

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

REBECCA MELENDEZ,

Petitioner,

**Electronically Filed
THIRD CIRCUIT
3CCV-25-0000438
27-JUL-2026
10:24 AM
Dkt. 126 REPLY**

v.

KAMEHAMEHA SCHOOLS (BISHOP ESTATE); HAWAII COUNTY PLANNING, JEFF DARROW
IN HIS OFFICIAL CAPACITY AS DIRECTOR; MARISSA HARMAN, IN HER PROFESSIONAL &
OFFICIAL CAPACITY; G70; KAWIKA MCKEAGUE, IN HIS OFFICIAL CAPACITY; JANE DOES 1-
20; DOE ENTITIES 1-20; DOE GOVERNMENT ENTITIES 1-20,

Respondents.

Civil No. 3CCV-25-0000438

(Declaratory Judgment)

PETITIONER'S REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION OF ORDER
GRANTING RESPONDENTS G70 AND KAWIKA MCKEAGUE'S MOTION TO DISMISS [DKT.
111]

CERTIFICATE OF SERVICE

NON-HEARING MOTION

JUDGE: Honorable Kauanoë Jackson

TRIAL DATE: None

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I. INTRODUCTION

Respondents G70 and Kawika McKeague's Memorandum in Opposition [Dkt. 120] mischaracterizes the nature of Petitioner's Motion for Reconsideration [Dkt. 111] and does not refute its substance. The Court's July 10, 2026 Order dismissed fewer than all Respondents and therefore remains subject to revision under HRCP Rule 54(b). Petitioner's Motion, as filed, relies on the legal significance of evidence already in the record -- not new evidence. See Motion page 2. Since the Motion's filing, new evidence has also come to light: a July 16, 2026 letter from Respondent G70, signed by Respondent McKeague, confirming that the FEIS as published omitted required content -- the same omission Petitioner alleged in the First Amended Petition. That letter, fully discussed in Section IV below, did not exist when the Motion to Dismiss was briefed or decided and could not have been raised earlier.

II. THE COURT'S JULY 10, 2026 ORDER REMAINS SUBJECT TO REVISION UNDER HRCP RULE 54(b), AND THE MOTION SATISFIES THE STANDARD GOVERNING RECONSIDERATION

The Court's July 10, 2026 Order dismissed only Respondents G70 and Kawika McKeague. It did not resolve Petitioner's claims against the remaining Respondents, including Kamehameha Schools, the County of Hawai'i Planning Department, Jeff Darrow, and Marissa Harman, and it contains no express determination that there is no just reason for delay. HRCP Rule 54(b) provides:

"When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the

court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties."

Because this action names six categories of Respondents and the July 10, 2026 Order resolved the rights and liabilities of only two of them -- G70 and Mr. McKeague -- the Order falls squarely within Rule 54(b)'s "multiple parties" clause and remains "subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties."

Within that authority, Hawai'i courts look to whether a party presents "new evidence and/or arguments that could not have been presented during the earlier adjudicated motion." *Amfac, Inc. v. Waikiki Beachcomber Inv. Co.*, 74 Haw. 85, 114, 839 P.2d 10, 27 (1992); accord *Ass'n of Apartment Owners of Wailea Elua v. Wailea Resort Co.*, 100 Hawai'i 97, 110, 58 P.3d 608, 621 (2002). This standard may be satisfied by either new evidence or new arguments. The Hawai'i Supreme Court has expressly distinguished Hawai'i practice from federal courts, which bar new legal theories on reconsideration altogether. *Sousaris v. Miller*, 92 Hawai'i 505, 513 n.9, 993 P.2d 539, 547 n.9 (2000) ("[W]e differ from several federal jurisdictions that construe [FRCP] Rule 59(e) ... as an improper vehicle to tender new legal theories for the first time.").

