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**Electronically Filed**

**THIRD CIRCUIT**

**3CCV-23-0000302**

**06-MAR-2024**

**11:57 PM**

**Dkt. 117 REPLY**

Attorneys for Defendants

HAWAIIAN PARADISE PARK OWNERS

ASSOCIATION, KARIN HOFFMAN,

and JEFFREY FINLEY

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

NICOLE CRAIG, as an individual and as  
Trustee of the Revocable Living Trust of  
Nicole L. Craig, and ROES 1-50,  
inclusive,

Plaintiff,

vs.

HAWAIIAN PARADISE PARK  
OWNERS ASSOCIATION, a Hawai'i  
nonprofit corporation, KARIN  
HOFFMAN, as an individual and HPPOA  
Director, JEFFREY FINLEY, as an  
individual and HPPOA Director, and  
DOES 1-50, inclusive and DOES 1-20;  
inclusive,

Defendants.

Civil No. 3CCV-23-0000302 (Hilo Division)  
(Declaratory Judgment)

DEFENDANTS HAWAIIAN PARADISE PARK  
OWNERS ASSOCIATION, KARIN HOFFMAN,  
and JEFFREY FINLEY'S REPLY IN SUPPORT  
OF THEIR MOTION FOR PROTECTIVE  
ORDER; DECLARATION OF COUNSEL;  
EXHIBITS M – O; CERTIFICATE OF SERVICE

**MOTION HEARING**

Date: March 11, 2024

Time: 8:00 a.m.

Judge: Hon. Henry T. Nakamoto

TRIAL DATE: January 27, 2025

JUDGE: Hon. Henry T. Nakamoto

638-050

**DEFENDANTS HAWAIIAN PARADISE PARK OWNERS ASSOCIATION,  
KARIN HOFFMAN, and JEFFREY FINLEY'S REPLY IN SUPPORT  
OF THEIR MOTION FOR PROTECTIVE ORDER**

HAWAIIAN PARADISE PARK OWNERS ASSOCIATION, KARIN HOFFMAN, and JEFFREY FINLEY (hereinafter collectively “Defendants”), by and through their attorneys, Roeca Luria Shin LLP, hereby respectfully submit this reply in support of their Motion.

Plaintiff mentioned, but did not address *Brende’s* balancing test favoring the issuance of a protective order. Also, Plaintiff stated on page 12 of her Opposition, “it is in the public interest to permit the disclosure of facts obtained in this case to the public, including the over 8,000 members of HPPOA.” Plaintiff presented no valid argument for opposing the issuance of a protective order; in fact, she all but admitted she intends to distribute information and documents she obtains in discovery, which should eliminate all doubt for the Court that a protective order is necessary to protect the integrity of these proceedings, especially the jury who will hear this case.

## **I. DISCUSSION**

### **a. What Is No Longer In Dispute.**

Plaintiff did not object to authority presented by Defendant in the Motion that:

- 1) There is no common law right of public access to unfiled discovery [Motion, Dkt. 105, pp. 8-9];
- 2) Plaintiff has no First Amendment right to disclose nonpublic information and documents she would not have received but for the discovery process [Motion, pp. 9-11];
- 3) *Brende’s* balancing test favors the issuance of a protective order [Motion, pp. 14-15];
- 4) Plaintiff’s access to information and documents will not be restricted by the proposed protective order [Motion, p. 15]; and

- 5) The proposed protective order will not prevent Plaintiff from disclosing information and documents already in the public domain or nonpublic information obtained outside of the discovery process [Motion, p. 15].

Accordingly, these matters can now be considered settled in Defendants' favor.

**b. What Remains In Dispute.**

Plaintiff objected to authority presented by Defendant in the Motion that:

- 1) Protecting the integrity of these proceedings constitutes good cause for the issuance of a protective order [Motion, pp. 11-12];
- 2) The proposed protective order is narrow in scope [Motion, p. 15]; and
- 3) Uncontrolled disclosure of nonpublic information and documents will threaten the trial process [Motion, p. 17].

