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**Electronically Filed**  
**FIFTH CIRCUIT**  
**5CCV-20-000091**  
**08-OCT-2020**  
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IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT

STATE OF HAWAI'I

FOR OUR RIGHTS, a Hawai'i corporation,  
Diana Lomma, David R. Hamman, Randi  
Hamman, Janet Eisenbach, Levana Lomma  
Keikaika, Lawrence K. Paille, GERALYN  
SCHULKIND, Leonard Shulkind, Daniel Hashimoto,  
Christina Cole, Francesca Woolger, Na'ea  
Lindsey, Michael Mazzone, Lanette J. Harley, and  
Lorraine L. Patch.

Plaintiffs,

vs.

DAVID IGE, in his official capacity as Governor  
of the State of Hawai'i; CLARE E. CONNORS,  
in her official capacity as Attorney General for  
the State of Hawai'i, and STATE OF HAWAI'I,

Defendants.

CIVIL NO. 5CCV-20-000091  
(OTHER CIVIL ACTION)

MOTION TO DISMISS PLAINTIFF'S FIRST  
AMENDED COMPLAINT;  
MEMORANDUM IN SUPPORT OF  
MOTION TO DISMISS; DECLARATION OF  
CRAIG Y. IHA; EXHIBITS "A-D"; NOTICE  
OF MOTION; CERTIFICATE OF SERVICE

Hearing Date: November 17, 2020

Hearing Time: 1:30 p.m.

Judge: The Honorable  
Kathleen N.A. Watanabe

No Trial Date Set

**MOTION TO DISMISS PLAINTIFF’S FIRST AMENDED COMPLAINT**

Governor DAVID Y. IGE, in his official capacity as Governor of the State of Hawai‘i, CLARE E. CONNORS, in her official capacity as Attorney General for the State of Hawai‘i, and the STATE OF HAWAI‘I (collectively, the “**State Defendants**”) respectfully move, through counsel, to dismiss the First Amended Complaint filed herein on September 24, 2020, by Plaintiffs FOR OUR RIGHTS, a Hawai‘i corporation, DIANA LOMMA, DAVID R. HAMMAN, RANDI HAMMAN, JANET EISENBACH, LEVANA LOMMA KEIKAIKA, LAWRENCE K. PAILLE, GERALYN SCHULKIND, LEONARD SHULKIND, DANIEL HASHIMOTO, CHRISTINA COLE, FRANCESCA WOOLGER, NA’EA LINDSEY, MICHAEL MAZZONE, LANETTE J. HARLEY, and LORAIN L. PATCH (collectively, “**Plaintiffs**”).

This Motion is brought pursuant to Rules 7(b), 8, and 12(b)(6) of the Hawai‘i Rules of Civil Procedure, and pursuant to Rules 3, 7, 7.1, and 7.2 of the Rules of the Circuit Courts of the State of Hawai‘i, and is based on the accompanying memorandum of law, any reply submitted in support thereof, the argument on the motion, the accompanying declarations and exhibits, and the records and files herein.

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As explained in the accompanying memorandum, Plaintiffs' First Amended Complaint should be dismissed in its entirety because it fails to state a claim as a matter of law.

DATED: Honolulu, Hawai'i, October 8, 2020.

*/s/ Craig Y. Iha*

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CIVIL NO. 5CCV-20-000091  
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MEMORANDUM IN SUPPORT OF  
MOTION TO DISMISS; DECLARATION OF  
CRAIG Y. IHA (SUPPORTING  
DOCUMENTS FILED SEPARATELY);  
CERTIFICATE OF SERVICE

Hearing Date: November 17, 2020

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Judge: The Honorable  
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No Trial Date Set

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Defendants.

CIVIL NO. 5CCV-20-000091  
(OTHER CIVIL ACTION)

MEMORANDUM IN SUPPORT OF  
MOTION TO DISMISS

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## MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

### **I. Introduction**

“Like many states across the nation and countries around the world, Hawai‘i has issued a series of Emergency Proclamations ‘to limit the spread of COVID-19, a novel severe acute respiratory illness’ with ‘no known cure, no effective treatment, and no vaccine.’” *Carmichael v. Ige*, No. CV 20-00273 JAO-WRP, 2020 WL 3630738, at \*1 (D. Haw. July 2, 2020) (quoting *S. Bay United Pentecostal Church v. Newsom*, 140 S. Ct. 1613, 1613 (2020) (mem.) (Roberts, C.J., concurring in the denial of injunctive relief)). In three cases, courts in Hawaii have denied challenges to the validity of the emergency proclamations under principles of federal constitutional law<sup>1</sup> and state statutory construction.<sup>2</sup>

On September 1, 2020, Judge Wendy DeWeese of the State Third Circuit Court<sup>3</sup> rejected the exact argument asserted by Plaintiffs here – that HRS Chapter 127A only authorized the Governor to issue a single, 60-day emergency proclamation that expired in May, regardless of whether COVID-19 continued to threaten the people of Hawai‘i. In an oral ruling dismissing the complaint, Judge DeWeese held that the language, purpose, and history of HRS Chapter 127A all demonstrate that the Governor is empowered to issue supplementary emergency proclamations extending beyond a single 60-day period.

This Court should likewise dismiss the present challenge to the Governor’s emergency proclamation, for the following reasons:

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<sup>1</sup> *Carmichael v. Ige*, No. CV 20-00273 JAO-WRP, 2020 WL 3630738, at \*1 (D. Haw. July 2, 2020); *Bannister v. Ige*, No. CV 20-00305 JAO-RT, 2020 WL 4209225 \*1 (D. Haw. July 22, 2020), attached as Exhibits A and B, respectively.

<sup>2</sup> *Partal, et al. v. Ige, et al.*, Civil No. 3CCV-20-0000277 (September 1, 2020) (ruling from the bench), hearing transcript attached as Exhibit C.

<sup>3</sup> *Partal* was assigned to District Family Court Judge DeWeese due to a vacancy on the Third Circuit bench.

- Although the Governor’s Thirteenth Proclamation Related to the COVID-19 Emergency was issued before Plaintiffs filed their First Amended Complaint, they challenge only prior, superseded proclamations that are no longer in effect. Plaintiffs lack standing to seek declaratory relief under HRS Chapter 632 because no ruling as to earlier proclamations could affect the validity of the operative Thirteenth Proclamation, and this Court lacks jurisdiction because Plaintiffs’ claims are moot;
- As held by the Third Circuit, Plaintiffs’ statutory claim fails because HRS Chapter 127A authorizes the Governor to issue separate proclamations to respond to ongoing emergencies. Otherwise, the Governor’s powers under that statute would suddenly disappear on the 61<sup>st</sup> day following an initial proclamation, even if an emergency or disaster is ongoing; and
- Plaintiffs’ void-for-vagueness claims fail because they have not alleged that the emergency proclamations are unconstitutionally vague with respect to any particularized facts. Nor can they establish that no set of circumstances exists under which the proclamations would be valid.

## II. Background

The COVID-19 pandemic has posed—and continues to pose—an unprecedented danger to the lives, health, and welfare of the people of the State of Hawai‘i. Today, “[t]he United States leads the world in COVID-19 cases and deaths by a large margin,” and “nearly all states are experiencing increases.” *Bannister v. Ige*, No. CV 20-00305 JAO-RT, 2020 WL 4209225 at \*1 (D. Haw. July 22, 2020). As of October 8, 2020, the United States has seen 7,528,313 cases of COVID-19, and 211,132 resulting deaths.<sup>4</sup> The numbers continue to climb each day. This disease poses an especially serious risk to the State of Hawai‘i, because “the public consequences of a COVID-19 outbreak” likely “would quickly overwhelm Hawaii’s healthcare system and resources, and Hawaii’s geographical isolation would further exacerbate the crisis.” *Bannister*, 2020 WL 4209225, at \*9. Responding to this threat, the Governor and mayors have taken urgent steps to protect public health. United States District Judge Jill Otake recounted

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<sup>4</sup> CDC, *Cases in the U.S.*, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last visited October 8, 2020).

some of these steps in a recent decision rejecting constitutional challenges to the emergency proclamations:

As COVID-19 appeared in Hawai‘i, Defendant Ige issued an Emergency Proclamation on March 4, 2020, authorizing the expenditure of State monies, and suspending specified Hawai‘i statutes. See [https://governor.hawaii.gov/wp-content/uploads/2020/03/2003020-GOV-Emergency-Proclamation\\_COVID-19.pdf](https://governor.hawaii.gov/wp-content/uploads/2020/03/2003020-GOV-Emergency-Proclamation_COVID-19.pdf) (last visited July 22, 2020).

On March 21, 2020, Defendant Ige issued a Second Supplementary Proclamation that imposed a 14-day quarantine, effective March 26, 2020, applying to all persons entering Hawai‘i, both residents and non-residents alike, with a few exceptions related to emergency and critical infrastructure functions. See [https://governor.hawaii.gov/wp-content/uploads/2020/03/2003152-ATG\\_Second-Supplementary-Proclamation-for-COVID-19-signed.pdf](https://governor.hawaii.gov/wp-content/uploads/2020/03/2003152-ATG_Second-Supplementary-Proclamation-for-COVID-19-signed.pdf) (last visited July 22, 2020). Defendant Ige's Eighth Supplementary Proclamation, issued on May 18, 2020, excepted from the quarantine individuals entering Hawai‘i “by recreational boats which have been at sea for at least 14 consecutive days before entering State waters and have no persons on board that are ill or are exhibiting symptoms of COVID-19.” [https://governor.hawaii.gov/wp-content/uploads/2020/05/2005088-ATG\\_Eighth-Supplementary-Proclamation-for-COVID-19-distribution-signed.pdf](https://governor.hawaii.gov/wp-content/uploads/2020/05/2005088-ATG_Eighth-Supplementary-Proclamation-for-COVID-19-distribution-signed.pdf) (last visited July 22, 2020).

In his Ninth Supplementary Proclamation issued on June 10, 2020, Defendant Ige extended the interstate quarantine until July 31, 2020. See [https://governor.hawaii.gov/wp-content/uploads/2020/06/2006097A-ATG\\_Ninth-Supplementary-Proclamation-COVID-19-distribution-signed.pdf](https://governor.hawaii.gov/wp-content/uploads/2020/06/2006097A-ATG_Ninth-Supplementary-Proclamation-COVID-19-distribution-signed.pdf) (last visited July 22, 2020).

On June 25, 2020, Defendant Ige announced the August 1, 2020 implementation of the trans-Pacific pre-testing program, which allows travelers to avoid quarantine by supplying a negative COVID-19 test obtained within 72 hours of arrival in Hawai‘i. ECF No. 25-6 (Decl. of Bruce S. Anderson, Ph.D) ¶ 8. Those with temperatures exceeding 100.4 or exhibiting other signs of infection will undergo secondary screening and be offered a COVID-19 test. *Id.* Due to uncontrolled outbreaks in the continental United States, an increase in Hawaii's cases, interruption to testing supplies, and an anticipated uptick in cases when schools reopen in August, Defendant Ige delayed the program until September 1, 2020. See <https://governor.hawaii.gov/newsroom/latest-news/office-of-the-governor-news-release-governor-ige-announces-pre-trav/> (last visited July 22, 2020). He correspondingly extended the quarantine until September 1, 2020 in a Tenth Supplementary Proclamation issued on July 17, 2020. See [https://governor.hawaii.gov/wp-content/uploads/2020/07/2007090-ATG\\_Tenth-Supplementary-Proclamation-for-COVID-19-distribution-signed.pdf](https://governor.hawaii.gov/wp-content/uploads/2020/07/2007090-ATG_Tenth-Supplementary-Proclamation-for-COVID-19-distribution-signed.pdf) (last visited July 22, 2020).

*Bannister v. Ige*, No. CV 20-00305 JAO-RT, 2020 WL 4209225 at \*1-2 (D. Haw. July 22, 2020); see also First Amended Complaint ¶¶ 14-26. The Governor has since issued his Eleventh,

Twelfth, and Thirteenth emergency proclamations. The Thirteenth proclamation was issued on September 23, 2020, the day before Plaintiffs filed their First Amended Complaint.<sup>5</sup>

Each emergency proclamation has been a separate proclamation specifically tailored to the evolving circumstances on the ground. After all, “[t]he precise question of when restrictions on particular social activities should be lifted during the pandemic is a dynamic and fact-intensive matter subject to reasonable disagreement,” *S. Bay United Pentecostal Church v Newsom*, 140 S. Ct. 1613 (2020) (Roberts, C.J., concurring in denial of injunctive relief), and state and local officials have had to “actively shap[e] their response to changing facts on the ground.” *Id.* at 1614. Indeed, the Governor has imposed additional restrictions when needed to arrest the viral spread, and relaxed other restrictions when the data allowed, all in response to ever-changing circumstances.

### **III. Legal Standard for a Motion to Dismiss**

Under HRCP Rule 12(b)(6), a complaint may be dismissed for “failure to state a claim upon which relief can be granted.” When considering a motion to dismiss under Rule 12(b)(6), the Court views a complaint in a light most favorable to the plaintiff and accepts factual, non-conclusory allegations as true for purposes of the motion. *Kealoha v. Machado*, 131 Hawai‘i 62, 74, 315 P.3d 213, 225 (2013). Still, “in weighing the allegations of the complaint as against a motion to dismiss, the court is not required to accept conclusory allegations on the legal effect of the events alleged.” *Id.* (quotations omitted).

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<sup>5</sup> See [https://governor.hawaii.gov/wp-content/uploads/2020/09/2009139-ATG\\_Thirteenth-Supplementary-Proclamation-for-COVID-19-distribution-signed.pdf](https://governor.hawaii.gov/wp-content/uploads/2020/09/2009139-ATG_Thirteenth-Supplementary-Proclamation-for-COVID-19-distribution-signed.pdf). Copy attached as Exhibit D. See also [https://governor.hawaii.gov/wp-content/uploads/2020/08/2008022-ATG\\_Eleventh-Proclamation-for-COVID-19-distribution-signed.pdf](https://governor.hawaii.gov/wp-content/uploads/2020/08/2008022-ATG_Eleventh-Proclamation-for-COVID-19-distribution-signed.pdf) and [https://governor.hawaii.gov/wp-content/uploads/2020/08/2008089-ATG\\_Twelfth-Proclamation-COVID-19-distribution-signed.pdf](https://governor.hawaii.gov/wp-content/uploads/2020/08/2008089-ATG_Twelfth-Proclamation-COVID-19-distribution-signed.pdf).

“[D]ismissal pursuant to HRCP Rule 12(b)(6) is appropriate where the allegations of the complaint itself clearly demonstrate that plaintiff does not have a claim, and in weighing the allegations of the complaint as against a motion to dismiss, the court will not accept conclusory allegations concerning the legal effect of the events the plaintiff has alleged.” *Bank of Am., N.A. v. Reyes-Toledo*, 143 Hawai‘i 249, 262-63, 428 P.3d 761, 774-75 (2018) (quotations omitted).

“[A] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of [their] claim that would entitle [them] to relief.” *Rohrer v. Hoyte*, 145 Hawai‘i 262, 450 P.3d 1287 (App. 2019).

Rule 12(b)(6) dismissal is appropriate when there is “an absence of law to support a claim[.]” *Justice v. Fuddy*, 125 Hawai‘i 104, 108, 253 P.3d 665, 669 (App. 2011); *see Machado*, 131 Hawai‘i at 74-75, 315 P.3d at 225-26 (dismissal under Rule 12(b)(6) was required where statute, properly interpreted, did not support plaintiff’s legal theory). Courts generally decide motions to dismiss under HRCP Rule 12(b)(6) based solely on the four corners of the complaint, but the Court may also take judicial notice of other documents in connection with a motion to dismiss without converting it into a motion for summary judgment, especially when those documents are relied upon in a complaint.

#### **IV. The First Amended Complaint Must be Dismissed**

##### **A. Plaintiffs Do Not Challenge the Emergency Proclamation Now in Effect.**

In their September 24, 2020 First Amended Complaint, Plaintiffs do not challenge the Governor’s Twelfth or Thirteenth Proclamations, which were issued on August 20, 2020 and September 23, 2020, respectively. Plaintiffs instead limit their challenge to the Governor’s Tenth and Eleventh Proclamations and prior orders. *See* Complaint at p. 28 (seeking relief as to “the Eleventh Proclamation, the Tenth Proclamation, and the June 10 Supplement inclusive of all exhibits and any existing or predecessor documents they include by reference”). However, the

Thirteenth Proclamation expressly “supersedes all prior proclamations issued by [the Governor] related to the COVID-19 emergency,” and was the only proclamation in effect when Plaintiffs filed their First Amended Complaint. *See* Thirteenth Proclamation at p. 32. Plaintiffs thus lack standing to seek declaratory relief because no ruling as to the prior, superseded proclamations could affect the validity of the Thirteenth Proclamation. And even if Plaintiffs could somehow establish standing, this Court would lack jurisdiction over the case because Plaintiffs’ claims are moot.

1. Plaintiffs lack standing to seek declaratory relief.

Plaintiffs seek declaratory relief under HRS § 632-1, which confers standing only:

(1) where antagonistic claims exist between the parties (a) that indicate imminent and inevitable litigation, or (b) where the party seeking declaratory relief has a concrete interest in a legal relation, status, right, or privilege that is challenged or denied by the other party, who has or asserts a concrete interest in the same legal relation, status, right, or privilege; and (2) a declaratory judgment will serve to terminate the uncertainty or controversy giving rise to the proceeding.

*Tax Found. of Hawai‘i v. State*, 144 Hawai‘i 175, 202, 439 P.3d 127, 154 (2019). The question of whether a party has standing to obtain declaratory relief pursuant to HRS § 632-1 is a question of law. *Id.*

Here, Plaintiffs lack standing for at least two reasons. First, a declaratory judgment regarding the Eleventh, Tenth, and Ninth Emergency Proclamations will not terminate any uncertainty or controversy because those proclamations have been superseded and have no legal effect. In other words, the injuries and controversies asserted in Plaintiffs’ First Amended Complaint cannot be remedied by an advisory opinion stating that the superseded Eleventh, Tenth, and Ninth Proclamations were invalid. Such an order would have no effect on the current Thirteenth Proclamation.

Second, no antagonistic claims exist between the parties: litigation seeking prospective relief as to superseded proclamations is neither imminent nor inevitable, and Plaintiffs cannot assert a concrete interest in defunct proclamations that are mere nullities. This Court thus lacks subject-matter jurisdiction over the First Amended Complaint and Plaintiffs lack standing to seek declaratory relief under HRS § 632-1.

2. Plaintiffs' claims are moot.

Even if Plaintiffs had standing, this Court lacks subject-matter jurisdiction because the First Amended Complaint seeks to invalidate proclamations that are no longer in effect. “A case is moot if it has lost its character as a present, live controversy of the kind that must exist if courts are to avoid advisory opinions on abstract propositions of law.” *Queen Emma Found. v. Tatibouet*, 123 Hawai‘i 500, 506–07, 236 P.3d 1236, 1242-43 (App. 2010) (citation omitted). A case is moot if it “does not rest on existing facts or rights.” *In re Application of Thomas*, 73 Haw. 223, 226, 832 P.2d 253, 254 (1992).

“Mootness is an issue of subject matter jurisdiction.” *See In re Marn Family Litig.*, 141 Hawai‘i 1, 7, 403 P.3d 621, 627 (2016). The existence of subject-matter jurisdiction is a pure question of law. *U.S. Bank Nat’l Ass’n v. Castro*, 131 Hawai‘i 28, 34, 313 P.3d 717, 723 (2013). When considering a HRCP Rule 12(b)(1) motion to dismiss for lack of subject-matter jurisdiction, this Court is not restricted to the face of the pleadings, but may review any evidence to determine whether jurisdiction exists. *Norris v. Hawaiian Airlines, Inc.*, 74 Haw. 235, 240, 842 P.2d 634, 637 (1992).

Where a claim challenges regulations that have been superseded, the claim is moot. In *Abiding Place Ministries v. Newsom*, a plaintiff moved for a preliminary injunction against various stay-at-home orders issued by the Governor of California to slow the spread of COVID-19. Case No. 20-cv-683-BAS-AHG, 2020 WL 2991467, at \*1 (S.D. Cal. June 4, 2020). The

governor later issued new guidance concerning the subject matter of the motion on May 25, 2020. *Id.* at \*2. The U.S. District Court for the Southern District of California held that the amended complaint and the motion were moot: “Because the amended complaint and the preliminary injunction Motion do not challenge the May 25 guidelines and because the May 25 guidelines superseded the orders challenged in Plaintiff’s papers, Plaintiff’s Motion is moot.” *Id.* at \*3.

Like the claims in *Abiding Place Ministries*, Plaintiffs’ claims here are moot. They challenge EPs that are no longer in effect. More so, Plaintiffs here filed their complaint *after* the Thirteenth EP was issued, yet explicitly limited their challenge to earlier proclamations and orders that were no longer in effect. Their claims do not rest upon *existing* facts or law, and there is no *present*, live controversy between the parties. Plaintiffs’ First Amended Complaint should be dismissed as moot.<sup>6</sup>

B. The Governor’s Emergency Proclamations are Fully Authorized Under HRS Chapter 127A.

Even if the Court reaches the merits—which it should not—Plaintiffs’ First Amended Complaint should be dismissed for failure to state a claim. Plaintiffs’ core allegation is that the Governor exceeded his authority by issuing the Eleventh and earlier proclamations because HRS § 127A-14 supposedly limits the Governor to a single, 60-day emergency proclamation. *See* Complaint, Count I, ¶¶ 36-48. But this claim is legally unavailing as all of the proclamations related to the COVID-19 emergency were fully authorized under both the plain language and legislative purpose of HRS chapter 127A.

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<sup>6</sup> Plaintiffs may well argue that their claim applies equally to any proclamations issued after the filing of their First Amended Complaint. But they did not *allege* a prospective claim of the invalidity of future proclamations. Instead, they deliberately challenged the specific provisions of earlier proclamations that were not even in effect when their claims were filed. Since the Court can only consider the allegations of the complaint, Plaintiffs’ claims are moot.

As discussed above, Judge DeWeese of the Third Circuit already has rejected the exact same argument that Plaintiffs make here. The plaintiffs in *Partal* raised an identical claim – that the Governor lacks authority to assert emergency powers more than 60 days after the date of the first emergency proclamation. *See Partal, et al. v. Ige, et al.*, September 1, 2020 Transcript at 20, attached as Exhibit C. Judge DeWeese dismissed that claim as a matter of law, holding that the language, purpose, and history of HRS Chapter 127A demonstrate that the Governor is empowered to issue supplementary proclamations extending beyond a single sixty-day period to address a continuing, ongoing emergency.

Specifically, in granting the State’s motion to dismiss, Judge DeWeese concluded that Chapter “127A contains no language prohibiting supplementary or additional emergency proclamations[,]” and that “[e]ach additional emergency proclamation triggers a new sixty-day period.” *Partal* Transcript, at 24.<sup>7</sup> And that HRS “127A-14(d) is not ambiguous” and even if it were, the state’s interpretation – *i.e.* that Chapter 127A permits the Governor to issue supplementary proclamations triggering new sixty-day periods – “is the better one.” *Id.* at 25. This conclusion was based on the fact that “the purpose of 127A is to confer comprehensive powers to protect the public and save lives” and that the Legislature intended for the statutes to be “liberally construed . . . to effectuate the purpose of the chapter.” *Id.* at 24-25. The State urges this Court to reach the same conclusion here.

1. HRS § 127A-14(d) does not limit the Governor’s authority to issue separate proclamations to protect the public during continuing emergencies.

All of the Governor’s proclamations related to the COVID-19 emergency were authorized by HRS § 127A-14(a) , which states:

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<sup>7</sup> Judge DeWeese ruled from the bench at the hearing on the State’s motion to dismiss. A written order is forthcoming.

The governor may declare the existence of a state of emergency in the State by proclamation if the governor finds that an emergency or disaster has occurred or that there is imminent danger or threat of an emergency or disaster in any portion of the State.

Each subsequent proclamation must be based on a new assessment of emergency conditions, because the Governor may only declare a state of emergency for sixty days at a time. *Id.* at § 127A-14(d) (“A state of emergency . . . shall terminate automatically sixty days after the issuance of a proclamation of a state of emergency . . . or by a separate proclamation of the governor . . . whichever occurs first”).

Chapter 127A does not, however, contain any language whatsoever prohibiting the Governor or mayors from issuing later emergency proclamations as needed to combat a continuing and ongoing emergency. On the contrary, § 127A-14(d) expressly refers to the use of “separate proclamation[s].” There is nothing in the text of HRS § 127A-14(d) that limits the number of emergency proclamations the Governor may issue to address a particular disaster. Rather, each additional proclamation triggers a new 60-day period under which the Governor may exercise emergency powers. If the Legislature intended to require that no additional, successive, and supplementary emergency declarations may be issued, it would have said so. It did not.

The Governor has done what the text of the statute contemplates: he issued separate, emergency proclamations based on periodic reassessments and declared renewed states of emergency related to COVID-19 based on evolving circumstances. *See, e.g.*, Thirteenth Proclamation at p. 2 (“COVID-19 continues to endanger the health, safety, and welfare of the people of Hawaii and a response requires the serious attention, effort, and sacrifice of all people in the State to avert unimaginable strains on our healthcare system and other catastrophic impacts to the State”). Each proclamation is a distinct and particularized emergency proclamation,

supported by particular findings, and based on an independent evaluation of the circumstances at the time of issuance. The statute is thus working exactly as it should—with § 127A-14(d) prompting the State and counties to proactively tailor restrictions to changing circumstances via periodic additional emergency proclamations.

2. The issuance of separate emergency proclamations is consistent with the purpose of HRS chapter 127A to “confer comprehensive powers” on the Governor to protect the public and save lives.

The purpose of HRS chapter 127A was to grant to the Governor broad and comprehensive powers in emergencies. *See* HRS § 127A-1(a)(2) (purposes include “confer[ring] upon the governor ... the emergency powers necessary to prepare for and respond to emergencies or disasters[.]”). The Legislature explicitly intended “to provide for and confer comprehensive powers,” and directed that the laws in this area “shall be liberally construed to effectuate its purposes[.]” HRS § 127A-1(c). The purposes of the statute are set forth in detail in HRS § 127A-1(a), and reflect:

the existing and increasing possibility of the occurrence of disasters or emergencies of unprecedented size and destructiveness resulting from natural or man-made hazards, and in order to ensure that the preparations of this State will be adequate to deal with such disasters or emergencies; to ensure the administration of state and federal programs providing disaster relief to individuals; and generally to protect the public health, safety, and welfare, and to preserve the lives and property of the people of the State[.]”

*Id.* Moreover, HRS § 127A-12(b)(19) expressly empowers the Governor to “[t]ake any and all steps necessary or appropriate to carry out the purposes of this chapter[.]”<sup>8</sup>

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<sup>8</sup> Chapter 127A also aligns with the Governor’s inherent executive authority to respond to ongoing emergencies in exigent circumstances. The Hawai‘i Constitution makes clear that “[t]he executive power of the State shall be vested in a governor.” Haw. Const. art. V, § 1. This vesting of the “executive power of the State” entails the possibility of “inherent but undefined constitutional power [that] the Governor might have in his role as chief executive officer of the state[.]” *Nat’l Tax-Limitation Com. v. Schwarzenegger*, 8 Cal. Rptr. 3d 4, 19 (Cal. App. 2003). It is long understood that “[i]t may be fit and proper for the government, in the exercise of the high discretion confided to the executive, ... to act on a sudden emergency ... by summary

Plaintiffs’ reading – that the Governor’s authority under Chapter 127A automatically disappears after 60 days even when the State is in the throes of an ongoing emergency – cannot be right because it would lead to an absurd result. Under Plaintiffs’ interpretation, the Governor’s hands would be tied, no matter how serious or long-lasting the emergency. The purposes of Chapter 127A to provide comprehensive emergency management powers would be defeated by placing the executive in an irrational legislative straitjacket during periods of emergency. That reading—and the chaos and uncertainty a ruling along those lines would cause—clearly is not what the Legislature intended. *Seki ex rel. Louie v. Hawai‘i Gov’t Employees Ass’n.*, 133 Hawai‘i 385, 402, 328 P.3d 394, 411 (2014) (statutes must be read “in the context of the entire statute and ... consistent with its purpose”). In any event, it is well settled that “a rational, sensible and practicable interpretation of a statute is preferred to one which is unreasonable or impracticable, inasmuch as the legislature is presumed not to intend an absurd result, and legislation will be construed to avoid, if possible, inconsistency, contradiction, and illogicality.” *Morgan v. Planning Dep’t*, 104 Hawai‘i 173, 185, 86 P.3d 982, 994 (2004) (quotation omitted).

3. The issuance of separate proclamations to respond to ongoing emergencies is consistent with the legislative history of HRS Chapter 127A and similar laws in other states.

When the Legislature enacted the Hawai‘i Emergency Management statute in 2014, the law was intended “to update and recodify Hawaii’s emergency management laws to conform with nationwide emergency management practices.” Conf. Committee Report No. 129-14 (Apr. 25, 2014) (H.B. No. 849, H.D.2, S.D. 2, C.D.1, at 1). This intent to align our statute with the practices in other states is illuminating because the majority of other states’ emergency-response

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measures, which are not found in the text of the laws.” *The Apollon*, 22 U.S. (9 Wheat.) 362, 366-67 (1824) (Story, J.).

statutes clearly contemplate emergencies lasting longer than 60 days: many states permit emergency proclamations to be renewed or reissued as necessary.

HRS § 127A-14 sets forth procedures for enacting emergency proclamations. An “emergency” is defined as “any occurrence, or imminent threat thereof, which results or may likely result in substantial injury or harm to the population or substantial damage to or loss of property,” HRS § 127A-2, and HRS § 127A-14(c) makes clear that “[t]he governor or mayor shall be the sole judge of the existence of the danger, threat, or circumstances giving rise to a declaration of a state of emergency in the State or a local state of emergency in the county, as applicable.”

By providing that emergency proclamations expire unless a separate proclamation is issued, HRS § 127A-14(d) ensures that a given proclamation cannot simply be left in place forever by default. The proclamations thus expire unless they are reissued by a new proclamation within sixty days. The Governor and mayors cannot simply assume that a provision in an emergency proclamation, once issued, will last forever. Rather, when the Governor or mayors want to reenact a particular provision for additional 60-day periods they must explicitly say so, by issuing separate emergency proclamations. This requirement also means that emergency orders are reevaluated at least once every two months, and tailored to the evolving conditions on the ground.

This is how emergency proclamations work in a number of other states.<sup>9</sup> For instance, state laws often expressly provide that provisions in an emergency proclamation will expire after

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<sup>9</sup> See 73 Am. Jur. 2d Statutes § 98 (“In interpreting statutes, a court may consider similar provisions in sister jurisdictions.”).

a certain number of days unless *renewed*.<sup>10</sup> Hawaii’s law does substantially the same: it provides that provisions in an emergency proclamation continue until 60 days have elapsed or a “separate proclamation” has been issued. When a state’s statutory framework intends to require legislatures to intervene in the emergency lawmaking process after a certain number of days, the statutes say so specifically.<sup>11</sup> Chapter 127A, however, says no such thing. Nor does chapter 127A prohibit the issuance of additional emergency proclamations, each of which have the effect of restarting the 60-day clock in HRS § 127A-14(d) .

Cases interpreting other states’ laws support the Governor’s authority to issue additional proclamations to deal with ongoing emergencies. For instance, the Illinois statute authorizes the governor to “issue a proclamation declar[ing] that a disaster exists.” *Cassell v. Snyders*, No. 3:20-cv-50153, 2020 WL 2112374, at \*13 (N.D. Ill. May 3, 2020) (quoting 20 Ill. Comp. Stat. §

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<sup>10</sup> AR Code § 12-75-107 (“No state of disaster emergency may continue for longer than sixty (60) days unless renewed by the Governor”); CO Rev Stat § 24-33.5-704 (“no state of disaster emergency may continue for longer than thirty days unless renewed by the governor”); 20 DE Code § 3115 (“No state of emergency can continue for more than 30 days without being renewed by the Governor.”); *see also* FL Stat § 381.00315; GA Code § 38-3-51; LA Rev Stat § 29:724; 37-B ME Rev Stat § 743; MD Pub Safety Code § 14-107; 35 PA Cons Stat § 7301; RI Gen L § 30-15-9; SD Codified L § 34-48A-5; TN Code § 58-2-107; TX Gov’t. Code § 418.014; MS Code § 33-15-11; NH Rev Stat § 4:45; NJ Rev Stat § 26:13-3; NM Stat § 12-10A-5; OK Stat T 63 § 63-6405.

<sup>11</sup> *See, e.g.*, AK Stat § 26.23.020(c) (“A proclamation of disaster emergency may not remain in effect longer than 30 days unless extended by the legislature by a concurrent resolution.”); KS Stat § 48-924 (“No state of disaster emergency may continue for longer than 15 days unless ratified by concurrent resolution of the legislature, with the single exception that upon specific application by the governor to the state finance council and an affirmative vote of a majority of the legislative members thereof, a state of disaster emergency may be extended once for a specified period not to exceed 30 days beyond such 15-day period.”); MN Stat § 12.31 (“A peacetime emergency must not be continued for more than five days unless extended by resolution of the Executive Council up to 30 days.”); *id.* (“If the governor determines a need to extend the peacetime emergency declaration beyond 30 days and the legislature is not sitting in session, the governor must issue a call immediately convening both houses of the legislature.”); SC Code § 25-1-440 (“A declared state of emergency shall not continue for a period of more than fifteen days without the consent of the General Assembly”); UT Code § 53-2a-206 (“A state of emergency may not continue for longer than 30 days unless extended by joint resolution of the Legislature, which may also terminate a state of emergency by joint resolution at any time.”).

3305/7). “After that,” according to the statute, the Governor “may invoke the Act’s emergency powers ‘for a period not to exceed 30 days.’” *Id.* (quoting 20 Ill. Comp. Stat. § 3305/7). In *Cassell*, the court considered “whether the Act permits [the Governor] to declare more than one emergency related to the spread of COVID-19.” *Id.* Like Plaintiffs, the challengers in *Cassell* urged that “the ongoing pandemic only justifies a single 30-day disaster proclamation.” *Id.* The government defendants countered that “so long as the Governor makes new findings of fact to determine that a state of emergency still exists, the Act empowers him to declare successive disasters, even if they stem from the same underlying crisis.” *Id.* The district court concluded, “[b]ased on the text and structure of the Act” at issue, that the government “ha[d] the better argument.” *Id.* The court explained that “[s]ome types of disasters, such as a storm or earthquake, run their course in a few days or weeks,” while “[o]ther disasters may cause havoc for months or even years.” *Id.* at \*14. “It is difficult,” the court reasoned, “to see why the legislature would recognize” the existence of “long-running problems as disasters, yet divest the Governor of the tools he needs to address them.” *Id.* at \*14. So too here: It is hard to see why the Legislature would recognize the existence of “disasters or emergencies of unprecedented size and destructiveness,” HRS § 127A-1 (emphasis added), but deny the executive power to respond to emergencies that continue for 60 days or more. The answer, of course, is that the Legislature did not deny the Governor this authority.

