

FUJIWARA AND ROSENBAUM, LLLC

JOSEPH T. ROSENBAUM 9205  
ELIZABETH JUBIN FUJIWARA 3558  
MARCOS R. BENDAÑA 11054  
1100 Alakea Street, FL 20, Suite B  
Honolulu, Hawai'i 96813  
Telephone: (808) 203-5436

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Attorneys for Plaintiff/Counterclaim-Defendant  
KENNETH L. LAWSON

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

KENNETH L. LAWSON,

Plaintiff/Counterclaim-Defendant,

vs.

UNIVERSITY OF HAWAI'I AT MĀNOA; CAMILLE NELSON in her individual capacity; MICHAEL BRUNO in his individual capacity; JOHN DOES 1-10; JANE DOES 1-10; DOE CORPORATIONS 1-10; DOE PARTNERSHIPS 1-10; DOE UNINCORPORATED ORGANIZATIONS 1-10; DOE ENTITIES 1-10; and DOE GOVERNMENTAL AGENCIES 1-10.

Defendants.

Civil No. 1CCV-25-0000036 (JJK)

PLAINTIFF/COUNTERCLAIM-DEFENDANT KENNETH LAWSON'S **MOTION FOR DISMISSAL OF DEFENDANT CAMILLE NELSON'S COUNTERCLAIM AGAINST PLAINTIFF KENNETH L. LAWSON**; MEMORANDUM IN SUPPORT OF MOTION; DECLARATION OF JOSEPH T. ROSENBAUM; EXHIBITS "A" to "H"; NOTICE OF HEARING; and CERTIFICATE OF SERVICE

**Hearing**

Date: April 2, 2025

Time: 9:30 a.m.

Judge: Honorable Jordon J. Kimura

**PLAINTIFF/COUNTERCLAIM-DEFENDANT KENNETH LAWSON'S MOTION FOR DISMISSAL OF DEFENDANT CAMILLE NELSON'S COUNTERCLAIM AGAINST PLAINTIFF KENNETH L. LAWSON**

Plaintiff/Counterclaim-Defendant Kenneth L. Lawson ("Counterclaim-Defendant" and/or "Professor Lawson"), by and through his undersigned attorneys, and hereby move this Honorable Court for an Order dismissing with prejudice any and all claims against Professor Lawson of

alleged defamation and intentional infliction of emotional distress, on the grounds that: Professor Lawson has established his cause of action pursuant to Hawai'i Revised Statutes ("HRS") § 634G-2 and that Defendant Camille Nelson, in her individual capacity, cannot establish (1) a *prima facie* case as to each essential element to her causes of action, (2) each cause of action have not been sufficiently pled and fail to state a sufficient claim for relief, and (3) and there is no genuine issue as to any material fact to the causes of action and Plaintiff/Counter-Defendant is entitled to judgment as a matter of law on the causes of action.

This Motion is made pursuant to HRS § 634G-6 as well as its accompanying sections and Rule 12(b)(6) of the Hawai'i Rules of Civil Procedure and is based upon the Memorandum attached hereto and the records and files herein.

DATED: Honolulu, Hawai'i, February 20, 2025.

/s/ Joseph T. Rosenbaum  
JOSEPH T. ROSENBAUM  
ELIZABETH JUBIN FUJIWARA  
MARCOS R. BENDAÑA  
Attorneys for Plaintiff/Counterclaim-Defendant  
Kenneth L. Lawson

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Defendants.

Civil No. 1CCV-25-0000036 (JJK)

MEMORANDUM IN SUPPORT OF MOTION

## MEMORANDUM IN SUPPORT OF MOTION

### **I. Introduction**

In 2022, the State of Hawai`i legislature enacted the Hawai`i Public Expression Protection Act (“HPEPA”) “to promote the rights of citizens to vigorously participate in government and to protect citizens from the chilling effect of retributive strategic lawsuits against public participation or “SLAPP” suits. To minimize the damage of SLAPP claims against citizens, Hawai`i’s anti-SLAPP law seeks to shift the burden of litigation back to the party bringing the SLAPP claim by providing for expedited judicial review, a stay on discovery, and sanctions.” *See* Exhibit A (2021 Hawai`i Senate Bill 3329; enacted June 17, 2022). The legislature further found that despite the broad intentions of the legislature that the law “shall be construed liberally to fully effectuate its purposes and intent”, Hawai`i’s previous anti-SLAPP law codified as Hawai`i Revised Statutes (“HRS”) § 634F was not effective at protecting citizen participation and was repealed. *Id.* The HPEPA was codified in 2022 under HRS § 634G to effectuate the intent of the legislature. The statute is to be construed broadly to encourage continued participation in matters of public significance and to avoid chilling such participation through abuse of the judicial process.

Defendant Camille Nelson’s (“Defendant/Counterclaimant” and/or “Dean Nelson”) Counterclaim Against Kenneth L. Lawson (“the Counterclaim”) [Dkt.13] is clearly a retributive strategic lawsuit and an attempt to chill and silence Professor Lawson’s constitutionally protected speech after he filed Complaints in the United States District Court, District of Hawai`i and the First Circuit Court, State of Hawai`i. The Counterclaim is a quintessential lawsuit that the HPEPA was intended to preclude.

On January 31, 2025, Dean Nelson filed meritless counterclaims against Professor Lawson alleging defamation and intentional infliction of emotional distress (“IIED”). *See* Dkt. 13 at ¶ 8. The facts show that not only was Dean Nelson’s Counterclaim filing retributive, but she also filed it to prevent Professor Lawson from filing an additional Complaint in Federal Court with new claims of violations to the United States First Amendment. The Counterclaim points to (1) Professor Lawson’s conduct at a faculty meeting at the William S. Richardson School of Law (“WSRSL”) on February 17, 2023, (2) emails he sent a few days after said faculty

meeting, and (3) five lawsuits that Professor Lawson filed in Federal and State Courts as evidence of defamation and IIED against Dean Nelson. *See* Dkt. 13 at ¶ 6. The Counterclaim is clearly devoid of any defamatory communication by Professor Lawson regarding Dean Nelson let alone any facts supporting a claim for IIED.

## **II. Background**

### **A. Professor Lawson’s United States District Court, District of Hawai`i, First Federal Complaint (Civil No. 23-00348)**

On August 23, 2023, Professor Lawson, as a pro se litigant, filed his First Verified Amended Complaint in the United States District Court, District of Hawai`i against Defendant University of Hawai`i (“UH”), Camille Nelson in her individual capacity, *et al.* (Civil No. 23-00348) (“Fed. Court No. 23-348”) and alleged the following claims: First Amendment Retaliation under 42 U.S.C. § 1983; Declaratory Relief under 28 U.S.C. §§ 2201, *et. seq.*; Conspiracy to Violate Civil Rights pursuant to 42 U.S.C. § 1985; and Neglect to Prevent Violation of Civil Rights pursuant to 42 U.S.C. § 1986. Declaration of Joseph T. Rosenbaum (“Rosenbaum Decl.”) at ¶ 4. *See also* Exhibit B (Professor Lawson’s First Amended Complaint for Federal Civil No. 24-00348 dated August 23, 2024).

The incident originally giving rise to the claims in that case, as well as the present case, occurred during a February 17, 2023, faculty meeting at the WSRSL. Professor Lawson questioned why there were no Black people participating in a Black History Month event that was planned by the WSRSL’s Diversity, Equity, and Inclusion (“DEI”) committee. Professor Lawson expressed his views that it was racist to have no Black people part of the event at all. The next day, he sent an email to the WSRSL faculty and staff that continued to describe his feelings of racism that he expressed at the meeting. On February 21, 2023, Professor Lawson sent an email to the WSRSL law students, faculty, and school staff, using the law school’s listserv. The email stated Professor Lawson and the members of the law school’s chapter of the National Black Law Students Association were calling for a boycott of the Black History Month event. Rosenbaum Decl. at ¶ 5. *See also* Dkt. No. 11 at ¶¶ 113-202.

On February 27, 2023, Defendant Bruno sent Professor Lawson a “Notice of Investigation” supposedly to determine if Professor Lawson’s speech and behavior at the February 17, 2023, faculty meeting and his subsequent use of the listserv to call for a boycott of the event had created a hostile work environment. The Notice of Investigation banned Professor

Lawson from the WSRSL campus indefinitely and restricted his speech by denying his use of the WSRSL listserv. Rosenbaum Decl. at ¶ 6. *See also* Dkt. No. 11 at ¶¶ 145, 148.

