuit Court's order.

III. COUNTERSTATEMENT OF THE ISSUES

1. Whether the Circuit Court correctly granted PSD's amended motion to dismiss based on the Unions' lack of organizational standing.
2. Whether the court properly held that the Unions' members did not have a private right of action under HRS ch. 92F to bring the claims in the action.

IV. STANDARD OF REVIEW

A. STANDING

Standing is required for a court to have subject matter jurisdiction over an action. "[T]he issue of standing is reviewed de novo on appeal." Tax Found. of Hawai'i v. State, 144 Hawai'i 175, 185, 439 P.3d 127, 137 (2019) (quoting Mottl v. Miyahira, 95 Hawai'i 381, 388, 23 P.3d 716, 723 (2001)). The same de novo standard applies to the question of whether a statute provides a private right of action. Hungate v. L. Off. of David B. Rosen, 139 Hawai'i 394, 405-06, 391 P.3d 1, 12-13 (2017). "If a party is found to lack standing, the court is without subject matter jurisdiction to determine the action." Hawaii Med. Ass'n v. Hawaii Med. Serv. Ass'n, Inc., 113 Hawai'i 77, 94, 148 P.3d 1179, 1196 (2006) (citing Pele Defense Fund v. Puna Geothermal Venture, 77 Hawai'i 64, 67, 881 P.2d 1210, 1213 (1994)).

B. RULE 12(B)(1) MOTION TO DISMISS

> "A trial court's dismissal for lack of subject matter jurisdiction is a question of law, reviewable de novo." Casumpang v. ILWU, Local 142, 94 Hawai'i 330, 337, 13 P.3d 1235, 1242 (2000) (emphasis removed) (citing McCarthy v. United States, 850 F.2d 558, 560 (9th Cir. 1988)).

> Our review [of a motion to dismiss for lack of subject matter jurisdiction] is based on the contents of the complaint, the allegations of which we accept as true and construe in the light most favorable to the plaintiff. Dismissal is improper unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.
>
> Casumpang, 94 Hawai‘i at 337, 13 P.3d at 1242 (citations and quotation marks omitted).

Tax Found. of Hawai‘i v. State, 144 Haw. 175, 185, 439 P.3d 127, 137 (2019).

C. RULE 12(B)(6) MOTION TO DISMISS

"A circuit court's ruling on a [Rule 12(b)(6)] motion to dismiss is reviewed *de novo*." Bank of America,N.A. v. Reyes-Toledo, 143 Hawai‘i 249, 256, 428 P.3d 761, 768 (2018) (citing Hungate v. Law Office of David B. Rosen, 139 Hawai‘i 394, 401, 391 P.3d 1, 8 (2017)). A Rule 12(b)(6) motion to dismiss tests the legal sufficiency of a party's claim for relief. A complaint should be dismissed for failure to state a claim pursuant to HRCP Rule 12(b)(6) if it appears beyond doubt that the plaintiffs can prove no set of facts in support of their claim that would entitle them to relief. Blair v. Ing, 95 Hawai‘i 247, 252, 21 P.3d 452, 457 (2001). In considering the motion, the court views the complaint in the light most favorable to the plaintiff and deems the factual allegations of the complaint as true. Id. The court should not, however, accept conclusory allegations about the legal effect of pleaded facts if the allegations do not reasonably follow from the plaintiff's description of what happened. Moore v. Allstate Ins. Co., 6 Haw. App. 646, 651, 736 P.2d 73, 77 (1987).

V. ARGUMENT

The Circuit Court did not err when it granted PSD's amended motion to dismiss based on the Unions' lack of organizational standing. The Hawai‘i Supreme Court has already held in SHOPO, 149 Hawai‘i at 497, 494 P.3d at 1230, that no private cause of action exists under HRS

ch. 92F to prevent the disclosure of government information. Since the essence of the Unions' claims in this case is that government information should not have been disclosed pursuant to HRS ch. 92F, SHOPO was appropriately applied by the Circuit Court when it granted the amended motion to dismiss. Because the Union and its members could not sue under HRS ch. 92F to challenge the disclosure of government information, the Circuit Court correctly determined that the Unions lacked organizational standing. Finally, neither HRS ch. 92F nor the Emergency Proclamation created a tort duty to support the Unions' negligence claims. Therefore, none of the Unions' arguments are meritorious, and the Circuit Court's order granting the amended motion to dismiss and judgment should be affirmed.

A. THERE IS NO PRIVATE RIGHT OF ACTION TO PREVENT THE DISCLOSURE OF GOVERNMENT INFORMATION UNDER HRS § 92-14

In this case, the Unions attempt to relitigate whether HRS ch. 92F provides a private right of action to prevent the disclosure of government information. However, this issue has already been squarely addressed in SHOPO, which held that HRS ch. 92F provides neither an express, nor an implied private right of action to prevent the disclosure of government documents.