The Legislature intended HRS § 127A-14 to “[e]stablish[] how proclamations are promulgated and terminated consistent with current authority for civil defense proclamations[.]” Conf. Committee Report No. 129-14, at 2 ¶ 10 (Apr. 25, 2014) (emphasis added). Before chapter 127A’s adoption in 2014, Hawai‘i law did not have a default rule where provisions in emergency proclamations lapse unless renewed by an additional emergency proclamation. HRS

§ 127A-14 modestly altered the status quo by adding the 60-day expiration date for a particular emergency proclamation in the absence of a “separate proclamation.” But nothing suggests that the Legislature intended this provision to categorically eliminate governors’ and mayors’ authority to respond at all to emergency conditions that often last more than 60 days. The fact that HRS § 127A-14(d) was viewed by lawmakers at the time as being largely “consistent with current authority”—consistent with the pre-2014 status quo—indicates that the Legislature did not intend to make the kind of radical change that Plaintiffs urge the Court to find. *Cf. Chisom v. Roemer*, 501 U.S. 380, 396 (1991) (reasoning that if lawmakers had intended to make a broad change in the law, they “would have made it explicit in the statute, or at least some of the Members would have identified or mentioned it at some point” in the legislative history).

4. Established practice—and the practical and pragmatic interpretation placed upon chapter 127A by the executive—further demonstrates that the use of supplementary proclamations is lawful under the statute.

Under Hawai‘i law, “the uniform practical construction of a statute by those charged with carrying out the statute is entitled to much weight.” *Chun v. Employees’ Ret. Sys.*, 61 Haw. 596, 602, 607 P.2d 415, 419 (1980). Here, the settled and uniform practice of the executive branch—governors and mayors alike—has been to understand HRS § 127A-14(d) as permitting supplementary emergency proclamations in response to ongoing emergencies. This practical and commonsense understanding of the law is fully consistent with the text of § 127A-14(d), as discussed above. The ability to issue additional proclamations when an emergency situation continues and evolves has proven vital in managing ongoing emergency situations and protecting the public. For example, consider the 2018 lava flow emergency. In May 2018—when eruptions from the Pu‘u ‘Ō‘ō vent in the East Rift Zone of the Kīlauea volcano threatened numerous populated areas in the County of Hawai‘i—Governor Ige issued an emergency

proclamation to respond to the emergency conditions in the area and to protect and assist affected populations. The first emergency proclamation was issued on May 3, 2018.<sup>12</sup> The situation on the ground evolved and further action was necessary. Accordingly, additional emergency proclamations were issued on May 10,<sup>13</sup> June 5,<sup>14</sup> August 3,<sup>15</sup> October 3,<sup>16</sup> and December 3, 2018.<sup>17</sup> These proclamations reflected and were based on the Governor’s periodic findings—at least once every 60 days—that the measures were needed to respond to the evolving emergency situation on the ground. The fifth proclamation “continue[d] until December 29, 2018,” at which point the state of emergency established by the fifth supplementary proclamation concluded. Plaintiffs’ proposed reading of the statute would make this sort of sustained emergency response impossible, and require a dramatic departure from settled interpretations.

Plaintiffs’ theory must be rejected because courts do not read statutes in a way that “hide[s] elephants in mouseholes,” *Morita v. Gorak*, 145 Hawai‘i 385, 399, 453 P.3d 205, 219 (2019) (quoting *Whitman v. Am. Trucking Assocs.*, 531 U.S. 457, 468 (2001)), or “read ... a sweeping rebalancing of power” into “what appears to be a minor administrative accommodation.” *Id.* Plaintiffs invite this Court to do just that: take a statute that expires the provisions in an emergency proclamation after 60 days, unless another emergency proclamation is issued, and read it as completely depriving the Governor and mayors of any power to respond to any emergency situation lasting longer than 60 days. That is not consistent with (a) the

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<sup>12</sup> <https://governor.hawaii.gov/wp-content/uploads/2018/05/18-05-03-Lava-Emergency-Proclamation-1.pdf>.

<sup>13</sup> <https://governor.hawaii.gov/wp-content/uploads/2018/05/18-05-09-Supplemental-Emergency-Proclamation-for-2018-Kilauea-Eruption.pdf>.

<sup>14</sup> <https://governor.hawaii.gov/wp-content/uploads/2018/06/18-06-05-Second-Supplemental-Emergency-Proclamation-for-County-of-Hawaii-1.pdf>.

<sup>15</sup> <https://governor.hawaii.gov/wp-content/uploads/2018/08/1808007.pdf>.

<sup>16</sup> <https://governor.hawaii.gov/wp-content/uploads/2018/10/1810012-Fourth-Suppl-Proc-Lava.pdf>.

<sup>17</sup> <https://governor.hawaii.gov/wp-content/uploads/2018/11/18-11-30-5th-Supplemental-Emergency-Proc-Lava.pdf>.

statutory text or the legislative history, (b) the executive branch’s interpretation of the statute has understood since enactment, or (c) common sense, as it would lead to an absurd, unworkable, and dangerous result.

C. Plaintiffs’ Void-for-Vagueness Argument Fails

Plaintiffs also cite to supposedly conflicting requirements contained in different proclamations to claim that the Ninth, Tenth, and Eleventh EPs are unconstitutionally vague. Complaint at ¶¶ 50-66. They also generally allege that persons “may differ as to the application of each of the various provisions contained in those documents.” Complaint at ¶ 53. Again, these allegations concerning prior proclamations fail on their face because the operative Thirteenth Proclamation – which Plaintiffs do not even mention – unambiguously states that “this Proclamation supersedes all prior proclamations issued by [the Governor] related to the COVID-19 emergency.” See Thirteenth Proclamation at p. 32. Therefore, there is no purpose served whatsoever by reviewing prior proclamations to determine what activities are prohibited.

In any event, even absent the Thirteenth Proclamation, Plaintiffs’ hypothetical and generalized allegations are not sufficient to void the proclamations as unconstitutionally vague. A criminal statute challenged on vagueness grounds must be “analyzed to determine if it (1) is internally inconsistent and incomprehensible to a person of ordinary intelligence, or (2) invites delegation of basic policy matters to police for resolution on an ad hoc and subjective basis.” *State v. Pacquing*, 139 Hawai‘i 302, 314, 389 P.3d 897, 909 (2016). With respect to a civil statute, “uncertainty . . . is not enough for it to be unconstitutionally vague; rather, it must be substantially incomprehensible.” *In re Guardianship of Carlsmith*, 113 Hawai‘i 236, 245, 151 P.3d 717, 726 (2007) (quoting *In re Gardens at West Maui Vacation Club*, 90 Hawai‘i, 334, 343, 978 P.2d 772, 781 (1999)). A court must “consider whether a statute is vague as applied to the particular facts at issue, for a plaintiff who engages in some conduct that is clearly proscribed

cannot complain of the vagueness of the law as applied to the conduct of others.” *Holder v. Humanitarian Law Project*, 561 U.S. 1, 18-19 (2010). Plaintiffs’ claims fail this high standard for several reasons.

First, the mere fact that some of the emergency proclamations amend and restate prior ones does not render them unconstitutionally vague; they merely address the continuing circumstances. Moreover, “complexity is not the same as vagueness,” and “a statute does not fail the vagueness test simply because it involves a complex regulatory scheme, or requires that several sources be read together[.]” *United States v. Zhi Yong Guo*, 634 F.3d 1119, 1122-23 (9th Cir. 2011).

Second, Plaintiffs do not set forth any particular facts to show that the proclamations are internally inconsistent, incomprehensible, or inviting of *ad hoc* policy determinations by police. A “court’s analysis should be confined to the litigant’s actual conduct, and a court should not analyze whether a reasonable person would understand that certain hypothetical conduct or situations violate the statute.” *VIP of Berlin, LLC v. Town of Berlin*, 593 F.3d 179, 189 (2d Cir. 2010). Notably, Plaintiffs have not alleged any particularized facts about how any specific provisions of the now defunct proclamations affected their conduct, impeded their activities, forced the cancellation of specific plans, or resulted in harms such as a criminal arrest.

Third, if Plaintiffs are claiming that the proclamations are somehow facially unconstitutional, they “must establish that no set of circumstances exists under which the [proclamations] would be valid.” *United States v. Salerno*, 481 U.S. 739, 745 (1987). Plaintiffs have not even attempted such a showing here. Indeed, “[a] statute will not be held unconstitutional by reason of uncertainty if any sensible construction embracing the legislative

purpose may be given it.” *State v. Alangcas*, 134 Hawai‘i 515, 525, 345 P.3d 181, 191 (2015) (quoting *State v. Gaylord*, 78 Hawai‘i 127, 138, 890 P.2d 1167, 1178 (1995)).

**V. Conclusion**

For the reasons set forth herein, this Court should grant Defendants’ motion to dismiss.

/s/ Craig Y. Iha

DAVID D. DAY  
NICHOLAS M. MCLEAN  
EWAN C. RAYNER  
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Deputy Attorneys General

Attorneys for Defendants  
DAVID IGE, in his official capacity  
as Governor of the State of Hawai‘i,  
CLARE E. CONNORS, in her official  
capacity as Attorney General for the State of  
Hawai‘i, and STATE OF HAWAI‘I

IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT

STATE OF HAWAI'I

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FOR OUR RIGHTS, a Hawai'i corporation,  
Diana Lomma, David R. Hamman, Randi  
Hamman, Janet Eisenbach, Levana Lomma  
Keikaika, Lawrence K. Paille, GERALYN  
Schulkind, Leonard Shulkind, Daniel Hashimoto,  
Christina Cole, Francesca Woolger, Na'ea  
Lindsey, Michael Mazzone, Lanette J. Harley, and  
Lorraine L. Patch.

Plaintiffs,

vs.

DAVID IGE, in his official capacity as Governor  
of the State of Hawai'i; CLARE E. CONNORS,  
in her official capacity as Attorney General for  
the State of Hawai'i, and STATE OF HAWAI'I,

Defendants.

CIVIL NO. 5CCV-20-000091  
(OTHER CIVIL ACTION)

DECLARATION OF CRAIG Y. IHA

**DECLARATION OF CRAIG Y. IHA**

I, Craig Y. Iha, declare as follows:

1. I am a Deputy Attorney General with the State of Hawai'i. Unless otherwise stated, I have personal knowledge of the facts contained in this declaration and am competent to testify to them.
2. Attached herewith as Exhibit "A" is a true and correct copy of Judge Jill Otake's order denying a motion for a temporary restraining order in *Carmichael v. Ige*, No. CV 20-00273 JAO-WRP, 2020 WL 3630738 (D. Haw. July 2, 2020), dated July 2, 2020
3. Attached herewith as Exhibit "B" is a true and correct copy of Judge Jill Otake's order denying a motion for a preliminary injunction in *Bannister v. Ige*, No. CV 20-00305 JAORT, 2020 WL 4209225 (D. Haw. July 22, 2020), dated July 22, 2020.

4. Attached herewith as Exhibit “C” is a true and correct copy of the transcript of the September 1, 2020 hearing on Defendant Governor David Y. Ige and the State of Hawai‘i’s Motion to Dismiss First Amended Complaint; Mayor Harry Kim’s Motion to Dismiss First Amended Complaint; and Plaintiffs’ Cross-Motion for Summary Judgment in *Partal, et al. v. Ige, et al.*, Civil No. 3CCV-20-0000277 (September 1, 2020).
  
5. Attached herewith as Exhibit “D” is a true and correct copy of the Governor’s Thirteenth Proclamation Related to the COVID-19 Emergency, also available on the Governor’s official website at [https://governor.hawaii.gov/wp-content/uploads/2020/09/2009139-ATG\\_Thirteenth-Supplementary-Proclamation-for-COVID-19-distribution-signed.pdf](https://governor.hawaii.gov/wp-content/uploads/2020/09/2009139-ATG_Thirteenth-Supplementary-Proclamation-for-COVID-19-distribution-signed.pdf).

I, Craig Y. Iha, declare under penalty of law that the foregoing is true and correct.

DATED: Honolulu, Hawai‘i, October 8, 2020.

/s/ Craig Y. Iha  
CRAIG Y. IHA  
Deputy Attorney General

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# Exhibit A

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2020 WL 3630738

Only the Westlaw citation is currently available.

United States District Court, D. Hawai'i.

Holly CARMICHAEL; Timothy Aaron Carmichael;  
Brooke McGowan; and Russell Hirsch, Plaintiffs,

v.

David IGE, in his official capacity as  
Governor of the State of Hawaii, Defendant.

CIVIL NO. 20-00273 JAO-WRP

|  
Signed 07/02/2020

### Synopsis

**Background:** Hawai'i resident and non-residents brought action alleging that governor's emergency proclamations regarding COVID-19 violated their constitutional rights. Plaintiffs moved for preliminary injunction.

**Holdings:** The District Court, [Jill A. Otake, J.](#), held that:

[1] governor's orders had real or substantial relation to public health crisis;

[2] plaintiffs were not likely to succeed on merits of their claim that 14-day travel quarantine violated their constitutional right to travel;

[3] plaintiffs were not likely to succeed on merits of their claim that stay-at-home orders violated their fundamental liberty interests;

[4] plaintiffs were not likely to succeed on merits of their claim that orders imposing quarantine on all persons entering Hawai'i and on interisland travelers violated their substantive due process rights;

[5] plaintiffs were not likely to succeed on merits of their claim that orders imposing quarantines on travelers and stay-at-home mandate violated their procedural due process rights;

[6] plaintiffs were not likely to succeed on merits of their claim that orders categorizing activities as authorized or unauthorized and businesses as essential or non-essential violated their equal protection rights;

[7] plaintiffs failed to establish that they would suffer irreparable harm in absence of preliminary injunctive relief; and

[8] balance of equities and public interest did not favor issuance of preliminary injunction.

Motion denied.

**Procedural Posture(s):** Motion for Preliminary Injunction.

West Headnotes (29)

### [1] Injunction

To obtain preliminary injunctive relief, plaintiff must establish: (1) likelihood of success on merits; (2) likelihood of irreparable harm in absence of preliminary relief; (3) that balance of equities tips in plaintiff's favor; and (4) that injunction is in public interest.

### [2] Injunction

Issuance of preliminary injunction may be appropriate when there are serious questions going to merits and balance of hardships that tips sharply towards plaintiff, so long as plaintiff also shows that there is likelihood of irreparable injury and that injunction is in public interest.

### [3] Injunction

Injunctive relief is extraordinary remedy that may only be awarded upon clear showing that plaintiff is entitled to such relief; it is never awarded as of right.

### [4] Injunction

In ruling on motions for preliminary injunction, courts must balance competing claims of injury and must consider effect on each party of granting or withholding of requested relief, and should be particularly mindful, in exercising their sound discretion, of public consequences in employing extraordinary remedy of injunction.

## Exhibit "A"

**[5] Injunction** 🔑

Mandatory injunctions ordering affirmative action by defendant go well beyond simply maintaining status quo, and are particularly disfavored.

**[6] Injunction** 🔑

Mandatory injunctions are subject to heightened scrutiny and should not be issued unless facts and law clearly favor moving party or extreme or very serious damage will result; they are not issued in doubtful cases.

**[7] Federal Civil Procedure** 🔑

To establish standing to sue in federal court, plaintiff must demonstrate: (1) injury in fact that is concrete and particularized and actual or imminent; (2) that injury is fairly traceable to defendant's conduct; and (3) that injury can be redressed through adjudication.

**[8] Injunction** 🔑

To establish standing, plaintiff exclusively seeking declaratory and injunctive relief must additionally show very significant possibility of future harm.

**[9] Health** 🔑

Latitude of officials in addressing public health concerns must be especially broad when acting in areas fraught with medical and scientific uncertainties, and if officials do not exceed these broad limits, they should not be subject to second-guessing by unelected federal judiciary, which lacks background, competence, and expertise to assess public health and is not accountable to people.

**[10] Health** 🔑

Hawai'i governor's executive orders issued in response to COVID-19 pandemic imposing restrictions on non-essential businesses, stay-at-home orders, and quarantines were designed to prevent importation and intrastate spread of COVID-19 and to stem spread of community transmission, and thus had real or substantial relation to public health crisis caused by COVID-19 pandemic, for purposes of evaluating orders' validity.

**[11] Constitutional Law** 🔑

Liberties secured by Constitution do not import absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint; there are manifold restraints to which every person is necessarily subject for common good.

**[12] Health** 🔑

When epidemic of disease threatens safety of community's members, it has right to protect itself, and commensurate with that right is state's authority to enact quarantine laws and health laws of every description.

**[13] Constitutional Law** 🔑

All constitutional rights may be reasonably restricted to combat public health emergency.

**[14] Health** 🔑

Judiciary may not second-guess state's policy choices in crafting emergency public health measures.

**[15] Constitutional Law** 🔑

Fifth Amendment's Due Process Clause only applies to federal government. *U.S. Const. Amend. 5.*

**[16] Constitutional Law** 🔑

Constitutional right to travel includes: (1) right of citizen of one state to enter and to leave another state, and (2) right to be treated as welcome visitor rather than unfriendly alien when temporarily present in second state.

**[17] Constitutional Law** 🔑

State law implicates constitutional right to travel when it actually deters such travel, when impeding travel is its primary objective, or when it uses any classification that serves to penalize exercise of that right.

**[18] Civil Rights** 🔑

Hawai'i resident and non-residents were not likely to succeed on merits of their claim that governor's executive orders issued in response to COVID-19 pandemic imposing 14-day travel quarantine violated their constitutional right to travel, for purposes of determining their entitlement to preliminary injunctive relief; governor imposed quarantine to prevent importation and spread of COVID-19 and to avoid overwhelming state's health care system, quarantine applied to both residents and non-residents coming to Hawai'i from mainland, and it was unclear that there were less restrictive means to achieve state's stated interests.

**[19] Constitutional Law** 🔑

Only those aspects of liberty that society traditionally has protected as fundamental are included within Due Process Clause's substantive protection. [U.S. Const. Amend. 14.](#)

**[20] Civil Rights** 🔑

Hawai'i resident and non-residents were not likely to succeed on merits of their claim that governor's stay-at-home orders issued in response to COVID-19 pandemic violated their fundamental liberty interests under substantive component of Due Process Clause, for purposes of determining their entitlement to preliminary injunctive relief, where stay-at-home mandate

had expired, and subsequent safer-at-home and act-with-care phases did not confine non-quarantined residents or visitors to their homes and lodging. [U.S. Const. Amend. 14.](#)

**[21] Civil Rights** 🔑

Hawai'i resident and non-residents were not likely to succeed on merits of their claim that governor's executive orders issued in response to COVID-19 pandemic imposing quarantine on all persons entering Hawai'i and on interisland travelers violated their fundamental liberty interests under substantive component of Due Process Clause, for purposes of determining their entitlement to preliminary injunctive relief, even though right to travel within United States was constitutionally protected, where evidence showed that unlimited travel would directly and materially interfere with state's safety and welfare. [U.S. Const. Amend. 14.](#)

**[22] Civil Rights** 🔑

Hawai'i resident and non-residents were not likely to succeed on merits of their claim that governor's executive orders imposing quarantines on travelers and stay-at-home mandate in response to COVID-19 pandemic violated their procedural due process rights, for purposes of determining their entitlement to preliminary injunctive relief; orders were issued in response to public health emergency, and they affected entire state, making individual notice and hearing unnecessary. [U.S. Const. Amend. 14.](#)

**[23] Constitutional Law** 🔑

Equal Protection Clause requires that all persons similarly situated should be treated alike. [U.S. Const. Amend. 14.](#)

**[24] Constitutional Law** 🔑

Classification neither involving fundamental rights nor proceeding along suspect lines cannot run afoul of Equal Protection Clause if there

is rational relationship between disparity of treatment and some legitimate governmental purpose. [U.S. Const. Amend. 14](#).

**[25] Civil Rights** 🔑

Hawai'i resident and non-residents were not likely to succeed on merits of their claim that governor's executive orders issued in response to COVID-19 pandemic that categorized activities as authorized or unauthorized and businesses as essential or non-essential violated their equal protection rights, for purposes of determining their entitlement to preliminary injunctive relief, where non-residents resided on mainland, and resident did not claim that orders interfered with her ability to work. [U.S. Const. Amend. 14](#).

**[26] Civil Rights** 🔑

Non-residents of Hawai'i failed to establish that they would suffer irreparable harm in absence of preliminary injunctive relief in their action challenging constitutionality of governor's executive orders issued in response to COVID-19 pandemic imposing 14-day travel quarantine, for purposes of determining their entitlement to preliminary injunctive relief; non-residents had elected not to travel to Hawai'i due to potential issues that could arise from having to quarantine, but did not claim that undergoing quarantine was impossible, or demonstrate likelihood of success on merits.

**[27] Injunction** 🔑

When injunction's impact reaches beyond parties, carrying with it potential for public consequences, public interest will be relevant to whether district court grants preliminary injunction.

**[28] Injunction** 🔑

In ruling on motion for preliminary injunction, public interest inquiry primarily addresses impact on non-parties rather than parties, and requires court to consider whether there exists

some critical public interest that would be injured by grant of preliminary relief.

**[29] Civil Rights** 🔑

Balance of equities and public interest did not favor issuance of preliminary injunction in action by Hawai'i resident and non-residents challenging constitutionality of governor's executive orders issued in response to COVID-19 pandemic imposing travel quarantine and stay-at-home mandate, even if orders interfered with their right to travel; orders were designed to slow spread of COVID-19, and serious consequences could result to public if state was enjoined from enforcing orders.

**Attorneys and Law Firms**

[Harmeet K. Dhillon](#), Pro Hac Vice, [Mark P. Meuser](#), Pro Hac Vice, Dhillon Law Group, Inc., San Francisco, CA, Lloyd James Hochberg, Jr., Topa Financial Center, Honolulu, HI, for Plaintiffs.

[Clare E. Connors](#), [Craig Y. Iha](#), [Ewan C. Rayner](#), [Nicholas Matthew McLean](#), William Maxwell Levins, Department of the Attorney General, State of Hawaii, Honolulu, HI, for Defendant.

**ORDER DENYING PLAINTIFFS' APPLICATION  
FOR TEMPORARY RESTRAINING ORDER  
AND ORDER TO SHOW CAUSE WHY  
PRELIMINARY INJUNCTION SHOULD NOT ISSUE**

[Jill A. Otake](#), United States District Judge

\*1 Plaintiffs Holly Lynn Carmichael and Timothy Aaron Carmichael (collectively, "the Carmichaels") and Russell Hirsch ("Hirsch"), non-residents of Hawai'i, and Brooke McGowan ("McGowan"), a resident of Hawai'i, challenge Defendant Governor David Ige's ("Defendant") Emergency Proclamations regarding COVID-19 as unconstitutional under the Fifth and Fourteenth Amendments to the Constitution. Claiming that there is no emergency in Hawai'i or the United States, Plaintiffs seek temporary injunctive relief enjoining Defendant from enforcing the 14-day

quarantine requirements<sup>1</sup> of the Emergency Proclamations and an order to show cause why a preliminary injunction should not issue. The Court DENIES the Application for the following reasons.

## BACKGROUND

Like many states across the nation and countries around the world, Hawai'i has issued a series of Emergency Proclamations "to limit the spread of COVID-19, a novel severe acute respiratory illness" with "no known cure, no effective treatment, and no vaccine." *S. Bay United Pentecostal Church v. Newsom*, — U.S. —, 140 S. Ct. 1613, 1613, 207 L.Ed.2d 154 (2020) (mem.) (Roberts, C.J., concurring). Further complicating efforts to contain COVID-19 is the fact that individuals who are "infected but asymptomatic ... may unwittingly infect others." *Id.* As of today, there are more than 10,533,779 cases and 512,842 deaths globally. See <https://covid19.who.int/> (last visited July 2, 2020). The United States has seen 2,679,230 cases and 128,024 deaths.<sup>2</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last visited July 2, 2020). Defendant contends that, due at least in part to the measures implemented in Hawai'i to address the pandemic, COVID-19 numbers have remained relatively low, with 946 cases and 18 deaths to date. See <https://health.hawaii.gov/coronavirusdisease2019/> (last visited July 2, 2020).

### I. Factual History

#### A. Plaintiffs

##### 1. The Carmichaels

Residents of California, the Carmichaels visit Maui up to ten times per year to use their vacation condominium in Lahaina. Compl. ¶¶ 58–59. They place the unit in a rental pool when it is unoccupied. *Id.* ¶ 59. The Carmichaels made travel arrangements to visit Hawai'i on April 1, 2020, but cancelled after learning of the quarantine. *Id.* ¶¶ 60–61. As Defendant extended the quarantine, the Carmichaels cancelled all rescheduled travel plans. Appl., Decl. of Holly Carmichael ("Carmichael Decl."), ECF No. 12-7 ¶¶ 4–8. Because the quarantine remains in effect, the Carmichaels have been unable and/or unwilling to travel to Maui. Compl.

¶¶ 62–63. They have concerns about necessary repairs to their unit, which "often require[ ] interaction with local tradesmen and always require[ ] at least one drive into Kahului for necessary parts, followed by a visit to the Lahaina Ace Hardware for items [they] later discover are also needed." Carmichael Decl. ¶¶ 9–12. And they claim that once at their unit, the Emergency Proclamations prohibit them from exiting their unit to dispose of trash. *Id.* ¶ 13.

#### 2. Brooke McGowan

\*2 McGowan resides in Hawai'i and had plans to travel to the mainland to assist her daughter with a federally funded green roofs project this summer<sup>3</sup> and visit her 90-year-old grandmother who is suffering from Alzheimer's. *Id.* ¶¶ 66–67. Without further explanation, she claims it is impossible to do both and complete a quarantine upon returning to Hawai'i. *Id.* ¶ 68.

#### 3. Russell Hirsch

Hirsch, a Nevada resident, owns two properties in Hawai'i—a farm in Hilo on Hawai'i Island where he grows fruit trees, and a home in Kailua on O'ahu. *Id.* ¶ 70. Hirsch cites three reasons he wishes to travel to Hawai'i: (1) maintain his properties—tend to his fruit trees in Hilo and perform electrical work on his Kailua home that would cost substantially more if completed by an electrician; (2) celebrate his daughter's graduation where she grew up; and (3) address a potential lawsuit involving the removal of his fruit trees. *Id.* ¶¶ 71–73. Hirsch alleges that the quarantine prevents him from doing any of this. *Id.* ¶ 74.

#### B. Emergency Proclamations

As COVID-19 appeared in Hawai'i, Defendant issued an Emergency Proclamation on March 4, 2020, authorizing the expenditure of State monies, and suspending specified Hawai'i statutes. Opp'n, Ex. A, ECF No. 34 at 4–7. Defendant's March 16, 2020 Supplementary Proclamation suspended additional State laws so the State could effectively respond to the emergency. *Id.*, Ex. B, ECF No. 34-1.

On March 21, 2020, Defendant issued a Second Supplementary Proclamation that imposed a 14-day quarantine, effective March 26, 2020, applying to *all persons entering Hawai'i*, both residents and non-residents alike,

with a few exceptions related to emergency and critical infrastructure functions. *Id.*, Ex. C, ECF No. 34-2 at 1. The Second Supplementary Proclamation imposed misdemeanor criminal penalties for violations of the quarantine rules. *Id.*

In response to the community-based transmission of COVID-19, Defendant issued a Third Supplementary Proclamation on March 23, 2020, imposing a stay-at-home mandate with limited exceptions. *Id.*, Ex. D, ECF No. 34-3 at 2. This Third Supplementary Proclamation restricted non-essential businesses, identified prohibited and permissible activities outside the home, prohibited gatherings of more than 10 people, and established social distancing requirements. *Id.* at 2–8. As with the quarantine, violation of the stay-at-home provisions is a misdemeanor. *Id.* at 8.

On March 31, 2020, Defendant issued a Fourth Supplementary Proclamation, extending the quarantine to interisland travelers, effective April 1, 2020, with several identified exceptions. Opp'n, Ex. E, ECF No. 34-4 at 2. The criminal provisions extended to these quarantine rules. *Id.*

Defendant's Fifth Supplementary Proclamation, issued on April 16, 2020, implemented enhanced social distancing requirements and an eviction moratorium. Appl., Ex. 6, ECF No. 12-2 at 33–40. On April 25, 2020, Defendant issued a Sixth Supplementary Proclamation amending and restating all prior proclamations and orders related to the COVID-19 emergency. *Id.*, Ex. 7, ECF No. 12-2 at 42–75.

The May 5, 2020 Seventh Supplementary Proclamation eased restrictions and authorized the reopening of certain business and activities, subject to social distancing guidelines, transitioning from a stay-at-home phase to a safer-at-home phase. Opp'n, Ex. F, ECF No. 34-5. The May 18, 2020 Eighth Supplementary Proclamation extended the quarantine and eviction moratorium until June 30, 2020. *Id.*, Ex. G, ECF No. 34-6. It also authorized the next phase of reopening: the act-with-care phase. *Id.*

\*3 On June 10, 2020, Defendant issued a Ninth Supplementary Proclamation lifting the interisland quarantine on June 16, 2020 while extending the interstate quarantine until July 31, 2020. Opp'n, Ex. H, ECF No. 34-7 at 9, 31.

On June 25, 2020, Defendant announced the August 1, 2020 implementation of the trans-Pacific pre-testing program, which allows travelers to avoid quarantine by supplying

a negative COVID-19 test obtained within 72 hours of arrival in Hawai'i. Opp'n, Decl. of Bruce S. Anderson, Ph.D. (“Anderson Decl.”), ECF No. 33-5 ¶ 8. Those with temperatures exceeding 100.4 or exhibiting other signs of infection will undergo secondary screening and be offered a COVID-19 test. *Id.*

## II. Procedural History

Plaintiffs commenced this action on June 15, 2020, alleging that Defendant's Emergency Proclamations violate their Fifth and Fourteenth Amendment rights. They assert the following claims: Count 1 – Fifth Amendment violation of the right to travel; Count 2 – Fifth Amendment due process violation of the right to liberty; Count 3 – Fourteenth Amendment equal protection violation; and Count 4 – Fifth and Fourteenth Amendment due process and equal protection violations caused by the Emergency Proclamations. Plaintiffs request an order temporarily, preliminarily, and permanently enjoining Defendant from enforcing his Emergency Proclamations or otherwise interfering with their constitutional rights, and for an award of attorneys' fees and costs. Compl. at 27.

The present Application followed on June 17, 2020. ECF No. 12.

## LEGAL STANDARD

[1] The standards governing temporary restraining orders (“TRO”) and preliminary injunctions are “substantially identical.”  [Washington v. Trump](#), 847 F.3d 1151, 1159 n.3 (9th Cir. 2017) (citation omitted); see  [Kaiser Found. Health Plan, Inc. v. Queen's Med. Ctr., Inc.](#), 423 F. Supp. 3d 947, 951 n.1 (D. Haw. 2019). To obtain preliminary injunctive relief, a plaintiff must establish: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in favor of the plaintiff; and (4) an injunction is in the public interest. See  [Winter v. Nat. Res. Def. Council, Inc.](#), 555 U.S. 7, 20, 129 S.Ct. 365, 172 L.Ed.2d 249 (2008) (citations omitted). Where, as here, the government is a party, the last two factors merge. See [Drakes Bay Oyster Co. v. Jewell](#), 747 F.3d 1073, 1092 (9th Cir. 2014).

[2] The Ninth Circuit also employs a “sliding scale” approach to preliminary injunctions, under which “the elements of the preliminary injunction test are balanced, so

that a stronger showing of one element may offset a weaker showing of another.” [All. for the Wild Rockies v. Cottrell](#), 632 F.3d 1127, 1131 (9th Cir. 2011). The issuance of a preliminary injunction may be appropriate when there are “ ‘serious questions going to the merits’ and a balance of hardships that tips sharply towards the plaintiff ... so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest.” [Id.](#) at 1135.

[3] [4] Injunctive relief is “an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief”; it is “never awarded as of right.” [Winter](#), 555 U.S. at 22, 24, 129 S.Ct. 365 (citations omitted). “[C]ourts ‘must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief,’ ” and should be particularly mindful, in exercising their sound discretion, of the “public consequences in employing the extraordinary remedy of injunction.” [Id.](#) at 24, 129 S.Ct. 365 (citations omitted).

\*4 [5] [6] Moreover, mandatory injunctions ordering affirmative action by a defendant, which is what Plaintiffs request here, go “well beyond simply maintaining the status quo ... [and are] particularly disfavored.” [Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.](#), 571 F.3d 873, 879 (9th Cir. 2009) (quoting [Anderson v. United States](#), 612 F.2d 1112, 1114 (9th Cir. 1979), as amended (1980)). Mandatory injunctions are “subject to heightened scrutiny and should not be issued unless the facts and law clearly favor the moving party,” [Dahl v. HEM Pharm. Corp.](#), 7 F.3d 1399, 1403 (9th Cir. 1993) (citation omitted), or “extreme or very serious damage will result.” [Park Vill. Apartment Tenants Ass’n v. Mortimer Howard Tr.](#), 636 F.3d 1150, 1160 (9th Cir. 2011) (citation omitted). They “are not issued in doubtful cases.” [Id.](#) (citation omitted). “The court’s finding of a strong likelihood that plaintiffs would succeed on the merits of their claims also evidences a conclusion that the law and facts clearly favor plaintiffs, meeting the requirement for issuance of a mandatory preliminary injunction.” [Katie A., ex rel. Ludin v. Los Angeles County](#), 481 F.3d 1150, 1157 (9th Cir. 2007) (citation omitted).

## DISCUSSION

Plaintiffs request a TRO enjoining Defendant, his agents, employees, successors in office, and the political subdivisions of the State, from enforcing or requiring compliance with: (1) the 14-day quarantine or (2) prohibitions on Plaintiffs’ due process and equal protection rights, including the right to travel. Appl. at i. Plaintiffs also ask that Defendant be ordered to show cause why a preliminary injunction should not issue. [Id.](#)

### I. Standing

Defendant argues that Plaintiffs lack standing because they have not alleged concrete and particularized injuries-in-fact. Plaintiffs counter that they have standing because: (1) the quarantine “substantially burdened” the Carmichaels and has prevented them from traveling to their vacation condominium on Maui; (2) “the quarantine period makes it functionally impossible” for McGowan to visit her daughter or care for her grandmother on the mainland; and (3) the quarantine prevents Hirsch from traveling to both his properties during a single short visit; prevents him from attending to any business at either property during the quarantine period; and “substantially burdens” his family’s plans to travel to Hawai’i to celebrate his daughter’s graduation. Reply, ECF No. 40 at 2–3.

