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SCPW-23-0000571

IN THE SUPREME COURT OF THE STATE OF HAWAII

STATE OF HAWAII

RICKEY T. RIVERA, JR.,

Petitioner,

vs.

THE HONORABLE LISA W. CATALDO, Judge
of the Circuit Court of the First Circuit, State of
Hawaii,

Respondent Judge,

and,

LEONA KALIMA; DIANE BONER; RAYNETTE
NALANI AH CHONG, special administrator of the
estate of JOSEPH CHING, deceased; CAROLINE
BRIGHT; DONNA KUEHU; and JAMES
AKIONA, on behalf of themselves and all others
similarly situated,

Respondents/Plaintiffs,

and,

STATE OF HAWAII; STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS;

Respondents/Defendants.

ORIGINAL PROCEEDING
(CASE NO. 1CC990004771)

RESPONDENTS-PLAINTIFFS'
ANSWER TO RICKEY T. RIVERA,
JR.'S PETITION FOR WRIT OF
MANDAMUS; DECLARATION OF
CARL M. VARADY; EXHIBITS 1-31;
CERTIFICATE OF SERVICE

**RESPONDENTS-PLAINTIFFS' ANSWER TO RICKEY T. RIVERA, JR.'S PETITION
FOR WRIT OF MANDAMUS**



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DATED: Honolulu, Hawai'i, October 24, 2023.

/s/ Carl M. Varady
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Class Counsel for Respondents-Plaintiffs

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I. INTRODUCTION.

On October 10, 2023, Petitioner Rickey T. Rivera, Jr. filed a letter with this Court that the Court has construed as a petition for writ of mandamus or extraordinary relief under Hawai‘i Rules of Appellate Procedure (HRAP), Rule 21. This petition was docketed by the appellate clerk upon receipt of the filing fee. HRAP 21(a).

The specific relief requested by Petitioner is a determination by this Court as to whether Mr. Rivera is eligible “to participate in the Kalima settlement.” The answer is “No.” The facts and the law conclusively preclude any settlement payment to Mr. Rivera.

As explained in more detail below, Mr. Rivera is a Class Member whose claim is barred as matter of law from receiving a settlement payment because he was not eligible to apply for a homestead until after June 30, 1988. Mr. Rivera was not 18 years old until after June 30, 1988 and, therefore, did not and could not suffer a breach of trust within the statutory waiver period of August 21, 1959 to June 30, 1988. HRS § 674-16(a). The identical time limit applies to claims. HRS § 674-17(a)(individual claims must arise between August 21, 1959 to June 30, 1988). Thus, Mr. Rivera has no claim and is not eligible to participate in the *Kalima* settlement.

II. FACTS.

A. The Class Includes All Claims; the Statute and Settlement Limit Payments.

On June 2, 2022, after 23 years of litigation and two appeals in this matter, the Plaintiffs and Defendant State of Hawai‘i, entered into a global settlement agreement to resolve all claims in the underlying case, *Kalima, et al. v. State of Hawai‘i, et al.*, (1CC99000477). Exhibit 1 to Declaration of Carl M. Varady (hereafter “Varady”)[Dkt. 1489 at 34-52]. On June 9, 2022, the court below granted preliminary approval to the Settlement Agreement and issued its *Order Granting Plaintiffs’ Motion For: (1) Preliminary Approval of Class Action Settlement; (2) Certification of Settlement Class; (3) Decertification of Subclasses 1-4 and 6; (4) Appointment of*

Class Representatives and Appointment of Class Counsel; (5) Appointment of Settlement Special Master; (6) Appointment of Claims Administrator; (7) Approval of Plan of Notice and Scheduling of Fairness Hearing (the “Preliminary Approval Order”)[Dkt. 1496]. Exhibit 2 to Varady. The “Settlement Class” is defined as:

All persons who filed claims with the Hawaiian Home Lands Trust Individual Claims Review Panel on or before August 31, 1995.

Id. at ¶ 3. As set forth in the Settlement Agreement, the Preliminary Approval Order bars the following Class Members from receiving settlement payments:

- (1) Individuals who did not file a claim with the Panel on or before August 31, 1995.
- (2) Individuals who filed a timely claim with the Panel but the claim did not assert an individual breach of trust which occurred between August 21, 1959, and June 30, 1988.
- (3) Individuals who filed a timely claim with the Panel but the claim asserted an individual breach of trust that occurred after June 30, 1988.
- (4) Individuals who filed a timely claim with the Panel but the claim was not a valid HRS Chapter 674 claim.
- (5) Individuals who filed a timely claim with the Panel but settled their claim.
- (6) Individuals who opted out of the Lawsuit in response to the 2007 class notice.
- (7) Individuals who opted out of the Lawsuit in response to the 2012 class notice.
- (8) Individuals who opt-out of the Settlement Class and this Settlement by sending a valid and timely Opt-Out Letter by April 3, 2023 to the Claims Administrator.

Id. These exclusions are predicated on the limited waiver of sovereign immunity for breaches of the Hawaiian Home Lands Trust contained in Hawai‘i Revised Statutes (“HRS”) Chapter 674:

Waiver of immunity. (a) The State waives its immunity from liability for actual damages suffered by an individual beneficiary **arising out of or resulting from a breach of trust or fiduciary duty, which occurred between August 21, 1959, to June 30, 1988**, and was caused by an act or omission of an employee of the State in the management and disposition of trust resources.

HRS § 674-16(a) (emphasis added). The same time limit applies to an individual’s right to sue:

Right to sue, individual claims. (a) An aggrieved individual claimant shall have the right to bring an action, in accordance with this part, in the circuit courts of the State for recovery of actual damages suffered by the claimant **arising out of or resulting from a breach of trust which occurred between August 21, 1959, to June 30, 1988**; provided that no action shall be filed until after October 1, 1997.

HRS §674-17(a)(emphasis added).

Thus, while the settlement class and the settlement agreement include “all persons who filed claims with the Hawaiian Home Lands Trust Individual Claims Review Panel on or before August 31, 1995,” and release the State from those claims, Class Members whose claims fall within the express exclusions of the statute, as reflected in the settlement agreement and court’s orders, will not receive payment.

Mr. Rivera is a Class Member whose claim was timely filed with the Panel, but who is barred as a matter of law from receiving a settlement payment because he was not eligible to apply for a homestead until after June 30, 1988. Mr. Rivera was not 18 years-old until after June 30, 1988. Section 208(1) of the Hawaiian Home Commission Act specifically requires that applicants must be 18 years-old at the time of application for a homestead. Because he could not legally apply for a homestead prior to June 30, 1988, Mr. Riveras is not entitled to a settlement payment in this case because, as a matter of law, he was not a beneficiary and suffered no breach of trust, therefore, during the claims waiver period.

B. The Court Below Consistently Reaffirmed the Class Definition and Claim Bars.

After the Preliminary Approval Order, the court below consistently reaffirmed the Class definition and payment exclusions described above, as demonstrated in the following documents:

1. The Court’s January 5, 2023 *Order Adopting First Amended Findings and Recommendations of the Special Master to Approve Proposed Settlement Distribution Plan and Revised Class Notices (Filed December 22, 2022); Revised Exhibits 1-6 [Dkt. 1580]*(the “Settlement Distribution Plan”), Revised Exhibit 1, ¶ II. B. 2.-4 [Dkt. 1589]. Exhibit 3 to Varady.

2. The Court's August 1, 2023 *Second Amended Payment Distribution Plan and Order* (the "Payment Distribution Plan") [Dkt. 1842] reaffirmed the Settlement Distribution Plan exclusions at ¶¶ I-IV, and approved Exhibit 3 [filed in camera], the Payment Distribution Plan, which is a list of 224 class members who are excluded from receiving a Settlement Payment because they have no claim, including, without limitation, Mr. Rivera. Exhibits 4 & [Sealed] 5 to Varady.
 3. The Court's August 1, 2023 *Order Granting Final Approval of Class Action Settlement and Motion for Attorneys' Fees* [Dkt. 1844] ("Final Approval Order"), which adopted the Payment Distribution Plan and reiterated the Class definition and exclusions. Final Approval Order at ¶ 4 at 8-9, Exhibit 6 to Varady.
- C. Claims Panel Dismissal of Mr. Rivera's HCO Claim for Lack of Jurisdiction.

On August 31, 1995, Mr. Rivera filed a Hawaiian Claims Office Claim form HCO 91-3129 on behalf of himself and his mother, Margaret L. Kakea Rivera. Exhibit 7 to Varady. He stated on the claim form that he "filed my application several years ago, and they had denied my right of application, not realizing myself and my mother are both registered Hawaiians with the Hawaiian affairs office (O.H.A.)."

On November 26, 1999, the investigator for the Hawaiian Claims Office Hearings Office recommended dismissing Mr. Rivera's claim because *inter alia* "[C]laimant first attempted to submit an application to DHHL in May of 1994. Prior to May of 1994, claimant had no contact with DHHL." Exhibit 8 to Varady. The basis of the recommended dismissal was that the "claim was outside the Panel's time frame jurisdiction."¹ The investigator commented that "I spoke with the claimant on Nov. 19, 1996. Claimant agrees that his claim should be dismissed, and therefore does not object." *Id.*

On November 21, 1996, the Hawaiian Claims Office filed an Order of Dismissal, noting that the "HCO investigator recommended dismissal of the claim for lack of jurisdiction." Exhibit 9 to Varady. The Order of Dismissal granted Mr. Rivera 15 days to file a notice of

¹ See, HRS § 674-16(a)(trust breach must occur between August 21, 1959 and June 30, 1988).

objection; he failed to do so. Varady ¶ 9. Instead, almost three years later on August 30, 1999, Mr. Rivera made a written demand of \$45,000 to settle his claim. On September 8, 1999, his settlement demand was rejected because the “Panel lacked jurisdiction over your claim” and because Mr. Rivera “took no action to dispute the dismissal.” Exhibit 10 to Varady.

D. Mr. Rivera Opted Out and Withdrew his Opt Out Request.

After this case was filed in Circuit Court on behalf of all persons who filed claims with the Hawaiian Claims Office, Class Members were given an opportunity to opt out of the case to pursue their own claims. On June 25, 2012, Mr. Rivera submitted a letter signed by him but purporting to represent his mother, stating “I wish to opt out of the Waiting List damages model for: Margaret Rivera.” Mr. Rivera’s opt out request also indicated under his name “I do not wish to be a member of the Waiting List Subclass, though.” Exhibit 11 to Varady.

On June 26, 2012, Mr. Rivera withdrew his request to opt out: “I apologize for the confusion; Just recently forwarded a letter to opt out, for Margaret Rivera. Can you please disregard that letter to opt out, we decided to remain OPT IN.” Exhibit 12 to Varady.

E. No Claim Notice; 6 Correction Forms; 9 Correspondences; 50 E-mails.

Throughout the claims administration process that began on June 9, 2022, Mr. Rivera has been provided reasonable, fair and adequate notice that he has no claim. In July 2022, Mr. Rivera was sent the first mailed notice to class members notifying them that claims arising after June 30, 1988, were not compensable. Exhibit 13 to Varady.

On January 21, 2023, Mr. Rivera was sent a “No Claim” Second Notice informing him that his claim would not be compensated: “You filed a claim with the Panel, but the claim asserted an individual breach of trust that occurred after June 30, 1988.” Exhibit 14 to Varady. The Second Notice informed Mr. Rivera of his right to present additional documentation in support of his claim by April 3, 2023. *Id.* The Second Notice also informed Mr. Rivera of his

right to opt out of the case by April 3, 2023. *Id.* The Second Notice also included a Correction Form to permit Mr. Rivera to submit any corrected information. *Id.*

Mr. Rivera submitted six nearly identical correction forms to the Claims Administrator in support of his position that he was entitled to receive a settlement payment. [Sealed] Exhibit 15 to Varady. All of the correction forms had similar information and documentation that was considered and reviewed by the Claims Administrator and Class Counsel. Varady ¶ 15. Multiple reviews of this repetitive information did not change Mr. Rivera's claim status, nor could it, because his birthdate (as disclosed on his sworn correction forms) placed him beyond the June 30, 1988, jurisdictional time limit for breaches of trust. Varady ¶ 15.

In addition to the six (6) correction forms, Mr. Rivera submitted similar information and documentation in a series of written communications with the Claims Administrator: February 5, 2023; February 27, 2023; March 4, 2023; March 28, 2023; April 4, 2023; June 11, 2023; July 6, 2023; and, August 17, 2023. Varady ¶ 16 & [Sealed] Exhibit 16 thereto. This correspondence repeated substantially the same information and documentation as the correction forms. *Id.* Each written communication from Mr. Rivera was reviewed and evaluated by the Claims Administrator and in some instances Class Counsel. Varady ¶ 17. Review of the information in these correction forms and communications did not reveal any facts that would change Mr. Rivera's claim status. *Id.*

Additionally, Mr. Rivera telephoned and e-mailed the Claims Administrator repeatedly throughout the claims process, raising the same arguments that were contained in the correction forms and correspondence. Many of these telephone calls and e-mails occurred on the same day or on successive days. There were approximately fifty (50) e-mails sent by Mr. Rivera from late 2022 and throughout 2023 to the Claims Administrator. Varady ¶ 18 and [Sealed] Exhibit 17 thereto. None of these e-mails or telephone communications contained any additional

information or documentation that could change the status of Mr. Rivera's claim. Varady ¶ 18.

F. Third Notice and Right to Object; Notice of Objection; Withdrawal of Objection.

Mr. Rivera was sent a Third Notice on June 20, 2023, confirming he did not qualify for a settlement payment and informing him of his right to object to the settlement. Varady ¶ 19 and Exhibit 18 thereto. On June 23, 2023, Mr. Rivera filed a Notice of Objection to the settlement, arguing that 1) the settlement was too low, 2) the Fair Market Rental Value formula provided inadequate compensation and 3) the settlement did not include compensation for special damages, malpractice, mismanagement, emotional distress and loss of economic opportunity. Exhibit 19 to Varady.

On July 5, 2023, prior to the Final Approval hearing, Mr. Rivera withdrew his Notice of Objection stating *inter alia*, “**As to the settlement being fair or reasonable [it] is beyond my ability to comprehend the merit of the settlement.** And as a result, due to elements beyond my control, [I] hereby make this declaration to cancel and withdraw the original objection on file. Without Prejudice.” Exhibit 20 to Varady (emphasis added).

On July 14, 2023, Mr. Rivera filed three additional letters with the Court, informing the Court of his disagreement with the Claims Administrator's decision regarding his own individual claim. Exhibits 21-23 to Varady.

G. Final Approval Granted and Judgment Entered on August 1, 2023.

The Court's August 1, 2023, Payment Distribution Plan [Dkt. 1842] at ¶¶ I-IV, reiterated the claims rules and exclusions. The Payment Distribution Plan approved a list of 224 class members who are excluded from receiving a Settlement Payment because they have no claim, including, without limitation, Mr. Rivera. Exhibit 4 & [Sealed] Exhibit 5 to Varady.

The Court's August 1, 2023 Final Approval Order adopted the Payment Distribution Plan and reiterated the Class definition and exclusions. Final Approval Order at ¶ 4 at 8-9, Exhibit 6

to Varady. Final Judgment resolving “all claims and issues as to all parties to this action” entered the same day. Exhibit 24 to Varady.

H. Mr. Rivera’s August 17, 2023, Letter.

On August 17, 2023, Mr. Rivera filed a letter with the Court Clerk stating as follows:

I wish to file an appeal before the deadline of August 31, 2023...The Appeal is limited to the issue of the Special Master and Claims Administrator failing to process my claim in a timely fashion.

Exhibit 25 to Varady.

I. Subsequent Withdrawal from Representing Mr. Rivera by Class Counsel.

After reviewing Mr. Rivera’s letter, Class Counsel researched their and Mr. Rivera’s positions. Mr. Rivera’s letter was addressed in discussions with Defendants’ counsel and the court below. Based on communications with the Office of Disciplinary Counsel, Class Counsel concluded that their ethical obligations under DR 1.16 required them to move immediately to withdraw from representing Mr. Rivera. Their motion was filed August 30, 2023 [Dkt. 1858]. Mr. Rivera was provided notice of the motion via U.S. Mail. Varady ¶ 25 and Exhibit 26 thereto.

On September 18, 2023, Mr. Rivera filed a letter requesting that the hearing on the motion to withdraw be continued until January 20, 2024 [Dkt. 1877]. Finding good cause to do so, the Court denied Mr. Rivera’s request on September 18, 2023 [Dkt. 1979]. On September 20, 2023, at 10:30 a.m., the date and time of the hearing on the motion to withdraw, three calls were made for Mr. Rivera’s appearance and the court attempted to reach him by telephone. Mr. Rivera failed to appear at the hearing. Varady ¶ 26. Class Counsels’ motion to withdraw was granted by the Court by order filed September 25, 2023. Exhibit 27 to Varady.

After Class Counsel’s motion was granted, on October 3, 2023, Mr. Rivera filed another handwritten document, untimely arguing that the motion to withdraw should be denied and, among other matters, that Class Counsel should have assisted Mr. Rivera in filing an appeal,

along with reiterating the same arguments about his claim made in his numerous prior filings and communications. Exhibit 28 to Varady.

On October 9, 2023, after lengthy discussions and communications with the court and Defendants regarding the significance and intent of Mr. Rivera's August 17, 2023, letter,² the court below reluctantly directed the clerk to deem it a notice of appeal, and the case was assigned a docket number by the appellate clerk. Exhibit 29 to Varady.

On October 10, 2023, Mr. Rivera filed his petition for a writ of mandamus with this Court, [SCPW-23-0000571 Dkt. 1].

J. The Appeal and this Original Proceeding Have Prevented the Court Below from Transferring the Settlement Funds to Class Members.

The court's August 1, 2023, Payment Distribution Plan provides that "[t]here are 2,515 living and deceased class members who are Payment Recipients." Exhibit 4 to Varady. at ¶ IX.C. The Court has established the Kalima Class Action Settlement Trust, which is a Qualified Settlement Trust ("QST") created to distribute payments to those 2,515 "parties who have a valid claim and or interest in the proceeds of the settlement funds derived from the [lawsuit], including parties who are entitled to the estates of deceased Class Members." *Id.* ¶ VIII. The QST

² On October 9, 2023, the court filed the written communications in which the parties first attempted to resolve the issue of the effect of the Rivera letter without risk to the State, meeting all the State's demands, before the State reversed its position and demanded the matter be referred for appeal irrespective of the fact that Defendants could not identify any risk from transferring the funds to the Trust for distribution to the Class Members. *See*, Dkt. 1899, 1901, 1903, 1905, 1907, 1909, 1911, 1913, 1915, 1917, 1919, 1921 & 1923. The effect of the Rivera letter also was thoroughly discussed at, Dkt. 1863, 1865-66, 1868, 1870, 1872, 1895-96 & 1897. The court below referred the case of appeal, after being forced to do so by the State's change of position and demand, even though "**the State cannot articulate any actual real-world risk** in the distribution of settlement proceeds short of withdrawal of Dkt. 1856 or disposition by the appellate court. Ultimately, however, it is the State's refusal to advise this Court if it would initiate its own appellate action if the Court ordered the transfer of funds – thereby even further delaying the class members' receipt of those funds – that ensures there will be no resolution at this stage." Exhibit 28 to Varady at 5. This information is provided for the Court's reference and background regarding the referred appeal, CAAP-23-0000572, and the State's role in the genesis of that appeal. A full discussion of these issues is beyond the scope of Respondents-Plaintiffs' answer to the instant writ.

Trustee will distribute the settlement funds. *Id.*

The court's August 1, 2023, Final Approval Order adopted the Payment Distribution Plan and affirmed that the QST would be the vehicle from which settlement payments would be made to the 2,515 recipients. Exhibit 6 to Varady ¶ 3 at 8.

However, the approximately \$285 million that the 2,515 settlement payment recipients are to receive has been held in the court's non-interest-bearing account, because of Mr. Rivera's appeal, now compounded by the instant writ. The court below has refused to transfer the funds to the QST for distribution because of Mr. Rivera's putative appeal and the State's demand that Mr. Rivera's letter be treated as an appeal. As the court below noted in its order, three to four Class Members on average die each month. Exhibit 29 to Varady at 4. It is also noteworthy that the Claims Administrator calculates that \$23,360.65 is lost each day that the \$285 million is not in the interest-bearing QST account. Varady ¶ 29. Even after the living Class Members payments are mailed out, the approximately \$96 million remaining that will be distributed through probate over the next two years would yield estimated interest of \$10,491.80, daily. *Id.* The lost interest could easily pay claims administration costs that are escalating due to the increased work by the Claims Administrator responding to Class Members' requests for information that have escalated due to the delay resulting from the appeal. *Id.*

III. STATEMENT OF THE ISSUES PRESENTED AND THE RELIEF SOUGHT.

This Court has succinctly identified the issue raised by Mr. Rivera's petition:

Whether Mr. Rivera is eligible "to participate in the Kalima settlement."

Respondents-Plaintiffs request that:

A. This Court rule Mr. Rivera is legally barred from participating and receiving any settlement payment and that his writ be denied with prejudice;

B. This Court direct the Intermediate Court of Appeals to dismiss Mr. Rivera's

appeal CAAP-23-0000572, with prejudice, because he is legally barred from receiving any settlement payment;

C. This Court remand both the instant case and CAAP-23-0000572 to the trial court and direct the trial court in 1CC990004771 to transfer the settlement funds to the Qualified Settlement Trust immediately as provided in the Final Approval Order, so that the 2,515 eligible Class Members may receive their settlement payments, which have been further delayed because of the appeal in CAAP-23-0000572 and the Mr. Rivera's writ.

IV. STANDARD FOR DECISION.

This Court has explained the standard for writs of prohibition and mandamus, thus:

A writ of mandamus and/or prohibition is an extraordinary remedy that will not issue unless the petitioner demonstrates a clear and indisputable right to the relief requested and a lack of other means to redress adequately the alleged wrong or to obtain the requested action. . . . Where a trial court has discretion to act, mandamus will not lie to interfere with or control the exercise of that discretion, even when the judge has acted erroneously, unless the judge has exceeded his or her jurisdiction, has committed a flagrant and manifest abuse of discretion, or has refused to act on a subject properly before the court under circumstances in which it has a legal duty to act.

Kema v. Gaddis, 91 Haw. 200, 204-205, 982 P.2d 334, 338-39 (Haw. 1999).

V. ARGUMENT.

A. Mr. Rivera's Claim is Barred as a Matter of Law.

Respondent-Plaintiffs do not contest that Mr. Rivera timely filed a claim with the Hawaiian Claims Office on August 31, 1995. Thus, he is a Class Member. He is legally barred from receiving a settlement payment because:

1. HRS § 674-16(a) limits the State's waiver of sovereign immunity, and thus viable claims to claims "suffered by an individual **beneficiary** arising out of or resulting from a **breach of trust or fiduciary duty, which occurred between August 21, 1959, to June 30, 1988.**" These same time limits apply to individual claims; they must arise between August 21, 1959, and June 30, 1988. HRS § 674-17(a).
2. In 1988, Section 208(1) of the Hawaiian Home Commission Act limited applicants for homestead leases to Native Hawaiians 18 years or older.

Younger Native Hawaiians were barred from applying.

3. Mr. Rivera's multitudinous sworn correction forms, birth certificate, and sworn 1994 homestead application all confirm his birthdate. His own sworn statements and birth certificate confirm he was not 18 years-old until after the claim period and immunity waiver expired on June 30, 1988. [Sealed] Exhibits 15 & 30-31 to Varady.
4. Mr. Rivera was not a qualified beneficiary under the Hawaiian Homes Commission Act, was owed no duty by the Department of Hawaiian Home Lands, and consequently could not have been harmed by a breach of trust until after the claim period and waiver of sovereign immunity expired. His "lost application" claim is barred as a matter of law.³

Mr. Rivera's repeated claims of application in "June 1988"⁴ when he was not yet 18 years-old are futile. Any breach of trust actionable under the statute, if it occurred at all, happened only after he was 18, after the waiver of sovereign immunity and claim periods expired. Because he was not 18 before the statutory waiver and claim periods ended, he cannot "participate in the Kalima settlement," as a matter of law.

The statutory bar was incorporated into:

1. The Court's January 5, 2023, Settlement Distribution Plan. Exhibit 3 to Varady at ¶ II. B. 1.-8.
2. The Court's August 1, 2023, Payment Distribution Plan which adopted the which is a list of 224 class members who are excluded from receiving a settlement payment because they have no claim, including, without limitation, Mr. Rivera. Exhibit 4 ¶¶ I-IV & [Sealed] Exhibit 5 to Varady.
3. The Court's August 1, 2023, Final Approval Order. Exhibit 6 to Varady ¶ 4 at 8-9.

³ Mr. Riviera's claim for payment based "lost application" and delay in homestead award would be a "waiting list" claim measured by the fair market rental value model that compensates beneficiaries for the years they are on the waitlist. *Kalima v. State*, 148 Haw. 129, 147, 468 P.3d 143, 161 (2020). This model was carried forward into the Settlement Distribution Plan approved the court, containing the rules for claims payments. Exhibit 3 to Varady at ¶ III.C. Mr. Rivera has no waiting list claim because it arose, if at all, when he became 18, after June 30, 1988.

⁴ Mr. Rivera's sworn assertions about the alleged "lost" application date vary, beginning by asserting his "lost" application was made June 30, 1988, then changing to June 15, 1988. *See*, Exhibit 15 to Varady.

The court's approval of the Settlement Distribution Plan, Payment Distribution Plan, and Final Approval Order, which exclude Mr. Rivera's claim, are mandated by Section 208(1) of the Hawaiian Homes Commission Act, HRS Chapter 674 and the settlement agreement. The court below has not exceeded her jurisdiction, nor has the court committed a flagrant and manifest abuse of discretion by confirming Mr. Rivera has no claim. The writ must be denied.

B. Mr. Rivera was Fully Informed and his Repeated Faulty Arguments Fully Considered.

Mr. Rivera was fully informed of the statutory bar to all claims outside the waiver and claim periods in the First Mailed Notice. Exhibit 14 to Varady. Mr. Rivera was sent a "No Claim" Second Notice on January 21, 2023, informing him specifically that his claim would not be compensated: "You filed a claim with the Panel, but the claim asserted an individual breach of trust that occurred after June 30, 1988." Exhibit 15 to Varady. The Second Notice informed Mr. Rivera of his right to opt out⁵ of the lawsuit or present additional documentation in support of his claim by April 3, 2023. *Id.* The Second Notice also included a correction form to permit Mr. Rivera to submit any corrected information. *Id.* Mr. Rivera did not opt out.

Mr. Rivera's multitudinous correction forms, written correspondence, e-mails, and telephone calls were recorded and reviewed. None of them change the fact of his birthdate or its effect on his claim. Varady ¶¶ 15-18 and Exhibits [Sealed] 16, 17-18 & 30-31, thereto.

⁵ Haw. R. Civ. Pro. 23(c)(2)(A) and (B) requires that class members be informed of the right to exclude themselves, or to opt out, of the case:

The notice shall advise each member that (A) the court will exclude the member from the class if the member so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion...

The Second Notice to "no claim" Class Members, was approved by the court below, and informed Mr. Rivera and all class members excluded from receiving settlement payment of their due process right to opt out. *See, Patrickson v. Dole Food Co.*, 137 Hawai'i 217, 230, 368 P.3d 959, 972 (Haw. 2015) (court must direct notice to class members informing them that the court will exclude from the class any member who requests exclusion). Exhibit 15 to Varady.

After full and fair disclosure to him, and exhaustive review of his submissions, Mr. Rivera cannot participate in the settlement because his claim is barred—he was not eligible to apply until after the waiver of immunity and claim period ended. The writ must be denied.

C. CAAP 23-0000572 Should Be Dismissed with Prejudice.

This Court should dismiss CAAP 23-0000572, in which Mr. Rivera seeks to pursue his individual claim, with prejudice. Exhibit 26 to Varady. Resolution of the instant writ renders Mr. Rivera’s claims for individual relief in that appeal both futile and moot. There is no appellate jurisdiction to consider that appeal. “Courts will not consume time deciding abstract propositions of law or moot cases, and have no jurisdiction to do so.” *Wong v. Bd. of Regents, Univ. Of Hawai’i*, 62 Haw. 391, 395, 616 P.2d 201, 204 (1980).

A case is moot if it has lost its character as a present, live controversy of the kind that must exist if courts are to avoid advisory opinions on abstract propositions of law. . . . We have said the suit must remain alive throughout the course of litigation to the moment of final appellate disposition to escape the mootness bar. . . . **Simply put, a case is moot if the reviewing court can no longer grant effective relief.**

Kaho’ohanohano v. State, 114 Hawai’i 302, 332, 162 P.3d 696, 726 (2007) (citations, internal quotation marks, and brackets omitted; emphasis added). The ICA cannot grant the relief sought by Mr. Rivera as a matter of law. He has no claim and cannot obtain the relief he requests in the ICA.⁶

⁶ While Respondents-Plaintiffs assert that the foregoing arguments are dispositive of CAAP 23-0000572, they do not waive additional arguments that apply to bar Mr. Rivera’s appeal, and will assert them and any other applicable arguments if the appeal is not dismissed through this Court’s action. These additional arguments are: (1) failure to file the \$1.5 million appellate cost bond mandated by the Final Approval Order (Exhibit 6 to Varady ¶ 24); (2) failure to comply with Haw. R. App. Pro. 3(a),(c)(2), (e)(1) & (f), 3.1(b) & 4(a)(1); (3) Mr. Rivera’s statement of intent or desire to appeal or intention to appeal does not constitute a valid notice of appeal. *Makaio v. Adamu*, 14 Haw. 411 (1902); *Laupahoehoe Sugar Co. v. Lalakea*, 27 Haw. 682 (1924); (4) a class member may not appeal a class settlement unless the class member has timely objected to a settlement. *Devlin v. Scardelletti*, 536 U.S. 1, 11, 122 S. Ct. 2005, 2011 (2002); *accord, Churchill Vill., L.L.C. v. GE*, 361 F.3d 566, 572 (9th Cir. 2004); *Weinman v. Fid. Capital Appreciation Fund (In re Integra Realty Res., Inc.)*, 354 F.3d 1246, 1257 (10th Cir.

VI. CONCLUSION.

For reasons set forth herein, Respondents-Plaintiffs respectfully request that:

A. This Court rule Mr. Rivera is legally barred from participating in and receiving any settlement payment in the lawsuit and that his writ be denied with prejudice;

B. Because he is legally barred from receiving any settlement payment, this Court direct the Intermediate Court of Appeals to dismiss Mr. Rivera's appeal CAAP-23-0000572, with prejudice;

C. This Court remand the instant case and simultaneously direct the Intermediate Court of Appeal to remand CAAP-23-0000572 to the trial court and direct the trial court 1CC990004771 to immediately transfer the settlement funds to the Qualified Settlement Trust as provided in the Final Approval Order to avoid further delays, claims administration costs, and attendant hardship that would otherwise be suffered by the Respondents-Plaintiffs.

DATED: Honolulu, Hawai'i, October 24, 2023.

/s/ Carl M. Varady

CARL M. VARADY
THOMAS R. GRANDE

Class Counsel for Respondents-Plaintiffs

2004). Mr. Rivera withdrew his objection. His appeal is barred as a matter of law because he did not object.

SCPW-23-0000571

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

STATE OF HAWAI‘I

RICKEY T. RIVERA, JR.,

Petitioner,

vs.

THE HONORABLE LISA W. CATALDO, Judge of the
Circuit Court of the First Circuit, State of Hawai‘i,

Respondent Judge,

and,

LEONA KALIMA; DIANE BONER; RAYNETTE
NALANI AH CHONG, special administrator of the estate
of JOSEPH CHING, deceased; CAROLINE BRIGHT;
DONNA KUEHU; and JAMES AKIONA, on behalf of
themselves and all others similarly situated,

Respondents/Plaintiffs,

and,

STATE OF HAWAI‘I; STATE OF HAWAI‘I
DEPARTMENT OF HAWAIIAN HOME LANDS;

Respondents/Defendants.

ORIGINAL PROCEEDING
(CASE NO. 1CC990004771)

DECLARATION OF CARL M.
VARADY; EXHIBITS 1-31

DECLARATION OF CARL M. VARADY

Carl M. Varady declares:

1. I am one of the attorneys of record for Respondents-Plaintiffs in this matter and make this declaration of my own personal knowledge. This declaration is submitted in support of Respondents-Plaintiffs’ Answer to Rickey T. Rivera, Jr.’s Petition for Writ of Mandamus.

2. On June 2, 2023, after 23 years of litigation and two appeals in this matter, the Plaintiffs and Defendant State of Hawai‘i, entered into a global settlement agreement to resolve all claims in the underlying case, *Kalima, et al. v. State of Hawai‘i, et al.*, (1CC99000477). The fully executed settlement agreement is attached as Exhibit 1 hereto and is found at Dkt. 1489 at 34-52 in the record below.

3. On June 9, 2022, the court below granted preliminary approval to the Settlement Agreement and issued its *Order Granting Plaintiffs’ Motion For: (1) Preliminary Approval of Class Action Settlement; (2) Certification of Settlement Class; (3) Decertification of Subclasses 1-4 and 6; (4) Appointment of Class Representatives and Appointment of Class Counsel; (5) Appointment of Settlement Special Master; (6) Appointment of Claims Administrator; (7) Approval of Plan of Notice and Scheduling of Fairness Hearing* (the “Preliminary Approval Order”) attached hereto as Exhibit 2, which is found at Dkt. 1496 in the record below.

4. The Court’s January 5, 2023, *Order Adopting First Amended Findings and Recommendations of the Special Master to Approve Proposed Settlement Distribution Plan and Revised Class Notices (Filed December 22, 2022); Revised Exhibits 1-6*, including Revised Exhibit 1, ¶ II. B. 1.-8, is attached hereto as Exhibit 3, which is found at Dkt. 1589 in the record below. Paragraph II.B.3. expressly precludes “[i]ndividuals who filed a timely claim with the Panel but the claim asserted an individual breach of trust that occurred after June 30, 1988” from receiving a settlement payment.