In that case, SHOPO contended that the City would violate HRS Ch. 92F if the City released to Civil Beat certain records, which SHOPO contended contained protected, private information. Contrary to SHOPO's position then, and the Unions' position now, the Court held that "there is no private right of action under UIPA for a party seeking to prevent the release of documents." Id. at 505, 494 P.3d at 1238. Instead, the Court noted, "UIPA provides an express cause of action for a specific class of people: those aggrieved by nondisclosure." Id. at 506, 494 P.3d at 1239 (emphasis in original). In other words, the judicial enforcement outlined in Chapter 92F is solely to "compel disclosure." HRS § 92F-15(a); see also SHOPO, 149 Hawai'i at 506,

494 P.3d at 1239. Thus, there is no express cause of action to *prevent* the disclosure of government records. SHOPO, 149 Hawai‘i at 506, 494 P.3d at 1239.

Similarly, the Court also found that there was no implied cause of action under HRS ch. 92F for SHOPO to sue to prevent the release of records. Id. The Court noted that "neither legislative intent nor the underlying purposes of the legislative scheme indicate that a party in SHOPO's position is able to sue to prevent the disclosure of public records. UIPA simply provides no right of nondisclosure." Id. at 507, 494 P.3d at 1240.

In reaching this conclusion, the Supreme Court discussed the legislative intent of HRS ch. 92F. The Supreme Court explained that HRS ch. 92F already provides for judicial review under HRS § 92F-15 when a party is aggrieved by an agency's *denial* of access to public records, and criminal enforcement under HRS § 92F-17(a) when there is an intentional disclosure of confidential information. SHOPO, 149 Hawai‘i at 507, 494 P.3d at 1241. Conspicuously missing from HRS ch. 92F, is a provision allowing for judicial review when a private party seeks to *prevent* disclosure of government records. See id. at 507-08, 494 P.3d at 1241-42.

The Court also went on to explain as follows:

> The legislative scheme also points against implying a cause of action for SHOPO to sue to prevent disclosure because UIPA itself creates no right of nondisclosure. SHOPO does not accurately characterize the law when it says that documents are "protected from disclosure" unless the public interest outweighs the privacy interest. In fact, HRS § 92F-13(1) provides that "[UIPA] shall not require disclosure of," inter alia, "records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy[.]" (Emphasis added.) "The plain language of a statute is 'the fundamental starting point of statutory interpretation[.]' " State v. Demello, 136 Hawai‘i 193, 195, 361 P.3d 420, 422 (2015) (citation omitted). The statutory language here is not prohibitive: that is, HRS § 92F-13 does "not require disclosure" if an exemption applies, but it does not forbid it, either. The statute does not, for instance, say that such records "shall not be disclosed," language used in other statutes.[18] Indeed, UIPA itself uses more restrictive and unequivocal language prohibiting disclosure in other places within the statutory scheme: under HRS § 92F-19(a) (2012), "[n]o agency may disclose or authorize disclosure of government records to any other agency," unless a defined exception applies. And the fourth

> exemption in HRS § 92F-13 provides that an agency need not release "[g]overnment records which, pursuant to state or federal law including an order of any state or federal court, are protected from disclosure[.]" HRS § 92F-13(4) (emphasis added). This provision recognizes that, unlike documents that are exempt from disclosure per HRS § 92F-13(1), (2), (3), and (5), some records are affirmatively "protected from disclosure" by state or federal law, and an agency does not violate UIPA, which would otherwise mandate disclosure, by abiding by a countervailing directive. **Reading the statute in pari materia, that the legislature could have, but did not, phrase HRS § 92F-13 to prohibit disclosure or protect from disclosure (rather than "not require disclosure") suggests that the difference was purposeful, and "this court must presume that the legislature meant what it said**[.]" Demello, 136 Hawai'i at 195, 361 P.3d at 422.

SHOPO, 149 Hawai'i at 507–08, 494 P.3d at 1240–41 (emphasis added).[2]

Thus the Unions' contention that HRS ch. 92F provides a private right of action to prevent the disclosure of government records directly contravenes the binding case law cited above. The Circuit Court did not err in this case when, citing to SHOPO, it accordingly found that no such right exists. JIMS 37 at PDF 4.

