

FIRST CIRCUIT COURT  
STATE OF HAWAII

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Attorneys for Defendant-Appellee  
KAY LORRAINE BATE

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

RESEARCH INSTITUTE FOR  
HAWAII.USA, and CHRISTOPHER  
DAMON HAIG as an individual,

Plaintiffs-Appellants,

vs.

KAY LORRAINE BATE; LINDA  
HAMILTON KRIEGER, RAYMUND  
LIONGSON, KIM COCO IWAMOTO,  
WALLACE FUKUNAGA, ARTEMIO  
BAXA, in their official capacities as  
Commissioners of the Hawaii Civil  
Rights Commission, Department of  
Labor & Industrial Relations, State of  
Hawaii; WILLIAM D. HOSHIJO, in his  
official capacity as Executive Director  
of the Hawaii Civil Rights  
Commission, Department of Labor &  
Industrial Relations, State of Hawaii;  
HAWAII CIVIL RIGHTS COMMISSION,

Defendants-Appellees.

) CIVIL NO. 14-1-2014-09 RAN

)  
) CASE MANAGEMENT ORDER;  
) ATTACHMENT "A"

)  
)  
) TRIAL DATE: January 25, 2016  
) JUDGE: Hon. Rhonda A. Nishimura

**CASE MANAGEMENT ORDER**

WHEREAS, the orderly conduct of this case will be facilitated by the adoption of a Case Management Order ("Order"), and good cause appearing therefor, the following Order is issued by the Court:

1. This matter is set for jury trial before the Honorable Rhonda A. Nishimura of the Circuit Court for the First Circuit, located at Kaahumanu Hale, 777 Punchbowl Street, Honolulu, Hawai'i 96813. The jury trial is *de novo*

as to all claims for which legal relief was granted, <sup>as provided by sci management corp v sllr 101 haw 438(2)</sup>  
this action involves claims for both legal and equitable relief.

2. <sup>^</sup> If the jury is called upon to make factual findings in connection with both legal and equitable matters resting upon the same set of facts, the Court shall be bound by the jury's findings of fact when making its equitable determinations.

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3. The parties will not be able to assert claims or defenses that they did not assert in the proceedings before the Hawaii Civil Rights Commission ("Commission").

4. There will be no further discovery.

5. Testimony at trial will be limited to the witnesses who testified during the contested case hearing before the Commission. The scope of testimony will be limited to the testimony presented by such witnesses during the proceedings before the Commission.

6. During the course of trial, the parties may use deposition transcripts and hearing transcripts from the Commission proceedings as allowed by the Hawai'i Rules of Evidence.

7. All pretrial motions that request entry of judgment on or dismissal of any claim shall be filed 50 days prior to the assigned trial date, in accordance with Rule 7(f) of the Rules of the Circuit Courts. When filing motions that request entry of judgment or dismissal of any claim, the parties will be limited to using admissible evidence that was produced in discovery and testimony presented during the proceedings before the Commission.

8. All parties are reminded of the requirements of Rule 12.1 of the Rules of the Circuit Courts and are advised that this Court will enforce those requirements by imposing sanctions authorized by RCC Rule 12.1(a)(6).

9. For the Court's appellate review concerning the claims for which only equitable relief was granted, the Court shall set a briefing schedule and oral argument following the jury verdict.

10. Plaintiffs shall contact the Honorable Karl K. Sakamoto no later than six weeks before trial to schedule a settlement conference.

11. By separate Order, this Court has granted Plaintiff Research Institute for Hawaii.USA's Motion for Order Compelling (1) Independent Medical Examination of Kay Lorraine Bate; and (2) Production of Dr. Robert Marvit's Expert File, and that Order is incorporated herein by reference. If any of the Defendants decide to present expert testimony of Dr. Robert Marvit, Plaintiffs' expert shall have an opportunity to conduct an independent medical examination (IME) of Kay Lorraine Bate and set forth his opinions in a report. Defendants will have an opportunity to submit a rebuttal report from Dr. Marvit. Further, Plaintiffs and Defendants shall have an opportunity to depose

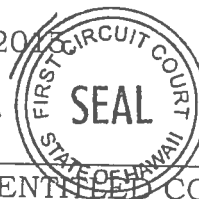
each other's respective medical experts and conduct other discovery, for example, propound discovery requests and serve records subpoenas, concerning the medical experts and their opinions. However, Defendants reserve the right to withdraw Dr. Marvit as an expert. If they do withdraw Dr. Marvit as an expert, Plaintiffs are not entitled to an IME or Dr. Marvit's file, and no discovery shall occur, as stated in paragraph 4 of this Order.