5. The Court’s August 1, 2023, *Second Amended Payment Distribution Plan and Order* (the “Payment Distribution Plan”) is attached hereto as Exhibit 4, which is found at Dkt. 1842 in the record below. The Payment Distribution Plan reaffirmed the Class definition and

exclusions from settlement, which are found at ¶¶ I-IV of the Payment Distribution Plan. The Payment Distribution Plan approved Exhibit 3 thereto, filed *in camera*, which is a list of 224 class members who were excluded from receiving a settlement payment because they have no claim, including, without limitation, Mr. Rivera. Exhibit 3 to the Payment Distribution Plan is filed herewith as [Sealed] Exhibit 5.

6. The Court's August 1, 2023, *Order Granting Final Approval of Class Action Settlement and Motion for Attorneys' Fees* ("Final Approval Order") which adopted the Payment Distribution Plan, reaffirmed the Class definition and exclusions. Final Approval Order ¶¶ 3 & 4 at 8-9, attached hereto as Exhibit 6, which is found at Dkt. 1844 in the record below.

7. Mr. Rivera's August 31, 1995, Hawaiian Claims Office Claim form HCO 91-3129, filed on behalf of himself and his mother, Margaret L. Kakea Rivera is attached hereto as Exhibit 7, which is found at Dkt. 1895 at 42-44.

8. A copy of the November 26, 1999, Hawaiian Claims Office Hearings Office investigator's memo recommending dismissal Mr. Rivera's claim for lack of jurisdiction and confirming his admission of agreement with that decision is attached hereto as Exhibit 8, which is found at Dkt. 1895 at 45.

9. A copy of the November 21, 1996, the Hawaiian Claims Office Order of Dismissal of Mr. Rivera's claim is attached hereto as Exhibit 9, which is found at Dkt. 1895 at 46. The Order of Dismissal granted Mr. Rivera 15 days to file an objection to the dismissal with the Hawaiian Claims Office. He did not do so.

10. On August 30, 1999, Mr. Rivera wrote a written demand of \$45,000 to settle his claim. On September 8, 1999, his offer of settlement was rejected by the Office of the Attorney

General because the “Panel lacked jurisdiction over [his] claim” and because Mr. Rivera “took no action to dispute the dismissal.” The Attorney General’s response to Mr. Rivera’s demand is attached as Exhibit 10, which is found at Dkt. 1895 at 47.

11. Mr. Rivera’s June 25, 2012, letter signed by him but purporting to represent his mother, stating “I wish to opt out of the Waiting List damages model for: Margaret Rivera,” and under his name “I do not wish to be a member of the Waiting List Subclass, though,” is attached as Exhibit 11, which is found at Dkt. 1895 at 48-50.

12. Mr. Rivera’s June 26, 2012, letter withdrew his request to opt out stating: “I apologize for the confusion; Just recently forwarded a letter to opt out, for Margaret Rivera. Can you please disregard that letter to opt out, we decided to remain OPT IN,” is attached as Exhibit 12, which is found at Dkt. 1895 at 51-52.

13. In July 2022, Mr. Rivera, along with all other Class Members was sent the First Mailed Notice of settlement which notified them that claims arising after June 30, 1988, were not compensable. The First Mailed Notice is attached hereto as Exhibit 13, which is found at Dkt. 1895 at 57-58.

14. The January 21, 2023, Second Notice sent to Mr. Rivera was a “No Claim” Second Notice informing him that his claim would not be compensated, stating: “You filed a claim with the Panel, but the claim asserted an individual breach of trust that occurred after June 30, 1988.” The Second Notice is attached hereto as Exhibit 14, which is found at Dkt. 1895 at 55-56.

15. Mr. Rivera’s February 7, 2023 (Correction Form 1); February 8, 2023 (Correction Form 2); February 14, 2023 (Correction Form 3); February 28, 2023 (Correction

Form 4); March 3, 2023 (Correction Form 5) and March 27, 2023 (Correction Form 6) including their enclosures are collectively submitted herewith as [Sealed] Exhibit 15. They are duplicative and repeat the same information. They are sworn by him, confirming Mr. Rivera's birth date and establishing that he was not 18 until after the claims period ended on June 30, 1988.

16. In addition to the six (6) correction forms, Mr. Rivera submitted similar information and documentation in a series of written communications with the Claims Administrator: February 5, 2023; February 27, 2023; March 4, 2023; March 28, 2023; April 4, 2023; June 11, 2023; July 6, 2023; and, August 17, 2023. These are attached collectively filed herewith as [Sealed] Exhibit 16. The correspondence repeated substantially the same information and documentation as the correction forms.

17. Each correction form and correspondence submitted by Mr. Rivera was reviewed and evaluated by the Claims Administrator and in some instances Class Counsel. As a result of the review of these correction forms and correspondences, there was no change in Mr. Rivera's claim status.

18. In addition to the correction forms and correspondences, Mr. Rivera telephoned and e-mailed the Claims Administrator repeatedly throughout the claims process, raising the same arguments that were contained in the correction forms and correspondence. Many of these telephone calls and e-mails occurred on the same day or on successive days. There were approximately fifty (50) e-mails sent by Mr. Rivera from late 2022 and throughout 2023 to the Claims Administrator. None of these e-mails or telephone communications contained any additional information or documentation that could change the status of Mr. Rivera's claim. The e-mail records are filed herewith as [Sealed] Exhibit 17, which are found at Dkt. 1895 at 63-114.

19. The Third Notice sent to Mr. Rivera on June 20, 2023, informing him of his right to object to the settlement is attached as Exhibit 18 hereto and found at Dkt. 1895 at 115-119.

20. Mr. Rivera's June 23, 2023, objection to the settlement is attached as Exhibit 19 hereto, which is found at Dkt. 1726.

21. Mr. Rivera's July 5, 2023, withdrawal of his objection to the settlement prior to the Final Approval hearing is attached Exhibit 20 hereto, which is found at Dkt. 1737.

22. Mr. Rivera's three July 14, 2023, filings, informing the Court of his disagreement with the Claims Administrator's decision regarding his own personal claim are attached as Exhibits 21-23 hereto, which are found at Dkt. 1776, 1778 & 1780.

23. The August 1, 2023, Final Judgment is attached as Exhibit 24 hereto, which is found at Dkt. 1846.

24. Mr. Rivera's August 17, 2023, letter is attached as Exhibit 25 hereto, which is found at Dkt. 1856.

25. After reviewing Mr. Rivera's letter, Mr. Grande and I researched their and Mr. Rivera's positions. Based on the communications the Office of Disciplinary Counsel, Mr. Grande and I concluded that our ethical obligations under DR 1.16 required us to move immediately to withdraw because Mr. Rivera was seeking relief inconsistent with HRS Chapter 674, the settlement agreement, the court's orders and final judgment. The motion to withdraw was filed August 30, 2023. It is found at Dkt. 1858. Mr. Rivera was provided notice of the motion via a copy sent via U.S. Mail. *See*, Exhibit 26 hereto, which is found at Dkt. 1858 at 17.

26. On September 20, 2023, at 10:30 a.m., the date and time of the hearing on the motion to withdraw, three calls were made from Mr. Rivera's appearance and an attempt to reach

him by telephone were made. Mr. Rivera failed to appear at the hearing.

27. Class Counsels' motion to withdraw was heard and granted by the Court by order filed September 25, 2023, attached as Exhibit 27 hereto, which is found at Dkt. 1885.

28. Mr. Rivera's October 3, 2023, letter reiterating his claim argument is attached as Exhibit 28 hereto, which is found at Dkt. 1891.

29. The trial court's order directing the clerk to refer Mr. Rivera's August 17, 2023, letter to the appellate clerk for docketing as an appeal is attached as Exhibit 29 hereto and found at Dkt. 1925. The court's order prevents the distribution approximately \$285 million settlement funds that the settlement payment recipients are to receive. The settlement funds have been held in the court's non-interest bearing account since they were paid by the State in August 2022.

The court below has refused to transfer the funds to the Qualified Settlement Trust for distribution because of Mr. Rivera's appeal, which now is further compounded the instant writ. As the court below noted in its order, three to four Class Members on average die each month. Exhibit 29 at 4. It is also noteworthy that the Claims Administrator calculates that \$23,360.65 is lost each day that the \$285 million is not in the interest-bearing QST account. Even after the living Class Members payments are mailed out, the remaining approximately \$96 million that will be distributed through probate over the next two years would yield estimated interest of \$10,491.80, daily. The lost interest could easily pay claims administration costs that are escalating due to the increased work by the Claims Administrator responding to Class Member requests for information that have escalated due to the delay caused by the appeal.

30. Mr. Rivera's birth certificate (duplicated in positive for ease of review) and 1994 sworn homestead application are filed herewith as [Sealed] Exhibits 30 & 31.

I declare under penalty of law that the foregoing is true.

DATED: Honolulu, Hawaii, October 21, 2023.

/s/ Carl M. Varady

CARL M. VARADY

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between Named Plaintiffs, on behalf of themselves and Plaintiffs as defined in paragraph I.(25), below (collectively, "Plaintiffs"), and State Defendants. Plaintiffs and State Defendants are collectively referred to as the "Parties."

Subject to Court approval as required by Rule 23, Hawai'i Rules of Civil Procedure ("HRCP"), the Parties hereby stipulate and agree that, in consideration of the mutual promises, covenants, and consideration set forth in this Agreement, the above-captioned action titled *Leona Kalima, et al. v. State of Hawai'i, et al.*, Civil No. 99-4771-12 LWC (the "Lawsuit"), shall be settled and compromised in accordance with the terms herein.

RECITALS

WHEREAS, the Lawsuit was commenced by the filing of a Complaint on December 29, 1999, which included class claims asserted on behalf of over 2,700 persons who asserted a right to sue for breach of trust pursuant to Chapter 674, Hawai'i Revised Statutes ("HRS"), and for breach of settlement agreement under HRS Chapter 661; and

WHEREAS, the Court certified a "Right To Sue" class on August 29, 2000, and determined that the Complaint's claims could properly be maintained against State Defendants; and

WHEREAS, State Defendants appealed the Court's determination that claims could be maintained for breach of trust or breach of settlement agreement; and

WHEREAS, the Hawai'i Supreme Court held that the Right to Sue class could maintain claims under HRS Chapter 674 but not under HRS Chapter 661 in an opinion titled *Kalima v. State*, 111 Hawai'i 84, 137 P.3d 990 (2006) ("*Kalima I*"); and

WHEREAS, on remand from the Supreme Court's *Kalima I* decision, a First Amended Complaint was filed in the Lawsuit on February 1, 2007, a Second Amended Complaint was filed on May 9, 2007, and a Supplemental Complaint for Waiting List Damages was filed on July 15, 2013; and

WHEREAS, the operative Second Amended Complaint and Supplemental Complaint are pled as a class action lawsuit and assert claims under HRS Chapter 674 on behalf of over 2,700 individuals who filed over 4,000 claims with the Panel; and

WHEREAS, the operative Second Amended Complaint, in addition to the "Right to Sue" class, identified nine (9) putative subclasses including: (i) waiting list; (ii) ultra vires qualifications; (iii) uninhabitable awards; (iv) lost applications; (v) construction defects; (vi) successor rights; (vii) loans; (viii) leases; and (ix) other claims; and

WHEREAS, through multiple orders the Court certified subclass (i), the waiting list subclass, for purposes of liability, causation, fact of damage, and the amount of damage (the "Waiting List Damages Subclass"); and

WHEREAS the Court certified the following subclasses for purposes of liability only: (ii) ultra vires qualifications (iii) uninhabitable awards; (iv) lost applications; and (vi) successor rights; and was not asked to certify the following subclasses: (v) construction defects, (vii) loans, (viii) leases, and (ix) other claims; and

WHEREAS, all Right To Sue class members are members of the Waiting List Damages Subclass; and

WHEREAS, the liability, causation and fact of damage claims of the Waiting List Damages Subclass were litigated, with the Court having found State Defendants liable for breaches of trust, and having found that the breaches of trust were the cause of Plaintiffs' damages; and

WHEREAS, the Parties litigated and the Court ruled on how actual damages (as defined in HRS Chapter 674) for the Waiting List Damages Subclass would be determined, using a fair market rental value model, and further determined how the claims administration process would be carried out; and

WHEREAS, no liability, causation, or damages was or has been found by the Court with regard to the other eight (8) subclasses; and

WHEREAS, an HRCF Rule 54(b) final judgment was entered in favor of the Waiting List Damages Subclass and against State Defendants on January 9, 2018; and

WHEREAS, the Parties cross-appealed from the Rule 54(b) judgment, raising various issues; and

WHEREAS, in *Kalima v. State*, 148 Hawai'i 129, 468 P.3d 143 (2020) (*Kalima II*), the Supreme Court decided, among other things, that the trial court did not err by adopting the fair market rental value damages model for the Waiting List Damages Subclass; the trial court correctly ruled that adjusting damages to present value constitutes an award of prejudgment interest in violation of HRS § 661-8; the trial court erred in ruling that damages for Waiting List Damages Subclass members do not begin to accrue until six years after receipt of a beneficiary's homestead application; the trial court did not err in finding that State Defendants breached their trust duties by not recovering lands that were withdrawn from the Hawaiian Home Lands Trust before statehood; and the trial court did not err in establishing the waiting list subclass list such that it included individuals who were not properly part of the waiting list subclass so as to bind such individuals to the judgment in the Lawsuit; and

WHEREAS, on remand, the Parties disagreed about the effect of the *Kalima II* decision on the Court's waiting list subclass claims administration process including how members of the

waiting list subclass prove their claims and amount of damages, if any, to which they are entitled; and

WHEREAS, on remand, the non-waiting list claims remain unresolved as to liability, causation, and damages, and the Parties disagreed about the merits of such claims; and

WHEREAS, Plaintiffs and their counsel have extensively analyzed and evaluated the merits of the Parties' respective claims and defenses in this Lawsuit, and recognize the risks of continued litigation including the possibility that if not settled now, a fair and final resolution of all claims, including non-waiting list claims, may not occur for several years, and there remain unresolved issues regarding the claims administration process for and defenses applicable to waiting list subclass claims that could negatively impact damages calculations; and

WHEREAS, prior to finalization of the Court's waiting list subclass claims administration process – with certain issues regarding the waiting list subclass claims process and all non-waiting list claims still unresolved – the Parties engaged in arms-length settlement discussions through their respective counsel with the assistance of the Honorable Gary W.B. Chang, Judge of the First Circuit Court, 14th Division, State of Hawai'i; and

WHEREAS, the Parties have reached a proposed comprehensive settlement of the Lawsuit, including all claims asserted or which could have been asserted in the Complaint, First Amended Complaint, Second Amended Complaint and the Supplemental Complaint for Waiting List Damages, including the claims of the waiting list subclass and the claims of all other certified and uncertified subclasses identified in the Second Amended Complaint and the Supplemental Complaint which to date have not been litigated or ruled upon; and

WHEREAS, the Settlement Class is defined to include the claims of all Plaintiffs, including class members of the certified and uncertified subclasses;

WHEREAS, on April 14, 2022, the Parties stipulated to the material terms of a valid and binding settlement agreement which material terms were memorialized in a signed document, approved by the Settlement Judge, titled Stipulated Terms of Settlement; and

WHEREAS, the Parties expressly contemplated that the material terms set forth in the Stipulated Terms of Settlement would be incorporated into a full settlement agreement, and this Agreement is the contemplated full settlement agreement; and

WHEREAS, Named Plaintiffs and Plaintiffs' counsel are satisfied that the terms and conditions of this Agreement are fair, reasonable, and adequate, and that this Agreement is in the best interests of all Plaintiffs;

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this Agreement, as well as the good and valuable consideration provided for herein, the Parties hereto agree to a full and complete settlement of the Lawsuit on the following terms and conditions:

TERMS OF AGREEMENT

I. Definitions

In addition to the definitions set forth above, the following definitions shall apply:

1. **"Agreement"** means this Settlement Agreement.
 2. **"Claims Administration Process"** means the process by which the Claims Administrator determines which members of the Settlement Class are Payment Recipients, determines the amount payable to each Payment Recipient, and issues settlement payments to Payment Recipients.
 3. **"Claims Administrator"** means the person responsible for implementing the Notice Plan and Claims Administration Process, subject to supervision by the Settlement Special Master and the Court.
 4. **"Class Counsel"** means:
 - a. Carl M. Varady, Esq.
Law Office of Carl M. Varady
Pauahi Tower, Suite 1730
1003 Bishop Street
Honolulu, HI 96813
 - b. Thomas R. Grande, Esq.
Grande Law Offices
41-859 Kalaniana'ole Highway, #271
Waimanalo, HI 96795
- Class Counsel are sometimes referred to as **Plaintiffs' counsel**.
5. **"Class Notice"** means the forms of notice approved and required by the Court to be provided to Settlement Class Members pursuant to the Notice Plan.
 6. **"Class Settlement Amount"** means exactly three hundred twenty-eight million and no/100 dollars (\$328,000,000.00).
 7. **"Complaint"** means the Complaint, First Amended Complaint, Second Amended Complaint and Supplemental Complaint filed in this Lawsuit, individually and collectively (unless the context otherwise requires), and all claims which arose out of the facts alleged in the Lawsuit or which were or could have been brought in the Lawsuit.
 8. **"Court"** means the Circuit Court of the First Circuit, State of Hawai'i. The Court is sometimes referred to as the **trial court**.

9. **"Day"** means a calendar day.
10. **"DHHL"** means the Department of Hawaiian Home Lands, State of Hawai'i.
11. **"Fairness Hearing"** means the hearing on the Motion for Final Approval of Settlement.
12. **"Final Approval"** means the occurrence of the following:
Following the Fairness Hearing, the Court has entered a final appealable order or judgment approving the Settlement, and
 - i. The time for appellate review and review by application for certiorari has expired, and no notice of appeal has been filed; or
 - ii. If appellate review or review by application for certiorari is sought, after any and all avenues of appellate review have been exhausted, the order approving settlement has not been modified, amended, or reversed in any way.
13. **"Legislation Enactment Deadline"** means July 13, 2022, or such later date as the Parties may agree to in writing.
14. **"Motion for Final Approval of Settlement"** means the motion to be filed by Plaintiffs seeking the Court's final approval of the Settlement which motion shall be heard at the Fairness Hearing.
15. **"Motion for Preliminary Approval of Settlement"** means the motion to be filed by Plaintiffs seeking the Court's preliminary approval of the Settlement.
16. **"Named Plaintiffs"** means the Class Representatives representing the Class named in the Complaint filed in the Lawsuit on December 29, 1999, the Second Amended Complaint filed in the Lawsuit on May 9, 2007, and the Supplemental Complaint for Waiting List Damages filed in the Lawsuit on July 15, 2013, except those individuals who have been removed as named plaintiffs or whose claims have been dismissed, and those named individuals who have died. In the latter case, Named Plaintiff refers to the authorized representative of an individual who has died if the authorized representative has been properly substituted in the Lawsuit as a named plaintiff in place of the deceased individual.
17. **"Net Settlement Amount"** means the amount available for settlement payments to Payment Recipients pursuant to the Payment Distribution Plan.
18. **"Notice Plan"** means the plan by which Settlement Class Members are to be notified of the Settlement and their options under the Settlement.
19. **"Panel"** means the Hawaiian Home Lands Trust Individual Claims Review Panel established by HRS Chapter 674.

20. **"Parties"** means Plaintiffs and State Defendants.
21. **"Payment Distribution Plan"** means, the plan that requires the Claims Administrator to pay the Net Settlement Amount in the form of settlement payments to Payment Recipients after Final Approval.
22. **"Payment of Plaintiffs' Attorneys Fees"** means the amount the Court determines is payable to Plaintiffs or Plaintiffs' attorneys as and for attorneys' fees, as described in Section IV(C), below.
23. **"Payments to Plaintiffs"** means the distribution of the Net Settlement Amount to Payment Recipients in accordance with the Payment Distribution Plan.
24. **"Payment Recipients"** means those Settlement Class Members described in Section VII(C), below.
25. **"Plaintiffs"** means, collectively, (i) all Named Plaintiffs, (ii) all individuals who are members of any class or subclass certified during the course of the Lawsuit, (iii) all individuals who are putative members of any putative class or subclass identified but not certified during the course of the Lawsuit; and (iv) all individuals whose claims were or could have been brought pursuant to the Complaint.
26. **"Preliminary Approval Order"** means an order entered by the Court following the hearing on the Motion for Preliminary Approval of Settlement preliminarily approving the terms set forth in this Agreement and approving the Notice Plan and the proposed forms of Class Notice.
27. **"Release of Claims"** means the release of claims described and defined in Section V, below.
28. **"Releasees"** means the State Defendants, i.e., the State of Hawai'i, the Department of Hawaiian Home Lands, the Hawaiian Home Lands Trust Individual Claims Review Panel, David Y. Ige, in his official capacity as Governor of the State of Hawai'i, all State of Hawai'i agencies, directors, officers, agents, employees, representatives, insurers, attorneys, administrators, and all other persons acting on behalf of the State.
29. **"Settlement"** means the compromise and settlement of the Lawsuit on the terms and conditions set forth in this Agreement.
30. **"Settlement Class"** means the class of persons defined in Section II, below.
31. **"Settlement Class Members"** means the members of the Settlement Class.
32. **"Settlement Fund"** means the account established with the Court into which the Class Settlement Amount is to be deposited as described in Section IV(A), below.

33. **"Settlement Payments"** or **"settlement payments"** means the individual payments to Payment Recipients made pursuant to the Payment Distribution Plan.
34. **"State Defendants"** means, collectively, the State of Hawai'i, State of Hawai'i Department of Hawaiian Home Lands, State of Hawai'i Hawaiian Home Lands Trust Individual Claims Review Panel, and David Y. Ige, in his official capacity as Governor of the State of Hawai'i. "State Defendants" does not include Doe Defendants, none of whom were identified during the course of the Lawsuit.
35. **"Stipulation Regarding Settlement Claims Administration Costs"** means the document of that title attached to this Agreement as Exhibit "A".

II. Settlement Class

The Hawai'i Supreme Court in *Kalima v. State*, 148 Hawai'i 129, 151-152 (2020) (*Kalima II*), held that the trial court's certification of a litigation class consisting of all persons who filed a claim with the Panel was proper, "in order to bind all persons who could pursue a claim as a waitlist member to the judgment in this case." *Id.* at 151. The Supreme Court further recognized that:

HRCP Rule 23(c)(3) (2011) provides that a judgment can only bind and preclude persons who are members of a class. As Plaintiffs note, "exclusion of these individuals from the class adjudication process means that they would be free to pursue their own claims against Defendants and that there would be no res judicata effect on these claims because they were not litigated and reduced to judgment." Therefore, although some of these class members may not have viable claims, it is appropriate to include them in the class in order to preclude them from attempting to relitigate their non-viable claims.

Id. at 152. The Parties intend that this Settlement shall similarly bind all persons who filed a claim with the Panel, and that those persons without viable claims, including without limitation those who settled their claims or who opt out, shall not be entitled to a settlement payment.

The Parties intend that this Settlement shall bind *all* Plaintiffs as that term is defined in Section I.(25), above. Thus, at the conclusion of this Settlement, the claims of all Plaintiffs which were or which could have been brought under the Complaint will have been disposed of via the Settlement either through the Release of Claims provided for below in Section V (and the subsequent dismissal of said claims) or by the opting out of individual Settlement Class Members in accordance with the Opt-Out Process set forth in Section VI(D), below.

For purposes of this Settlement, there shall be one class called the Settlement Class, which shall be defined as:

All persons who filed claims with the Hawaiian Home Lands Trust Individual Claims Review Panel on or before August 31, 1995.

The definition is coextensive with the definition of "Plaintiffs" and includes all persons listed on the "Class and Waiting List Subclass List" attached as Exhibit I to Plaintiffs' Motion to Establish Class List and Waiting List Subclass List filed July 1, 2016, and which was adopted by the Court by the Order Granting Plaintiffs' Motion to Establish Class List and Waiting List Subclass List [Filed July 1, 2016], filed July 26, 2017.

All Settlement Class Members are bound by the terms of this Agreement. However, not all Settlement Class Members are entitled to a settlement payment under this Settlement. To qualify for a payment under this Settlement, a Settlement Class Member must: (i) be a member of the Settlement Class, and (ii) meet the requirements of a Payment Recipient as described in Section VII.(C), below.

Plaintiffs shall take all steps reasonably necessary to ensure that this Settlement and the Release of Claims provided for herein shall be binding on all Settlement Class Members (meaning all Plaintiffs) including those Settlement Class Members who do not qualify for a settlement payment, including but not limited to: (i) providing class notice to all Settlement Class Members; (ii) providing all Settlement Class Members with adequate opportunity to exclude themselves from the Settlement or object to the Settlement; and (iii) obtaining all Court orders necessary to effectuate such binding effect on all Settlement Class Members.

Subject to Court approval, the representatives of the Settlement Class shall be Leona Kalima, Diane Boner, and Raynette Nalani Ah Chong, Special Administrator of the Estate of Joseph Ching. Class Counsel shall, in the Motion for Preliminary Approval of Settlement, seek the Court's appointment of these individuals to be the representatives of the Settlement Class under HRCF Rule 23.

Attorneys Thomas R. Grande and Carl M. Varady shall, in the Motion for Preliminary Approval of Settlement, request that the Court appoint them as class counsel pursuant to HRCF Rule 23 to represent all Plaintiffs, including the Settlement Class, for purposes of this Settlement. This Settlement is contingent upon the Court's appointment of qualified class counsel to represent the Plaintiffs, including the Settlement Class.

The Parties and Class Counsel agree that, if approved, certification of the Settlement Class is a conditional certification for settlement purposes only, and if for any reason the Court does not grant final approval of the Settlement, or if for any other reason the Settlement does not become effective, the certification of the Settlement Class for settlement purposes shall be deemed null and void without further action by the Court or any of the Parties, each Party shall retain their respective rights and shall be returned to their relative legal positions *status quo ante* as they existed prior to execution of this Agreement, and neither this Agreement nor any of its accompanying exhibits or orders entered by the Court in connection with this Agreement shall be admissible or used for any purpose in the Lawsuit.

III. Legislation

The Parties acknowledge and agree that this Agreement is contingent on the enactment of legislation by the Hawai'i Legislature to authorize the appropriation of monies to fund the Class

Settlement Amount. The Parties agree that enactment of this legislation is material and essential to this Agreement and that if such legislation is not enacted into law by the Legislation Enactment Deadline, unless such date is mutually agreed by the Parties in writing to be extended, the Settlement shall automatically become null and void and the Lawsuit shall proceed.

IV. Payment by the State of Hawai'i to Fund the Settlement

A. Deposit of Class Settlement Amount in Court's Settlement Fund

In consideration of, and subject to, the terms and conditions of this Agreement, and subject to Court approval, not more than thirty (30) days after the required legislative appropriation(s) becomes effective, the State of Hawai'i shall deposit the Class Settlement Amount into the Settlement Fund.

Other than the Class Settlement Amount, State Defendants owe no other sums to Plaintiffs or Plaintiffs' attorneys whatsoever.

No distributions from the Class Settlement Amount shall be made until the conditions precedent to distributing said funds under this Agreement have been satisfied.

Notwithstanding the foregoing paragraph, and subject to the Court's approval and entry of the Stipulation Regarding Settlement Claims Administration Costs attached as Exhibit "A" hereto, the Claims Administrator may be paid during the interim between when the legislative appropriation becomes effective and Final Approval. Costs paid under this paragraph shall not exceed One Million and no/100 dollars (\$1,000,000.00), or another amount agreed to by the Parties in writing, or as may be ordered by the Court. The costs shall be paid out of the moneys deposited into the Settlement Fund as directed by the Settlement Special Master. Any amount paid under this paragraph shall be credited to the State as set forth in the Stipulation Regarding Settlement Claims Administration Costs.

B. Authorized Uses of Class Settlement Amount

The Class Settlement Amount shall be used to pay for only the following:

1. Payments to Plaintiffs in accordance with the Court's approved Payment Distribution Plan.
2. Costs necessary to implement the Settlement including, but not limited to, reasonable and necessary costs to:
 - a. Retain a Settlement Special Master and Probate Special Master subject to Court appointment;
 - b. Retain a qualified Claims Administrator subject to Court appointment;
 - c. Implement the Notice Plan;
 - d. Implement the Claims Administration Process including the Payment Distribution Plan;

- e. Subject to Court approval, retain such additional qualified professionals the Court, the Special Masters, or the Claims Administrator may deem necessary to efficiently and effectively implement the Claims Administration Process.
- 3. Reasonable and necessary costs related to probate proceedings for deceased Settlement Class Members.
- 4. Payment of Plaintiffs' Attorneys' Fees in accordance with Section IV.(C). below.

C. Payment of Plaintiffs' Attorneys' Fees

The amount of the Payment of Plaintiffs' Attorneys' Fees shall be determined as follows:

- 1. On proper notice and motion to be heard at the Fairness Hearing, Plaintiffs or Plaintiffs' attorneys may request that the Payment of Plaintiffs' Attorneys' Fees be paid *from the Class Settlement Amount* based on contingent fee, HRS Chapter 674, or any other theory, in an amount not to exceed forty million and no/100 dollars (\$40,000,000.00). The amount to be paid shall be determined by the Court except that Plaintiffs' attorneys shall not accept any fees in excess of \$40,000,000.00. Any amounts awarded in excess of \$40,000,000.00, if any, shall remain in the Class Settlement Amount to be paid to Payment Recipients pursuant to the Payment Distribution Plan.
- 2. State Defendants shall not oppose Plaintiffs' or Plaintiffs' attorneys' request for Payment of Plaintiffs' Attorneys' Fees in an amount less than or equal to twenty-eight million and no/100 dollars (\$28,000,000.00).
- 3. Class Counsel and State Defendants waive any appeal of the Court's award of Payment of Plaintiffs' Attorneys' Fees as set forth in this Section IV.(C).
- 4. Plaintiffs and Plaintiffs' attorneys waive and will not seek any additional amounts for payment of costs incurred in and for the Lawsuit. This limitation does not apply to expenditures authorized under Section IV.(B)(1) – (3).
- 5. The Court shall have sole discretion to decide the amount to be awarded as Payment of Plaintiffs' Attorneys' Fees at the Fairness Hearing.
- 6. Plaintiffs or Plaintiffs' attorneys shall give notice of the intent to seek attorneys' fees, including the amount they are permitted to seek pursuant to this Section IV.(C), in the Motion for Preliminary Approval of Settlement and in the Class Notice provided to Plaintiffs so that Plaintiffs may have an opportunity to object to the requested fee award prior to the Fairness Hearing.

Thirty-one days after Final Approval, the Claims Administrator shall disburse the amount approved by the Court for Payment of Plaintiffs' Attorneys' Fees from the Class Settlement Amount.

Class Counsel represent that there are no outstanding attorney liens to which the Payment of Plaintiffs' Attorneys' Fees or any portion of the Class Settlement Amount are subject and shall defend and indemnify State Defendants against any such liens or claims if any person(s) enforces or attempts to enforce such liens or claims against said funds.

D. Payments to be Returned to the State if Settlement is Not Approved

In the event there is no Final Approval of the Settlement, the funds remaining on deposit in the Settlement Fund shall be returned to the State of Hawai'i, and any payments made from the funds shall be credited to any future administrative costs the State may be ordered to pay in the Lawsuit as set forth in the Stipulation Regarding Settlement Claims Administration Costs.

V. Release of Claims

In consideration for the payment of the Class Settlement Amount, Plaintiffs, for themselves, their heirs, successors, and assignees, will, upon Final Approval, release all Releasees from all claims arising out of the facts alleged in the Lawsuit, all claims that were asserted or could have been asserted before the Panel, and all claims that were asserted or could have been asserted in this Lawsuit (the "Release of Claims").

The Release of Claims shall be effective at the moment of, and be conditioned upon Final Approval of the Settlement, as defined in section I, above, without further action by the Parties.

VI. Court Approval of Settlement; Notice Plan; Procedures for Settlement Class Members to Exclude Themselves From (Opt Out of) or Object to Settlement

A. Motion for Preliminary Approval of Settlement

Plaintiffs shall file the Motion for Preliminary Approval of Settlement at such time as the Court may direct. The motion shall include a summary of the terms of this Settlement, a description of the proposed Payment Distribution Plan, notice of an intent to seek the Payment of Plaintiffs' Attorneys' Fees including the amount allowed by this Settlement, a request for approval of the Notice Plan, a request for approval of the specific form of Class Notice to be sent to Settlement Class Members, information on how Settlement Class Members may exclude themselves from the Settlement (opt-out) or object to the Settlement or the Payment of Plaintiffs' Attorneys' Fees, and shall include a complete copy of this Agreement and its exhibits. The motion shall also request certification of the Settlement Class, appointment of the Settlement Class Representatives and Class Counsel, and shall request that the Court schedule a Fairness Hearing.

B. Notice Plan

The Claims Administrator shall implement the Notice Plan approved by the Court. The Notice Plan shall, to the extent practicable, be designed to provide individual notice to Settlement Class Members or their authorized representatives or successors.

Prior to mailing the approved Class Notices, the Claims Administrator shall process the Settlement Class List against the National Change of Address Database maintained by the United States Postal Service ("USPS").

C. Content of Class Notice

Class Notices or other written communications sent to Settlement Class Members shall first be approved by the Court.

D. Opt-Out Process

Plaintiffs not wanting to participate in this Settlement and not wanting to release claims pursuant to this Settlement shall submit a valid and timely Opt-Out Letter.

To be valid, the Opt-Out Letter shall contain a statement which clearly conveys a request to be excluded from and not participate in the Settlement, the individual's full name, mailing address, and telephone number, and must be signed and dated. To be timely, an Opt-Out Letter must be postmarked by the date approved by the Court and set forth in the Class Notice. Opt-Out Letters shall be sent to the Claims Administrator.