On March 28, 2023, Defendant Bruno extended Professor Lawson’s banishment from the WSRSL campus and restrictions on his use of the WSRSL listserv, and informed Professor Lawson that additional allegations had been made against him. Professor Lawson was also being investigated for misogyny, because he allegedly had directed his comments only to women, not men. The Notice claimed that it was misogyny when Professor Lawson did not respond to the emails seeking new faculty rules, even though Professor Lawson had in fact responded to the email. Due to his ongoing banishment from campus while the investigation was being conducted, Professor Lawson was forced to teach his classes online from his home. Rosenbaum Decl. at ¶ 7. *See also* Dkt. No. 11 at ¶¶ 157-159.

On April 15, 2024, Professor Lawson voluntarily dismissed his Complaint, Fed. Court No. 23-348, pursuant to Federal Rules of Civil Procedure (“FRCP”) 41(a), solely for procedural reasons. Rosenbaum Decl. at ¶ 8.

Between August 21, 2023, and April 15, 2024, there were a significant number of filings and/or hearings and activity for Fed. Court No. 23-348 which included, but are not limited to, the following: a motion for a temporary restraining order and preliminary injunction, report of planning meeting, scheduling conference statements, initial disclosures, discovery requests, and two (2) mediations. Rosenbaum Decl. at ¶ 9.

**B. Professor Lawson’s United States District Court, District of Hawai`i, Second Federal Complaint (Civil No. 24-00172)**

Professor Lawson, as a pro se litigant, filed his First Verified Amended Complaint in a second federal case on May 30, 2024 (Civil No. 24-00172) (“Fed. Court No. 24-172”) which was nearly identical to his prior federal Complaint, Fed. Court No. 23-348. He alleged the following claims in Fed. Court No. 24-172: a Title 42 United States Code Section 1983 claim alleging content and viewpoint discrimination, in violation of his First Amendment rights; Section 1983 claims alleging retaliation for the exercise of his First Amendment rights; a Section 1983 claim alleging prior restraint, in violation of his First Amendment rights; Section 1983 claims asserting facial and as-applied challenges to University Executive Policy 1.202 and to University Executive Policy 9.210; a Section 1983 claim alleging violation of his Fourteenth Amendment due process rights; a Title 42 United States Code Section 1985 claim alleging conspiracy to

violate civil rights; and a Title 42 United States Code Section 1986 claim alleging failure to prevent violation of civil rights. Rosenbaum Decl. at ¶ 10. *See also* Exhibit C at pdf pg. 1 (Professor Lawson’s First Amended Complaint for Federal Civil No. 24-00172 dated May 30, 2024).

As noted *supra*, the second filed Federal Complaint, Fed. Court No. 24-172, is simply an extension of the first federal Complaint and they should not be treated as distinct. Rosenbaum Decl. at ¶ 11.

**C. Professor Lawson’s First Circuit Court, State of Hawai`i, Complaint (Civil No. 1CCV-23-0001391)**

On October 25, 2023, Professor Lawson, through his current counsel, filed an action in the First Circuit Court, State of Hawai`i against the University of Hawai`i, Camille Nelson in her individual capacity, *et al.* (Civil No. 1CCV-23-0001391) (“State Court No. 23-1391”). The First Amended Complaint for that case was filed on April 17, 2024, and it alleges: claims sounding in contract related to the breach of a settlement agreement reached during Lawson’s salary and misclassification grievance; discrimination and retaliation pursuant to HRS § 378-2; whistleblower retaliation pursuant to HRS § 378-62; and Intentional Infliction of Emotional Distress. Rosenbaum Decl. at ¶ 12. *See also* Exhibit D (Professor Lawson’s First Amended Complaint filed April 17, 2024, 1CCV-23-0001391).

1CCV-23-0001391 (“State case 23-1391”) is a breach of contract lawsuit wherein Professor Lawson, a tenured Professor with decades of experience as a practicing attorney, entered into a Settlement Agreement (“the Settlement Agreement”) with Defendant UH after he filed a grievance for inequity in pay and misclassification as a tenured Specialist member of the faculty (“S-Faculty”) at the WSRSL. UH eventually breached the covenant of good faith and fair dealings that is implied in every contract executed in the State of Hawai`i when they denied Professor Lawson a Special Salary Adjustment (“SSA”) after he went through the appropriate procedures for the SSA as directed by Dean Nelson. Rosenbaum Decl. at ¶ 13. *See also* Exhibit D at ¶ 1.

State case 23-1391 is also an action to redress the discrimination and retaliation against Professor Lawson based on his race, color, arrest and court record, and disability. Professor Lawson’s inequity in his pay raises an inference of discrimination and retaliation. Professor Lawson continues to be retaliated against after complaining about discrimination. Professor

Lawson thus alleges state law causes of action under a common nucleus of operative facts for violations of HRS § 378-2. Rosenbaum Decl. at ¶ 14. *See also* Exhibit D at ¶ 2.

State case 23-1391 is also an action to redress the retaliation against Professor Lawson after he complained about the illegally created conversion process of S-Faculty to J-Faculty at the WSRSL. Professor Lawson thus alleges state law causes of action under a common nucleus of operative facts for violations the Hawai'i State Whistleblowers' Protection Act, HRS § 378-62. Rosenbaum Decl. at ¶ 15 . *See also* Exhibit D at ¶ 3.

**D. Professor Lawson's First Circuit Court, State of Hawai'i, Complaint (Civil No. 1CCV-24 0000340)**

On March 14, 2024, Professor Lawson, through his current counsel, filed a Complaint for the in the First Circuit Court, State of Hawai'i against the University of Hawai'i, Dean Nelson in her individual capacity, *et al.* (Civil No. 1CCV-24-0000340) ("State Court No. 24-340"). The First Amended Complaint in that case was filed on April 17, 2024, and it alleges: discrimination and retaliation pursuant to HRS § 378-2; whistleblower retaliation pursuant to HRS § 378-62; and Intentional Infliction of Emotional Distress. Rosenbaum Decl. at ¶ 16. *See also* See Exhibit E (Professor Lawson's First Amended Complaint filed April 17, 2024, 1CCV-24-0000340).

1CCV-24-0000340 ("State case 23-340") is a discrimination and retaliation lawsuit as described in Fed. Court No. 23-348 as stated, *supra*. Rosenbaum Decl. at ¶ 17. *See* Exhibit E at ¶¶ 85-131.

Although State Court Nos. 23-1391 and 24-340 are vastly different, both Complaints share some of the same factual background information, the underlying claims stem from completely different actions by the Defendants. The actionable facts in the two cases are distinct and are not based upon the same actions. Rosenbaum Decl. at ¶ 18.

**E. State Court Nos. 23-1391 and 24-340 Were Consolidated and Stayed**

On September 6, 2024, a hearing was held on Defendants' Motion to Consolidate and Stay Professor Lawson's State Court Nos. 23-1391 and 24-340. Professor Lawson did not oppose the consolidation of the cases but did oppose a stay in the cases. On September 19, 2024, the Hon. Judge Karin L. Holma issued an Order to consolidate State Court Nos. 23-1391 and 24-340 and to stay the cases while Professor Lawson continued to litigate his Federal case, Fed. Court No. 24-172. Importantly, State Court Nos. 23-1391 and 24-340 arise out of Hawai'i State law claims that could not have been adjudicated in Federal Court. Rosenbaum Decl. at ¶ 19.

It should be noted that in State Court No. 23-1391, Professor Lawson survived a motion to dismiss his IIED claim against Dean Nelson. Moreover, in Fed. Court No. 24-172, Professor Lawson survived a motion to dismiss, as relevant here, in regard to his claims against Dean Nelson *et al.* under (1) Title 42 United States Code Section 1983 claim alleging viewpoint discrimination in violation of the First Amendment, (2) Section 1983 claim alleging First Amendment retaliation, and (3) Section 1983 claim alleging violations of Professor Lawson's Fourteenth Amendment procedural due process rights. Rosenbaum Decl. at ¶ 19.

**F. Professor Lawson Filed the Present Case (Civil No. 1CCV-25-000036) in State Court to Meet the Statute of Limitations Provided by the Hawai'i Civil Rights Commission**

As a result of opposing discrimination at the WSRSL faculty meeting in February 2023 and via filing courts complaints in the State of Hawai'i Court and U.S. District Court, Professor Lawson endured additional adverse actions by UH and its faculty. Additional adverse actions that were not stated in State Court Nos. 23-1391 and 24-340 included, but are not limited to:

- i. "Defendant Bruno inexplicably and unilaterally imposed restrictions and a "no-contact" order against Professor Lawson if he were to attend the 2024 W.S.R.S.L. graduation ceremony in May 2024. Students wanted Professor Lawson to attend the ceremony. Defendant Bruno would not define exactly what his "no-contact" order encompassed, so Professor Lawson did not attend out of fear of further retaliation. Defendant Bruno also continued his "no-contact" order, Professor Lawson's ongoing banishment, and restriction from the listserv even after the decisionmaker of the investigations against Professor Lawson did not recommend or even suggest such actions.
- ii. Professor Lawson had a 30-day suspension without pay from May 16, 2024, until June 15, 2024.
- iii. Professor Lawson was also required to attend mandatory training with Defendant on EP 9.210, the University's Workplace Non-Violence Policy on July 23, 2024. Professor Lawson was also required to attend mandatory training with Defendant on EP 1.202, Nondiscrimination, Equal Opportunity and Affirmative Action, and EP1.204 Sex and Gender Based Misconduct on July 20 and 29, 2024. Even though the decisionmaker found that Professor Lawson did not violate Title IX policies, Defendant Bruno required Professor Lawson to undergo Title IX training.
- iv. Professor Lawson was also required to attend mandatory anger management training sessions on the following dates: June 27, 2024, July 3, 2024, July 10, 2024, July 18, 2024, July 24, 2024, and July 26, 2024.
- v. Defendant U.H. also ordered Professor Lawson to waive his privacy rights to his medical records to attend the mandatory anger management/mental

health sessions.”