[7] [8] A plaintiff must demonstrate three elements to establish that he or she has standing to sue in federal court: (1) “injury in fact” that is “concrete and particularized” and “actual or imminent”; (2) the injury must be fairly traceable to the defendant’s conduct; and (3) the injury can be redressed through adjudication. [Lujan v. Defenders of Wildlife](#), 504 U.S. 555, 560–61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992) (citations omitted); see [Spokeo, Inc. v. Robins](#), — U.S. —, 136 S. Ct. 1540, 1547, 194 L.Ed.2d 635 (2016). A plaintiff exclusively seeking declaratory and injunctive relief must additionally “show a very significant possibility of future harm.” [San Diego Cty. Gun Rights Comm. v. Reno](#), 98 F.3d 1121, 1126 (9th Cir. 1996) (citation omitted).

Plaintiffs’ bare and conclusory allegations, both in the Complaint and in their declarations, reveal a common theme: they have *elected* not to travel—whether to or from Hawai’i—because they do not want to be quarantined. Less obvious are the injuries they purport to have suffered or are in

imminent danger of sustaining as a result of the Emergency Proclamations. For example, McGowan wants to travel to the mainland, i.e., leave Hawai'i, and has not explained how quarantining upon her return constitutes a very significant possibility of future harm. Because the Court denies the request for TRO, however, it declines to reach standing at this time.

## II. Plaintiffs Are Not Entitled to Injunctive Relief

### A. Strong Likelihood of Success on the Merits/Serious Questions Going to the Merits<sup>4</sup>

\*5 [9] [10] Chief Justice Robert's concurrence in [South Bay United Pentecostal Church v. Newsom](#) informs the Court's analysis. [— U.S. —, 140 S. Ct. 1613, 207 L.Ed.2d 154](#) (Roberts, C.J., concurring).<sup>5</sup> Chief Justice Roberts recognized that the “Constitution principally entrusts ‘[t]he safety and the health of the people’ to the politically accountable officials of the States ‘to guard and protect.’” [Id.](#) (quoting [Jacobson v. Massachusetts](#), 197 U.S. 11, 38, 25 S.Ct. 358, 49 L.Ed. 643 (1905)) (alteration in original). The latitude of officials “must be especially broad” when acting “in areas fraught with medical and scientific uncertainties.” [Id.](#) (quoting [Marshall v. United States](#), 414 U.S. 417, 427, 94 S.Ct. 700, 38 L.Ed.2d 618 (1974)). If officials do not exceed these broad limits, “they should not be subject to second-guessing by an ‘unelected federal judiciary,’ which lacks the background, competence, and expertise to assess public health and is not accountable to the people.” [Id.](#) at 1613–14 (quoting [Garcia v. San Antonio Metro. Transit Auth.](#), 469 U.S. 528, 545, 105 S.Ct. 1005, 83 L.Ed.2d 1016 (1985)). This is particularly true when “a party seeks emergency relief in an interlocutory posture, while local officials are actively shaping their response to changing facts on the ground.” [Id.](#) at 1614. In such circumstances, “[t]he notion that it is ‘indisputably clear’ that the Government’s limitations are unconstitutional seems quite improbable.” [Id.](#)

Courts presented with emergency challenges to governor-issued orders temporarily restricting activities to curb the spread of COVID-19 have consistently applied [Jacobson v. Massachusetts](#) to evaluate those challenges.<sup>6</sup> See, e.g., [League of Indep. Fitness Facilities & Trainers, Inc. v. Whitmer](#), 814 Fed.Appx. 125, —, 2020 WL 3468281, at

\*2 (6th Cir. 2020) (collecting cases); [Slidewaters LLC v. Wash. Dep’t of Labor & Indus.](#), No. 2:20-CV-0210-TOR, 2020 WL 3130295, at \*4 (E.D. Wash. June 12, 2020); [Prof’l Beauty Fed’n of Cal. v. Newsom](#), No. 2:20-cv-04275-RGK-AS, 2020 WL 3056126, at \*5 (C.D. Cal. June 8, 2020) (collecting cases); [Altman v. County of Santa Clara](#), — F. Supp. 3d —, —, No. 20-cv-02180-JST, 2020 WL 2850291, at \*7 (N.D. Cal. June 2, 2020) (“Although Plaintiffs attempt to dismiss [Jacobson](#) as ‘arcane constitutional jurisprudence,’ ... the case remains alive and well—including during the present pandemic.” (citation omitted)); [Six v. Newsom](#), — F. Supp. 3d —, —, No. 8:20-cv-00877-JLS-DFM, 2020 WL 2896543, at \*3 (C.D. Cal. May 22, 2020).

[11] [12] According to [Jacobson](#), the liberties secured by the Constitution do “not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good.” [Jacobson](#), 197 U.S. at 26, 25 S.Ct. 358. It is a “fundamental principle that persons and property are subjected to all kinds of restraints and burdens in order to secure the general comfort, health, and prosperity of the state.” [Id.](#) (citation and internal quotations marks omitted). When an epidemic of disease threatens the safety of a community’s members, it “has the right to protect itself.” [Id.](#) at 27, 25 S.Ct. 358. And commensurate with that right is a state’s authority “to enact quarantine laws and health laws of every description.” [Id.](#) at 25, 25 S.Ct. 358 (internal quotations marks omitted).

[13] [14] Defendant’s Emergency Proclamations—purporting to protect public health during the COVID-19 pandemic—are not susceptible to Plaintiffs’ constitutional challenges unless they have “no real or substantial relation to” the crisis or are “beyond all question, a plain, palpable invasion of rights secured by the fundamental law.” [Jacobson](#), 197 U.S. at 31, 25 S.Ct. 358 (citations omitted). Indeed, “[Jacobson](#) instructs that *all* constitutional rights may be reasonably restricted to combat a public health emergency.” [In re Abbott](#), 954 F.3d 772, 786 (5th Cir. 2020). And “the judiciary may not ‘second-guess the state’s policy choices in crafting emergency public health measures.’” [In re Rutledge](#), 956 F.3d 1018, 1029 (8th Cir. 2020) (quoting [Abbott](#), 954 F.3d at 784).

### 1. Real or Substantial Relation to Public Health

\*6 Defendant argues that the self-quarantine orders were designed to prevent the importation and intrastate spread of COVID-19 and that restrictions on non-essential businesses are necessary to maintain social distancing and stem the spread of community transmission. Defendant successfully demonstrates that his Emergency Proclamations have a real or substantial relation to the public health crisis caused by the COVID-19 pandemic.

Dr. Sarah Park, Hawaii's State Epidemiologist, avers that restrictions on non-essential businesses, stay-at-home orders, and quarantines (interstate and intrastate) were imposed to minimize the spread of COVID-19. Opp'n, Decl. of Sarah Y. Park, M.D. ("Park Decl."), ECF No. 33-2 ¶¶ 16–17. Dr. Park advised Defendant about the necessity of both the interstate and intrastate quarantines and determined that a 14-day quarantine was appropriate because that is the estimated length of COVID-19's maximum incubation period. *Id.* ¶¶ 19–20. Dr. Park opines that due to the measures undertaken by Defendant, Hawaii's infection and death rates have remained low and that the implementation of the Emergency Proclamations met the goal of flattening the curve and slowing infections to a rate that would prevent the health system from becoming overwhelmed. *Id.* ¶¶ 9, 30. According to Dr. Park, the quarantine remains in effect because absent a vaccine or cure, the following non-exhaustive benchmarks must be met to lift it: "ensuring all businesses, schools, healthcare facilities are following safe practices; increasing its contact tracing capability; working to establish protocols for testing travelers prior to their arrival; ensuring a continuously stable and adequate supply of testing supplies and personal protective equipment; and increasing the state's daily testing capacity." *Id.* ¶ 28. Dr. Park hopes that utilizing these benchmarks will allow for safe re-opening of trans-Pacific travel without risking a second wave of infection. *Id.*

Dr. Steven Hankins, Lead Coordinator for Emergency Support Function-8 with the Hawai'i Emergency Management Agency ("HI-EMA"), states that according to HI-EMA's model, if not for the quarantine, more than 25,000 cumulative COVID-19 patients in Hawai'i would have required hospitalization by the end of July 2020 and more than 5,000 deaths would have occurred by July 23, 2020. Opp'n, Decl. of Steven Hankins, M.D. ("Hankins Decl."), ECF No. 33-3 ¶ 7. Based on the number of licensed hospital

beds in Hawai'i, and given the number typically occupied by non-COVID-19 patients, Dr. Hankins estimates that Hawai'i would have exceeded bed capacity on or around June 28, 2020,<sup>7</sup> which would have prevented the acute care system from providing necessary care and "led to significant excess deaths both from COVID-19 and from the other conditions which require hospital care." *Id.* ¶¶ 10–11.

The foregoing establishes that the Emergency Proclamations bear a real or substantial relation to public health. *See, e.g., Altman, — F.Supp.3d at —, 2020 WL 2850291, at \*9* (concluding that the subject order bears "a real or substantial relationship to the legitimate public health goal of reducing COVID-19 transmission and preserving health care resources" (citations omitted)); *Prof'l Beauty, 2020 WL 3056126, at \*6* ("In this case, the Court finds that California's Stay at Home Order bears a real and substantial relation to public health insofar as it bars cosmetologists from working."); *Rutledge, 956 F.3d at 1029* ("On the record before us, the State's interest in conserving PPE resources and limiting social contact among patients, healthcare providers, and other staff is clearly and directly related to public health during this crisis. That interest is being effectuated by the ADH directive. The directive is a legally valid response to the circumstances confronted by the Governor and state health officials."); *Abbott, 954 F.3d at 787* ("In sum, it cannot be maintained on the record before us that GA-09 bears 'no real or substantial relation' to the state's goal of protecting public health in the face of the COVID-19 pandemic." (citation omitted)).

\*7 Plaintiffs' theory that no emergency exists here or throughout the United States is contradicted by the record and readily available information.<sup>8</sup> With the lifting of restrictions in Hawai'i, COVID-19 cases have increased. Park Decl. ¶ 41. And across the country, there is a resurgence in cases following the loosening of restrictions. *Id.* ¶¶ 22, 29, 39–40. Plaintiffs have not refuted Defendant's proffered bases for the Emergency Proclamations—all of which have a real or substantial relation to public health—especially where, as here, "[t]he precise question of when restrictions on particular social activities should be lifted during the pandemic is a dynamic and fact-intensive matter subject to reasonable disagreement." *S. Bay, 140 S. Ct. at 1613* (Roberts, C.J., concurring). It is not the Court's role to "usurp the functions of another branch of government," *Jacobson, 197 U.S. at 28, 25 S.Ct. 358*, by second-guessing the State's bases for

formulating and extending public health and safety measures. It is “the duty of the constituted authorities primarily to keep in view the welfare, comfort, and safety of the many, and not permit the interests of the many to be subordinated to the wishes or convenience of the few.” [Id.](#) at 29, 25 S.Ct. 358.

## 2. Plain, Palpable Invasion of Rights Secured by the Constitution

The Court now considers the second [Jacobson](#) inquiry: whether the Emergency Proclamations are “*beyond question*, in palpable conflict with the Constitution.”<sup>9</sup> [Jacobson](#), 197 U.S. at 31, 25 S.Ct. 358 (emphasis added). And more precisely, whether they cause a “plain, palpable invasion” of Plaintiffs’ Fifth and Fourteenth Amendment rights. [Id.](#) The Court concludes they do not, whether under traditional levels of scrutiny or [Jacobson](#)’s highly deferential standard.

### a. Right to Travel (Count 1)

[15] Plaintiffs claim that the Emergency Proclamations violate their fundamental right to travel between states under the Fifth Amendment. Appl. at 14; Compl. ¶¶ 84–85. This claim necessarily fails because “the Fifth Amendment’s due process clause only applies to the federal government.” [Bingue v. Prunchak](#), 512 F.3d 1169, 1174 (9th Cir. 2008) (citations omitted). It “prohibits the federal government from depriving persons of due process, while the Fourteenth Amendment explicitly prohibits deprivations without due process by the several States.” [Castillo v. McFadden](#), 399 F.3d 993, 1002 n.5 (9th Cir. 2005) (citation omitted).

[16] [17] Even if Plaintiffs invoked the proper constitutional provision, they would not be entitled to injunctive relief. Although “‘travel’ is not found in the text of the Constitution,” the “‘constitutional right to travel from one State to another’ is firmly embedded in [Supreme Court] jurisprudence.” [Saenz v. Roe](#), 526 U.S. 489, 498, 119 S.Ct. 1518, 143 L.Ed.2d 689 (1999) (citation omitted). The “right to travel” has three components, two of which are relevant here: (1) “the right of a citizen of one State to enter and to leave another State,” and (2) “the right to be treated as a welcome visitor rather than an unfriendly alien

when temporarily present in the second State.” [Id.](#) at 500, 119 S.Ct. 1518. “A state law implicates the right to travel when it actually deters such travel, when impeding travel is its primary objective, or when it uses ‘any classification which serves to penalize the exercise of that right.’ ” [Attorney Gen. of N.Y. v. Soto-Lopez](#), 476 U.S. 898, 903, 106 S.Ct. 2317, 90 L.Ed.2d 899 (1986) (plurality opinion) (citations omitted).

Plaintiffs characterize the 14-day travel quarantine as a travel ban when it is not. In fact, the 14-day travel quarantine violates neither of the two components of the right to travel identified above, as individuals from other states may freely travel to Hawai’i; they must simply comply with the quarantine, a requirement *equally applicable to Hawai’i residents*. This limited restriction (not ban) is a reasonable one. We are in the middle of a pandemic, and even Plaintiffs’ counsel voluntarily acknowledged at the hearing that the COVID-19 crisis is serious.

\*8 In their Reply, Plaintiffs attempt to expand their claim, arguing that interstate and intrastate travelers are treated differently because individuals already in Hawai’i may travel between islands, while those traveling from the mainland are subject to the quarantine.<sup>10</sup> Reply at 8. This is a failed effort to create a distinction where none exists. Just as non-residents traveling to Hawai’i are restricted from traveling between islands, so, too, are residents returning from the mainland. Conversely, residents and non-residents may freely travel intrastate if they are not quarantined.

Plaintiffs present comments Defendant made to the Associated Press on May 4, 2020 as evidence that the quarantine was designed to bar interstate movement and reduce the number of visitors to Hawai’i. Defendant stated: “We are the most isolated community on the planet .... As such, we’ve got to be more self-reliant, but we also had the opportunity to enact a quarantine, make it meaningful and most importantly, know that we could really dramatically reduce the number of visitors we get.” Reply, Ex. 5, ECF No. 40-6.<sup>11</sup> This singular statement does not change the neutral nature of the quarantine itself. *See Altman*, — F.Supp.3d at —, 2020 WL 2850291, at \*12 (“Courts applying [Jacobson](#) to other COVID-19 restrictions have found that facial neutrality weighed in favor of upholding them.” (citations omitted)). Neither does it alter the primary objective of the Emergency Proclamations, which is to limit

the importation and spread of COVID-19 and to prevent the health care system from becoming overwhelmed.

Plaintiffs further contend that the quarantine deters travel because they deem it “impossible” to fulfill their purposes for traveling and complete the quarantine. While not its intended purpose, the quarantine appears to have some deterrent effect, as evidenced by the depressed visitor numbers. But any deterrent effect the quarantine may have on Plaintiffs’ travel to Hawai‘i does not amount to a violation of their right to travel. We are not here dealing with a quarantine or Emergency Proclamations with a *purpose* of deterring Plaintiffs (or other out-of-state travelers) from entering Hawai‘i. *See, e.g., Shapiro v. Thompson*, 394 U.S. 618, 631, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969), *overruled on other grounds by Edelman v. Jordan*, 415 U.S. 651, 94 S.Ct. 1347, 39 L.Ed.2d 662 (1974) (“[T]he *purpose* of deterring the in-migration of indigents cannot serve as justification for the classification created by the one-year waiting period, since that purpose is constitutionally impermissible.” (emphasis added)). Indeed, “not everything that deters travel burdens the fundamental right to travel. States and the federal government would otherwise find it quite hard to tax airports, hotels, moving companies or anything else involved in interstate movement.” *Matsuo v. United States*, 586 F.3d 1180, 1183 (9th Cir. 2009). Because the non-resident Plaintiffs are not barred from entry into and out of Hawai‘i nor are they treated differently than residents, there is no plain, palpable conflict with the Fourteenth Amendment.

\*9 Even assuming the quarantine imposed a burden on Plaintiffs’ right to travel, thereby triggering strict scrutiny, *see Mem’l Hosp. v. Maricopa County*, 415 U.S. 250, 262 n.21, 94 S.Ct. 1076, 39 L.Ed.2d 306 (1974), Plaintiffs would nevertheless be unable to show a likelihood of success on the merits or a serious question going to the merits. To survive strict scrutiny, the quarantine must be “narrowly tailored to promote a compelling governmental interest.” *Nunez ex rel. Nunez v. City of San Diego*, 114 F.3d 935, 946 (9th Cir. 1997) (citing *Phyller v. Doe*, 457 U.S. 202, 217, 102 S.Ct. 2382, 72 L.Ed.2d 786 (1982)); *see Soto-Lopez*, 476 U.S. at 904 & n.4, 106 S.Ct. 2317 (citations omitted).

Defendant imposed the quarantine to prevent the importation and spread of COVID-19 and to avoid overwhelming the health care system, which are compelling state interests. And the quarantine is narrowly tailored because asymptomatic

individuals can spread the disease, COVID-19 has an estimated 14-day incubation period, and it is unclear that there are less restrictive means to achieve Defendant’s stated interests. Moreover, from August 1, 2020, the trans-Pacific pre-testing program will allow travelers to waive the quarantine requirement if they obtain a negative COVID-19 test within 72 hours of arrival and provide proof upon landing.<sup>12</sup> Anderson Decl. ¶ 8. Any traveler exhibiting signs of infection will undergo secondary screening and be offered a COVID-19 test at the airport. *Id.*

[18] Accordingly, based on the record presently before it, the Court finds that the quarantine survives strict scrutiny and Plaintiffs cannot *at this time* establish a likelihood of success or raise a serious question going to the merits of their right to travel claim. *See, e.g., Bayley’s Campground Inc. v. Mills*, — F. Supp. 3d —, —, —, No. 2:20-cv-00176-LEW, 2020 WL 2791797, at \*1, 11 (D. Me. May 29, 2020) (finding that Maine’s quarantine restrictions—prohibiting non-residents from sheltering there “unless they own or can rent property in Maine where they can quarantine themselves for 14 days”—burdened the plaintiffs’ “right to travel,” but nevertheless concluding that they did not show a likelihood of success because “[i]t is not at all clear that there are any less restrictive means for the state to still meet their goal of curbing COVID-19”).

#### b. Due Process (Counts 2 and 4)

Plaintiffs allege that the Emergency Proclamations violate their liberty rights and do not offer a process by which to challenge the Emergency Proclamations prior to or following their implementation. As with Count 1, Plaintiffs invoke the wrong constitutional provision and are not entitled to relief on that basis alone. But even construing this as a Fourteenth Amendment claim, Plaintiffs are unlikely to succeed on the merits and fail to raise serious questions going to the merits.

#### i. Substantive Due Process (Count 2)

Count 2 is largely comprised of historic legal principles from Supreme Court cases without clear articulation of Plaintiffs’ claims against Defendant. Plaintiffs allege, in conclusory fashion, that the Emergency Proclamations violate their fundamental liberty interests, namely their right to travel,

right to earn a living, and freedom from house arrest. Compl. ¶ 104.

\*10 [19] The substantive component of the Due Process Clause of the Fourteenth Amendment “protects certain individual liberties from state interference.” *Franceschi v. Yee*, 887 F.3d 927, 937 (9th Cir. 2018) (alteration in original) (citations omitted). “[O]nly those aspects of liberty that we as a society traditionally have protected as fundamental are included within the substantive protection of the Due Process Clause.” *Id.* (citation omitted). Therefore, substantive due process is “largely confined to protecting fundamental liberty interests, such as marriage, procreation, contraception, family relationships, child rearing, education and a person’s bodily integrity, which are ‘deeply rooted in this Nation’s history and tradition.’” *Id.* (citations omitted); see also *Engquist v. Or. Dep’t of Agric.*, 478 F.3d 985, 996 (9th Cir. 2007) (“A threshold requirement to a substantive or procedural due process claim is the plaintiff’s showing of a liberty or property interest protected by the Constitution.” (citation omitted)).

[20] The Court addressed the right to travel above. In the Application, Plaintiffs focus on the deprivation of liberty caused by the quarantine and stay-at-home mandate, which they equate with a *state-wide confinement whether or not one is infected with COVID-19*. Appl. at 15–16. To the extent Plaintiffs’ request for relief is predicated on a stay-at-home mandate, they cannot show a likelihood of success on the merits or raise serious questions going to the merits. Hawai‘i is currently in an act-with-care phase, which took effect on May 18, 2020. Opp’n, Exs. G–H. On May 5, 2020, a safer-at-home phase replaced the stay-at-home phase.<sup>13</sup> *Id.*, Ex. F. Neither the safer-at-home nor act-with-care phases confine non-quarantined residents or visitors to their homes/lodging, so this claim lacks any basis.

[21] Plaintiffs fare no better with their claim that the quarantine violates their fundamental rights. Although the right to travel within the United States is constitutionally protected, that does not mean that a temporary quarantine cannot be instituted in certain areas when evidence shows that unlimited travel there would directly and materially interfere with the safety and welfare of that area. See *Zemel v. Rusk*, 381 U.S. 1, 15–16, 85 S.Ct. 1271, 14 L.Ed.2d 179 (1965). As discussed above, assuming the quarantine is subject to strict scrutiny instead of the highly deferential *Jacobson* standard, it is narrowly tailored to promote a compelling governmental interest—preventing

the importation and spread of COVID-19 and avoiding an overwhelmed health care system. Thus, Plaintiffs are unlikely to succeed on the merits and they have not raised serious questions going to the merits.

## ii. Procedural Due Process

Plaintiffs do not delineate between substantive and procedural due process, but they appear to assert a procedural due process claim—entitlement to and deprivation of some process with respect to the issuance of the Emergency and Supplementary Proclamations. Appl. at 21; Compl. ¶ 138 (“Governor Ige’s emergency orders provide for no opportunity for a hearing; no appeal; no reconsideration, notwithstanding that the Governor ordered house arrest for all people in Hawaii, engaged in the promulgation of administrative regulations and legislative prerogatives.”).

[22] “Procedural due process imposes constraints on governmental decisions which deprive individuals of ‘liberty’ or ‘property’ interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment.” *Mathews v. Eldridge*, 424 U.S. 319, 332, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). These protections notwithstanding, the Supreme Court has determined that “summary administrative action may be justified in emergency situations.” *Hodel v. Va. Surface Mining & Reclamation Ass’n, Inc.*, 452 U.S. 264, 300, 101 S.Ct. 2352, 69 L.Ed.2d 1 (1981) (citations omitted). A “deprivation of property to protect the public health and safety is [o]ne of the oldest examples’ of permissible summary action.” *Id.* (alteration in original) (citations omitted). COVID-19 is an unprecedented emergency. And despite Plaintiffs’ effort to downplay and negate its seriousness—driven by their apparent desire to “leave quarantine to enjoy Hawaii for 14 days”<sup>14</sup>—it is precisely the type of emergency situation requiring Defendant to act expeditiously. Moreover, because the Emergency Proclamations affect the entire State, they “do not give rise to the constitutional procedural due process requirements of individual notice and hearing; general notice as provided by law is sufficient.” *Halverson v. Skagit County*, 42 F.3d 1257, 1261 (9th Cir. 1994). The constantly evolving situation could not reasonably allow Plaintiffs to challenge every supplementary proclamation before it issues. Plaintiffs cannot persuasively argue that they have suffered a meaningful deprivation of process. Based on the foregoing, this claim is unlikely to

succeed on the merits, and it does not raise serious questions going to the merits.

c. Equal Protection (Counts 3 and 4)

\*11 Plaintiffs allege that Defendant's arbitrary categorization of business as essential or non-essential precludes them from making a living and results in disparate treatment in violation of their equal protection rights under the Fourteenth Amendment. Compl. ¶¶ 120–21. Plaintiffs argue that allowing certain activities while prohibiting others is similarly violative. *Id.* ¶¶ 144–45.

[23] [24] “The Equal Protection Clause of the Fourteenth Amendment commands that no State shall ‘deny to any person within its jurisdiction the equal protection of the laws,’ which is essentially a direction that all persons similarly situated should be treated alike.” [City of Cleburne v. Cleburne Living Ctr.](#), 473 U.S. 432, 439, 105 S.Ct. 3249, 87 L.Ed.2d 313 (1985) (quoting [Plyler](#), 457 U.S. at 216, 102 S.Ct. 2382). The Supreme Court has “repeatedly held that ‘a classification neither involving fundamental rights nor proceeding along suspect lines ... cannot run afoul of the Equal Protection Clause if there is a rational relationship between disparity of treatment and some legitimate governmental purpose.’ ” [Cent. State Univ. v. Am. Ass’n of Univ. Professors](#), 526 U.S. 124, 127–28, 119 S.Ct. 1162, 143 L.Ed.2d 227 (1999) (alteration in original) (citations omitted); [Nat’l Ass’n for the Advancement of Psychoanalysis v. Cal. Bd. of Psychology](#), 228 F.3d 1043, 1049 (9th Cir. 2000) (“To withstand Fourteenth Amendment scrutiny, a statute is required to bear only a rational relationship to a legitimate state interest, unless it makes a suspect classification or implicates a fundamental right.” (citations omitted)).

[25] The basis for this claim is unclear. Plaintiffs dispute Defendant's categorization of activities as authorized/unauthorized and businesses as essential/non-essential. But to the extent Plaintiffs argue that these categorizations infringe upon their fundamental right to work, the Emergency Proclamations do not affect them. The Carmichaels and Hirsch reside on the mainland and McGowan has not alleged that the Emergency Proclamations interfere with her ability to work at all; her contention is that the quarantine “makes it impossible” for her to travel to the mainland due to the restrictions she will face upon her return. Given the

circumstances, Plaintiffs cannot establish a likelihood of success on the merits and they have not raised serious questions going to the merits.

In sum, Plaintiffs have failed to show a likelihood that they would succeed on the merits of their claims, let alone a strong likelihood of success, as is required for a mandatory injunction. Nor have Plaintiffs raised serious questions going to the merits as to any of their claims. Consequently, they are not entitled to a TRO.

B. Irreparable Harm

“At a minimum, a plaintiff seeking preliminary injunctive relief must demonstrate that it will be exposed to irreparable harm.” [Caribbean Marine Servs. Co. v. Baldrige](#), 844 F.2d 668, 674 (9th Cir. 1988) (citation omitted). As a prerequisite to injunctive relief, “a plaintiff must *demonstrate* immediate threatened injury”; a speculative injury is not irreparable. [Id.](#) (citations omitted). “Irreparable harm is ... harm for which there is no adequate legal remedy, such as an award of damages.” [Ariz. Dream Act Coal. v. Brewer](#), 757 F.3d 1053, 1068 (9th Cir. 2014) (citation omitted). “[A]n alleged constitutional infringement will often alone constitute irreparable harm,” [Monterey Mech. Co. v. Wilson](#), 125 F.3d 702, 715 (9th Cir. 1997) (citation omitted), but not if “the constitutional claim is too tenuous.” [Goldie's Bookstore, Inc. v. Superior Court](#), 739 F.2d 466, 472 (9th Cir. 1984).

\*12 [26] Plaintiffs argue that the deprivation of their constitutional rights causes them irreparable harm, with each day bringing further injury, and no damages can adequately compensate them for their loss of time and freedom. As discussed above, Plaintiffs’ declarations explain only why they have elected not to travel to Hawai’i due to the potential issues that could arise from having to quarantine, or claim, without supporting explanation or evidence, that undergoing the quarantine is impossible. These cursory and speculative assertions insufficiently *demonstrate* immediate threatened injury and considering Plaintiffs’ failure to show a likelihood of success on the merits, their constitutional claims are too attenuated to establish irreparable harm.

C. Balance of Equities/Public Interest

Plaintiffs view their harm as so significant that *any* continuation of the quarantine would irreparably violate their right to travel, whereas Defendant would suffer no hardship.

Reply at 12. They also suggest that it is in Hawaii's best interest to allow its residents to travel, associate, and be free from government restraint. *Id.*

[27] [28] In assessing whether Plaintiffs establish that the balance of equities tip in their favor, “the district court has a ‘duty .... to balance the interests of all parties and weigh the damage to each.’ ” *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1138 (9th Cir. 2009) (citation omitted). When an injunction's impact “reaches beyond the parties, carrying with it a potential for public consequences, the public interest will be relevant to whether the district court grants the preliminary injunction.” *Id.* at 1139 (citations omitted). Indeed, “[t]he public interest inquiry primarily addresses impact on non-parties rather than parties.” *League of Wilderness Defs./Blue Mountains Biodiversity Project v. Connaughton*, 752 F.3d 755, 766 (9th Cir. 2014) (citation omitted). It also requires the Court to “consider whether there exists some critical public interest that would be injured by the grant of preliminary relief.” *Cottrell*, 632 F.3d at 1138 (citation omitted); *Stormans*, 586 F.3d at 1139 (“[C]ourts ... should pay particular regard for the public consequences in employing the extraordinary remedy of injunction.” (citation omitted)).

[29] Here, the equities weigh heavily against Plaintiffs. At its core, this case is about the non-resident Plaintiffs’ desire to travel to their vacation homes without restriction and McGowan's desire to travel to the mainland without facing a quarantine when she returns home. But the desires of a few cannot override the community's interest in preserving its health and well-being.

As discussed above, the restrictions imposed by the Emergency Proclamations were designed to slow the spread of COVID-19, and they arguably have. Serious consequences

could result to the public if Defendant is enjoined from enforcing the Emergency Proclamations at this time, as doing so would undermine his ongoing efforts to *safely* reopen the state to travelers and ease restrictions on residents and visitors.

Until Defendant implements the components of Hawaii's risk mitigation strategy,<sup>15</sup> a sudden, wholesale lifting of all restrictions in the Emergency Proclamations would be highly detrimental and disruptive. Defendant is confronting a dynamic situation fraught with uncertainty. In these unprecedented times, it is not the Court's role to second-guess the decisions of state officials who have the expertise to assess the COVID-19 pandemic and institute appropriate measures to minimize its impact to this community. See *Stormans*, 586 F.3d at 1139 (“[When] an injunction is asked which will adversely affect a public interest ... the court may in the public interest withhold relief until a final determination of the rights of the parties, though the postponement may be burdensome to the plaintiff.” (alteration in original) (citation omitted)). Under these circumstances, a TRO would not be in the public's interest.

## CONCLUSION

\*13 For the reasons stated herein, the Court HEREBY DENIES Plaintiffs’ Application for Temporary Restraining Order and for Order to Show Cause Why a Preliminary Injunction Should Not Issue. ECF No. 12.

IT IS SO ORDERED.

### All Citations

--- F.Supp.3d ----, 2020 WL 3630738

## Footnotes

- 1 At the hearing, Plaintiffs clarified that they only seek temporary injunctive relief related to the quarantine requirement.
- 2 This reflects an increase of 54,357 cases and 725 deaths since yesterday. See <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last visited July 2, 2020).

- 3 In her Declaration, McGowan characterizes it as a home construction project. Appl., Decl. of Brooke McGowan (“McGowan Decl.”), ECF No. 12-8 ¶ 3.
- 4 This is the only element (of four) addressed by Plaintiffs in their Application. Because it is Plaintiff’s burden to prove entitlement to injunctive relief, and they failed to present a prima facie case as to all required elements in their Application, it can be denied on this basis alone regardless of whether Plaintiffs eventually addressed the remaining elements in their Reply. Even considering those arguments, though, Plaintiffs still have not met their burden.
- 5 While [South Bay](#) did not concern Equal Protection or Due Process claims, it denied an application for injunctive relief to enjoin enforcement of the California governor’s executive order restricting attendance at places of worship. Notably, Chief Justice Roberts focused on the deference paid to local governments concerning matters of health and safety, and not the standards typically applied to constitutional claims, i.e., strict scrutiny to assess a free exercise claim under the First Amendment.
- 6 Plaintiffs argue that [Jacobson](#) is inapplicable. But the cases they rely upon did not address [South Bay](#). Indeed, one case preceded [South Bay](#) and the order in the other case issued the same day as [South Bay](#).
- 7 Dr. Hankins provides a date of “06/28/2000,” which appears to be a typographical error.
- 8 Plaintiffs rely entirely on the declaration of an economist to contend that there is no emergency. See Appl., Decl. of Joel W. Hay, Ph.D, ECF No. 12-3 ¶ 36 (“[I]t is my professional opinion that 14-day quarantines are ineffective because there is no emergency in Hawaii or the United States.”). Plaintiffs appear to disregard any role the Emergency Proclamations may have played in limiting COVID-19 cases and deaths, instead relying solely on those numbers as evidence of a lack of emergency.
- 9 “Although courts have not yet defined the precise contours of this standard, it plainly puts a thumb on the scale in favor of upholding state and local officials’ emergency public health responses.” *Prof’l Beauty*, 2020 WL 3056126, at \*7 (citation omitted).
- 10 Plaintiffs also attempt to manufacture a classification between those traveling to Hawai’i and those *leaving* Hawai’i: “Americans traveling from the mainland are subject to Governor Ige’s 14-day mandatory quarantine, while Americans traveling from Hawaii to the mainland or from island to island are not.” Reply at 9. It is axiomatic that those traveling to the mainland would not be subject to Hawaii’s quarantine once they leave. This distinction is irrelevant in any event because the right to travel concerns differentiation between residents and non-residents. No such distinction exists here. All who leave Hawai’i for the mainland—non-residents and residents alike—will not be subject to Hawaii’s quarantine on the mainland, though they will be subject to any quarantine requirements imposed by another state.
- 11 Despite acknowledging that Defendant made this statement weeks before they filed their lawsuit, Plaintiffs waited until the Reply to offer it as evidence in support of their Application. Simply put, this tactic undermines the notion that a party should present all evidence in support of its request at the outset so that the opposing party has an opportunity to respond. Nonetheless, because the Court permitted Defendant to respond at the hearing, it will consider this evidence.
- 12 The implementation of the trans-Pacific pre-testing program does not undercut the reasonableness of the restrictions currently in place. What will be feasible next month was not necessarily possible earlier in the crisis because of benchmarks that must be met. Park Decl., ECF No. 33-2 ¶ 28.
- 13 This tends to demonstrate that Defendant is employing a tiered and measured reopening strategy with a goal of imposing only those restrictions deemed necessary to promote public health and safety.
- 14 Reply at 10.
- 15 Anderson Decl. ¶ 7.