A Plaintiff who submits a valid and timely Opt-Out Letter shall not be entitled to a settlement payment and forever waives their right to receive a share of the Class Settlement Amount.

1. Individuals Who Settled Their Claims

Individuals who settled their claims at the Panel level or directly with DHHL do not have valid claims in this Lawsuit and are not eligible for a settlement payment under this Settlement. Inasmuch as the claims they submitted to the Panel have already been dismissed with prejudice, individuals who settled their claims at the Panel level also cannot opt out and pursue their claims in a separate lawsuit. These individuals will be provided with a form of Class Notice or other communication that informs them they have no right to a settlement payment. *See also* Section VII.(C), below.

2. Individuals Who Previously Opted Out of the Lawsuit

Individuals who previously opted out of this Lawsuit in 2007 or 2012 do not have valid claims in this Lawsuit and are not eligible for a settlement payment under this Settlement. Inasmuch as the previous decision to opt out in 2007 or 2012 meant that these individuals were no longer part of this Lawsuit as of the opt out date, such individuals cannot now opt out and

pursue their claims in a separate lawsuit. These individuals will be provided with a form of Class Notice or other communication that informs them they have no right to a settlement payment. *See also* Section VII.(C), below.

E. Objections to Settlement or to Payment of Plaintiffs' Attorneys' Fees

A Settlement Class Member who wishes to object to this Agreement, the Settlement, or the Payment of Plaintiffs' Attorneys' Fees must timely file with the Clerk of the Court and serve on counsel for the Parties a statement of their objections and whether the Settlement Class Member intends to appear at the Fairness Hearing.

Any Settlement Class Member may appear at the Fairness Hearing to object to any aspect of this Agreement, the Settlement, or Plaintiffs' Request for Attorneys' Fees. Settlement Class Members may act either on their own or through counsel employed at their own expense.

To be considered timely, a Settlement Class Member's objections must be postmarked on or before the date approved by the Court and set forth in the Class Notice.

F. Fairness Hearing

Plaintiffs shall file a Motion for Final Approval of Settlement at such time as the Court may direct which shall include a summary of the Claims Administrator's implementation of the Notice Plan and a report on requests to opt out of and objections to the Settlement.

The Fairness Hearing is to be held on a date determined by the Court in consultation with the Parties. At the Fairness Hearing, Class Counsel will request that the Court:

1. Consider any objections by Plaintiffs, including Settlement Class Members;
2. Give final approval to the Settlement as fair, reasonable, and adequate, and binding on those Settlement Class Members who did not validly and timely submit Opt-Out Letters;
3. Determine the amount of the Payment of Plaintiffs' Attorneys' Fees;
4. Determine the Net Settlement Amount to be distributed to Payment Recipients, including for distribution in probate proceedings to be conducted after Final Approval.

G. Effect of Failure to Grant Final Approval

In the event the Settlement and this Agreement are not granted Final Approval, they shall be deemed null, void, and unenforceable and shall not be used or admissible in any subsequent proceedings against State Defendants or other agencies, officials, or employees of the State of Hawai'i either in this Court or in any other judicial, arbitral, administrative, investigative, or other forum; and the Lawsuit shall recommence. In the event the Settlement and this Agreement are not approved by the Court or Final Approval is otherwise not obtained, State Defendants will not be deemed to have waived, limited, or affected in any way their defenses to the Lawsuit.

VII. Claims Administration Process

The Claims Administration Process shall be implemented as approved by the Court.

A. Role and Responsibilities of the Claims Administrator

The Claims Administrator shall have primary responsibility for implementing the Notice Plan and the Claims Administration Process approved by the Court.

Under the supervision of the Settlement Special Master, the Claims Administrator shall submit regular progress reports to the Parties and the Court regarding all disbursements including settlement payments to Payment Recipients.

B. Role and Responsibilities of the Settlement Special Master

The Settlement Special Master shall be appointed by the Court to supervise the Claims Administration Process and the Claims Administrator. Subject to Court approval, the Settlement Special Master may expend all reasonable and necessary funds in fulfillment of her/his responsibilities as follows:

1. Work with Class Counsel and the Claims Administrator to implement the Claims Administration Process, including:
 - a. Notice and outreach to Settlement Class Members;
 - b. Settlement payment computation; and
 - c. The Payment Distribution Plan.
2. Supervise and coordinate disbursement of monies for Claims Administration expenses.
3. Supervise and coordinate issuance of settlement payments to living Settlement Class Members.
4. Coordinate with the Probate Special Master/Special Administrator to implement a probate plan if one is developed and approved by the Court, and supervise and coordinate issuance of settlement payments to deceased Settlement Class Members' estates.
5. Review the Claims Administrator's determination that Settlement Class Members do not qualify for participation in the settlement and provide appropriate notice to such class members and the Court.
6. Make periodic and final reports to the Court as ordered or as needed.
7. Perform such other duties necessary to administer the Claims Administration Process as requested or as the Court may order.

C. Payment Recipients; Certain Settlement Class Members Not Entitled to Settlement Payments

All Settlement Class Members are Payment Recipients except that the following individuals shall *not* be entitled to a settlement payment under this Agreement:

1. Individuals who did not file a claim with the Panel on or before August 31, 1995.
2. Individuals who filed a timely claim with the Panel but the claim did not assert an individual breach of trust which occurred between August 21, 1959, and June 30, 1988.
3. Individuals who filed a timely claim with the Panel but the claim asserted an individual breach of trust that occurred after June 30, 1988.
4. Individuals who filed a timely claim with the Panel but the claim was not a valid HRS Chapter 674 claim.
5. Individuals who filed a timely claim with the Panel but settled their claim.
6. Individuals who opted out of the Lawsuit in response to the 2007 class notice.
7. Individuals who opted out of the Lawsuit in response to the 2012 class notice.
8. Individuals who opt out of the Settlement Class and this Settlement by sending a valid and timely Opt-Out Letter to the Claims Administrator, as described above.

The Parties are not aware of any separate lawsuits filed by individuals who opted out of this Lawsuit in 2007 or 2012.

D. Payment Distribution Plan

Thirty-one days after Final Approval, the Claims Administrator shall issue settlement payments from the Net Settlement Amount to each Payment Recipient via check in accordance with the Payment Distribution Plan approved by the Court. All settlement payment checks issued to Settlement Class Members will expire and become void 120 days after they are issued.

Payment to each Payment Recipient is deemed made at the moment the settlement payment check for a Payment Recipient is issued, i.e., prepared and signed by the Claims Administrator, payable to the Payment Recipient and mailed to the Payment Recipient's last known address. The completion of this Settlement is not contingent upon Payment Recipients negotiating their respective payment checks. Settlement Class Members who do not opt out are bound by this Agreement, including the Release of Claims, even if some Payment Recipients do not negotiate their checks for any reason.

Interest on any funds held pending issuance of settlement payments shall be used to pay for claims administration expenses.

E. Disposition of Residual Funds

Any remainder of the Class Settlement Amount that cannot be distributed after all authorized payments are made in accordance with this Agreement and applicable orders of the Court shall be paid to the Department of Hawaiian Home Lands loan fund established by section 213(c) of the Hawaiian Homes Commission Act and used exclusively for the purposes enumerated in section 214(a) of the Hawaiian Homes Commission Act.

F. Court Approval Required

Class Counsel shall seek the Court's approval of the Claims Administration Process, including the Payment Distribution Plan, referenced in this Section VII.

VIII. Other Responsibilities of the Parties Under this Agreement

The Parties shall take the following actions in furtherance of the Settlement herein:

A. Defendants shall:

1. To the extent practicable, and for information not already provided to Class Counsel during the litigation of this Lawsuit, provide Plaintiffs and the Claims Administrator information in their possession reasonably necessary to advance the resolution of the payment of claims, including, without limitation, known original lease application dates and award dates for all applications and awards to Settlement Class Members, including known accelerated and undivided award effective dates.
2. To the extent practicable, but not more than every two weeks unless otherwise ordered by the Court, and for information not already provided to Class Counsel during the litigation of this Lawsuit, have DHHL provide Plaintiffs and the Claims Administrator regular updates of Settlement Class Members' addresses and telephone numbers and the names of deceased Plaintiffs' successors to the extent such information is known or becomes known to DHHL. The foregoing is subject to first obtaining a protective order from the Court as to the release of any information deemed confidential under section 10-2-3(d), Hawai'i Administrative Rules.
3. Support Plaintiffs' or the Claims Administrator's requests to the Court for an order under section 338-18, Hawai'i Revised Statutes, or other state law in seeking records from the Hawai'i Department of Health or other agency to provide Plaintiffs and the Claims Administrator information reasonable and

necessary to advance the resolution of the payment of claims, including maintaining and updating the list of all deceased class members.

4. Not oppose Plaintiffs' application to the Court for:

- a. preliminary approval of the Settlement;
- b. certification of the Settlement Class;
- c. reappointment of Class Counsel as counsel for the Settlement Class;
- d. appointment of the Settlement Class Representative(s);
- e. retention of a Settlement Special Master;
- f. retention of a Claims Administrator;
- g. approval of the Notice Plan; and
- h. scheduling of the Fairness Hearing.

Defendants' obligations under this paragraph are subject to Defendants being provided a reasonable opportunity to review, comment on, and concur with said applications prior to Plaintiffs' filing of the applications, which non-opposition shall not be unreasonably withheld, conditioned, or delayed.

5. Not oppose Plaintiffs' application to the Court for:

- a. final approval of the Settlement;
- b. final approval of the Payment Distribution Plan; and
- c. Payment of Plaintiffs' Attorneys' Fees to Plaintiffs' counsel except as set forth in section VII(C), above.

Defendants' obligations under this paragraph are subject to Defendants being provided a reasonable opportunity to review, comment on, and concur with said applications prior to Plaintiffs' filing of the applications, which non-opposition shall not be unreasonably withheld, conditioned, or delayed.

B. Plaintiffs shall:

- 1. Prepare and submit all documents necessary to seek approval by the Court of the Settlement under HRCF Rule 23, including, but not limited to, submission of the Notice Plan to the Court for its review and approval.
- 2. Submit the Payment Distribution Plan to the Court for its review and approval.
- 3. Subject to Court appointment, retain the Settlement Special Master, Probate Special Master and Claims Administrator as provided for in this Agreement.

C. The Parties shall:

1. Cooperate fully and take all actions reasonably necessary to implement and achieve this Settlement, including actions reasonably necessary to conclude the Claims Administration Process.
2. If they receive original Opt-Out Letters or objections that should have been submitted to the Claims Administrator or the Court, as the case may be, promptly submit said communications to the proper person as contemplated by this Agreement with copies to opposing counsel.

IX. Stipulation for Dismissal with Prejudice; Continuing Court Oversight

A. Stipulation for Dismissal With Prejudice

Within thirty (30) days after the Final Approval and Release of Claims become effective, payment checks are issued to Payment Recipients, and Payment of Plaintiffs' Attorneys' Fees is disbursed to Class Counsel as provided herein, the Parties shall stipulate to a dismissal with prejudice of the Complaint and the Lawsuit in a form and substance approved by the Court.

B. Continuing Court Oversight

The Parties shall continue to confer with the Court at routine intervals set by the Court to assure the fulfillment of the Settlement and this Settlement Agreement. The Court shall retain jurisdiction over this matter to enforce the terms of the Settlement, including ensuring that payments are made in accordance with the Court-approved Payment Distribution Plan. Such jurisdiction shall terminate upon final distribution of all funds in the Court account, including payment of residual funds, if any, pursuant to paragraph VII(E), or 60 days after the submission of the final report by the Special Master, whichever is later.

X. Additional Provisions

1. **No Effect on Waiting List, DHHL Decision Making.** This Settlement does not affect the present status or qualification of any Plaintiff/Settlement Class Member on any waiting list maintained by DHHL or qualifications to receive a lease under the Hawaiian Homes Commission Act. Decisions or findings by the Claims Administrator shall not be binding on DHHL or the Hawaiian Homes Commission except for purposes of this Settlement.
2. **No Third-Party Beneficiaries.** This Agreement shall not be construed to create rights in, or to grant remedies to, or delegate any duty, obligation or undertaking established herein to any third party as a beneficiary of this Agreement.
3. The rule of construction that an agreement is to be construed against the drafting party is not to be applied in interpreting this Agreement. The Parties acknowledge that they have read this Agreement, that they understand its meaning and intent, that

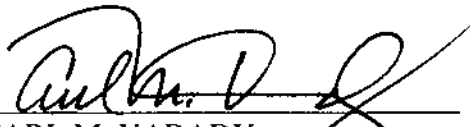

they have executed it voluntarily and with opportunity to consult with legal counsel, and have participated and had an equal opportunity to participate in the drafting and approval of drafting of this Agreement. No ambiguity shall be construed against any party based upon a claim that the party drafted the ambiguous language. This Agreement contains all essential terms of the settlement the Parties have reached. While other documents may be prepared hereafter to further effectuate the provisions hereof, the Parties intend that this Agreement is a valid, binding agreement, enforceable by the Court.

4. **This Agreement Incorporates the Stipulated Terms of Settlement.** This Agreement is intended to incorporate in all material respects and to supersede the Stipulated Terms of Settlement dated April 14, 2022. To the extent the terms of this Agreement conflict with the Stipulated Terms of Settlement, this Agreement shall control.
5. The representative signatories to this Agreement each represent that they are fully authorized to enter into this Agreement and bind the respective Parties to its terms and conditions. This Agreement may be executed in counterparts.

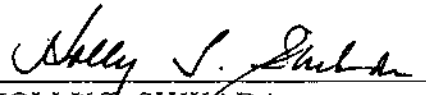
SIGNATURES

Wherefore, intending to be legally bound in accordance with the terms of this Agreement, the Parties hereby execute this Agreement, effective on June 2, 2022, which is the date on which the last signatory signed this Agreement.

FOR PLAINTIFFS


CARL M. VARADY
CLASS COUNSEL

THOMAS R. GRANDE
CLASS COUNSEL

FOR DEFENDANTS


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Attorney General, State of Hawai'i
CRAIG Y. IHA
Deputy Attorney General
LINDA LEE K. FARM
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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

Leona Kalima, Diane Boner, Raynette
Nalani Ah Chong, special administrator of
the estate of Joseph Ching, deceased, et al.

Plaintiffs,

vs.

State of Hawai'i, State of Hawai'i
Department of Hawaiian Home Lands; et
al.,

Defendants.

Civil No. 99-4771-12 LWC
(Class Action)

ORDER GRANTING PLAINTIFFS' MOTION
FOR: (1) PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT; (2)
CERTIFICATION OF SETTLEMENT CLASS;
(3) DECERTIFICATION OF SUBCLASSES 1-
4 and 6; (4) APPOINTMENT OF CLASS
REPRESENTATIVES AND APPOINTMENT
OF CLASS COUNSEL; (5) APPOINTMENT
OF SETTLEMENT SPECIAL MASTER; (6)
APPOINTMENT OF CLAIMS
ADMINISTRATOR; (7) APPROVAL OF
PLAN OF NOTICE AND SCHEDULING OF
FAIRNESS HEARING

Hearing:

Date: June 6, 2022

Time: 9:00 a.m.

Judge: Hon. Lisa W. Cataldo

Post-Trial Proceedings

**ORDER GRANTING PLAINTIFFS' MOTION FOR: (1) PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT; (2) CERTIFICATION OF SETTLEMENT
CLASS; (3) DECERTIFICATION OF SUBCLASSES 1-4 and 6; (4) APPOINTMENT OF
CLASS REPRESENTATIVES AND APPOINTMENT OF CLASS COUNSEL; (5)
APPOINTMENT OF SETTLEMENT SPECIAL MASTER; (6) APPOINTMENT OF
CLAIMS ADMINISTRATOR; (7) APPROVAL OF PLAN OF NOTICE AND
SCHEDULING OF FAIRNESS HEARING**

Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, Decertification of Subclasses 1-4 and 6, Certification of Settlement Class, Appointment of Class Counsel, Class Representatives, Settlement Special Master, and Claims Administrator, Approval of Plan of Notice and Scheduling of Fairness Hearing filed on June 2, 2022 ("Motion") was heard by the Honorable Lisa W. Cataldo on June 6, 2022, at 9:00 a.m. Thomas R. Grande and Carl M. Varady appeared for Plaintiffs. Craig Y. Iha, Katie L. Lambert, Deputy Attorneys General, and Linda Lee K. Farm and Donna H. Kalama, Special Deputy Attorneys General, appeared for Defendants.

The Court, having heard argument from Plaintiffs' counsel, and having reviewed and considered Plaintiffs' motion and memorandum, the records and files herein, and Defendants' Statement of No Opposition, and GOOD CAUSE APPEARING THEREFOR,

Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, Decertification of Subclasses 1-4 and 6, Certification of Settlement Class, Appointment of Class Counsel, Class Representatives, Settlement Special Master, and Claims Administrator, Approval of Plan of Notice and Scheduling of Fairness Hearing filed on June 2, 2022, is hereby GRANTED in accordance with the findings and terms set forth below.

THE COURT HEREBY FINDS AND ORDERS:

1. Preliminary Approval of Settlement Agreement

Subject to a Fairness Hearing and Final Approval, the terms of the Settlement Agreement attached as Exhibit 1 to the Motion are preliminarily approved as being fair, reasonable, adequate and in the best interests of the Settlement Class in light of the benefits to Class Members; the strength of Plaintiffs' case and the State's defenses; and the complexity, expense and probable duration of further litigation and the risk and delay inherent in possible appeals. In preliminarily approving the Settlement Agreement, the Court makes the following findings:

- a. The proposed class representatives and Settlement Class Counsel have adequately represented the Settlement Class in the settlement negotiations;

- b. The parties engaged in substantial discovery over the course of the 23-year history of the case;
- c. The Settlement Agreement was entered into at arm's length by experienced counsel with the assistance of Circuit Court Judge Gary W.B. Chang;
- d. The relief provided by the Settlement Agreement is clearly adequate;
- e. The Settlement Agreement treats members of the Settlement Class equitably relative to each other; and
- f. The Settlement Agreement is sufficiently within the range of reasonableness that notice of the Settlement Agreement should be given to members of the proposed Settlement Class.

2. Decertification of Subclasses 1-4, 6

The Court finds that the claims of all Plaintiffs, including those in the existing certified subclasses, Waiting List (1), Ultra Vires (2), Uninhabitable (3), Lost Applications (4) and Successor Rights (6), are proposed to be resolved as part of the Settlement, and that all such individuals in the previously-certified Subclasses are members of the Settlement Class certified herein. The Court therefore decertifies these Subclasses, and all decertified Subclass members may assert claims as Settlement Class Members.

3. Class Certification

Pursuant to Hawai'i Rule of Civil Procedure 23 and in light of the proposed settlement, the Court hereby finds that the prerequisites for class action treatment have been met and provisionally certifies the following class for settlement purposes ("Settlement Class"):

All persons who filed claims with the Hawaiian Home Lands Trust Individual Claims Review Panel on or before August 31, 1995.

The following persons will not receive a Settlement Payment under the terms of the Settlement Agreement:

- (1) Individuals who did not file a claim with the Panel on or before August 31, 1995.
- (2) Individuals who filed a timely claim with the Panel but the claim did not assert an individual breach of trust which occurred between August 21, 1959, and June 30, 1988.

- (3) Individuals who filed a timely claim with the Panel but the claim asserted an individual breach of trust that occurred after June 30, 1988.
- (4) Individuals who filed a timely claim with the Panel but the claim was not a valid HRS Chapter 674 claim.
- (5) Individuals who filed a timely claim with the Panel but settled their claim.
- (6) Individuals who opted out of the Lawsuit in response to the 2007 class notice.
- (7) Individuals who opted out of the Lawsuit in response to the 2012 class notice.
- (8) Individuals who opt-out of the Settlement Class and this Settlement by sending a valid and timely Opt-Out Letter to the Claims Administrator.

The Court finds that provisional certification of the Settlement Class is warranted for the Settlement Agreement because:

- a. The Class Members are so numerous that joinder of all of them in the Lawsuit is impracticable;
- b. There are questions of law and fact common to the Class Members which predominate over any individual questions;
- c. The claims of the Class Representatives are typical of the claims of the Class Members;
- d. The Class Representatives and Class Counsel will fairly and adequately represent and protect the interests of all of the Class Members; and
- e. Class treatment of these claims will be efficient and manageable, thereby achieving an appreciable measure of judicial economy, and a class action is superior to other available methods for a fair and efficient adjudication of this controversy.

4. Appointment of Class Representative and Settlement Class Counsel

The Court hereby finds that Leona Kalima, Diane Boner, and Raynette Ah Chong, Special Administrator of the Estate of Joseph Ching, Deceased, have interests consistent with the Settlement Class and will fairly and adequately serve as Class Representatives. The Court hereby appoints Ms. Kalima, Ms. Boner, and Ms. Ah Chong to serve as Class Representatives of the Settlement Class.

The Court hereby appoints Carl M. Varady and Thomas R. Grande as Settlement Class Counsel.

5. Appointment of Settlement Special Master

The Court authorizes the appointment of a Settlement Special Master, whose duties will be to oversee the notice plan, administer the Settlement Fund with the Court's supervision and final approval, and account for the Claims Administration and settlement payments process.

The Settlement Special Master shall be appointed by the Court to supervise the Claims Administration Process and the Claims Administrator. Subject to Court approval, the Settlement Special Master may expend all reasonable and necessary funds in fulfillment of her/his responsibilities as follows:

- a. Work with Class Counsel and the Claims Administrator to implement the Claims Administration Process, including:
 1. Notice and outreach to Settlement Class Members;
 2. Settlement payment computation; and
 3. The Payment Distribution Plan.
- b. Supervise and coordinate disbursement of monies for Claims Administration expenses.
- c. Supervise and coordinate issuance of settlement payments to living Settlement Class Members.
- d. Coordinate with the Probate Special Master/Special Administrator to implement a probate plan if one is developed and approved by the Court, and supervise and coordinate issuance of settlement payments to deceased Settlement Class Members' estates.
- e. Review the Claims Administrator's determination that Settlement Class Members do not qualify for participation in the settlement and provide appropriate notice to such class members and the Court.
- f. Make periodic and final reports to the Court as ordered or as needed.
- g. Perform such other duties necessary to administer the Claims Administration Process as requested or as the Court may order.

The parties are directed to meet and propose to the Court appropriate candidate(s) for the Settlement Special Master position.

6. Appointment of Claims Administrator

The Court authorizes the appointment of Epiq Class Action and Claims Solutions, Inc. (“Epiq”) as the Claims Administrator in this case.

The Claims Administrator will operate under the direction of the Settlement Special Master and will generally perform class list and class notice services; maintain electronic evidence; confirm electronic evidence provided by the parties; maintain the individual claims data in electronic format, and compute and process settlement payments.

7. Claims Administration Process; Timetable; First Notice to Potential Settlement Class Members.

The Court approves the Claims Administration Process; Timetable and Plan of Notice attached as Exhibit 4 to the Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement, as revised by the Post-Hearing Submission filed June 6, 2022 [Dkt 1491].

The Settlement Class shall receive notices in accordance with the terms of this Order.

The Court approves the form and content of: (a) the First Mailed Notice attached as Exhibit 6 to the Motion; (b) the Letter to Class Members attached as Exhibit 7 to the Motion; (c) the Publication Notice attached as Exhibit 8 to the Motion; (d) the Information Request Form attached as Exhibit 5 to the Motion; and, (e) the Kalima-Lawsuit Settlement Website (<https://www.kalima-lawsuit.com>) attached as Exhibit 10 to the Motion, all as revised by the Post-Hearing Submission filed June 6, 2022 [Dkt 1491]. Non-material changes and corrections may be made to the Class Notices as the Parties deem appropriate or necessary.

The Court finds that the mailing of the First Mailed/Emailed Notice in conjunction with the publication of the Publication Notice in the manner set forth herein constitutes the best notice that is practicable under the circumstances, is valid, due and sufficient notice to all persons entitled thereto and complies fully with the requirements of Haw. R. Civ. Pro. 23 and the due process requirements.

On or around July 1, 2022, the First Mailed Notice shall be mailed by first-class mail, postage prepaid, to all members of the Settlement Class. The Notice shall also be provided to all persons who request it. In addition, a copy of the Notice shall be posted on the Internet at <https://www.kalima-lawsuit.com>, the Settlement Website.

On or around July 1, 2022, Settlement Class Counsel shall cause the Publication Notice to be published in the *Honolulu Star-Advertiser*, the *Hilo Tribune Herald*, *West Hawai'i Today*,

the *Maui News*, the *Garden Isle*, and the *Molokai Dispatch*. Publication Notice shall also be published on the DHHL website, *Ka Wai Ola* (Office of Hawaiian Affairs), *Ka Nuhou Uila* (DHHL) and by the Sovereign Council of Hawaiian Homestead Associations (“SCHHA”) online and other SCHHA media outlets.

Class Counsel shall present and obtain approval from the Court for the proposed content of the Second Mailed Notice and Third Mailed Notice and of any additional notice that Class Counsel may propose.

a. Plan of Distribution – October 1, 2022

Class Counsel in consultation with the Claims Administrator shall formulate and propose a Plan of Distribution of the net settlement funds to the Court by October 1, 2022.

b. Second Mailed/Emailed Notice – November 1, 2022

After Court approval of the Plan of Distribution, Class Members shall receive a Second Mailed Notice. The individualized Second Mailed Notice shall disclose the dates and/or other information the Claims Administrator proposes to use to calculate each Payment Recipient’s settlement payment and provide the Payment Recipient an opportunity to correct the dates or other information.

The second notice will notify those Class Members who are not entitled to a settlement payment under the Settlement of their status as a non-Payment Recipient and will provide a second notice of the Exclusion Deadline and process.

c. Deadline for Exclusion – December 15, 2022

All requests for exclusion from the Settlement Class must be in writing, postmarked no later than December 15, 2022, and must otherwise comply with the requirements set forth in the First Mailed Notice and Second Mailed Notice.

d. Probate Plan – December 15, 2022

Class Counsel, in consultation with the Probate Court and Probate Special Master/Probate Administrator, is directed to formulate and propose a Probate Plan to the Court by December 15, 2022.

e. Third Mailed/Emailed Notice – February 15, 2023

After computation of individual settlement payments by the Claims Administrator, which will be received and reviewed by the Special Master, Class Members will receive a third individual Court-approved notice by first-class mail on or about February 15, 2023. The

individual notice will set forth and explain each Class Members' settlement payment and disclose Class Counsel's request for attorneys' fees and fully inform the Class Members of objection procedures.

f. Deadline to Object – March 15, 2023

Any objection by any member of the Settlement Class to the proposed settlement or the request for attorneys' fees must be in writing, must be filed with the Clerk of Court and postmarked no later than March 15, 2023, and must otherwise comply with the instructions set forth in the Notice.

g. Responses to Objections – March 27, 2023

Submissions by the Parties, including memoranda in support of the proposed settlement, responses to any objections, motion for attorneys' fees by Class Counsel, shall be filed with the Court no later than eighteen (18) days prior to the Fairness Hearing, i.e., no later than March 27, 2023.

h. Fairness Hearing/Final Approval Hearing – April 14, 2023, 9:00 a.m.

The Court will hold a Fairness Hearing on **April 14, 2023, at 9:00 a.m.** to consider objections by Settlement Class Members and determine whether to give final approval to: (1) the proposed Settlement; (2) the distribution of the Settlement Fund including the issuance of settlement payments to Payment Recipients; (3) Settlement Class Counsel's request for an award of attorneys' fees; (4) the request for an incentive payment to the Class Representatives to be paid from the Settlement Fund; and (5) determination of how to issue settlement payments for deceased Settlement Class members whose claims are then or expected to be processed in probate.

Any Settlement Class member who follows the procedure set forth in the Third Mailed Notice may appear and be heard at this hearing. If the Court believes it is appropriate, the hearing may be conducted remotely by telephone or other electronic means. If the Court determines to hold the hearing remotely, Settlement Class Counsel shall post that information on the settlement website and provide any class member that has informed the Court that they intend to participate with the information required to participate remotely. The Fairness Hearing may be rescheduled, adjourned, or continued without further notice to the Settlement Class.

Thirty-one days after Final Approval (as that term is defined in the Settlement Agreement), the Settlement Special Master shall direct the Claims Administrator to issue the

settlement payments approved by the Court, subject to appropriate probate court requirements for disbursement to deceased class members.

i. Final Accounting

The Settlement Special Master shall prepare a Final Accounting of the Settlement Fund and submit it to the Court upon the completion of the distribution of funds. If there is a balance remaining in the Settlement Fund following the payment of all valid claims, claims administration costs, attorneys' fees, and Class Representative Incentive payments, the remainder, if any, shall be paid to the Department of Hawaiian Home Lands loan fund established by HHCA § 213(c) and used exclusively for the purposes enumerated in HHCA § 214(a).

j. Miscellaneous

If the Settlement Agreement is terminated pursuant to its terms, or if the proposed settlement is not approved or consummated for any reason whatsoever, the settlement and all proceedings had in connection therewith, including, without limitation, the preliminary class certification, shall be vacated without prejudice to the status quo ante rights of the parties to this action, subject to the Stipulation Regarding Settlement Claims Administration Costs.

The Court retains continuing and exclusive jurisdiction over the action to consider all further matters arising out of or connected with the settlement, including the administration and enforcement of the Agreement.

[SIGATURES ON NEXT PAGE]

DATED: Honolulu, Hawai‘i, June 8, 2022.

/s/ Lisa W. Cataldo



THE HONORABLE LISA W. CATALDO

APPROVED AS TO FORM:

/s/ Donna H. Kalama

HOLLY T. SHIKADA

Attorney General

CRAIG Y. IHA

Deputy Attorney General

and

LINDA LEE K. FARM

DONNA H. KALAMA

Special Deputy Attorneys General

ATTORNEYS FOR DEFENDANTS

Kalima, et al. v. State, et al., Civil No. 99-4771-12 LWC; ORDER GRANTING PLAINTIFFS' MOTION FOR: (1) PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; (2) CERTIFICATION OF SETTLEMENT CLASS; (3) DECERTIFICATION OF SUBCLASSES 1-4 and 6; (4) APPOINTMENT OF CLASS REPRESENTATIVES AND APPOINTMENT OF CLASS COUNSEL; (5) APPOINTMENT OF SETTLEMENT SPECIAL MASTER; (6) APPOINTMENT OF CLAIMS ADMINISTRATOR; (7) APPROVAL OF PLAN OF NOTICE AND SCHEDULING OF FAIRNESS HEARING

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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

LEONA KALIMA, DIANE BONER,
RAYNETTE NALANI AH CHONG,
special administrator of the estate of JOSEPH
CHING, deceased,

Plaintiffs,

vs.

STATE OF HAWAI'I, STATE OF HAWAI'I
DEPARTMENT OF HAWAIIAN HOME
LANDS; et al.,

Defendants.

CIVIL NO. 99-4771-12 LWC
(Class Action)

ORDER ADOPTING FIRST AMENDED
FINDINGS AND RECOMMENDATIONS OF
THE SPECIAL MASTER TO APPROVE
PROPOSED SETTLEMENT DISTRIBUTION
PLAN AND REVISED CLASS NOTICES
(FILED DECEMBER 22, 2022); REVISED
EXHIBITS 1-6 [DKT. 1580]

POST-TRIAL PROCEEDINGS JUDGE:
HON. LISA W. CATALDO

SETTLEMENT JUDGE: HON. GARY
W.B. CHANG

**ORDER ADOPTING FIRST AMENDED FINDINGS AND RECOMMENDATIONS OF THE
SPECIAL MASTER TO APPROVE PROPOSED SETTLEMENT DISTRIBUTION PLAN
AND REVISED CLASS NOTICES (FILED DECEMBER 22, 2022); REVISED EXHIBITS 1-6
[DKT. 1580]**

The Court having reviewed the *First Amended Findings And Recommendations of the
Special Master to Approve Proposed Settlement Distribution Plan and Class Notices; Revised
Exhibits 1-6* [Filed December 22, 2022][Dkt. 1580], along with the records and files herein,
having extensive discussions with counsel for the parties and reviewing their submissions, and
the Court finding good cause therefor, the Special Master's First Amended Recommendations:

I do hereby certify that the foregoing is a full, true and correct copy of the official court record of the Courts of the State of Hawai'i.
Dated at: Honolulu, Hawai'i 20-OCT-2023, /s/ Lori Ann Okita, Clerk of the First Judicial Circuit, State of Hawai'i



1. To approve and order adoption of the Proposed Settlement Distribution Plan set forth in Revised Exhibit 1, hereto;
2. To approve the Errata Publication Notice, Errata Claim Notice, Errata Construction Claim Notice, No Claim Notice, and Settled and Opt Notice attached hereto as Revised Exhibits 2 through 6, subject to modification by the Claims Administrator (Epiq) as to form to meet any requirements imposed by publishers or the process of mailing;
3. To direct the Claims Administrator (Epiq) to update the www.kalima-lawsuit.com website to include the Publication Notice and the Proposed Settlement Distribution Plan; and
4. To authorize the Special Master, as a function and cost of Claims Administration, to retain a Construction Expert to make payment recommendations based on claims data submitted by Class Members, similar cases, average repair/damages amounts, or other reasonable basis based on available facts, including his/her experience, knowledge, and training in the field of construction remediation, as more fully set out in the Proposed Settlement Distribution Plan,

are hereby adopted by the Court and,

APPROVED AND SO ORDERED.

/s/ Lisa W. Cataldo



JUDGE OF THE ABOVE-ENTITLED COURT

***Kalima, et al. v. State of Hawai'i, et al.*, Civil No. 99-4771-12 LWC ORDER ADOPTING FIRST AMENDED FINDINGS AND RECOMMENDATIONS OF THE SPECIAL MASTER TO APPROVE PROPOSED SETTLEMENT DISTRIBUTION PLAN AND REVISED CLASS NOTICES (FILED DECEMBER 22, 2022); REVISED EXHIBITS 1-6 [DKT. 1580]**

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ATTORNEYS FOR PLAINTIFFS

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

LEONA KALIMA, DIANE BONER,
RAYNETTE NALANI AH CHONG,
special administrator of the estate of
JOSEPH CHING, deceased, CAROLINE
BRIGHT, DONNA KUEHU, and JAMES
AKIONA, et al.,

Plaintiffs,

vs.