**c. Protecting the Integrity of these Proceedings Constitutes Good Cause for the Issuance of a Protective Order.**

The bulk of Plaintiff's opposition is focused on Defendant Jeff Finley's (Defendant HPPOA's Vice President) responses to the very speculation and misinformation being spread (oftentimes highly uncivil) online that the Motion is trying to mitigate by keeping non-public information and documents non-public. Rather than presenting any authority that protecting the integrity of judicial proceedings *does not* constitute good cause for issuing a protective order, Plaintiff instead engages in a "he said – she said" monologue while arguing her case in footnotes. Yet, Plaintiff's focus on Mr. Finley's defense of himself online is precisely why a protective order is needed. *More fuel should not be added to the fire.* What American journalist and author Douglas Preston said about the Internet is entirely applicable here:

Never in human history has a system developed like the Internet, which allows for the free rein of our punishing instincts with no checks or balances, no moderation, and no accountability, and conducted with complete anonymity. ***On the Internet, any assertion, no matter how false, remains forever. It is a process that is horrendously unfair.***

[ ] In these cybergroups, all are self- selected punishers. Dissenters are blocked and nonconforming opinions deleted. The accused is dehumanized. A toxic feedback loop of highly filtered information transforms the group into a cybermob not unlike the medieval witch hunts of Europe or lynch mobs in the American South... ***The ugliness on the Internet is not white noise. It lasts forever. It cannot be ignored. It causes terrible things to happen in the real world.*** The Internet is a place where our darkest evolutionary biology runs riot.

In a way, I believe this is one of the most important articles I've written. The Internet has become one of the central pillars of our lives, and its dark underbelly has only gotten worse, a charnel house of anonymous trolling, abuse, ***lies, hate, conspiracy think, and cruelty that destroys lives, undermines democracy, incites toxic tribalism, and damages trust in America's fundamental institutions.***

Douglas Preston, THE LOST TOMB 218-219 (2023) (emphasis added). In prolifically quoting Defendant Finley's online efforts to defend himself against oftentimes very personal and incredibly uncivil attacks, Plaintiff essentially argues *not* that good cause doesn't exist to protect the integrity of these proceedings, but rather, "what is good for the goose is good for the gander."

Then so be it. *It is so important to protect the integrity of these proceedings* that Defendants would also agree to be bound by the same terms and conditions in the proposed SPO [Motion, Dkt. 105, Exh. C]. Attached as Exhibit "M" is a revised proposed SPO showing deletions in red strikethrough and additions in blue underline to bind Defendants to the same terms as Plaintiff, not that Defendants ever intended to publicize any non-public information about Plaintiff obtained through discovery.

**d. The Proposed Protective Order is Narrow In Scope and Uses Common Sense to Determine What is Public and What is Non-Public.**

Plaintiff argues beginning on page 14 of her Opposition that Defendants cannot be trusted to determine what is public information and documents and what is non-public. Plaintiff's

argument is based on her improperly equating access to information with that information being public.

The way to determine whether a document in this case is public is simple and based on common sense. It is if it's already in the public domain, then it's public. If it's not already in the public domain, it is non- public.

Plaintiff conflates access to documents with them being public. For example, Plaintiff argues on page 15 of her Opposition that Defendant HPPOA has not provided certain financial information "because they have not yet been made public." An HOA member may have a statutory path to *access* the HOA's financial information, but that does not automatically make the information public for everyone because the HOA member only has access by virtue of their status as a member. Likewise, as this case progresses, there will undoubtedly be information and documents requested that Plaintiff would not be entitled to were she not suing Defendant; but the fact that her lawsuit is public record does not make unfiled discovery public. *See* the unopposed discussion in Motion titled, "Plaintiff Has No First Amendment Right to Disclose Nonpublic Information and Documents She Would Not Have Received But For the Discovery Process [Motion, Dkt. 105, pp. 9-11].

Plaintiff's conflation of access equaling public domain demonstrates she isn't satisfied with Defendants using such a commonsense way to evaluate whether documents are public. In that case, perhaps she would be more satisfied with a neutral discovery master being appointed in this case to make those calls.