III. THE MOTION MUST BE CONSTRUED ACCORDING TO ITS SUBSTANCE, WHICH ASKS THE COURT TO RECONSIDER ITS LEGAL CONCLUSION—NOT MERELY TO REREAD EXHIBIT B-20

Respondents characterize the Motion as merely asking the Court to "take a longer look" at evidence already before it and argue that "[a] request to reexamine evidence is an admission that the evidence is not new." Opp. at 3. That characterization overlooks the substance of the Motion. The Motion does not simply ask the Court to revisit Exhibit B-20 or reweigh the existing record. Rather, it asks the Court to reconsider its legal conclusion that Respondents G70 and Mr. McKeague are not proper respondents under HRS § 343-7(c). The discussion of Exhibit B-20 and the accompanying hypothetical illustrate Petitioner's legal argument that Chapter 343 should not be construed to categorically exclude from judicial review a professional who personally signs and submits representations to a governmental agency under his own name, title, and professional credentials solely because those representations were made on behalf of a client—particularly where, as here, the First Amended Petition alleges that those representations violated HRS Chapter 343 and HAR Chapter 11-200.1. Under HRCP Rule 8(f), "[a]ll pleadings shall be so construed as to do substantial justice." The Motion should therefore be evaluated according to its substance rather than Respondents' characterization of it.

The Hawai'i Supreme Court has explained the purpose behind this principle: the Rules "reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." *Ellis v. Crockett*, 51 Haw. 45, 61, 451 P.2d 814, 824 (1969) (quoting *Conley v. Gibson*, 355 U.S. 41, 48 (1957)). The *Ellis* court further observed that "H.R.C.P., Rule 1 itself provides that the Rules are to 'be construed to secure the just, speedy, and inexpensive determination of every action.'" *Id.* HRCP Rule 1(a) states this directly: the Rules "shall be construed and administered to secure the just, speedy,

and inexpensive determination of every action." RCCH Rule 1.1(a) likewise provides that "[t]hese Rules shall be construed and administered to secure the just, speedy, and inexpensive determination of every action."

Properly construed, Petitioner's Motion does not merely ask the Court to reread Exhibit B-20. Petitioner expressly acknowledged that Exhibit B-20 "was before the Court when it issued the Order." Mot. at 2. Petitioner's Motion instead asks the Court to reconsider the legal significance of the undisputed facts that exhibit contains: that Respondent Mark Kawika McKeague personally signed representations to the State that the FEIS was prepared pursuant to HRS Chapter 343 and HAR Chapter 11-200.1, included responses to all substantive comments, and was ready for governmental acceptance. The question the Motion raises -- whether those personally signed representations bear on whether McKeague and G70 are proper respondents under HRS § 343-7(c) -- was not addressed in the Court's Order, which concluded only that G70 and McKeague "are not proper parties." Order (Dkt. 106) at 2.

Respondents further argue that Petitioner's theory would expose "every consultant" to suit. This misstates Petitioner's argument. Petitioner's Motion is expressly limited to the circumstances presented here: a consultant who personally signed representations to the accepting authority regarding the FEIS's legal compliance and completeness, where the First Amended Petition alleges those specific representations are inaccurate, and where the representations were submitted in support of the very acceptance challenged in this proceeding. Petitioner does not ask the Court to hold that every consultant on every FEIS is a proper respondent; Petitioner asks the narrower question whether a consultant who personally certifies compliance to the accepting authority under his own name, title, and professional credentials, thereby invoking those professional qualifications in support of the certification, and whose own representations are directly implicated by the claims in the First Amended Petition, may be dismissed solely because he acted in a consulting capacity.

IV. THE JULY 16, 2026 LETTER CONSTITUTES NEW EVIDENCE

Respondents argue that reconsideration cannot rest on new evidence because Exhibit B-20 "was before the Court when it issued the Order." Opp. at 3. This argument does not address the July 16, 2026 letter attached to Petitioner's Notice of Supplemental Filing [Dkt. 118], which did not exist at the time the Motion to Dismiss was briefed, argued, or decided -- it was issued six days after the Court entered its Order. Because the July 16, 2026 letter did not yet exist, it "could not have been presented during the earlier adjudicated motion." *Amfac*, 74 Haw. at 114, 839 P.2d at 27.