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# Exhibit B

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2020 WL 4209225

Only the Westlaw citation is currently available.  
United States District Court, D. Hawai'i.

Brock Tyler BANNISTER, Plaintiff,

v.

David IGE, et al., Defendants.

CIVIL NO. 20-00305 JAO-RT

|  
Signed 07/22/2020

#### Attorneys and Law Firms

Brock Tyler Bannister, Laie, HI, pro se.

### ORDER DENYING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Jill A. Otake, United States District Judge

\*1 Pro se Plaintiff Brock Tyler Bannister ("Plaintiff"), a South Carolina resident, challenges Defendant Governor David Ige's ("Defendant Ige") Emergency Proclamations regarding COVID-19 as unconstitutional under the Fourteenth Amendment to the Constitution. Plaintiff requests injunctive relief in the form of an exemption from the 14-day quarantine for himself, his wife, and his two minor children. For the following reasons, the Court DENIES Plaintiff's Motion for Preliminary Injunction.<sup>1</sup>

#### BACKGROUND

Like many states across the nation and countries around the world, Hawai'i has issued a series of Emergency Proclamations "to limit the spread of COVID-19, a novel severe acute respiratory illness" with "no known cure, no effective treatment, and no vaccine."  *S. Bay United Pentecostal Church v. Newsom*, 140 S. Ct. 1613, 1613 (2020) (mem.) (Roberts, C.J., concurring). Further complicating efforts to contain COVID-19 is the fact that individuals who are "infected but asymptomatic ... may unwittingly infect others." *Id.*

The United States leads the world in COVID-19 cases and deaths by a large margin, with 3,935,211 cases and 142,595

deaths, *see* <https://coronavirus.jhu.edu/map.html> (last visited July 22, 2020), and nearly all states are experiencing increases. *See* <https://www.npr.org/sections/health-shots/2020/03/16/816707182/map-tracking-the-spread-of-the-coronavirus-in-the-u-s> (last visited July 22, 2020).

#### I. Factual History

##### A. Bannister Family

Plaintiff and his family arrived in Honolulu on July 9, 2020 and are subject to the State's 14-day quarantine through July 23, 2020.<sup>2</sup> Compl. at 2. Plaintiff is vacationing at a rental home in Laie for 36 days, or until August 13, 2020, at a cost of \$10,508.68. *Id.* He complains that the quarantine—of which he was aware before traveling here—will cause him to lose 40% of his vacation time in Hawai'i. *Id.* According to Plaintiff, "[t]ime is a finite resource, and each minute that [he] and [his] family spend under a mandatory quarantine, which [he] believe[s] the law demonstrates to be unlawful, steals from [them] precious moments that [they] will never gain back and no amount of money can purchase." *Id.* at 6.

##### B. Emergency Proclamations

As COVID-19 appeared in Hawai'i, Defendant Ige issued an Emergency Proclamation on March 4, 2020, authorizing the expenditure of State monies, and suspending specified Hawai'i statutes. *See* [https://governor.hawaii.gov/wp-content/uploads/2020/03/2003020-GOV-Emergency-Proclamation\\_COVID-19.pdf](https://governor.hawaii.gov/wp-content/uploads/2020/03/2003020-GOV-Emergency-Proclamation_COVID-19.pdf) (last visited July 22, 2020).

On March 21, 2020, Defendant Ige issued a Second Supplementary Proclamation that imposed a 14-day quarantine, effective March 26, 2020, applying to *all persons entering Hawai'i*, both residents and non-residents alike, with a few exceptions related to emergency and critical infrastructure functions. *See* [https://governor.hawaii.gov/wp-content/uploads/2020/03/2003152-ATG\\_Second-Supplementary-Proclamation-for-COVID-19-signed.pdf](https://governor.hawaii.gov/wp-content/uploads/2020/03/2003152-ATG_Second-Supplementary-Proclamation-for-COVID-19-signed.pdf) (last visited July 22, 2020). Defendant Ige's Eighth Supplementary Proclamation, issued on May 18, 2020, excepted from the quarantine individuals entering Hawai'i "by recreational boats which have been at sea for at least 14 consecutive days before entering State waters and have no persons on board that are ill or are exhibiting symptoms of COVID-19." [https://governor.hawaii.gov/wp-content/uploads/2020/05/2005088-ATG\\_Eighth-Supplementary-](https://governor.hawaii.gov/wp-content/uploads/2020/05/2005088-ATG_Eighth-Supplementary-)

## Exhibit "B"

Proclamation-for-COVID-19-distribution-signed.pdf (last visited July 22, 2020).

\*2 In his Ninth Supplementary Proclamation issued on June 10, 2020, Defendant Ige extended the interstate quarantine until July 31, 2020. See [https://governor.hawaii.gov/wp-content/uploads/2020/06/2006097A-ATG\\_Ninth-Supplementary-Proclamation-COVID-19-distribution-signed.pdf](https://governor.hawaii.gov/wp-content/uploads/2020/06/2006097A-ATG_Ninth-Supplementary-Proclamation-COVID-19-distribution-signed.pdf) (last visited July 22, 2020).

On June 25, 2020, Defendant Ige announced the August 1, 2020 implementation of the trans-Pacific pre-testing program, which allows travelers to avoid quarantine by supplying a negative COVID-19 test obtained within 72 hours of arrival in Hawai‘i. ECF No. 25-6 (Decl. of Bruce S. Anderson, Ph.D) ¶ 8. Those with temperatures exceeding 100.4 or exhibiting other signs of infection will undergo secondary screening and be offered a COVID-19 test. *Id.* Due to uncontrolled outbreaks in the continental United States, an increase in Hawaii’s cases, interruption to testing supplies, and an anticipated uptick in cases when schools reopen in August, Defendant Ige delayed the program until September 1, 2020. See <https://governor.hawaii.gov/newsroom/latest-news/office-of-the-governor-news-release-governor-ige-announces-pre-trav/> (last visited July 22, 2020). He correspondingly extended the quarantine until September 1, 2020 in a Tenth Supplementary Proclamation issued on July 17, 2020. See [https://governor.hawaii.gov/wp-content/uploads/2020/07/2007090-ATG\\_Tenth-Supplementary-Proclamation-for-COVID-19-distribution-signed.pdf](https://governor.hawaii.gov/wp-content/uploads/2020/07/2007090-ATG_Tenth-Supplementary-Proclamation-for-COVID-19-distribution-signed.pdf) (last visited July 22, 2020).

## II. Procedural History

Plaintiff commenced this action on July 10, 2020, suing Defendant Ige and the State (collectively, “Defendants”), alleging that Defendant Ige’s Emergency Proclamations violate his and his family’s due process, equal protection, and liberty rights under the Fourteenth Amendment. Compl. at 3–5. Plaintiff requests an injunction preventing the enforcement of the quarantine for himself and his family, as well as \$300.25 in damages for each day they are subject to quarantine and \$25,000.00 in punitive damages. *Id.* at 6.

Plaintiff filed the present Motion on July 13, 2020. ECF No. 6.

## LEGAL STANDARD

To obtain preliminary injunctive relief, a plaintiff must establish: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in favor of the plaintiff; and (4) an injunction is in the public interest. See *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (citations omitted). Where, as here, the government is a party, the last two factors merge. See *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014).

The Ninth Circuit also employs a “sliding scale” approach to preliminary injunctions, under which “the elements of the preliminary injunction test are balanced, so that a stronger showing of one element may offset a weaker showing of another.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). The issuance of a preliminary injunction may be appropriate when there are “ ‘serious questions going to the merits’ and a balance of hardships that tips sharply towards the plaintiff ... so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest.” *Id.* at 1135.

Injunctive relief is “an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief”; it is “never awarded as of right.” *Winter*, 555 U.S. at 22, 24 (citations omitted). “[C]ourts ‘must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief,’ ” and should be particularly mindful, in exercising their sound discretion, of the “public consequences in employing the extraordinary remedy of injunction.” *Id.* at 24 (citations omitted).

\*3 Moreover, mandatory injunctions ordering affirmative action by a defendant, which is what Plaintiff requests here, go “well beyond simply maintaining the status quo ... [and are] particularly disfavored.” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879 (9th Cir. 2009) (quoting *Anderson v. United States*, 612 F.2d 1112, 1114 (9th Cir. 1979), as amended (1980)). Mandatory injunctions are “subject to heightened scrutiny and should not be issued unless the facts and law clearly favor the moving party,” *Dahl v. HEM Pharm. Corp.*, 7 F.3d 1399, 1403 (9th

Cir. 1993) (citation omitted), or “extreme or very serious damage will result.” [Park Vill. Apartment Tenants Ass'n v. Mortimer Howard Tr.](#), 636 F.3d 1150, 1160 (9th Cir. 2011) (citation omitted). They “are not issued in doubtful cases.” *Id.* (citation omitted). “The court’s finding of a strong likelihood that plaintiffs would succeed on the merits of their claims also evidences a conclusion that the law and facts clearly favor plaintiffs, meeting the requirement for issuance of a mandatory preliminary injunction.” [Katie A., ex rel. Ludin v. Los Angeles County](#), 481 F.3d 1150, 1157 (9th Cir. 2007) (citation omitted).

## DISCUSSION

Plaintiff requests an injunction exempting him and his family<sup>3</sup> from the 14-day quarantine. ECF No. 6 at 1. The Court notes that it recently addressed similar challenges to the Emergency Proclamations in [Carmichael v. Ige](#), Civil No. 20-00273 JAO-WRP, 2020 WL 3630738 (D. Haw. July 2, 2020). Because Plaintiff does not present any persuasive arguments or authority requiring the Court to depart from the *Carmichael* order, much of the analysis herein mirrors *Carmichael*.

### I. Plaintiff is Not Entitled to Injunctive Relief

#### A. Strong Likelihood of Success on the Merits/Serious Questions Going to the Merits

Defendants argue that Plaintiff has not established a likelihood of success on the merits because his claims are barred by the Eleventh Amendment and fail under [Jacobson v. Massachusetts](#), 197 U.S. 11 (1905), and the Equal Protection Clause.

##### 1. Eleventh Amendment Immunity

To the extent Plaintiff seeks damages from Defendants, his claims are barred by the Eleventh Amendment. “The Eleventh Amendment shields consenting states from suits in federal court,” [K.W. ex rel. D.W. v. Armstrong](#), 789 F.3d 962, 974 (9th Cir. 2015) (citing [Seminole Tribe of Fla. v. Florida](#), 517 U.S. 44, 54 (1996)), and bars individuals from bringing lawsuits against a state or an instrumentality of a state for monetary damages or other retrospective relief. See [Ariz.](#)

[Students' Ass'n v. Ariz. Bd. of Regents](#), 824 F.3d 858, 865 (9th Cir. 2016). Furthermore, it “applies regardless of the nature of relief sought and extends to state instrumentalities and agencies.” [Krainski v. Nevada ex rel. Bd. of Regents of Nev. Sys. of Higher Educ.](#), 616 F.3d 963, 967 (9th Cir. 2010) (citing [Papasan v. Allain](#), 478 U.S. 265, 276 (1986)). Suits against state officials in their official capacities are likewise barred because they constitute suits against the state itself. See [Will v. Mich. Dep't of State Police](#), 491 U.S. 58, 71 (1989).

Eleventh Amendment immunity is not absolute, however. Congress may abrogate a state’s immunity, or a state may waive immunity. See [Clark v. California](#), 123 F.3d 1267, 1269 (9th Cir. 1997). And under the *Ex parte Young* exception, “private individuals may sue state officials in federal court for *prospective* relief from ongoing violations of federal law, as opposed to money damages, without running afoul of the doctrine of sovereign immunity.” [Koala v. Khosla](#), 931 F.3d 887, 895 (9th Cir. 2019) (citing [Va. Office for Prot. & Advocacy v. Stewart](#), 563 U.S. 247, 254–55 (2011)). *Ex parte Young* is based on the proposition “that when a federal court commands a state official to do nothing more than refrain from violating federal law, he is not the State for sovereign-immunity purposes.” [Va. Office for Prot. & Advocacy](#), 563 U.S. at 255 (citation omitted). It does not apply “when ‘the state is the real substantial party in interest.’” *Id.* (citation omitted). Thus, while the Eleventh Amendment bars Plaintiff from seeking prospective injunctive relief against the State, he may pursue his claims against Defendant Ige for prospective injunctive relief from ongoing violations of his Fourteenth Amendment rights.

##### 2. Fourteenth Amendment Violations

\*4 As in *Carmichael*, Chief Justice Roberts’ concurrence in [South Bay United Pentecostal Church v. Newsom](#) informs the Court’s analysis. 140 S. Ct. 1613 (Roberts, C.J., concurring). Chief Justice Roberts recognized that the “Constitution principally entrusts ‘[t]he safety and the health of the people’ to the politically accountable officials of the States ‘to guard and protect.’” *Id.* (quoting [Jacobson](#), 197 U.S. at 38) (alteration in original). The latitude of officials “must be especially broad” when acting “in areas fraught with medical and scientific uncertainties.” *Id.* (quoting [Marshall v. United States](#), 414 U.S. 417, 427 (1974)).

If officials do not exceed these broad limits, “they should not be subject to second-guessing by an ‘unelected federal judiciary,’ which lacks the background, competence, and expertise to assess public health and is not accountable to the people.” [Id.](#) at 1613–14 (quoting [Garcia v. San Antonio Metro. Transit Auth.](#) 469 U.S. 528, 545 (1985)). This is particularly true when “a party seeks emergency relief in an interlocutory posture, while local officials are actively shaping their response to changing facts on the ground.” [Id.](#) at 1614. In such circumstances, “[t]he notion that it is ‘indisputably clear’ that the Government’s limitations are unconstitutional seems quite improbable.” *Id.*

Courts presented with emergency challenges to governor-issued orders temporarily restricting activities to curb the spread of COVID-19 have consistently applied *Jacobson* to evaluate those challenges. See [Carmichael](#), 2020 WL 3630738, at \*5 (collecting cases). According to *Jacobson*, the liberties secured by the Constitution do “not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good.” [Jacobson](#), 197 U.S. at 26. It is a “fundamental principle that persons and property are subjected to all kinds of restraints and burdens in order to secure the general comfort, health, and prosperity of the state.” *Id.* (citation and internal quotations marks omitted). When an epidemic of disease threatens the safety of a community’s members, it “has the right to protect itself.” [Id.](#) at 27. And commensurate with that right is a state’s authority “to enact quarantine laws and health laws of every description.” [Id.](#) at 25 (internal quotations marks omitted).

Defendant Ige’s Emergency Proclamations—purporting to protect public health during the COVID-19 pandemic—are not susceptible to Plaintiff’s constitutional challenges unless they have “no real or substantial relation to” the crisis or are “beyond all question, a plain, palpable invasion of rights secured by the fundamental law.”<sup>4</sup> [Jacobson](#), 197 U.S. at 31 (citations omitted). Indeed, “*Jacobson* instructs that all constitutional rights may be reasonably restricted to combat a public health emergency.” [In re Abbott](#), 954 F.3d 772, 786 (5th Cir. 2020). And “the judiciary may not ‘second-guess the state’s policy choices in crafting emergency public health

measures.’” [In re Rutledge](#), 956 F.3d 1018, 1029 (8th Cir. 2020) (quoting [Abbott](#), 954 F.3d at 784).

#### a. Real or Substantial Relation to Public Health

The Court already determined in *Carmichael* that Defendant Ige successfully demonstrated “that his Emergency Proclamations have a real or substantial relation to the public health crisis caused by the COVID-19 pandemic.” [Carmichael](#), 2020 WL 3630738, at \*6 (discussing the Declarations of Dr. Sarah Park, Hawaii’s State Epidemiologist and Dr. Steven Hankins, Lead Coordinator for Emergency Support Function-8 with the Hawai‘i Emergency Management Agency); see also ECF No. 25-3 (Park Decl.) ¶¶ 9, 16–17, 19–20, 28, 30; ECF No. 25-4 (Hankins Decl.) ¶¶ 7, 10–11. The jump in COVID-19 cases and deaths in Hawai‘i since the issuance of the *Carmichael* order lends further support to the quarantine.<sup>5</sup> And the alarming resurgence of cases on the mainland, both before, see ECF No. 25-3 ¶¶ 22, 29, 40, and after the Court issued *Carmichael* only buttresses Defendant Ige’s position here.

\*5 Plaintiff has not attempted to refute Defendant Ige’s proffered bases for the Emergency Proclamations, all of which have a real or substantial relation to public health. It is not the Court’s role to “usurp the functions of another branch of government,” [Jacobson](#), 197 U.S. at 28, by second-guessing the State’s bases for formulating and extending public health and safety measures. Rather, it is “the duty of the constituted authorities primarily to keep in view the welfare, comfort, and safety of the many, and not permit the interests of the many to be subordinated to the wishes or convenience of the few.” [Id.](#) at 29.

#### b. Plain, Palpable Invasion of Rights Secured by the Constitution

The Court now considers the second *Jacobson* inquiry: whether the Emergency Proclamations are “beyond question, in palpable conflict with the Constitution.”<sup>6</sup> [Jacobson](#), 197 U.S. at 31 (emphasis added). And more precisely, whether they cause a “plain, palpable invasion” of Plaintiff’s Fourteenth Amendment rights. *Id.* The Court concludes they do not, whether under traditional levels of scrutiny or *Jacobson*’s highly deferential standard.

### i. Due Process

Plaintiff alleges that the quarantine violates his liberty right to free movement without due process because he is forced to quarantine without scientific proof that he has contracted or been exposed to COVID-19. Compl. at 3. Plaintiff is unlikely to succeed on the merits and fails to raise serious questions going to the merits.

The substantive component of the Due Process Clause of the Fourteenth Amendment “protects certain individual liberties from state interference.” *Franceschi v. Yee*, 887 F.3d 927, 937 (9th Cir. 2018) (alteration in original) (citations omitted). “[O]nly those aspects of liberty that we as a society traditionally have protected as fundamental are included within the substantive protection of the Due Process Clause.” *Id.* (citation omitted). Therefore, substantive due process is “largely confined to protecting fundamental liberty interests, such as marriage, procreation, contraception, family relationships, child rearing, education and a person’s bodily integrity, which are ‘deeply rooted in this Nation’s history and tradition.’” *Id.* (citations omitted); see also *Engquist v. Or. Dep’t of Agric.*, 478 F.3d 985, 996 (9th Cir. 2007) (“A threshold requirement to a substantive or procedural due process claim is the plaintiff’s showing of a liberty or property interest protected by the Constitution.” (citation omitted)).

Plaintiff cannot show that a lack of opportunity to prove that he is not infected with COVID-19 violates his due process rights. Plaintiff appears to contend that Defendant Ige’s actions amount to a constitutional violation under *Jacobson* because he imposed the quarantine, a complete restraint, in lieu of other “partial restraints” like face masks and social distancing. ECF No. 6 at 2–3. But the Emergency Proclamations have mandated social distancing and the use of face masks. And even if they did not, the use of masks and social distancing—which are not restraints—address different concerns than the quarantine. Mask use and social distancing are employed to minimize the spread of COVID-19 within the community as businesses and activities resume, while the quarantine seeks to limit the *importation* and spread of COVID-19. As here, a temporary quarantine can be instituted in certain areas when evidence shows that unlimited travel there would directly and materially interfere with the safety and welfare of that area. See *Zemel v. Rusk*, 381 U.S. 1, 15–16 (1965).

\*6 Even applying strict scrutiny,<sup>7</sup> the quarantine is “narrowly tailored to promote a compelling governmental interest.” *Nunez ex rel. Nunez v. City of San Diego*, 114 F.3d 935, 946 (9th Cir. 1997) (citing *Plyler v. Doe*, 457 U.S. 202, 217 (1982)); see *Soto-Lopez*, 476 U.S. at 904 & n.4 (citations omitted). Defendant Ige imposed the quarantine to prevent the importation and spread of COVID-19 and to avoid overwhelming the health care system, which are compelling state interests. And the quarantine is narrowly tailored because asymptomatic individuals can spread the disease, COVID-19 has an estimated 14-day incubation period, and despite Plaintiff’s belief to the contrary,<sup>8</sup> it is unclear that there are less restrictive means to achieve Defendant Ige’s stated interests.

Although Defendant Ige has delayed the trans-Pacific pre-testing program until September 1, 2020, once executed, it will allow travelers to waive the quarantine requirement if they obtain a negative COVID-19 test within 72 hours of arrival and provide proof upon landing.<sup>9</sup> ECF No. 25-6 ¶ 8. Any traveler exhibiting signs of infection will undergo secondary screening and be offered a COVID-19 test at the airport. *Id.* Accordingly, based on the record presently before it, the Court finds that the quarantine survives strict scrutiny and Plaintiff cannot *at this time* establish a likelihood of success or raise a serious question going to the merits of his due process claim.

### ii. Equal Protection

Plaintiff alleges that the quarantine violates his equal protection rights because travelers who have been at sea for 14 days are exempt, as are travelers arriving from August 1, 2020 who can provide negative COVID-19 test results.<sup>10</sup> ECF No. 6 at 3; Compl. at 5. For the first time in his Reply, Plaintiff challenges the exemption granted to students attending college. ECF No. 26 at 4. The Court declines to consider this argument because it is not presented in the Complaint.<sup>11</sup>

\*7 “The Equal Protection Clause of the Fourteenth Amendment commands that no State shall ‘deny to any person within its jurisdiction the equal protection of the laws,’ which is essentially a direction that all persons similarly

situated should be treated alike.” [City of Cleburne v. Cleburne Living Ctr.](#), 473 U.S. 432, 439 (1985) (quoting [Plyler](#), 457 U.S. at 216). The Supreme Court has “repeatedly held that ‘a classification neither involving fundamental rights nor proceeding along suspect lines ... cannot run afoul of the Equal Protection Clause if there is a rational relationship between disparity of treatment and some legitimate governmental purpose.’” [Cent. State Univ. v. Am. Ass'n of Univ. Professors](#), 526 U.S. 124, 127–28 (1999) (alteration in original) (citations omitted); [Nat'l Ass'n for the Advancement of Psychoanalysis v. Cal. Bd. of Psychology](#), 228 F.3d 1043, 1049 (9th Cir. 2000).

Plaintiff's allegations do not implicate any fundamental rights or suspect classifications and there is a rational relationship between Defendant Ige's classifications and the legitimate purpose of protecting the health of Hawaii's residents and visitors. Unlike travelers arriving by plane, individuals arriving by recreational boat after 14 or more days at sea have effectively completed a quarantine.<sup>12</sup>

Regarding the trans-Pacific pre-testing program, legitimate reasons exist for establishing a future implementation date. It is part of a multilayered risk mitigation strategy, designed to limit the COVID-19 risk to a level that is manageable for Hawaii's healthcare infrastructure. ECF No. 25-6 ¶ 7. Plaintiff's expectation that the program is long overdue—or at a minimum should be selectively available to him before other travelers—does not make the quarantine unconstitutional.

Plaintiff questions Defendant Ige's motivations for continuing to “oppress” travelers through quarantine because Dr. Bruce Anderson, Director for the Hawai'i Department of Health, confirmed in a June 25, 2020 declaration that the State has been prepared to manage the risk posed by reopening to travelers. ECF No. 26 at 5. But Dr. Anderson did not confirm that the State was already prepared; rather, he said the State had been working tirelessly to reopen safely and to develop a multilayered mitigation strategy. ECF No. 25-6 ¶¶ 6–7. He represented that the State was still finetuning the trans-Pacific pre-testing program which—when coupled with the other layers of the risk mitigation strategy such as robust contract tracing, thermal scanning, and health questionnaires—could sufficiently mitigate the risk. *Id.* ¶¶ 7, 10. Notably, the declaration is from approximately one month ago and circumstances have since changed. Any suggestion that Defendant Ige is currently acting contrary to Dr. Anderson's representations from last month is unsupported. For these

reasons, Plaintiff cannot establish a likelihood of success on the merits of his equal protection claim nor has he raised serious questions going to the merits.

\*8 In sum, Plaintiff fails to show a likelihood that he would succeed on the merits of his claims, let alone a strong likelihood of success, as is required for a mandatory injunction. Plaintiff similarly fails to raise serious questions going to the merits of any of his claims. Consequently, Plaintiff is not entitled to injunctive relief.

#### B. Irreparable Harm

“At a minimum, a plaintiff seeking preliminary injunctive relief must demonstrate that it will be exposed to irreparable harm.” [Caribbean Marine Servs. Co. v. Baldrige](#), 844 F.2d 668, 674 (9th Cir. 1988) (citation omitted). As a prerequisite to injunctive relief, “a plaintiff must *demonstrate* immediate threatened injury”; a speculative injury is not irreparable. *Id.* (citations omitted). “Irreparable harm is ... harm for which there is no adequate legal remedy, such as an award of damages.” [Ariz. Dream Act Coal. v. Brewer](#), 757 F.3d 1053, 1068 (9th Cir. 2014) (citation omitted). “[A]n alleged constitutional infringement will often alone constitute irreparable harm,” [Monterey Mech. Co. v. Wilson](#), 125 F.3d 702, 715 (9th Cir. 1997) (citation omitted), but not if “the constitutional claim is too tenuous.” [Goldie's Bookstore, Inc. v. Superior Court](#), 739 F.2d 466, 472 (9th Cir. 1984).

Plaintiff argues only that he and his family suffer irreparable harm every moment they remain quarantined. ECF No. 6 at 1. He urges:

No amount of money can adequately compensate us for the loss of time, enjoyment, and liberty we have lost; not to mention the emotional distress we have experienced being treated like prisoners<sup>[ 13 ]</sup> in our own country without any proof that we violated any law or were, under the circumstances, infected with COVID-19 or other communicable disease.

*Id.* at 1–2. These conclusory and unsubstantiated allegations fail to establish irreparable harm. Plaintiff knew full well that Hawai‘i has a mandatory 14-day quarantine *before* he traveled here. Yet he *voluntarily* decided to proceed with his vacation.

### C. Balance of Equities/Public Interest

Plaintiff contends that the imposition of the requested injunction would cause little personal hardship to Defendant Ige and that he has had more than sufficient time to develop and execute a plan to reopen the State to visitors. ECF No. 6 at 3. In assessing whether Plaintiff establishes that the balance of equities tip in his favor, “the district court has a ‘duty.... to balance the interests of all parties and weigh the damage to each.’ ” [Stormans, Inc. v. Selecky](#), 586 F.3d 1109, 1138 (9th Cir. 2009) (citation omitted). When an injunction’s impact “reaches beyond the parties, carrying with it a potential for public consequences, the public interest will be relevant to whether the district court grants the preliminary injunction.” *Id.* at 1139 (citations omitted). “The public interest inquiry primarily addresses impact on non-parties rather than parties.” [League of Wilderness Defs./Blue Mountains Biodiversity Project v. Connaughton](#), 752 F.3d 755, 766 (9th Cir. 2014) (citation omitted). It also requires the Court to “consider whether there exists some critical public interest that would be injured by the grant of preliminary relief.” [Cottrell](#), 632 F.3d at 1138 (citation omitted); [Stormans](#), 586 F.3d at 1139 (“[C]ourts ... should pay particular regard for the public consequences in employing the extraordinary remedy of injunction.” (citation omitted)).

\*9 Here, the equities weigh heavily against Plaintiff. Notwithstanding his efforts to paint a picture of undue suffering and hardship, Plaintiff’s primary grievance is that he cannot enjoy all 36 days of his Hawai‘i vacation without restrictions.<sup>14</sup> Again, Plaintiff knew about the mandatory quarantine but decided to travel here anyway and now asks to be exempted from a requirement imposed on all incoming travelers, including residents, merely because he purportedly has no symptoms of COVID-19,<sup>15</sup> is *not aware*<sup>16</sup> of being exposed to anyone with COVID-19, and *believes* he is not a danger to public health in Hawai‘i. ECF No. 6 at 1.

Plaintiff’s desire to obtain preferential treatment for himself and his family cannot override the community’s interest in preserving its health and well-being. Plaintiff’s assertion

that the requested injunction would not cause hardship to Defendant Ige is not well taken. The quarantine is meant to protect Hawai‘i and Plaintiff’s premature release from quarantine could cause harm to the community, as there is no assurance he is not infected with COVID-19.

Incredibly, Plaintiff contends that visitors are “better experienced in how to avoid getting sick and transmitting COVID-19 to others (such as wearing masks and social distancing), as evidenced by the fact that they originate from areas harder hit than Hawai‘i and yet remain healthy.” ECF No. 6 at 3–4. But by “healthy,” he really means “without symptoms.” And, as stated, COVID-19’s pervasiveness is due in large part to asymptomatic spread. Plaintiff also posits that the quarantine does not serve the public interest because visitors annually outnumber residents 10.42 million to 1.42 million. *Id.* at 4. However, the ability for visitors to vacation without a quarantine does not outweigh residents’ rights to health and safety. This community, not visitors, would bear the public consequences of a COVID-19 outbreak, which would quickly overwhelm Hawaii’s healthcare system and resources, and Hawaii’s geographical isolation would further exacerbate the crisis. The quarantine has arguably allowed Hawaii’s COVID-19 numbers to remain among the lowest in the nation. See <https://www.npr.org/sections/health-shots/2020/03/16/816707182/map-tracking-the-spread-of-the-coronavirus-in-the-u-s> (last visited July 22, 2020).

In these unprecedented times, it is not the Court’s role to second-guess the decisions of state officials who have the expertise to assess the COVID-19 pandemic and institute appropriate measures to minimize its impact to this community. See [Stormans](#), 586 F.3d at 1139 (“[When] an injunction is asked which will adversely affect a public interest ... the court may in the public interest withhold relief until a final determination of the rights of the parties, though the postponement may be burdensome to the plaintiff.” (alteration in original) (citation omitted)). Under these circumstances, an injunction granting Plaintiff an early release from quarantine would not be in the public’s interest.

IT IS SO ORDERED.

CONCLUSION

\*10 For the reasons stated herein, the Court HEREBY DENIES Plaintiff's Motion for Preliminary Injunction. ECF No. 6.

**All Citations**

Slip Copy, 2020 WL 4209225

**Footnotes**

- 1 Because the Motion will be moot if not addressed before the conclusion of Plaintiff's quarantine, the Court handles it on an expedited basis. A request of this nature would ordinarily be presented as a motion for temporary restraining order.
- 2 At the July 17, 2020 Status Conference, defense counsel explained that the 14-day count starts the day after arrival.
- 3 Plaintiff's wife and children are not parties to the action. Thus, any relief could only be awarded to Plaintiff. Moreover, even if Plaintiff named his family as parties, he could not act on their behalf, because he is not an attorney. See Compl. at 2 ("I am not a lawyer[.]"). "[A] non-lawyer 'has no authority to appear as an attorney for others than himself.'" [Johns v. County of San Diego](#), 114 F.3d 874, 877 (9th Cir. 1997) (citation omitted). This extends to parents and their minor children. See *id.* (holding that "a parent or guardian cannot bring an action on behalf of a minor child without retaining a lawyer").
- 4 Plaintiff argues that *Jacobson* requires the satisfaction of additional factors: (1) reasonableness; (2) not affecting people of other states; and (3) legislative enactment. ECF No. 6 at 2. The *Jacobson* test does not include these factors.
- 5 Compare <https://health.hawaii.gov/coronavirusdisease2019/> (last visited July 22, 2020) (1,418 cases and 24 deaths), with [Carmichael](#), 2020 WL 3630738, at \*1 (946 cases and 18 deaths as of July 2, 2020) (citation omitted).
- 6 "Although courts have not yet defined the precise contours of this standard, it plainly puts a thumb on the scale in favor of upholding state and local officials' emergency public health responses." [Prof'l Beauty Fed'n of Cal. v. Newsom](#), No. 2:20-cv-04275-RGK-AS, 2020 WL 3056126, at \*7 (C.D. Cal. June 8, 2020) (citation omitted).
- 7 The Court is skeptical that strict scrutiny applies because Plaintiff has not identified a legitimate fundamental interest.
- 8 Plaintiff argues that the 14-day quarantine is not the least restrictive means because: (1) per the Centers for Disease Control ("CDC"), 14 days is the maximum incubation period for COVID-19, with 97.5% of individuals developing symptoms within 11.5 days and a median time of four to five days from exposure to symptom onset; and (2) individuals subject to federal public health orders have the right to have quarantine reassessed after 72 hours. Compl. at 4. Plaintiff additionally contends that Defendants cannot prove that an increase in cases is attributable to a spread in the disease as opposed to an increase in testing. ECF No. 26 at 2. Plaintiff has not suggested that he has expertise in the medical or infectious disease fields, and has not offered an expert opinion on the quarantine's necessity, so the Court rejects his personal opinions about whether COVID-19 is in fact spreading or what constitutes the least restrictive means for Defendant Ige to minimize the spread of COVID-19. Defendant Ige imposed the 14-day period (versus a five-day or 11.5-day quarantine) at the recommendation of Hawaii's State Epidemiologist. ECF No. 25-3 ¶ 20 (selecting 14 days because it is the maximum incubation period and an individual not showing symptoms at the end of the period would be extremely unlikely to remain infectious). And testing all arriving travelers upon arrival or at some point

thereafter is simply unfeasible at this time “due to unstable test and personal protective equipment supplies and insufficient laboratory capacity, both public and private laboratories combined.” *Id.* ¶ 25.

9 The future implementation of the trans-Pacific pre-testing program does not undercut the reasonableness of the restrictions currently in place. What will be feasible in September is not viable now because certain benchmarks have yet to be met. ECF No. 25-3 ¶ 28. As seen in the short time since the Court decided *Carmichael*, circumstances can change dramatically, requiring adjustments.

10 As discussed, Defendant Ige has delayed the trans-Pacific pre-testing program until September 1, 2020.

11 The Court recognizes that the exemption arose after Plaintiff filed his Complaint, but he cannot amend his claims through a Reply brief.

12 Plaintiff mistakenly views the mode of transportation as the distinguishing factor, see ECF No. 26 at 4, when it is the 14-plus days of isolation that excepts recreational boaters arriving in Hawai'i from the quarantine. Interestingly, Plaintiff presents a hypothetical under which travelers by recreational boat would be infectious for longer than 14 days if an individual infects another individual on day 10 of the journey. Compl. at 5. Yet for his family's purposes, he suggests that the number of days from exposure to symptom onset would be far fewer than that mandated by the quarantine, see *id.* at 4, notwithstanding their exposure to countless people during their travel to Hawai'i.

