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HAWAI'I CIVIL RIGHTS COMMISSION

STATE OF HAWAI'I

MARCUS L. KAWATACHI, Executive Director, on behalf of the Complaint filed by	)	DOCKET NO. 25-001-H-F
	)	
BRANDIE PAYNE and GREGORY PAYNE, Complainants,	)	ORDER GRANTING EXECUTIVE DIRECTOR'S MOTION FOR SUMMARY JUDGMENT FILED ON SEPTEMBER 9, 2025
vs.	)	
	)	
PEARY G. WAGNER, individually, Respondent.	)	<u>HEARINGS EXAMINER:</u> The Honorable Jo-Ann M. Adams, Esq. <u>Hearing:</u> November 7, 2025, 9 a.m.

ORDER GRANTING EXECUTIVE DIRECTOR'S MOTION FOR SUMMARY JUDGMENT FILED ON SEPTEMBER 9, 2025

The EXECUTIVE DIRECTOR'S MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE PARTIAL SUMMARY JUDGMENT ("Motion"), originally filed on September 9, 2025 with a hearing date of October 6, 2025, came on for hearing via Zoom on November 7, 2025, at 9:00 a.m. The Hearing was rescheduled due to a change in Hearing Officer. The motion came before the Honorable Jo-Ann M. Adams, Esq., Hearings Examiner of the above-entitled Commission ("**Hearing**"). Enforcement Attorney Eric Pililaau, Esq. appeared and presented argument on behalf of MARCUS L. KAWATACHI, **Executive Director**, Hawai'i Civil Rights Commission as the moving party.

Respondent did not file an Opposition Memorandum (for either the hearing schedule for October 6, 2025 or the hearing as rescheduled for November 7, 2025) and did not appear at the Hearing on November 7, 2025. The Hearings Examiner notes that Respondent was present for the

Third Scheduling Conference on October 6, 2025 when the dates were set regarding the Motion. Further, the date for filing Opposition Memoranda was extended to assure that Respondent had ample opportunity to file an Opposition Memorandum since there had been a change in Hearing Officer. These dates were published as the “THIRD SCHEDULING CONFERENCE ORDER; NOTICE OF HEARING ON EXECUTIVE DIRECTOR’S MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE PARTIAL SUMMARY JUDGMENT, dated October 8, 2025, and included brief explanations of the Opposition Memoranda.¹

I. INTRODUCTION

At issue is Executive Director’s Motion for Summary Judgment, filed on September 9, 2025. This motion is brought pursuant to HRS §§ 368-3, 515-16, and pursuant to Hawai‘i Administrative Rules (“HAR”) §§ 12-46-31, 12-46-36, and 12-46-46, and Hawai‘i Rules of Civil Procedure (“HRCP”) Rules 7(b) and 56.

II. LEGAL STANDARD

Under HRCP Rule 56, summary judgment is appropriate when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Summary judgment may be granted for all or part of a claim.

There is no genuine issue as to any material fact if the facts that establish, refute, or defend one of the essential elements of a cause of action are not in dispute. When the party seeking summary judgment meets their burden by establishing the absence of a genuine issue of material

¹ Respondent was mailed the THIRD SCHEDULING CONFERENCE ORDER; NOTICE OF HEARING ON EXECUTIVE DIRECTOR’S MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE PARTIAL SUMMARY JUDGMENT by certified mail on October 8, 2025 and sent a courtesy copy by email, which was not returned as undeliverable.

fact, "the burden shifts to the opponent to come forward with specific facts showing that there remains a genuine issue for trial."

Under HRCF Rule 56(e), if the motion for summary judgment is sufficiently supported, the nonmoving party must respond with specific facts to show there is a genuine issue for trial. If the nonmoving party does not respond, "the judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law."

The Executive Director maintains that there is no genuine issue of material fact that Respondent subjected Complainants to familial status-based discriminatory statements in violation of HRS § 515-16(7). HRS § 515-16(7), which states in pertinent part:

It is a discriminatory practice for a person, or for two or more persons to conspire ... to print, circulate, post, or mail, or cause to be published a statement, advertisement, or sign, or to use a form of application for a real estate transaction, or to make a record or inquiry in connection with a prospective real estate transaction, that indicates, directly or indirectly, an intent to make a limitation or specification, or to discriminate because of race, sex, including gender identity or expression, sexual orientation, color, religion, marital status, familial status ...".
(Underlining added.)

To prove a "discriminatory statement" claim under HRS § 515-16(7), a complainant must show that: (1) Complainants are members of a protected class, (2) the respondent made, printed or published a notice, statement or advertisement with respect to the sale or rental of a dwelling, and (3) the notice, statement or advertisement indicated a preference, limitation, or discrimination based on a protected class.

III. ANALYSIS

After reviewing the pleadings, evidence submitted, and arguments presented, I find:

1. That it is undisputed that Complainants Brandie Payne and Gregory Payne are members of the “familial status” protected class, as a pregnant individual and as individuals domiciled with a minor child, defined in HRS § 515-2 and HAR § 12-46-302, based on the following statements made by Brandie Payne in her declaration, dated September 1, 2025, and attached to the Executive Director’s Motion:

- “2. I am a tenant at 904 Mililani Street, Unit B ... beginning on or about February 4, 2020.”
- “3. In a May 9, 2020, text message from Peary Wagner (“Respondent”), my husband Gregory Payne and I were informed that following the birth of our child, our rent would be increase by \$100. In the same text message, Respondent wrote that he normally does not rent a one-bedroom apartment to three people, and offered to show Gregory and I a two-bedroom apartment that would be \$1,200 in monthly rent.”
- “5. On or about September 28, 2020, Gregory and I brought our newborn child home from the hospital to the subject property.”