STATE OF HAWAI'I, STATE OF
HAWAI'I DEPARTMENT OF
HAWAIIAN HOME LANDS; et al.,

Defendants.

CIVIL NO. 99-4771-12 LWC
(Class Action)

**PROPOSED SETTLEMENT
DISTRIBUTION PLAN; EXHIBIT 1;
CERTIFICATE OF SERVICE
POST-TRIAL PROCEEDINGS JUDGE:**

HON. LISA W. CATALDO

SETTLEMENT JUDGE:

HON. GARY W.B. CHANG

PROPOSED SETTLEMENT DISTRIBUTION PLAN

Pursuant the Court's June 9, 2022 *Order Granting Plaintiffs Motion For: (1) Preliminary Approval of Class Action Settlement; (2) Certification of Settlement Class; (3) Decertification of Subclasses 1-4 and 6; (4) Appointment of Class Representatives and Appointment of Class*

REVISED EXHIBIT 1 to Speical Master's First Amened Findings and Recommendations
EXHIBIT 3 TO DELCARATION OF CARL M. VARADY

Counsel; (5) Appointment of Settlement Special Master; (6) Appointment of Claims Administrator; (7) Approval of Plan of Notice and Scheduling of Fairness Hearing (the “Preliminary Approval Order”) [Dkt. 1496], Plaintiffs, through their Counsel, Carl M. Varady and Thomas R. Grande, hereby submit the Proposed Settlement Distribution Plan (the “Plan”) for determining distribution of payments to the Settlement Class Members. This Plan describes the rules to validate claims and determine settlement payments, including the rationale for selecting the rules and for rejecting other possible rules.

I. BACKGROUND.

The Hawaiian Claims Office Individual Review Panel (the “Panel”) received 4,327 claims filed by approximately 2,750 individuals by the August 31, 1995, claims filing deadline. The vast majority of these claims were filed by *pro se* claimants. All of the claims are unique and arise from highly individualized fact patterns, regardless of similarity of type. In its final report to the legislature, the Panel recounted that approximately 40% of the original claims were dismissed or planned for dismissal on various grounds, jurisdictional, substantive, and procedural. *See*, Exhibit 1 (excerpted from Hawaiian Claims Office Final Report 1997). Many of the latter dismissals were for failing to respond to mailings or attempted telephone contacts or deciding that the process was too intimidating or overwhelming. Substantive dismissals were founded on legal interpretations that were not expressly stated in HRS Chapter 674—*e.g.*, children or other estate representatives could not file on behalf of deceased Hawaiian beneficiaries.

As explained more fully below, the rules for exclusion from settlement are being construed more narrowly in this process and a majority of dismissed claims are being included in the settlement. This inclusiveness is more consistent with the remedial nature of HRS Chapter

674. As the Hawai‘i Supreme Court explained, the statute “should be ‘liberally construed to suppress the perceived evil and advance the enacted remedy’ and should not be narrowly interpreted to ‘impede rather than advance the remedies’ provided by the statute.” *Kalima v. State*, 148 Haw. 129, 142, 468 P.3d 143, 156 (2020)(*Kalima II*).

Inclusion is also based on the fact that the Waiting List and other subclasses have been decertified. The class now is the Settlement Class. The Plan is consistent with the inclusive class definition: *All persons who filed claims with the Hawaiian Home Lands Trust, Individual Claims Review Panel on or before August 31, 1995*. Settlement is not limited to waiting list claims and the settlement payments will compensate Settlement Class members for all claims.

A corollary of this approach is that extending the settlement relief to the greatest number of claimants within the limits of the settlement will reduce the amount of relief to each individual claimant.

The alternative, to employ the exclusions of the Panel not found in the statute would exclude more class members from participating in the settlement. This seems to be inconsistent with the statute’s purpose of resolving these long-standing breach of trust claims through a process that was intended to be efficient and user-friendly.

The other alternative of demanding additional proof from as long as 60 or more years ago, from a class in which 1,140 members who now are deceased, is untenable. Years would pass, more class members would die, and very little new proof would be likely. While the result might be more detailed or “accurate,” the process would be wholly unreasonable, resulting in delays and more deaths in a rapidly aging class.

Thus, Class Counsel propose a middle-way approach that accepts the proof as it is and includes claims that might have been excluded by the Panel based on non-participation or legal

interpretations that could be debated. This middle-way approach spreads the relief among the most families seeking, finally, to receive the economic benefits of “rehabilitation” promised under the Hawaiian Homes Commission Act, which Chapter 674 was supposed to remedy, but which has been denied to date. This process is proposed as the most reasonable and least unsatisfactory approach available to resolve the claims as promptly as possible

II. GENERAL PRINCIPLES.

The following general principles will be used to validate claims and measure settlement payments.

A. Participation in the Settlement Will be Inclusive.

Participation in the settlement in this case will be inclusive. The class definition of the Settlement Agreement requires that settlement payments be made to all claims that were filed with the Panel that fall within the jurisdiction of HRS Chapter 674. The Settlement Agreement requires that the 4,327 claims of approximately 2,750 Class Members be paid unless they fall within one of eight (8) specific categories of exclusion.

This approach is consistent with the intent and terms of the Settlement Agreement, which recognizes that claims were made in a *pro se* process that began 30 years ago. As the Class Members’ claims have been included within this action since December 29, 1999, except for the few who have opted out of the action, it is imperative that wherever possible, their claims be recognized and appropriately compensated.

B. Exclusions from Settlement.

There are eight exclusions in the Settlement Agreement. They exclude the following categories of Class Members from receiving compensation:

1. Individuals who did not file a claim with the Panel on or before August 31, 1995.

2. Individuals who filed a timely claim with the Panel but the claim did not assert an individual breach of trust which occurred between August 21, 1959, and June 30, 1988.
3. Individuals who filed a timely claim with the Panel but the claim asserted an individual breach of trust that occurred after June 30, 1988.
4. Individuals who filed a timely claim with the Panel but the claim was not a valid HRS Chapter 674 claim.
5. Individuals who filed a timely claim with the Panel but settled their claim.
6. Individuals who opted out of the Lawsuit in response to the 2007 class notice.
7. Individuals who opted out of the Lawsuit in response to the 2012 class notice.
8. Individuals who opt out of the Settlement Class and this Settlement by sending a valid and timely Opt-Out Letter to the Claims Administrator, as described above.

These are the only *per se* exclusions applied to the settlement distribution. These are the categories that will be designated as “no claim” and receive the “no claim” notice.

C. Claim Evaluation Based on Reasonableness

As long as a claim can be fairly understood, is not unreasonable, and it is not excluded under one of the eight categories of exclusion, the claim will be included within the claims eligible to receive compensation.

The primary objective is to distribute the settlement proceeds as broadly as possible, to the most class members, rather than to establish elaborate burdens of proof or analyses that do not serve the intent of the settlement to resolve all non-excluded claims by providing compensation to the Class Members.

This approach avoids further delay that would result from requiring Class Members or

their heirs to submit additional proof decades after the original claims were submitted or create a large pool of Class Members who might seek to object to the distribution or take actions that would be detrimental to the Class as a whole. It also has the beneficial effect of reducing the number of opt outs by reducing the number of Class Members who might otherwise receive nothing in an evidentiary proceeding. Consequently, this approach preserves the intent of the parties to resolve all claims brought in this action through the Settlement. It also results in finality for the greatest number of claims, another objective of the Settlement.

D. Documents Used to Evaluate Claims.

Each claim will be evaluated based on the claims stated in the Hawaiian Claims Office claim forms, supplemented by individual documentation, the investigators' notes, reports, hearings officers' and/or Panel fact findings as well as Department of Hawaiian Homelands files and data compilations. These historical documents are accepted in support of whatever claims are being presented.

E. Claims Eligible for Payment.

There are two categories of claims that will be compensated by different methods. First, waiting list and all other claims that result in delays of homestead awards will be measured by Fair Market Rental Value ("FMRV") as adopted by the Hawai'i Supreme Court Hawai'i Supreme Court in *Kalima II*. Construction and infrastructure claims, which cannot be expressed as delay-in-award claims, will be measured by the cost of repair or cost of remediation as recommended by a Construction Expert to be appointed by the Special Master.

III. SPECIFIC PRINCIPLES.

The Specific Principles to determine settlement payment are based upon HRS Chapter 674, *Kalima II*, prior court rulings, the Hawaiian Homes Commission Act and its regulations,

and the Settlement Agreement.

A. Hawai'i Supreme Court Rulings on Value of Delay.

As explained below, the Hawai'i Supreme Court adopted Fair Market Rental Value as the appropriate measure of payment for delay in receiving a homestead.

B. Rulings of the Hawaiian Claims Office Individual Claims Review Panel Do Not Control.

The Settlement Agreement does not exclude numerous claims that were rejected by the Panel. These include the Panel's rulings on the standing of family members claims by or on behalf of others, age at time of application, and Native Hawaiian Qualification are rejected as inconsistent with the definition of the Settlement Class and the terms of the Settlement Agreement. While the Panel's fact findings and investigations are an important source of information to assess the factual bases for these now-30-year-old claims, the Panel's legal rulings and damages methodology are neither binding nor relevant for purposes of settlement.

1. Disqualification of Representative Claims.

The Panel ruled that relatives could not bring claims on behalf of elderly or deceased persons. A substantial number of such claims were made and summarily dismissed based on a legal conclusion that the Class Members lacked "standing" to bring a claim on someone else's behalf. The Panel process was intended to remedy long-standing breaches of trust going back to the date of statehood. It created what was supposed to be a simple *pro se* process to assess alleged breaches of trust by DHHL and make recommendations for economic resolution of these claims, which at the time of passage, could be as much as three-decades old at the time the HRS Chapter 674 administrative process began. Class Members' representative claims will be recognized in the settlement process, as barring such claims would be inconsistent with the

remedial purpose of the statute and the waiver of sovereign immunity to allow relief for decades-old claims.

Relief will be calculated based on the perceived losses of the person for whom the claims are made, not the Class Member who brought the claim. If both the represented person and the Class Member have claims, both will be recognized and compensated. This approach best serves the remedial purpose of the statute recognized in *Kalima I* and reaffirmed in *Kalima II*. It also preserves the intent to resolve all claims made and results in finality for the greatest number of claims. Excluding representative claims would result in a substantial number of rejected claims that could result in collateral litigation inconsistent with the intent of the Settlement.

2. Disqualification of Underage Applicants.

The Panel disqualified applicants who were not of age (21 before July 1, 1985; 18 afterward) at the time of application. Thus, the Panel rejected a number of otherwise qualified Native Hawaiians claims. For settlement purposes, applications from under-age applicants are treated as provisional deemed submitted on the date of the applicants' birthdays. The concept of provisional application is consistent, by analogy, with DHHL's position is that it can evaluate Native Hawaiian Blood Quantum. There are a small number of class members who applied, often at the direction of their close relatives, before they were of age, believing their applications were effective, only to find out later they were not. Treating their claims as if they applied on the birthdate when they became qualified by age, rather than dismissing them as "no claim" is consistent with the intent of the Settlement. The alternative would be to deem them all "no claim" and risk collateral litigation inconsistent with the Settlement.

3. Native Hawaiian Qualifications.

Under the Hawaiian Homes Commission Act, a qualified applicant must have 50% Hawaiian blood quantum (“NHQ”). While DHHL’s policies state that an applicant’s blood quantum is presumed established if not challenged within 30 days of application, DHHL takes the position that NHQ can be challenged at any time, even after a lease is awarded. DHHL’s process for accepting and processing applications to determine blood quantum has been inconsistent over time and from island to island, leading to ad hoc determinations of when NHQ documentation is required and when NHQ is determined. The Panel required Class Members to prove their NHQ and that they were wrongly denied application.

Class Members report having been denied application in the first instance or having their application provisionally accepted while their NHQ is challenged for a period of years. However, DHHL permits NHQ to be confirmed any time before a lease is signed. Three basic scenarios are reported:

- a. A Class Member reports learning about NHQ from DHHL, is frustrated or discouraged or disagrees and does not attempt to apply physically or by mail.
- b. A Class Member reports making a physical attempt to apply in person or through mail and the application is rejected because the person does not look Hawaiian, does not have a Hawaiian name, is given inaccurate information about NHQ requirements, or is unable to prove NHQ at that time. The application is rejected or refused.
- c. A Class Member makes a physical attempt to apply in person. The HCO claim form says s/he was told s/he does not look Hawaiian, does not have a Hawaiian name, is given inaccurate information about NHQ requirements, or is unable to

prove NHQ at that time. But the HCO claim form and file say nothing about attempt to submit or apply.

The narrative descriptions in the HCO claim forms and investigator's notes and reports are widely varied. Some describe time, place, persons, and manner involved in applications. Others written by less articulate Class Members are lacking in such detail. There is a need for a clear standard to evaluate whether these claims will be compensable. Because the circumstances are extremely varied and span a 30-year period, during which original records were lost in a fire at DHHL, there are limited meaningful options.

Any person who contacted DHHL by mail, or physically went to one of its offices, and who was not already an applicant, is reasonably presumed to have done so for the purpose of applying. If their application was denied because they could not prove their blood quantum at the time of application, they are presumed to have applied as of that date. This approach is consistent with DHHL's position that it can confirm NHQ at any time and that an applicant's NHQ only be established by the time a lease is offered.

Other approaches were considered: (1) assigning "no claim" to anyone who could not prove NHQ at the time of application; (2) requiring proof of NHQ by the Panel; or (3) granting a claim only if DHHL confirmed NHQ after application. All of them fail to include scenarios in which poor beneficiaries, without access to family records or genealogists, were turned away and discouraged from applying further. Nor do they account for the fact that DHHL provided no assistance with genealogy, even though it employed genealogists to verify NHQ when documents were submitted.

Because this is a settlement, not an evidentiary proceeding, the two-criteria physical attempt to apply plus denial of application are a reasonable method of resolving these claims in a

manner consistent with the intent of the Settlement and purpose of HRS Chapter 674.

C. Rules for Claims.

The rules for those Class Members who have claims for delay in homestead awards are determined by the time interval of delay in award and by the type of application, as follows:

Starting Date (Date of Loss)

1. The starting date for claims shall be the earliest of (1) attempted application or (2) actual application by a qualified beneficiary.
2. “Attempted application” means a qualified beneficiary attempted to apply for a homestead in person or by mail and the application was refused for some improper reason, such as, gender, marital status, income, assets, property ownership, last name, appearance, or any other improper reason.
3. “Application date” is the earliest application date. Later transfers to other areas or islands do not affect the application date.
4. An application submitted prior to August 21, 1959 shall be considered to be filed as of August 21, 1959.
5. If an estimate of the application date was given by the class member, in the case of a lost or denied application, the date shall be the midpoint of the estimated time period, e.g., “July” = 7/15; “1970” = 6/30/70; “early 1960s” = 6/30/62, etc.
6. An application date that is unknown and cannot be obtained from any current source shall be considered the 21st birthday (before July 1, 1985) or 18th birthday (between July 1, 1985 and June 30, 1988, the end of the claims period.) For Class Members who apply or attempt to apply before they are of age, their claims will

begin the date their 21st birthday, for applications before July 1, 1985, and their 18th birthday, for applications after July 1, 1985.

Rule for Successors to Applications

The application date for a successor to another person's application is the date of succession to the application. In the event that the predecessor had a claim, such as a waiting list claim, the died and her/his application was succeeded to by the successor, the first interval of waiting belongs to the estate of the deceased class member; the second interval belongs to the successor.

Rules for Type of Applications

Each type of claim will be calculated according to the matrix of Fair Market Rental Values for that type of leasehold applied for—*i.e.*, residential, agricultural, or pastoral.

1. A Class Member shall be awarded payment for a maximum of two claims for each type of application submitted, e.g., residential and agricultural; or, residential and pastoral. DHHL regulations prohibit holding both an agricultural and pastoral lease. In the case of an applicant with both agricultural and pastoral applications, the earliest of the applications will be used as the measure of damages and the later excluded from receiving compensation. As a beneficiary can only hold either an agricultural or pastoral lease, not both, only one claim will be compensated. If agricultural and pastoral applications are made on the same date, the claim will be treated as one for agricultural land. Agricultural land was much more available and an award more probable. Once awarded, the agricultural lease would result in the cancellation of the pastoral application.

2. A Class Member's claim shall be measured by the type of application submitted, not the type of application awarded.

Rules for Determining Ending Dates for Claims

The end dates for claims shall be determined as follows:

1. The Ending Date for claims shall be the date of lease award, or, if there is no award, the date of death or April 14, 2022 (the date of Settlement), whichever is earliest.
2. A Class Member's date of lease award shall be considered the date the lease was effective, or the date of subdivision approval for accelerated or undivided interest awards.
3. A Class Member's date of award for an accelerated or undivided interest award that is transferred by the Class Member before the date of occupancy or subdivision approval is the date of that transfer.

D. Construction Claims.

There are approximately 104 claims for construction or infrastructure defects in homes built or developed by DHHL. These claims are unique, though sometimes related, and cannot be evaluated using the Fair Market Rental Value damages for delay model.

Numerous methods have been considered for evaluating them, including: (1) average stated losses for all, including those who did not provide any cost/estimate for repair; (2) denying as "no claim" those who did not state a value for cost/estimate for repair; (3) calculating a ratio of value between Fair Market Rental Value for a developed lot and the improvements, using current sales data and applying that to the time period of ownership prior to repair. None of these are satisfactory because all of them are more arbitrary than using the model proposed.

To resolve these claims fairly without further delay that would result from an evidentiary proceeding of some kind—a task likely to be very difficult given that age of the living Class Members and the number who are deceased—the following strategy will be used.

The Special Master will retain a Construction Expert to review and decide construction defect cases. The Construction Expert will review the HCO claim files, DHHL files and any findings to determine the bases of the claims. If DHHL's actions regarding construction or infrastructure during the class period was a substantial factor in some loss, cost or repair or remediation, compensation will be awarded.

Construction Claim Rules

These are the rules to be employed by the Construction Expert:

1. General Rule: the purpose of the Construction Expert's work is to determine the reasonable cost of stated necessary repairs. Because of the age of proof and the fact that forty percent of the original class members are deceased, typical evidentiary analysis based on a preponderance of evidence is not possible. The Construction Expert will make recommendations based on the description of the claim on a "some evidence" basis analogous to the analysis that applied under Haw. R. Civ. Pro. 59.
2. Specific Rules:
 - a. If an amount of damage or expense is requested in an HCO Claim form or a Fact Finding made by the Panel or Hearings Officer, that amount will serve as the basis of the claim unless the Expert determines it to be unreasonable.
 - b. If the Claims Expert concludes that an amount stated in an HCO Claim form or a Fact Finding made by the Panel or Hearings Office is unreasonable based on similar cases, average repair/damages amounts, or other available facts, including

his/her experience, knowledge, and training in the field of construction remediation, the Claims Expert will make a reasonable recommendation.

- c. If no damage or expense amount is stated or requested or if there is no factual finding, the expert will make a reasonable recommendation based on similar cases, average repair/damages amounts, or other reasonable basis based on available facts, including his/her experience, knowledge, and training in the field of construction remediation.
- d. The Expert will make a payment recommendation based upon the cost of repair presented or determined at the time the claim was submitted. Costs of remediation will be based on the cost of repair presented or determined at the time the claim was submitted, not current dollars.
- e. The Construction Expert will not make factual findings, but will include a summary description of the claim and an explanation of the basis for his payment decision.
- f. These recommendations are subject to review by the Special Master and the Court's final approval.
- g. Because class members will have the right to submit additional factual support for their claim, there is no appeal right of the amount of the payment. This is consistent with the process used to decide Waiting List claims. Class members dissatisfied with their award may file objections with the Court, prior to the final approval hearing.

IV. CONCLUSION.

This Plan for distributing settlement payments to Settlement Class Members is consistent with the Settlement Class Definition: *All persons who filed claims with the Hawaiian Home Lands Trust, Individual Claims Review Panel on or before August 31, 1995.* It is as inclusive as possible, while maintaining the exclusions of the Settlement Agreement. Class Counsel respectfully request the Court to approve this Proposed Settlement Distribution Plan.

DATED: Honolulu, Hawai‘i, December 1, 2022.

/s/ Carl M. Varady

CARL M. VARADY
THOMAS R. GRANDE

CLASS COUNSEL

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing documents were served through the Court's JEFS system on the date indicated below on all parties who have consented to receive service by electronic means.

DATED: Honolulu, Hawai'i, December 1, 2022.

/s/ Carl M. Varady

CARL M. VARADY
THOMAS R. GRANDE

CLASS COUNSEL

KALIMA CLASS ACTION SETTLEMENT – SECOND NOTICE

IF YOU FILED A CLAIM WITH THE HAWAIIAN HOME LANDS TRUST INDIVIDUAL CLAIMS REVIEW PANEL ON OR BEFORE AUGUST 31, 1995, YOU MAY BE ENTITLED TO A SETTLEMENT PAYMENT AS A CLASS MEMBER IN *KALIMA v. STATE OF HAWAII, DEPARTMENT OF HAWAIIAN HOMELANDS, et al.* Civil No. 99-4771-12-LWC

On June 6, 2022, First Circuit Court Judge Lisa W. Cataldo preliminarily approved a settlement of this case. The class members for this settlement are:

“All persons who filed claims with the Hawaiian Home Lands Trust Individual Claims Review Panel on or before August 31, 1995.”

In July 2022, class members were mailed information about their legal rights and options. You will be receiving a second notice after January 15, 2023 to give you important information about your claim and whether it is part of the settlement.

If your claim is part of the settlement, your second notice will include Start and End dates for your settlement payment. These dates are based on currently known data. They are subject to change before the final calculations are made if more accurate data becomes known. You will receive your final dates and estimated settlement payment in a third notice, which is expected to be sent after June 1, 2023. **Please review this mailing carefully. Requested corrections must be submitted by March 17, 2023, using the Claim Correction form included with the second notice or found at www.Kalima-Lawsuit.com.**

If you are a class member who did not receive a mailed notice in July 2022, please provide current contact information by the methods described below. If you are a relative of a deceased class member, please designate a person to receive information for your family by the methods described below.

Court's Revised Case Schedule

The Court has approved a new schedule for final approval of the Settlement, which is necessary to complete the complex file review and claims evaluation process necessary before payments can be distributed.

The proposed schedule will extend the current schedule only so far as reasonably necessary to complete the work required. The extended deadlines have been set by the Court to assure that Settlement distribution is as accurate and fair as possible.

- The second notice containing your start and end dates will be mailed on **January 16, 2023**.
- The deadline to opt out of the lawsuit is **March 17, 2023**.
- The third notice containing your estimated settlement payment will be mailed on **June 1, 2023**.
- The deadline for final approval of the Settlement is **July 21, 2023**

You may update your contact information or designate a representative for a deceased class member in any of the following three ways:

- Update your information at www.Kalima-Lawsuit.com/request; or
- Download and return the Information Request Form from www.Kalima-Lawsuit.com/important-documents; or
- Request and return an Information Request Form by calling 808-650-5551 or 1-833-639-1308 or e-mailing info@kalima-lawsuit.com

QUESTIONS? Please call **808-650-5551** or **1-833-639-1308**, or visit **www.Kalima-Lawsuit.com** for more information or to update your contact information.

Inā makemake 'oe i kēia 'ōlelo hō'ike ma ka 'ōlelo Hawai'i, e kelepona mai, 808-650-5551 ai'ole 1-833-639-1308.

THIS IS AN OFFICIAL NOTIFICATION OF THE FIRST CIRCUIT COURT – PLEASE DO NOT CONTACT THE COURT

**REVISED EXHIBIT 2 to Speical Master's First Amened Findings and Recommendations
EXHIBIT 3 TO DELCARATION OF CARL M. VARADY**

NOTICE OF CLAIM FROM CLASS ACTION SETTLEMENT
Kalima v. State of Hawai'i, CIVIL NO. 99-4771-12 LWC

YOU ARE RECEIVING THIS LETTER TO NOTIFY YOU THAT YOU ARE A CLASS MEMBER IN THE KALIMA V. STATE OF HAWAII CLASS ACTION SETTLEMENT.

Based on currently available records from the State of Hawai'i Department of Hawaiian Home Lands ("DHHL") the starting date and ending dates we have been able to identify for your claims are:

<u>Type of Homestead</u>	<u>Start Date</u>	<u>End Date</u>
Residential	XX/XX/XXXX	XX/XX/XXXX
Agricultural / Pastoral	XX/XX/XXXX	XX/XX/XXXX

THESE DATES ARE BASED ON CURRENT DATA. THEY ARE SUBJECT TO CHANGE BEFORE THE FINAL CALCULATIONS IF MORE ACCURATE DATA BECOMES KNOWN. YOU WILL RECEIVE YOUR FINAL DATES AND ESTIMATED SETTLEMENT PAYMENT IN A NOTICE SENT **AFTER JUNE 1, 2023. PLEASE SEE THE LAST PAGE OF THIS NOTICE FOR THE COURT'S REVISED CASE SCHEDULE**

Important Definitions

- "Type of Homestead" is the type you applied for or attempted to apply for, or were awarded or assigned, or sought or received as a successor to an application or a homestead lease.
- "Start date" is the date you applied or attempted to apply for a homestead or succeeded or attempted to succeed to a homestead application.
- "End date" is the date of your lease award, if any, or the date of a class member's death or April 14, 2022, whichever is earliest. The award date for accelerated and undivided awards is the date of subdivision approval or occupancy.

These definitions also apply to claims brought on behalf of others who applied, attempted to apply, succeeded to, or attempted to succeed to an application or a homestead lease.

The Hawai'i Supreme Court has ruled that the State of Hawai'i Department of Hawaiian Homelands breached its trust obligations to beneficiaries by failing to keep accurate records. The amount of payment you receive will be based upon accurate Start and End Dates for your claim(s). Because of DHHL's failure to keep accurate records, the above information we have may not be correct.

Please carefully review these dates and, if necessary, correct this information using the enclosed form and return it to Kalima Claims Administrator PO Box 135035, Honolulu, HI 96801. Your corrections must be postmarked by **March 17, 2023** to be accepted.

IF YOU AGREE WITH THE INFORMATION LISTED ABOVE AND WISH TO PARTICIPATE IN THE SETTLEMENT, YOU DO NOT NEED TO TAKE FURTHER ACTION OR RESPOND TO THIS NOTICE.

You will receive a notice after June 1, 2023 informing you of the amount of your settlement payment based upon the above information or your verified corrected information. The Court has scheduled the Final Approval Hearing for July 21, 2023. Settlement payments will be distributed starting thirty days after the Final Approval Hearing, unless any class member appeals or the Court orders other delays.

Information about how start and end dates are determined, information for relatives of deceased Class Members, and how to opt out or intervene can be found on the following pages.

Please do not call the Judge, the Clerk of the Court, or the State of Hawai'i about this notice. They will not be able to give you advice about this case. If you have questions, please contact the Claims Administrator at (808) 650-5551 OR 1-833-639-1308 or via e-mail: info@kalima-lawsuit.com.

Outline of Rules of Payment Eligibility and that Determine Start and End Dates of Claims

The First Circuit Court has approved and adopted the following rules to determine who is eligible to receive a settlement payment and to determine the start and end dates of claims.

Rules for Determining Class Members Who are Not Entitled to a Settlement Payment

Under the Settlement Agreement approved by the Court the following Class Members will not receive settlement payments:

1. Individuals who did not file a claim with the Hawaiian Claims Office Panel ("Panel") on or before August 31, 1995.
2. Individuals who filed a timely claim with the Panel but the claim did not assert an individual breach of trust which occurred between August 21, 1959, and June 30, 1988.
3. Individuals who filed a timely claim with the Panel but the claim asserted an individual breach of trust that occurred after June 30, 1988.
4. Individuals who filed a timely claim with the Panel but the claim was not a valid HRS Chapter 674 claim.
5. Individuals who filed a timely claim with the Panel but settled their claim.
6. Individuals who opted out of the Lawsuit in response to the 2007 class notice.
7. Individuals who opted out of the Lawsuit in response to the 2012 class notice.
8. Individuals who opt out of the Settlement Class and this Settlement by sending a valid and timely Opt-Out Letter to the Claims Administrator.

Rules for Determining Persons Who May be Entitled to a Settlement Payment

1. Individuals who filed a claim with the Panel on or before August 31, 1995, and whose claims are not within the eight categories in the Settlement Agreement described above.
2. Individuals who filed a claim with the Panel on or before August 31, 1995 on behalf of another person such as a father, mother or other relative, irrespective of whether that person is deceased, who are identified in the HCO Claim Form, and whose claims are not within the eight categories in the Settlement Agreement described above.

General Rules for Measuring Claims

1. Any claim that involves a delay between an application or attempted application and award will be treated as a Waiting List claim.
2. Applications refused for improper reasons do not affect the claim.

Rules for Determining Starting Date (Date of Loss)

1. The starting date for claims shall be the earliest of (1) attempted application or (2) actual application by a qualified beneficiary.
2. "Attempted application" means a qualified beneficiary attempted to apply for a homestead in person or by mail and the application was refused for some improper reason, such as gender, marital status, income, assets, property ownership, last name, appearance or any other improper reason.
3. "Application date" is the earliest application date. Later transfers to other areas or islands do not affect the application date.
4. An application submitted prior to August 21, 1959 shall be considered to be filed as of August 21, 1959.
5. If an estimate of the application date was given by the class member, the date shall be the midpoint of the estimated time period, e.g., "July" = 7/15; "1970" = 6/30/70; "early 1960s" = 6/30/62, etc.
6. An application date that is unknown and cannot be obtained from any current source shall be considered the 21st birthday (before July 1, 1985) or 18th birthday (between July 1, 1985 and June 30, 1988, the end of the claims period). For Class Members who apply or attempt to apply before they are of age, their claims will begin the date of their 21st birthday, for applications before July 1, 1985, and their 18th birthday, for applications after July 1, 1985.

Rule for Successors to Applications

The application date for a successor to an application is the date of succession to the application.

Rules for Type of Applications

1. A Class Member shall be awarded payment for a maximum of two claims for each type of application submitted, e.g., residential and agricultural; or, residential and pastoral. Where a class member applies for both agricultural and pastoral, the earliest application will serve as a single claim because a beneficiary cannot hold both agricultural and pastoral leases. If both agricultural and pastoral applications are filed on the same date the claim will be calculated as an agricultural claim.
2. A Class Member's claim shall be measured by the type of application submitted, not the type of application awarded.

Rules for Determining Ending Dates for Claims

1. The Ending Date for claims shall be the date of lease award, or, if there is no award, the date of death or April 14, 2022 (the date of Settlement), whichever is earliest.
2. A Class Member's date of lease award shall be considered the date the lease was effective, or the date of subdivision approval for accelerated or undivided interest awards.
3. A Class Member's date of award for an accelerated or undivided interest award that is transferred by the Class Member before the date of occupancy or subdivision approval is the date of that transfer.

Information for Relatives of Deceased Class Members

To Receive a Settlement Payment, Family Members of Deceased Class Members Must Submit An Information Request Form and Be Confirmed as Heirs.

If you have not already done so, please complete an information request form that can be downloaded or filled in by visiting <https://www.kalima-lawsuit.com>. To request that the form be sent to you via mail or e-mail contact info@kalima-lawsuit.com or call 1-808-650-5551 OR 1-833-639-1308.

How will the Settlement Payment to Deceased Class Members Be Made?

If the class member did not identify family members as heirs, family members who seek to qualify to receive a settlement payment must be confirmed as heirs. They must do so through a special court proceeding called probate.

Probate court proceedings will divide the settlement payment according to the terms of the deceased class member's will or trust. If the deceased class member did not have a will or trust (called "intestate probate"), Hawai'i probate law will determine how the payment is divided among the confirmed heirs.

Who Will Represent Deceased Class Members in Probate Court? Should We Hire Our Own Attorney?

You may hire your own attorney for probate proceedings. Reasons to hire a probate attorney include: (1) if you want to confirm your status as an heir and personal representative, which may allow you to receive payment sooner; or (2) if there is a potential for disputes among family members.

How do We Find an Attorney?

If the deceased class member had a will or trust, you should contact the attorney who prepared the will or trust to discuss this question. Otherwise, you may contact the Hawai'i State Bar Association Lawyer Information and Referral Service at (808) 537-9140 or email LRIS@hsba.org and ask for a referral to lawyers who specialize in probate matters.

Requirements for Class Members Who Died Outside of Hawai'i

Please consult with a probate attorney in your state if your family member died outside of Hawai'i and send a certified copy of the family member's death certificate to the Claims Administrator. If you seek to be confirmed as an heir or personal representative of your family member's estate, you should retain an attorney for that purpose.

What if We Can't Afford an Attorney?

The Court will be asked to approve a Probate Plan that provides for a Special Administrator who will be paid out of settlement funds. If the Court approves this plan, the Special Administrator may be able to: (1) determine if there are existing wills or trusts; (2) file a motion to confirm known heirs; and (3) obtain probate court approval to divide the settlement among confirmed heirs. The attorneys' fees and costs of this work would be deducted from your settlement. Because there are more than 1,100 deceased class members, and thousands of potential heirs, that process is expected to take until December 31, 2023 and possibly longer.

Your Legal Right to Opt Out of This Settlement

If You Wish to Exclude Yourself from Participating in the Settlement	You may exclude yourself from participating in this Settlement. If you do so, you will not receive a payment from the Settlement Fund. The deadline to request exclusion from the Settlement is March 17, 2023 . To exclude yourself from the Settlement, please follow the instructions below.
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You may exclude yourself from participating in the Settlement. If you do so, you will not receive any compensation from the Settlement Fund. You will retain any claims you may have against the State of Hawai'i and the Released Parties (as that term is defined in the Settlement Agreement) and are free to pursue whatever legal rights you may have at your own risk and your own expense.