**i. Plaintiff is Estopped from Arguing HRS Chapter 421J Provide Her With a Statutory Right to Non-Public Information and Documents.**

Plaintiff argues on page 15 of her Opposition that HRS Chapter 421J requires a homeowner's association to provide certain documents upon request. She wrote, "HRS 421J

requires the Association to provide contracts and invoices to any member upon request.” Again, a statutory right to request documents does not mean those documents are public domain; only that the individual has a right of access to them.

Notwithstanding Plaintiff’s confusion and conflation over access versus public domain, Plaintiff is estopped from arguing that HRS Chapter 421J provides her with a right to obtain such documents because she alleged in Paragraph 89 of her Complaint [Dkt. 1] that “Defendant HPPOA does not meet the conditions and definitions of a ‘planned community association’ under HRS 421J.” “It is well established that a party’s factual allegation in a complaint or other pleading is a judicial admission which binds the party.” *Lee v. Puamana Cmty. Ass’n*, 109 Haw. 561, 573, 128 P.3d 874, 886 (2006) (citing *Int’l Brotherhood. of Elec. Workers, Local 1357 v. Hawaiian Tel. Co.*, 68 Haw. 316, 320 n. 2, 713 P.2d 943, 949 n. 2 (1986)). After alleging that HRS Chapter 421J does not apply to Defendant HPPOA in her Complaint, Plaintiff cannot now take the opposite position in her Opposition and argue she is entitled to relief under Chapter 421J.

**e. Uncontrolled Disclosure of Nonpublic Information and Documents Will Threaten the Trial Process. Plaintiff Indicated Her Intent To Do That.**

Plaintiff has all but admitted beginning on page 12 of her Opposition that she intends to publicly share the nonpublic information and documents she obtains in discovery. She argues that “it is in the public interest to permit the disclosure of facts obtained in this case to the public, including the over 8,000 members of HPPOA.” Opposition, p. 12. In other words, there is no dispute that Plaintiff intends to try her case in the court of public opinion instead of this court of law. Plaintiff “must not be allowed to divert the trial from the very purpose of a court system to adjudicate controversies [ ] *in the calmness and solemnity of the courtroom* according to legal

procedures. Among these legal procedures is the requirement that *the jury's verdict be based on evidence received in open court, not from outside sources.*" *Sheppard v. Maxwell*, 384 U.S. 333, 350–51(1966) (emphasis added).

Plaintiff has also stated, "Lawyers are held to a higher standard in this regard because since [sic] their statements are likely to be received as especially authoritative. Plaintiff has no such authoritative status, and should not be subject to anything less or anything more." Opposition, p. 11 (quotations and citation omitted).

This is concerning and very troubling. Plaintiff indicated her intent to try this case in the court of public opinion before her trial date, without concern for polluting the jury pool, but said she "has no such authoritative status." *Plaintiff is an officer of the court.* Not an officer of this particular court, but an officer of the court nonetheless. Plaintiff is an active licensed attorney in California first admitted in 1996, Bar ID 185006. As a member of a state's bar for nearly thirty years, she should have respect for the judiciary and conservation of its resources, and should have respect for the integrity of the trial process and not taint it by openly signaling intent to try this case in the court of public opinion. For her to argue that "Plaintiff has no such authoritative status," especially when she indicated that she is working with other potential plaintiffs [Opposition, p. 14) is disingenuous and concerning. Plaintiff knows better. Perhaps *this* court may not be able to hold Plaintiff to a higher standard (or perhaps it could under the inherent powers doctrine), but Plaintiff should recognize that the ethics of the legal profession as well as reverence for the judicial system by virtue of her chosen profession morally hold her to that higher standard she cited.

- f. Defendants Have Already Provided Plaintiff With Responsive Public Information, and Have Been and Continue to Try to Work With Plaintiff to Avoid Unnecessarily Using the Court's Limited Resources.**

Finally, Plaintiff alleged on page 4 of her Opposition that Defendants should have known since August 2023 that they would have needed a protective order. Plaintiff's allegation is misleading because she eliminates some very important points on the timeline she presented. Plaintiff states she withdrew her first discovery request on October 16, 2023. The Court will recall that there was Defendant's Motion to Dismiss [Dkt. 22] scheduled to be heard on October 27. What followed was a scheduling conference on November 1. There were no open discovery requests at that time, and the online rancor was not as pervasive or toxic back then as it became after the Motion for Summary Judgment was denied. There was no need to discuss the need for a protective order back then. When Plaintiff served her discovery request in December, that is when the conversation about the need for a protective order appropriately began.