*See* Dkt. 11 at ¶¶ 202-204 and 218-231.

Professor Lawson timely filed Charges of Discrimination (FEPA Nos. 22982 and 22983) with the Hawai`i Civil Rights Commission (“HCRC”) for the additional adverse actions. On October 29, 2024, the HCRC issued the ninety-day right to sue notices for Professor Lawson’s HCRC Charges. The statute of limitations for Professor Lawson’s right to sue notices was January 27, 2025. Rosenbaum Decl. at ¶ 20. *See also* Dkt. 11 at ¶ 10.

On January 10, 2025, Professor Lawson filed an action in the First Circuit Court, State of Hawai`i against the University of Hawai`i, Camille Nelson in her individual capacity, *et al.* for the present case, State Court No. 25-0036. The First Amended Complaint for the present case was filed on January 27, 2025, and it alleges: claims related to the breach of Professor Lawson’s settlement agreement; discrimination and retaliation pursuant to HRS § 378-2; whistleblower retaliation pursuant to HRS § 378-62; and intentional infliction of emotional distress. *See* Dkt. 11 at ¶¶ 233-264.

On or about January 11, 2025, Defendants’ attorney spoke with Professor Lawson’s attorney and communicated that his clients were upset with the additional instant lawsuit, State Court No. 25-0036. During litigation of Professor Lawson’s lawsuits, it has been made clear that Dean Nelson has been upset with the lawsuits. Evinced in the fact that she specifically cites to the lawsuits in the Counterclaim. *See* Dkt. 13 at ¶¶ 3-6. Professor Lawson’s attorney informed Defendants’ attorney that State Court No. 25-0036 was filed to meet the statute of limitations from the HCRC and that Professor Lawson was not serving State Court No. 25-0036 to the Defendants with the hopes there would be a settlement as discussed during the course of a mediation between the parties that began on December 16, 2025. Professor Lawson’s State Court No. 25-0036 was filed in an abundance of caution in the event that if the parties stipulated to amend consolidated cases State Court Nos. 23-1391 and 24-340, there was no guarantee that the Hon. Judge Holma would approve of the stipulation, thus leaving the possibility that the statute of limitations could expire for HCRC FEPA Nos. 22982 and 22983. Rosenbaum Decl. at ¶ 21.

On January 27, 2025, shortly after Professor Lawson filed his First Amended Complaint in the present case, his attorney emailed and informed Defendants’ attorney that the First Amended Complaint had been filed to meet the statute of limitations for one of Professor Lawson’s HCRC right to sue notices. Professor Lawson’s attorney also stated he would notify

Defendants' attorney when Professor Lawson intended to serve Defendants with State Court No. 25-0036. Rosenbaum Decl. at ¶ 22.

On January 29, 2025, Professor Lawson's attorney again spoke with Defendants' attorney and reiterated the above and acknowledged the likelihood of consolidating the present case with State Court Nos. 23-1391 and 24-340. Professor Lawson's attorney also stated that Professor Lawson would be filing an additional Complaint in Federal Court once the decision in his grievance was issued. Rosenbaum Decl. at ¶ 23.

Just two days later, Dean Nelson filed a Counterclaim in the present case [Dkt.13] alleging defamation and IIED by Professor Lawson. The Counterclaim is a quintessential SLAPP suit aimed at silencing Professor Lawson's free speech through meritless defamation and IIED claims. Moreover, Dean Nelson is clearly trying to chill Professor Lawson's speech and prevent him from filing an additional Complaint in Federal Court with new claims of violations of the United States Constitution's First Amendment. Rosenbaum Decl. at ¶ 24.

As crucial to the understanding of the clear temporal relation of Dean Nelson's Counterclaim and her attempts to chill Professor Lawson's protected speech, on December 15, 2024, Professor Lawson provided Defendants with a draft Complaint for an additional Federal Court Complaint he intended to file with new claims against Dean Nelson of: First Amendment Retaliation pursuant to 42 U.S.C. 1983 and HRS § 378-2, as well as IIED. Rosenbaum Decl. at ¶ 25. The incident give rising to that Complaint occurred when Defendants UH and Dean Nelson directed Professor Lawson to change his course material for Criminal Law. One single anonymous whistleblower complaint to UH complained of the inappropriate use of images Professor Lawson used in a hypothetical to teach the legal concept of *mens rea* and transferred intent. Importantly, the complaint cited to Professor Lawson's lawsuits against the Defendants as one of the reasons why the images were inappropriate. Rosenbaum Decl. at ¶ 26.

As a result of the whistleblower complaint, Professor Lawson had a mandatory meeting with UH and Dean Nelson where they admitted that Professor Lawson's hypothetical likely did not violate any UH policy, but he still would be required to change his academic course material that was complained of. To no avail, Professor Lawson protested that UH was violating his First Amendment right of academic freedom and expression. Professor Lawson was accompanied by a union representative of the University of Hawaii Professional Assembly ("UHPA") that also supported Professor Lawson's assertion that his First Amendment right to academic freedom and

expression was being violated. Thereafter, Professor Lawson through the assistance of the UHPA, filed a grievance with the UH addressing Professor Lawson's First Amendment right to academic freedom and expression. The grievance is still being reviewed by UH. Rosenbaum Decl. at ¶ 27.

On or about, December 13, 2024, the Foundation for Individual Rights and Expression ("FIRE"), a nonprofit dedicated to freedom of speech, issued a letter to UH detailing how UH was violating Professor Lawson's First Amendment right to academic expression. Rosenbaum Decl. at ¶ 28. *See also* Exhibit F (FIRE Letter to the UH dated December 13, 2024). On January 23, 2025, FIRE published an article on their website that covered how the UH violated Professor Lawson's First Amendment right to academic freedom. On January 29, 2025, local news outlet Honolulu Civil Beat published an article titled "Free Speech Group Blasts UH For Censoring Law School Presentation" that covered FIRE's January 23, 2025, online article. Rosenbaum Decl. at ¶ 27. *See also* Exhibit G (FIRE Online Article dated January 23, 2025). Clearly, FIRE's national coverage of Dean Nelson's and UH's trampling on Professor Lawson's First Amendment right to academic freedom was a tipping point for Dean Nelson.

The Counterclaim is without question retributive in nature and intended to chill Professor Lawson's protected speech. Unlike the Counterclaim, Professor Lawson's Federal and State lawsuits are meritorious and allowable under the applicable laws and rules.

### **III. Legal Standard**

HRS § 634G-2 (**Scope of Chapter**) provides in relevant part:

(a) Except as otherwise provided in subsection (b), this chapter shall apply to a cause of action asserted against a person based on the person's:

(1) Communication in a legislative, executive, *judicial*, administrative, or other governmental proceeding;

(2) Communication on an issue under consideration or review in a legislative, executive, judicial, administrative, or other governmental proceeding; or

(3) *Exercise of the right of freedom of speech or of the press, the right to assemble or petition, or the right of association, guaranteed by the United States Constitution or the Hawaii State Constitution, on a matter of public concern.*

(emphasis added).

HRS § 634G-6 (**Dismissal of cause of action**) provides in relevant part:

(a) In ruling on a motion under section 634G-3(a), the court shall dismiss with prejudice a cause of action or part of a cause of action if:

(1) The moving party establishes under section 634G-2(a) that this chapter applies;

(2) The responding party fails to establish under section 634G-2(b) that this chapter does not apply; and

(3) Either:

(A) The responding party fails to establish a prima facie case as to each essential element of the cause of action; or

(B) The moving party establishes that:

(i) The responding party failed to state a cause of action upon which relief can be granted;

or

(ii) There is no genuine issue as to any material fact and the party is entitled to judgment as a matter of law on the cause of action or part of the cause of action.