Respondents contend in a footnote that the July 16, 2026 letter does not alter the analysis because, "[i]n short, the arguments she makes regarding Exhibit B-20 apply equally to the exhibit attached to the Notice." Opp. at 4 n.3. This argument conflates the newness of a document with the newness of its content. The letter is independently significant, not merely cumulative. It demonstrates that Mr. McKeague's practice of personally signing official correspondence concerning the FEIS, under his own name and professional credentials, continued for nearly a year after the original August 26, 2025 transmittal letter. To the extent Respondents mean that their substantive rebuttal of Exhibit B-20 applies equally to the July 16, 2026 letter, that argument is addressed in Section V below: the "on behalf of the Applicant" does not resolve whether Mr. McKeague may be held accountable for representations he personally signed, whether in August 2025 or July 2026.

Respondents' July 16, 2026 letter, like the original August 26, 2025 transmittal letter, states that it was submitted 'on behalf of' Kamehameha Schools. That phrase identifies whom Mr. McKeague represented — it does not resolve who is accountable for the representations he personally signed under his own name, title, and professional credentials, in either letter.

**V. HRS § 343-2'S DEFINITION OF "PERSON" SUPPORTS PETITIONER'S POSITION
UNDER HRS § 343-7(c)**

Petitioner's Motion already argued that subsection (a) of § 343-7 names specific limited parties while subsection (c) contains no comparable restriction. Mot. at 4. HRS § 343-2's definition of "Person" confirms and reinforces that same textual point: the Legislature knew how to use narrow, limiting language when it chose to, and its choice not to do so in § 343-7(c) is consistent with — and further supported by — the broad definition of "Person" it adopted elsewhere in the same chapter.

Respondents argue that Petitioner's HRS § 343-7(c) contention was "presented at length" in the briefing on the Motion to Dismiss and that "[r]epeating it a third or fourth time does not satisfy the reconsideration standard." Opp. at 4-5. Petitioner does not merely repeat that argument here. Hawai'i courts do not treat a motion for reconsideration as an improper vehicle for further developing a legal theory, as some federal courts do. See *Sousaris v. Miller*, 92 Hawai'i 505, 513 n.9, 993 P.2d 539, 547 n.9 (2000).

Respondents' Opposition, like their Motion to Dismiss, rests on the premise that because Chapter 343 does not use the word "consultant," a consultant retained by an applicant falls outside the statute's reach. Opp. at 4 ("In any event, the letter confirms that G70 and McKeague acted 'on behalf of the Applicant, Kamehameha Schools,' which in turn confirms that G70 and McKeague participated in the FEIS as the applicant's consultant. As the Court has already held, Chapter 343 imposes its duties on agencies and applicants, not on consultants."); see also Opp. at 6 ("Signing a transmittal letter 'on behalf of the Applicant' confirms that G70 and McKeague were consultants to Kamehameha Schools, and not the applicant.").

This argument overlooks HRS § 343-2, which broadly defines "Person" to include "any individual, partnership, firm, association, trust, estate, private corporation, or other legal entity other than an agency." Respondent G70, a private corporation, and Respondent McKeague, an individual, each fall squarely within that definition. Respondents have not identified any provision of HRS Chapter 343 requiring dismissal of G70 or Mr. McKeague. The statute is silent about consultants — it does not say they are excluded. HRS § 343-2's broad definition of "Person" confirms this distinction: the statute does not expressly forbid lawsuits against consultants, and it did not make a legislative decision to exclude consultants from judicial review.