B. SHOPO WAS PROPERLY APPLIED IN THIS CASE

The Unions argue SHOPO was improperly applied in this case. However, the opposite is true. Both here and in SHOPO, unions sued the government under HRS ch. 92F, to challenge the disclosure of information in which the unions' members allegedly held significant privacy

[2] The Unions have suggested that the legislative remarks in the Journal of the House of Representatives, Fourteenth Legislature, Regular Session of 1988, at 818, support that there was a remedy "for those whose [personal] records are inappropriately disclosed." ICA docket number 38 at PDF 16-17. However, the plain language of HRS ch. 92F does not provide a private right of action to challenge the disclosure of agency-held records, even for those whose personal records were improperly disclosed. HRS § 92F-27(a) provides judicial relief to individuals when an agency fails to comply with any provision of HRS ch. 92F Part III and only after the individual has exhausted the administrative remedies under HRS §§ 92F-23 (access to personal record; initial procedure), 92F-24 (right to correct personal record; initial procedure), and 92F-25 (correction and amendment; review procedures). However, while Part III concerns an individual's access to the individual's personal records and ability to make amendments to those records, nothing in Part III prevents an agency from disclosing personal records. Thus, the Unions' argument is not persuasive in light of the plain language of HRS ch. 92F and the holding in SHOPO.

interests under HRS § 92F-14. The only difference between SHOPO and this case is the point in time when the challenge was brought. In SHOPO, the action was filed prior to the disclosure of the public records, when the government stated its intention to make the records public. SHOPO, 149 Hawai‘i at 498, 494 P.3d at 1231. Here, the disclosure had already occurred prior to the Unions filing their complaint.

However, as noted by the Circuit Court, "This is a distinction without a difference[.]" JIMS 37 at PDF 4. The Supreme Court already made clear in SHOPO that HRS ch. 92F only provides a private right of action to *compel* the disclosure of government records, not to prevent the disclosure. SHOPO, 149 Hawai‘i at 506, 494 P.3d at 1239.

It does not matter what point in time a party chooses to bring an action under HRS ch. 92F to challenge the disclosure of government information – whether it is before or after the disclosure occurs. HRS ch. 92F simply does not provide a vehicle for any such challenge. Thus, the Circuit Court did not err when it extended the holding in SHOPO to this case.

C. THE UNION LACKED ORGANIZATIONAL STANDING TO SUE UNDER HRS § 92-14

An organization may sue on behalf of its members - even though it has not itself been injured – only when:

> (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

Hawaii Med. Ass'n v. Hawaii Med. Service Ass'n, Inc., 113 Hawai‘i 77, 95, 148 P.3d 1179, 1197 (2006) (citations omitted).

In the Complaint, the Unions alleged the following regarding their organizational standing to bring the action:

> The Plaintiffs, as organizations and/or associations of members, have standing to bring the present lawsuit: (a) **Its members would otherwise have standing to sue in their own right under Sec. 92F-14, HRS**; (b) the interests the Plaintiffs seek to protect, on behalf of its members is germane to the purpose of the HGEA and UPW of protecting its members with respect to the terms and conditions of employment, including employees' interests and rights set out in Hawaii law, regulations and collective bargaining agreements with public employers throughout the State of Hawaii; and (c) the claims asserted and the relief requested requires the participation[3] of individual members in the present claim. Hawaii Med. Ass'n v. Hawaii Med. Serv. Ass'n, Inc., 113 Hawai'i 77, 95, 148 P.3d 1179, 1197, 2006 WL 2578956 (2006).

JIMS 1 at PDF 4 ¶ 11 (emphasis added).

The Circuit Court found that the Unions lacked organizational because in light of SHOPO, the Unions failed to satisfy the first prong, that the Unions "members would otherwise have standing to sue in their own right under Sec. 92F-14, HRS." JIMS 37 at PDF 2. Since pursuant to SHOPO, the Unions' members would not have a private right of action under HRS § 92F-14 (or any other part of HRS ch. 92F) to sue to prevent the disclosure of government information, no such right exists for the Unions either. Thus the Unions lacked standing to sue. See JIMS 37 at PDF 4.

This was an appropriate conclusion by the Circuit Court because if a party lacks a private right of action to sue, the party will also by definition lack standing. In County of Hawai'i v. Ala Loop Homeowners, 123 Haw. 391, 406, 235 P.3d 1103, 1118 (2010), abrogated by Tax Found. of Hawai'i v. State, 144 Haw. 175, 439 P.3d 127 (2019), the Hawai'i Supreme Court discussed the private right of action and standing inquiries. There, the Court recognized that "the term 'standing' is sometimes used to describe the private right of action inquiry." Id. n.20. Although

[3] The Unions contended during the hearing on PSD's amended motion to dismiss that this was an error and the Unions meant to allege that the claims asserted and the relief requested did not require the participation of individual members. Transcript of Proceedings [ICA docket number 36] on January 11, 2022 ("Tr.") at 22:16-25.

the Court stated that "the two inquiries involve distinct policy considerations and distinct tests," id., the difference described by the Court was that "[t]he private right of action inquiry focuses on the question of whether any private party can sue to enforce a statute, while the standing inquiry focuses on whether a particular private party is an appropriate plaintiff." Id. Therefore, if there is no private right of action, then no private parties have standing.