#### **IV. Argument**

##### **A. Professor Lawson's Speech Cited in the Counterclaim Are Protected Speech Pursuant to HRS 634G-2(a)(1)(3)**

Courts should evaluate motions pursuant to HRS § 634G-6 using a two-step process. First, the Plaintiff/Counterclaim-Defendant must establish that the challenged claims arise from activity protected under HRS § 634G-2(a). *See* HRS § 634G-6(a)(1). Protected activity is any act by the Counterclaim-Defendant made in furtherance of his right of communication in a judicial proceeding or free speech under the United States Constitution or the Hawai'i State Constitution on a matter of public concern. *See* HRS § 634G-2(a)(1)(3). The statute shall be construed liberally to fully effectuate its purposes and intent to protect the exercise of the right of freedom of speech and of the press, the right to assemble and petition, and the right of association, guaranteed by the United States Constitution or Hawaii State Constitution. HRS § 634G-10.

Next, if Plaintiff/Counterclaim-Defendant shows that a challenged cause of action arises out of protected activity, the Defendant/Counterclaimant then has the burden of proof to demonstrate a probability of prevailing on the claim. To satisfy this burden, the Defendant/Counterclaimant must demonstrate that each challenged claim based on protected activity is legally sufficient and factually substantiated pursuant to HRS § 634G-6(a)(3)(A)(B)(i)(ii).

**i. Professor Lawson’s Speech During a February 17, 2023, Faculty Meeting at The WSRSL and His Subsequent Emails Dated February 18 and 21, 2023 Were Protected Speech On a Matter of Public Concern**

The Counterclaim erroneously points to Professor Lawson’s speech during: (1) a faculty meeting at the WSRSL on February 17, 2023; (2) emails he sent on February 18 and 21, 2023; and (3) five lawsuits that Professor Lawson filed in Federal and State Courts as evidence of defamation and IIED against Dean Nelson. *See* Dkt. 13 at ¶¶ 3-6.

Whether speech is on a matter of public concern is a question of law. *Berry v. Dep’t of Soc. Servs.*, 447 F.3d 642, 648 (9th Cir. 2006). The speech need not be entirely about matters of public concern, but it must “substantially involve” such matters. *Johnson v. Multnomah County*, 48 F.3d 420, 425 (9th Cir. 1995). “[S]peech warrants protection when it ‘seek[s] to bring to light actual or potential wrongdoing or breach of public trust.’” *Barone v. City of Springfield*, 902 F.3d 1091, 1098 (9th Cir. 2018) (second alteration in original) (quoting *Connick v. Myers*, 461 U.S. 138, 148, 103 S. Ct. 1684, 75 L. Ed. 2d 708 (1983)).

“Whether an employee’s speech addresses a matter of public concern must be determined by the content, form, and context of a given statement, as revealed by the whole record.” *Connick*, 461 U.S. at 147–48, 103 S. Ct. 1684. “[T]he content of the speech is generally the most important.” *Karl v. City of Mountlake Terrace*, 678 F.3d 1062, 1069 (9th Cir. 2012). In reviewing form and context, “we focus on the point of the speech, looking to such factors as the employee’s motivation and the audience chosen for the speech.” *Ulrich v. City & County of San Francisco*, 308 F.3d 968, 979 (9th Cir. 2002) (citation and internal quotation marks omitted). This analysis seeks to determine whether the employee aimed “‘to bring wrongdoing to light,’ not ‘merely to further some purely private interest.’” *Id.* (quoting *Havekost v. U.S. Dep’t of Navy*, 925 F.2d 316, 318 (9th Cir. 1991)).

Here, without question, Professor Lawson’s engaged in protected speech pursuant to HRS § 634G-2 when he denounced racism during a faculty meeting at the WSRSL on February 17, 2023. The Hon. Judge Leslie Kobayashi determined that Professor Lawson’s speech denouncing racism at the faculty meeting addressed a matter of public concern and is instructive here, stating in relevant part:

“At the February 17, 2023 faculty meeting, Lawson criticized the Event and questioned why the DEI committee “had not included any Black individuals as facilitators or panelists” for the Event. [Lawson Decl. at ¶ 12.] Lawson stated the

exclusion “was an example of what academic scholar and author Robin DiAngelo addressed at length in her book ‘Nice Racism.’” [Id. at ¶ 14.]...***This Court concludes that the general subject of Lawson’s speech at the February 17, 2023 faculty meeting – whether the Event was appropriate - addressed a matter of public concern.*** However, during his speech about a matter of public concern, Lawson made some remarks that expressed individual disputes and grievances, such as his comparison of his Black experience with Nelson’s.”

*See* Exhibit H at pdf pgs.18-20 (Order Denying Plaintiff’s *Ex Parte* Motion For Temporary Restraining Order dated May 3, 2024, Federal Court No 24-00172) (emphasis added).

Moreover, in Fed. Court No. 24-172, Professor Lawson survived a motion to dismiss, as relevant here, as to his claims against Dean Nelson *et al.* under (1) Title 42 United States Code Section 1983 claim alleging viewpoint discrimination in violation of the First Amendment, (2) Section 1983 claim alleging First Amendment retaliation, and (3) Section 1983 claim alleging violations of Professor Lawson’s Fourteenth Amendment procedural due process rights. Rosenbaum Decl. at ¶ 19. These Federal claims arise out of Professor Lawson’s speech regarding a matter of public concern.

Likewise, Professor Lawson’s speech in his emails dated February 18 and 21, 2023, referenced in the Counterclaim as evidence of defamation and IIED, were also denouncing racism at the WSRSL, a matter of public concern. The emails were a continuation of his protected speech that he conveyed during the February 17, 2023, WSRSL faculty meeting. *See* Dkt. 13 at ¶¶ 16-17.

**ii. Professor Lawson’s Federal and State Court Complaints Are Protected Speech Under Hawai`i’s Litigation Privilege Doctrine**

“Hawai`i courts have applied an absolute litigation privilege in defamation actions for words and writings that are material and pertinent to judicial proceedings.” *Isobe v. Sakatani*, 279 P.3d 33, 47 (Haw. App. 2012) (citing *Matsuura v. E.I. du Pont de Nemours & Co.*, 102 Hawai`i 149, 154, 73 P.3d 687 at 692 (2003)). Moreover, it has been recognized that the privilege adopted in Hawai`i is consistent with the privilege as set forth in Restatement (Second) of Torts § 586 (1977). *Isobe*, 279 P.3d at 47 (citation omitted).

The policies associated with the litigation privilege include: (1) promoting the candid, objective, and undistorted disclosure of evidence; (2) placing the burden of testing the evidence upon the litigants during trial; (3) avoiding the chilling effect resulting from the threat of subsequent litigation; (4) reinforcing the finality of judgments; (5) limiting collateral attacks

upon judgments; (6) promoting zealous advocacy; (7) discouraging abusive litigation practices; and (8) encouraging settlement. *Matsuura*, 73 P.3d at 693.

Here, Professor Lawson's five lawsuits are clearly protected speech under the Hawai'i litigation privilege doctrine as well as activity protected under HRS § 634G-2(a)(1) and cannot be used against him in Dean Nelson's defamation or IIED claims. Like the HPEPA, Hawai'i's litigation privilege policy aims to "avoid the chilling effect resulting from the threat of subsequent litigation" and "discouraging abusive litigation practices". *Id.*

As a showing of their retributive intent, Defendant/Counterclaim's reference to Professor Lawson's five lawsuits, misleads this Court, and states, "the 5 Lawsuits were intended to extort the University to pay him compensation that the University rejected and or penalties he is not entitled to." *See* Dkt. 13 at ¶ 6.

**B. Dean Nelson's Claims of Defamation and Intentional Infliction of Emotional Distress Should Be Dismissed Because She Has Not Established a *Prima Facie* Case**

Professor Lawson has, without question, shown that the defamation and IIED claims against him arose out of his protected activity pursuant to HRS § 634G-6(a)(1). Pursuant to HRS § 634G-6(a)(1)(A), Dean Nelson has the burden of proof to demonstrate a probability of prevailing on her counterclaims. To satisfy this burden, Dean Nelson must establish a *prima facie* case as to each essential element of defamation and IIED, which she cannot do. HRS § 634G-6(a)(1)(3)(A). The ultimate downfall for Dean Nelson to establish a *prima facie* case lies in the fact that the Counterclaim lacks any statements made by Professor Lawson that are defamatory or rise to the high standard of outrageousness.

In order to sustain a claim for defamation, a plaintiff must establish the following four elements: (a) *a false and defamatory statement concerning another*; (b) an unprivileged publication to a third party; (c) fault amounting at least to negligence on the part of the publisher [actual malice where the plaintiff is a public figure]; and (d) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. *Gold v. Harrison*, 88 Haw. 94, 100, 962 P.2d 353, 359 (Haw. 1998) (internal citations omitted)(emphasis added).

