

FIRST CIRCUIT COURT
STATE OF HAWAII
FILED

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J. KUBO
CLERK

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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)	Civil No. 14-1-2014-09 (RAN)
HAWAII.USA, CHRISTOPHER DAMON)	
HAIG as an individual,)	AMENDED CASE MANAGEMENT ORDER;
)	EXHIBIT A
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 &)	Trial Date: October 15, 2018, 9:00 a.m.
Industrial Relations, State of Hawaii;)	Judge: Presiding Judge
WILLIAM D. HOSHIO, 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.)	(caption continued on next page)
)	

AMENDED CASE MANAGEMENT ORDER

WHEREAS, the orderly conduct of this case will be facilitated by the adoption of this Amended Case Management Order (“Order”), and good cause appearing therefor, this Order is issued by the Court following the status conference between the parties held on September 26, 2017, before the Honorable Judge James Ashford, to further clarify and amend the Case Management Order entered by the Honorable Judge Rhonda Nishimura on October 15, 2015, as follows:

1. This matter is set for jury trial commencing on October 15, 2018 at 9:00 a.m. before the Presiding Judge herein. The jury trial is *de novo* as to all claims for which legal relief was granted as provided by *SCI Management Corp. v. Sims*, 101 Hawai‘i 438 (2003).
2. This action involves claims for both legal and equitable relief. 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 finding of fact when making its equitable determinations.
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”). By December 29, 2017, the parties will identify the claims and defenses asserted before the Commission for the Court.
4. There will be no further discovery, except as may be provided herein below at paragraph 12.
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. By

December 29, 2017, the parties will submit a list of all witnesses who testified before the Commission to the Court.

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

7. All pretrial motions that request entry of judgment on or dismissal of any claim shall be filed fifty (50) days prior to the assigned trial date, in accordance with Rule 7(f) of the Rules of the Circuit Courts (“RCC”). 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 for RCC Rule 12.1 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. Counsel for Defendant Bate shall contact the Honorable Judge Bert I. Ayabe no later than six weeks before trial to schedule a settlement conference.

11. On or before December 29, 2017, the parties are to submit to the Court:

(a) Identification of the claims and defenses that were and were not asserted before the Commission;

(b) A list of all witnesses who testified at the contested case hearing before the Commission who shall therefore be eligible to testify at trial hereof;

(c) A transcript of the entire contested case hearing before the Commission;
and

(d) Notification whether Defendants' expert witness, Dr. Robert Marvit, will testify at trial or not.

12. By separate Order, this Court 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 Dr. Marvit will be called to testify, then Plaintiffs' expert, Dr. Marvin Acklin, shall have an opportunity to conduct an independent medical examination ("IME") of Kay Lorraine Bate, and set forth his or her opinion in a report no later than sixty days (60) prior to the discovery cutoff. Dr. Marvit's written rebuttal report is due no more than thirty (30) days prior to the discovery cutoff. 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. If Dr. Marvit will not be called to testify, then Plaintiffs are not entitled to conduct an IME, obtain Dr. Marvit's file, or call Dr. Acklin to testify, and no discovery shall occur, as stated in paragraph 4 of this Order.

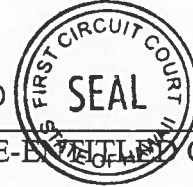
13. No later than sixty (60) days before trial is scheduled to commence, the parties may file motions seeking clarification as to which claims are legal and which are equitable, and/or written requests for instructions.

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

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

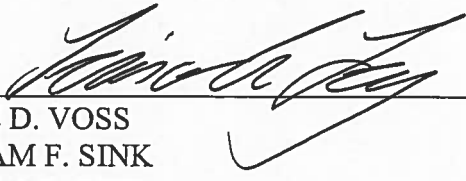
DATED: Honolulu, Hawaii, NOV 29 2017.

JAMES H. ASHFORD
JUDGE OF THE ABOVE-ENTITLED COURT



Research Institute For Hawaii.USA v. Kay Lorraine Bate, et al.; Civil No. 14-1-2014-09 (RAN); AMENDED CASE MANAGEMENT ORDER; EXHIBIT A

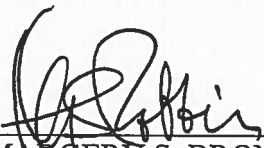
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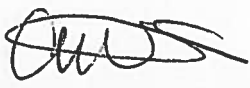


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and ARTEMIO BAXA, in their official
capacities as Commissioners of the Hawaii
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ATTACHMENT "A"
(Revised: 1/14/2010)

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.

Deadline	Issue	Action
Fourteen (14) days prior to the Monday of trial week	1) EXHIBITS	ALL EXHIBITS (both joint & separate) must be marked and submitted to the court, with exhibit lists, and exchanged between parties
	2) MOTIONS IN LIMINE; DEPOSITION DESIGNATIONS (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).
	3) BENCH TRIAL DOCUMENTS	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.
Ten (10) days prior to the Monday of trial week	1) EXHIBITS	File and serve a statement indicating the legal ground(s) for objection(s) as to each separate exhibit.
	2) MOTIONS IN LIMINE; DEPOSITION COUNTERDESIGNATIONS	File and serve any and all Memorandum in Opposition to the Motion(s) In Limine and objections to Deposition designations and/or counterdesignations.
Seven (7) days prior to the Monday of trial week	JURY TRIAL DOCUMENTS	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: Dublin, 9 Haw. App. 249, 833 P.2d 85 (1992); and State v. Adam and Ostendorp, 97 Haw 475 (2002).