To exclude yourself from the Settlement, you must mail a signed letter to the Kalima Lawsuit Claims Administrator to P.O. Box 135035, Honolulu, Hawai'i 96801, postmarked on or before **March 17, 2023**. The exclusion letter must state that you exclude yourself from this Settlement and must include the name and case number of this litigation (*Kalima et al. v State of Hawai'i et al.*, Civil No. 99-4771-12 LWC), as well as your full name, address, telephone number, a statement that you wish to be excluded, and your signature. So-called "mass" or "class" exclusion requests are not permitted.

If you wish to exclude the claims of a deceased class member, you must obtain probate court approval appointing you as the personal representative of the estate before doing so.

If you intend to file a separate lawsuit, limitations periods may bar your claim if it is not timely filed. **Any separate lawsuit should be filed before July 21, 2023** to ensure it falls within the potential statutory limitations period. Please consult with an attorney about filing such a claim.

Please do not call the Judge, the Clerk of the Court, or the State of Hawai'i about this notice. They will not be able to give you advice about this case. If you have questions, please contact the Claims Administrator at (808) 650-5551 OR 1-833-639-1308 or e-mail info@kalima-lawsuit.com.

Your Legal Right to Intervene in This Case

If You Wish to Intervene in This Case	If you wish to intervene in this case, you may hire an attorney at your own expense to do so. You no longer will be represented by Class Counsel and you will have to consult with your retained attorney to obtain further information about the intervention process.
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Revised Schedule

The Court has approved a new schedule for final approval of the Settlement, which is necessary to complete the complex file review and claims evaluation process necessary before payments can be distributed.

The proposed schedule will extend the current schedule only so far as reasonably necessary to complete the work required. The extended deadlines have been set by the Court to assure that Settlement distribution is as accurate and fair as possible.

- The second notice containing your start and end dates will be mailed on **January 16, 2023**.
- The deadline to opt out of the lawsuit is **March 17, 2023**.
- The third notice containing your estimated settlement payment will be mailed on **June 1, 2023**.
- The deadline for final approval of the Settlement is **July 21, 2023**

REVISED EXHIBIT 3 to Speical Master's First Amened Findings and Recommendations

EXHIBIT 3 TO DELCARATION OF CARL M. VARADY

CLAIM CORRECTION FORM

SUBMIT THIS FORM ONLY IF YOU DISAGREE WITH DATES ON THE FIRST PAGE OF THIS NOTICE.

CLASS MEMBER INFORMATION:

First Name: _____ MI: ____ Last Name: _____

Date of Birth _____ Last 4 of Social Security Number _____

DECEASED CLASS MEMBER'S FAMILY REPRESENTATIVE INFORMATION (If applicable):

Name: _____

Address: _____

City: _____ State _____ Zip Code _____

Telephone: _____ Email: _____

Relationship to Class Member _____

PLEASE SUBMIT CORRECTED INFORMATION ONLY:

<u>Type of Homestead Application</u>	<u>Start Date</u>	<u>End Date</u>
Residential	_____	_____
Agricultural / Pastoral	_____	_____

Additional Claimant Listed on Claim Form:

PLEASE SUBMIT ANY DOCUMENTS YOU HAVE TO SUPPORT YOUR POSITION BY MAIL. DO NOT SEND DOCUMENTS YOU ALREADY HAVE SUBMITTED TO THE HAWAIIAN CLAIMS OFFICE OR TO THE DEPARTMENT OF HAWAIIAN HOME LANDS.

By my signature below, I affirm on penalty of law that the foregoing statements are true based on my own personal knowledge:

Dated: _____, 2023.

Signature: _____

Print name: _____

To request corrections, you must submit this form by mail to Kalima Claims Administrator, PO Box 135035, Honolulu, HI 96801 OR via e-mail to info@kalima-lawsuit.com. You may download a copy of the correction form by going to kalima-lawsuit.com. **Your corrections must be postmarked by March 17, 2023 to be accepted. YOU ARE NOT PERMITTED TO SUBMIT NEW CLAIMS. THE CLAIMS DEADLINE CLOSED AUGUST 30, 1995. YOU MAY ONLY MAKE CORRECTIONS TO THE CLAIM TYPE, CLAIM START DATE, AND CLAIM END DATES.**

NOTICE OF CLAIM FROM CLASS ACTION SETTLEMENT
***Kalima v. State of Hawai'i*, CIVIL NO. 99-4771-12 LWC**

YOU ARE RECEIVING THIS LETTER TO NOTIFY YOU THAT YOU MAY BE ELIGIBLE FOR PAYMENT IN THE KALIMA V. STATE OF HAWAII CLASS ACTION SETTLEMENT FOR A CONSTRUCTION OR INFRASTRUCTURE CLAIM.

You are receiving this notice because you submitted a construction or infrastructure claim to the Hawaiian Claims Office between 1991 and 1995. Construction and infrastructure claims are for defective housing, utilities, or lots provided by the Department of Hawaiian Home Lands ("DHHL"). If you did not submit a construction or infrastructure claim to the Hawaiian Claims Office, **please disregard this notice.**

How Will Construction Claims Be Decided?

Construction claims will be decided by a Construction Expert appointed by the Court and supervised by the Settlement Special Master. Based upon the standards approved by the Court found on page 3 of this Notice, the Construction Expert will decide: (1) if you have a valid claim for construction or infrastructure defect and (2) if you do have a valid claim, what the reasonable repair cost was for the defect at the time it was repaired or at the time the claim was submitted, whichever occurred first.

What Construction and Infrastructure Claims Will Receive a Settlement Payment?

Construction or infrastructure claims will only be considered for houses constructed or sold by DHHL within the class period, i.e., August 21, 1959 to June 30, 1988 (the "Class Period"). Construction or infrastructure damage for all other houses and damage that occurred outside of the Class Period will not be considered.

What Will the Construction Expert Consider?

The Construction Expert will review your submissions to the Hawaiian Claims Office, including any expert or investigative reports and/or factual findings or recommendations made by investigators or the Panel.

You do not have to submit any additional information for your construction or infrastructure claim to be considered. If you wish to submit additional information, please complete and return the form found on page 2. **This form must be postmarked by March 17, 2023 to be accepted. You cannot submit new claims.**

Please see the last page of this notice for the Court's revised schedule.

How Will Claims Be Decided?

The Construction Expert will make recommendations to the Special Master for the settlement payment based upon the information class members have submitted. You will receive a third notice with the amount of your payment and may accept or object in writing. The Court will review any objections and approve the final settlement payment.

How Will Class Members Find Out if They Are Entitled to a Construction Claim Payment and the Amount?

Class members will receive a notice after June 1, 2023 informing them of the amount of their settlement payment, if any, based upon the information Class Members provided to the Hawaiian Claims Office. The Court has scheduled the Final Approval Hearing for July 21, 2023.

Information for relatives of deceased Class Members who submitted construction claims is found on page 4.

If you wish to opt out of this settlement or intervene in the case if you do not opt out, see page 5.

Please do not call the Judge, the Clerk of the Court, or the State of Hawai'i about this notice. They will not be able to give you advice about this case. If you have questions, please call (808) 650-5551 OR 1-833-639-1308 or email info@kalima-lawsuit.com.

OUTLINE OF RULES FOR CONSTRUCTION AND INFRASTRUCTURE CLAIMS

General Rule

The purpose of the Construction Expert's work is to determine the reasonable cost of stated necessary repairs. Because of the age of proof, the fact that forty percent of the original class members are deceased, and this is a settlement, not litigation, typical evidentiary analysis based on a preponderance of evidence is not possible. The Construction Expert will make recommendations based on the "some evidence" standard analogous to the analysis that is applied under Haw. R. Civ. Pro. 59 when a new trial is requested after verdict.

Summary of Specific Rules:

1. A Class Member who submitted a construction or infrastructure claim to the HCO Panel will have the construction or infrastructure claim decided by a Construction Expert supervised by the Special Master appointed by the Court.
2. Construction or infrastructure claims will only be considered by houses constructed or sold by DHHL within the class period, i.e., August 21, 1959 to June 30, 1988 (the "Class Period").
3. Construction or infrastructure damage that occurred outside of the Class Period will not be considered.
4. A construction claim submitted by a class member who succeeded to a homestead after June 30, 1988 shall be considered to be a representative claim on behalf of the person who occupied the lot during the claims period.
5. The Construction Expert may consider the following evidence to evaluate individual construction claims:
 - a. Submissions by class members
 - b. Expert reports
 - c. Investigative Reports
 - d. Factual findings or recommendations made by the Panel or investigator
 - e. Any other relevant facts.
6. If an amount of damage or expense is stated, the amount will serve as the basis of the claim unless the Construction Expert determines it to be unreasonable, in which case s/he will make a reasonable recommendation based on similar cases, average repair/damages amounts, or other basis. If no damage amount is stated the expert will make a recommendation based on similar cases, average repair/damages amounts, or other reasonable basis.
7. The Construction Expert will make recommendations to the Special Master for the settlement payment based upon the information you submitted. The Court will approve the final settlement payment.

Information for Relatives of Deceased Class Members

To Receive a Settlement Payment, Family Members of Deceased Class Members Must Submit An Information Request Form and Be Confirmed as Heirs.

If you have not already done so, please complete an information request form that can be downloaded or filled in by visiting <https://www.kalima-lawsuit.com>. To request that the form be sent to you via mail or e-mail contact info@kalima-lawsuit.com or call 1-808-650-5551 OR 1-833-639-1308.

How will the Settlement Payment to Deceased Class Members Be Made?

If the class member did not identify family members as heirs, family members who seek to qualify to receive a settlement payment must be confirmed as heirs. They must do so through a special court proceeding called probate.

Probate court proceedings will divide the settlement payment according to the terms of the deceased class member's will or trust. If the deceased class member did not have a will or trust (called "intestate probate"), Hawai'i probate law will determine how the payment is divided among the confirmed heirs.

Who Will Represent Deceased Class Members in Probate Court? Should We Hire Our Own Attorney?

You may hire your own attorney for probate proceedings. Reasons to hire a probate attorney include: (1) if you want to confirm your status as an heir and personal representative, which may allow you to receive payment sooner; or (2) if there is a potential for disputes among family members.

How do We Find an Attorney?

If the deceased class member had a will or trust, you should contact the attorney who prepared the will or trust to discuss this question. Otherwise, you may contact the Hawai'i State Bar Association Lawyer Information and Referral Service at (808) 537-9140 or email LRIS@hsba.org and ask for a referral to lawyers who specialize in probate matters.

Requirements for Class Members Who Died Outside of Hawai'i

Please consult with a probate attorney in your state if your family member died outside of Hawai'i and send a certified copy of the family member's death certificate to the Claims Administrator. If you seek to be confirmed as an heir or personal representative of your family member's estate, you should retain an attorney for that purpose.

What if We Can't Afford an Attorney?

The Court will be asked to approve a Probate Plan that provides for a Special Administrator who will be paid out of settlement funds. If the Court approves this plan, the Special Administrator may be able to: (1) determine if there are existing wills or trusts; (2) file a motion to confirm known heirs; and (3) obtain probate court approval to divide the settlement among confirmed heirs. The attorneys' fees and costs of this work would be deducted from your settlement. Because there are more than 1,100 deceased class members, and thousands of potential heirs, that process is expected to take until December 31, 2023 and possibly longer.

Your Legal Right to Opt Out of This Settlement

If You Wish to Exclude Yourself from Participating in the Settlement	You may exclude yourself from participating in this Settlement. If you do so, you will not receive a payment from the Settlement Fund. The deadline to request exclusion from the Settlement is March 17, 2023 . To exclude yourself from the Settlement, please follow the instructions below.
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You may exclude yourself from participating in the Settlement. If you do so, you will not receive any compensation from the Settlement Fund. You will retain any claims you may have against the State of Hawai'i and the Released Parties (as that term is defined in the Settlement Agreement) and are free to pursue whatever legal rights you may have at your own risk and your own expense.

To exclude yourself from the Settlement, you must mail a signed letter to the Kalima Lawsuit Claims Administrator to P.O. Box 135035, Honolulu, Hawai'i 96801, postmarked on or before **March 17, 2023**. The exclusion letter must state that you exclude yourself from this Settlement and must include the name and case number of this litigation (*Kalima et al. v State of Hawai'i et al.*, Civil No. 99-4771-12 LWC), as well as your full name, address, telephone number, a statement that you wish to be excluded, and your signature. So-called "mass" or "class" exclusion requests are not permitted.

If you wish to exclude the claims of a deceased class member, you must obtain probate court approval appointing you as the personal representative of the estate before doing so.

If you intend to file a separate lawsuit, limitations periods may bar your claim if it is not timely filed. **Any separate lawsuit should be filed before July 21, 2023** to ensure it falls within the potential statutory limitations period. Please consult with an attorney about filing such a claim.

Please do not call the Judge, the Clerk of the Court, or the State of Hawai'i about this notice. They will not be able to give you advice about this case. If you have questions, please contact the Claims Administrator at (808) 650-5551 OR 1-833-639-1308 or e-mail info@kalima-lawsuit.com.

Your Legal Right to Intervene in This Case

If You Wish to Intervene in This Case	If you wish to intervene in this case, you may hire an attorney at your own expense to do so. You no longer will be represented by Class Counsel and you will have to consult with your retained attorney to obtain further information about the intervention process.
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Revised Schedule

The Court has approved a new schedule for final approval of the Settlement, which is necessary to complete the complex file review and claims evaluation process necessary before payments can be distributed.

The proposed schedule will extend the current schedule only so far as reasonably necessary to complete the work required. The extended deadlines have been set by the Court to assure that Settlement distribution is as accurate and fair as possible.

- The second notice containing your start and end dates will be mailed on **January 16, 2023**.
- The deadline to opt out of the lawsuit is **March 17, 2023**.
- The third notice containing your estimated settlement payment will be mailed on **June 1, 2023**.
- The deadline for final approval of the Settlement is **July 21, 2023**

CONSTRUCTION CLAIM ADDITIONAL INFORMATION FORM

CLASS MEMBER INFORMATION:

First Name: _____ MI: ____ Last Name: _____

Date of Birth _____ Last 4 of Social Security Number _____

DECEASED CLASS MEMBER'S FAMILY REPRESENTATIVE INFORMATION (if applicable):

Name: _____

Address: _____

City: _____ State _____ Zip Code _____

Telephone: _____ Email: _____

Relationship to Class Member _____

**YOUR CONSTRUCTION CLAIM WILL BE BASED UPON YOUR SUBMISSION TO THE HAWAIIAN CLAIMS OFFICE
AND THE HAWAIIAN CLAIMS OFFICE INVESTIGATIVE FILE.**

Brief Description of Problem _____

Dates of Damage _____

Was it repaired ? Yes _____ No _____

Cost of Repair/Estimated Repair Cost at time the Repair was First Needed \$ _____

**PLEASE SUBMIT ANY DOCUMENTS YOU HAVE TO SUPPORT YOUR POSITION BY MAIL. DO NOT SEND DOCUMENTS YOU
ALREADY HAVE SUBMITTED TO THE HAWAIIAN CLAIMS OFFICE OR TO THE DEPARTMENT OF HAWAIIAN HOME LANDS.**

**By my signature below, I affirm on penalty of law that the foregoing statements are true based on my own personal
knowledge:**

Dated: _____, 2023.

Signature: _____

Print name: _____

To submit additional information about a construction or infrastructure claim, you must submit this form to Kalima Claims Administrator, PO Box 135035, Honolulu, HI 96801 OR via e-mail to info@kalima-lawsuit.com. You may download a copy of the correction form by going to kalima-lawsuit.com. **You must submit this information by March 17, 2023. CONSTRUCTION DEFECTS OR INFRASTRUCTURE DEFECTS MUST HAVE OCCURRED PRIOR TO JUNE 30, 1988. YOU MAY NOT ASSERT A NEW CLAIM FOR CONSTRUCTION.**

Kalima v. State of Hawai'i Settlement
PO Box 135035, Honolulu, HI 96801
Telephone: 808-650-5551 OR 833-639-1308
Email: info@kalima-lawsuit.com

NOTICE OF NO ENTITLEMENT TO PAYMENT FROM CLASS ACTION SETTLEMENT

Kalima v. State of Hawai'i, CIVIL NO. 99-4771-12 LWC

**YOU ARE RECEIVING THIS LETTER TO NOTIFY YOU THAT YOU ARE NOT ENTITLED TO A
PAYMENT FROM THE KALIMA v. STATE OF HAWAI'I CLASS ACTION SETTLEMENT
FOR THE FOLLOWING REASON:**

____ You did not file a claim with the Panel on or before August 31, 1995.

____ You filed a timely claim with the Panel but the claim did not assert an individual breach of trust which occurred between August 21, 1959, and June 30, 1988.

____ You filed a timely claim with the Panel but the claim asserted an individual breach of trust that occurred after June 30, 1988.

____ You filed a timely claim with the Panel but the claim was not a valid HRS Chapter 674 claim.

You have a right to object to the determination that you are not entitled to a payment by submitting your objection in writing with any supporting documentation **postmarked by March 17, 2023** to:

Claims Administrator
Kalima v. State of Hawai'i Settlement
PO Box 135035
Honolulu, HI 96801

Please provide copies of any documents or other evidence that you believe should be considered in support of your position.

If you wish to opt out of this settlement, please follow the instructions on the reverse side of this notice.

Please do not call the Judge, the Clerk of the Court, or the State of Hawai'i about this notice. They will not be able to give you advice about this case. If you have questions, please call (808) 650-5551 OR 1-833-639-1308 or email info@kalima-lawsuit.com.

REVISED EXHIBIT 5 to Speical Master's First Amened Findings and Recommendations
EXHIBIT 3 TO DELCARATION OF CARL M. VARADY

Your Legal Right to Opt Out of This Settlement

If You Wish to Exclude Yourself from Participating in the Settlement	<p>You may exclude yourself from participating in this Settlement. If you do so, you will not receive a payment from the Settlement Fund. The deadline to request exclusion from the Settlement is March 17, 2023.</p> <p>To exclude yourself from the Settlement, please follow the instructions below.</p>
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You may exclude yourself from participating in the Settlement. If you do so, you will not receive any compensation from the Settlement Fund. You will retain any claims you may have against the State of Hawai'i and the Released Parties (as that term is defined in the Settlement Agreement) and are free to pursue whatever legal rights you may have at your own risk and your own expense.

To exclude yourself from the Settlement, you must mail a signed letter to the Claims Administrator at P.O. Box 135035, Honolulu, Hawai'i 96801, postmarked by **March 17, 2023**. The exclusion letter must state that you exclude yourself from this Settlement and must include the name and case number of this litigation (*Kalima et al. v State of Hawai'i et al.*, Civil No. 99-4771-12 LWC), as well as your full name, address, telephone number, a statement that you wish to be excluded, and your signature. So-called "mass" or "class" exclusion requests are not permitted.

If you wish to exclude the claims of a deceased class member, you must obtain probate court approval appointing you as the personal representative of the estate.

If you intend to file a separate lawsuit, limitations periods may bar your claim if it is not timely filed. **Any separate lawsuit should be filed before July 21, 2023** to ensure it falls within the potential statutory limitations period. Please consult with a lawyer about filing your claim.

Your Legal Right to Intervene in This Case

If You Wish to Intervene in This Case	<p>If you wish to intervene in this case, you may hire an attorney at your own expense to do so. You no longer will be represented by Class Counsel and you will have to consult with your retained attorney to obtain further information about the intervention process.</p>
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Please do not call the Judge, the Clerk of the Court, or the State of Hawai'i about this notice. They will not be able to give you advice about this case. If you have questions, please call (808) 650-5551 OR 1-833-639-1308 or email info@kalima-lawsuit.com.

Kalima v. State of Hawai'i Settlement

PO Box 135035, Honolulu, HI 96801

Telephone: 808-650-5551 OR 833-639-1308

Email: info@kalima-lawsuit.com

**NOTICE OF NO ENTITLEMENT TO PAYMENT FROM CLASS ACTION
SETTLEMENT**

Kalima v. State of Hawai'i, CIVIL NO. 99-4771-12 LWC

YOU ARE RECEIVING THIS LETTER TO NOTIFY YOU THAT YOU ARE NOT ENTITLED TO A PAYMENT FROM THE KALIMA v. STATE OF HAWAII CLASS ACTION SETTLEMENT FOR THE FOLLOWING REASON:

____ You filed a timely claim(s) with the Panel but settled your claim(s).

____ You opted out of the lawsuit in response to the 2007 or 2012 class notice. A

copy of your settlement agreement or notice that you chose to opt out is enclosed.

You have a right to object to the determination that you are not entitled to a payment by submitting your objection in writing postmarked **by March 17, 2023** to:

Claims Administrator
Kalima v. State of
Hawai'i Settlement
PO Box 135035
Honolulu, HI 96801

Please provide copies of any documents or other evidence that you believe should be considered in support of your position.

Please do not call the Judge, the Clerk of the Court, or the State of Hawai'i about this notice. They will not be able to give you advice about this case. If you have questions, please call (808) 650-5551 OR 1-833-639- 1308 or email info@kalima-lawsuit.com.

LAW OFFICE OF CARL M. VARADY
CARL M. VARADY 4873-0
Pauahi Tower, Suite 1730
1003 Bishop Street
Honolulu, Hawai'i 96813
Telephone: (808) 523-8447
E-mail: carl@varadylaw.com

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FIRST CIRCUIT
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09:27 AM
Dkt. 1842 ORD

GRANDE LAW OFFICES
THOMAS R. GRANDE 3954-0
41-859 Kalaniana'ole Highway, #271
Waimānalo, Hawai'i 96795
Telephone: (808) 271-7500
Email: tgrande@grandelawoffices.com

CLASS COUNSEL

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

LEONA KALIMA, DIANE BONER,
RAYNETTE NALANI AH CHONG,
special administrator of the estate of JOSEPH
CHING, deceased, CAROLINE BRIGHT,
DONNA KUEHU, and JAMES
AKIONA, et al.,

Plaintiffs,

vs.

STATE OF HAWAI'I, STATE OF HAWAI'I
DEPARTMENT OF HAWAIIAN HOME
LANDS; et al.,

Defendants.

CIVIL NO. 99-4771-12 LWC
(Class Action)

SECOND AMENDED PAYMENT
DISTRIBUTION PLAN AND ORDER

POST-TRIAL PROCEEDINGS JUDGE:
HON. LISA W. CATALDO

SETTLEMENT JUDGE: HON. GARY W.B.
CHANG

SECOND AMENDED PAYMENT DISTRIBUTION PLAN AND ORDER

Plaintiffs hereby submit the following Second Amended Payment Distribution Plan to direct the method by which Settlement Payments will be made to individual living Class Members and to the estates of deceased Class Members, and for procedures following Final Approval.

I do hereby certify that the foregoing is a full, true and correct copy of the official court record of the Courts of the State of Hawai'i.
Dated at: Honolulu, Hawai'i 01-AUG-2023, /s/ Lori Ann Okita, Clerk of the First Judicial Circuit, State of Hawai'i



I. The Settlement Agreement Requires the Court to Approve a Payment Distribution Plan

The Settlement Agreement requires that a Payment Distribution Plan be approved by the Court (Settlement Agreement ¶ VIII.F.) and defines the Payment Distribution Plan as “the plan that requires the Claims Administrator to pay the Net Settlement Amount in the form of settlement payments to Payment Recipients after Final Approval.” Settlement Agreement ¶ I.21. “Settlement payments” refer to the individual payments to Payment Recipients. Settlement Agreement ¶ I.33. All Settlement Class members are “Payment Recipients” except individuals excluded from receiving payment by ¶ VIII. C. of the Settlement Agreement. *See*, ¶ IV. *infra*. The Net Settlement Amount is “the amount available for settlement payments to Payment Recipients pursuant to the Payment Distribution Plan,” *i.e.*, the amount remaining after deductions for claims administration costs and attorneys’ fees. Settlement Agreement ¶ I.17.

Final Approval means the occurrence of the following:

Following the Fairness Hearing, the Court has entered a final appealable order or judgment approving the Settlement, and

- i. The time for appellate review and review by application for certiorari has expired, and no notice of appeal has been filed; or
- ii. If appellate review or review by application for certiorari is sought, after any and all avenues of appellate review have been exhausted, the order approving settlement has not been modified, amended, or reversed in any way.

Settlement Agreement ¶ I.12.

II. The Settlement Distribution Plan Defines the Rules for Determining Claims

Pursuant to the January 5, 2023 *Order Adopting First Amended Findings and Recommendations of the Special Master to Approve Proposed Settlement Distribution Plan and Revised Class Notices* (the “Settlement Distribution Plan Order”)[Dkt 1589], this Court adopted and approved Plaintiffs’ Proposed Settlement Distribution Plan attached as Revised Exhibit 1 to

the Settlement Distribution Plan Order (the “Settlement Distribution Plan”) and incorporated herein by reference. The Settlement Distribution Plan contains guidelines and rules used to validate the claims of Settlement Class Members and to compute the value of validated claims.

The Settlement Distribution Plan implements the Settlement Agreement’s mandate that “[a]ll Settlement Class Members are Payment Recipients” unless they fall into one or more of the specifically identified exceptions. Settlement Agreement ¶ VII.C. The Plan describes and provides the methodology for computing the value of two categories of valid claims: (1) waiting list or delay claims; and (2) construction or infrastructure claims.

III. Rules for Calculating Settlement Payments

Individual settlement payments for Payment Recipients have been calculated through the following process, in accordance with the Settlement Agreement, Settlement Distribution Plan, and prior orders of this Court.

Settlement payments to Class Members for delays in receiving homestead awards will be calculated by the Claims Administrator based on each Class Member’s individual circumstances. Delays in residential, agricultural, and pastoral awards will be calculated using the interval between the date of application or attempted application as the claim start date, and the date of an award, or, if no award was made, the date of the Class Member’s death, or date of settlement (April 14, 2022), whichever is earliest, as the claim end date.

Payment amounts are calculated using the matrices prepared by Defendants’ experts and approved by the Court to establish the net Fair Market Rental Value (“FMRV”) for the length of delay, calculated incrementally from the claim start date to the claim end date. The net FMRV includes a deduction of \$1 per year that would have been paid by the Class Member if a Department of Hawaiian Home Lands (“DHHL”) lease had been awarded.

Settlement payments to Class members for construction and infrastructure claims were calculated by the Construction Expert based upon the reasonable cost to repair at the time the claim was submitted. *See*, June 8, 2023, *Settlement Special Master's Submission Of Construction Expert Report* [Dkt. 1677] & *Exhibit A (filed in camera)* [Dkt. 1688]. These calculations were approved by the Court's June 15, 2023, *Order Approving Construction Expert Report; Exhibit A* [Dkt. 1699].

In the event that the Gross Settlement Amount of \$328 million, less attorneys' fees, class representative incentive awards, and claims administration costs, is not sufficient to pay each claim at 100% of calculated value, all claims will be calculated and paid as set forth in paragraph VI. *infra*.

IV. Determination of Valid Claims

Notice to Settlement Class Members was provided as required by the Settlement Agreement and by the Court, and all of the Settlement Class Members' claims have been reviewed.¹ Based on that review, a determination has been made as to which claims are valid under the principles and rules set forth in the Settlement Distribution Plan. The settlement value of each valid claim has been computed by applying the principles and rules in the Settlement Distribution Plan.

¹ A final individualized notice setting forth the estimated amount of the settlement payment for each Payment Recipient based on this Payment Distribution Plan was mailed on June 13, 2023, to the Settlement Class Members. Reports describing the complete Notice Plan were submitted by the Claims Administrator, Epiq, on June 19, 2023 [Dkt. 1709] and July 13, 2023 [Dkt. 1754, 1756, 1758, 1760, 1762, 1764].

The Court has reviewed *in camera*² and approves Exhibit 2 attached hereto, which is a list of 2,515 Class Members with valid claims that will be paid from the Settlement Fund, listed by Tracking Number and total amount of each Class Member's Settlement Payment. These Class Members are "Payment Recipients." There are 1,351 living class members who are Payment Recipients and 1,164³ deceased class members' estates who are Payment Recipients.

The Court has reviewed *in camera* and approves Exhibit 3 attached hereto, which is a list of 224 class members who are excluded from receiving a Settlement Payment because they have no claim, listed by Tracking Number, Name and category of their exclusion.

The Court has reviewed *in camera* and approves Exhibit 4 attached hereto, which is a list of 30 class members who are excluded from receiving a Settlement Payment because they have settled all⁴ of their claims, listed by Tracking Number and Name.

The Court has reviewed *in camera* and approves Exhibit 5 attached hereto, which is a list of 28 class members who are excluded from receiving a Settlement Payment because they have opted out of this lawsuit, listed by Tracking Number, Name and year they opted out.

² Exhibits 2 – 5 were submitted and reviewed *in camera* pursuant to this Court's February 26, 2014, *Amended Order Granting Plaintiffs' Motion for Release of Confidential Information* filed March 1, 2007 [Dkt. 713], and State of Hawai'i Department of Hawaiian Home Lands, Hawai'i Administrative Rules § 10-1-3(d) which requires personal information of DHHL applicants to be held in "absolute confidence."

³ Plaintiffs previously estimated a total of 1,354 deceased "class members", which at the time of submission was an accurate estimate of *all* deceased class members, including those with no claim, those who settled and those opted out. Unlike a typical case, at State Defendants' insistence, those who settled, those with no claim, and those who opted out are nevertheless considered "class members."

⁴ One class member with two claims settled one but not the other and is not excluded from receiving a settlement payment for the non-settled claim.

The Court has reviewed *in camera* and approves Exhibit 10 to the Payment Distribution Plan, which is a list of 2,797 class members comprising the Settlement Class List.

V. Nature of the Settlement Payments

Settlement Class Members' claims were filed under Hawai'i Revised Statutes Chapter 674 for purposes of this Settlement and the methods and rules of computing the value of Payment Recipients' claims were structured to comport with the intent and definitions of Hawai'i Revised Statutes Chapter 674 as interpreted by the Hawai'i Supreme Court in *Kalima v. State of Hawai'i*, 148 Hawai'i 129, 468 P.3d 143 (2020) ("*Kalima II*"). Thus, settlement payments are intended to adhere as closely as possible to the definition of "actual damages". Under section 674-2, "actual damages" are defined as:

...direct, monetary out-of-pocket loss, excluding noneconomic damages as defined in section 663-8.5 and consequential damages sustained by the claimant individually rather than the beneficiary class generally, arising out of or resulting from a breach of trust, which occurred between August 21, 1959, and June 30, 1988, and was caused by an act or omission by an employee of the State with respect to an individual beneficiary in the management and disposition of trust resources.

HRS § 674-2. In accordance with this definition, calculated settlement values exclude personal injury damages, consequential damages such as lost profits, noneconomic damages such as pain and suffering, and punitive damages. Moreover, in accordance with *Kalima II*, the fair market rental value measure for waiting claims (the "best fit curve") does not include interest payments.

VI. Method for Calculating Payment Recipients' Settlement Payments

In order to determine the specific amount each Payment Recipient is to receive, the value of each validated claim will be calculated as follows:

1. The aggregate value of all claims for all Payment Recipients were added together to calculate the "Total Claims Amount."

2. Payment Recipients' **individual** claim amounts were compared to the "Total Claims Amount" to calculate each Class Member's "Proportional Share Percentage" of the "Net Settlement Amount."
3. The "Net Settlement Amount" was calculated by deducting attorneys' fees, class representative incentive payments, and estimated claims administration costs from the \$328,000,000 Class Settlement Amount. For purposes of calculating the Net Settlement Amount, Class Counsel will seek attorneys' fees award of 12.19% of the Class Settlement Amount (\$40 million), which is the maximum amount permitted in the Settlement Agreement. Class Representative Incentive Awards total \$75,000 (\$25,000 for the three Settlement Class Representatives). Estimated **current and future** class claims administration costs are currently calculated at 0.63% of the Gross Settlement Amount (\$2,073,043.78). Payment Recipients' estimated Settlement Payments are then calculated by multiplying the Net Settlement Amount by their Proportional Share Percentage.

VII. Distribution of Settlement Payments

If Final Approval is granted on July 21, 2023, and no appeals are filed, it is expected that distribution of settlement payment checks can begin on or around September 1, 2023.

Consistent with the terms of the First Amended Joint Order Approving Probate Plan and Qualified Settlement Trust filed on or about June 23, 2023, the Chief Clerk, First Circuit Court, State of Hawai'i, is hereby ordered to transfer, 31 days after Final Approval as that term is defined in the Settlement Agreement, all settlement funds in the Kalima Settlement Fund trust account to "Sylvius H. Von Saucken, General Manager - Mass Torts, EPIQ Class Action &

Claims Solutions, Inc., Trustee of the Kalima Class Action Settlement Trust dated June 23, 2023.” (“Trustee”)

Consistent with the terms of the June 21, 2022, *Stipulation Regarding Settlement Claims Administration Costs and Order* [Dkt. 1500] and June 8, 2023, *Second Stipulation Regarding Settlement Claims and Administration Costs and Order* [Dkt. 1675], the Accountant for the Settlement Claims Administration Fund is hereby ordered to transfer, 31 days after Final Approval as that term is defined in the Settlement Agreement, all remaining funds in the Settlement Claims Administration Fund, to the Trustee.

The Trustee shall administer the settlement funds pursuant to the terms of the Trust, including the investment authority as set forth in Article 2-6.5 of the Trust, and as provided in the Hawai‘i Uniform Trust Code.