The Hawai'i Supreme Court has adopted a three-part test for determining whether a challenged statement can support a defamation claim. Under the three-part test, the court

analyzes: (1) whether the general tenor of the entire work negates the impression that the defendant was asserting an objective fact; (2) whether the defendant used figurative or hyperbolic language that negates that impression; and (3) whether the statement in question is susceptible of being proved true or false. *Gold*, 88 Hawai`i at 101, 962 P.2d at 360.

“[T]ruth is an absolute defense to defamation.” *Wilson v. Freitas*, 214 P.3d 1110, 1118 (Haw. App. 2009) (quoting *Gonsalves v. Nissan Motor Corp. in Hawaii, Ltd.*, 100 Hawai`i 149, 173, 58 P.3d 1196, 1220 (2002) (citation omitted). The literal truth of every word or detail of the challenged statement is not required; the statement need only be substantially true. *Wilson*, 214 P.3d at 1118 (citation omitted). “[I]t is sufficient if the substance, the gist, the sting, of the matter is true.” *Id.* (citation omitted).

The threshold question in a defamation suit is whether a reasonable factfinder could conclude that the statement implies an assertion of objective fact. *Williams v. Kanemaru*, No. CAAP-11-0000419, 2013 Haw. App. LEXIS 489, 2013 WL 4458887, at \*4 (Hawai`i Ct. App. Aug. 20, 2013) (internal citation and quotation mark omitted). “A defamatory communication may consist of a statement in the form of an opinion, but a statement of this nature is actionable only if it implies the allegation of undisclosed defamatory facts as the basis for the opinion.” *Id.* (quoting Restatement (Second) of Torts § 566 (1977)). **“A simple expression of opinion based on disclosed . . . nondefamatory facts is not itself sufficient for an action of defamation, no matter how unjustified and unreasonable the opinion may be or how derogatory it is.”** *Id.* (emphasis added) (internal citation omitted). The rationale behind this rule is that when the facts are disclosed, third parties will understand that they are hearing the defendant’s “interpretation of the facts presented; they are therefore unlikely to construe the statement as insinuating the existence of additional, undisclosed facts.” *Id.* at \*5. (quoting *Standing Comm. on Discipline of the U.S. Dist. Court for the Cent. Dist. of Cal. v. Yagman*, 55 F.3d 1430, 1439 (9th Cir. 1995).

In *Williams*, the plaintiff claimed that the defendants defamed her by accusing her of being a “racist”. The defendants’ alleged accusation that the plaintiff was a “racist” occurred during an interview as part of an investigation into the climate of the operating room and complaints that the plaintiff was mistreating others. The defendants allegedly accused the plaintiff of being racist because the plaintiff did not like Barack Obama and said that he looked like a “bobble head” and because the plaintiff made fun of a colleague’s manner of speech. The plaintiff did not dispute that these events occurred. *Id.* at \*5-6.

In upholding the trial court’s decision granting summary judgement in favor of the defendants, the Hawai`i Court of Intermediate Appeals in *Williams* found that the defendants’ alleged statement that the plaintiff was a “racist” was merely an opinion characterizing the plaintiff based on disclosed facts that the plaintiff apparently recognized as true. *Id.* The court further stated that because the basis for the opinion was disclosed, if the opinion were deemed unfounded or unfair, the listener would be free to reject it. *Id.*

Here, it’s not clear in the Counterclaim what exact statements Professor Lawson made regarding Dean Nelson that were allegedly defamatory. The Counterclaim alleges that defamatory statements occurred during a faculty meeting at the WSRSL on February 17, 2023; emails Professor Lawson sent dated February 18 and 21, 2023; and the five (5) lawsuits that Professor Lawson filed in Federal and State Courts. *See* Dkt. 13 at ¶¶ 3-6.

The only alleged statements by Professor Lawson provided in the Counterclaim that could possibly be construed as defamatory from the February 17, 2023, WSRSL faculty meeting were recited in Dean Nelson’s interview with the University investigators which states in relevant part and that factual basis for which Professor Lawson disputes to an extent:

- “I interjected and asked Professor Lawson: “can we talk about where we go from here? I feel that you’re upset, can we think about how to move on positively and go on?” If there was a positive suggestion, we could have dealt with it; no one tried to diminish anything he was saying. I told him that we are all colleagues, and we can ask them, the diversity committee, what they were trying to achieve. Professor Lawson then responded by saying **“you’re an apologist and you’re what allows this racist shit to continue”**. He continued in a raised voice and now directing his anger at me by *asking if I had “ever seen my mama get beat down”, or if I had “ever been beaten by the police” and that if I haven’t, I wasn’t “a real black person”*”
- “The committee had asked me to attend the event, but I couldn’t because I had a conflict. I didn’t want to mention it at that time because I felt like it wouldn’t have mattered as **he was basically saying I was not black enough and it might have made him angrier. Professor Lawson would probably then be upset that they asked me instead of him. He said things like “you’re not from here, you wouldn’t understand”. I am Jamaican-Canadian and I’ve been in this country since 1998.**”
- He asserted that I could not weigh in or comment as I basically didn’t have the right type of blackness, wasn’t from here, and/or wasn’t black enough to weigh in.
- **“He said that I was a “nice racist” and “too woke” to understand what is real.”**

*See* Dkt. 13 at ¶ 14 (emphasis added).

The Counterclaim is clearly devoid of any defamatory communication by Professor Lawson regarding Dean Nelson. At best, he was merely stating opinions characterizing Dean Nelson based on disclosed nondefamatory facts. No matter how unjustified and unreasonable or derogatory Professor Lawson's opinions may have been, his statements are not sufficient for a defamation claim. Also, because the basis for Professor Lawson's opinions were disclosed, if the opinion were deemed unfounded or unfair, the listener would be free to reject it. Moreover, under Hawai'i's litigation privilege doctrine, Dean Nelson cannot rely on Professor Lawson's Court Complaints as a basis for a claim of IIED.

**i. Dean Nelson Cannot Establish a *Prima Facie* Case of Intentional Infliction of Emotional Distress**

A claim of IIED requires that the act allegedly causing the harm was: (1) intentional or reckless, (2) outrageous, and (3) caused extreme emotional distress to another. *Hac v. Univ. of Haw.*, 102 Hawai'i 92, 106-07, 73 P.3d 46, 60-61 (Haw. 2003). "The term 'outrageous' has been construed to mean 'without just cause or excuse and beyond all bounds of decency.'" *Enoka v. AIG Hawai'i Ins. Co., Inc.*, 109 Hawai'i 537, 559, 128 P.3d 850, 872 (2006) (quoting *Lee v. Aiu*, 85 Hawai'i 19, 34 n.12, 936 P.2d 655, 670 n.12 (1997)).

The question of whether the actions of the alleged tortfeasor are unreasonable or outrageous is for the court in the first instance, although where reasonable people may differ on that question it should be left to the jury. *Takaki v. Allied Mach. Corp.*, 87 Hawai'i 57, 68, 951 P.2d 507, 518 (App. 1998). "Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Williams v. Kanemaru*, No. CAAP-11-0000419, 2013 Haw. App. LEXIS 489, 2013 WL 4458887, at \*11 (Hawai'i Ct. App. Aug. 20, 2013) (citing *Tseu ex rel. Hobbs v. Jeyte*, 88 Hawai'i 85, 93, 962 P.2d 344, 352 (1998) (quoting Restatement (Second) of Torts § 46 cmt. d (1965))). "[M]ere **insults, indignities, threats, annoyances, petty oppressions, or other trivialities**" are **insufficient.**" *Young v. Allstate Ins. Co.*, 119 Hawai'i 403, 425, 198 P.3d 666, 688 (2008) (citation and internal quotation marks omitted) (emphasis added). *See also Shoppe v. Gucci Am., Inc.*, 94 Hawai'i 368, 387, 14 P.3d 1049, 1068 (2000) (holding that employer's shouting at and abusive manner toward employee, including public chastisement about attire and comportment, were not outrageous as a matter of law). **"An actor is also not liable in an IIED claim where**

**the conduct is privileged, -- when he has done no more than to insist upon his legal rights in a permissible way, even though he is well aware that such insistence is certain to cause emotional distress.** *Young*, 119 Haw. at 425, 198 P.3d at 688 (emphasis added) (internal citation and quotations omitted). The Hawai'i Supreme Court has set an extremely high bar for those seeking to assert an IIED claim:

“In explaining the type of “outrageous” conduct that makes a claim for intentional infliction of emotional distress actionable, the Restatement (Second) of Torts states:

It has not been enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by ‘malice,’ or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort. Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, ‘Outrageous!’”