13 The Court observes that prisoners are not typically confined in vacation rentals.

14 Plaintiff also points to the \$10,508.68 price tag for his vacation rental, but the Court is confused as to how Plaintiff's decision to expend those funds furthers his argument.

15 One of the most concerning aspects of COVID-19 is that asymptomatic individuals can transmit the disease. ECF No. 25-3 ¶ 12.

16 Unawareness is no consolation given South Carolina's COVID-19 numbers, coupled with Plaintiff and his family's possible exposure during their travel from South Carolina to Hawai'i. See <https://www.scdhec.gov/infectious-diseases/viruses/coronavirus-disease-2019-covid-19/sc-testing-data-projections-covid-19> (last visited July 22, 2020) (74,761 cases and 1,242 deaths).

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# Exhibit C

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IN THE CIRCUIT COURT OF THE THIRD CIRCUIT  
FOURTH DIVISION  
STATE OF HAWAII

RICHARD PARTAL II, KRISTINE ) Civil No. 3CCV-20-000277  
MARIE PARTAL AND ELLEN PARTAL, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
DAVID Y. IGE, STATE OF HAWAII, )  
MAYOR HARRY KIM, et al., )  
 )  
Defendants. )  
\_\_\_\_\_ )

TRANSCRIPT OF PROCEEDINGS

Before the Honorable Wendy DeWeese, Judge  
presiding, on Tuesday, September 1, 2020, conducted  
via Zoom video communications.

--oOo--

Transcript prepared from KURT T. FAUT, CSR #418  
videodisc by: Certified Court Reporter  
State of Hawaii

Exhibit "C"

ORIGINAL

## 1 APPEARANCES

2 For the Plaintiffs:

3 JAMES HOCHBERG, ESQ.  
4 Attorney at Law  
5 700 Bishop Street  
6 Suite 2100  
7 Honolulu, Hawaii 96813

8 - and -

9 HARMEET DHILLON, ESQ.  
10 Center for American Liberty  
11 (Appearing by telephone.)

12 - and -

13 CHRISTINA WEST, ESQ.  
14 Center for American Liberty  
15 (Appearing by telephone.)16 For the Defendant Governor  
17 David Y. Ige, State of  
18 Hawaii:

19 NICHOLAS McLEAN, ESQ.

20 - and -

21 CRAIG IHA, ESQ.

22 - and -

23 EWAN RAYNER, ESQ.

24 - and -

25 MAX LEVINS, ESQ.  
Deputies Attorney General  
Department of the Attorney  
General  
425 Queen Street  
Honolulu, Hawaii 9681326 For the Defendant Mayor  
27 Harry Kim, County of  
28 Hawaii:29 D. KAENA HOROWITZ, ESQ.  
30 Deputy Corporation Counsel  
31 Office of the Corporation  
32 Counsel  
33 101 Aupuni Street  
34 Suite 325  
35 Hilo, Hawaii 96720  
(Appearing by telephone.)

1 Tuesday, September 1, 2020

2 --oOo--

3 THE CLERK: Civil Case Number 3CCV-20-277, Richard  
4 Partal, II, et cetera, et al., versus David Y. Ige, et  
5 cetera, et al., one, motion to dismiss plaintiffs' first  
6 amended complaint; two, Mayor Harry Kim's motion to dismiss  
7 plaintiffs' first amended complaint; three, plaintiffs'  
8 cross-motion for partial summary judgment, that on May 3rd,  
9 2020, Governor Ige's emergency powers had already  
10 automatically terminated pursuant to Hawaii Revised Statutes  
11 Chapter 127A.

12 THE COURT: Okay. Good morning. State your  
13 appearance, please. Let's start with the plaintiff.

14 MR. HOCHBERG: Good morning, your Honor. My name  
15 is Jim Hochberg. It's nice to meet you. I represent the  
16 plaintiffs. I'm in Honolulu.

17 THE COURT: Hello.

18 MR. HOCHBERG: My co-counsel Harmeet Dhillon from  
19 the Center for American Liberty is on the telephone from the  
20 mainland.

21 THE COURT: Okay. And Ms. Dhillon, can you hear  
22 us?

23 MR. HOCHBERG: I --

24 MS. DHILLON: Yes, I can, your Honor.

25 THE COURT: Okay. Thank you.

1 Good morning, Mr. Hochberg, Ms. Dhillon. Okay.  
2 And who is on the phone for the -- for Governor  
3 Ige?

4 MR. McLEAN: Good morning, your Honor. Nicholas  
5 McLean, from the Department of the Attorney General, on  
6 behalf of Governor Ige and the state of Hawaii.

7 THE COURT: Okay.

8 MR. McLEAN: And we also have in the room here my  
9 colleagues Craig Iha, Ewan Rayner, and Max Levins.

10 THE COURT: Okay. Very well. And then on the  
11 phone for Mayor Kim?

12 MR. HOROWITZ: Good morning, your Honor. This is  
13 Kaena Horowitz on behalf of Mayor Kim.

14 THE COURT: Okay. And then I understand that we  
15 have Ms. Dhillon, some other, at least one other member or  
16 other members of your team listening in by phone.

17 Is that Ms. West?

18 MS. WEST: Yes, your Honor.

19 THE COURT: Okay.

20 MS. WEST: That is correct, your Honor.

21 THE COURT: All right.

22 MS. WEST: Christina West.

23 THE COURT: All right. Okay. Anybody else present  
24 on the phone? Negative response.

25 All right. Okay. So Mr. Hochberg, what I plan to

1 do is deal with the motions to dismiss first, and then we'll  
2 address the motion for partial summary judgment.

3 So Mr. McLean, anything -- well, let me first start  
4 by saying I've read the motions, oppositions, and the  
5 replies.

6 So Mr. McLean, anything you wish to add to the  
7 argument set forth in your motion?

8 MR. McLEAN: Thank you, your Honor. If I may just  
9 briefly speak to a couple of points --

10 THE COURT: Sure.

11 MR. McLEAN: -- and then speak in opposition to the  
12 motion for partial summary judgment. And then, of course, if  
13 your Honor has any questions, I'd be happy to address those  
14 as well.

15 But I think just the very brief points that we  
16 would want to emphasize are that the HRS Chapter 127A is  
17 intended to give the governor broad powers and comprehensive  
18 powers to respond to emergency situations.

19 Today all fifty states have an active state of  
20 emergency for Covid 19 in place. Plaintiffs are asking  
21 essentially for this to be the only state where that is not  
22 the case.

23 And we believe that when you look at the text and  
24 the purpose of the relevant statutory provision, this is the  
25 127A-14(d), it becomes clear that a reasonable and practical

1 interpretation of that provision is that the government can  
2 essentially renew, reissue emergency proclamations, thereby  
3 establishing a new sixty-day period. And that is precisely  
4 what's been done here.

5 So with that, I'm certainly happy to -- any  
6 specific questions that the Court may have. And if I may,  
7 I'd like to reserve a few minutes to respond to  
8 Mr. Hochberg's argument.

9 THE COURT: Sure. So Mr. McLean, how do you  
10 respond to the plaintiffs' argument that if you look at the  
11 legislative history of Chapter 127, in the earlier drafts,  
12 the bill contained language basically providing the governor  
13 with unlimited powers? There was no number of days or finite  
14 termination or automatic termination clause in the language  
15 of the bill.

16 And that as the bill went on, it was amended. And  
17 eventually the sort of unlimited powers sort of implication  
18 of the bill was amended. And the legislature specifically  
19 inserted a sixty-day limitation.

20 So how do you respond to that argument that there  
21 was a clear intent by the legislature to, you know, in fact  
22 limit the governor's powers to sixty days?

23 MR. McLEAN: Absolutely, your Honor. Thank you.

24 I think the early E-factor there is, what does the  
25 sixty days do? Does the sixty days, the sixty-day provision

1 in the Section 14(d), does that provide a absolute drop-dead  
2 date that applies across the board that no matter how  
3 extensive the underlying emergency, no matter how long it  
4 lasts, and no matter how long the -- no matter how many  
5 additional emergency proclamations are issued, then, you  
6 know, that's it? There could be no further emergency powers  
7 whatsoever? So that, we would submit, is a very extreme way  
8 of reading this particular provision.

9 A much more reasonable way that honors the  
10 legislative intent, that takes the language as it exists in  
11 the statute, was really not fighting the language in the  
12 statute, but we submit that a much more practical way of  
13 reading that is to say, well, what is the concern here?

14 Well, a key concern is that you don't want to have  
15 specific provisions in an emergency proclamation become  
16 stale. And so by putting the sixty-day period in, you --  
17 it's essentially a sort of a deliberation-forcing or an  
18 information-forcing rule that forces a periodic reevaluation  
19 of the provisions of these emergency proclamations, at least  
20 once every (indecipherable) days.

21 But we submit it's not a extremely restrictive  
22 straightjacket of the sort that would make any kind of  
23 effective emergency response, indeed any emergency response  
24 by the governor at all, totally impossible.

25 THE COURT: Thank you, Mr. McLean.

1           Okay. Mr. Horowitz, anything you want -- I mean, I  
2           guess, you know what, just for the record, the motions to  
3           dismiss are fairly parallel and argue the same argument. So  
4           just for purposes of efficiency here, I will take both of the  
5           motions to dismiss at the same time.

6           So Mr. Horowitz, anything you want to add to the  
7           motion and the information put forth in your pleadings?

8           MR. HOROWITZ: No, your Honor. Like you said,  
9           they're very parallel, so we concur with what my colleague at  
10          the attorney general's office has said.

11          THE COURT: Okay. Mr. Hochberg, anything you want  
12          to say in addition to what you filed in your opposition  
13          and/or in response to the comments by Mr. McLean?

14          MR. HOCHBERG: I would, your Honor. And thank you.

15          In order for the defendants' reading of the statute  
16          section to be reasonable and practical, they have to change  
17          the words. And that, in my mind, makes it not very  
18          reasonable. And it may be practical, but that's not a legal  
19          test.

20          Secondly, the words, shall automatically terminate,  
21          is a pretty drop-dead phrase. And unlike the other state  
22          statutes cited by the defendants in their memo in op, none of  
23          those other states has automatic terminations with no  
24          language inconsistent with the automatic termination.

25          If you look at the two footnotes, they all say, you

1 know, the power terminates unless the governor does  
2 something. And that's on the footnote, I think, 17 and 19 in  
3 their brief.

4 The other thing I would say is that, interestingly  
5 enough, with their argument related to the proclamations  
6 after May 3rd having been new proclamations of emergency, a  
7 state of emergency, which, by the way 127A-14(d) says that  
8 the state of emergency shall automatically terminate.

9 Not that a power being exercised terminates, but  
10 actually the foundation for all the executive power. The  
11 proclamation of the state of emergency is what automatically  
12 terminates.

13 But on August 20th, Governor Ige, and this is not  
14 attached to any of my filings because I didn't have it, he  
15 issued a 12th proclamation. And this is a really good  
16 example of how the actual text of the proclamations don't  
17 support their argument that each of the later proclamations  
18 are new proclamations of the state of emergency.

19 I'll just read a little bit of it. It's August  
20 20th, signed by -- approved by Clare Connors, attorney  
21 general, and signed by David Y. Ige, governor.

22 And what it says is, Whereas, I issued on March  
23 4th, 2020, a proclamation declaring a state of emergency to  
24 support ongoing state and county responses to Covid 19. And  
25 then he goes on and lists the litany of the subsequent memos.

1           And then he says, Whereas, the last whereas, Covid  
2 19 continues to endanger health, safety, and welfare of the  
3 people in Hawaii, and a response requires the serious intent,  
4 effort, and sacrifice of all people in Hawaii, or in the  
5 state, to avert unmanageable strains on our health care  
6 system and other catastrophic impacts on the state.

7           Now, therefore, I, David Y. Ige, governor of the  
8 state of Hawaii, hereby authorize and invoke the following.  
9 And then there's thirty-some pages of executive order.

10           And the point to share that in is even after the  
11 case was filed, even after the motions were filed, the  
12 governor's still acting like all of these relate back to the  
13 March 4th initial proclamation of the state of emergency  
14 which Section 14(d) says: The state of emergency shall  
15 automatically terminate on the sixtieth day, which was  
16 May 3rd.

17           I think the other interesting thing that I think  
18 would be good for the Court to consider, in addition to our  
19 pleadings is these cases, cite of Hawaii, the authorities for  
20 those cases don't have any statute like Hawaii that simply  
21 says the state of emergency terminates automatically on the  
22 sixtieth day. They all offer some mechanism for the governor  
23 to go forward, except for Illinois. And that's the Governor  
24 Pritzker series of cases.

25           And what -- let me find that. So what that statute

1 actually says, and it's 20 ILC, as in cat, S as in Sam,  
2 which, I'm guessing, is Illinois Code of Statutes, or  
3 something, 3305, slash, 7, Emergency Powers of the Governor.

4 It says: In the event of a disaster as defined in  
5 Section 4, the Governor may, by proclamation, declare that a  
6 disaster exists. Upon such proclamation, the Governor shall  
7 have and may exercise for a period not to exceed thirty days,  
8 the following emergency powers.

9 It doesn't say that the emergency, state of  
10 emergency, automatically terminated. And I think that's why  
11 the Court in Illinois could infer there must be the ability  
12 to deal with what the Illinois Governor's Office is dealing  
13 with with Covid. But our statute is actually a statute that  
14 says, because the legislature, clearly from the legislative  
15 history, intended it, that the sixty-day modification -- and  
16 actually the modification is a complete exclusion of the  
17 legislative body and the citizens of Hawaii from  
18 participating in the law-making process.

19 That sixty-day delegation was gonna require, after  
20 the automatic termination of the act, state of emergency,  
21 that the governor, mayors, the executive branches that were  
22 exercising this chapter had to work again with the people of  
23 Hawaii.

24 Because basically our system of government only  
25 works with the consent of the governed. We're under a

1 lockdown again today in part because the governor and the  
2 mayor of Honolulu didn't think the people of Hawaii were  
3 doing their part to keep the number of Covid positive cases  
4 down.

5 That's indicating a lack of consent of the  
6 governed. And that's a real constitutional problem, and  
7 that's why we brought the case.

8 And the final point that I would like to address is  
9 to mention that the exceptional circumstances that exist  
10 under the Missouri rule for the Liberty Mutual versus Jones  
11 case and, locally, Kahai (phonetic) Kupuna case, the whole  
12 focus of the state's argument in their motion to dismiss the  
13 claims is because of the exceptional nature of the Covid  
14 crisis.

15 And if there's an exceptional Covid crisis, for  
16 their purposes there must also be one under the Missouri  
17 rule. And coupled with the fact that Chapter 127A is not a  
18 penal statute, it's a civil statute, their application of  
19 Kahai Kupuna is misplaced.

20 And there's no reason to dismiss this case on the  
21 basis of part of the claims by two of the plaintiffs has to  
22 do with a traffic citation for breaking the quarantine --  
23 anyway, which does carry some criminal penalties. But the  
24 bigger question with Chapter 127A and all of these thirteen  
25 proclamations by the governor is civil in nature.

1           And the other thing, if the Court has any questions  
2 about these claims being brought under Chapter 661-1 with  
3 respect to the attorney's fees for the private attorney  
4 general aspect, I'm happy to talk about that.

5           THE COURT: So Mr. Hochberg, how do you -- so  
6 basically your argument is that instead of the governor  
7 acting, the legislature should have acted or should be acting  
8 to address the, you know, the Covid situation and whatever  
9 emergencies exist.

10           But how do you -- how would you respond to an  
11 argument that, no, if the legislature had intended for it to  
12 be the one to act in this situation, it hasn't done so? It's  
13 had time to do so, and it hasn't done so. So what does that  
14 mean?

15           MR. HOCHBERG: Your Honor, I'm sorry. If you're  
16 asking me if the legislature has acted in the Covid thing,  
17 they in fact did. There was a motion for a temporary  
18 restraining order pending in Judge Otake's court -- the  
19 hearing was July 2nd -- on a Covid constitutional  
20 right-to-travel claim.

21           And while that motion was pending, the senate came  
22 back in to work, took House Bill 2502 that had passed over  
23 earlier in the year from the House of Representatives to the  
24 Senate, gutted it, made it into a Covid travel bill, I'm  
25 thinking, because the Court could have stricken the travel

1 restrictions, and the legislature wanted to make sure Hawaii  
2 has legislatively created travel restrictions so there was no  
3 gap.

4 On the 2nd of July, Judge Otake denied the motion  
5 for temporary restraining order. The 4th of July weekend  
6 happened. On the 6th of July, the senate approved the bill,  
7 sent it over to the house, and the house simply rejected it.  
8 There's no statement as to why they did that. Whether it was  
9 because the TRO was not granted, we don't know.

10 But I think the main point is that the legislature  
11 proved that in a short period of time, they can actually  
12 craft legislation on this very Covid matter. And if the  
13 Court thought that it was a safe thing to do in wanting to  
14 enforce this automatic termination, the Court obviously could  
15 give the legislature a short period of time to stopgap the  
16 complete absence of any kind of orders on Covid.

17 THE COURT: Okay. Thank you, Mr. Hochberg.

18 Mr. McLean, do you want to respond, briefly?

19 MR. McLEAN: If I may, your Honor --

20 THE COURT: Yes.

21 MR. McLEAN: -- briefly.

22 I think the first point to make, there really is  
23 nothing in the legislative history, as your Honor indicated,  
24 that would -- that the legislature was intended to equip the  
25 position of essentially micro-managing every aspect of the

1 state's response.

2 This, as we all know, is a very fast-moving  
3 pandemic. It changes. Conditions on the ground can change  
4 from one week to the next or one month to the next. And it's  
5 simply not reasonable to imagine that a legislature could be  
6 passing statute to deal with this.

7 And I think that although I certainly think there  
8 are a number of aspects in the legislative history that sort  
9 of survives, legislative history that my colleague recites, I  
10 think that to the extent the legislature has been active,  
11 it's been to increase the powers available, not to decrease  
12 them and certainly not to take them back, as it were.

13 And to put itself in the position of having to not  
14 just decide the broad policy matters, but every single matter  
15 that's currently being done by executive order or a  
16 supplementary emergency proclamation.

17 On the plaintiffs' theory, every single one of  
18 those decisions, presumably, would have to be taken by the  
19 legislature. And in a time of an emergency when there's  
20 always some emergency situations that the legislature may not  
21 be able to meet, that there -- it's simply not a reasonable  
22 understanding of law, in our view.

23 And just very briefly on the Kahai Kupuna case that  
24 my friend mentioned, I think the key issue there that we  
25 would like to emphasize is that, you know, on I think it's on

1 a straightforward reading of this case that there are certain  
2 preconditions that a plaintiff has to meet before it can be  
3 entitled to the kind of use that the plaintiffs are seeking  
4 in this case.

5 And one of those things is that you can't simply  
6 litigate your case in the pending criminal matter. One of  
7 the certainly prerequisites is that there isn't going to be a  
8 pending criminal matter to decide the legal issues that are  
9 being implicated. And so I think that, you know, that really  
10 is a -- I think their theory is -- bar the plaintiffs' claims  
11 here.

12 And so unless your Honor has any additional  
13 questions, I'll have nothing further.

14 THE COURT: Mr. Horowitz, anything you want to add?

15 MR. HOROWITZ: No, your Honor. Thank you.

16 THE COURT: All right. So the Court has considered  
17 the motions, the arguments contained therein, the opposition  
18 to the replies.

19 You know, the plaintiffs, by way of their  
20 complaint, raise, I think, an issue that's on the minds of  
21 many people, not just in the state of Hawaii, but citizens  
22 all across the country, which is concern around potentially  
23 unlawful power grabs by the executive branch.

24 The plaintiffs' motion seeks specifically orders  
25 declaring Governor Ige's 7th and 8th and 9th supplemental

1     proclamations to be facially invalid, and as applied to  
2     plaintiffs, to be invalid.

3             Plaintiffs also seek an order temporarily,  
4     preliminarily, and permanently enjoining and prohibiting  
5     Governor Ige and Mayor Kim from issuing further emergency  
6     orders, enforcing existing emergency orders, or otherwise  
7     interfering with plaintiffs' constitutional rights and  
8     liberties.

9             They further seek an order and a judgment declaring  
10    Mayor Kim's enforcement of the unlawful orders,  
11    self-unlawful, and attorney's fees and costs pursuant to the  
12    private attorney general doctrine.

13            This, these motions are filed as motions to dismiss  
14    pursuant to Hawaii Rules of Civil Procedure 12(b)(6).  
15    Pursuant to 12(b)(6), the Court must view the complaints in  
16    the light most favorable to the plaintiff and must deem the  
17    factual nonconclusory allegations in the complaint to be true  
18    for purposes of the motions.

19            However, a dismissal is appropriate when there is  
20    an absence of law to support a claim. And that's based on, I  
21    think, the case cited by both counsel, Justice versus Fuddy,  
22    125 Hawaii 104.

23            One thing that both parties basically agree on,  
24    that this is an issue of statutory interpretation, and that  
25    the interpretation of Chapter 127A, and specifically

1 127A-14(d) is a question of law.

2 The -- I'm probably going to do a poor job of  
3 summarizing you folks' eloquent arguments, but in essence,  
4 defendant Ige has argued that the text of 127A-14(d) does not  
5 support plaintiffs' argument that Chapter 127A contains no  
6 language prohibiting supplementary or additional emergency  
7 proclamations.

8 You know, the Court notes though that it also  
9 contains no language expressly authorizing them either.

10 The purpose of 127A, defendants argue, is to confer  
11 comprehensive powers to protect the public and save lives.  
12 There's nothing limiting the number of emergency  
13 proclamations, and each proclamation triggers a new sixty-day  
14 period.

15 The defendants argue that the supplementary  
16 emergency proclamations are distinct and particularized  
17 emergency proclamations based on independent evaluations of  
18 the relevant circumstances by Governor Ige, that chapter 127A  
19 confers upon the governor emergency powers necessary to  
20 prepare for and respond to emergencies and disasters.

21 And that based on the express language of the  
22 statute, the legislature's intent is to provide for and  
23 confer comprehensive powers. And that the statute shall be  
24 liberally construed to effectuate those purposes.

25 The chapter further refers to emergencies of,

1 quote, unprecedented size and destructiveness and expressly  
2 empowers the governor to take any and all steps necessary or  
3 appropriate to carry out the purposes of Chapter 127A.

4 Lastly, the defendants argue that the statute  
5 provides that the governor shall be the sole judge of the  
6 existence of the circumstances giving rise to the state of  
7 emergency.

8 Defendants further argue that established practice  
9 demonstrates that the use of supplementary proclamations is  
10 lawful under the statutes. That 127A-14(d) is not ambiguous.  
11 But if it is, the state's interpretation is the better one.  
12 And that the constitutional backdrop vesting in the governor  
13 inherent executive powers supports defendants'  
14 interpretation.

15 And lastly, plaintiffs -- defendants argue  
16 plaintiffs cannot recover attorney's fees and costs on the  
17 basis of sovereign immunity.

18 Defendant Kim's motion to dismiss parallels that of  
19 the state of Hawaii and Governor Ige and argues that  
20 plaintiffs' interpretation fails to take into consideration  
21 the context of the entire statute. That the plain reading of  
22 the statute demonstrate the governor is vested with broad  
23 authority, comprehensive powers, that should be liberally  
24 construed and is the sole judge of the existence of an  
25 emergency.

1           But in the context of the entire statute, it is  
2 clear that the governor is vested with authority to issue  
3 separate and successive emergency proclamations. And as  
4 such, Mayor Kim rightfully relied on them and/or took action  
5 upon them.

6           Furthermore, defendant Kim argues that 127A  
7 sub (c)17 permits Mayor Kim to take any and all steps  
8 necessary or appropriate to carry out the purposes of Chapter  
9 127A during an emergency period. Defendant Kim is requesting  
10 a dismissal with prejudice and attorney's fees and costs,  
11 labelling plaintiffs' filings as frivolous.

12           The plaintiffs' opposition, like I said,  
13 characterizes the issue of one that's statutory  
14 interpretation and argues that basically this case centers on  
15 the question that whether as a matter of law the automatic  
16 termination of the emergency orders, as stated in 127A-14(d),  
17 means that Governor Ige's Covid 19 emergency proclamation and  
18 orders pursuant thereto automatically terminated on the  
19 sixtieth day after he issued his first Covid 19 emergency  
20 proclamation on March 4th, 2020.

21           Plaintiffs argue there is no language for any  
22 option for the governor to extend the state of the emergency  
23 beyond the sixtieth day. But, as defendant Ige argues,  
24 there's also no language prohibiting successive emergency  
25 proclamations and/or requiring the legislature to act at the

1 conclusion of the sixty days.

2 Plaintiffs argue that the text of 127A-14(d)  
3 supports plaintiffs' position. It argues that the Court  
4 should employ the canon of statutory construction expressed  
5 in *Unis Es Exclusion Alteres* (phonetic) and argues that the  
6 statute should be given its plain meaning and effect. That  
7 there is no justification for departure from the plain  
8 meaning.

9 Moreover, the plaintiffs argue that the history and  
10 purpose of 127A support plaintiffs' argument that there is an  
11 automatic limit on the government's -- on the governor's  
12 comprehensive powers. It argues that the extra-territorial  
13 authority cited to by the defendants actually supports the  
14 plaintiffs' position and that the governor's supplemental  
15 emergency proclamations are unlawful.

16 Plaintiffs argue 127A is not ambiguous and supports  
17 their claims. It says that time limits on the executive  
18 powers is appropriate under Chapter 127A and also in light of  
19 Hawaii's overall constitutional scheme.

20 Lastly, plaintiffs request attorneys -- request --  
21 argue -- strike that, argue that their request for attorney's  
22 fees and costs is not barred by sovereign immunity and argue  
23 that their claims are not frivolous.

24 So the Court has reviewed the authorities cited by  
25 both sides as well as done its own research on some of these

1 legal issues and, specifically, will start by saying that it  
2 looked at the case Four Star Insurance Agency, Inc., versus  
3 Hawaiian Electric Industries, 89 Hawaii 427.

4           It's a 1999 case in which the Court stated:  
5 Although we obtained the intention of the legislature  
6 primarily from the language of the statute itself, we have  
7 rejected an approach to statutory construction which limits  
8 us to the words of a statute. For when aid to construction  
9 of the meaning of words as used in the statute is available,  
10 there certainly can be no rule of law which forbids its use,  
11 however clear the words may appear on superficial  
12 examination.

13           Thus the plain language rule of statutory  
14 construction does not preclude an examination of sources  
15 other than the language of the statute itself, even when the  
16 language appears clear and perfunctory upon clear and  
17 perfunctory review.

18           Were this not the case, a Court may be unable to  
19 adequately discern the underlying policy which the  
20 legislature seeks to promulgate and thus would be unable to  
21 determine if a literal construction would produce an absurd  
22 or unjust result inconsistent with the policies of the  
23 statute.

24           Furthermore, the Court may depart from the plain  
25 reading of a statute where a literal interpretation would

1 lead to absurd and/or unjust results. That's Sato versus  
2 Kawata, 79 Hawaii 14.

3 Furthermore, a Court may examine sources other than  
4 the language of the statute itself to determine if a literal  
5 construction would produce absurd or unjust results  
6 inconsistent with the policies of the statute. That's Dines,  
7 D-I-N-E-S, versus Pacific Insurance Company, Limited, 78  
8 Hawaii 325. And that's at page 337 in the dissent.

9 Court may consider the reason and spirit of the law  
10 and the cause which induced the legislature to enact it to  
11 discover its true meaning, Gray versus Administrator Director  
12 of the Courts, 84 Hawaii 138.

13 And lastly, the Courts must construe statutes to  
14 avoid absurd results, and a rational, sensible and  
15 practicable interpretation of the statute is preferred to one  
16 which is unreasonable impracticable, inconsistent,  
17 contradictory, and illogical. And this is the Kelii Puleole  
18 case versus Wilson, 85 Hawaii 217.

19 So the Court views its obligation in construing a  
20 statute as, one, to ascertain and give effect to the  
21 intention of the legislature, which is to be obtained  
22 primarily from the language of the statute itself. However,  
23 the Court must read the statute and the statutory language in  
24 the context of the entire statute and construe it in a manner  
25 consistent with its purpose.

1           This Court has considered the language of the  
2 statute in the context of the chapter as a whole and finds  
3 that the defendants' analysis and interpretation is the  
4 correct one. Defendants' statutory construction makes sense  
5 and does not produce an absurd or unjust result.

6           Defendants' interpretation is consistent with the  
7 reason and the spirit of the law as expressed by the language  
8 of Chapter 127A as a whole.

9           So based thereon, the Court will find that the text  
10 of 127A-14(d) does not support plaintiffs' argument. 127A  
11 contains no language prohibiting supplementary or additional  
12 emergency proclamations.

13           The purpose of 127A is to confer comprehensive  
14 powers to protect the public and save lives. There is  
15 nothing limiting the number of emergency proclamations. Each  
16 additional emergency proclamation triggers a new sixty-day  
17 period. The supplementary emergency proclamations are  
18 distinct and particularized emergency proclamations based on  
19 independent evaluations of the relevant circumstances on the  
20 ground by the governor.

21           Chapter 127A's language confers upon the governor  
22 emergency powers necessary to prepare for and respond to  
23 emergencies and disasters. And based on the express language  
24 of the statute, it is the legislature's intent to provide for  
25 and confer comprehensive powers. And that the statute shall

1 be, quote, liberally construed, end quote, to effectuate the  
2 purpose of the chapter.

3 Chapter 127A further refers to emergencies of  
4 unprecedented size and destructiveness and expressly empowers  
5 the government to take all steps necessary or appropriate to  
6 carry out the purposes of the chapter. The governor shall be  
7 the sole judge of the existence of circumstances giving rise  
8 to a state of emergency.

9 Court will further find that established practice  
10 demonstrates that the use of supplementary proclamations is  
11 lawful under the statutes. 127A-14(d) is not ambiguous. But  
12 if it is, the state's interpretation is the better one. And  
13 the constitutional backdrop vesting in the governor inherent  
14 executive powers supports the defendants' interpretation.

15 The Court will find that based on the Court's  
16 rulings, no law or facts can remedy the deficiencies in the  
17 plaintiffs' first amended complaint. And the Court will  
18 grant the defendants' motions to dismiss with prejudice.

19 The Court understands that plaintiffs argue that  
20 the executive branch is engaged in an unlawful power grab.  
21 However, the legislature has not acted in this particular  
22 area, despite there being no prohibition against them doing  
23 so. And despite this Court's interpretation and contrary to  
24 the plaintiffs' argument, the governor's authority is not  
25 without restraint.

1           To support each successive emergency proclamation,  
2 the governor must identify the existence of the danger,  
3 threat, or circumstances giving rise to a declaration of a  
4 state of emergency. Absent his ability to do so, or when the  
5 facts on the ground no longer justify such findings, the  
6 governor's emergency powers will cease.

7           And the Court notes that in this action, the  
8 plaintiffs have not challenged or contested the factual  
9 existence and widespread severe impact of the Covid 19  
10 pandemic within the state.

11           With respect to any other bases to dismiss raised  
12 by the defendants, the Court does not need to reach those  
13 other independent bases as the Court has already ruled based  
14 on the findings it has made.

15           With respect to the attorney fee request by Mayor  
16 Kim, the Court cannot find that plaintiffs' arguments are  
17 frivolous. A finding of frivolous is a high bar, and the  
18 Court has to find not only that they are without merit, but  
19 also that there is bad faith. And the Court cannot find bad  
20 faith on the part of the plaintiffs, so the Court is going to  
21 deny defendant Kim's request for attorney's fees and costs.

22           In light of the Court's dismissal of plaintiffs'  
23 first amended complaint with prejudice, plaintiffs' motion  
24 for partial summary judgment is now moot. And so the Court  
25 need not address that.

1 Mr. McLean, any questions?

2 MR. McLEAN: No, your Honor.

3 THE COURT: Mr. Horowitz, any questions?

4 MR. HOROWITZ: No, your Honor. Thank you.

5 THE COURT: Mr. Hochberg, any questions?

6 MR. HOCHBERG: No, thank you, your Honor. Thank  
7 you for all the work you've put into this.

8 THE COURT: Okay. And Mr. McLean, you can prepare  
9 the findings and conclusions and order of the Court, please.

10 And then Mr. Horowitz, you can do so, I guess, on  
11 your motion.

12 MR. McLEAN: Thank you, your Honor.

13 THE COURT: All right. Thank you, Gentlemen.

14 UNIDENTIFIED SPEAKER: Thank you, very much.

15 UNIDENTIFIED SPEAKER: Thank you, your Honor.

16 THE COURT: Okay.

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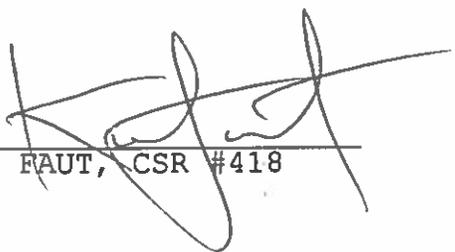
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STATE OF HAWAII                    )  
                                          )    ss.  
COUNTY OF HAWAII                )

I, KURT FAUT, CSR 418, a Certified Court Reporter in the state of Hawaii, hereby certify that the foregoing comprises a full, true, and correct transcription of my stenographic notes taken from digital electronic media, videodisc, of the proceedings held in the above-entitled cause.

Dated this 10<sup>th</sup> day of SEPTEMBER 2020.

  
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KURT FAUT, CSR #418

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# Exhibit D

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OFFICE OF THE GOVERNOR  
STATE OF HAWAII

**THIRTEENTH PROCLAMATION  
RELATED TO THE COVID-19 EMERGENCY**

By the authority vested in me by the Constitution and laws of the State of Hawai'i, to provide relief for disaster damages, losses, and suffering, and to protect the health, safety, and welfare of the people, I, DAVID Y. IGE, Governor of the State of Hawai'i, hereby determine, designate and proclaim as follows:

**WHEREAS**, I issued on March 4, 2020, a **Proclamation** declaring a state of emergency to support ongoing State and county responses to COVID-19; on March 16, 2020, a **Supplementary Proclamation** suspending certain laws to enable State and county responses to COVID-19; on March 21, 2020, a **Second Supplementary Proclamation** and Rules Relating to COVID-19 implementing a mandatory self-quarantine for all persons entering the State; on March 23, 2020, a **Third Supplementary Proclamation** to mandate and effectuate physical distancing measures throughout the State; on March 31, 2020, a **Fourth Supplementary Proclamation** implementing a mandatory self-quarantine for all persons traveling between any of the islands in the State; and on April 16, 2020, a **Fifth Supplementary Proclamation** implementing enhanced safe practices and an eviction moratorium; on April 25, 2020, a **Sixth Supplementary Proclamation** amending and restating all prior proclamations and executive orders related to the COVID-19 emergency; on May 5, 2020, a **Seventh Supplementary Proclamation** related to the COVID-19 Emergency; on May 29, 2020, an **Eighth Supplementary Proclamation** related to the COVID-19 Emergency; on June 10, 2020, a **Ninth Supplementary Proclamation** related to the COVID-19 Emergency; on July 17, 2020, a **Tenth Proclamation** related to the COVID-19 Emergency; on August 6, 2020, an **Eleventh Proclamation** related to the COVID-19 Emergency Interisland Travel Quarantine; on August 21, 2020, a **Twelfth Proclamation** related to the COVID-19 Emergency.