The Claims Administrator shall issue settlement payments from the Net Settlement Amount to each Payment Recipient via check. All settlement payment checks issued to Settlement Class Members will expire and become void 120 days after they are issued. Payment to each Payment Recipient is deemed made at the moment the settlement payment check for a Payment Recipient is issued, *i.e.*, prepared and signed by the Trustee of the Qualified Settlement Trust described in paragraph VIII. *infra*, payable to the Payment Recipient and mailed to the Payment Recipient’s last known address; private delivery services may be used for payment amounts larger than \$25,000. Each Settlement Payment check will include a statement explaining any adjustments to the estimated payment amounts previously provided to Payment Recipients in Mailed Notice #3.

The Claims Administrator shall make reasonable efforts to locate all living class members for whom there is no valid address, and any costs will be treated as claims administration costs.

The Claims Administrator shall make reasonable efforts to redistribute settlement payments to Payment Recipients whose settlement payment checks expired and shall apportion costs incurred in doing so individually to those Payment Recipients.

The Claims Administrator will not incur unreasonable expenses to locate living class members or Payment Recipients whose checks have expired and will report to the Court when reasonable efforts and expenses have been exhausted.

The Trustee of the Qualified Settlement Trust (“Trustee”), described in paragraph VIII. *infra*, will make distributions to living Class Members, without Court approval. The Trustee will make distributions to those with beneficial interests derived from deceased Class Members, upon approval of the Probate Court. The estimated time period for distribution of settlement payments to those who have beneficial interests in the Qualified Settlement Trust (“QST”) derived from deceased Class Members is expected to extend to at least December 2024.

VIII. Qualified Settlement Trust and Deceased Class Members

There are approximately 1,164 Class Members who are known to be deceased. A June 23, 2023, Amended Probate Plan has been approved to efficiently and fairly distribute settlement payments to and among the parties who have a legitimate interest in the respective estates of the deceased Class Members [Dkt. 1724].

The Court has established the Kalima Class Action Settlement Trust, which is a Qualified Settlement Trust within the meaning of Treasury Regulation Section 1.468B. The Beneficiaries of the QST are defined as those “parties who have a valid claim and or interest in the proceeds of

the settlement funds derived from the Civil Matter, including parties who are entitled to the estates of deceased Class Members.” Article 1-2.1 of the QST. The method of distributions from the QST to all of the beneficiaries of the QST is set forth in Article 1-5 of the QST.

Upon petition to the Probate Court by Probate Special Counsel and with the oversight and recommendations of the Probate Special Master, the Probate Court will provide instructions to the Trustee to make proper distributions to the QST beneficiaries whose interests are derived from deceased Settlement Class Members’ estates.

Costs and fees associated with the probate process will be charged to the estates of the deceased Settlement Class Member both as a group, for common administrative probate services and costs, and individually for specific probate petitions, subject to the Probate Court’s approval.

The Trustee will be responsible for administration and distribution of the settlement funds, will be subject to the Court’s ongoing oversight, and for complying with federal reporting requirements.

Interim and final reports will be submitted for approval to the Probate Court by the Probate Special Master, Probate Special Counsel and QST Trustee. The Trustee will provide a Final Accounting at the conclusion of the Payment Distribution process.

IX. Claims Administration Costs, Probate Costs, Budgeting and Accounting

A. Current and Future Class Costs.

The total estimated class claims administration costs by Claims Administrator Epiq Class Action and Claims Solutions, Inc.’s (“Epiq”), fees and costs for the Settlement Special Master, Construction Expert, Tax Expert, Accountant, bank fees and other costs through August 31, 2023, are \$1,290,336.78. Revised Exhibit 6: Kalima Class Fund Cost by Payee.

The Court finds these costs to be reasonable and were and will be necessarily incurred in implementing the claims administration process approved by the Court and that these costs are “authorized uses of the class settlement amount” as defined by the Settlement Agreement, ¶ 4.B.

Future class claims administration costs for Epiq, the Settlement Special Master, Accountant, and other costs are estimated to be \$782,707. Revised Exhibit 6: Kalima Class Fund Cost by Payee; Exhibit 7: Epiq Redacted Budget Estimate for Class Costs. Total estimated class claims administration costs through December 31, 2024 are \$2,073,043.78.

The Court finds these cost estimates to be reasonable and will be necessarily incurred in implementing the claims administration process approved by the Court and that these costs are “authorized uses of the class settlement amount” as defined by the Settlement Agreement, ¶ 4.B.

The Court approves a Final Claims Calculation based upon total and estimated current and future costs of \$2,073,043.78. These accrued and estimated future costs will be deducted from the Class Settlement Amount in calculating the Net Settlement Amount. Any estimated costs not expended will be included in the Supplemental Payment of Undistributed Funds to Class Members, if such Supplemental Distribution is made pursuant to paragraph XI. *infra*.

Any requests for payment of future class Claims Administration costs in excess of this amount will be made through application and approval of the Settlement Special Master.

B. Current and Future Probate Fees and Costs

Estimated probate claims administration costs by Epiq, the Probate Special Master, and Probate Special Counsel through August 31, 2023, are \$568,052.49. Exhibit 8: Kalima Class Fund Cost by Payee. Future Probate claims administration costs for Epiq are estimated to be \$884,002.00. Exhibit 9: Epiq Redacted Budget for Probate Costs. Total estimated probate

claims administrative costs through December 31, 2024 are \$1,452,054.49. These costs will be apportioned *pro rata* among all deceased Class Members' estates' Net Settlement Amounts.

The Court finds these cost estimates to be reasonable and will be necessarily incurred in implementing the claims administration process approved by the Court and that these costs are "authorized uses of the class settlement amount" as defined by the Settlement Agreement, ¶ 4.B.

Future probate fees and costs by the Probate Special Master and Probate Special Counsel will be incurred and will be paid upon application to and approval by the Probate Court. These costs and fees will be apportioned directly to the estates being probated as explained in paragraph IX.C *infra*. Any estimated probate costs not expended will be included in the Supplemental Payment of Undistributed Funds to Class Members, if such Supplemental Distribution is made pursuant to paragraph XI. *infra*.

C. Accounting

Claims administration costs for the class as a whole and claims administration fees and costs for probate matters will be billed and accounted for separately.

1. Claims Administration Services for All Class Members

There are 2,515 living and deceased class members who are Payment Recipients. Post-Final Approval claims administration costs for all Payment Recipients will be deducted from the Gross Settlement amount and are apportioned among all Class Members.

2. Claims Administration Services for Deceased Class Members

There are an estimated 1,164 deceased class members. Post-Final Approval Claims Administration Services for deceased class members will be apportioned among all deceased Class Members. Each estate will be charged pro-rata, subject to Probate Court approval.

3. Individual Services by Probate Special Master/ Probate Special Counsel.

Pre-Final Approval fees incurred by the Probate Special Master and Probate Special Counsel for the development of the Probate Plan and QST will be apportioned among all deceased Class Members. Each estate will be charged general probate administration costs *pro rata* based on the estate's Net Settlement Amount, subject to Probate Court approval.

Post-Final approval fees and costs incurred by the Probate Special Master and Probate Special Counsel for the resolution of individual estates or on a group basis will be charged to the individual or grouped estates, subject to Probate Court approval.

X. Supplemental Payment of Undistributed Funds

At the conclusion of the Probate Plan and Settlement Payment distribution, in the case where Settlement Class Members received a payment that is less than 100% of their Proportional Share of the Total Claims Amount, and the remaining undistributed QST funds, including any estimated but unexpended claims administration or probate administration costs, are sufficient to pay the claims administration costs thereof, the Claims Administrator will make supplemental payments as follows:

1. Calculate all outstanding unpaid claims administration costs, if any; and
2. After first deducting unpaid claims administration costs incurred up to and including the supplemental payment and estimated claims administration costs in making the supplemental payments, calculate and distribute supplemental payments on a *pro rata* basis to all located Class Members and located Class Members' estates, based on the value of their individual claims up to 100% of their Proportional Share of the Total Claims Amount.

If the remaining Settlement Funds are not sufficient to fund the claims administration costs necessary to distribute such supplemental payments, the remainder of the Settlement Funds

will be used to pay outstanding Claims Administration costs and then distributed as set forth in paragraph XI, *infra*.

XI. Disposition of Residual Funds

Any remainder of the Class Settlement Amount that cannot be distributed after all authorized payments are made in accordance with the Settlement Agreement, this Payment Distribution Plan, and applicable orders of the Court, shall be paid to the Department of Hawaiian Home Lands loan fund established by section 213(c) of the Hawaiian Homes Commission Act and used exclusively for the purposes enumerated in section 214(a) of the Hawaiian Homes Commission Act. Settlement Agreement ¶ VII.E.

XII. Continuing Court Oversight

Pursuant to the Settlement Agreement, ¶ IX.B, the Court shall retain jurisdiction over this matter to ensure that payments are made in accordance with this Payment Distribution Plan. Such jurisdiction shall terminate upon final distribution of all funds, including payment of residual funds, if any, pursuant to the Settlement Agreement, ¶ VI.E, or 60 days after the submission of the final report by the Special Master, whichever is later.

XIII. Final Report

At the conclusion of the distribution of settlement payments, the Trustee will submit a Final Accounting to the Court with details of the claims distribution process and status.

This Payment Distribution Plan shall be incorporated into and be a part of the Probate Plan; the Probate Plan also is incorporated into this Payment Distribution Plan.

[SIGNATURES ON THE NEXT PAGE]

APPROVED AS TO FORM:

BY: /s/ Craig Y. Iha
ANNE E. LOPEZ
Attorney General, State of Hawai‘i

July 28, 2023
DATED

CRAIG Y. IHA
JORDAN A.K. CHING
Deputy Attorneys General

LINDA LEE K. FARM
DONNA H. KALAMA
Special Deputy Attorneys General

ATTORNEYS FOR STATE DEFENDANTS

APPROVED AND SO ORDERED:

/s/ Lisa W. Cataldo



HON. LISA W. CATALDO
JUDGE OF THE ABOVE-ENTITLED COURT

August 1, 2023
DATED

KALIMA, ET AL. v. STATE OF HAWAI‘I, ET AL. CIVIL NO. 99-4771-12 LWC; SECOND
AMENDED PAYMENT DISTRIBUTION PLAN AND ORDER

EXHIBIT “5” [FILED UNDER SEAL]

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CLASS COUNSEL

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

LEONA KALIMA, DIANE BONER,
RAYNETTE NALANI AH CHONG,
special administrator of the estate of JOSEPH
CHING, deceased, CAROLINE BRIGHT,
DONNA KUEHU, and JAMES
AKIONA, et al.,

Plaintiffs,

vs.

STATE OF HAWAI'I, STATE OF HAWAI'I
DEPARTMENT OF HAWAIIAN HOME
LANDS; et al.,

Defendants.

CIVIL NO. 99-4771-12 LWC
(Class Action)

ORDER GRANTING FINAL APPROVAL
OF CLASS ACTION SETTLEMENT AND
MOTION FOR ATTORNEYS' FEES

POST-TRIAL PROCEEDINGS JUDGE:
HON. LISA W. CATALDO

SETTLEMENT JUDGE:
HON. GARY W.B. CHANG

ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND
MOTION FOR ATTORNEYS' FEES

Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement [Dkt. 1707] and
Motion for Attorneys' Fees [Dkt. 1703], both filed on June 19, 2023, were heard by the Honorable Lisa
W. Cataldo on July 21, 2023, at 9:00 a.m. Carl M. Varady and Thomas R. Grande appeared for
Plaintiffs. Craig Y. Iha, Deputy Attorney General, and Linda Lee K. Farm

I do hereby certify that the foregoing is a full, true and correct copy of the official court record of the Courts of the State of Hawai'i.

Dated at: Honolulu, Hawai'i 01-AUG-2023, /s/ Lori Ann Okita, Clerk of the First Judicial Circuit, State of Hawai'i



and Donna H. Kalama, Special Deputy Attorneys General, appeared for State Defendants. Settlement Special Master Hon. Michael F. Broderick (ret.), Probate Special Master Emily H. Kawashima, and Probate Special Counsel Scott C. Suzuki were also present.

WHEREAS the Settlement Class Representatives Leona Kalima, Diane Boner and Raynette Ah Chong, special administrator of the Estate of Joseph Ching, deceased, on behalf of themselves and all other Class Members (“Settlement Class”), have applied to the Court pursuant to Hawai‘i Rules of Civil Procedure 23 for an order granting final approval of the proposed settlement of this class action (“Lawsuit”), for attorneys’ fees in accordance with the Settlement Agreement (“Settlement Agreement”) executed by the parties in this case on June 2, 2022, and for entry of a Final Judgment implementing the terms of the Settlement Agreement;

WHEREAS on June 9, 2022, the Court granted preliminary approval to the Settlement Agreement and issued its *Order Granting Plaintiffs’ Motion For: (1) Preliminary Approval of Class Action Settlement; (2) Certification of Settlement Class; (3) Decertification of Subclasses 1-4 and 6; (4) Appointment of Class Representatives and Appointment of Class Counsel; (5) Appointment of Settlement Special Master; (6) Appointment of Claims Administrator; (7) Approval of Plan of Notice and Scheduling of Fairness Hearing* (the “Preliminary Approval Order”)[Dkt. 1496];

WHEREAS the Court has read and considered the Settlement Agreement, which is incorporated herein;¹

WHEREAS the Court has read and considered the Plaintiffs’ June 19, 2023, Unopposed Motion for Final Approval of Settlement, the memorandum, exhibits and declarations in support thereof, and Plaintiffs’ July 14, 2023 Reply, and has heard argument of counsel thereon;

WHEREAS the Court has read and considered the Plaintiffs’ June 19, 2023 Motion for Attorneys’

¹ Terms not defined in this Order shall have the definitions ascribed to them in the Settlement Agreement.

Fees, the memorandum, exhibits and declarations in support thereof, and Plaintiffs' July 14, 2023 Reply, and has heard argument of counsel thereon;

WHEREAS the Court has read and considered the State Defendants' July 3, 2023 Response to Plaintiffs' Unopposed Motion for Final Approval [Dkt. 1731] and July 3, 2023 Memorandum in Opposition to Plaintiffs' Motion for Attorneys' Fees [Dkt. 1733], all exhibits and declarations in support thereof, and has heard argument of counsel thereon;

WHEREAS the Court has read and considered the July 7, 2023, *Findings and Recommendations of the Settlement Special Master to Approve Proposed Payment Distribution Plan* [Dkt. 1789], the prior findings and recommendations of the Settlement Special Master and his periodic reports to the Court [Dkt. 1521, 1558, 1564, 1580, 1591, 1613, 1624, 1626, 1630, 1649, 1677, 1679 & 1687];

WHEREAS, the Court has received the *Amended Payment Distribution Plan* [Dkt. 1824], which is substantively identical to the Payment Distribution Plan [Dkt. 1789, Exhibit 1] submitted by the Special Master to the Court for approval, but amended to reflect more accurately the number and types of claims and amounts for past and future claims administration costs as of the date of its filing;

WHEREAS, the parties have continued review and revisions to the Amended Payment Distribution Plan and specifically, Exhibits 2-5 and 10 thereto to correct name spellings and calculations according to the Settlement Distribution Plan rules to provide the most accurate identities of Class Members and claim calculation amounts from available data and now are in agreement that all identified and necessary changes have been made;

WHEREAS, the parties have prepared and filed a Second Amended Payment Distribution Plan [Dkt. 1835 & 1836] with corrected Class Member names and calculations, but otherwise identical in substance to the *Amended Payment Distribution Plan* [Dkt. 1824];

WHEREAS the Court has read and considered the Probate Special Master's periodic reports

[Dkt. 1634 & 1642];

WHEREAS the Court has read and considered the June 8, 2023 Construction Expert Report (and June 13, 2023 Errata) and entered its Order Approving Construction Expert Report [Dkt. 1699];

WHEREAS the Court has read and considered the July 13, 2023 Claims Administrator Epiq Class Actions and Claims Solutions’ (“Epiq) Final Report on Notice and corresponding exhibits [Dkt. 1754, 1756, 1758, 1760, 1762 & 1764];

WHEREAS the Court has read and considered Class Members’ declarations in support of the settlement and Class Members’ objections to the settlement;

WHEREAS the Court has read and considered Plaintiffs’ July 14, 2023, Response to Objections and Statements in Support of Settlement [Dkt. 1744] and Defendants’ July 14, 2023, joinder Response to Objections to Settlement [Dkt. 1782];

WHEREAS the Probate Court and this Court have approved the June 23, 2023 *First Amended Joint Order Approving Probate Plan and Qualified Settlement Trust* [Dkt. 1724];

WHEREAS the Court has read and considered the proposed Second Amended Payment Distribution Plan filed on July 28, 2023;

WHEREAS the June 9, 2022, Preliminary Approval Order² states that the Court will consider the following at the Final Approval Hearing: (1) the proposed Settlement; (2) the distribution of the Settlement Fund including the issuance of settlement payments to Payment Recipients; (3) Settlement Class Counsel’s request for an award of attorneys’ fees; (4) the request for an incentive payment to the Class Representatives to be paid from the Settlement Fund; and (5) the determination of how to issue settlement payments for deceased Settlement Class Members whose claims are then or expected to be

² Order Granting Plaintiffs’ Motion For: (1) Preliminary Approval Of Class Action Settlement; (2) Certification of Settlement Class; (3) Decertification Of Subclasses 1-4 And 6; (4) Appointment Of Class Representatives And Appointment of Class Counsel; (5) Appointment of Settlement Special Master; (6) Appointment of Claims Administrator; (7) Approval Of Plan Of Notice And Scheduling Of Fairness Hearing filed June 9, 2022 [Dkt.1496].

processed in probate; and

WHEREAS based on the above submissions and presentations as well as the Plaintiffs' submissions and presentations in support of the June 2, 2022 Motion for Preliminary Approval³ the Court finds that the proposed Settlement is fair, reasonable, and adequate,

NOW THEREFORE, GOOD CAUSE HAVING BEEN FOUND, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. Jurisdiction and Final Approval of Settlement Agreement

This Court has personal jurisdiction over all Settlement Class Members and jurisdiction to approve the Settlement and the Settlement Agreement. The Settlement Agreement is hereby approved as being fair, reasonable and adequate and in the best interests of the Settlement Class in light of the benefits to Class Members, the strength of Plaintiffs' case and the State Defendants' defenses, the complexity, expense, and probable duration of further litigation and the risk and delay inherent in possible appeals. In approving the Settlement Agreement, the Court makes the following findings:

- a. The proposed Settlement Class Representatives and Settlement Class Counsel have adequately represented the Settlement Class in the settlement negotiations;
- b. The parties engaged in substantial discovery, two trials, two appeals, and significant post-appeal litigation over the course of the 24-year history of the case;

³ June 2, 2022, Plaintiffs' Motion For Preliminary Approval Of Class Action Settlement, Decertification Of Subclasses 1-4 And 6, Certification Of Settlement Class, Appointment Of Class Counsel, Class Representatives, Settlement Special Master And Claims Administrator, Approval Of Plan Of Notice And Scheduling Of Fairness Hearing; Memorandum In Support Of Motion For Preliminary Approval Of Class Action Settlement, Decertification Of Subclasses 1-4 And 6, Certification Of Settlement Class, Appointment Of Class Counsel, Class Representatives, Settlement Special Master And Claims Administrator, Approval Of Plan Of Notice And Scheduling Of Fairness Hearing [Dkt.1489]

c. The Settlement Agreement was entered into at arm's length by experienced counsel with the assistance of Circuit Court Judge Gary W.B. Chang;

d. The relief provided by the Settlement Agreement is clearly adequate, and

e. The Settlement Agreement treats members of the Settlement Class equitably relative to each other.

2. Specific Findings Regarding the Settlement Agreement

Pursuant to Hawai'i Rules of Civil Procedure 23, the Court finds the Settlement Agreement is fair, reasonable, and adequate and resulted from serious, informed, non-collusive negotiations conducted at arm's length by the Settling Parties and their counsel. In making these final findings, the Court has considered the nature of the claims, the amounts and kinds of benefits to be paid in settlement, the information available to the settling parties, and the allocation of the settlement payments among Settlement Class Members.

The terms of the Settlement Agreement do not have any obvious deficiencies and do not improperly grant preferential treatment to any individual Settlement Class Member. In addition, the Court notes that the Settling Parties reached the proposed Settlement after substantial discovery, motions practice, two trials, and two appeals in litigation that has been ongoing since 1999.

After intensive settlement discussions before the Hon. Gary W.B. Chang from March 18, 2022, continuing through preliminary approval on June 9, 2022, the Court finds that the settling parties entered into the proposed Settlement in good faith, that the proposed Settlement meets the standards for final approval and the Settlement is sufficiently fair, reasonable and adequate to warrant final approval and distribution of the settlement payments pursuant to the proposed Second Amended Payment Distribution Plan. The Court finds that the \$328 million settlement amount exceeds the actual value of the settled claims, as measured by the rules of the Distribution Plan, by 2.5% or \$8.3 million, thereby confirming that the Settlement is fair, reasonable and adequate, and is therefore an excellent result for

the Settlement Class.

3. Second Amended Payment Distribution Plan

The Court has reviewed the proposed Second Amended Payment Distribution Plan filed July 28, 2023 [Dkt.1835 & 1836] and approves it as fair, reasonable, and adequate in its terms. The Court specifically approves all of the Second Amended Payment Distribution Plan's elements, including, but not limited to, the determination of valid claims and the calculation of settlement payments.

The terms of the Second Amended Payment Distribution Plan relating to the establishment of the Kalima Class Action Settlement Trust (the "QST") from which settlement payments will be distributed to living Class Members and to heirs who derive their beneficial interests from the claims of Deceased Class Members, is fair, reasonable, and adequate.

The terms of the Second Amended Payment Distribution Plan are incorporated into this Order Granting Final Approval.

4. Class Definition and Exclusions

Consistent with the certified Settlement Class definition previously approved by the Court in its Preliminary Approval Order, and in accord with the Settlement Agreement, pursuant to Hawai'i Rule of Civil Procedure 23, the Court hereby finds that the prerequisites for class action treatment have been met for final settlement purposes of the "Settlement Class" defined as:

All persons who filed claims with the Hawaiian Home Lands Trust Individual Claims Review Panel on or before August 31, 1995.

As set forth in the Settlement Agreement, the definition of the Settlement Class includes all persons who fall within the definition of "Plaintiffs". The following persons will not receive a Settlement Payment under the terms of the Settlement Agreement:

- a. Individuals who did not file a claim with the Hawaiian Home Lands Trust Individual Claims Review Panel (“Panel”) on or before August 31, 1995;
- b. Individuals who filed a timely claim with the Panel, but the claim did not assert an individual breach of trust which occurred between August 21, 1959, and June 30, 1988;
- c. Individuals who filed a timely claim with the Panel, but the claim asserted an individual breach of trust that occurred after June 30, 1988;
- d. Individuals who filed a timely claim with the Panel, but the claim was not a valid HRS Chapter 674 claim;
- e. Individuals who filed a timely claim with the Panel but settled their claim;
- f. Individuals who opted out of the Lawsuit in response to the 2007 class notice;
- g. Individuals who opted out of the Lawsuit in response to the 2012 class notice, and
- h. Individuals who opted out of the Settlement Class and this Settlement by sending a valid and timely Opt-Out Letter to the Claims Administrator prior to the applicable settlement deadline.

5. Class Recertification

The Court finds that recertification of the Settlement Class is warranted for the Settlement because:

- a. The Class Members are so numerous that a joinder of all of them in the Lawsuit is impracticable;
- b. There are questions of law and fact common to the Class Members which predominate over any individual questions;
- c. The claims of the Class Representatives are typical of the claims of the Class

Members;

- d. The Class Representatives and Class Counsel will fairly and adequately represent and protect the interests of all of the Class Members, and
- e. Class treatment of these claims will be efficient and manageable, thereby achieving an appreciable measure of judicial economy, and a class action is superior to other available methods for a fair and efficient adjudication of this controversy.

6. Reappointment of Class Representatives and Settlement Class Counsel

The Court hereby finds that Leona Kalima, Diane Boner, and Raynette Ah Chong, Special Administrator of the Estate of Joseph Ching, Deceased, have interests consistent with the Settlement Class, have no conflict of interest with the settlement class, and will fairly and adequately serve as Settlement Class Representatives. The Court hereby reappoints Ms. Kalima, Ms. Boner, and Ms. Ah Chong to continue to serve as Class Representatives of the Settlement Class.

The Court hereby finds that class counsel is adequate and experienced and reappoints Carl M. Varady and Thomas R. Grande to continue as Settlement Class Counsel.

7. Reappointment of Settlement Special Master

The Court reappoints the Hon. Michael Broderick (ret.) to continue to serve as Settlement Special Master. The Settlement Special Master may expend all reasonable and necessary funds in fulfillment of his responsibilities to complete the implementation of the Claims Administration Process, including but not limited to:

- a. Implementing the provisions of the Second Amended Payment Distribution Plan;
- b. Supervising and coordinating issuance of settlement payments to living Settlement Class Members;
- c. Supervising and coordinating disbursement of monies for Claims Administration

expenses for class-wide claims administration activities;

- d. Coordinating with the Probate Special Master and Probate Special Counsel to implement the Court-approved Probate Plan;
- e. Making periodic and final reports to the Court as ordered or as needed, and
- f. Performing such other duties necessary to administer the Claims Administration Process as requested or as the Court may order.

8. Reappointment of Probate Special Master and Probate Special Counsel

Subject to Probate Court approval, the Court reappoints Emily H. Kawashima to continue as Probate Special Master and Scott C. Suzuki to continue as Probate Special Counsel, who, subject to Probate Court approval, may expend all reasonable and necessary funds in fulfillment of their responsibilities to complete implementation of the Claims Administration Process, including but not limited to:

- a. Implementing the provisions of the Probate Plan, Qualified Settlement Trust and Second Amended Payment Distribution Plan;
- b. Supervising and coordinating settlement payments to deceased Settlement Class Members' estates;
- c. Supervising and coordinating disbursement of monies for Claims Administration expenses for probate claims administration activities;
- d. Implementing the Court-approved Probate Plan, Qualified Settlement Trust and Second Amended Payment Distribution Plan;
- e. Making periodic and final reports to the Court as ordered or as needed, and
- f. Performing such other duties necessary to administer the claims administration process as requested or as the Court may order.

9. Reappointment of Claims Administrator

The Court reappoints Epiq Class Action and Claims Solutions, Inc. to continue as the Claims Administrator in this Settlement.

The Claims Administrator will operate under the direction of the Settlement Special Master to make final computations and process settlement payments and engage in any required follow-up activities to ensure that settlement payments are distributed to living class members.

The Claims Administrator will operate under the direction of the Probate Special Master to compute and process settlement payments and engage in any required follow-up activities to ensure that settlement payments are distributed to the estates of deceased class members.

10. Payment Recipients

The Court has reviewed *in camera* and approves Exhibit 2 to the Second Amended Payment Distribution Plan, which is a list of 2,515 class members with valid claims to be paid in this case, listed by tracking number and amount of Settlement Payment. These Class Members are “Payment Recipients.”

11. “No Claim” or “No Jurisdiction Claim” Settlement Class Members Will Not Receive Payments.

During the claims review process, it was determined that 224 Settlement Class Members asserted claims that did not fall within the jurisdiction of HRS Chapter 674. Said Settlement Class Members are identified on Exhibit 3 (filed *in camera*), to the Second Amended Payment Distribution Plan. As a result of this “no claim” determination, said Settlement Class Members are not Payment Recipients under the Settlement Agreement, and the Claims Administrator is directed to not distribute settlement payments to these members.

12. Settlement Class Members Who Previously Settled Their Claims Will Not Receive Payments.

During the claims review process, it was determined that 30 Settlement Class Members settled

their claims, which settlements were documented in written settlement agreements. As a result of the settlements, these Settlement Class Members' claims were withdrawn or dismissed with prejudice. These Settlement Class Members are identified on Exhibit 4 (filed *in camera*) to the Second Amended Payment Distribution Plan. As a result of these prior settlements, these Settlement Class Members are not Payment Recipients under the Settlement Agreement, and the Claims Administrator is directed to not distribute settlement payments to these members.

13. Settlement Class Members Who Opted Out of the Lawsuit Will Not Receive Payments.

Three (3) Settlement Class Members timely excluded themselves from (opted out of) this Settlement after the Preliminary Approval Order. These Settlement Class Members are identified on Exhibit 5 (filed *in camera*) to the Second Amended Payment Distribution Plan. As a result of their timely exclusions, the Claims Administrator is directed to not distribute settlement payments to these members.

Twenty-five (25) Settlement Class Members previously excluded themselves from (opted out of) this Lawsuit in 2007 and 2012. These Settlement Class Members are identified on Exhibit 5 (filed *in camera*) to the Second Amended Payment Distribution Plan. These Settlement Class Members are not Payment Recipients under the Settlement Agreement, and the Claims Administrator is directed to not distribute settlement payments to these members.

All Settlement Class Members who failed to timely serve written exclusions in the manner specified in the Court's Preliminary Approval Order are deemed to have waived the ability to exclude themselves, are foreclosed from excluding themselves from the Settlement, are bound by the terms of the Settlement Agreement and the Final Judgment and are foreclosed forever from excluding themselves from the Settlement or this Lawsuit unless otherwise allowed by the Court.

14. Probate Plan and Qualified Settlement Trust

The Court has reviewed the Probate Plan and the QST and has approved the Probate Plan and

QST, jointly with the Probate Court. The Court finds that the Probate Plan and QST are fair, reasonable and adequate in their terms. The Court incorporates the terms of the Probate Plan and QST into this Order Granting Final Approval. The Court hereby establishes the Kalima Class Action Settlement Trust and appoints “Sylvius H. Von Saucken, General Manager – Mass Torts, EPIQ Class Action & Claims Solutions, Inc., as Trustee of the Kalima Class Action Settlement Trust,” which trust shall be dated as of the date of the entry of this Order.

15. The Notice Plan and the Administration of the Settlement

In its Preliminary Approval Order, the Court previously approved and ordered the Claims Administrator to carry out the Notice Plan. The Court has reviewed and hereby approves the implementation of the Notice Plan by the Claims Administrator.

Pursuant to the Notice Plan, the Claims Administrator has: (a) researched, compiled, and updated addresses for living and deceased Class Members and family representatives; (b) distributed three (3) written notices and corresponding email notices; (c) arranged for publication of the class notice; (d) posted notices on and created and maintained the settlement website, www.kalima-lawsuit.com; (e) maintained an Interactive Voice Recording (IVR) voicemail system, with appropriate live operator call-back; (f) responded to class member inquiries by mail, e-mail and telephone and/or forwarded such inquiries to Class Counsel; (g) provided written information and documents to Class Members and their relatives as appropriate, and (h) received and maintained on behalf of the Court any opt out exclusions from the Settlement Class.

16. Notices to the Class

The Court finds that the Notice Plan and Class Notices fully and accurately informed the Settlement Class Members of all material elements of the proposed Settlement and of each Settlement Class Member’s right and opportunity to opt out or object to the proposed Settlement. The Court further finds that the publication, mailing and distribution of the class notices in the manner and form

approved by the Court substantially met the requirements of Hawai‘i Rules of Civil Procedure 23, the Constitution of the State of Hawai‘i and the United States Constitution (including their Due Process Clauses), the Rules of Court, and any other applicable law. The publication, mailing and distribution of the class notices provided the best notice practicable under the circumstances and constituted due and sufficient notice to all Settlement Class Members.

17. Administration of the Probate Plan and Qualified Settlement Trust

After Final Approval, the Claims Administrator shall administer distribution of settlement payments to living Class Members and deceased Class Members’ estates, and shall provide claims administration support for final distribution of settlement payments to living and deceased Class Members under the terms of the Probate Plan and Qualified Settlement Trust, including providing individual notice, research services, IVR services, website maintenance and any other activity consistent with these duties. General class administrative duties shall remain under the supervision of the Settlement Special Master and specific probate claims administrative duties shall be under the supervision of the Probate Special Master.

The Claims Administrator shall maintain separate accounting for (a) activities relating to class-wide tasks, such as payment distribution, processing and appropriate follow-up, and (b) activities relating solely to probate proceedings for estates of individual Class Members.

18. Objections

Five (5) Settlement Class Members timely objected to the fairness, reasonableness, or adequacy of the Settlement Agreement. The Court has considered these objections and Plaintiffs’ and State Defendants’ responses and finds that the objections are not meritorious.

All Settlement Class Members who failed to timely serve written objections in the manner specified in the Court’s Preliminary Approval Order are deemed to have waived any objections, are foreclosed from making any objections, whether by appeal or otherwise, to the Settlement Agreement

and Motion for Attorneys' Fees, are bound by the terms of the Settlement Agreement, this order, and the Final Judgment, and are foreclosed forever from making any objection to the fairness or adequacy or any other aspect of the Settlement Agreement and the Motion for Attorneys' Fees.

19. Claims Administration Following the Final Approval Hearing

The Court has considered the following factors and made the following findings:

- a. The Settlement Agreement is fair, reasonable and adequate;
- b. The Court hereby enters this Order granting final approval of the Settlement and Final Judgment implementing its terms;
- c. The Notices and the Notice Plan were implemented pursuant to the Settlement Agreement and the Court's Preliminary Approval Order and (i) constituted the best practicable notice; (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise potential Settlement Class Members of the pendency of the lawsuit, the nature of the proposed Settlement (including Class Counsels' request for award of attorneys' fees and waiver of costs), their right to object to the proposed Settlement, their right to exclude themselves from the Settlement Class, and their right to appear at the Final Approval Hearing, (iii) were reasonable and constituted due, adequate, and sufficient notice to all persons entitled to notice and (iv) met all applicable requirements of Hawai'i Rules of Civil Procedure 23, the Constitution of the State of Hawai'i and the United States Constitution (including their Due Process Clauses), the rules of Court, and any other applicable law;
- d. The Settlement Class Representatives and Class Counsel adequately represented the Settlement Class and its members for the purposes of entering into and implementing the Settlement and will continue to adequately represent the Settlement Class for implementing the Second Amended Payment Distribution Plan;
- e. Class Counsels' request for an award of Attorneys' Fees is substantiated, fair, reasonable, and adequate, and
- f. Based on the foregoing, the Trustee shall allocate and distribute:

- i. Settlement Payments for Payment Recipients pursuant to the Second Amended Payment Distribution Plan (the Net Settlement Amount) in the amount of \$285,851,956.22, or as close to that dollar figure as is possible taking into account division and rounding requirements. Based on the Claims Administrator's calculations, the settlement payments for the 2,515 Payment Recipients total \$285,851,943.81, and said amount shall be distributed to Payments Recipients as set forth in Exhibit 2 to the Second Amended Payment Distribution Plan. The *de minimis* difference of \$12.41 shall remain in the Class Settlement Amount to be expended by the Trustee in accordance with the Second Amended Payment Distribution Plan and this Order;
- ii. Attorneys' Fees to Class Counsel: \$40,000,000.00;
- iii. Incentive Awards to Class Representatives: \$75,000 (\$25,000 each);
- iv. Payment of estimated Claims Administration expenses for the entire Settlement Class for the period June 1, 2022, through August 31, 2023: \$1,290,336.78, and
- v. Retention for estimated Claims Administration expenses for the entire Settlement Class for the period September 1, 2023, through December 31, 2024: \$782,707.00.