In this case, the first part of the organizational standing test asks whether the organization's members would otherwise have standing to sue in their own right. Since the SHOPO Court ruled that there is no private right of action to prevent the disclosure of government information under HRS ch. 92F, then there is no way that any of the Unions' members could have standing. Thus, the Circuit Court did not err when it held that the Unions lacked standing to sue under HRS ch. 92F.

D. NEITHER HRS CH. 92F NOR THE EMERGENCY PROCLAMATION CREATED A TORT DUTY

The Unions' negligent supervision claim was based on a supposed duty created by the Emergency Proclamation. JIMS 1 at PDF 10 ¶ 45. Their negligence claim was based on an alleged duty created by the HRS § 92F-14(b) and the Emergency Proclamation. JIMS at PDF 12 ¶ 57-58. However, neither authority provides a tort duty upon which the Unions can base their negligent supervision or negligence claims.[4]

What the Unions have failed to acknowledge is that the duty or obligation must be one that is "recognized by law, requiring the defendant to conform to a certain standard of conduct,

[4] The Unions reference In re Bevins, 28 Haw. 733 (1925), for its discussion of "malfeasance" as also supporting their negligent claims. While In re Bevins defined "malfeasance," the case concerned the impeachment of an elected official where the statutory standard for removal of the officer included "malfeasance." Id. at 740. In re Bevins did not involve a negligence tort claim, and does not support the Unions' argument in this case that they sufficiently alleged their negligence claim.

for the protection of others against unreasonable risks." Nakamoto v. Kawauchi, 142 Hawai'i 259, 275, 418 P.3d 600, 616 (2018) (emphasis added). There is no such law recognizing a duty in the present case.

As explained above, the Supreme Court has already ruled in SHOPO that there is no private right of action under HRS ch. 92F to prevent the disclosure of governmental information.

Similarly, the Emergency Proclamation expressly states:

> VII. Enforcement
> No provision of this Proclamation, or any rule or regulation hereunder, shall be construed as authorizing any private right of action to enforce any requirement of this Proclamation, or of any rule or regulation.

JIMS 20 at PDF 20-21.

Thus both authorities that the Unions rely upon in their negligence claims do not allow suits such as this one.

Additionally, the Unions cannot get around the lack of a private right of action to sue under HRS ch. 92F or the Emergency Proclamation, by alleging that either of those authorities supplied a tort duty to support a negligence claim. The Hawai'i Supreme Court has recognized that there is no tort duty to comply with all statutes or emergency proclamations, such that a duty is breached whenever they are violated. See Molfino v. Yuen, 134 Hawai'i 181, 185, 339 P.3d 679, 683 (2014) (noting its prior holding that counties do not have a tort "duty to administer and enforce the applicable laws, rules and regulations" because such a duty would be "too expansive in light of public policy considerations versus liability and remedial considerations").

Moreover, with regard to HRS ch. 92F, the Molfino Court already determined that "HRS Chapter 92F, when read as a whole, does not reflect a legislative intent to impose tort liability for merely negligent acts or omissions of government agencies in the maintenance of public records." Id. at 187, 339 P.3d at 685. Similarly, HRS ch. 92F lacks any legislative intent to

impose tort liability for merely negligent acts in the accidental disclosure of alleged government information, as is claimed in this case. Thus the Unions' argument that a tort duty supporting their negligence claims existed under the Emergency Proclamation or HRS § 92F-14(b), is controverted by the applicable law.

VI. CONCLUSION

The Circuit Court did not err when it granted the amended motion to dismiss and entered judgment in favor of PSD. Thus, the order granting the amended motion to dismiss and final judgment should be affirmed.

DATED: Honolulu, Hawai'i, April 6, 2023.

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STATEMENT OF RELATED CASES

Defendant-Appellee is not aware of any related cases.

DATED: Honolulu, Hawai‘i, April 6, 2023.

/s/ AMANDA FURMAN
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 31, 2023, true and correct copies of DEFENDANT-APPELLEE DEPARTMENT OF PUBLIC SAFETY, STATE OF HAWAI‘I’S ANSWERING BRIEF and STATEMENT OF RELATED CASES were served electronically (through the Court’s Judiciary Electronic Filing System), upon the following at their last known address:

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DATED: Honolulu, Hawai‘i, March 31, 2023.

/s/ AMANDA FURMAN
AMANDA FURMAN