**WHEREAS**, as of September 22, 2020, the recorded number of cases and deaths have more than doubled since August 21, 2020, with more than 11,500 documented cases of COVID-19 in the State and 120 deaths attributed to this

disease;

**WHEREAS**, COVID-19 continues to endanger the health, safety, and welfare of the people of Hawai'i and a response requires the serious attention, effort, and sacrifice of all people in the State to avert unmanageable strains on our healthcare system and other catastrophic impacts to the State;

**NOW, THEREFORE**, I, DAVID Y. IGE, Governor of the State of Hawai'i, hereby authorize and invoke the following as set forth herein:

<b>I. <u>Statewide Coordination</u></b> .....	[ 4 ]
<b>II. <u>Invocation of Laws</u></b> .....	[ 4 ]
<b>III. <u>Act with Care Order</u></b> .....	[ 5 ]
A. Work in Businesses or Operations	
B. Safe Practices	
C. Persons Experiencing Homelessness	
D. Force and Effect of Law	
<b>IV. <u>Travel to the State</u></b> .....	[ 6 ]
A. Health Screening for Travelers to the State	
B. Self-Quarantine for Travelers to the State	
C. Host Responsibility	
D. Prohibition on Renting Vehicles	
E. Car Sharing Services Responsibility	
F. Enhanced Movement Quarantine	
G. Force and Effect of Law	
<b>V. <u>Interisland Travel Quarantine</u></b> .....	[ 10 ]
<b>VI. <u>Suspension of Laws</u></b> .....	[ 12 ]
A. Session Laws	
B. Division 1. Government	
C. Division 2. Business	
D. Division 3. Property; Family	
E. Division 4. Courts and Judicial Proceedings	
F. Division 5. Crimes and Criminal Proceedings	
<b>VII. <u>Severability</u></b> .....	[ 31 ]
<b>VIII. <u>Enforcement</u></b> .....	[ 32 ]

**Exhibit A. Rules Relating to Immunities for Health Care Practices**  
**Exhibit B. Rules Relating to COVID-19 Health Screening Process and Travel Self-Quarantine**  
**Exhibit C. Rules Relating to Child Care Services Under Chapter 17-798.2, Hawaii Administrative Rules**  
**Exhibit D. Rules Relating to Notaries Public** (amended)  
**Exhibit E. State Roadmap to Recovery and Resilience**  
**Exhibit F. Sunshine Law and UIPA**  
**Exhibit G. Rules Relating to Safety Guidelines for Barbers and Beauty Operators**  
**Exhibit H. Rules Relating to Mortuaries, Cemeteries, Embalmers, Undertakers and Mortuary Authorities**

**I. Statewide Coordination**

For the purposes of this COVID-19 emergency only, I hereby invoke section 127A-13(a)(5), Hawaii Revised Statutes (HRS), as it is my opinion that it is necessary to coordinate emergency management functions. Accordingly, I direct all counties to obtain my approval, or the approval of the Director of Hawaii Emergency Management Agency (HIEMA), prior to issuing any emergency order, rule, or proclamation. I further suspend sections 127A-14(b) and 127A-25, HRS, to the limited extent necessary to ensure statewide coordination.

This Thirteenth Proclamation (Proclamation) does not apply to the United States government.

**II. Invocation of Laws**

The following emergency provisions are expressly invoked, if not already in effect upon declaration of an emergency on March 4, 2020:

Sections 127A-12(a)(5), 127A-13(a)(6), and 127A-13(a)(7), HRS, directing the Director of HIEMA and the administrators of each county emergency management agency to take appropriate actions to direct or control, as may be necessary for emergency management.

Section 127A-12(b)(13), HRS, requiring each public utility, or any person owning, controlling, or operating a critical infrastructure, to protect and safeguard its or the person's property, or to provide for the protection and safeguarding thereof, and provide for the protection and safeguarding of all critical infrastructure and key resources; provided that without prejudice to the generality of the foregoing two clauses, the protecting or safeguarding may include the regulation or prohibition of public entry thereon, or the permission of the entry upon terms and conditions as I may prescribe.

Section 127A-12(b)(16), HRS, directing all state agencies and officers to cooperate with and extend their services, materials, and facilities as may be required to assist in emergency response efforts.

Section 127A-13(a)(8), HRS, preventing the hoarding, waste, or destruction of materials, supplies, commodities, accommodations, facilities, and services to effectuate equitable distribution thereof, or to establish priorities therein; to investigate; and notwithstanding any other law to the contrary, to

regulate or prohibit, by means of licensing, rationing, or otherwise, the storage, transportation, use, possession, maintenance, furnishing, sale, or distribution thereof, and any business or any transaction related thereto.

Section 127A-16, HRS, activating the Major Disaster Fund.

Section 127A-30, HRS, inasmuch as such section automatically went into effect upon declaration of an emergency on March 4, 2020.

Rules Relating to Immunities for Health Care Practices, as set forth in Exhibit A attached hereto.

### **III. Act with Care**

#### **A. Work in Businesses or Operations**

Pursuant to sections 127A-12(a)(5), 127A-12(b)(14), 127A-13(a)(1), and 127A-13(a)(7), HRS, the following businesses or operations may operate during this emergency: businesses or operations that are part of the federal critical infrastructure sectors, including essential workers supporting the 2020 Census, as identified by the U.S. Cybersecurity & Infrastructure Security Agency, and the businesses or operations operating in each county in accordance with the State Roadmap to Recovery and Resilience, referenced in Exhibit E. Businesses include for-profit, non-profit, or educational entities, regardless of the nature of the service, the function they perform, or their corporate or entity structure.

#### **B. Safe Practices**

All persons must wear face coverings in compliance with county orders, rules and directives approved by me pursuant to Section I. All persons shall comply with applicable hygiene and physical distancing guidance from the Centers for Disease Control and Prevention (CDC) as well as State, county, industry and regulatory requirements for safe hygiene and physical distancing practices to mitigate the spread of COVID-19, including standards adopted by and requirements issued by Hawaii Department of Health (DOH).

#### **C. Persons Experiencing Homelessness**

Persons experiencing homelessness are exempt from Section III of this Proclamation but shall comply with the safe practices referenced in Section III.B to the fullest extent possible and are strongly urged to obtain shelter. Governmental and other entities are strongly urged to make such shelter

available as soon as possible and to the maximum extent practicable and to use in their operation COVID-19 risk mitigation practices recommended by the CDC.

D. Force and Effect of Law

Pursuant to section 127A-25, HRS, all provisions set forth in Section III of this Proclamation are hereby adopted as rules that shall have the force and effect of law. In the event of any inconsistency, conflict or ambiguity between this Proclamation and any county emergency order, rule, directive or proclamation, the relevant documents shall be read to allow a county maximum flexibility to exercise its respective emergency management authority.

Pursuant to section 127A-29, HRS, any person who intentionally or knowingly violates any provision set forth in this Section III of this Proclamation shall be guilty of a misdemeanor, and upon conviction, the person shall be fined not more than \$5,000, or imprisoned not more than one year, or both.

IV. Travel to the State

A. Health Screening for Travelers to the State

Pursuant to section 127A-11, HRS, all persons entering the State of Hawai'i shall submit to the mandatory screening process identified in the Rules Relating to COVID-19 Health Screening Process and Travel Self-Quarantine, attached hereto as Exhibit B and hereinafter referred to as the "Travel Rules," and must comply with all applicable State and county rules, directives, and orders related to travelers.

B. Self-Quarantine for Travelers to the State

Pursuant to section 127A-13(a)(1), HRS, all persons entering the State of Hawai'i shall be subject to mandatory self-quarantine as provided in the Travel Rules, except those persons entering the State (1) by recreational boats into the State's small boat (non-commercial) harbors which have been at sea for at least 14 consecutive days before entering State waters and have no persons on board who are ill or are exhibiting symptoms of COVID-19 or (2) who, upon entry into the State, provide written confirmation from a State approved COVID-19 testing facility of a negative test result from a test administered to the traveler within 72 hours from the final leg of departure. **The negative test exception shall become effective on October 15, 2020.**

The period of self-quarantine shall begin from the day of entry into the State and shall last 14 days or the duration of the person's presence in the State, whichever is shorter. Persons who require paid or commercial lodging while subject to the mandatory self-quarantine shall not designate as their quarantine location a short-term rental, as defined by the applicable ordinances in each county, or as mandated by county order, rule or directive. Where a county rule, directive or order prohibits intended residents from residing in a short-term rental, as defined by the applicable county ordinances, all intended residents of that county must designate a hotel or motel as their quarantine location.

Persons entering the State to perform critical infrastructure functions as identified in Section III.A of this Proclamation shall be subject to self-quarantine but may obtain a limited exemption from [covidexemption@hawaii.gov](mailto:covidexemption@hawaii.gov) allowing them temporarily to break self-quarantine only when performing their critical infrastructure functions. If a limited exemption is granted to any traveler from [covidexemption@hawaii.gov](mailto:covidexemption@hawaii.gov), such person shall be subject to all quarantine restrictions when not performing their critical infrastructure work or engaging in the activity expressly exempted. Only persons who have been granted an exemption through [covidexemption@hawaii.gov](mailto:covidexemption@hawaii.gov) may temporarily break self-quarantine and only for the purposes expressed in the written exemption. An exemption shall be void if the person subject to the exemption fails to wear appropriate protective gear and to follow the Safe Practices referenced in Section III.B of this Proclamation while engaged in the activities expressed in the written exemption. An exemption from [covidexemption@hawaii.gov](mailto:covidexemption@hawaii.gov) does not require businesses or operations to recognize the exemption from the 14-day self-quarantine period. All travelers to the State of Hawai'i shall complete the mandatory documentation identified in the Travel Rules.

C. Host Responsibility

All hosts of any guest or guests within the State of Hawai'i shall be responsible for ensuring their guest or guests abide by the mandatory self-quarantine set forth in Section A above.

Any host violates this section if the host intentionally, knowingly, or recklessly fails to notify law enforcement immediately when a guest or guests

subject to the self-quarantine fails to enter or remain within the confines of their designated quarantine location.

It shall be the duty of all hosts to ascertain the period of self-quarantine for their guest or guests and to determine whether or not their guest or guests remain confined to their designated quarantine location throughout the period of self-quarantine. It shall not be a defense to a violation of this section that the host did not know the period of self-quarantine for their guest or guests, that they did not know that their guest or guests were subject to the mandatory self-quarantine, or that they did not know that their guest or guests had failed to enter or remain within the confines of the designated quarantine location.

For purposes of this section, the following definitions apply:

“Designated quarantine location” means any hotel, motel, house, townhouse, condominium, or apartment in the State of Hawai‘i, that will be occupied, with the permission of the owner, renter, lessor, or manager of the accommodations, by persons entering the State of Hawai‘i during their period of quarantine and that is designated as such by these persons. In the case of hotels, motels, townhouses, condominiums, and apartments, “designated quarantine location” refers to the person’s individual room or unit.

“Hosts” means any individual, partnership, corporation, company, association, or any other person, group, or entity, who is the owner, renter, or lessor of any designated quarantine location.

“Guest or guests” means any person or persons subject to mandatory self-quarantine who are renting, leasing, or otherwise occupying any designated quarantine location from a host during the period of self-quarantine.

“Period of self-quarantine” means the period of time that begins the day a person enters the State of Hawai‘i and lasts 14 days or the duration of the person’s presence in the State, whichever is shorter.

#### D. Prohibition on Renting Vehicles

Unless an exemption is granted, persons subject to self-quarantine pursuant to Section IV of this Proclamation are prohibited from renting motor vehicles in the State, whether through a rental car company, online service, or through a peer-to-peer platform or car sharing service including but not limited to

Turo and Zipcar. Any reservations or confirmation of reservations by a person subject to self-quarantine shall be presumed to be the rental of a motor vehicle in violation of this order.

For purposes of this section:

“Period of self-quarantine” is as set forth above in Section IV.C.

“Motor vehicle” means an automobile, motorcycle, moped, or other vehicle propelled by a motor, whether gasoline, electric, or hybrid, which is offered for rent or lease within the State of Hawai’i through any car sharing service.

E. Car Sharing Services Responsibility

All persons who provide motor vehicles through peer-to-peer platforms or car sharing services, including but not limited to Turo and Zipcar (hereinafter collectively referred to as “car sharing services”), shall be responsible for ensuring that they do not rent, lease, or otherwise provide any motor vehicle to any person subject to a self-quarantine, whether a visitor or returning resident, during the person’s period of self-quarantine.

Any person violates this section if the person intentionally, knowingly, or recklessly provides a motor vehicle through a car sharing service to a person subject to the self-quarantine.

It shall be the duty of all persons providing a motor vehicle through a car sharing service to determine whether or not the person is seeking to obtain the vehicle during the person’s period of self-quarantine. It shall not be a defense to a violation of this section that a person providing a motor vehicle through a car sharing service did not know that the person seeking the motor vehicle was not subject to the mandatory self-quarantine.

For purposes of this section:

“Period of self-quarantine” is as set forth above in Section IV.C.

“Motor vehicle” is as set forth above in Section IV.D.

F. Enhanced Movement Quarantine

A county may establish an Enhanced Movement Quarantine (EMQ) program through agreements with resort or hotel facilities. Travelers who enter the State as part of an EMQ program must comply with all State, county and industry safety and health standards applicable to such program and complete all

mandatory documentation. The EMQ program shall be implemented through county emergency orders, rules or proclamation and subject to the approval requirements of Section I of this Proclamation. A county EMQ program shall:

1. Restrict participating travelers to clearly-defined geographical areas and ensure limited contact with those not subject to self-quarantine. The geographical areas may include adjacent shoreline areas where beach access is permitted by applicable state and county authorities, provided that members of the public are given notice of the EMQ and are not prohibited from accessing the shoreline area;

2. Include safety, monitoring and enforcement measures consistent with industry standards;

3. Provide capacity for isolating any positive or suspected COVID-19 cases and provide necessary wraparound services for such persons;

4. Require participating travelers to sign waivers confirming they have voluntarily elected to participate in the EMQ; voluntarily agreed to electronic monitoring and other requirements; and voluntarily waived express privacy protections, including to health information, as necessary to accomplish the public health purpose of this Proclamation;

5. Require participating travelers to bear all costs related to their participation in the EMQ, including monitoring, isolation, care, lodging and other expenses.

**G. Force and Effect of Law**

Pursuant to section 127A-25, HRS, all provisions set forth in Section IV of this Proclamation and the Travel Rules are hereby adopted as rules and shall have the force and effect of law.

Pursuant to section 127A-29, HRS, any person who intentionally, knowingly, or recklessly violates Section IV of this Proclamation or the Travel Rules shall be guilty of a misdemeanor, and upon conviction, the person shall be fined not more than \$5,000, or imprisoned not more than one year, or both.

**V. Interisland Travel Quarantine**

Pursuant to section 127A-13(a)(1), HRS, and section 127A-12(b)(19), HRS, all persons traveling from within the State to the Islands of Kaua'i, Hawai'i,

and the Islands comprising the Counties of Maui and Kalawao, in the State of Hawai'i shall be subject to mandatory self-quarantine. The period of self-quarantine shall begin from the day of entry onto the Island and shall last 14 days or the duration of the person's presence on the Island, whichever is shorter. All travelers must comply with all applicable State and county rules, directives, and orders related to travelers, including those mandating the verification of data upon arrival at the airport and the completion of any and all documents. All provisions of Section IV.C-E and G of the Proclamation apply with full force and effect to this Section.

Persons traveling from within the State to the Islands of Kaua'i, Hawai'i, and the Islands comprising the Counties of Maui and Kalawao to perform critical infrastructure functions as identified in Section III.A of the Proclamation shall be subject to self-quarantine but may obtain a limited exemption allowing them to break quarantine only when performing their critical infrastructure functions. If a limited exemption is granted to any traveler, such person shall be subject to all quarantine restrictions when not performing their critical infrastructure work or engaging in the activity expressly exempted. Persons seeking an exemption from the Interisland Travel Quarantine must contact the appropriate county for review and approval. The Director of HIEMA also may grant exemptions from the Interisland Travel Quarantine.

A county may adopt a negative test exception to the Interisland Travel Quarantine, which exception shall be developed in conjunction with the State and integrated with the negative test exception process set forth in Section IV.B. A county negative test exception shall be implemented through county emergency orders, rules or proclamations subject to the approval requirements of Section I of this Proclamation.

Pursuant to section 127A-29, HRS, any person violating the Interisland Travel Quarantine and any applicable State or county rule, directive or order related to travelers, including the completion of any document required by the State or any county, shall be guilty of a misdemeanor, and upon conviction, the person shall be fined not more than \$5,000, or imprisoned not more than one year, or both.

## VI. Suspension of Laws

The following laws are suspended, as allowed by federal law, pursuant to section 127A-13(a)(3), HRS:

### A. Session Laws

Section 9, Act 5, Session Laws of Hawaii 2019, to the extent that the appropriation for debt service payments shall no longer be limited to principal and interest payments on general obligation bonds, such that debt service moneys may be used for bond counsel fees, costs related to tax compliance work on the expenditure of general obligation bond proceeds, and other bond related costs.

### B. Division 1. Government

Section 37-41, HRS, **appropriations to revert to state treasury; exceptions.**

Section 37-74(d), HRS, **program execution**, except for sections 37-74(d)(2) and 37-74(d)(3), HRS, and any such transfers or changes considered to be authorized transfers or changes for purposes of section 34-74(d)(1) for legislative reporting requirements.

Section 40-66, HRS, **appropriations lapse when.**

Chapter 46, HRS, **county organization and administration**, with respect to any county ordinance, rule, regulation, law or provision which applies to any county permitting, licensing, zoning, variance, processes, procedures, fees, or any other requirements that hinder, delay, or impede the purpose of this proclamation.

Section 78-13, HRS, **salary periods**, to the extent necessary to allow the State of Hawaii Department of Defense to pay, as expeditiously as possible, members of the Hawaii National Guard ordered into active service and deployed in response to this emergency.

Sections 87A-42(b) – (f), HRS, **other post-employment benefits trust**, 87A-43, HRS, **payment of public employer contributions to the other post-employment benefits trust**, and 237-31(3), HRS, **remittances**, to the extent necessary to suspend the requirement for public employers to pay the annual required contribution to the Hawai'i Employer-Union Health Benefits Trust Fund in the fiscal year 2020-2021.

Chapter 89, HRS, **collective bargaining in public employment.**

Chapter 89C, HRS, **public officers and employees excluded from collective bargaining.**

Chapter 91, HRS, **administrative procedure**, to the extent necessary such that, at the sole discretion of the department or agency, any administrative hearing may be conducted by telephone or video conference without the parties, department or agency, being physically present in the same location; any deadlines may be waived or suspended; and any administrative hearing procedures, such as, but not limited to, conferences, filing of documents, or service, may be done via telephone or email. Additionally, to provide agencies with maximum flexibility to respond to the COVID-19 emergency, and to authorize any agency or court to stay or continue administrative hearings, appeals, and related deadlines as necessary.

Administrative hearings not subject to Chapter 91, to the extent necessary such that, at the sole discretion of the department of agency, any such hearing may be conducted by telephone or video conference without the parties, department, or agency, being physically present in the same location; any deadlines may be waived or suspended; and any hearing procedures, such as, but not limited to, conferences, filing of documents, or service, may be done via telephone or email.

Section 91-3(b), HRS, **procedure for adoption, amendment, or repeal of rules**, and section 325-2, HRS, **physicians, laboratory directors, and health care professionals to report** to the extent necessary to add coronavirus disease 2019 (COVID-19) (SARS-CoV-2) to Exhibits A and B of Chapter 11-156, Hawaii Administrative Rules (HAR), without adopting emergency rules, and to ensure that physicians, health care professionals, and laboratory directors shall report the incidence or suspected incidence of COVID-19 to the department of health in the manner specified by the department of health and that test results (including positive and negative results) be reported to the department of health via the electronic laboratory reporting system and by telephone on an urgent basis. The addition of (COVID-19) (SARS-CoV-2) to Exhibits A and B of Chapter 11-156, HAR, shall be effective for the period of this Proclamation.

Chapter 92, HRS, **public agency meetings and records**, to the extent set forth in Exhibit F attached hereto.

Chapter 92F, HRS, **uniform information practices act (modified)**, to the extent set forth in Exhibit F attached hereto.

Section 102-2, HRS, **contracts for concessions; bid required, exception.**

Section 103-2, HRS, **general fund.**

Section 103-53, HRS, **contracts with the State or counties; tax clearances, assignments.**

Section 103-55, HRS, **wages, hours, and working conditions of employees of contractors performing services.**

Section 103-55.5, HRS, **wages and hours of employees on public works construction contracts.**

Chapter 103D, HRS, **Hawaii public procurement code.**

Chapter 103F, HRS, **purchases of health and human services.**

Chapter 104, HRS, **wages and hours of employees on public works**, to the extent that this suspension only applies to construction contracts for governmental construction projects related to COVID-19 entered into on or after the date of the Supplementary Proclamation issued on March 16, 2020 through the duration of the emergency.

Chapter 105, HRS, **government motor vehicles**, except for section 105-11, HRS, **State motor pool revolving fund.**

Section 127A-25(c), HRS, **rules and orders**, to the extent the requirement to publish rules adopted pursuant to chapter 127A, HRS, in a newspaper of general circulation in the State shall be suspended inasmuch as the posting of such rules on the applicable state or county government website or by other means of official announcement as provided by this section brings the rules' content to the attention of the general public.

Section 127A-30(a)(2), HRS, **rental or sale of essential commodities during a state of emergency; prohibition against price increases**, to the extent that it permits the termination of any tenancy for a residential dwelling unit in the area that is the subject of the proclamation for a breach of a material term

of a rental agreement or lease resulting from a failure to pay all or any portion of the rent or lease, maintenance fees, utility charges, taxes or other fees required by the rental agreement or lease. Additionally, section 521-68, HRS, **landlord's remedies for failure by tenant to pay rent** and section 521-71, HRS, **termination of tenancy; landlord's remedies for holdover tenants** and Chapter 666, **landlord and tenant**, to the extent necessary to prohibit the commencement, continuation, or prosecution of an action, to terminate any tenancy for a residential dwelling unit, for failure to pay all or any portion of the rent, maintenance fees, utility charges, taxes or other fees required for the residential dwelling unit.

Sections 134-3(a) and (b), HRS, **registration, mandatory, exceptions**, to the extent necessary such that the chiefs of police of the counties, in their sole discretion, may suspend the deadline whereby a person must register a firearm within five days after arrival in the State of the person or firearm, whichever arrives later, and the deadline whereby a person acquiring a firearm pursuant to section 134-2, HRS, must register the firearm within five days of acquisition.

Section 183C-6, HRS, **permits and site plan approvals**, to the extent necessary to enable the Department of Land and Natural Resources to administer the permitting program for conservation district use permits without the application of provisions providing for automatic approval of permit requests that are not acted upon within 180 days.

Chapter 205A, HRS, coastal zone management.

Section 206M-2(b), HRS, **establishment of the Hawaii technology development corporation**, to the extent necessary to delegate the powers, duties, and authority of the board to the chief executive officer for the purpose of awarding and dispensing State funding available under section 601(a) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act to awardees or grantees.

Section 237D-6.5(b), HRS, **distribution of the transient accommodations tax**.

Chapter 261, HRS, **aeronautics**

Chapter 281, HRS, **intoxicating liquor**, and related administrative rules, to the extent as follows:

1. Section 281-1, HRS, **definitions**, to exclude hand sanitizer and surface disinfectants from the definition of “liquor” and “intoxicating liquor”; and
2. Section 281-31, HRS, **licenses, classes** to enable the county liquor commissions to allow licensees to sell unopened beer or unopened wine or unopened prepackaged cocktails with food for pick up, delivery, take out, or other means to be consumed off the premises, and to enable county liquor commissions to waive, suspend, or postpone any deadlines or administrative procedures; and to allow class 1 licensees to purchase fermentable wash from class 1, 3, 14, and 18 licensees.

Provided that liquor licensees shall comply at all times with any and all federal laws and any and all state and county laws not specifically suspended herein, including, but not limited to, Chapter 149A, HRS, **Hawaii Pesticides Law**, and the rules, regulations, and requirements of the State of Hawai'i Department of Agriculture, the U.S. Food and Drug Administration, the U.S. Environmental Protection Agency, and the U.S. Alcohol and Tobacco Tax and Trade Bureau.

Section 281-37, HRS, **sales of alcohol**, and related administrative rules, to the extent to allow hospitals and medical clinics to purchase hand sanitizer and surface disinfectants in any quantity from class 1 licensees without holding a county alcohol purchase permit. Provided that liquor licensees shall comply at all times with any and all federal laws and any and all state and county laws not specifically suspended herein, including, but not limited to, Chapter 149A, HRS, **Hawaii Pesticides Law**, and the rules, regulations, and requirements of the State of Hawai'i Department of Agriculture, the U.S. Food and Drug Administration, the U.S. Environmental Protection Agency, and the U.S. Alcohol and Tobacco Tax and Trade Bureau.

Section 281-42(a)(6) and (b)(2), HRS, **manufacturers and wholesale dealers, special restrictions**, and any related administrative rules, to the extent necessary to enable the county liquor commissions to allow liquor manufacturers

and wholesale dealers to negotiate credit terms for periods in excess of thirty (30) days with liquor retail licensees during the disaster emergency relief period, subject to the following restrictions:

1. Any credit negotiations under this suspension must be finalized prior to the termination of the disaster emergency relief period;
2. The suspension of Section 281-42(a)(6), HRS, shall terminate upon the termination of the disaster emergency relief period;
3. The suspension of Section 281-42(b)(2), HRS, shall remain in effect until twenty-one (21) days after the termination of the disaster emergency relief period to the extent necessary to allow liquor retail licensees who have outstanding invoice balances more than thirty (30) days due, to continue purchasing liquor by credit.

Chapter 266, HRS, **harbors**.

Sections 286-26(a) and (b), HRS, **certification of inspection**, section 286-54, HRS, **out-of-state-vehicle permit**, section 286-106, HRS, **expiration of licenses**, section 286-236(f), HRS, **commercial driver's license qualification standards**, sections 286-107(a), (b), (c), (d), (g), and (h), HRS, **license renewals; procedures and requirements**, section 286-239(g), HRS, **commercial driver's license**, section 286-241, HRS, **notification of disqualification, suspension, revocation, cancellation, marking medical certification status as not-certified, or downgrading of commercial driver's licenses or permits**, section 286-306(a), HRS, **expiration; renewal; replacement**, to the extent necessary to enable the Director of Transportation to waive or extend the renewal, expiration, or other deadlines for certificates, licenses, and permits that occurred or will occur during the emergency period.

Sections 286-26(d), HRS, **certification of inspection**.

Section 286-108, HRS, **examination of applicants**.

Section 286-110, HRS, **instruction permits**.

Section 291-31.5, HRS, **blue lights prohibited for motor vehicles, motorcycles, motor scooters, bicycles, mopeds** to the extent necessary to allow Department of the Attorney General vehicles to operate with blue lights when used for law enforcement related emergency management functions.

Section 291-51.6, HRS, **issuance of temporary removable windshield placards**, to the extent that the Director of the Department of Health may extend the duration of the temporary removable windshield placard beyond six months.

Section 291-52, HRS, **issuance of removable windshield placard**, with respect only to the statutory six-year expiration.

Sections 302D-12(h)(1) - (5), HRS, **charter school governing boards; powers and duties**, to the extent necessary to enable the governing board of a charter school to conduct business in person or through remote technology without holding meetings open to the public. The governing boards shall consider reasonable measures to allow public participation consistent with physical distancing practices, such as providing notice of meetings, allowing submissions of written testimony on agenda items, live streaming meetings, and posting minutes of meetings online. No governing board deliberation or action shall be invalid, however, if such measures are not taken.

Chapter 325, HRS, **infectious and communicable diseases**, to the limited extent that any provision conflicts with the Governor's exercise of emergency powers herein under section 127A-13(a)(1), HRS.

Sections 328L-3(f)(1) and (2), HRS, **emergency and budget reserve fund**.

Sections 329-32(a), 329-33(a), 329-38.2, HRS, **uniform controlled substances act**, and related administrative rules, to the extent necessary to allow out-of-state physicians and nurses to dispense (including prescribing and administering) controlled substances without having to register in Hawai'i, as contemplated in the United States Drug Enforcement Administration's (DEA) COVID-19 Policy Concerning Separate Registration Across State Lines dated March 25, 2020. Such physicians or nurses must maintain active registration in at least one state and be authorized under that state's law to dispense controlled substances. Such doctors or nurses must also otherwise comply with state laws, including those related to controlled substances.

Section 329-32(e), HRS, **registration requirements**, and related administrative rules, for the limited purpose of allowing the offsite dispensing of necessary take-home doses of medication for medication assisted treatment by

an opioid treatment program (OTP) authorized under Section 329-40, HRS, without obtaining a separate state registration, as contemplated in the DEA's COVID-19 policy concerning DEA narcotic treatment programs dated April 7, 2020.

Section 329-38(a)(1)(C), HRS, **prescriptions**, and related administrative rules, only to the extent necessary to allow a facsimile, photograph, or scan of a written prescription to be delivered to the dispensing pharmacist within 15 days of an emergency oral prescription, as contemplated in the DEA's COVID-19 guidance concerning the issuance of oral schedule II prescriptions dated March 27, 2020.

Section 329-38(d), HRS, **prescriptions**, for the limited purpose and to the extent necessary to allow prescribing practitioners to authorize subsequent prescriptions for opioids and benzodiazepines through telephone consultation without an in-person consultation every 90 days. Such practitioners must otherwise comply with all other requirements of Section 329-38(d).

Section 329-40 (b)(7), HRS, **methadone treatment program**, and related administrative rules, for the limited purpose of permitting the issuance of up to 28 doses of methadone to qualified patients in an opioid treatment program in accordance with the United States Substance Abuse and Mental Health Services Administration's Opioid Treatment Program Guidance, updated on March 19, 2020.

Section 329-41(a)(8), HRS, **prohibited acts B penalties**, for the sole and limited purpose of enabling authorized physicians practicing telehealth as provided in section 453-1.3, HRS, to issue prescriptions for controlled substances. Such physicians must otherwise comply with all other requirements of Chapter 329, HRS.

Section 329-101(b), HRS, **reporting of dispensation of controlled substances; electronic prescription accountability system; requirements; penalty**, to the extent necessary to enable the Department of Public Safety to issue State controlled substance registrations prior to an applicant's registration with the electronic prescription accountability system.

Chapter 329, Part IX, HRS, **medical use of cannabis**, to the extent necessary to allow the Department of Health to extend the effective period of registration for qualifying patients and primary caregivers with registration cards with expiration dates in April and May for ninety (90) days. This suspension shall not apply to the registration of a qualifying out-of-state patient or a caregiver of a qualifying out-of-state patient, and it shall not apply to qualifying patients or primary caregivers with registration cards that expire after May 2020.

Section 346-29, **applications for public assistance; manner, form, conditions**, and section 346-53, HRS, **determination of amount of assistance**, and related administrative rules, to the extent necessary such that the Director of the Department of Human Services, in his sole discretion and for the purpose of assisting those in need, may suspend eligibility and other requirements for family units and individuals impacted by an emergency, and may disregard income received from unemployment insurance or other relief assistance payments, when determining eligibility and the amount of a recipient's assistance payments during the emergency period.

Sections 346-59.1, 431:10A-116.3, 432:1-601.5, and 432D-23.5, HRS, **coverage for telehealth**, to the extent that the definitions of “telehealth” in each section shall exclude the use of standard telephone contacts.

Section 346-71, HRS, **general assistance to households without minor dependents**, and related administrative rules, to the extent necessary to allow for a presumptive determination of a disability for the duration of the emergency.

Section 346-97, HRS, **criminal history record checks**, and related administrative rules, to the extent necessary for the Director of the Department of Human Services, in his sole discretion, to suspend criminal history record check requirements prior to enrolling Medicaid service providers.

Chapter 346, Part VIII, HRS, **child care**, and related administrative rules for child care licensing and subsidies, to the extent necessary such that the Director of the Department of Human Services, in his sole discretion and for the purpose of assisting those in need, may suspend fingerprinting requirements; suspend the requisite staffing configurations and the number of children per adult ratio for a child care establishment facility; suspend eligibility and other

requirements for family units impacted by an emergency; disregard emergency related benefits in calculating child care subsidies; suspend application deadlines for child care subsidies; allow for re-determinations of eligibility and monthly payment amounts within the eligibility period; and suspend subsidy payments for longer than one month when a payment amount is determined to be zero. Additionally, pursuant to section 127A-25, HRS, the Rules Relating to Child Care Services Under Chapter 17-798.2, Hawaii Administrative Rules, as set forth in Exhibit C attached hereto are hereby adopted.

Section 346-261, HRS, **First-To-Work; establishment; purpose**, and related administrative rules, to the extent necessary such that the Director of the Department of Human Services, in his sole discretion and for the purpose of assisting those in need, may suspend eligibility and other requirements for family units impacted by an emergency, and may provide additional rent support for family units impacted by an emergency during the emergency period.

Section 353-62(b)(5), HRS, **Hawaii paroling authority; responsibilities and duties; operations; records, reports, staff**, and related administrative rules, to allow a hearing before a panel of at least two members of the paroling authority in all cases.

Section 353-63, HRS, **service of Hawaii paroling authority members; compensation; expenses**, for the limited purpose and to the extent necessary to allow compensation paid to part-time members of the Hawaii paroling authority to exceed eighty percent of the total regular working hours in a month. All other requirements and limitations set forth in section 353-63 shall remain in full force and effect.