*Toguchi v. Matayoshi*, No. 13-00380 DKW-KSC, 2015 U.S. Dist. LEXIS 51209, at \*12-13 (D. Haw. Apr. 17, 2015) (citing *Ross v. Stouffer Hotel Co. (Hawai'i) Ltd., Inc.*, 76 Hawai'i 454, 465 n. 12, 879 P.2d 1037, 1048 n. 12 (1994) (quoting Restatement (Second) of Torts § 46, cmt. d. (1965))).

In *Williams*, the Hawai'i Court of Intermediate Appeals found that the defendants' alleged accusation of calling the plaintiff “racist”, represented an opinion based on disclosed facts and was not “without just cause or excuse and beyond all the bounds of decency” *Williams v. Kanemaru*, No. CAAP-11-0000419, 2013 Haw. App. LEXIS 489, 2013 WL 4458887, at \*11 (Hawai'i Ct. App. Aug. 20, 2013) (internal citation omitted). The court in *Williams* also stated, “nor can we say that a reasonable person would be unable to adequately cope with the comments, characterizations, and reprimands arising from the Defendants' workplace investigation. Defendants' alleged accusation does not reach the high standard of outrageousness necessary to maintain an IIED claim; thus, this claim fails as a matter of law.” *Id.*

Here, any of the alleged defamatory statements made by Professor Lawson against Dean Nelson in the Counterclaim represented an opinion based on disclosed facts and were not without just cause or excuse and beyond all the bounds of decency. Importantly, as noted *supra*, the alleged defamatory statements referenced in the Counterclaim stem from Professor Lawson's

protected speech denouncing racism. A reasonable person would certainly consider Professor Lawson's alleged defamatory statements, at most, trivialities that do not rise to the high standard of outrageousness. Dean Nelson's alleged accusation of defamation clearly does not reach the high standard of outrageousness necessary to maintain an IIED claim and fails as a matter of law.

**C. Dean Nelson's Claims of Defamation and Intentional Infliction of Emotional Distress Should Be Dismissed Because She Failed to State a Cause of Action Upon Which Relief Can Be Granted**

Pursuant to HRS § 634G-6(a)(3)(B)(i), Dean Nelson's counterclaims of defamation and IIED should be dismissed if Professor Lawson can establish that Dean Nelson failed to state a cause of action upon which relief can be granted. This is the same exacting standard under HRCF Rule 12(b)(6).

A Rule 12(b)(6) motion to dismiss tests the legal sufficiency of a party's claim for relief. A complaint should be dismissed for failure to state a claim pursuant to HRCF Rule 12(b)(6) if it appears beyond doubt that the plaintiff can prove no set of facts in support of their claim that would entitle them to relief. *Blair v. Ing*, 95 Hawai'i 247, 252, 21 P.3d 452, 457 (2001).

In considering the motion, the court views the complaint in the light most favorable to the plaintiff and deems the factual allegations of the complaint as true. *Id.* However, the court is not required to accept conclusory allegations on the legal effect of the events alleged. *Civil Beat Law Ctr. for the Pub. Interest, Inc. v. City & Cty. of Honolulu*, 445 P.3d 47, 55 (Haw. 2019) (internal citation omitted). *See Also Moore v. Allstate Ins. Co.*, 6 Haw. App. 646, 651, 736 P.2d 73, 77 (1987) (the court should not accept conclusory allegations about the legal effect of pleaded facts if the allegations do not reasonably follow from the plaintiff's description of what happened).

Here, even taken the allegations in Counterclaim as true, Dean Nelson's claims of defamation and IIED must be dismissed because as discussed, *supra*. The Counterclaim is clearly devoid of any defamatory communication by Professor Lawson regarding Dean Nelson. At best, he was merely stating opinions characterizing Dean Nelson based on disclosed nondefamatory facts. No matter how unjustified and unreasonable or derogatory Professor Lawson's opinions may have been to some, his statements are not sufficient for a defamation claim.

Any of the alleged defamatory statements made by Professor Lawson as stated in the Counterclaim represented an opinion based on disclosed facts and stem from Professor

Lawson's protected speech denouncing racism. His alleged defamatory statements were not without just cause or excuse and beyond all the bounds of decency. At most, his alleged defamatory statements were trivialities that do not rise to the high standard of outrageousness. Clearly, the Counterclaim failed to state a claim sufficient for an IIED claim.

Moreover, Dean Nelson cannot rely on Professor Lawson's lawsuits as a basis for a claim of IIED pursuant to Hawai'i's litigation privilege doctrine. Professor Lawson's lawsuits are also clearly protected speech under HRS § 634G-2(a)(1). Like the HPEPA, Hawai'i's litigation privilege policy aims to "avoid the chilling effect resulting from the threat of subsequent litigation" and "discouraging abusive litigation practices".

Dean Nelson's accusations as pled do not reach the high standard of outrageousness necessary to maintain an IIED claim and fail as a matter of law. Accordingly, all claims against Professor Lawson must be dismissed with prejudice.

**D. Dean Nelson's Claims of Defamation and Intentional Infliction of Emotional Distress Should Be Dismissed Because There is No Genuine Issue as to Any Material Fact and Professor Lawson is Entitled to Judgment as a Matter of Law**

Pursuant to HRS § 634G-6(a)(3)(B)(ii), Dean Nelson's counterclaims of defamation and IIED should be dismissed if Professor Lawson can establish that there is no genuine issue as to any material fact and Professor Lawson is entitled to judgment as a matter of law. This is the same exacting standard for summary judgement pursuant to HRCF Rule 56(c).

Summary judgment is proper if "the pleadings depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." HRCF Rule 56(c). Once the moving party has satisfied its initial burden of showing the absence of a genuine issue of material fact and its entitlement to a judgment as a matter of law, the opposing party "may not rest upon the mere allegations or denial of the [opposing party's] pleading" but must come forward, through affidavit or other evidence, with "specific facts showing there is a genuine issue for trial." HRCF Rule 56(e). If the opposing party fails to respond in this fashion, the moving party is entitled to summary judgment as a matter of law. *Suzuki v. State*, 119 Hawaii 288, 297, 196 P.3d 290, 299 (Haw. App. 2008).

Here, even taking the allegations in Counterclaim as true, Dean Nelson's claims of defamation and IIED must be dismissed as a matter of law. Dean Nelson is unable to establish a

*prima facie* case for each cause of action as discussed, *supra*. The Counterclaim is clearly devoid of any defamatory communication by Professor Lawson regarding Dean Nelson. At best, he was merely stating opinions characterizing Dean Nelson. Professor Lawson's alleged statements are not sufficient for a defamation claim and fails as a matter of law.

Any of the alleged defamatory statements in the Counterclaim made by Professor Lawson against Dean Nelson represented an opinion based on disclosed facts and were not without just cause or excuse and beyond all the bounds of decency. A reasonable person would certainly consider Professor Lawson's alleged statements, at most, trivialities that do not rise to the high standard of 'outrageous' or 'without just cause or excuse and beyond all bounds of decency.' Dean Nelson's accusation as to Professor Lawson's statements clearly does not reach the high standard of outrageousness necessary to maintain an IIED claim and fails as a matter of law.

#### **V. CONCLUSION**

Based on the foregoing, Plaintiff/Counterclaim-Defendant respectfully requests that his Motion to Dismiss, pursuant to HRS 634G-6 and HRCP Rule 12(b)(6), be granted as to Defendant/Counterclaimant counterclaims of defamation and intentional infliction of emotional distress (Counts I and II) against Plaintiff/Counterclaim-Defendant.

DATED: Honolulu, Hawai'i, February 20, 2025.

/s/ Joseph T. Rosenbaum  
JOSEPH T. ROSENBAUM  
Attorney for Plaintiff/Counterclaim Defendant  
Kenneth L. Lawson

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT  
STATE OF HAWAI'I

KENNETH L. LAWSON,  
  
Plaintiff/Counterclaim-Defendant,  
  
vs.

UNIVERSITY OF HAWAI'I AT MĀNOA; CAMILLE NELSON in her individual capacity; MICHAEL BRUNO in his individual capacity; JOHN DOES 1-10; JANE DOES 1-10; DOE CORPORATIONS 1-10; DOE PARTNERSHIPS 1-10; DOE UNINCORPORATED ORGANIZATIONS 1-10; DOE ENTITIES 1-10; and DOE GOVERNMENTAL AGENCIES 1-10.

Defendants.

Civil No. 1CCV-25-0000036 (JJK)

DECLARATION OF JOSEPH T. ROSENBAUM

DECLARATION OF JOSEPH T. ROSENBAUM

STATE OF HAWAII )  
 ) SS.  
CITY AND COUNTY OF HONOLULU )

I, JOSEPH T. ROSENBAUM, do hereby declare:

1. Unless otherwise indicated, I make this declaration based upon my personal firsthand knowledge. All of the statements in this declaration are true. I understand that if I make a false statement, I may be prosecuted for perjury.