Any estimated claims administration costs not expended will be included in the supplemental payment of undistributed funds to Class Members, if such supplemental distribution is made pursuant to ¶ 21 *infra*.

20. Release of Claims

Pursuant to ¶ V. of the Settlement Agreement, Plaintiffs, including each and every Settlement Class Member, for themselves, their heirs, successors, and assignees, hereby release all Releasees as defined in the Settlement Agreement from all claims arising out of the facts alleged in this Lawsuit, all

claims that were asserted or could have been asserted before the Panel, and all claims that were asserted or could have been asserted in this Lawsuit (the “Release of Claims”). The Release of Claims shall be effective as of the date of Final Approval. Pursuant to the Settlement Agreement, all Settlement Class Members are bound by the terms of the Settlement Agreement, including the Release of Claims. Pursuant to the Settlement Agreement, State Defendants owe no sums to Plaintiffs or Plaintiffs’ attorneys whatsoever other than the Class Settlement Amount. The Court hereby fully and finally releases and discharges the Releasees from the Released Claims. Plaintiffs, including each and every Settlement Class Member, are hereby permanently barred and enjoined from filing, commencing, instituting, continuing, pursuing, maintaining, prosecuting, intervening in, participating in, or enforcing any Released Claims (including, without limitation, in any individual, class or putative class, representative or other action or proceeding), directly or indirectly, in any judicial, administrative, arbitral or other forum, against the Releasees.

21. Final Accounting and Supplemental Payment Distribution.

The Trustee shall prepare a Final Accounting of the Settlement Fund and submit it to the Court upon the completion of the distribution of funds. At the conclusion of the Probate Plan and distribution, in the case where Settlement Class Members received a pro rata payment that is less than 100% of their Proportional Share of the Total Claims Amount, and the remaining undistributed QST funds, including any estimated but unexpended claims administration or probate administration costs, are sufficient to pay the claims administration costs thereof, the Claims Administrator will make supplemental payments as follows:

- a. Calculate all outstanding unpaid claims administration costs, if any; and
- b. After first deducting unpaid claims administration costs incurred up to and including the supplemental payment, calculate and distribute supplemental payments on a pro rata basis to all located Class Members and located Class Members’ estates, based on the value of their individual claims up to

100% of their Proportional Share of the Total Claims Amount.

If the remaining Settlement Funds are not sufficient to fund the claims administration costs necessary to distribute such supplemental payments, the remainder of the Settlement Funds will be used to pay outstanding Claims Administration costs and then any remainder shall be paid to the Department of Hawaiian Home Lands loan fund established by HHCA § 213(c) and used exclusively for the purposes enumerated in HHCA § 214(a).

22. Disposition of Residual Funds

Any remainder of the Class Settlement Amount that cannot be distributed after all authorized payments are made in accordance with the Settlement Agreement, the Second Amended Payment Distribution Plan, and applicable orders of the Court, shall be paid to the Department of Hawaiian Home Lands loan fund established by section 213(c) of the Hawaiian Homes Commission Act and used exclusively for the purposes enumerated in section 214(a) of the Hawaiian Homes Commission Act.

23. Retention of Jurisdiction

Without affecting the finality of the Final Judgment for purposes of appeal, the Court retains jurisdiction to consider all further applications arising out of or connected with the Settlement Agreement, including but not limited to requests for the transfer of additional funds for claims administration purposes from the Settlement Special Master and all other matters relating to the claims administration for the Settlement Class, including both living and deceased Class Members.

The Probate Court retains jurisdiction to oversee and implement the Probate Plan and Qualified Settlement Trust for payments relating to deceased Class Members' estates.

This Court retains jurisdiction in all other matters relating to the final disposition of settlement payments as provided for in the Second Amended Payment Distribution Plan including any and all disputes arising out of the claims by any other attorneys seeking attorneys' fees, costs, other expenses,

or awards resulting from or in any way related to or arising out of this lawsuit.

Pursuant to the terms of the Settlement Agreement, the Court's jurisdiction shall terminate upon final distribution of all settlement funds including payment of residual funds, if any, pursuant to ¶ VII.E. of the Settlement Agreement, or 60 days after the submission of the final report by the Trustee, whichever is later. Such termination of jurisdiction does not affect the enforceability of the Settlement Agreement.

24. By entering this Order, the Court is not making a determination as to the merits of the Plaintiffs' claims. Pursuant to the Settlement Agreement, the Settlement does not affect the present status or qualification of any Plaintiff Settlement Class Member on any waiting list maintained by the Department of Hawaiian Home Lands ("DHHL") or qualifications to receive a lease under the Hawaiian Homes Commission Act. Decisions or findings by the Claims Administrator, Class Counsel, the Settlement Special Master, the Probate Special Master, or the Court or Probate Court made for purposes of determining whether a Settlement Class Member is entitled to a settlement payment or the amount of said settlement payment is not binding on DHHL or the Hawaiian Homes Commission except for purposes of this Settlement.

25. Appeals

Should an appeal be filed by any Settlement Class Member or any person purporting to act on behalf of any Settlement Class Member after entry of Final Judgment following this order, Plaintiffs and State Defendants shall be permitted to take the deposition(s) of any appellants. Any Class Member filing an appeal must file an appellate bond pursuant to HRAP 7 in the amount of \$1,500,000.00, which represents the reasonably anticipated additional costs of claims and probate administration resulting from the delay of such an appeal and estimated reasonable attorneys' fees and costs likely to be incurred by Plaintiffs in opposing such an appeal.

26. Funding of the Kalima Class Action Settlement Trust

Consistent with the terms of the First Amended Joint Order Approving Probate Plan and Qualified Settlement Trust filed on or about June 23, 2023, the Chief Clerk, First Circuit Court, State of Hawai‘i, is hereby ordered to transfer, 31 days after Final Approval as that term is defined in the Settlement Agreement, all settlement funds in the Kalima Settlement Fund trust account to “Sylvius H. Von Saucken, General Manager - Mass Torts, EPIQ Class Action & Claims Solutions, Inc., Trustee of the Kalima Class Action Settlement Trust dated June 23, 2023.” (“Trustee”).

Consistent with the terms of the June 21, 2022, *Stipulation Regarding Settlement Claims Administration Costs and Order* [Dkt. 1500] and June 8, 2023 *Second Stipulation Regarding Settlement Claims and Administration Costs and Order* [Dkt. 1675], the Accountant for the Settlement Claims Administration Fund is hereby ordered to transfer, 31 days after Final Approval as that term is defined in the Settlement Agreement, all remaining funds in the Settlement Claims Administration Fund, to the Trustee.

The Trustee shall administer the settlement funds pursuant to the terms of the Trust, including the investment authority as set forth in Article 2-6.5 of the Trust, and as provided in the Hawai‘i Uniform Trust Code.

27. Settlement Class List

The Court has reviewed *in camera* and approves Exhibit 10 to the Second Amended Payment Distribution Plan, which is a list of 2,797 Class Members comprising the Settlement Class List.

28. Dismissal of All Claims With Prejudice and Entry of Final Judgment

This Order and its approval of the Settlement and Settlement Agreement resolve all claims and issues as to all parties to this Lawsuit. Accordingly, all claims of the Plaintiffs are hereby dismissed on the merits with prejudice.

The Settlement Agreement, this Order, and the Final Judgment to be entered upon approval of

this Order will be binding on, and have res judicata and preclusive effect in, all pending and future lawsuits or other proceedings encompassed by the Release of Claims and/or that are based, in whole or in part, on the claims released by the Release of Claims.

There is no just reason for delay in the entry of Final Judgment and immediate entry by the Clerk of the Court is hereby directed.

IT IS SO ORDERED:

/s/ Lisa W. Cataldo



By:

The Honorable Lisa W. Cataldo
State of Hawai'i, First Circuit Judge

DATED: August 1, 2023, 2023

APPROVED AS TO FORM:

BY: Craig Y. Iha
ANNE E. LOPEZ
Attorney General, State of Hawai'i

DATED: July 28, 2023

CRAIG Y. IHA
JORDAN A.K. CHING
Deputy Attorneys General

LINDA LEE K. FARM
DONNA H. KALAMA
Special Deputy Attorneys General

ATTORNEYS FOR STATE DEFENDANTS

Kalima, et al. vs. State of Hawai'i, et al., Civil No. 99-4771 LWC, **ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND MOTION FOR ATTORNEYS' FEES**

Accepted ____/____/____

AUG 31 2 21 PM '95

HCO 9 [REDACTED] 3/88

HAWAIIAN CLAIMS
OFFICE

OFFICE
REVISED

Name (First, middle, last): _____ Mr. _____ Mrs. _____ Miss _____ Ms.

Rickey T. Rivera, Jr.

Telephone numbers:

Home:

Work:

Other Nos.:

Social Security No.:

Birthdate:

Other names you have used:

See attached

Date _____

- ☐ I am an eligible beneficiary of the Hawaiian Home Lands trust.
 I am an: ☐ applicant. ☐ homesteader.
☐ I have not applied for a homestead lease.

- _____ pastoral _____ agricultural _____ residential

- Area: _____ Island: _____
- Area: _____ Island: _____

- ☐ Accelerated (raw land) award
☐ Home construction
☐ Infrastructure (roads, water, etc.)
☐ Lease document
☐ Loan application or agreement
☐ Lost application
☐ Position on the waiting list
☐ Successorship
☐ Qualifications as an applicant
☐ Other, please state: _____

EXHIBIT 7 TO DELCARATION OF CARL M. VARADY

August 29 1995

Dear Sir, and or Madam.

I am Responding due to the deadline on August 31. 1995.

my mother, [REDACTED], who is of 100% Hawaiian, explained to me that DHHL had misplaced or had lost her application years ago. So from that time she had gave up on that fight.

So, I myself Derrick T. Rivers Jr. had filed an application several years ago, and they had denied my right of application, not realizing, myself and my mother are both registered Hawaiians with the Hawaiian affairs office (O.H.A.) (operation Ohana.)

I, and my mother would like to file a claim.
Thank you very much.

Yours Truly..

(Son) Derrick T. Rivers Jr.
(Mother) [REDACTED].

HCO-216883

DEPARTMENT OF COMMERCE
AND CONSUMER AFFAIRS

DEPARTMENT OF COMMERCE
AND CONSUMER AFFAIRS

AUG 31 2 21 PM '95

HAWAIIAN CLAIMS
OFFICE

LOX BILVER
ON
EXCERPT
SECTION

HCO-216884

EXHIBIT 7 TO DELCARATION OF CARL M. VARADY

November 20, 1996

Memorandum:

To: Hearings Officer
Fr: Monica Morris *thm*
Re: Dismissal of HCO 95-3129, Rickey Rivera, Jr.

I recommend dismissal of the above claim, due to lack of jurisdiction. I spoke with the claimant on Nov. 19, 1996. Claimant agrees that his claim should be dismissed, and therefore does not object.

In particular:

1. Claimant's claim is based on DHHL not accepting his application due to questions surrounding his native Hawaiian qualification.

2. However, claimant first attempted to submit an application to DHHL in May of 1994. Prior to May of 1994, claimant had no contact with DHHL.

3. This claim is outside the Panel's time frame jurisdiction.

HCO-216873



DEPARTMENT OF COMMERCE
AND CONSUMER AFFAIRS

Nov 21 9 01 AM '96

HAWAIIAN CLAIMS

HAWAIIAN HOME LANDS TRUST INDIVIDUAL CLAIMS REVIEW PANEL
HAWAIIAN CLAIMS OFFICE
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

IN RE:) HCO [REDACTED]
)
RICKEY T. RIVERA, JR.) ORDER OF DISMISSAL
)

ORDER OF DISMISSAL

The Claimant, Rickey T. Rivera, Jr., filed his claim with the Hawaiian Claims Office ("HCO") on August 31, 1995. Thereafter, the claim was accepted for investigation. During the course of the investigation, the HCO investigator recommended dismissal of the claim for lack of jurisdiction. On November 19, 1996, the investigator informed the Claimant of her recommendation and the Claimant did not object to the dismissal.

THEREFORE, IT IS HEREBY ORDERED that, pursuant to Hawaii Revised Statutes Chapter 674, and Hawaii Administrative Rules §16-316-28(b), HCO 95-3129 is dismissed.

The parties shall have fifteen (15) days within which to file written objections to this Order.

DATED: Honolulu, Hawaii, November 21, 1996.

CATHERINE A. CHUN-HOON
Hearings Officer
Hawaiian Claims Office
Department of Commerce
and Consumer Affairs

HCO-216872

BENJAMIN J. CAYETANO
Governor



EARL I. ANZAI
ATTORNEY GENERAL

THOMAS R. KELLER
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
REGULATORY DIVISION
INDIVIDUAL CLAIMS UNIT
465 SOUTH KING STREET, SUITE B-2
HONOLULU, HAWAII 96813
(808) 586-8370
Fax (808) 587-2938

September 8, 1999

Rickey T. Rivera, Jr.
113 Mie Place
Wahiawa, Hawaii 96786

Dear Mr. Rivera:

RE: HCO 95-3129, Individual Claims Case

My office represents the Department of Hawaiian Home Lands in cases before the Hawaiian Home Lands Trust Individual Claims Review Panel ("Panel"). We have received your letter dated August 30, 1999, in which you presented to us the history of the claims review process, the preservation of your right to file an action under Chapter 674, Hawaii Revised Statutes (HRS), and an offer to settle your claim for \$45,000.00. Unfortunately, we cannot assist you in the resolution of your individual claims case.

On August 31, 1995, you filed a claim with the Hawaiian Claims Office. On November 21, 1996, the Hearings Officer for the Hawaiian Claims Office issued an Order of Dismissal which said that the Panel lacked jurisdiction over your claim. After that, you did not contest this Order of Dismissal within the 15 days required by the Panel's rules. We can find no sound reason to agree to your offer of settlement because you took no action to dispute the dismissal and because the Panel has dismissed your claim. Therefore, we cannot settle your claim for any amount.

The Hawaiian Claims Office has unfortunately ceased processing claims cases. However, the Hawaiian Claims Office remains responsible for certain actions concerning your claim including acceptance of written notice by an "aggrieved individual claimant" pursuant to section 674-17(b), HRS. Therefore, we are forwarding a copy of your letter to that office. May we suggest that you contact them directly for further information regarding your claim or the claims process at the following address:

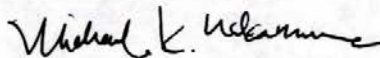
Hawaiian Claims Office
P.O. Box 541
Honolulu, Hawaii 96809

HCO-216847

Rickey T. Rivera, Jr.
September 8, 1999
Page 2

Again, because my office represents the Department of
Hawaiian Home Lands, I regret I cannot help you further.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Michael K. Nakamura". The signature is fluid and cursive, with a prominent initial "M".

Michael K. Nakamura
Deputy Attorney General

cc: Hawaiian Claims Office

HCO-216848

Kalima, et al. vs. State of Hawaii et al.
I wish to opt-out of the Waiting List
Damages model.

for:



Wishes: Please for Civil #. 99-4771-12 VLE
they: I do not want to be a member of
the Waiting List Damages Subclass, therefore

Kalima vs. State Civil #. 99-4771-12 VLE
Clerk of Court
Circuit Court of the First Circuit
Kaoihonu Hale
777 Punchbowl Street
Honolulu, Hawaii 96813

A. MARPLE
CLERK

2012 JUN 25 PM 2:41

1ST CIRCUIT COURT
STATE OF HAWAII
FILED

Therefore, please no phone calls.

Aloha!

Smile

June 27, 12

Maka!



HONOLULU HI 968

27 JAN 2012 PM 1



Kalima vs. State, Civil # 99-4771-12 VLC

Clerk of the Court

Circuit Court of the First Circuit

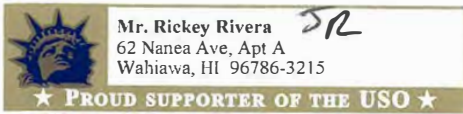
Kaahumanu Hale

777 Punchbowl Street
Honolulu Hawaii 96813

96813-9688



WMK



Sunday June 24, 12

Re: Kalima V. State, Civil NO. 99-4771-12 VLL

Margaret L. Rivera

Dear Clerk of the Court:

I Apologize for the Confusion; Just
Recently I forwarded A letter To opt. out.,
for Margaret Rivera.

Can you please Disregard That Letter.
To opt. out., We Decided To remain
opt. IN.

I Apologize for Inconvinices, I may
have unintentionally caused.

Mekelo!

Rickey I. Rivera

A. MARPLE
CLERK

2012 JUN 26 PM 1:42

1ST CIRCUIT COURT
STATE OF HAWAII
FILED

Mr. Rickey Rivera
Apt. A
62A Nanea Ave.
Wahiawa, HI 96786



HONOLULU HI 968

25 JUN 2012 4:41 PM



Kalima V. State, CIVIL #. 99-4771-12 VLC
Clerk of the Court
Circuit Court of the First Circuit
Kaahumanu Hale
177 Punchbowl Street
Honolulu, Hawaii 96813

Re: OPT. IN.



NOTICE OF CLASS ACTION SETTLEMENT

**YOU ARE RECEIVING THIS NOTICE BECAUSE YOU MAY BE ENTITLED TO A SETTLEMENT
PAYMENT AS A CLASS MEMBER IN
KALIMA v. STATE OF HAWAII, DEPARTMENT OF HAWAIIAN HOMELANDS, et al.
Civil No. 99-4771-12-LWC**

This is an official communication of the First Circuit Court and is not a solicitation. You do not have to pay money or take any other action to join this lawsuit.

On June 6, 2022, First Circuit Court Judge Lisa W. Cataldo preliminarily approved a settlement of this case. The class members for this Settlement are

“All persons who filed claims with the Hawaiian Home Lands Trust Individual Claims Review Panel on or before August 31, 1995.”

The following persons will not be entitled to a settlement payment:

- 1) Individuals who did not file a claim with the Panel on or before August 31, 1995.
- 2) Individuals who filed a timely claim with the Panel, but the claim did not assert an individual breach of trust that occurred between August 21, 1959, and June 30, 1988.
- 3) Individuals who filed a timely claim with the Panel, but the claim asserted an individual breach of trust that occurred after June 30, 1988.
- 4) Individuals who filed a timely claim with the Panel, but the claim was not a valid HRS Chapter 674 claim.
- 5) Individuals who filed a timely claim with the Panel but settled their claim.
- 6) Individuals who opted out of the Lawsuit in response to the 2007 class notice.
- 7) Individuals who opted out of the Lawsuit in response to the 2012 class notice.
- 8) Individuals who opt out of the Settlement Class and this Settlement by sending a valid and timely Opt-Out Letter to the Claims Administrator.

If you are a Settlement Class Member, you do not have to take any action at this time for your claim to be considered. However, please provide current contact information by the methods described below.

If you are a relative of a deceased Settlement Class Member, please designate a person to receive information for your family by the methods described below.

You may update your contact information in any of the following four ways:

- Call 808-650-5551 or 833-639-1308; or
- Update your information through the website at <https://www.kalima-lawsuit.com>; or
- Complete and mail back the enclosed Information Request Form; or
- Attend a community meeting to be held in your area or virtually online. Check Important Dates on the website for the meeting schedule, <https://www.kalima-lawsuit.com>.

What does the Settlement provide?

The State of Hawai'i has agreed to create a \$328 million Settlement Fund for the Settlement Class Members. If the Settlement is approved by the Court, Settlement Class Members who have valid claims may be eligible to receive a payment paid out of the Settlement Fund, after payment is made for special master and claims administration costs, attorneys' fees, and a Class Representative Incentive Award. The amount of the settlement payment will be based on an established Court-approved distribution plan. The payment amount cannot be determined at this time, but each Settlement Class Member will be notified at a later date of the following: (1) whether their claim is valid; and, if so, (2) the estimated amount to be paid to that Settlement Class Member under the Settlement.

Please turn this page over to see your legal rights and options.

Your Legal Rights and Options in this Settlement

Right to Payment for Class Members	<p>If you are a Settlement Class Member, you do not have to take any action at this time to receive a settlement payment. The validity of your claim will be determined at a later date. However, please confirm and update your mailing address, telephone number(s), and email address by using the https://www.kalima-lawsuit.com contact information update page OR by mailing the information to the following address:</p> <p>Kalima Claims Administrator P.O. Box 135035 Honolulu, HI 96801</p>
Right to Payment for Deceased Class Members	<p>If you are a relative of a deceased Class Member, please designate someone to represent your family. Please provide your name, mailing address, telephone number(s), and email address by using the https://www.kalima-lawsuit.com contact information update page OR by mailing the information to the following address:</p> <p>Kalima Claims Administrator P.O. Box 135035 Honolulu, HI 96801</p>
If You Wish to Exclude Yourself from Participating in the Settlement	<p>You may exclude yourself from participating in this Settlement. If you do so, you will not receive a payment from the Settlement Fund. You will retain any claims you may have against the State of Hawai'i and the Released Parties (as that term is defined in the Settlement Agreement) and are free to pursue whatever legal right you may have at your own risk and your own expense.</p> <p>To exclude yourself from the Settlement, you must mail a signed letter to the Claims Administrator at Kalima Settlement, P.O. Box 135035, Honolulu, Hawai'i 96801, <i>postmarked by December 15, 2022</i>. The exclusion letter must state that you exclude yourself from this Settlement and must include the name and case number of this litigation as well as your full name, address, telephone number, a statement that you wish to be excluded, and your signature.</p> <p>If you wish to exclude the claims of a deceased class member, you must obtain probate court approval appointing you as the personal representative of the estate.</p> <p>If you intend to file a separate lawsuit, limitations periods may bar your claim if it is not timely filed. Any separate lawsuit should be filed before April 14, 2023, to ensure it falls within the potential statutory limitations period. Please consult with a lawyer about filing your claim.</p>
If You Wish to Object	<p>You may file an objection if you wish to object to the Settlement. The deadline to object to the Settlement is March 15, 2023.</p>

Inā makemake 'oe i kēia 'ōlelo hō'ike ma ka 'ōlelo Hawai'i, e kelepona mai, 808-650-5551 ai'ole 833-639-1308.

Please do not call the Judge, the Clerk of the Court, or the State of Hawai'i about this case. They will not be able to give you advice about this case. If you have questions, please call 808-650-5551 OR 833-639-1308 .

NOTICE: The attorneys and other people working on this case will never ask you for your banking or other financial information. You may be asked to verify your identity.

**THIS IS AN OFFICIAL NOTIFICATION OF THE FIRST CIRCUIT COURT –
PLEASE DO NOT CONTACT THE COURT.**

Kalima Claims Administrator
P.O Box 135035
Honolulu, HI 96801



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RICKEY T RIVERA JR



Tracking Number:



January 31, 2023

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Kalima v. State of Hawai'i Settlement
P.O. Box 135035, Honolulu, HI 96801
Telephone: 808-650-5551 OR 833-639-1308
Email: info@kalima-lawsuit.com

NOTICE OF NO ENTITLEMENT TO PAYMENT FROM CLASS ACTION SETTLEMENT
***Kalima v. State of Hawai'i*, CIVIL NO. 99-4771-12 LWC**

**YOU ARE RECEIVING THIS LETTER TO NOTIFY YOU THAT YOU ARE NOT ENTITLED TO A
PAYMENT FROM THE KALIMA v. STATE OF HAWAI'I CLASS ACTION SETTLEMENT FOR THE
FOLLOWING REASON:**

- _____ You did not file a claim with the Panel on or before August 31, 1995.
- _____ You filed a timely claim with the Panel but the claim did not assert an individual breach of trust which occurred between August 21, 1959, and June 30, 1988.
- X You filed a timely claim with the Panel but the claim asserted an individual breach of trust that occurred after June 30, 1988.
- _____ You filed a timely claim with the Panel but the claim was not a valid HRS Chapter 674 claim.

You have a right to object to the determination that you are not entitled to a payment by submitting your objection in writing with any supporting documentation **postmarked by April 3, 2023**, to:

Claims Administrator
Kalima v. State of Hawai'i Settlement
PO Box 135035
Honolulu, HI 96801

Please provide copies of any documents or other evidence that you believe should be considered in support of your position.

If you wish to opt out of this settlement, please follow the instructions on the reverse side of this notice.

Please do not call the Judge, the Clerk of the Court, or the State of Hawai'i about this notice. They will not be able to give you advice about this case. If you have questions, please call (808) 650-5551 OR 1-833-639-1308 or email info@kalima-lawsuit.com.

Your Legal Right to Opt Out of This Settlement

If You Wish to Exclude Yourself from Participating in the Settlement	<p>You may exclude yourself from participating in this Settlement. If you do so, you will not receive a payment from the Settlement Fund. The deadline to request exclusion from the Settlement is April 3, 2023.</p> <p>To exclude yourself from the Settlement, please follow the instructions below.</p>
---	--

You may exclude yourself from participating in the Settlement. If you do so, you will not receive any compensation from the Settlement Fund. You will retain any claims you may have against the State of Hawai'i and the Released Parties (as that term is defined in the Settlement Agreement) and are free to pursue whatever legal rights you may have at your own risk and your own expense.

To exclude yourself from the Settlement, you must mail a signed letter to the Claims Administrator at P.O. Box 135035, Honolulu, Hawai'i 96801, postmarked by **April 3, 2023**. The exclusion letter must state that you exclude yourself from this Settlement and must include the name and case number of this litigation (*Kalima et al. v. State of Hawai'i et al.*, Civil No. 99-4771-12 LWC), as well as your full name, address, telephone number, a statement that you wish to be excluded, and your signature. So-called "mass" or "class" exclusion requests are not permitted.

If you wish to exclude the claims of a deceased class member, you must obtain probate court approval appointing you as the personal representative of the estate.



If you intend to file a separate lawsuit, limitations periods may bar your claim if it is not timely filed. **Any separate lawsuit should be filed before July 21, 2023**, to ensure it falls within the potential statutory limitations period. Please consult with a lawyer about filing your claim.

Your Legal Right to Intervene in This Case

If You Wish to Intervene in This Case	If you wish to intervene in this case, you may hire an attorney at your own expense to do so. You no longer will be represented by Class Counsel and you will have to consult with your retained attorney to obtain further information about the intervention process.
---------------------------------------	---

Please do not call the Judge, the Clerk of the Court, or the State of Hawai'i about this notice. They will not be able to give you advice about this case. If you have questions, please call 1-808-650-5551 OR 1-833-639-1308 or email info@kalima-lawsuit.com.

EXHIBIT “15” [FILED UNDER SEAL]

EXHIBIT “16” [FILED UNDER SEAL]

EXHIBIT “17” [FILED UNDER SEAL]

Kalima Claims Administrator
P.O. Box 135035
Honolulu, HI 96801

June 20, 2023

Tracking Number: 560



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000 0000837 00000000 0001 0004 00210 INS: 0 0

RICKEY T RIVERA
2161 CALIFORNIA AVENUE
WAHIAWA HI 96786

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NOTICE TO CLASS MEMBERS IN THE *KALIMA v. STATE OF HAWAI'I* CLASS ACTION WHO DO NOT QUALIFY FOR A SETTLEMENT PAYMENT

You have previously been provided with notice of the Settlement in *Kalima v. State of Hawai'i* and were informed that you did not qualify to receive a settlement payment in this case. This Notice contains important information about your rights as a "no payment" Class Member.

The purpose of this notice is to inform you of

- the date and time of the Final Approval Hearing,
- how you can support or object to the Settlement in this case,
- how to get your documents relating to this case, and
- the deadline to file your own lawsuit against the State of Hawai'i if you previously opted out or excluded yourself from the lawsuit or this Settlement.

When will the Final Approval Hearing be held?

The Court has scheduled the Final Approval Hearing (also called the Fairness Hearing) for **July 21, 2023, at 9:00 a.m.** A copy of the Motion for Final Approval and Motion for Attorneys' Fees are available at kalima-lawsuit.com/important-documents.

How do I support or object to the settlement?

1. To tell the Court you support the Settlement, please fill in the enclosed "Declaration in Support of Settlement" and return it to the Kalima Claims Administrator by mail, addressed to P.O. Box 135035, Honolulu, HI 96801, or email it to info@kalima-lawsuit.com. You may also download a copy of the Declaration in Support of Settlement on the website here: kalima-lawsuit.com/important-documents. Please mail or email the Declaration to the Claims Administrator by **July 14, 2023**.

2. You also may appear and ask to be heard in support of the Settlement at the **July 21, 2023, 9:00 a.m. Final Approval Hearing**. Please notify the Claims Administrator by **July 14, 2023**, by mail to P.O. Box 135035, Honolulu, HI 96801, or email to info@kalima-lawsuit.com if you wish to do so. Class Members will be heard in the order in which they sign up. Please focus your statements on whether you think the Settlement is fair, reasonable, and adequate.

3. If you wish to object to the Settlement, you must file your objection in writing, addressed to *Kalima v. State*, Civ. No. 99-4771-12 LWC, Clerk of the First Circuit Court, Ka'ahumanu Hale, 777 Punchbowl Street, Honolulu, HI 96813-5093. The objection must be received by the Court no later than **July 14, 2023**. At the same time, you must also send a copy of your objection to the attorneys for all Parties to the lawsuit, including Class Counsel and the attorneys representing the Defendant, at their addresses found below.

Court	Class Counsel	Defense Counsel
<i>Kalima v. State</i> , Civ. No. 99-4771-12 LWC Clerk of the First Circuit Court Ka'ahumanu Hale 777 Punchbowl Street Honolulu, HI 96813-5093	Carl M. Varady Pauahi Tower, Suite 1730 1003 Bishop Street Honolulu, HI 96813 Thomas R. Grande 41-859 Kalaniana'ole Highway, #271 Waimānalo, HI 96795	Anne E. Lopez Attorney General, State of Hawai'i 425 Queen Steet Honolulu, HI 96813



Any objection to the proposed Settlement must be filed in writing and must include

1. the objector's full name, address, email address, and current telephone number;
2. the case name and number of the litigation (*Kalima et al. v State of Hawai'i et al.*, Civil No. 99-4771-12 LWC);
3. all grounds for the objection, with factual and legal support for the stated objection, including any supporting materials, whether the objector intends to appear at the Final Approval Hearing, and the names and addresses of any witnesses the objector intends to call at the hearing;
4. the identification of any other objections the objector has filed, or has had filed on the objector's behalf, in any other class action cases in the last four years; and
5. the objector's signature.

If you file written objections, you may appear at the Final Approval Hearing, which is scheduled to be held on **July 21, 2023**, at 9:00 a.m. (or other date set by the Court), in person or through counsel to show cause as to why the proposed Settlement should not be approved as fair, reasonable, and adequate. Attendance at the hearing is not necessary. However, persons wishing to object to the final approval of the Settlement, the request for attorneys' fees and Claims Administration costs, and/or the request for an Incentive Award to the Class Representatives are required to file written objections that comply with the requirements described above and must be **received** by the Court on or before **July 14, 2023**.

If you hire an attorney in connection with making an objection, that attorney must also file with the Court a notice of appearance by the objection deadline of **July 14, 2023**. If you hire your own attorney, you will be solely responsible for payment of any fees and costs the attorney incurs on your behalf. If you opted out of (excluded yourself from) the Settlement, you cannot file an objection.

Do I need to attend the Final Approval Hearing?

You do *not* need to attend the Final Approval Hearing. Class Counsel will appear at the Final Approval Hearing to represent the Class Members. If you do want to attend the hearing in person, by Zoom, or telephone, please visit the settlement website at kalima-lawsuit.com or contact the Kalima Claims Administrator for more information by email at info@kalima-lawsuit.com or by telephone at 808-650-5551 or 833-639-1308.

How do I receive a copy of my documents?

The State of Hawai'i Department of Hawaiian Home Lands has your original documents. If you want copies of your original documents, please call the State of Hawai'i Department of Hawaiian Home Lands at 808-620-9500.

Plaintiffs' Counsel may have copies of some documents relating to your claim if they were provided by the State of Hawai'i. Those documents may include (1) your Department of Hawaiian Home Lands application and/or lease file and (2) documents from the Hawaiian Home Lands Trust Individual Claims Review Panel.

Documents provided by the State of Hawai'i to Plaintiffs' Counsel may not be complete and may not contain all of the documents in your file(s). To make sure you receive all of your original documents, please contact the State of Hawai'i Department of Hawaiian Home Lands at 808-620-9500.

All copies of documents in Plaintiffs' Counsel's possession will be returned to the State of Hawai'i at the conclusion of this case.

If you want copies of documents provided by the State of Hawai'i to Plaintiffs' Counsel, please notify the Claims Administrator in writing by **September 1, 2023**.

Your request will be forwarded to the State of Hawai'i Department of Hawaiian Home Lands, which will remove any confidential information relating to persons who are not Plaintiffs in this case. After the State's review and removal of any confidential information relating to persons who are not Plaintiffs in this case, your redacted documents will be sent to you by the Claims Administrator. That process may take many months. Please contact the Department of Hawaiian Home Lands if you need copies of your original documents right away and to make sure you have all of the documents from your file(s).