12. Motions in limine shall be heard on the Thursday preceding the week of trial.

13. The parties shall comply with all applicable requirements and deadlines set forth in Attachment "A" to this Order.

DATED: Honolulu, Hawaii, OCT 13 2015, 2015

RHONDA A. NISHIMURA




JUDGE OF THE ABOVE-ENTITLED COURT

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*RESEARCH INSTITUTE FOR HAWAII.USA and CHRISTOPHER DAMON HAIG v. KAY LORRAINE BATE, et al.*, Civil No 14-1-2014-09 RAN, CASE MANAGEMENT ORDER

Approved as to form:



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MARGERY S. BRONSTER  
CATHERINE L. AUBUCHON

Attorneys for Defendant-Appellee  
KAY LORRAINE BATE

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ROBIN WURTZEL  
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WILLIAM D. HOSHIJO, in his official  
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Department of Labor and Industrial  
Relations State of Hawai'i

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RAYMUND LIONGSON, KIM COCO  
IWAMOTO, WALLACE FUKUNAGA,  
and ARTEMIO BAXA, in their official  
capacities as Commissioners of the  
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Department of Labor & Industrial  
Relations, State of Hawaii; and the  
HAWAII CIVIL RIGHTS  
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KAY LORRAINE BATE et al.*, Civil No. 14-1-2014-09 RAN, CASE MANAGEMENT  
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**ATTACHMENT "A"**  
(Revised: 1/14/2010)

JUDGE RHONDA A. NISHIMURA - TENTH DIVISION - FIRST JUDICIAL CIRCUIT

**DEADLINES TWO (2) WEEKS BEFORE TRIAL WEEK**

**TRIAL WEEK:** Parties, attorneys and witnesses shall be prepared to start trial any day during the week before or the week after the scheduled trial week.  
The Court's non-trial day is Monday.

<b>Deadline</b>	<b>Issue</b>	<b>Action</b>
<b>Fourteen (14) days prior to the Monday of trial week</b>	<b>1) EXHIBITS</b>	ALL EXHIBITS (both joint & separate) must be marked and submitted to the court, with exhibit lists, and exchanged between parties
	<b>2) MOTIONS IN LIMINE; DEPOSITION DESIGNATIONS</b> (For witnesses not testifying in person)	File and serve any and all Motions in Limine and Deposition designations (for witnesses who will not personally appear at trial).
	<b>3) BENCH TRIAL DOCUMENTS</b>	Exchange and submit to the Court the following as part of your exhibits (Refer to 1- Exhibits): 1) Affidavit, declaration or deposition excerpts which shall be the direct testimony for all lay witnesses. 2) Written reports for all expert witnesses, if not previously exchanged.
<b>Ten (10) days prior to the Monday of trial week</b>	<b>1) EXHIBITS</b>	File and serve a statement indicating the legal ground(s) for objection(s) as to each separate exhibit.
	<b>2) MOTIONS IN LIMINE; DEPOSITION COUNTERDESIGNATIONS</b>	File and serve any and all Memorandum in Opposition to the Motion(s) in Limine and objections to Deposition designations and/or counterdesignations.
<b>Seven (7) days prior to the Monday of trial week</b>	<b>JURY TRIAL DOCUMENTS</b>	File and serve the following: 1. Witness list which will be read or submitted to Jury. 2. Attorney Firm List. 3. Brief factual statement to be read to Jury. 4. Jury Instructions. 5. Special Verdict Form.

**EXPERTS:** *Note: Expert opinions not disclosed in deposition testimony, written report(s) and/or answers to interrogatories, by the discovery cut off date, will not be allowed at trial.*

**EXHIBITS:**

- 1) **JOINT EXHIBITS:** Counsel are to meet, confer and compile a set of exhibits which the parties agree shall be admitted into evidence, for any and all purposes, at the start of the trial. NOTE: Any and all references to insurance matters must be redacted from all exhibits.



- 2) **SEPARATE EXHIBITS** are those exhibits not agreed upon as a joint exhibit and which counsel intend to introduce into evidence at trial. Exhibits which have not been exchanged between the parties shall not be admitted into evidence except upon a showing of good cause. **Plaintiff shall have an exhibit which summarizes all damages. See, Hawai'i Rules of Evidence, Rule 1006.**

OBJECTIONS TO SEPARATE EXHIBITS: Failure to object to an exhibit shall be deemed a waiver of all objections thereto, and the exhibit may be admitted into evidence without further argument.