2. I am competent to testify to the matters set forth herein.

3. That I am an attorney with Fujiwara and Rosenbaum, LLLC and am licensed to practice law in the State of Hawai'i. I am one of the attorneys representing Plaintiff/Counterclaim-Defendant Kenneth L. Lawson in this action.

4. On August 23, 2023, Professor Lawson, as a pro se litigant, filed his First Verified Amended Complaint in the United States District Court, District of Hawai'i against Defendant University of Hawai'i ("UH"), Camille Nelson in her individual capacity, *et al.* (Civil No. 23-00348) ("Fed. Court No. 23-348") and alleged the following claims: First Amendment Retaliation under 42 U.S.C. § 1983; Declaratory Relief under 28 U.S.C. §§ 2201, *et. seq.*; Conspiracy to Violate Civil Rights pursuant to 42 U.S.C. § 1985; and Neglect to Prevent Violation of Civil Rights pursuant to 42 U.S.C. § 1986.

5. The incident originally giving rise to the claims in that case, as well as the present case, occurred during a February 17, 2023, faculty meeting at the WSRSL. Professor Lawson questioned why there were no Black people participating in a Black History Month event that was planned by the WSRSL's Diversity, Equity, and Inclusion ("DEI") committee. Professor Lawson expressed his views that it was racist to have no Black people part of the event at all. The next day, he sent an email to the WSRSL faculty and staff that continued to describe his feelings of racism that he expressed at the meeting. On February 21, 2023, Professor Lawson sent an email to the WSRSL law students, faculty, and school staff, using the law school's listserv. The email stated Professor Lawson and the members of the law school's chapter of the National Black Law Students Association were calling for a boycott of the Black History Month event.

6. On February 27, 2023, Defendant Bruno sent Professor Lawson a "Notice of Investigation" supposedly to determine if Professor Lawson's speech and behavior at the February 17, 2023, faculty meeting and his subsequent use of the listserv to call for a boycott of the event had created a hostile work environment. The Notice of Investigation banned Professor

Lawson from the WSRSL campus indefinitely and restricted his speech by denying his use of the WSRSL listserv.

7. On March 28, 2023, Defendant Bruno extended Professor Lawson's banishment from the WSRSL campus and restrictions on his use of the WSRSL listserv, and informed Professor Lawson that additional allegations had been made against him. Professor Lawson was also being investigated for misogyny, because he allegedly had directed his comments only to women, not men. The Notice claimed that it was misogyny when Professor Lawson did not respond to the emails seeking new faculty rules, even though Professor Lawson had in fact responded to the email. Due to his ongoing banishment from campus while the investigation was being conducted, Professor Lawson was forced to teach his classes online from his home.

8. On April 15, 2024, Professor Lawson voluntarily dismissed his Complaint, Fed. Court No. 23-348, pursuant to Federal Rules of Civil Procedure ("FRCP") 41(a), solely for procedural reasons.

9. Between August 21, 2023, and April 15, 2024, there were a significant number of filings and/or hearings and activity for Fed. Court No. 23-348 which included, but are not limited to, the following: a motion for a temporary restraining order and preliminary injunction, report of planning meeting, scheduling conference statements, initial disclosures, discovery requests, and two (2) mediations.

10. Professor Lawson, as a pro se litigant, filed his First Verified Amended Complaint in a second federal case on May 30, 2024 (Civil No. 24-00172) ("Fed. Court No. 24-172") which was nearly identical to his prior federal Complaint, Fed. Court No. 23-348. He alleged the following claims in Fed. Court No. 24-172: a Title 42 United States Code Section

1983 claim alleging content and viewpoint discrimination, in violation of his First Amendment rights; Section 1983 claims alleging retaliation for the exercise of his First Amendment rights; a Section 1983 claim alleging prior restraint, in violation of his First Amendment rights; Section 1983 claims asserting facial and as-applied challenges to University Executive Policy 1.202 and to University Executive Policy 9.210; a Section 1983 claim alleging violation of his Fourteenth Amendment due process rights; a Title 42 United States Code Section 1985 claim alleging conspiracy to violate civil rights; and a Title 42 United States Code Section 1986 claim alleging failure to prevent violation of civil rights.

11. The second filed Federal Complaint, Fed. Court No. 24-172, is simply an extension of the first federal Complaint and they should not be treated as distinct.

12. Circuit Court, State of Hawai'i against the University of Hawai'i, Camille Nelson in her individual capacity, *et al.* (Civil No. 1CCV-23-0001391) ("State Court No. 23-1391"). The First Amended Complaint for that case was filed on April 17, 2024, and it alleges: claims sounding in contract related to the breach of a settlement agreement reached during Lawson's salary and misclassification grievance; discrimination and retaliation pursuant to HRS § 378-2; whistleblower retaliation pursuant to HRS § 378-62; and Intentional Infliction of Emotional Distress.

13. 1CCV-23-0001391 ("State case 23-1391") is a breach of contract lawsuit wherein Professor Lawson, a tenured Professor with decades of experience as a practicing attorney, entered into a Settlement Agreement ("the Settlement Agreement") with Defendant UH after he filed a grievance for inequity in pay and misclassification as a tenured Specialist member of the faculty ("S-Faculty") at the WSRS. UH eventually breached the covenant of good faith and fair dealings that is implied in every contract executed in the State of Hawai'i when they

denied Professor Lawson a Special Salary Adjustment (“SSA”) after he went through the appropriate procedures for the SSA as directed by Dean Nelson.

14. State case 23-1391 is also an action to redress the discrimination and retaliation against Professor Lawson based on his race, color, arrest and court record, and disability. Professor Lawson’s inequity in his pay raises an inference of discrimination and retaliation. Professor Lawson continues to be retaliated against after complaining about discrimination. Professor Lawson thus alleges state law causes of action under a common nucleus of operative facts for violations of HRS § 378-2.

15. State case 23-1391 is also an action to redress the retaliation against Professor Lawson after he complained about the illegally created conversion process of S-Faculty to J-Faculty at the WSRS. Professor Lawson thus alleges state law causes of action under a common nucleus of operative facts for violations the Hawai‘i State Whistleblowers’ Protection Act, HRS § 378-62.

16. On March 14, 2024, Professor Lawson, through his current counsel, filed a Complaint for the in the First Circuit Court, State of Hawai‘i against the University of Hawai‘i, Dean Nelson in her individual capacity, *et al.* (Civil No. 1CCV-24-0000340) (“State Court No. 24-340”). The First Amended Complaint in that case was filed on April 17, 2024, and it alleges: discrimination and retaliation pursuant to HRS § 378-2; whistleblower retaliation pursuant to HRS § 378-62; and Intentional Infliction of Emotional Distress.

17. 1CCV-24-0000340 (“State case 23-340”) is a discrimination and retaliation lawsuit as described in Fed. Court No. 23-348.

18. Although State Court Nos. 23-1391 and 24-340 are vastly different, both Complaints share some of the same factual background information, the underlying claims stem

from completely different actions by the Defendants. The actionable facts in the two cases are distinct and are not based upon the same actions.

19. On September 6, 2024, a hearing was held on Defendants' Motion to Consolidate and Stay Professor Lawson's State Court Nos. 23-1391 and 24-340. Professor Lawson did not oppose the consolidation of the cases but did oppose a stay in the cases. On September 19, 2024, the Hon. Judge Karin L. Holma issued an Order to consolidate State Court Nos. 23-1391 and 24-340 and to stay the cases while Professor Lawson continued to litigate his Federal case, Fed. Court No. 24-172. Importantly, State Court Nos. 23-1391 and 24-340 arise out of Hawai'i State law claims that could not have been adjudicated in Federal Court. In State Court No. 23-1391, Professor Lawson survived a motion to dismiss his IIED claim against Dean Nelson. In Fed. Court No. 24-172, Professor Lawson survived a motion to dismiss, as relevant here, in regard to his claims against Dean Nelson *et al.* under (1) Title 42 United States Code Section 1983 claim alleging viewpoint discrimination in violation of the First Amendment, (2) Section 1983 claim alleging First Amendment retaliation, and (3) Section 1983 claim alleging violations of Professor Lawson's Fourteenth Amendment procedural due process rights.

20. Professor Lawson timely filed Charges of Discrimination (FEPA Nos. 22982 and 22983) with the Hawai'i Civil Rights Commission ("HCRC") for the additional adverse actions. On October 29, 2024, the HCRC issued the ninety-day right to sue notices for Professor Lawson's HCRC Charges. The statute of limitations for Professor Lawson's right to sue notices was January 27, 2025.