Since then, Defendants have attempted to work in good faith with Plaintiff despite her resistance. *See* Motion Exhibits B, E, and F. Since the filing of this Motion, Defendants have continued to try to work with Plaintiff and avoid a hearing on this matter. *See* correspondence to Plaintiff dated February 6, 2024, attached as Exhibit "N" ("I continue to remain optimistic that we can reach agreement on the stipulated protective order and that we can avoid costly and time-consuming motions practice and avoid consuming the Court's limited resources. If you will agree to the stipulated protective order, I will withdraw Defendants' motion and work with Defendants to provide you with both public and non-public information responsive to your First Request for Answers to Interrogatories as soon as practical.") *See also* correspondence to Plaintiff dated February 20, 2022, attached as Exhibit "O" (Transmitting in good faith public responses to Plaintiff's First Set of Interrogatories and stating, "You do not have to turn everything into a fight. I would like to ask you once again to please reconsider your opposition to



the proposed stipulated protective order for the reasons provided you in previous correspondence, including my latest correspondence dated February 6. Thank you.”

**g. The Court Should Not Grant the Affirmative Relief Plaintiff Seeks in Her Opposition.**

Plaintiff argues on page 4 of her Opposition that Defendant has waived objections. Waiver of objection is not automatic by operation because it functions as a sanction, which only the Court can grant. Plaintiff has not made any such motion. Further, Hawai‘i courts would generally issue sanctions for a complete failure to respond to interrogatories. “Generally, Rule 37(b) sanctions are only warranted where a court order for discovery has been violated. However, sanctions are allowed under Rule 37(d) ‘against a party for a complete failure to respond to ... interrogatories[.]’” *Azer v. Courthouse Racquetball Corp.*, 9 Haw. App. 530, 542, 852 P.2d 75, 83 (1993) (quoting 8 C. Wright and A. Miller, *FEDERAL PRACTICE AND PROCEDURE: CIVIL* § 2282, at 757 (1970)). Here, a motion is still pending and hasn’t been settled.

Plaintiff also requests this Court to order Defendants to respond to the non-public portion of her discovery request by March 17. Defendants will commit to providing responses to Plaintiff within fifteen (15) calendar days of the entry of an order, regardless of the outcome.

**II. CONCLUSION**

In conclusion, the protective order Defendants seek is narrow, its separation of public and non-public information and documents is commonsense, and Plaintiff does not dispute that *Brende’s* balancing tips in favor of granting the Motion. Plaintiff will not be prejudiced by the proposed protective order; Plaintiff will not be limited in her ability to request information and documents; Plaintiff will have full use of nonpublic information and documents to prepare for

trial and use at trial; these proceedings will benefit immensely through orderly administration of this case; and the integrity of proceedings will be protected, especially the factfinding function of the jury. For the reasons and authority above and in this Reply, Defendants respectfully request that the Court GRANT this Motion and approve of the narrowly-tailored, limited-scope *revised* proposed protective order attached as Exhibit M.

DATED: Honolulu, Hawai‘i, March 6, 2024.

/s/ Barron T. Oda  
JAMES SHIN  
JAMES R. FERGUSON  
BARRON T. ODA  
Attorneys for Defendants  
HAWAIIAN PARADISE PARK OWNERS  
ASSOCIATION, KARIN HOFFMAN,  
and JEFFREY FINLEY

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

NICOLE CRAIG, as an individual and as  
Trustee of the Revocable Living Trust of  
Nicole L. Craig, and ROES 1-50,  
inclusive,

Plaintiff,

vs.