Section 373-3, HRS, **fees; biennial renewal, restoration**, section 437-23(a), HRS, **term of license**, section 439-18(c), HRS, **schools**, section 443B-4.58, HRS, **biennial renewal requirement**, section 440-14, HRS, **license, limitations, renewals**, section 444-15, HRS, **fees; biennial renewals; inactive license**, section 448E-8, HRS, **fees; renewals**, section 448F-9, HRS, **biennial renewal; failure to renew**, section 448H-8, HRS, **fees**, section 16-81-10, HAR, **renewal of license**, section 452-16, HRS, **renewal of license; fees**, section 453-3(2), HRS, **limited and temporary licenses**; section 453-3(4), HRS, **limited**

**and temporary licenses**, section 453-6, HRS, **fees; expenses**, section 453D-11, HRS, **renewal of license; fees**, section 457A-7(e), HRS, **medicare or medicaid nurse aide certification**, section 457A-8(e), HRS, **nurse aide certification for state licensed or state-certified health care settings**, section 457B-9(b), HRS, **fees**, section 457G-6, HRS, **biennial renewal; failure to renew; restoration, inactive license; conversion from registration**, section 458-8(a), HRS, **expiration and renewal**, section 460J-14, HRS, **fees; biennial renewal; inactive license**, section 461J-10, HRS, **biennial renewal; failure to renew**, section 462A-6, HRS, **duration and renewal of license**, section 16-96-27, HAR, **renewal of license**, section 463-10, HRS, **licenses; fees; renewal of licenses; inactive license**, section 464-9(c), HRS, **applications for and certificates of licensure; renewal; fees; continuing education**, section 465-11(a), HRS, **renewals; continuing education requirement**, section 466D-10, HRS, **renewal of license**, section 467-11, HRS, **fees; original license and biennial renewals**, section 471-9(c), HRS, **licenses**, section 472-2(a)(1), HRS, **practice of veterinary technology; qualifications; registration required**, section 481E-5(f), HRS, **certificate of registration; issuance or denial; renewal**, section 481Z-6(f), HRS, **certificate of registration; issuance or denial; renewal**, section 484-9(a), HRS, **annual report**, section 514E-10(e), HRS, **registration required; developer, acquisition agent, plan manager, and exchange agent; registration renewal**, section 514E-10.2(h), HRS, **limited permit**, to the extent necessary such that the Director of the Department of Commerce and Consumer Affairs may suspend or extend license renewal or certification deadlines.

Section 377-9, HRS, **prevention of unfair labor practices**, to the extent necessary such that, at the sole discretion of the Hawaii Labor Relations Board, the requirement to hold a hearing on the complaint not more than 40 days after the filing of the complaint or amendment thereof may be waived.

Chapter 383, HRS, **Hawaii employment security law**, to the extent necessary and as allowed by federal law, through the duration of the emergency as defined under federal law, to enable the Director of the Department of Labor and Industrial Relations to:

1. waive the one-week waiting period for unemployment insurance claimants, the able and available requirement not already exempted, the work search requirements, and online registration for work requirement on HireNet for claimants who are otherwise eligible for unemployment insurance benefits as a result of COVID-19 for claims beginning March 1, 2020;
2. extend deadlines;
3. allow greater flexibility in determining good cause, employer contributions to the Unemployment Insurance Trust Fund, and employer experience rating; and
4. waive required cash or in-kind contributions at the sole discretion of the Director of the Department of Labor and Industrial Relations.

Chapter 386, HRS, **workers' compensation law**, to the extent necessary such that the Department of Labor and Industrial Relations' failure to act within the specified period shall not be deemed an automatic approval.

Chapter 394B, HRS, **dislocated workers**, to the extent necessary to waive notice requirements and deadlines; payment of back pay, benefits, or other forms of compensation; payment of dislocated employees or worker allowance; imposition of penalties; and any private right of action for failure to comply with Chapter 394B, HRS, resulting from the COVID-19 response.

C. Division 2. Business

Chapter 432E, Part IV, HRS, **external review of health insurance determinations**, to the extent necessary to suspend all proceedings for external review until rescheduled by the Insurance Commissioner; and to extend any deadlines, including but not limited to the 130-day deadline to file a request for external appeal.

Section 438-8.5, HRS, **medical clearance**, section 439-12.5, HRS, **medical clearance**, section 16-73-56, HAR, **medical clearance**, and section 16-78-76, HAR, **medical clearance**, to the extent necessary to waive the medical clearance requirement. Additionally, pursuant to section 127A-25, HRS, the Rules Relating to Safety Guidelines for Barbers and Beauty Operators, as set forth in Exhibit G attached hereto are hereby adopted.

Section 451J-5, HRS, **prohibited acts**, and section 451J-7, HRS, **application for licensure**, to the extent necessary to waive the licensure and accompanying requirements so as to permit marriage and family therapists licensed in their state, but not licensed in Hawai'i, who have pre-established relationships with a patient or client currently residing in the State of Hawai'i, to engage in telehealth practices with these patients. This shall not authorize out-of-state mental health professionals who are not licensed in Hawai'i to solicit or establish new relationships with clients or patients located in Hawai'i.

Chapter 453, HRS, **medicine and surgery**, and Chapters 16-85, HAR, **medical examiners**, and 16-93, HAR, **osteopaths**, to the extent necessary to allow out-of-state physicians, osteopathic physicians, and physician assistants with a current and active license, or those previously licensed pursuant to Chapter 453, HRS, but who are no longer current and active, to practice in Hawai'i without a license; provided that they have never had their license revoked or suspended and are hired by a state or county agency or facility, or by a hospital, including related clinics and rehabilitation hospitals, nursing home, hospice, pharmacy, or clinical laboratory, or other health care entity.

Section 453-1.3, HRS, **practice of telehealth**, to the extent necessary to allow individuals currently and actively licensed pursuant to Chapter 453, HRS, to engage in telehealth without an in-person consultation or a prior existing physician-patient relationship; and to the extent necessary to enable out-of-state physicians, osteopathic physicians, and physician assistants with a current and active license, or those who were previously licensed pursuant to Chapter 453, HRS, but who are no longer current and active, to engage in telehealth in Hawai'i without a license, in-person consultation, or prior existing physician-patient relationship, provided that they have never had their license revoked or suspended and are subject to the same conditions, limitations, or restrictions as in their home jurisdiction.

Section 453D-5, HRS, **prohibited acts**, and section 453D-7, HRS, **application for licensure as a mental health counselor**, to the extent necessary to waive the licensure and accompanying requirements so as to permit mental health counselors licensed in their state, but not licensed in

Hawai'i, who have pre-established relationships with a patient or client currently residing in the State of Hawai'i, to engage in telehealth practices with these patients. This shall not authorize out-of-state mental health professionals who are not licensed in Hawai'i to solicit or establish new relationships with clients or patients located in Hawai'i.

Chapter 456, HRS, **notaries public**, and related administrative rules, to the extent necessary to suspend any requirement that would require close physical contact to accomplish notary functions. Additionally, pursuant to section 127A-25, HRS, the Rules Relating to Notaries, as set forth in Exhibit D attached hereto are hereby adopted.

Chapter 457, HRS, **nurses**, and chapter 16-89, HAR, **nurses**, to the extent necessary to allow out-of-state licensed practical nurses, registered nurses, advanced practice registered nurses, and advance practice registered nurses with prescriptive authority with a current and active license, or those previously licensed pursuant to Chapter 457, HRS, but who are no longer current and active, to practice in Hawai'i without a license; provided that they have never had their license revoked or suspended and are hired by a state or county agency or facility, or by a hospital, including related clinics and rehabilitation hospitals, nursing home, hospice, pharmacy, clinical laboratory, or other health care entity.

Section 457-7, HRS, **registered nurses; qualifications; licenses; fees; title; existing licensed nurses; verification of licenses; eligibility**, to the extent necessary to waive the licensure and accompanying requirements so as to permit graduates of nursing education programs approved by the State Board of Nursing, within 180 days following graduation, to be employed to practice nursing under the supervision of a registered nurse, with the endorsement of the employing health care entity.

Section 457-8, HRS, **licensed practical nurse; qualifications; license; fees; title; existing licensed nurses; verification of licenses; eligibility**, to the extent necessary to waive the licensure and accompanying requirements so as to permit graduates of nursing education programs approved by the State Board of Nursing, within 180 days following graduation, to be employed to

practice nursing under the supervision of a registered licensed practical nurse, with the endorsement of the employing health care entity.

Section 457-8.5, HRS, **advanced practice registered nurse; qualifications; licensure; endorsement; fees; eligibility**, to the extent necessary to waive the licensure and accompanying requirements so as to permit graduates of an accredited graduate-level education program preparing the nurse for one of the four recognized advanced practice registered nurse roles licensed by the State Board of Nursing, within 180 days following graduation, to be employed to practice as an advanced practice registered nurse, with the endorsement of the employing health care entity.

Section 457G-1.4, HRS, **license required**, and section 457G-1.5, HRS, **practice of occupational therapy**, to the extent necessary to allow out-of-state occupational therapists and occupational therapy assistants with current and active licenses, or those previously license pursuant to Chapter 457G, HRS, but who are no longer current and active, to practice in Hawai'i without a license; provided that they have never had their licenses revoked or suspended and are hired by a state or county agency or entity, or by a hospital, including related clinics and rehabilitation hospitals, nursing home, hospice, pharmacy, clinical laboratory, or other health care entity.

Section 461-5, HRS, **qualifications for license**, and Section 461-6, HRS, **examination; license**, to the extent necessary to waive the licensure and accompanying requirements so as to permit graduates of a pharmacy college accredited by the Accreditation Council for Pharmacy Education, within 180 days following the conferment of the doctor of pharmacy degree, to be employed to practice pharmacy under the supervision of a registered pharmacist, with the endorsement of the employing health care entity.

Section 461-9(a), HRS, **pharmacist in charge; pharmacy personnel**, and Sections 16-95-79(a), HAR, **supervision by a registered pharmacist**, and 16-95-80(a), HAR, **physical presence of a registered pharmacist**, to the extent necessary to allow a registered pharmacist currently and actively licensed pursuant to Chapter 461, HRS, or pharmacy intern currently and actively

permitted by the board, to fill, compound, or receive prescriptions by remote data entry.

Section 461J-2, HRS, **practice of physical therapy; qualifications**, section 461J-6, HRS, **permanent licenses**, and section 16-110-20, HAR, **requirements for a permanent physical therapist license or physical therapist assistant license**, to the extent necessary to allow an out-of-state physical therapist or physical therapy assistant with a current and active license, or those previously licensed pursuant to Chapter 461J, HRS, but who are no longer current and active, to practice in Hawai'i without a license; provided that they have never had their license revoked or suspended and are hired by a state or county agency or entity, or by a hospital, including related clinics and rehabilitation hospitals, nursing home, hospice, pharmacy, clinical laboratory, or other health care entity.

Section 464-4, HRS, **public works**.

Section 465-2, HRS, **license required**, and section 465-15, HRS, **prohibited acts; penalties**, to the extent necessary to waive the licensure and accompanying requirements so as to permit psychologists licensed in their state, but not licensed in Hawai'i, who have pre-established relationships with a patient or client currently residing in the State of Hawai'i, to engage in telehealth practices with these patients.

Section 466D-3, HRS, **license required**, and section 466D-9, HRS, **licensure by endorsement**, to the extent necessary to allow an out-of-state respiratory therapist with a current and active license, or those previously licensed pursuant to Chapter 466D, HRS, but who are no longer current and active, to practice in Hawai'i without a license; provided that they have never had their license revoked or suspended and are hired by a state or county agency or entity, or by a hospital, including related clinics and rehabilitation hospitals, nursing home, hospice, pharmacy, clinical laboratory, or other health care entity.

Section 466J-4, HRS, **licenses required**, section 466J-5, HRS, **radiographers, radiation therapists, and nuclear medicine technologists, qualifications and licenses**, section 11-44-3, HAR, **licenses required**, section

11-44-4, HAR, **application for license**, and section 11-44-5, HAR, **minimum eligibility requirements for license**, to the extent necessary to allow an out-of-state radiographer, radiation therapist, or nuclear medicine technologist, with a current and active registration or certification in good standing with the American Registry of Radiologic Technologists (ARRT) in radiography, radiation therapy technology, or nuclear medicine technology or with the Nuclear Medicine Technology Certification Board (NMTCB) in nuclear medicine technology; or those previously licensed pursuant to Chapter 466J, HRS, but who are no longer current and active, to practice in Hawai'i without a license; provided that they have never had their license revoked or suspended and are hired by a state or county agency or other health care entity that possesses a current and valid radiation facility license. Facilities are required to submit to the Radiologic Technology Board the following information for individuals performing radiologic technology under this exemption: full name; ARRT, NMTCB or previous license number; and a photocopy of the current ARRT or NMTCB credential card or defunct license (if available).

Section 467E-5, HRS, **licensed required**, and section 467E-13, HRS, **prohibited acts; penalties**, to the extent necessary to waive the licensure and accompanying requirements so as to permit social workers licensed in their state, but not licensed in Hawai'i, who have pre-established relationships with a patient or client currently residing in the State of Hawai'i, to engage in telehealth practices with these patients. This shall not authorize out-of-state mental health professionals who are not licensed in Hawai'i to solicit or establish new relationships with clients or patients located in Hawai'i.

Section 468E-3, HRS, **practice as speech pathologist or audiologist; title or description of services**, section 468E-4, HRS, **persons and practices not affected**, section 468E-8, HRS, **license**, section 16-100-12, HAR, **registration required**, and section 16-100-16, HAR, **general requirements**, to the extent necessary to allow an out-of-state speech pathologist or audiologist with a current and active license, or those previously licensed pursuant to

Chapter 468E, HRS, but who are no longer current and active, to practice in Hawai'i without a license; provided that they have never had their license revoked or suspended and are hired by a state or county agency or entity, or by a hospital, including related clinics and rehabilitation hospitals, nursing home, hospice, pharmacy, clinical laboratory, or other health care entity.

Section 469-2, HRS, **rules**, and related administrative rules for Mortuaries, Cemeteries, Embalmers, Undertakers and Mortuary Authorities, to the extent necessary to suspend any law that facilitates the gathering of large groups for the viewing of a body before cremation or burial. Additionally, pursuant to section 127A-25, HRS, the Rules Relating to Mortuaries, Cemeteries, Embalmers, Undertakers and Mortuary Authorities, as set forth in Exhibit H attached hereto are hereby adopted.

Section 471-10, HRS, **refusal to grant and revocation or suspension of license**, to the extent necessary to enable veterinarians to engage in telehealth without a previously existing Veterinarian-Client-Patient-Relationship or physical examination of the patient.

Chapter 481I, HRS, **motor vehicle express warranty enforcement (lemon law)**, to the extent necessary such that, at the sole discretion of the Department of Commerce and Consumer Affairs, any arbitration hearing may be conducted by telephone or video conference without the parties, arbitrator, or department being physically present in the same location; any deadlines, including but not limited to, the lemon law rights period under section 481I-2, HRS, may be extended, waived, or suspended; and any hearing procedures, including but not limited to, submission of documents or service, may be done via telephone or email.

D. Division 3. Property; Family

Chapter 501, HRS, **land court registration**, and related court or administrative rules, to the extent necessary such that the Registrar of the Bureau of Conveyances, in his sole discretion and for the purpose of facilitating the recording functions of the Bureau of Conveyances, may suspend recording requirements calling for certified copies of court records, or any other recording requirements that cannot be satisfied under the current emergency conditions,

including but not limited to recording requirements which may require close physical contact.

Chapter 502, HRS, **bureau of conveyances; recording**, and related court or administrative rules, to the extent necessary such that the Registrar of the Bureau of Conveyances, in his sole discretion and for the purpose of facilitating the recording functions of the Bureau of Conveyances, may suspend recording requirements calling for certified copies of court records, or any other recording requirements that cannot be satisfied under the current emergency conditions, including but not limited to recording requirements which may require close physical contact.

Section 572-1(7), HRS, **requisites of valid marriage contract**, to the extent necessary to suspend the requirement that the parties to be married and the person performing the marriage ceremony be physically present at the same place and time for the marriage ceremony. During the time that this emergency order is effective, marriage ceremonies may be performed by synchronous, real-time, interactive audio and video telecommunications, so long as the parties to be married and the person performing the marriage ceremony shall all be physically present in Hawai'i and all of the other requisites for a valid marriage contract are met. This suspension shall apply retroactively to March 4, 2020, the beginning of the disaster emergency relief period.

Section 572-6, HRS, **application; license; limitations**, to the extent necessary to suspend the requirement that persons applying for a marriage license shall appear personally before an agent authorized to grant marriage licenses. During the time that this emergency order is effective, persons applying for a marriage license may appear by synchronous, real-time, interactive audio and video telecommunications before an agent authorized to grant marriage licenses.

Chapter 576E, HRS, **administrative process for child support enforcement**, and related administrative rules, to the extent necessary such that, at the sole discretion of the Department of the Attorney General or the Child Support Enforcement Agency, the agency may sign an order temporarily

suspending or modifying child support obligations without the need to commence administrative proceedings when all parties are in mutual agreement.

Section 11-219-7.5(e), HAR, **renewal of parking permits**, to the extent that the six-year recertification for special license plates shall be suspended if such recertification becomes due during the emergency period.

Sections 15-37-4(a)(2) - (5), HAR, **procedure for a SWHV**, so that all solar water heater variance requests and payments will be done online at the Department of Business, Economic Development and Tourism Energy Division Solar Water Heater Variance website, and no other submittal methods (i.e., email, fax, U.S. Postal Service, or hand delivery) or payments by check will be accepted.

E. Division 4. Courts and Judicial Proceedings

Nothing suspended or invoked by this Proclamation.

F. Division 5. Crimes and Criminal Proceedings

Sections 706-669, 706-670, and 706-670.5, HRS, **disposition of convicted defendants**, to the extent that these sections and related administrative rules prescribe time limits for matters before the Hawaii Paroling Authority.

Chapter 846E, HRS, **registration of sex offenders and other covered offenders and public access to registration information**, to the extent necessary to suspend any requirement that a covered offender must come into close physical contact with an agency with jurisdiction, the attorney general, or chief of police, or their designees to satisfy any element of this section.

**VII. Severability**

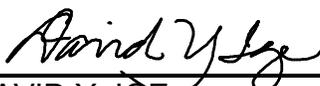
If any provision of this Proclamation is rendered or declared illegal for any reason, or shall be invalid or unenforceable, such provision shall be modified or deleted, and the remainder of this Proclamation and the application of such provision to other persons or circumstances shall not be affected thereby but shall be enforced to the greatest extent permitted by applicable law.

**VIII. 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. Unless the Governor, Director of Emergency Management, or their designee issues an express order to a non-judicial public officer, no provision of this Proclamation, or any rule or regulation hereunder, shall be construed as imposing any ministerial duty upon any non-judicial public officer and shall not bind the officer to any specific course of action or planning in response to the pandemic or interfere with the officer's authority to utilize his or her discretion.

**I FURTHER DECLARE** that this Proclamation supersedes all prior proclamations issued by me related to the COVID-19 emergency, and that the disaster emergency relief period shall continue through October 31, 2020, unless terminated or superseded by a separate proclamation, whichever shall occur first.

Done at the State Capitol, this  
22<sup>nd</sup> day of September, 2020.

  
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DAVID Y. IGE,  
*Governor of Hawai'i*

APPROVED:



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Clare E. Connors  
*Attorney General*  
*State of Hawai'i*

EXHIBIT A  
Rule Relating to Immunities for Health Care Practices

EXHIBIT B  
Rules Relating to COVID-19 Health Screening Process and Travel  
Self-Quarantine

EXHIBIT C  
Rules Relating to Child Care Services Under Chapter 17-798.2,  
Hawaii Administrative Rules

EXHIBIT D  
Rules Relating to Notaries Public (amended)

EXHIBIT E  
State Roadmap to Recovery and Resilience

EXHIBIT F  
Sunshine Law and UIPA

EXHIBIT G  
Rules Relating to Safety Guidelines for Barbers and Beauty Operators

EXHIBIT H  
Rules Relating to Mortuaries, Cemeteries, Embalmers, Undertakers and Mortuary  
Authorities

RULES RELATING TO  
IMMUNITIES FOR HEALTH CARE PRACTICES

- §1 Purpose and Authority
- §2 Definitions
- §3 Health Care Response to COVID-19
- §4 Immunity of Health Care Facilities
- §5 Immunity of Health Care Professionals
- §6 Immunity of Health Care Volunteers
- §7 Miscellaneous

§1 Purpose and Authority. These rules are adopted pursuant to section 127A-9, 12, 13, 25, 29, and 31, Hawaii Revised Statutes, to respond to the COVID-19 emergency declared by the Governor and have the full force and effect of law. The following rules are necessary to enable the healthcare system in Hawaii to continue to function at acceptable levels of service for patients during a time when health care professionals are in short supply.

§2 Definitions. For the purpose of these rules, the following definitions apply:

"Health care facility" means any program, institution, place, building, or agency, or portion thereof, private or public, other than federal facilities or services, whether organized for profit or not, used, operated, or designed to provide medical diagnosis, treatment, nursing, rehabilitative, or preventive care to any person or persons. The term includes but is not limited to facilities licensed or certified by DOH pursuant to section 321-11(10), Hawaii Revised Statutes (HRS), and others providing similarly organized services regardless of nomenclature, and any state government-operated site providing health care services established for the purpose of responding to the COVID-19 outbreak.

"Health care professional" means physicians and surgeons and others licensed pursuant to chapter 453, podiatrists licensed pursuant to chapter 463E, dentists licensed pursuant to chapter 448, psychologists licensed pursuant to chapter 465, nurses licensed pursuant to chapter 457, veterinarians licensed pursuant to chapter 471, acupuncturists licensed pursuant to chapter 436E, massage therapists licensed pursuant to chapter 452, naturopathic physicians licensed pursuant to chapter 455, chiropractors licensed pursuant to chapter 442,

## EXHIBIT A

occupational therapists licensed pursuant to chapter 457G, physical therapists licensed pursuant to chapter 461J, respiratory therapists licensed pursuant to chapter 466D, radiographers, radiation therapists, and nuclear medicine technologists licensed pursuant to chapter 466J, speech pathologists or audiologists licensed pursuant to chapter 468E, and pharmacists licensed pursuant to chapter 461 who (i) are providing health care services at a health care facility in response to the COVID-19 outbreak and are authorized to do so; or (ii) are working under the direction of the Hawai'i Emergency Management Agency (HIEMA) or Hawai'i Department of Health (HDOH) pursuant to any Proclamation, Supplementary Proclamation, and/or Executive Order related to the COVID-19 outbreak (hereinafter collectively referred to as Emergency Proclamations). Health care professionals include the following:

- (1) Physicians, osteopathic physicians, physician assistants, nurses, occupational therapists, physical therapists, respiratory therapists, and speech pathologists or audiologists with a current and active out-of-state license who are authorized to practice in Hawai'i without a Hawai'i license by my Emergency Proclamations.
- (2) Physicians, osteopathic physicians, physician assistants, nurses, occupational therapists, physical therapists, respiratory therapists, radiographers, radiation therapists, nuclear medicine technologists, and speech pathologists or audiologists who were previously licensed pursuant to chapters 453, 457, 457G, 461J, 466D, 466J, and 468E, HRS, respectively, who have no current and active Hawai'i license, who never had their license revoked or suspended and are hired by a state or county agency or facility, or by a hospital, including related clinics and rehabilitation hospitals, nursing home, hospice, pharmacy, or clinical laboratory, or other health care entity, and who are authorized to practice in Hawai'i without a license by my Emergency Proclamations.
- (3) Psychologists licensed in their state but not licensed in Hawai'i who have pre-

established relationships with a patient or client currently residing in the State of Hawai'i who are authorized to engage in telehealth practices with these patients by my Emergency Proclamations and veterinarians who are authorized to engage in telehealth without a previously existing Veterinarian-Client-Patient-Relationship or physical examination of the patient by my Emergency Proclamations.

"Health care volunteer" means all volunteers or medical, nursing, social work, pharmacy, occupational, physical, or respiratory therapist students who do not have licensure who (i) are providing services, assistance, or support at a health care facility in response to the COVID-19 outbreak and are authorized to do so; or (ii) are working under the direction of HIEMA or HDOH pursuant to my Emergency Proclamations.

§3 Health Care Response to COVID-19. Health care facilities, health care professionals, and health care volunteers shall render assistance in support of the State's response to the disaster recognized by the Governor's Emergency Proclamations related to COVID-19. For health care facilities, "rendering assistance" in support of the State's response includes cancelling or postponing elective surgeries and procedures as each facility determines to be appropriate under the circumstances presented by the COVID-19 emergency if elective surgeries or procedures are performed at the health care facility. In addition, for health care facilities, "rendering assistance" in support of the State's response must include measures such as increasing the number of beds, preserving personal protective equipment, or taking necessary steps to prepare to treat patients with COVID-19. For health care professionals, "rendering assistance" in support of the State's response means providing health care services at a health care facility in response to the COVID-19 outbreak, or working under the direction of HIEMA or HDOH pursuant to the Governor's Emergency Proclamations. For health care volunteers, "rendering assistance" in support of the State's response means providing services, assistance, or support at a health care facility in response to the COVID-19 outbreak, or working under the direction of HIEMA or HDOH pursuant to the Emergency Proclamations.

§4 Immunity of Health Care Facilities. Health care facilities that in good faith comply completely with all state and federal orders regarding the disaster emergency, shall be immune from civil liability for any death or injury to persons, or property damage alleged to have been caused by any act or omission by the health care facility, which death of or injury to persons, or property damage occurred at a time when the health care facility was engaged in the course of rendering assistance to the State by providing health care services in response to the COVID-19 outbreak, unless it is established that such death or injury to persons, or property damage was caused by willful misconduct, gross negligence, or recklessness of the health care facility.

§5 Immunity of Health Care Professionals. Health care professionals who in good faith comply completely with all state and federal orders regarding the disaster emergency, shall be immune from civil liability for any death or injury to persons, or property damage alleged to have been caused by any act or omission by the health care professional, which death of or injury to persons, or property damage occurred at a time when the health care professional was engaged in the course of rendering assistance to the State by providing health care services in response to the COVID-19 outbreak, unless it is established that such death or injury to persons, or property damage was caused by willful misconduct, gross negligence, or recklessness of the health care professional.

§6 Immunity of Health Care Volunteers. Any health care volunteer who in good faith complies completely with all state and federal orders regarding the disaster emergency, shall be immune from civil liability for any death of or injury to persons, or property damage alleged to have been caused by any act or omission by the health care volunteer at a time when the health care volunteer was engaged in the course of rendering assistance to the State by providing services, assistance, or support in response to the COVID-19 outbreak, unless it is established that such death of or injury to persons, or property damage was caused by the willful misconduct, gross negligence, or recklessness of the health care volunteer.

§7 Miscellaneous. (a) Nothing in these rules shall be construed to preempt or limit any applicable immunity from civil liability available to any health care facility, health care professional, or health care volunteer.

(b) If any provision of these rules is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this rule are declared to be severable.

(c) The provisions of these rules shall take effect nunc pro tunc to March 4, 2020, and shall remain in effect for the emergency period, unless terminated by separate proclamation, whichever shall occur first.

Rules Relating to  
COVID-19 Health Screening Process and Travel Self-Quarantine

- §1 Purpose and Authority
- §2 Definitions
- §3 Health Screening
- §4 Mandatory Self-Quarantine
- §5 Order of Self Quarantine
- §6 Defenses
- §7 Costs to be Paid by Quarantined Person
- §9 Criminal Penalties

§1 Purpose and Authority. These rules are adopted pursuant to sections 127A-11, 12, 13, 25, 29, and 31, Hawaii Revised Statutes, to respond to the COVID-19 emergency declared by the Governor and have the force and effect of law.

§2 Definitions. "Health Screening" means a process used to detect the presence of a communicable or dangerous disease in an individual and may include the measuring of a person's temperature through thermal temperature screening, and the administration of one or more questionnaires used to conduct surveillance of disease activity or to determine to whom a diagnostic tool is administered.

"Mandatory State of Hawaii Travel and Health Form" means a form or questionnaire developed by the State for travelers. It may be amended from time to time by the Director of Emergency Management, and amendments shall be posted on the websites for the Governor and the Hawaii Emergency Management Agency.

"Order for Self-Quarantine" means an order from the Director of Emergency Management directing a mandatory self-quarantine. It may be amended from time to time by the Director of Emergency Management, and amendments shall be posted on the websites for the Governor and the Hawaii Emergency Management Agency.

"State approved COVID-19 test" means a test to determine the presence of active COVID-19 infection that has been approved for use under these rules by the Hawaii Department of Health (DOH). Currently approved is the processing by laboratories that are licensed or certified by Clinical Laboratories Improvement Amendments (CLIA) of specimens for nucleic acid amplification testing approved or authorized by the United States Food and Drug Administration, pursuant to an Emergency Use Authorization or other authorization for COVID-19 testing.

"Thermal temperature screening" means a non-contact means of measuring a person's temperature.

§3 Health Screening. All persons entering the State of Hawaii shall submit to a health screening as determined by the Director of Emergency Management to be necessary to prevent the spread of COVID-19 to protect the public health and safety. Any person violates this section if the person intentionally or knowingly:

- (1) Refuses or fails to truthfully, accurately and fully complete a Mandatory State of Hawaii Travel and Health Form, attached hereto; or
- (2) Refuses or fails to undergo thermal [~~screening~~] temperature screening conducted by state personnel.

§4 Mandatory Self-Quarantine. (a) All persons entering the State of Hawaii shall be subject to mandatory self-quarantine, except:

- (1) those persons [~~who are exempted by the Governor's Proclamation Related to the COVID-19 Emergency~~ ("Proclamation")] performing critical infrastructure functions or who have otherwise been exempted by the Director of Emergency Management; or
- (2) those persons who have submitted a test sample for a State approved COVID-19 test within 72 hours from the final leg of departure and whose negative test results for the COVID-19 disease are verified by the State upon arrival.

(b) The period of self-quarantine shall begin from the day of entry into the State and shall last 14 days or the duration of the person's presence in the State, whichever is shorter.

(c) Notwithstanding the foregoing, those persons who have submitted a test sample for a State approved COVID-19 test within 72 hours from the final leg of departure and whose test results were not available at arrival, may thereafter submit negative test results to state officials designated by the Director of Emergency Management, and upon written acceptance from such officials, will no longer be subject to the mandatory self-quarantine.

§5 Order of Self Quarantine. (a) All persons subject to mandatory self-quarantine shall remain in self-quarantine for a period of 14 days, which period commences the day of arrival, or the duration of the person's presence in the State of Hawaii, whichever is shorter.

(b) Any person subject to such quarantine violates this section if the person intentionally or knowingly:

- (1) Refuses or fails to truthfully, accurately and fully complete the Order for Self-Quarantine;
- (2) Refuses or fails to enter or remain within the confines of the quarantine location designated by

the person to the Director of Emergency Management or the Director's authorized representative for the period of self-quarantine;

- (3) Refuses or fails to follow any of the orders contained within the Order for Self-Quarantine; or
- (4) Refuses or fails to obey the orders of the Director of Emergency Management or the Director's authorized representative.

§6 Defenses. It shall be an affirmative defense to a violation of Sections 4 and 5 of the Rules Relating to COVID-19 Health Screening Process and Travel Self-Quarantine if the person:

- (1) Enters the State by recreational boat into the State's small boat (non-commercial) harbors that had been at sea for at least 14 consecutive days before entering State waters and has no persons on board who are ill or are exhibiting symptoms of COVID-19;
- (2) Upon entering the State, provides written confirmation from a State approved COVID-19 testing facility of a negative result from a DOH approved test administered to the person within 72 hours from the final leg of departure;
- ~~{1}~~ (3) Applies for an exemption from mandatory self-quarantine through [travelexemption.hawaii.gov](http://travelexemption.hawaii.gov) and receives confirmation of the exemption from [covidexemption@hawaii.gov](mailto:covidexemption@hawaii.gov), and breaks self-quarantine for the sole purpose of performing critical infrastructure functions, wears appropriate protective gear, and follows the safe practices identified in the Proclamation; or
- ~~{2}~~ (4) Is otherwise exempt from the self-quarantine requirements.

§7 Costs to be Paid by Quarantined Person. Any person under the mandatory self-quarantine prescribed by these rules shall be responsible for all costs associated with that person's quarantine, including transport, lodging, food, medical care, and any other expenses to sustain the person during the self-quarantine period.

§8 Criminal Penalties. (a) Any person violating any of these rules shall be guilty of a misdemeanor and upon conviction, the person shall be fined not more than \$5,000, or imprisoned not more than one year, or both.

(b) Penalties prescribed by these rules are in addition to any other lawful penalties established by law.

Rules Relating to Child Care Services Under  
Chapter 17-798.2, Hawaii Administrative Rules

- §1 Purpose and authority
- §2 Eligibility requirements
- §3 Method of computing child care payment
- §4 Mandatory Reporting

§1 Purpose and authority. These rules are adopted pursuant to sections 127A-12, 13, 25, 29, and 31, Hawaii Revised Statutes, to respond to the COVID-19 emergency declared by the Governor. The following amendments are necessary to enable the Department of Human Services to assist families who need child care services due to impacts of the COVID-19 pandemic emergency. These rules have the force and effect of law.