21. On or about January 11, 2025, Defendants' attorney spoke with Professor Lawson's attorney and communicated that his clients were upset with the additional present lawsuit, State Court No. 25-0036. During litigation of Professor Lawson's lawsuits, it has been

made clear that Dean Nelson has been upset with the lawsuits. Professor Lawson's attorney informed Defendants' attorney that State Court No. 25-0036 was filed to meet the statute of limitations from the HCRC and that Professor Lawson was not serving State Court No. 25-0036 to the Defendants with the hopes there would be a settlement as discussed during the course of a mediation between the parties that began on December 16, 2025. Professor Lawson's State Court No. 25-0036 was filed in an abundance of caution in the event that if the parties stipulated to amend consolidated cases State Court Nos. 23-1391 and 24-340, there was no guarantee that the Hon. Judge Holma would approve of the stipulation, thus leaving the possibility that the statute of limitations could expire for HCRC FEPA Nos. 22982 and 22983.

22. On January 27, 2025, shortly after Professor Lawson filed his First Amended Complaint in the present case, his attorney emailed and informed Defendants' attorney that the First Amended Complaint had been filed to meet the statute of limitations for one of Professor Lawson's HCRC right to sue notices. Professor Lawson's attorney also stated he would notify Defendants' attorney when Professor Lawson intended to serve Defendants with State Court No. 25-0036.

23. On January 29, 2025, Professor Lawson's attorney again spoke with Defendants' attorney and reiterated the above and acknowledged the likelihood of consolidating the present case with State Court Nos. 23-1391 and 24-340. Professor Lawson's attorney also stated that Professor Lawson would be filing an additional Complaint in Federal Court once the decision in his grievance was issued.

24. Just two days later, Dean Nelson filed a Counterclaim in the present case alleging defamation and IIED by Professor Lawson.

25. On December 15, 2024, Professor Lawson provided Defendants with a draft Complaint for an additional Federal Court Complaint he intended to file with new claims against Dean Nelson of: First Amendment Retaliation pursuant to 42 U.S.C. 1983 and HRS § 378-2, as well as IIED.

26. The incident give rising to that Complaint occurred when Defendants UH and Dean Nelson directed Professor Lawson to change his course material for Criminal Law. One single anonymous whistleblower complaint to UH complained of the inappropriate use of images Professor Lawson used in a hypothetical to teach the legal concept of *mens rea* and transferred intent. Importantly, the complaint cited to Professor Lawson’s lawsuits against the Defendants as one of the reasons why the images were inappropriate.

27. As a result of the whistleblower complaint, Professor Lawson had a mandatory meeting with UH and Dean Nelson where they admitted that Professor Lawson’s hypothetical likely did not violate any UH policy, but he still would be required to change his academic course material that was complained of. To no avail, Professor Lawson protested that UH was violating his First Amendment right of academic freedom and expression. Professor Lawson was accompanied by a union representative of the University of Hawaii Professional Assembly (“UHPA”) that also supported Professor Lawson’s assertion that his First Amendment right to academic freedom and expression was being violated. Thereafter, Professor Lawson through the assistance of the UHPA, filed a grievance with the UH addressing Professor Lawson’s First Amendment right to academic freedom and expression. The grievance is still being reviewed by UH. Rosenbaum Decl. at ¶ 27.

28. On or about, December 13, 2024, the Foundation for Individual Rights and Expression (“FIRE”), a nonprofit dedicated to freedom of speech, issued a letter to UH detailing how UH was violating Professor Lawson’s First Amendment right to academic expression.

29. On January 23, 2025, FIRE published an article on their website that covered how the UH violated Professor Lawson’s First Amendment right to academic freedom. On January 29, 2025, local news outlet Honolulu Civil Beat published an article titled “Free Speech Group Blasts UH For Censoring Law School Presentation” that covered FIRE’s January 23, 2025, online article.

30. Attached hereto as Exhibit “A” is a true and accurate copy of Hawai‘i Senate Bill 3329; enacted June 17, 2022.

31. Attached hereto as Exhibit “B” is a true and accurate copy of Professor Lawson’s First Amended Complaint for Federal Civil No. 24-00348 dated August 23, 2024.

32. Attached hereto as Exhibit “C” is a true and accurate copy of Professor Lawson’s First Amended Complaint for Federal Civil No. 24-00172 dated May 30, 2024.

33. Attached hereto as Exhibit “D” is a true and accurate copy of Professor Lawson’s First Amended Complaint filed April 17, 2024, 1CCV-23-0001391.

34. Attached hereto as Exhibit “E” is a true and accurate copy of Professor Lawson’s First Amended Complaint filed April 17, 2024, 1CCV-24-0000340.

35. Attached hereto as Exhibit “F” is a true and accurate copy of the FIRE Letter to the UH dated December 13, 2024.

36. Attached hereto as Exhibit “G” is a true and accurate copy of the FIRE Online Article dated January 23, 2025.

37. Attached hereto as Exhibit “H” is a true and accurate copy of the Order Denying Plaintiff’s ex Parte Motion for Temporary Restraining Order in federal case No. 1:24-cv-00172-LEK-RT, dated May 03, 2024.

Further Declarant Sayeth Naught.

Executed on February 20, 2025.

/s/ Joseph T. Rosenbaum  
JOSEPH T. ROSENBAUM

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

KENNETH L. LAWSON,

Plaintiff/Counterclaim-Defendant,

vs.

UNIVERSITY OF HAWAII AT MĀNOA; CAMILLE NELSON in her individual capacity; MICHAEL BRUNO in his individual capacity; JOHN DOES 1-10; JANE DOES 1-10; DOE CORPORATIONS 1-10; DOE PARTNERSHIPS 1-10; DOE UNINCORPORATED ORGANIZATIONS 1-10; DOE ENTITIES 1-10; and DOE GOVERNMENTAL AGENCIES 1-10.

Defendants.

Civil No. 1CCV-25-0000036 (JJK)

NOTICE OF HEARING ON MOTION

**Hearing**

Date: April 2, 2025

Time: 9:30 a.m.

Judge: Honorable Jordon J. Kimura

**NOTICE OF HEARING OF MOTION**

To: William Meheula  
Derek T. Mayeshiro  
Justin M. Luney  
Attorneys for Defendants  
UNIVERSITY OF HAWAII  
CAMILLE NELSON in her individual capacity  
MICHAEL BRUNO in his individual capacity

NOTICE IS HEREBY GIVEN that the Forgoing Motion shall come on for hearing before the Honorable Judge of the above-entitled Court, in his Courtroom in the First Circuit Court, Honolulu District Court, 1111 Alakea Street, Honolulu, Hawai'i, Courtroom 5C at 9:30 a.m. on April 2, 2025, in person, or as soon thereafter as counsel can be heard.

DATED: Honolulu, Hawai'i, February 20, 2025.

/s/ Joseph T. Rosenbaum  
JOSEPH T. ROSENBAUM  
Attorney for Plaintiff/Counterclaim-Defendant  
KENNETH LAWSON

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

KENNETH L. LAWSON,

Plaintiff, Counterclaim-Defendant

vs.

UNIVERSITY OF HAWAII AT MĀNOA; CAMILLE NELSON in her individual capacity; MICHAEL BRUNO in his individual capacity; JOHN DOES 1-10; JANE DOES 1-10; DOE CORPORATIONS 1-10; DOE PARTNERSHIPS 1-10; DOE UNINCORPORATED ORGANIZATIONS 1-10; DOE ENTITIES 1-10; and DOE GOVERNMENTAL AGENCIES 1-10.

Defendants.

Civil No. 1CCV-25-0000036 (JJK)

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that PLAINTIFF/COUNTERCLAIM-DEFENDANT KENNETH LAWSON'S MOTION FOR DISMISSAL OF DEFENDANT CAMILLE NELSON'S COUNTERCLAIM AGAINST PLAINTIFF KENNETH L. LAWSON was duly served via jefs on February 20, 2025, to the following:

University of Hawai'i  
General Counsel Office  
2444 Dole Street  
Bachman 110  
Honolulu, HI 96822

DEREK MAYESHIRO  
derekmay@hawaii.edu  
JUSTIN LUNEY  
jluney@hawaii.edu

Attorneys for Defendants  
UNIVERSITY OF HAWAII  
CAMILLE NELSON in her individual capacity  
MICHAEL BRUNO in his individual capacity

WILLIAM MEHEULA  
bill@meheulalaw.com

Attorney for Defendant/Countercomplainant  
CAMILLE NELSON, on the Counterclaim

DATED: Honolulu, Hawai'i, February 20, 2025.

FUJIWARA AND ROSENBAUM, LLC

/s/ Joseph T. Rosenbaum  
JOSEPH T. ROSENBAUM  
Attorney for Plaintiff/Counterclaim-Defendant  
KENNETH L. LAWSON