HAWAIIAN PARADISE PARK  
OWNERS ASSOCIATION, a Hawai'i  
nonprofit corporation, KARIN  
HOFFMAN, as an individual and HPPOA  
Director, JEFFREY FINLEY, as an  
individual and HPPOA Director, and  
DOES 1-50, inclusive and DOES 1-20;  
inclusive,

Defendants.

Civil No. 3CCV-23-0000302 (Hilo Division)  
(Declaratory Judgment)

DECLARATION OF COUNSEL

638-050

**DECLARATION OF COUNSEL**

I, Barron T. Oda, under penalty of perjury, declare as follows:

1. I am an attorney with the law firm of Roeca Luria Shin LLP, and I am licensed to practice law in all courts in the State of Hawaii.
2. I am one of the attorneys representing Defendants HAWAIIAN PARADISE PARK OWNERS, ASSOCIATION, KARIN HOFFMAN, and JEFFREY FINLEY (“hereinafter collectively Defendants”) in the above-captioned matter.
3. Attached as Exhibit M is a true and correct *revised* copy of a proposed stipulated protective order applying the terms and conditions equally to both Plaintiff and Defendants. I drafted Exhibit M.

4. Attached as Exhibit N is a true and correct copy of correspondence I drafted to Plaintiff dated February 6, 2024 concerning her request for public responses to her discovery request, and again asking her to reconsider her position on the stipulated protective order.

5. Attached as Exhibit O is a true and correct copy of correspondence I drafted to Plaintiff dated February 20, 2024 transmitting public responses to her discovery request, and again asking her to reconsider her position on the stipulated protective order.

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

DATED: Honolulu, Hawai'i, March 6, 2024.

/s/ Barron T. Oda  
BARRON T. ODA

Of Counsel:

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HAWAIIAN PARADISE PARK OWNERS

ASSOCIATION, KARIN HOFFMAN

and JEFFREY FINLEY

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

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NICOLE CRAIG, as an individual and as  
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HOFFMAN, as an individual and HPPOA  
Director, JEFFREY FINLEY, as an  
individual and HPPOA Director, and  
DOES 1-50, inclusive and DOES 1-20;  
inclusive,

Defendants.

Civil No. 3CCV-23-0000302 (Hilo Division)  
(Declaratory Judgment)

STIPULATED PROTECTIVE ORDER

## **STIPULATED PROTECTIVE ORDER**

It being represented to the Court that the Plaintiff NICOLE CRAIG (“Plaintiff”) has requested information and documents from the defendants, HAWAIIAN PARADISE PARK OWNERS ASSOCIATION, KARIN HOFFMAN, AND JEFFREY FINLEY (“Defendants”);

It being represented to the Court that as this litigation progresses, the parties may request non-public information and documents ~~may be requested by Plaintiff~~ from each other;

It being represented to the Court that this case has resulted in a tremendous amount of speculation and misinformation being disseminated online;

It being represented to the Court that it is in the interests of the orderly administration of this litigation to maintain the confidentiality non-public information and documents produced in discovery to prevent fueling of further speculation and misinformation being disseminated online;

It being represented to the Court that Defendants are willing to provide information and documents requested by Plaintiff only under a Protective Order upon the hereinafter stated terms and conditions, and will themselves observe the same terms; and

It being represented to the Court that all of the parties are in agreement as to the terms of the said Protective Order and stipulate to its entry; therefore,

It is hereby ORDERED that:

1. ~~Defendants~~ The parties will disclose documents that ~~it designates~~ they designate “Confidential” to ~~the Plaintiff~~ each other, only pursuant to this Order and under the conditions that follow.

2. Any and all of the aforesaid materials disclosed by ~~Defendants~~ either party and the contents thereof shall not be disclosed to any person other than: ~~Plaintiff~~ the parties

themselves, their legal counsel, consultants or expert witnesses (pursuant to the terms of paragraph 5 below), the Court, Court personnel, court reporters and witnesses. The aforesaid materials shall not be photocopied or reproduced by any means without the prior consent of ~~counsel for Defendants~~the disclosing party or until further order of this Court.

3. Any and all of the aforesaid materials disclosed by ~~Defendants~~the parties and the contents thereof shall be used only in connection with the above-captioned matter and shall not be used for any other purpose whatsoever.