**PREPARATION OF EXHIBITS:** Exhibits with exhibit lists shall be appropriately marked and submitted to the Court fourteen (14) days before the trial week, as follows:

1. Judge's copy shall be tabbed in 3 ring binder(s);
2. A clean set of the exhibits being offered into evidence shall be submitted in individually tabbed file folders labeled with appropriate Exhibit marking, i.e., JT-1, JT-2, etc;
3. Each exhibit must be marked on the reverse side of the last page of the exhibit (lower right hand corner) using one of the following marking guidelines:
  - a. **Joint exhibits:** identified with abbreviation "JT", followed by numerical placement starting with the number "1" (i.e., JT-1, JT-2, etc.);
  - b. **Plaintiff's exhibits:** identified numerically starting with the number "1" (i.e., 1, 2, etc.);
  - c. **Defendant's exhibits:** identified alphabetically (i.e., A, B, etc.);
  - d. **Other exhibits:** For case involving multiple parties' exhibits, exceptionally voluminous exhibits or unusually oversized exhibits, please call Judge's chambers for marking codes and/or further instructions;
4. Original exhibits:
  - a. Party to retain the original exhibit(s) to be identified. See No. 3;
  - b. If the original exhibit(s) is received into evidence, that exhibit(s) is to be submitted to the Court at the appropriate time.

#### **MOTIONS IN LIMINE / DEPOSITION DESIGNATIONS**

A pretrial hearing re: Motions in Limine and objections to exhibits, deposition designations and/or counterdesignations shall be held on the date/time as set forth in the Trial Setting Status Conference Order attached hereto.

#### **SETTLEMENT CONFERENCE:**

The CONFIDENTIAL SETTLEMENT CONFERENCE LETTER shall contain:

1. A brief statement of the issues;
2. Facts in favor of Plaintiff's case and against Plaintiff's case;
3. Facts in favor of Defendant's case and against Defendant's case;
4. Fees and costs expended to date;
5. Anticipated fees and costs to and through trial;
6. Best possible outcome following trial for each party;
7. Worst possible outcome following trial for each party;
8. Likelihood of the best/worst outcomes occurring (percentages);
9. Most recent demand/offer.

## GENERAL INFORMATION

### JURY TRIAL:

1. Jurors will be allowed to take notes.
2. Jurors will be provided copies of Jury Instructions when read.
3. Court instructs Jury before Closing Arguments.
4. 24 hr. notice of witnesses to be called to testify.
5. Witnesses only to be called to the stand one time.
6. Exclusionary rule will be invoked - counsel responsible for compliance.
7. Peremptory Challenges: 3 each side; 1 alternate each side.

### TIME LIMITS: (based on 2 party cases and subject to change on a case by case basis)

- a. Jury Selection: 25 min. each side  
3 min. replacement /alternates.
- b. Opening Statement: 20 min. each side
- c. Closing Arguments: 1 hr. each side
- d. Court's trial hours: 9:00 a.m. - noon and 1:30 p.m. - 4:15 p.m.

### VISUAL AIDS AND DEMONSTRATIVE EVIDENCE:

- a. Show all visual aids to the court and counsel before using them.
- b. The parties shall obtain and make available all equipment necessary to view any evidence. The equipment shall be available, set up and approved by the court before trial.
- c. The parties shall mutually review all such aids/evidence before trial.

### BENCH TRIALS:

The direct testimony of each lay witness shall be by affidavit / declaration or by deposition excerpts. These shall be provided to the Court on or before fourteen (14) days prior to the trial week. Additional questions and answers on direct will be limited to approximately five (5) minutes. The direct examination of each expert shall be by written report.

### EXTENSIONS OF TIME LIMITS AND DEADLINES

Unless otherwise ordered herein, counsel shall comply with all deadlines required by the Hawai'i Rules of Civil Procedure and the Rules of the Circuit Courts of the State of Hawai'i (the Rules).

### SANCTIONS

Any failure to comply with this order, Attachment "A" and/or with the Rules may result in sanctions pursuant to Rules 12(t), 12.1(a)(6) and 15 of the Rules of the Circuit Courts of the State of Hawai'i; HRS §603-21.9(6); In Re: Dubin, 9 Haw. App. 249, 833 P.2d 85 (1992); and State v. Adam and Ostendorp, 97 Haw 475 (2002).