Hawai'i courts interpret statutes anew, beginning with the statute's language. *Keliipuleole v. Wilson*, 85 Hawai'i 217, 221, 941 P.2d 300, 304 (1997). Courts are "bound to give effect to all parts of a statute," and no clause "shall be construed as superfluous, void, or insignificant if a construction can be legitimately found which will give force to and preserve all words of the statute." *Id.* The Legislature did not need to use the word "consultant" to reach G70 and McKeague; it used the broader term "Person," which by its plain terms already includes a private corporation and an individual. Reading § 343-7(c) to categorically exclude any "Person" who performs consulting work would require importing a limitation the statute's own definitions do not contain.

Petitioner's Motion further observes that subsection (a) of § 343-7 identifies specific, limited parties, while subsection (c) contains no comparable limiting language restricting who may be named as a respondent. Mot. at 4. Nothing in § 343-7(c), or in § 343-2's definition of "Person," forecloses naming a "Person"—including one who personally made representations material to an agency's acceptance decision—as a respondent.

VI. THE ORDER SHOULD BE RECONSIDERED BECAUSE IT PROVIDED NO REASONING ON AN UNPRECEDENTED QUESTION

Respondents argue that "[t]he Court was right the first time" and that "[a]n acknowledged absence of supporting authority is not a reason to reconsider a prior ruling." Opp. at 5-6. That is not a basis to deny reconsideration. Petitioner's Motion is based on the statutory text discussed above and the absence of any stated reasoning in the Order explaining why G70 and Mr. McKeague were dismissed despite that statutory text.

The Order dismissed G70 and Mr. McKeague in a single sentence without addressing the statutory text discussed in this Reply. The question whether Chapter 343 permits naming G70 and Mr. McKeague as respondents presents an issue of statutory interpretation. Because the Order provides no explanation addressing that statutory text, further consideration is warranted.

VII. THE MOTION WAS PROPERLY BROUGHT

Respondents suggest, through footnote, that the Motion "does not comport with the requirements for a motion for reconsideration or the rules of the Court." Opp. at 1. Respondents identify no specific rule violated. To the extent this footnote is intended to refer to co-Petitioner Daisy Mitchell not joining the Motion, Petitioner Melendez brings this Motion solely on her own behalf, as permitted by HRS § 605-2, which authorizes a person to appear in court and prosecute that person's own cause without legal counsel. HRCP Rule 11(a) provides: "Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is unrepresented, shall be signed by the party." Petitioner Melendez signed the Motion on her own behalf, consistent with Rule 11(a), and does not purport to represent Petitioner Mitchell or assert rights on her behalf. Indeed, this is consistent with the Court's Notice of the Parties'

Expected Conduct, which states that "[a] motion or other filing signed by one self-represented party generally applies only to that party." (Dkt. 63 ¶ 1.)

Respondents also note that Petitioner's Notice of Supplemental Filing [Dkt. 118] was filed without a separate motion for leave. Opp. at 4 n.3. That procedural issue is addressed in Petitioner's Motion for Leave, Nunc Pro Tunc, to File Notice of Supplemental Filing [Dkt. 118], filed before this Reply.

VIII. DISMISSAL WITHOUT RESOLVING THE THRESHOLD STATUTORY QUESTION FORECLOSES RELIEF TO WHICH PETITIONER MAY BE ENTITLED

Respondents argue that "[w]hether a party is a proper respondent under Section 343-7(c) is logically antecedent to what relief might be available" and that removal of Mr. McKeague as G70's President "is not relief a court grants in reviewing whether an agency has lawfully accepted an FEIS under section 343-7(c)." Opp. at 5.

Petitioner does not contend that the availability of removal relief determines whether G70 and McKeague are proper respondents. Petitioner's point is the reverse: dismissal of the G70 Respondents without first resolving the threshold statutory question addressed in Section V above forecloses any relief to which Petitioner may be entitled against them, whether or not that relief takes the specific form requested in the First Amended Petition. HRCP Rule 54(c) provides that, "[e]xcept as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings."