4. No person who examines any document produced pursuant to this order shall disseminate orally, in writing, or by any other means, the document(s) or the information contained therein, to any person not also authorized to examine documents under the terms of this order.

5. Plaintiff and counsel for Defendants may permit ~~an~~their expert or experts hired by the Plaintiff or other parties in the above-captioned litigation to review the documents subject to this Protective Order, but Plaintiff and counsel for Defendants must first obtain from said experts a written statement confirming the expert's agreement to comply with every element of this Protective Order. Said experts shall agree that the documents and the contents thereof shall not be disclosed to any other person or entity and said documents shall not be photocopied or reproduced by any means. Any documents provided to experts must be returned to Defendants and all electronic copies of such documents permanently deleted within thirty (30) days of the conclusion of the above-captioned litigation pursuant to the terms of paragraph 8 below.

6. Notwithstanding the foregoing provisions, this Order shall be without prejudice to the right of any party to challenge the propriety of discovery on any grounds including, but not limited to, relevance, privilege and materiality.

7. Notwithstanding the foregoing provisions, this Order shall not restrict in any manner the right of any party to offer or use as evidence at the trial of this action any of the documents subject to this Protective Order and nothing contained herein shall be construed as a waiver of any objection which might be raised as to the admissibility of any evidentiary material.

8. At the conclusion of this lawsuit by settlement, a jury verdict, nonsuit, dismissal, by judgment order or otherwise, all Defendants materials, including any and all copies, or renditions made from the materials, shall be returned to Defendants and all electronic copies of such materials permanently deleted within thirty (30) days.

9. A breach of the terms of this Order shall entitle Defendants to seek appropriate judicial remedies, including but not limited to attorneys' fees and costs incurred in the enforcement of this Order.

DATED: Hilo, Hawai'i, \_\_\_\_\_.

\_\_\_\_\_  
JUDGE OF THE ABOVE-ENTITLED COURT

Agreed as to the terms and conditions:

\_\_\_\_\_  
NICOLE CRAIG  
Plaintiff

\_\_\_\_\_  
JAMES R. FERGUSON, ESQ.  
BARRON T. ODA, ESQ.  
Attorneys for Defendant  
HAWAIIAN PARADISE PARK OWNER'S ASSOCIATION  
KARIN HOFFMAN



JEFFREY FINLEY

---

**Stipulated Protective Order:** *Nicole Craig v. Hawaiian Paradise Park Owners Association, et al.*  
Civil No. 3CCV-23-0000302, Third Circuit Court, State of Hawai‘i

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February 6, 2024

**Via e-mail to:** [nicole@nicolecraiglaw.com](mailto:nicole@nicolecraiglaw.com)

Nicole Craig  
1057 Cochrane Road  
Suite 160-33  
Morgan Hill, CA 95037

Re: Nicole Craig v. HPPOA *et. al.*  
CCV-23-0000302; Circuit Court of the Third Circuit, State of Hawai'i  
Re: February 2, 2024 Correspondence re Discover

Dear Ms. Craig:

This correspondence responds to your February 2, 2024 request for discovery responses not covered by Defendants' motion for protective order. The motion distinguishes between information and documents that are publicly available (and thus have no disclosure restrictions) and those that are not publicly available and should be protected from disclosure to third parties except for your consultants and experts.

Regarding your request for descriptions of non-public information that would be subject to a protective order, that is now before the Court to decide because Section 1 of the proposed Stipulated Protective Order already provides a process for designating such information.

Regarding your request for publicly available information in the meantime, I would like to make an observation that publicly available information is just as accessible to you as it is to any other member of the public, including Defendants. In the spirit of cooperation, however, Defendants will provide such publicly available information. You asked for it by February 8 and I am sorry I cannot accommodate your preferred date. I can get you the requested information by February 16, which is next week Friday. Between now and Friday, I have two hearings in Federal District Court, two responsive pleadings, one mediation, and I will be on Kaua'i for another case. I will make it my priority to get you publicly available information responsive to your First Request for Answers to Interrogatories.