§2 Eligibility requirements. Section 17-798.2-9, Hawaii Administrative Rules, is amended to read as follows:

“§17-798.2-9 Eligibility requirements. (a) Depending upon availability of funds, all children eligible for child care assistance shall reside with the eligible caretaker and meet the following requirements:

- (1) Be under age thirteen years;
  - (2) Be thirteen through seventeen years of age with a physical or mental incapacity that prevents the child from doing self-care; or
  - (3) Receive child protective services, and the need for child care is specified in the family unit's case plan as ordered by the court.
- (b) A caretaker shall be eligible for child care, provided the caretaker:
- (1) Has a monthly gross income verified through documentation that does not exceed eighty-five percent of the State Median Income for a family of the same size except for:
    - (A) Individuals who are licensed by the department or organizations under the authority of the department, as foster parents; [or]
    - (B) Family units receiving child protective services; [~~and~~] or
    - (C) Family units impacted by any federal-, state-, or county-declared emergency proclamation related to a man-made or

natural disaster, or public health  
pandemic situation;

- (2) Meets one of the following conditions:
- (A) Is engaged in employment in exchange for wages or salary;
  - (B) Has a written offer of employment that is scheduled to start within two weeks;
  - (C) Needs child care for up to thirty calendar days during a break in employment, if employment is scheduled to resume within thirty days;
  - (D) Needs up to thirty consecutive days in a twelve-month period for the caretaker with or without a work history to job search, when there is no one to care for the child, not to exceed the maximum child care rates as provided under section 17-798.2-12;
  - (E) Is enrolled in and attends an educational program or job training, vocational, or employment training. This includes the break time between classes for the day;
  - (F) Is participating in the FTW program or a treatment program as required by section 17-656.1-10, except for a participant in the Food Stamp Employment and Training program, and the FTW participant is involved in the required activities written in the FTW employment or individualized service plan;
  - (G) Is receiving child protective services and the need for child care is specified in the family unit's case plan as ordered by the court;
  - (H) Is in a two-parent family unit where one of the caretakers is in an approved activity and the other caretaker is determined to have a disability which prevents the caretaker from providing care for their own child. Proof of disability and inability to provide care of the caretaker's own eligible child shall be verified by the written report of a State-licensed physician, psychologist, or psychiatrist. In the

case of a temporary disability, the written report shall be submitted every six months;

- (I) Is a caretaker participating in an approved activity and has a temporary disability that prevents him or her from engaging in that activity and providing care for his or her own child until the activity can be resumed. Proof of the temporary disability condition and duration, and inability to care for the caretaker's own child shall be verified by the written report of a State-licensed physician, psychologist, or psychiatrist. The written report shall be reviewed every thirty days;
  - (J) Is a caretaker whose child is approved for participation in the Preschool Open Doors program; [~~or~~]
  - (K) Is a caretaker under the age eighteen years who meets any eligibility condition cited in section 17-798.2-9(b)(2)(A) through (J), retains custody of his or her own child, and does not reside in the same household with his or her adult caretaker[~~-~~]; or
  - (L) Is a caretaker impacted by any federal-, state-, or county-declared emergency proclamation related to a man-made or natural disaster, or public health pandemic situation and who needs child care to search for employment or prepare for resuming employment; and
- (3) Shall establish a reasonable relationship between the time during which the caretaker participates in an activity and the time during which child care is needed.
- (c) Child care providers and caregivers:
- (1) Shall meet the following conditions in order that child care payments may be authorized:
    - (A) Be eighteen years old or older;
    - (B) Afford caretakers unlimited access to their children, including written records concerning their children, during normal hours of provider operation and whenever the children are in the care of the provider;

- (C) Be a department regulated or license-exempt child care provider, including in-home care providers. License-exempt providers shall be listed with the department and shall submit a written statement to the department that shall attest to their:
    - (i) Willingness to provide care;
    - (ii) Rate that will be charged;
    - (iii) Assurance that the provider premises are safe from hazards in accord with subparagraphs (G) and (H); and
    - (iv) Address and telephone number;
  - (D) Have no known history of child abuse or neglect, physical, psychological or psychiatric problems, or criminal convictions that may adversely affect or interfere with the care of children;
  - (E) Provide consent, on forms supplied by the department, to conduct a background check. The background check shall be conducted in accord with sections 17-891.1-3, 17-892.1-3, 17-895-3, or 17-896-3;  
Provide consent, on forms supplied by the department, to conduct an additional fingerprint check through the Federal Bureau of Investigations (FBI), except for the child's grandparents, great-grandparents, siblings living in a separate residence and who are at least eighteen years old, and aunts or uncles;
  - (F) Be free of tuberculosis as indicated by a skin test or chest x-ray completed within the last twenty-four months of child care; and
  - (G) Have a child care facility or home with an installed smoke detector, unobstructed emergency exits, and an emergency exit plan.
- (2) Shall not be one of the following:
- (A) Parents, biological or legal;
  - (B) Step-parents living in the household;
  - (C) Guardians, or members of the family unit that receives government financial assistance payments, including essential persons;
  - (D) Providers who are not in compliance with State or county regulatory requirements;

- (E) Individuals under the age of eighteen years;
  - (F) Other individuals determined by the department to pose a risk to the health and safety of the child;
  - (G) A sibling of the child needing care who resides in the same home as the child; or
  - (H) A caretaker.
- (d) The department shall:
- (1) Verify that the child and caretaker meet the eligibility requirements as described in this chapter;
  - (2) Establish the eligibility of the child care provider and caregiver selected by the caretaker, following the provisions of section 17-798.2-9(c).
  - (3) Allow, at the department's option, for the presumptive eligibility of a license-exempt provider selected by the caretaker upon receipt by the department of the completed and signed child care certificate and provider confirmation forms and consent forms for conducting a background check, provided that the presumptive eligibility shall end upon completion of the background check;
  - (4) Authorize the initial and subsequent monthly child care payments based on sections 17-798.2-9, 17-798.2-10, 17-798.2-12, 17-798.2-13, 17-798.2-14, 17-798.2-15, 17-798.2-16, 17-798.2-17, 17-798.2-18, 17-798.2-20, 17-798.2-21, 17-798.2-29, and 17-798.2-35;
  - (5) Review eligibility no less than every six months and whenever changes that affect eligibility are reported; and
  - (6) Track and monitor appropriateness and utilization of child care and payments."

§3 Method of computing child care payment. Section 17-798.2-14,

Hawaii Administrative Rules, is amended to read as follows:

"§17-798.2-14 Method of computing child care payment.

(a) The following will be used to compute the child care payment:

- (1) Monthly gross income;
- (2) The caretaker's hours of activity, except for individuals identified in sections 17-798.2-9(b)(2)(G) [~~and~~], (J), and (L) [~~÷~~];

- (3) The caretaker's relationship to the child who reside with the caretaker, and the age of the child who needs care;
  - (4) The child care provider;
  - (5) The cost and hours of child care;
  - (6) The type of child care; and
  - (7) The need for care.
- (b) The child care payment amount shall be determined by:
- (1) Counting the caretaker's activity hours to be engaged in for the month, as referenced in section 17-798.2-14(a)(2), comparing these activity hours with the child care hours needed, and always choosing the lesser hours; provide that:
    - (A) This is not needed for child protective services reasons as ordered by the court;
    - (B) This is not required for the Preschool Open Doors program; ~~and~~
    - (C) In the case of a caretaker who is temporarily disabled in accordance with subparagraph 17-798.2-9(b)(2)(I), the activity hours shall be the same as the activity hours that the caretaker had prior to the temporary disability~~[-]~~; and
    - (D) This is not required for a caretaker impacted by any federal-, state-, or county-declared emergency proclamation related to a man-made or natural disaster, or public health pandemic situation and who needs child care to search for employment or prepare for resuming employment.
  - (2) Identifying the type of child care selected and approved for each qualifying child, and using the child care rate table, Exhibit I, to select the appropriate rate for the care type that supports the hours needed for child care; provided that:
    - (A) For child protective services need is based on the number of hours of child care specified in the court order; ~~and~~
    - (B) For the Preschool Open Doors program need is based on the number of hours child care requested by a caretaker~~[-]~~; and
    - (C) For a caretaker impacted by any federal-, state-, or county-declared emergency proclamation related to a man-made or

natural disaster, or public health pandemic situation, need is based on full-time care.

- (3) Comparing the child care allowance determined by subparagraphs (b)(1) and (2) and the actual child care cost, and choosing the lesser amount.
  - (4) Determining the family unit's co-payment (conversely, the percentage of the department's maximum rate allowable) based on the family unit's monthly gross income, and using the co-payment rates established in Exhibit III, dated October 1, 2009, attached at the end of this chapter.
  - (5) Subtracting the family unit's co-payment from the amount determined in subparagraph (b)(3).
- (c) The family unit shall be responsible for any child care costs in excess of the maximum child care rates specified in section 17-798.2-12.
- (d) The family unit shall be responsible to pay its share of the childcare cost directly to the provider.
- (e) The department shall project the family unit's eligibility and monthly payments prospectively for the eligibility period.
- (1) The initial payment shall be calculated from the date of eligibility to the end of the month, which may be for less than a full month, and shall be considered the first month of the eligibility period.
  - (2) When changes are reported during the eligibility period, the monthly payments shall be prospectively calculated for the remainder of the eligibility period."

§4 Mandatory reporting. Section 17-798.2-15, Hawaii Administrative Rules, is amended to read as follows:

"§17-798.2-15 Mandatory reporting. (a) A caretaker who is a recipient of child care payments shall be responsible to report to the department within ten calendar days when the following changes occur:

(1) Monthly gross income and the source of the household income when it is in excess of the eighty-five per cent of the State Median Income for a family of the same size, except for:

- (A) Department-licensed foster parents with approved activities that need child care; [~~or~~]

- (B) Family units that receive child protective services~~[-]~~; or
  - (C) Family units that are impacted by any federal-, state-, or county-declared emergency proclamation related to a man-made or natural disaster, or public health pandemic situation.
- (2) Address changes, including:
    - (A) Place of residence; and
    - (B) Mailing address;
  - (3) Household composition;
  - (4) Marital status;
  - (5) Child care provider;
  - (6) Cost of care;
  - (7) Child care type;
  - (8) Loss of activity,
    - (A) Except for family units that receive only Preschool Open Doors services; ~~[or]~~
    - (B) Except for family units that receive child protective services; ~~[and]~~ or
    - (C) Except for family units that are impacted by any federal-, state-, or county-declared emergency proclamation related to a man-made or natural disaster, or public health pandemic situation; and
  - (9) Closure of the child protective services case.
    - (b) Changes may be reported in writing, in person, or by telephone, and shall be supported by verifying documentation.
    - (c) When changes are reported pursuant to this section, the department shall take action on the reported changes and calculate payments for the balance of the eligibility period, after timely and adequate notice.
      - (1) Changes that are reported within ten calendar days of the occurrence shall be implemented in the first month following the month in which the change was reported;
      - (2) Changes that are reported after ten calendar days of the occurrence, that result in a higher payment, shall be implemented in the second month following the month in which the change was reported; and
      - (3) Changes that are reported that result in a lower payment shall be implemented in the first month following the month in which the change was reported, and the department shall recover any overpayments from the date of the occurrence."

Rules Relating to Notaries Public

§1 Purpose and authority

§2 Social distancing

§3 Notarial Acts Utilizing Audio-Visual Technology

§1 Purpose and authority. These rules are adopted pursuant to sections 127A-12, 13, 25, 29, and 31, Hawaii Revised Statutes, to respond to the COVID-19 emergency declared by the Governor, specifically to enable Hawaii notaries to perform notarial acts while complying with social distancing guidelines. These rules have the force and effect of law.

§2 Social distancing. (a) The notary public shall take every reasonable precaution to perform notarial acts in compliance with all orders and social distancing guidelines relating to the COVID-19 emergency.

(b) Notaries public will not be required to perform notarial acts if they believe social distancing guidelines to ensure health and safety cannot be followed.

§3 Notarial Acts Utilizing Audio-Visual Technology. Notarial acts may be performed by utilizing audio-visual technology, provided there is compliance with the following conditions:

- (1) The notary public shall have personal knowledge of the signer or obtain satisfactory evidence of the identity of the signer by requiring presentation of a current government-issued identification card or document that contains the signer's photograph and signature to the notary public during the video conference.

Transmittal of the signer's identification for purposes of verification to the notary public prior to or after the video conference shall not satisfy this condition;

- (2) The notary public shall confirm via observation during the video conference that the signer appears to be aware of significance of the transaction requiring a notarial act and is willing to perform such a transaction;
- (3) The video conferencing shall allow for direct interaction between the person and the notary public and shall not be pre-recorded;

## EXHIBIT D

- (4) The notary public shall confirm as is reasonably possible that the signer is physically situated in this State;
- (5) The notary public shall create an audio-visual recording of the performance of the notarial act, which shall be kept as part of the notary public's record and stored as an unsecured audio-visual recording or on a secured external digital storage such as a flash drive, DVD, or external hard drive;
- (6) The notary public shall deposit with the office of the attorney general the external digital storage and the notarial record books within ninety days of the notary public's date of the resignation, expiration of any term of office as a notary, or removal from or abandonment of office as a notary. The notary public's representative shall provide the same upon the notary public's death;
- (7) The notary public shall obtain the signed document that requires notarization ~~by fax or electronic format on the same date it was signed~~ within fourteen days of signing and the notarization date shall be the same as the date of signature;
- (8) The notary public may notarize the transmitted copy of the document and transmit the same back to the signer;
- (9) The notary public shall add a statement to the notarized document as follows: "*This notarial act involved the use of communication technology enabled by emergency order*";
- (10) The notary public shall enter in the record book that the notarial act was performed pursuant to Executive Order 20-02; and
- (11) The notary public may repeat notarization of the original signed document as of the date of execution provided the notary public receives such original signed document together with the electronically notarized copy within 60 days after the date of execution.

# State of Hawai'i Roadmap to Recovery and Resilience

*Healing Hawai'i*

Phase 1:  
Stabilization

*Kama'āina Economy*

Phase 2:  
Reopening

*Renew & Rebuild*

Phase 3:  
Long-term Recovery

*Stronger Hawai'i*

Phase 4:  
Resilience



**STAY AT HOME**  
(Major Disruption)

**SAFER AT HOME**  
(Moderate Disruption)

**ACT WITH CARE**  
(Minor Disruption)

**RECOVERY**  
(Minimal Disruption)

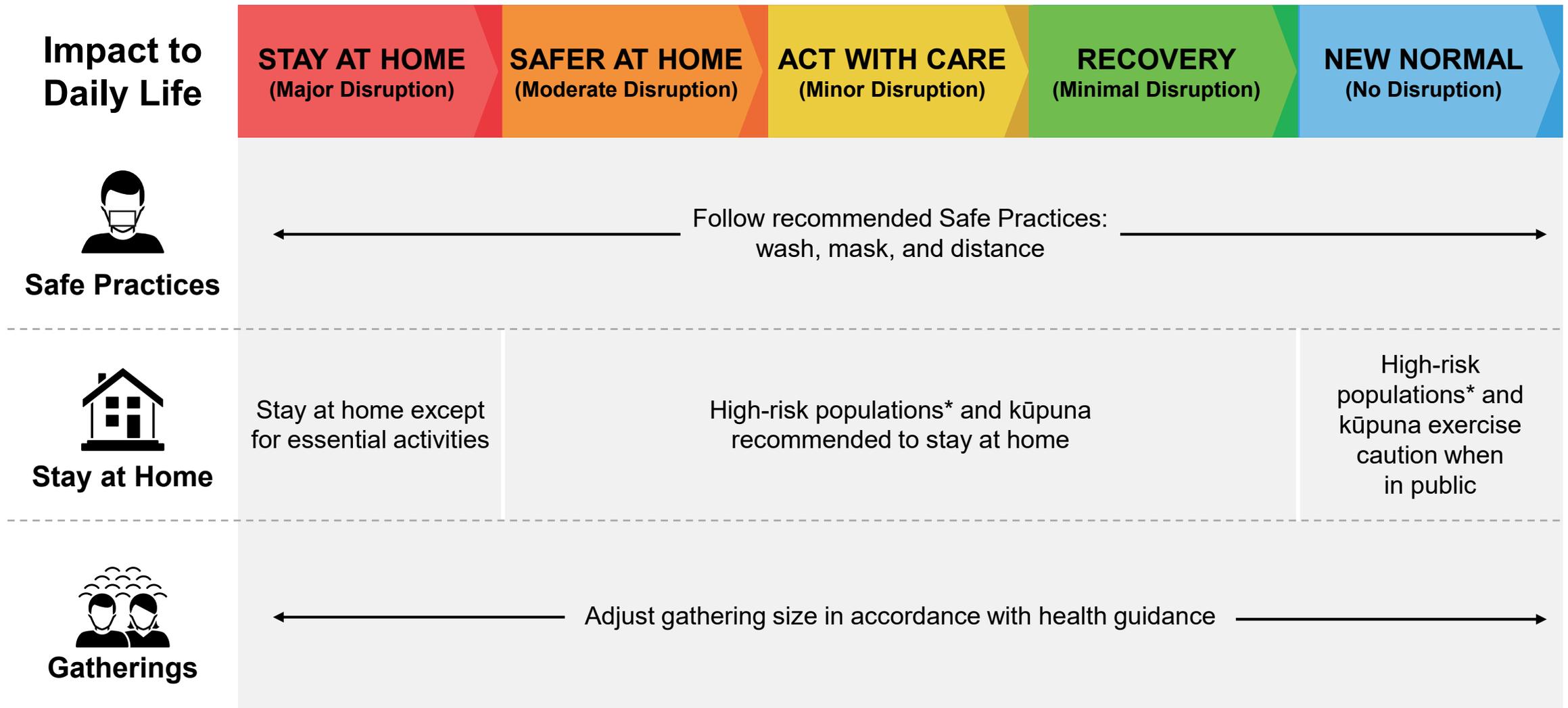
**NEW NORMAL**  
(No Disruption)

# Impacts to Daily Life from Stabilization to Resilience

As of Sept. 21, 2020

(Impact level and impacts to daily life may vary by County)

**EXHIBIT E**



\*High-risk populations are currently defined by CDC as: persons 65 years of age and older; people of all ages with underlying medical conditions (particularly not well controlled), including people with chronic lung disease or moderate to severe asthma, people who have serious heart conditions, people who are immunocompromised, people with severe obesity, people with diabetes, people with chronic kidney disease undergoing dialysis, and people with liver disease; people who live in a nursing home or long-term care facility.

## Sunshine Law and UIPA

Chapter 92, HRS, Part I. Meetings, is suspended to the extent necessary to enable boards as defined in Section 92-2, to conduct meetings without any board members or members of the public physically present in the same location. The physical locations of the board members need not be listed on the agenda.

Boards are discouraged from meeting during the emergency disaster relief period and should only be meeting as necessary to comply with a law, operational necessity, or in furtherance of emergency responses to COVID-19.

If a board holds a meeting:

- Notice of meetings must be electronically posted and electronically provided to notification lists consistent with section 92-7; however, posting at the site of the meeting or at a centralized location in a public building is not required.
- Board packets, consistent with Section 92-7.5, must be electronically posted as soon as practicable under current conditions.
- Boards must accept written testimony from the public.
- Boards must comply with the requirements to keep and electronically post meeting minutes consistent with Section 92-9.
- The quorum requirements in Section 92-15 must be met for all meetings.

If a board has the staffing, technological and other resources to hold a secure video-teleconference (i.e., video and audio), it must in good faith attempt to provide the public with the opportunity to observe the meeting as it happens and an opportunity to provide oral testimony. No board action shall be invalid if the board's good faith efforts to implement remote technology for public observations and comments do not work.

If a board does not have the staffing, technological or other resources to hold a secure video-teleconference (i.e., it is limited to audio only), it must provide the public with the opportunity to listen to the teleconference as it happens and should make a good faith effort to provide the public with the opportunity to provide oral testimony.

Boards are encouraged to consider the following guidelines:

- Board members should be clearly visible and/or audible consistent with the remote technology used by the board.

## EXHIBIT F

- At the start of all meetings, the presiding officer should announce the names of the participating members.
- For audio-only teleconferencing, each speaker should repeat their name before making remarks.
- Votes should be conducted by roll call so that it is clear how each board member voted.
- To preserve the executive nature of any portion of a meeting closed to the public, the presiding officer should confirm with staff that no unauthorized person is present and has access to the executive session.
- When resources exist to readily do so, boards should record meetings and make the recordings electronically available to the public as soon as practicable after a meeting.

Notwithstanding the above, board meetings whose agendas have already been noticed as of the date of this Proclamation may proceed under the provisions of the Sixth Supplemental Emergency Proclamation.

Chapter 92F, HRS, **uniform information practices act**, and Chapters 71 and 73, Title 2 of the Hawaii Administrative Rules, are suspended to the extent they contain any deadlines for agencies, including deadlines for the OIP, relating to requests for government records and/or complaints to OIP. As resources permit, agencies are encouraged to respond to requests for government records (UIPA Requests). To balance the needs of the public with the resources available to government agencies during the COVID-19 crisis, agencies must comply with the following minimum requirements:

- Agencies must acknowledge receipt of UIPA Requests. If a request is not acknowledged, the requester may ask the Office of Information Practices to verify that the agency received the UIPA Request.
- Agencies must retain UIPA Requests and may not destroy requested records while a UIPA Request is pending.
- As resources permit, agencies shall in good faith:
  - respond to UIPA Requests for information that do not require redaction or substantial review of records without substantial delay; and
  - prioritize responding to UIPA Requests made in the public interest where the requestor has the primary intent and actual ability to widely disseminate the requested information to the general public.

## **EXHIBIT F**

- Requests for government records not answered during the emergency relief period must be answered in a reasonable period of time when the suspension of laws is lifted.

RULES RELATING TO  
SAFETY GUIDELINES FOR  
BARBERS AND BEAUTY  
OPERATORS

- §1 Purpose and authority
- §2 Social distancing
- §3 Definitions
- §4 Barber shops and beauty shops; sanitation
- §5 COVID-19 infection mitigation and social distancing;  
preopening and ongoing safety protocol
- §6 Closures

§1 Purpose and authority. These rules are adopted pursuant to sections 127A-12, 13, 25, 29, and 31, Hawaii Revised Statutes, to respond to the COVID-19 emergency declared by the Governor, specifically to enable Hawaii licensed barbers and beauty operators to perform services while complying with social distancing guidelines. These rules have the force and effect of law.

§2 Social distancing. The barber or beauty operator shall take every reasonable precaution to operate in compliance with all orders and social distancing guidelines relating to the COVID-19 emergency.

§3 Definitions.

"Department" means Department of Commerce and Consumer Affairs.

"Disinfection" means the process that eliminates many or all pathogenic organisms, except bacterial spores, on inanimate objects.

"Operator" means barber as defined in section 438-1, Hawaii Revised Statutes and beauty operator as defined in section 439-1, Hawaii Revised Statutes.

"Sanitation" means the treatment of a clean surface for the destruction of micro-organisms including pathogens.

"Shop" means all barber shops as defined in section 438-1, Hawaii Revised Statutes and beauty shops as defined in section 439-1, Hawaii Revised Statutes.

"State" means the State of Hawaii.

"Sterilization" means a process that destroys or eliminates all forms of microbial life by physical or chemical methods.

"Ventilation" means the production and maintenance by natural or mechanical means of atmospheric conditions

favorable to health and comfort.

§4 Barber shops and beauty shops; sanitation. (a)  
General sanitation requirements.

- (1) No person shall operate a shop in connection with any other business or dwelling unless there is a partition from the floor to the ceiling, separating the shop from such other business or dwelling. Nothing here shall prohibit the sale of tobacco, newspapers, or shoe shining in shops.
  - (2) No shop shall be used as a living, cooking, or sleeping facility, nor shall any such facility adjoining a shop have a direct opening into such shop.
  - (3) Articles of food and beverages, except water, shall not be sold, kept for sale, or stored in any shop, and shops shall be separated by a tight partition or separate entry from any place where articles of food and beverages are sold, kept for sale, or stored.
  - (4) The walls, floors, ceilings, furniture and fixtures, and all other parts and surfaces of every shop shall be kept clean at all times.
  - (5) Every shop shall be kept in good repair, and shall be properly and adequately lighted and ventilated.
  - (6) Every shop shall be provided with adequate sanitary facilities, including toilets, hot and cold running water, and sinks or wash basins. Plumbing shall comply with the applicable county plumbing code. Toilets shall be located in suitably and properly ventilated toilet rooms with self-closing doors.
- (b) Sanitary practice requirements.
- (1) No operator shall use in any shop any astringent in lump or styptic pencil form, sponge, lump alum, powder puff, neck duster, shaving brush, or shaving mug on a customer.
  - (2) No operator shall stop the flow of blood by using alum or other material unless applied in liquid form or in powdered form applied with a clean towel.
  - (3) No operator shall use razors, shears, scissors, clippers, tweezers, finger bowls, or combs, or

any like article on any customer unless the item has been thoroughly cleaned and disinfected since last used. All such instruments shall be thoroughly cleaned and disinfected by a method recommended by the Centers for Disease Control and Prevention, the Environmental Protection Agency, and/or the Occupational Safety and Health Administration. After disinfecting, instruments shall be stored in a manner to prevent contamination, or be disinfected again immediately before re-use. All disinfectants shall be approved by the Environmental Protection Agency.

- (4) No operator shall remove or attempt to remove any wart, mole, pimple, ingrown hair, or undertake any like treatment unless properly trained in medical science. Cleaning of ears is prohibited.
- (5) Every operator shall wash his or her hands thoroughly with soap and hot water and dry his or her hands with sanitary towels or hand drying devices immediately before attending any person, and shall wear at all times a clean uniform or outer coat or apron.
- (6) Towels or other fabrics that come in contact with the skin or hair of a customer shall not be used on more than one customer without being laundered in an acceptable manner or subjected to a sterilizing process approved by the Center for Disease Control and Prevention before again being used on a customer.
- (7) Prior to serving any customer, the headrest of any chair to be used by said customer shall be properly disinfected and covered with a clean towel or a clean sheet of paper.
- (8) All towels and other linens used in any shop shall be kept in a closed cabinet at all times when not in use.
- (9) All creams, tonics, cosmetics, and other applications used for customers shall be kept in clean closed containers.
- (10) A clean strip of cotton, towel, or paper band shall be placed around the neck of each customer served, so that at no time will hair, cloth, or cape come in contact with the neck or skin on the

customer.

- (11) No person shall commit any insanitary practice or act in a shop sink or wash basin, such as brushing teeth, expectorating, or gargling.

§5 COVID-19 infection mitigation and social distancing; preopening and ongoing safety protocol.

(a) Preopening safety protocols.

- (1) Thoroughly clean and disinfect all fixtures, furnishings, equipment, doorways, work stations, and restrooms. Check and replace various filters such as heating, ventilation, air conditioning, and hair dryers. Disinfectants shall be EPA-registered and labeled as bactericidal, virucidal and fungicidal.
- (2) Evaluate the layout and arrange seats at least six feet apart. Consider adding spacing between booths, shampoo sinks, divider shields, sneeze shields, and/or alternative work schedules to accomplish this. Consider using the front and rear doorways to establish one-way traffic through the shop. Remove items such as candy dishes, self-serve coffee, product samples, magazines, and paper reading products from the common area.
- (3) Have hand sanitizer available for all employees and clients.
- (4) Take inventory of personal protective equipment (PPE), cleaning products, and EPA-registered disinfecting products, and order supplies, if necessary.
- (5) Establish new policies requiring employees to wear a face covering as described and recommended by the CDC at all times when in the shop, except while eating or drinking in a break room. Salons may consider providing face coverings to clients. Clients should wear a face covering as described and recommended by the CDC to the extent possible while receiving services.
- (6) Establish new schedules of employees and appointment policies to minimize the risk of overcrowding inside the shop. There should be no more than ten people in the shop at any time

including staff, provided the six-foot social distancing requirements are met. These policies shall be in writing and shall be posted to advise the public of the new policies.

- (7) Shop owners shall provide training, educational materials, and reinforcement on proper sanitation, hand-washing, cough and sneeze etiquette, and shall ensure that breakrooms are thoroughly cleaned and sanitized and not used for congregating by employees.
- (b) Ongoing Safety Considerations After Opening
  - (1) Consider seeing clients by appointment only. Limit the number of persons in the waiting area of the shop. It is recommended that clients wait outside the shop until the operator is ready to serve them.
  - (2) The use of a face covering as described and recommended by the CDC is mandatory for all employees at all times while in the shop. Placing a clean towel over the face of the client while at the sink is a good way to protect their mouth, nose and eyes. Minimize to the greatest degree possible, up-close, direct face-to-face contact with clients.
  - (3) Before and after each client, require staff to wash hands with soap and water for at least 20 seconds; properly clean and disinfect all workstations, shampoo, manicure and pedicure bowls, implements, and tools; ensure single use and porous items, such as disposable capes or cardboard nail files, are new; and follow manufacturer's requirements for product use, formulations, and/or disposal. Consider placing paper drapes or laundered towels on chairs.
  - (4) Employees should frequently wash their hands after using the phones, computer, cash register or credit card machine. Wipe all surfaces between each use.
  - (5) Advise employees and clients to stay at home if they are not feeling well. Consider pre-screening clients and ask if they have traveled outside the county or experienced any COVID-19 symptoms in the past 14 days. Decline services

- for any client that answers yes.
- (6) Discontinue the practice of physical social greetings, such as hugs or handshakes.
  - (c) Any Operator who contracts COVID-19 or any other contagious or infectious disease in a communicable form shall not attend any person in any shop, nor shall any person afflicted with such disease in communicable form receive any treatment in any such establishment. Any operator afflicted with any such disease shall return to work in a shop only upon a written statement from a physician that it is safe for him or her to return to work.

§6 Closures. Upon inspection, if any shop is found in violation of these rules, it may be closed immediately by public health officials or by the Department.

RULES RELATING TO  
MORTUARIES, CEMETERIES, EMBALMERS, UNDERTAKERS  
AND MORTUARY AUTHORITIES

- §1 Purpose and Authority
- §2 Prohibition on transporting a body to residences and other places
- §3 Definitions
- §4 Criminal Penalties

§1 Purpose and Authority. These rules are adopted pursuant to section 127A-12, 13, 25, 29, and 31, Hawaii Revised Statutes, to respond to the COVID-19 emergency declared by the Governor and have the full force and effect of law. The following are necessary to enable the Department of Health to effectively prohibit gatherings to view a decedent's body outside of mortuaries and cemeteries governed by Hawaii Administrative Rules, Title 11, Chapter 22. To the extent anything in these rules conflicts with Title 11, Chapter 22, these rules shall control during the emergency period.

§2 Prohibition on transporting a body to residences and other places. Any cemetery, cemetery authority, mortuary, mortuary authority, or person engaged in the provision of funeral services or who embalms bodies is prohibited from transporting a body to a residence or any other location, unless it is the location of burial authorized by law.

§3 Definitions.

"Cemetery" means a place dedicated to and used or intended to be used for the permanent interment of human remains. It may be either a burial park, for earth interment; a mausoleum; for vault or crypt interments; a structure or place used or intended to be used for the interment of cremated remains; or any combination of one or more thereof.

"Cemetery or authority" means any person who undertakes to establish, maintain, manage, operate, improve, or conduct a cemetery, the interring of human remains, or the care, preservation, and embellishment of cemetery property, whether or not the person undertakes such activity for profit.

## EXHIBIT H

"Embalm" means the injection of fluid or agent of sufficient strength and quantity to accomplish a thorough disinfection and preservation of a dead human body, the fluid or agent being injected arterially in addition to cavity injection.

"Funeral services" means arranging for or providing for pick-up of human remains, embalming, placing the same on display, or otherwise providing for final disposition of human remains.

"Mortuary" means any business providing funeral services.

"Mortuary authority" means any person who undertakes to establish, maintain, manage, operate, or conduct funeral services, regardless as to whether the person undertakes such activity for profit.

§4 Criminal Penalties. (a) Any person violating any of these rules shall be guilty of a misdemeanor and upon conviction, the person shall be fined not more than \$5,000, or imprisoned not more than one year, or both.

(b) Penalties prescribed by these rules are in addition to any other lawful penalties established by law.

IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT

STATE OF HAWAI'I

Electronically Filed  
FIFTH CIRCUIT  
50 CV-20-000091  
08-OCT-2020  
05:44 PM

FOR OUR RIGHTS, a Hawai'i corporation,  
Diana Lomma, David R. Hamman, Randi  
Hamman, Janet Eisenbach, Levana Lomma  
Keikaika, Lawrence K. Paille, GERALYN  
Schulkind, Leonard Shulkind, Daniel Hashimoto,  
Christina Cole, Francesca Woolger, Na'ea  
Lindsey, Michael Mazzone, Lanette J. Harley, and  
Lorraine L. Patch.

Plaintiffs,

vs.

DAVID IGE, in his official capacity as Governor  
of the State of Hawai'i; CLARE E. CONNORS,  
in her official capacity as Attorney General for  
the State of Hawai'i, and STATE OF HAWAI'I,

Defendants.

CIVIL NO. 5CCV-20-000091  
(OTHER CIVIL ACTION)

NOTICE OF MOTION

DATE: November 17, 2020

TIME: 1:30 p.m.

JUDGE: The Honorable  
Kathleen N.A. Watanabe

No Trial Date Set

**NOTICE OF MOTION**

TO: MARC J. VICTOR, Esq.  
JODY L. BROADDUS, Esq.  
Attorneys for Freedom Law Firm  
1003 Bishop Street, Suite 1260  
Pauahi Tower  
Honolulu, Hawai'i 96813  
Attorney for Plaintiffs

Notice is hereby given that the foregoing motion shall come on for hearing before the  
Honorable Kathleen N.A. Watanabe of the above-entitled Court, in her Courtroom at the  
Puuhonua Kaulike Building, 3970 Kaana Street, Lihue, Hawai'i 96766 (or subject to stipulation

by the parties and leave of Court, as appropriate, by videoconference and/or teleconference), at 1:30 p.m. on November 17, 2020, or as soon thereafter as counsel can be heard.

DATED: Honolulu, Hawai‘i, October 8, 2020.

*/s/ Craig Y. Iha*

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DAVID D. DAY  
NICHOLAS M. MCLEAN  
EWAN C. RAYNOR  
CHRISTOPHER J. LEONG  
CRAIG Y. IHA  
Deputy Attorneys General

Attorneys for Defendants  
DAVID IGE, in his official capacity  
as Governor of the State of Hawai‘i,  
CLARE E. CONNORS, in her official  
capacity as Attorney General for the State of  
Hawai‘i, and STATE OF HAWAI‘I

IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT

STATE OF HAWAI'I

FOR OUR RIGHTS, a Hawai'i corporation,  
Diana Lomma, David R. Hamman, Randi  
Hamman, Janet Eisenbach, Levana Lomma  
Keikaika, Lawrence K. Paille, GERALYN  
Schulkind, Leonard Shulkind, Daniel Hashimoto,  
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the State of Hawai'i, and STATE OF HAWAI'I,

Defendants.

CIVIL NO. 5CCV-20-000091  
(OTHER CIVIL ACTION)

CERTIFICATE OF SERVICE

**Electronically Filed**  
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**5CCV-20-000091**  
**08-OCT-2020**  
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**CERTIFICATE OF SERVICE**

I certify that the above document was served electronically through the Court's JEFS  
system upon the following on the date indicated below:

MARC J. VICTOR, Esq.  
[Marc@AttorneysForFreedom.com](mailto:Marc@AttorneysForFreedom.com)  
JODY L. BROADDUS, Esq.  
[Jody@AttorneysForFreedom.com](mailto:Jody@AttorneysForFreedom.com)  
Attorneys for Freedom Law Firm  
1003 Bishop Street, Suite 1260  
Pauahi Tower  
Honolulu, Hawai'i 96813  
Attorneys for Plaintiffs

DATED: Honolulu, Hawai‘i, October 8, 2020.

/s/Craig Y. Iha

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DAVID D. DAY  
NICHOLAS M. MCLEAN  
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