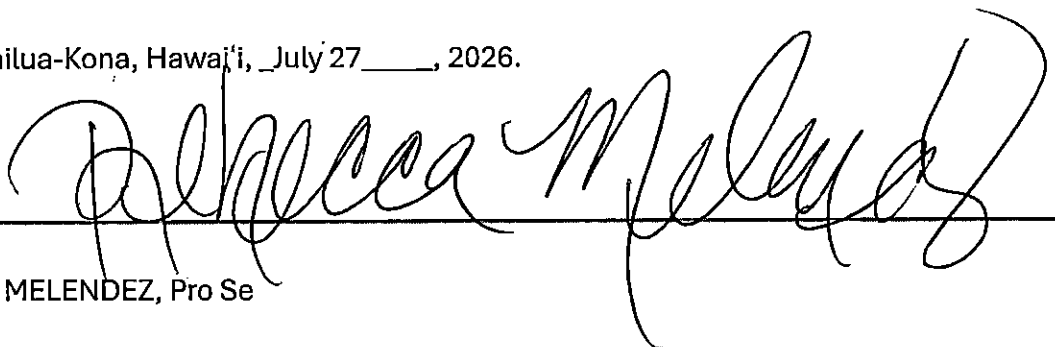
The Hawai'i Supreme Court has applied this principle to require that a party be granted the relief to which it is entitled, "even if he has not demanded that relief in his pleadings." *Ravelo v. County of Hawai'i*, 66 Haw. 194, 198-99, 658 P.2d 883, 886 (1983) (quoting *Waterhouse v. Capital Investment Co.*).

Respondents' argument that removal relief specifically is unavailable under § 343-7(c), even if correct, does not answer whether some other form of relief against G70 and McKeague may be warranted once the threshold question -- whether they are proper respondents under HRS §§ 343-2 and 343-7(c) -- is resolved on the merits. Dismissing the G70 Respondents based on the conclusion that they are not proper respondents forecloses the Court's ability to grant whatever relief may ultimately be warranted against them, contrary to the principle *Ravelo* and HRCP Rule 54(c) embody.

IX. CONCLUSION

For the foregoing reasons, and those set forth in Petitioner's Motion for Reconsideration [Dkt. 111], Petitioner respectfully requests that this Court grant reconsideration of its July 10, 2026 Order, vacate the dismissal of Respondents G70 and Kawika McKeague, and deny Respondents G70 and Kawika McKeague's Motion to Dismiss [Dkt. 55].

DATED: Kailua-Kona, Hawai'i, July 27____, 2026.



REBECCA MELENDEZ, Pro Se

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was duly served upon the following parties by depositing the same in the United States mail, postage prepaid, on __July 27_____, 2026:

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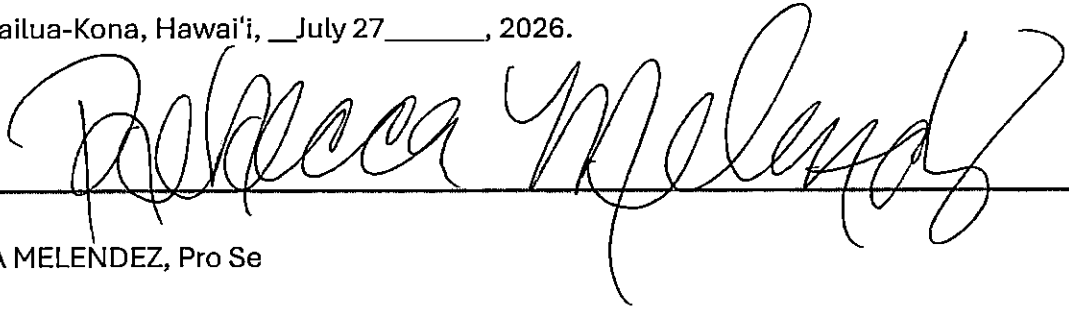
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DATED: Kailua-Kona, Hawai'i, __July 27_____, 2026.

A handwritten signature in cursive script, reading "Rebecca Melendez", is written over a horizontal line. The signature is fluid and extends slightly above and below the line.

REBECCA MELENDEZ, Pro Se