I would also like to take this opportunity to ask you to reconsider your opposition to the proposed stipulated protective order. The only thing the stipulated protective order prevents you from doing is sharing non-public information and documents with third parties who are not your litigation consultants or experts. That is all. It does not limit your ability to conduct discovery. It

**EXHIBIT N**

does not limit your ability to use nonpublic information and documents obtained in discovery to pursue your case. The stipulated protective order will not hamper your discovery efforts in any way. Unless you were preparing to publish nonpublic information and documents obtained in discovery, the stipulated protective order will not prejudice you at all.

I continue to remain optimistic that we can reach agreement on the stipulated protective order and that we can avoid costly and time-consuming motions practice and avoid consuming the Court's limited resources. If you will agree to the stipulated protective order, I will withdraw Defendants' motion and work with Defendants to provide you with both public and non-public information responsive to your First Request for Answers to Interrogatories as soon as practical. If you have any other concerns about the stipulated protective order besides its limitation on disclosure of nonpublic information and documents to persons other than your consultants and experts, please let me know what they are so that we can work towards a solution if one is available. Mahalo.

Very truly yours,

**ROECA LURIA SHIN LLP**

A Limited Liability Law Partnership

*/s/ Barron T. Oda*

Barron T. Oda

BTO/jv

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February 20, 2024

**Via e-mail to:** [nicole@nicolecraiglaw.com](mailto:nicole@nicolecraiglaw.com)

Nicole Craig

1057 Cochrane Road

Suite 160-33

Morgan Hill, CA 95037

Re: Nicole Craig v. HPPOA *et. al.*

CCV-23-0000302; Circuit Court of the Third Circuit, State of Hawai'i

Re: February 2, 2024 Correspondence re Discovery

Dear Ms. Craig:

Submitted with this letter is *Defendant Hawaiian Paradise Park Owner's Association's First Response of Public Information Only to Plaintiff Nicole Craig's First Set of Interrogatories (Amended) Dated December 4, 2023*. A notary was not available today; my client expects to notarize it tomorrow and I will send it to you via email upon receipt.

This correspondence also responds to your February 20, 2024 reply to my February 16 status update on providing public information responsive to your First Set of Interrogatories. You wrote, "Thanks for the update. However, please note that the responses to interrogatories and request for production are overdue except to those covered by the motion for protective order, and you have therefore waived objections to those responses. I will expect the responses by tomorrow at 5:00 p.m. HST or I will have no other choice than to file a motion to compel."

A copy of this record of correspondence is attached.

I disagree with you that objections have been waived. Any such waiver would operate as a sanction. Neither Hawai'i Rules of Civil Procedure 33 or 37 provide for such a sanction as a matter of course. Such a sanction can only be issued by a court.

Hawai'i courts would generally issue sanctions for a *complete failure to respond to interrogatories*. "Generally, Rule 37(b) sanctions are only warranted where a court order for discovery has been violated. However, sanctions are allowed under Rule 37(d) 'against a party for a complete failure to respond to ... interrogatories[.]'" *Azer v. Courthouse Racquetball Corp.*, 9 Haw. App. 530, 542, 852 P.2d 75, 83 (1993) (*quoting* 8 C. Wright and A. Miller, FEDERAL PRACTICE AND PROCEDURE: CIVIL § 2282, at 757 (1970)). In *Azer v. Courthouse Racquetball Corp.*, the

**EXHIBIT O**

Intermediate Court of Appeals declined to uphold discovery sanctions where the defendants “(1) answered each interrogatory, (2) promised to supplement their responses, and (3) did supplement their responses, albeit tardily and, perhaps, incompletely.” *Id.*, 9 Haw. App. at 545–46, 852 P.2d at 84. Hawai‘i courts would also be reluctant to impose harsh sanctions “in the absence of a showing of bad faith, willfulness, or callous disregard of the rights of other litigants[.]” *W.H. Shipman, Ltd. v. Hawaiian Holiday Macadamia Nut Co.*, 8 Haw. App. 354, 361, 802 P.2d 1203, 1207 (1990). Courts would also review the matter for actual prejudice to the party seeking discovery. *Id.*, 8 Haw. App. At 364, 802 P.2d at 1208.