2. That the parties entered into a “RENTAL AGREEMENT”, dated 2-4-2020, that stated in pertinent part: “Moving in additional people will cause the rent to increase \$200 per person OR MAY RESULT IN AN IMMEDIATE EVICTION.”

3. That the parties were in a court hearing on Wednesday, February 10, 2021, before the Honorable M. Kanani Lauback, District Court Judge, which was transcribed by Beth Kelly, RPR, CSR #235, Court Reporter. The following statements were made in court as reported in the hearing transcript:

- THE COURT: “So. Mr. Wagner, don’t tell me what you think they believed. Tell me what is in this rental agreement. What your understanding of it was.” (Transcript Page: Lines 19:14-16.)
- MR. WAGNER: “Well, it says here, they’re the tenants, Gregory William Payne, Brandie May Perdue. The apartment is rented to two people. Moving in additional people will cause the rent to increase \$200.00 per person, or may result in immediate eviction.” (18:20-24)
“So they’re – they’re increasing the population with the – with their baby and, ah, an application must be filed for an additional tenants.” (18:25-19:3)

- MR. ZAMBER: “And the additional, ah, person, that you, ah, mention – is a minor; correct? (20:25-21:1)
 - MR. WAGNER: “Could be any age.” (21:2)
 - MR. ZAMBER: “Okay. And that – and they actually had a baby that was just born to this couple under the age of one now. Correct?” (21:3-5)
 - MR. WAGNER: “Yes.” (21:6)
4. That it is undisputed by the parties that Respondent made statements both in and out of court that expressed his intention to increase Complainants’ rent because their newborn child will be domiciled with Complainants on the subject property.
 5. That an ordinary listener would find that Respondent’s statements to increase Complainants’ rent based on the birth of their newborn child indicated a limitation and an intent to discriminate against families with minor children.

This decision relies on the transcripts quoted hereinabove, which include discriminatory statements made before Complainants and disinterested third parties, and were transcribed by a court reporter with a duty to accurately report court proceedings. Based on these undisputed facts, Hawai‘i Civil Rights Commission Executive Director Marcus L. Kawatachi has met the burden of proof that Complainants were members of a protect class based on familial status, and Respondent subjected Complainants to familial status-based discriminatory statements, verbally and in print, in violation of HRS § 515-16(7).

Respondent offered no objections to these facts and has not proffered specific facts showing that there remains a genuine issue for trial.

IV. ORDER

The Court, having reviewed the Motion, memoranda of law in support, declaration of counsel and the exhibits thereto, the records and files herein, the arguments made by counsel at

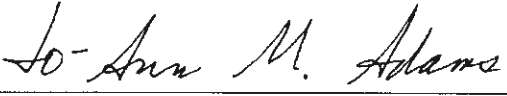
the hearing, and otherwise being fully advised, HEREBY ORDERS, ADJUDGES, AND DECREES:

The MOTION FOR SUMMARY JUDGMENT is **GRANTED**. Respondent discriminated against Complainants in violation of HRS § 515-16(7) by subjecting Complainants to discriminatory statements that indicate an intent to limit, and a preference against, Complainant's familial status.

The hearing set for May 21, 2026, shall be limited to the issue of damages, which will address:

- 1) Damages incurred as a result of the discriminatory statements by Respondent;
- 2) Any other amounts the parties believe to be relevant in determining damages.

DATED: Honolulu, Hawai'i, November 12, 2025.



Jo-Ann M. Adams, Hearing Examiner

HAWAI'I CIVIL RIGHTS COMMISSION

STATE OF HAWAI'I

MARCUS L. KAWATACHI, Executive	)	DOCKET NO. 25-001-H-F
Director, on behalf of the Complaint filed by	)	
	)	CERTIFICATE OF SERVICE RE:
BRANDIE PAYNE and GREGORY PAYNE,	)	[PROPOSED] ORDER GRANTING
	)	EXECUTIVE DIRECTOR'S MOTION FOR
Complainants,	)	SUMMARY JUDGMENT OR IN THE
	)	ALTERNATIVE PARTIAL SUMMARY
vs.	)	JUDGMENT FILED ON SEPTEMBER 9,
	)	2025
PEARY G. WAGNER, individually,	)	
	)	
<u>Respondent.</u>	)	

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing was duly served upon the following parties, promptly after filing, by electronic mail and/or U.S. mail and/or hand-delivery to the following addresses:

Eric K. Pililaau
Hawai'i Civil Rights Commission
830 Punchbowl St. Rm. 411
Honolulu, HI 96813

PEARY G. WAGNER
31 Piliialoha Street
Hilo, HI 96720
pearygene@yahoo.com

Dated: Honolulu, Hawai'i, November 13, 2025.



Sandy Yoshimura, Administrative Assistant
Hawai'i Civil Rights Commission

Adjudications