Here, there has been no complete failure to answer your interrogatories, nor is there any showing of bad faith or callous disregard. HPPOA agreed to provide you with public information responsive to your first set of interrogatories, and I kept you updated on its status and the reason for the delay. From Friday, February 16, to today, excluding the weekend and the President’s Day holiday, a mere six hours have passed since the promised delivery date. Further, there can be no actual prejudice of such a *de minimis* delay, for which good cause exists, and for public information that is equally available to you. Accordingly, your position is unreasonable and if you were to file a motion for sanctions to seek a waiver of objections, it would be untenable.

You do not have to turn everything into a fight. I would like to ask you once again to please reconsider your opposition to the proposed stipulated protective order for the reasons provided you in previous correspondence, including my latest correspondence dated February 8. Thank you.

Very truly yours,

**ROECA LURIA SHIN LLP**

A Limited Liability Law Partnership

/s/ Barron T. Oda

Barron T. Oda

Enclosures:

- Record of correspondence, February 16 – 20, 2024
- Defendant Hawaiian Paradise Park Owner’s Association’s First Response of Public Information Only to Plaintiff Nicole Craig’s First Set of Interrogatories (Amended) Dated December 4, 2023

## Barron Oda

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**From:** NICOLE CRAIG <nicole@nicolecraiglaw.com>  
**Sent:** Tuesday, February 20, 2024 6:28 AM  
**To:** Barron Oda  
**Subject:** Re: Response to Plaintiff's 1RAI - awaiting client approval

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Thanks for the update. However, please note that the responses to interrogatories and request for production are overdue except to those covered by the motion for protective order, and you have therefore waived objections to those responses. I will expect the responses by tomorrow at 5:00 p.m. HST or I will have no other choice than to file a motion to compel.

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**From:** Barron Oda <boda@rlhlaw.com>  
**Sent:** Friday, February 16, 2024 7:34:19 PM  
**To:** NICOLE CRAIG <nicole@nicolecraiglaw.com>  
**Subject:** Response to Plaintiff's 1RAI - awaiting client approval

Good afternoon Ms. Craig,

I don't have the response to your first request for answers to interrogatories just yet, but I wanted to provide you with this status update so that you know it is coming. The response is substantively complete. I am just waiting for client approval and whether a few things were publicly released. I will continue to remain in touch with them and you until it's approved.

Mahalo and have a pleasant holiday weekend,  
Barron

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

NICOLE CRAIG, as an individual and as  
Trustee of the Revocable Living Trust of  
Nicole L. Craig, and ROES 1-50,  
inclusive,

Plaintiff,

vs.

HAWAIIAN PARADISE PARK  
OWNERS ASSOCIATION, a Hawai'i  
nonprofit corporation, KARIN  
HOFFMAN, as an individual and HPPOA  
Director, JEFFREY FINLEY, as an  
individual and HPPOA Director, and  
DOES 1-50, inclusive and DOES 1-20;  
inclusive,

Defendants.

Civil No. 3CCV-23-0000302 (Hilo Division)  
(Declaratory Judgment)

CERTIFICATE OF SERVICE

TRIAL DATE: NONE

JUDGE: Hon. Henry T. Nakamoto

638-050COS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was duly served by  
depositing the same in the United States Mail, postage prepaid [M], hand-delivery [HD],  
facsimile transmission [F], electronic mail [EM], or Judiciary Electronic Filing System [JEFS] to  
the following on March 6, 2024:

NICOLE CRAIG  
1057 Cochrane Road, Suite 160-33  
Morgan Hill, California 95037  
Plaintiff *Pro Se*

[ JEFS ]

DATED: Honolulu, Hawai'i, March 6, 2024.

/s/ Barron T. Oda

JAMES SHIN

JAMES R. FERGUSON

BARRON T. ODA

Attorneys for Defendants  
HAWAIIAN PARADISE PARK OWNERS  
ASSOCIATION, KARIN HOFFMAN,  
and JEFFREY FINLEY