If you do not request copies of your documents by **September 1, 2023**, Plaintiffs' Counsel will return them to the State of Hawai'i. The State of Hawai'i Department of Hawaiian Home Lands has the original documents.

The Court's February 26, 2014, Amended Order Granting Plaintiffs' Motion for Release of Confidential Information filed on March 7, 2023, states the following:

Any material State Defendants produce in accordance with this Order to any person who withdraws, is dismissed, or opts out of this action shall be offered to the person by Plaintiffs' Counsel upon dismissal, withdrawal or opt-out, provided that, if the material is an applicant or lessee file produced by State Defendants, Plaintiffs' counsel shall return such material to the State Defendants for removal of confidential information concerning non-Plaintiffs prior to Plaintiffs' Counsel providing material to the person; if the person does not want the material, Plaintiffs' counsel, at Plaintiffs' Counsel's option return the material to the State Defendants and certify to State Defendants that it was offered, refused or has been destroyed.

A copy of the Confidential Information Order is available at kalima-lawsuit.com/important-documents.

I previously opted out (excluded myself) from the lawsuit or this Settlement. How do I file my own lawsuit against the State of Hawai'i?

If you have previously opted out (excluded yourself) from the lawsuit or this Settlement and you intend to file a separate lawsuit, limitations periods may bar your claim if it is not timely filed. Any separate lawsuit should be filed before July 21, 2023, to ensure it falls within the potential statutory limitations period. Please consult with a lawyer about filing your claim.

Please do not call the Judge, the Clerk of the Court, or the State of Hawai'i about this notice. They will not be able to give you advice about this case. If you have questions, please contact the Claims Administrator at 808-650-5551 or 833-639-1308 or via email at info@kalima-lawsuit.com.



DECLARATION IN SUPPORT OF SETTLEMENT
IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

LEONA KALIMA, DIANE BONER, AND RAYNETTE
 NALANI AH CHONG, ET AL.,

Plaintiffs,

vs.

STATE OF HAWAII, STATE OF HAWAII DEPARTMENT
 OF HAWAIIAN HOME LANDS, ET AL.,

Defendants.

CIVIL NO. 99-4771-12 LWC

(Class Action)

DECLARATION OF

[WRITE OR TYPE YOUR NAME HERE]

declares:

[WRITE OR TYPE YOUR NAME HERE]

1. I am one of the Settlement Class Members in this case. I am above the age of 18 years old and make this declaration of my own personal knowledge.

2. I understand that a settlement has been reached in this case in which the State of Hawaii has agreed to pay \$328 million to settle all the claims that were brought in this case, including mine.

3. I have been informed of the Settlement and how my claim(s) were calculated and how they will be paid through notices I have received, communications with Class Counsel, Court filings by Class Counsel, the Settlement Special Master, and the Claims Administrator, and in reviewing documents and information at kalima-lawsuit.com.

4. I support the Settlement and think it is fair, reasonable, and adequate. [Although it is optional, you may make a statement in your own words of why you support the Settlement in the following space or attach or submit a separate sheet.]

5. I respectfully ask the Court to approve the Settlement at the Final Approval Hearing on July 21, 2023, so that payment can be distributed to me and the other Settlement Class Members by the Claims Administrator.

I declare that the foregoing is true.

DATED: _____, _____, 2023
 [FILL IN CITY AND STATE WHERE YOU LIVE] [DATE]

[Sign your name]

[Print your name]

You can submit this form and any additional pages for consideration by the Court. Please mail it using the enclosed return envelope.



Electronically Filed
FIRST CIRCUIT
1CC990004771
23-JUN-2023
02:12 PM
Dkt. 1726 OBJ

STATE OF HAWAII
IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

OTHER DOCUMENT

(CASE TYPE/CASE NUMBER IDENTIFIED IN ELECTRONIC FILE MARK)

I do hereby certify that the foregoing is a full, true and correct copy of the official court record of the Courts of the State of Hawai'i.
Dated at: Honolulu, Hawai'i 27-JUN-2023, /s/ Lori Ann Okita, Clerk of the First Judicial Circuit, State of Hawai'i



Objection to the individual
calculated Settlement Amount and The
Proposed 328 million Settlement
Amount is Severely too Low, must
be Adjusted, Re-Adjusted.

NIA
1726

Civil No. 99-4771-LWC (class Action)
Kalima vs. State of Hawaii

FIRST CIRCUIT COURT
STATE OF HAWAII
FILED
2023 JUN 23 PM 2:12
N. ANAYA
CLERK

Rickey T. Rivera Jr.,
Margaret L. Rivera Declaration of Objection.

A. We are Settlement Class members in this Case, and
make this declaration of my own free Act and will.

B. We understand that this Settlement in this
Case, 328 million is too Low, and must be
Re-Adjusted to include Emotional Distress, Loss
of economic opportunity and other hardships..
such as Negligence, malpractice, and Special
Damages.

C. We have been informed of the fair rental
market value formula, to only have Re-imburse
for past Rent. Does not provide Adequate,
and Appropriate Compensatory recovery relief
payments which should be made Available to
the Class members Both Living and Deceased.

RECEIVED
LDB (NIA)

JUN 23 2023

and have been in Court Sessions for over 20 years.

D. We Declare our objection to this Settlement, remains unfair, unreasonable and inadequate, To receive only Re-embursement of rental payments. Does not provide the Necessary Resources the Class members must have. Compensatory recovery relief Payments to include, special damages, Negligence, malpractice mismanagement including emotional distress, and Loss of economic opportunity as a result of Poor Accounting. Poor maintenance of Buildings of which A Huge Fire destroyed thousands of documents, And losses to thousands of Applications, And to include a healthy Compensation Award in order for the Class members to move on. Comfortably. in harmony.

E. We Respectfully ask the Court, to ReAdJust the Settlement Amount to include general and special damages; And to Return the entire package back to the Special master and Claims Administrator to work on Again.

So that the individual Settlement amount
can be Re-Advised, to have only reimbursement
of rental payments is really causing a
diservice to the class members as a result
of the Low Calculated Individual amounts.
Due to the return of rental payments. Only
and to include special and general damages
and a Re-development of Compensatory recovery
rental payments that will enable the class
members to be comfortable and move on.
so that payment can be re-determined and
distributed to me and other class members

Are Asking this Court not to Approve
the Final Hearing on July 21, 2023, As a
result of deficiencies, deficiencies to individual
Calculated Settlement amounts. I declare that
the foregoing is True. June 21, 2023.

2161 California Avenue, Watiana, Texas 76786
(800) 852-2787, ricarivera72@gmail.com

River. River 2
Ricard T. Rivera J.
for Margaret L. Rivera



400570790000116317

**DECLARATION IN SUPPORT OF SETTLEMENT
IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII**

LEONA KALIMA, DIANE BONER, AND RAYNETTE
NALANI AH CHONG, ET AL.,

Plaintiffs,

vs.

STATE OF HAWAII, STATE OF HAWAII DEPARTMENT
OF HAWAIIAN HOME LANDS, ET AL.,

Defendants.

CIVIL NO. 99-4771-12 LWC

(Class Action)

DECLARATION OF

[WRITE OR TYPE YOUR NAME HERE]

declares:

[WRITE OR TYPE YOUR NAME HERE]

1. I am one of the Settlement Class Members in this case. I am above the age of 18 years old and make this declaration of my own personal knowledge.

2. I understand that a settlement has been reached in this case in which the State of Hawaii has agreed to pay \$328 million to settle all the claims that were brought in this case, including mine.

3. I have been informed of the Settlement and how my claim(s) were calculated and how they will be paid through notices I have received, communications with Class Counsel, Court filings by Class Counsel, the Settlement Special Master, and the Claims Administrator, and in reviewing documents and information at kalima-lawsuit.com.

4. I support the Settlement and think it is fair, reasonable, and adequate. [Although it is optional, you may make a statement in your own words of why you support the Settlement in the following space or attach or submit a separate sheet.]

5. I respectfully ask the Court to approve the Settlement at the Final Approval Hearing on July 21, 2023, so that payment can be distributed to me and the other Settlement Class Members by the Claims Administrator.

I declare that the foregoing is true.

DATED: _____, 2023
[FILL IN CITY AND STATE WHERE YOU LIVE] [DATE]

[Sign your name]

[Print your name]

You can submit this form and any additional pages for consideration by the Court. Please mail it using the enclosed return envelope.



Civ No. 99-4771 - 12

Kalime vs. state
Clerk of the First Circuit Court

Kee Run the
777 Punches street
96813

Electronically Filed
FIRST CIRCUIT
1CC990004771
05-JUL-2023
09:04 AM
Dkt. 1737 DEC

STATE OF HAWAII
IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

DECLARATION/AFFIDAVIT

(CASE TYPE/CASE NUMBER IDENTIFIED IN ELECTRONIC FILE MARK)

I do hereby certify that the foregoing is a full, true and correct copy of the official court record of the Courts of the State of Hawai'i.
Dated at: Honolulu, Hawai'i 07-JUL-2023, /s/ Lori Ann Okita, Clerk of the First Judicial Circuit, State of Hawai'i



Kalena vs. State of Hawaii Civ # 99-4771-12
(LWC)

PTV
1737

Ricky C. Rivera Jr

Margaret L. Rivera

2161 California Avenue

Wahiawa, Hawaii 96786

(808) 852-2787

rickyrivera72@gmail.com

FILED COURT CLERK

2023 JUL -5 AM 9:04

[Signature]

P. NAKAMOTO

Declaration to Cancel and Withdraw the
Original Objection on File.

1.) The Original Grounds for the objection was
based solely on the Refund of Rental Payments
without negligence, General and Special Damages and
without mismanagement and emotional distress -
Compensation will not be included... I am Amazed,
in shock Ave.

2.) Originally I had Justly Believed the request
for Attorneys Fees, Claims Administration, and the
Special Award for the Class reps, were indeed. Very
monumental Compared to our estimated Amount, as to
the Settlement being fair, or reasonable, is beyond my
Ability to Comprehend the merit of the Settlement,
And As a result. Due to elements beyond my Control
Hereby make this Declaration to Cancel and Withdraw
The Original objection on File. Without Prejudice,
Respectively.

Ricky T. Rivera Jr.

Margaret L. Rivera

2:30 am

Sunday June 25, 2023



Jr

HONOLULU HI 967

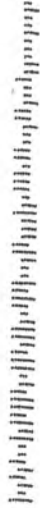
30 JUN 2023 PM 5 L



Kalene Vs. State Civ # 99-4771-12
LWC Clerk of the First Circuit Court
Kaaheuan Hale
777 Punchbowl Street
Honolulu, Hawaii 96813-5093

We Support U.S. Postal Service & U.S. Postal Service A

96813-5093



Kahuna t/ale

96813-5093

Civ # 99-4771-12

LWC

Kalene vs. State



Electronically Filed
FIRST CIRCUIT
1CC990004771
14-JUL-2023
04:14 PM
Dkt. 1776 LT

I do hereby certify that the foregoing is a full, true and correct copy of the official court record of the Courts of the State of Hawai'i.
Dated at: Honolulu, Hawai'i 14-JUL-2023, /s/ Lori Ann Okita, Clerk of the First Judicial Circuit, State of Hawai'i



DECLARATION IN SUPPORT OF SETTLEMENT
IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

LEONA KALIMA, DIANE BONER, AND RAYNETTE
NALANI AH CHONG, ET AL.,

Plaintiffs,

vs.

STATE OF HAWAII, STATE OF HAWAII DEPARTMENT
OF HAWAIIAN HOME LANDS, ET AL.,

Defendants.

CIVIL NO. 99-4771-12 LWC

(Class Action)

DECLARATION OF

Mr. Rickey T. Rivera Jr

[WRITE OR TYPE YOUR NAME HERE]

Mr. Rickey T. Rivera Jr declares:
[WRITE OR TYPE YOUR NAME HERE]

1. I am one of the Settlement Class Members in this case. I am above the age of 18 years old and make this declaration of my own personal knowledge.

2. I understand that a settlement has been reached in this case in which the State of Hawaii has agreed to pay \$328 million to settle all the claims that were brought in this case, including mine.

3. I have been informed of the Settlement and how my claim(s) were calculated and how they will be paid through notices I have received, communications with Class Counsel, Court filings by Class Counsel, the Settlement Special Master, and the Claims Administrator, and in reviewing documents and information at kalima-lawsuit.com.

4. I support the Settlement and think it is fair, reasonable, and adequate. [Although it is optional, you may make a statement in your own words of why you support the Settlement in the following space or attach or submit a separate sheet.]

EN 5. I disagree with the Notice that I do not qualify for payment
EN 6. Letter dated 2-11-2002 Confirms my first Attempt to Apply June 15, 1988
EN 7. right to receive damages, date of First Application June 15, 1988
EN 8. Claim Form showing my mom And Dicking Filing for Same.
EN 9. Proof I do qualify for A Settlement Payment
EN 10. Attempted Start date June 15, 1988 End date July 21, 2023
EN 11. Claims Administrator made A mistake. Please process.

5. I respectfully ask the Court to approve the Settlement at the Final Approval Hearing on July 21, 2023, so that payment can be distributed to me and the other Settlement Class Members by the Claims Administrator.

I declare that the foregoing is true.

DATED: Wahiawa, Hawaii, June 27, 2023
[FILL IN CITY AND STATE WHERE YOU LIVE] [DATE]

Mr. Rickey T. Rivera Jr

[Sign your name]

Mr. Rickey T. Rivera Jr

[Print your name]

You can submit this form and any additional pages for consideration by the Court. Please mail it using the enclosed return envelope.

Dear Judge, I know I have A Valid Claim.
there is the proof, I provided Copies
for All other Parties. Thank You!

BENJAMIN J. CAYETANO
GOVERNOR



EARL I. ANZAI
ATTORNEY GENERAL
THOMAS R. KELLER
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
PUBLIC SAFETY, HAWAIIAN HOME LANDS AND HOUSING DIVISION
465 SOUTH KING STREET, ROOM B-2
HONOLULU, HAWAII 96813-2913
(808) 587-2978
Fax: (808) 587-2938

February 11, 2002

Mr. Ricky T. Rivera, Jr.
113 Mie Place
Wahiawa, Hawai'i 96786

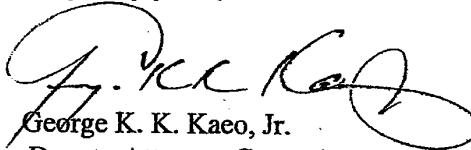
Dear Mr. Rivera:

In your letter dated February 2, 2002, you indicate that you have a number of complaints, most of which are currently being addressed in some manner. The Department of Hawaiian Home Lands is the appropriate forum to raise issues concerning your current status as an applicant. Clearly, your application was received by the Department of Hawaiian Home Lands May 13, 1994, as evidenced by the copy you attached to your letter. As to your 1988 application claim filed with the Hawaiian Claims Office on August 31, 1995, you need to confer with your counsel.

The Department of the Attorney General represents state agencies and state employees. We do not and cannot provide legal services to members of the public. Accordingly, I am unable to provide you with any assistance.

Thank you, however, for informing me of your situation.

Very truly yours,


George K. K. Kao, Jr.
Deputy Attorney General

GKKK:gm

BENJAMIN J. CAYETANO
Governor

KATHRYN S. MATAYOSHI
Director

BENJAMIN I. FUKUMOTO
Deputy Director



HAWAIIAN CLAIMS OFFICE
DEPARTMENT OF COMMERCE & CONSUMER AFFAIRS
STATE OF HAWAII

PETER LIHOLIHO TRASK
Chairperson

ALEXANDER A. S. AKUNA
MONSIGNOR CHARLES A. KEKUMAN

MARIE A. McDONALD
WARREN C. R. PERRY
Panel Members

Hawaiian Home Lands Trust
Individual Claims Review Panel

MELODY K. MACKENZIE
Executive Director

November 9, 1995

Rickey T. Rivera, Jr.
48 Haumalu Place
Wahiawa, HI 96786

IN RE: HCO 95-3129; NOTICE OF ACCEPTANCE OF CLAIM

Dear Mr. Rivera:

Your claim has been accepted for review by the Hawaiian Home Lands Trust Individual Claims Review Panel.

The next step in reviewing your claim is an investigation. The investigation of your claim begins as of the date of this notice. We have requested that your file with the Department of Hawaiian Home Lands (DHHL) be made available for our review. After we have reviewed your DHHL file, an investigator with our office will contact you to go over and supplement the information you provided in your claim form. It is very important that we be able to contact you in investigating your claim, so if you move or change your phone number, please notify our office.

In accordance with our rules, a copy of your claim form is being served upon DHHL and they will be responding within twenty days. They will send a copy of their response to you as well as file a copy with the Panel. In many instances, DHHL will file a "general denial" of your claim. No matter what response you receive from DHHL, our office will continue to investigate your claim. Your claim will not be dismissed as a result of DHHL's response.

Should you have any questions, please call our toll free number 1-800-481-0800 (neighbor islands) or 586-2826 (Oahu). Mahalo.

Hawaiian Claims Office

clmltr 9/6/95

August 29 1995

Dear Sir, and or Madam.

I am Responding due to the deadline on August 31. 1995.

my mother, Margaret Leinale Kaeka, who is of 100% Hawaiian, explained to me that OHHL had misplaced or had lost her application years ago. So from that time she had gave up on that first

So, I myself Ricky T. Rivars Jr. had file an application several years ago, and they had denied my right of application, not realizing, myself and my mother are both Registered Hawaiians with the Hawaiian Affairs Office (O.H.A.) Operation Chama.

I, and my mother would like to file a claim.
Thank you Very Much.

Yours Truly..

(Son) Ricky T. Rivars Jr. —
(Mother) Margaret L. Kaeka (Rivars).

48 Hauunala place 622-1795
Wahiana O'ahu Hanani 96786 (Registered Hawaiians)

Office use only:

Accepted / /

DEPARTMENT OF COMMERCE
AND CONSUMER AFFAIRS

Office use only:

HCO 95-3129
HCO 95-3130

AUG 31 2 21 PM '95

HAWAIIAN CLAIMS
OFFICE
HAWAIIAN HOME LANDS TRUST INDIVIDUAL CLAIMS REVIEW PANEL
Hawaiian Claims Office

CLAIM FORM

Name (First, middle, last): Mr. Mrs. Miss Ms.
Rickey T. Rivera, Jr. Margaret L. Kaeka (Rivera)

Current Address:

48 Haumalu Place

Wahiawa, HI 96786

Telephone numbers:

Home: 622-1795

Work:

Other Nos.:

Social Security No.:

Birthdate:

Other names you have used:

The statements contained in this claim form are true to the best of my knowledge.

See attached

Signature

Date

1. Status (check as many as necessary):

 I am an eligible beneficiary of the Hawaiian Home Lands trust.

I am an: applicant. homesteader.

 I have not applied for a homestead lease.

2. Type of homestead lease (check as many as necessary):

 pastoral agricultural residential

3. Location of homestead leases involved in this claim, please give areas and islands:

Area: Island:

Area: Island:

4. This claim involves the following (check as many as necessary):

 Accelerated (raw land) award

 Home construction

 Infrastructure (roads, water, etc.)

 Lease document

 Loan application or agreement

☒ Lost application

 Position on the waiting list

 Successorship

 Qualifications as an applicant

 Other, please state:

II. SUMMARY OF CLAIMS PROCESS

The Hawai'i Supreme Court ruled that the class has been properly certified and affirmed the process by which each person on the Waiting List Subclass list will go through the claims administration process, where the Special Master will determine whether that individual does or does not have a viable claim. *Kalima v. State*, 148 Hawai'i 129, 151, 468 P.3d 143, 165 (2020)(*Kalima II*).

The Special Master's general duties, approved by the Hawai'i Supreme Court in *Kalima II*, are to:

supervise the Claims Administration Process and have authority to appoint a Claims Administrator to perform the ministerial work of processing all Waiting List Damages Subclass members' damages claims. The Special Master shall resolve any disputed legal or factual issues, which then may be appealed to the Court.

Exhibit 2: July 26, 2017 Order Granting Plaintiffs' Motion to Establish Claims Administration Process to Resolve All Claims, filed November 9, 2016 ROA 226:423 ("Claims Administration Order") at 2.

In the ministerial post-judgment claims process, the Special Master decides (1) the right to receive damages and (2) the amount of damages that will be awarded to all claimants who filed claims with the Hawaiian Claims Office (Waiting List Subclass).

Monetary damages are measured by the type of homestead application – residential, agricultural, or pastoral – and the length of delay in receiving an award based on the Fair Market Rental Value (FMRV) of a comparable developed lot on the open market for the individual damage period. Trustee's experts have calculated damages for the three types of homesteads, but those calculations are not current and must be updated to compute accurate damages through final judgment in this case ("FMRV Charts")

III. RIGHT TO RECEIVE DAMAGES AND MEASUREMENT OF DAMAGES

A. Right to Receive Damages

In order to receive damages, Waiting List Subclass members must prove three facts:

- (1) date of application on or before June 30, 1988,
- (2) 18 years old at time of application, and
- (3) Native Hawaiian Qualification (50% or more Native Hawaiian ancestry).

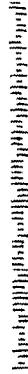
Mr. Riekey Rivera
2161 California Ave
Wahiawa, HI 96786-2743

12

HONOLULU HI 967
1 JUL 2023 PM 5

The Honorable Judge Jesse W. Catelbo
Kolani vs. State, Civ No. 99-4771-12
Class to the First Circuit Court
Kachuan Jale
777 Punchbowl Street
Honolulu, Hawaii 96813

96813-500199



Electronically Filed
FIRST CIRCUIT
1CC990004771
14-JUL-2023
04:20 PM
Dkt. 1778 LT

EXHIBIT 22 TO DELCARATION OF CARL M. VARADY

**DECLARATION IN SUPPORT OF SETTLEMENT
IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII**

LEONA KALIMA, DIANE BONER, AND RAYNETTE
NALANI AH CHONG, ET AL.,

Plaintiffs,

vs.

STATE OF HAWAII, STATE OF HAWAII DEPARTMENT
OF HAWAIIAN HOME LANDS, ET AL.,

Defendants.

CIVIL NO. 99-4771-12 LWC

(Class Action)

DECLARATION OF

[WRITE OR TYPE YOUR NAME HERE]

declares:

[WRITE OR TYPE YOUR NAME HERE]

1. I am one of the Settlement Class Members in this case. I am above the age of 18 years old and make this declaration of my own personal knowledge.

2. I understand that a settlement has been reached in this case in which the State of Hawaii has agreed to pay \$328 million to settle all the claims that were brought in this case, including mine.

3. I have been informed of the Settlement and how my claim(s) were calculated and how they will be paid through notices I have received, communications with Class Counsel, Court filings by Class Counsel, the Settlement Special Master, and the Claims Administrator, and in reviewing documents and information at kalima-lawsuit.com.

4. I support the Settlement and think it is fair, reasonable, and adequate. [Although it is optional, you may make a statement in your own words of why you support the Settlement in the following space or attach or submit a separate sheet.]

5. I respectfully ask the Court to approve the Settlement at the Final Approval Hearing on July 21, 2023, so that payment can be distributed to me and the other Settlement Class Members by the Claims Administrator.

I declare that the foregoing is true.

DATED: _____, 2023
[FILL IN CITY AND STATE WHERE YOU LIVE] [DATE]

[Sign your name]

[Print your name]

You can submit this form and any additional pages for consideration by the Court. Please mail it using the enclosed return envelope.



Kalima Claims Administrator
P.O. Box 135035
Honolulu, HI 96801

June 20, 2023

Tracking Number: 560



400570790000132397
000 0000845 00000000 0001 0004 00212 INS: 0 0

RICKEY T RIVERA
2161 CALIFORNIA AVE
WAHIAWA HI 96786-2743

Dear Honorable Judge Jusi W. Catdalo - Aloha!
The remaining Core issues are unresolved Disputed
Claims still exists and the Trustee refuses and disagrees
to the Stating and end dates, regarding my Claims
Also there remains clear and convincing evidence
that the Claims Administrator and Special Master
made Numerous Mistakes in this discovery. I must
petition this Honorable Court to Review, make
the Necessary findings And Respectfully
Ask this Honorable Court to make Recommendation
in the Best Interest of the Claimant. The
Duties of the Claims Administrator are 3 fold
1.) Notice And Communication 2.) Acceptance and provision
of claim forms 3.) Calculation And Distribution
in this matter of the Case file; the Administrator

- Continues request to accept the Original (Correction)
and processing of my claim forms has ceased
- 1.) Original filed with DHHL on June 15, 1988
 - 2.) the February letter of 2/11/2002 As I inquire about the status of my Application.
 - 3.) the deputy Attorney General at that time could not discuss the results of my June 15, 1988 Application
 - 4.) I clearly stated that DHHL received my my Application on May 13, 1994
 - 5.) me and my mother files our lost Application claims with the Hawaiian Claims office on August 31, 1995
 - 6.) The Hawaiian Claims office closes.
 - 7.) our claims packets in the Kaline Class Action
 - 8.) I Acquire with DHHL regarding the status of my Application, DHHL could not comment on the June 15, 1988 Application. Could not comment on the May 13, 2004 1994 Application, But Confirmed A 2005 Application.

9.) Between myself And mon fees our Claims
together At the Hara Claims office. under Last
Amplison, it is a Travesty of Justice to Approve
use And Deny the other. I wish to
plain the Waiver of 5,000.000 introduced
By class Counsel

10.) You Asking this General Court to Approve
my Claims status, And the Settlement is unfair
And unreasonable to Counsel. I will Submit
request permission to plain Waiver &
forward to plain the Waiver of 500,000

Respectfully I believe the Claims Administrator
And Special Master Counsel Negligence to me
by denying my Claims with intent.

This Concludes - my defense position
and the Negligent intention of the Claims
Administrator And Special Master in Continued
denying.

Paul. P. P
R. P.

June 30, 2023 11:45 PM

June 6, 2023 available July 13

החברה מודעת למגוון המגזרי ולחשיבות ההתאמה למגוון זה.

NOTICE TO CLASS MEMBERS IN THE *KALIMA v. STATE OF HAWAII* CLASS ACTION WHO DO NOT QUALIFY FOR A SETTLEMENT PAYMENT

You have previously been provided with notice of the Settlement in *Kalima v. State of Hawai'i* and were informed that you did not qualify to receive a settlement payment in this case. This Notice contains important information about your rights as a "no payment" Class Member.

The purpose of this notice is to inform you of

- the date and time of the Final Approval Hearing,
- how you can support or object to the Settlement in this case,
- how to get your documents relating to this case, and
- the deadline to file your own lawsuit against the State of Hawai'i if you previously opted out or excluded yourself from the lawsuit or this Settlement.

When will the Final Approval Hearing be held?

The Court has scheduled the Final Approval Hearing (also called the Fairness Hearing) for July 21, 2023, at 9:00 a.m. A copy of the Motion for Final Approval and Motion for Attorneys' Fees are available at kalima-lawsuit.com/important-documents.

How do I support or object to the settlement?

1. To tell the Court you support the Settlement, please fill in the enclosed "Declaration in Support of Settlement" and return it to the Kalima Claims Administrator by mail, addressed to P.O. Box 135035, Honolulu, HI 96801, or email it to info@kalima-lawsuit.com. You may also download a copy of the Declaration in Support of Settlement on the website here: kalima-lawsuit.com/important-documents. Please mail or email the Declaration to the Claims Administrator by **July 14, 2023**.

2. You also may appear and ask to be heard in support of the Settlement at the July 21, 2023, 9:00 a.m. Final Approval Hearing. Please notify the Claims Administrator by July 14, 2023, by mail to P.O. Box 135035, Honolulu, HI 96801, or email to info@kalima-lawsuit.com if you wish to do so. Class Members will be heard in the order in which they sign up. Please focus your statements on whether you think the Settlement is fair, reasonable, and adequate.

3. If you wish to object to the Settlement, you must file your objection in writing, addressed to *Kalima v. State*, Civ. No. 99-4771-12 LWC, Clerk of the First Circuit Court, Ka'ahumanu Hale, 777 Punchbowl Street, Honolulu, HI 96813-5093. The objection must be received by the Court no later than **July 14, 2023**. At the same time, you must also send a copy of your objection to the attorneys for all Parties to the lawsuit, including Class Counsel and the attorneys representing the Defendant, at their addresses found below.

Court	Class Counsel	Defense Counsel
<i>Kalima v. State</i> , Civ. No. 99-4771-12 LWC Clerk of the First Circuit Court Ka'ahumanu Hale 777 Punchbowl Street Honolulu, HI 96813-5093	Carl M. Varady Pauahi Tower, Suite 1730 1003 Bishop Street Honolulu, HI 96813 Thomas R. Grande 41-859 Kalaniana'ole Highway, #271 Waimānalo, HI 96795	Anne E. Lopez Attorney General, State of Hawai'i 425 Queen Street Honolulu, HI 96813

BENJAMIN J. CAYETANO
GOVERNOR



EARL I. ANZAI
ATTORNEY GENERAL
THOMAS R. KELLER
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
PUBLIC SAFETY, HAWAIIAN HOME LANDS AND HOUSING DIVISION
465 SOUTH KING STREET, ROOM B-2
HONOLULU, HAWAII 96813-2913
(808) 587-2978
Fax: (808) 587-2938

February 11, 2002

Mr. Ricky T. Rivera, Jr.
113 Mie Place
Wahiawa, Hawaii 96786

Dear Mr. Rivera:

In your letter dated February 2, 2002, you indicate that you have a number of complaints, most of which are currently being addressed in some manner. The Department of Hawaiian Home Lands is the appropriate forum to raise issues concerning your current status as an applicant. Clearly, your application was received by the Department of Hawaiian Home Lands May 13, 1994, as evidenced by the copy you attached to your letter. As to your 1988 application claim filed with the Hawaiian Claims Office on August 31, 1995, you need to confer with your counsel.

The Department of the Attorney General represents state agencies and state employees. We do not and cannot provide legal services to members of the public. Accordingly, I am unable to provide you with any assistance.

Thank you, however, for informing me of your situation.

Very truly yours,

A handwritten signature in dark ink, appearing to read "G. K. K. Kao".
George K. K. Kao, Jr.
Deputy Attorney General

GKKK:gm

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS
APPLICATION FOR LEASE OF HAWAIIAN HOME
HOMESTEAD LOT

NAME OF APPLICANT Rickey T. Piloni Jr.

PLACE OF RESIDENCE 369 Wai Drive
Honolulu, Hawaii 96

DATE 9/21/1994

IF HOMESTEAD LEASE APPLIED FOR ☒ YES
(see only)

APPLIED FOR ☒ Hawaii
(see only)

LANDS

DATE 9/21/1994

PLACE OF BIRTH Honolulu, Hawaii

DATE OF BIRTH 9/21/1994

CONFIDENTIAL

Dec 13

① Lost Application Questionnaire
Rickey T. Piloni Jr

Accepted / /

DEPARTMENT OF COMMERCE
AND CONSUMER AFFAIRS

AUG 31 2 21 PM '95

HAWAIIAN CLAIMS

REVIEWS

HAWAIIAN HOME LANDS TRUST INDIVIDUAL CLAIMS REVIEW PANEL
Hawaiian Claims Office

CLAIM FORM

Name (First, middle, last): _____ Mr. _____ Mrs. _____ Miss _____ Ms. _____
 _____ Margaret L. Kaeka (Rivera) - HCO 95-3130

Current Address: _____ Telephone numbers: _____
 48 Haumalu Place _____ Home: 622-1795
 Wahiawa, HI 96786 _____ Work: _____
 _____ Other Nos.: _____

Social Security No.: _____ Birthdate: _____

Other names you have used: _____

The statements contained in this claim form are true to the best of my knowledge.

See attached

Signature

Date _____

1. Status (check as many as necessary):
☐ I am an eligible beneficiary of the Hawaiian Home Lands trust.
 I am an: ☐ applicant ☐ homesteader.
☐ I have not applied for a homestead lease.

2. Type of homestead lease (check as many as necessary):
☐ pastoral ☐ agricultural ☐ residential

3. Location of homestead leases involved in this claim, please give areas and islands:

Area: _____ Island: _____
Area: _____ Island: _____

4. This claim involves the following (check as many as necessary):

- ☐ Accelerated (raw land) award
- ☐ Home construction
- ☐ Infrastructure (roads, water, etc.)
- ☐ Lease document
- ☐ Loan application or agreement

✓ Lost application
 Position on the waiting list
 Successorship
 Qualifications as an applicant
 Other, please state: _____

COPY

LEONA B. BAKER
CHIEF OF BUREAU
HAWAIIAN HOME LANDS



STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

P.O. BOX 1479

HONOLULU, HAWAII 96811

MAR 16 2005

MICHAEL A. BAKER
CHIEF OF BUREAU
HAWAIIAN HOME LANDS
HONOLULU, HAWAII
96811
KARLANN B. PARK
DEPUTY CHIEF OF BUREAU

RICKEY THOMAS RIVERA JR
1060 KILANI AVE #1-802
WAIHANA, HI 96786

Dear Applicant:

SUBJECT: Applications for Hawaiian Home Lands
Homestead Lease

Your applications for Hawaiian Home Lands homestead leases have been accepted by the Department of Hawaiian Home Lands. Your name has been placed on the following waiting lists:

Island	Type of Lease	App Date
OAHU	AGRICULTURAL	January 27, 2005
OAHU	RESIDENTIAL	January 27, 2005

Enclosed for your files are copies of the accepted applications and a copy of the Title 10 Excerpts from the Administrative Rules. Please read and retain.

It is very important that you inform the Department in writing any time there is a change in your mailing address because all official contacts with applicants are by mail.

If you have any questions or need assistance, please contact the district office on your island of residence.

Thank you for your kokua.

APPLICATIONS BRANCH
DEPARTMENT OF HAWAIIAN HOME LANDS

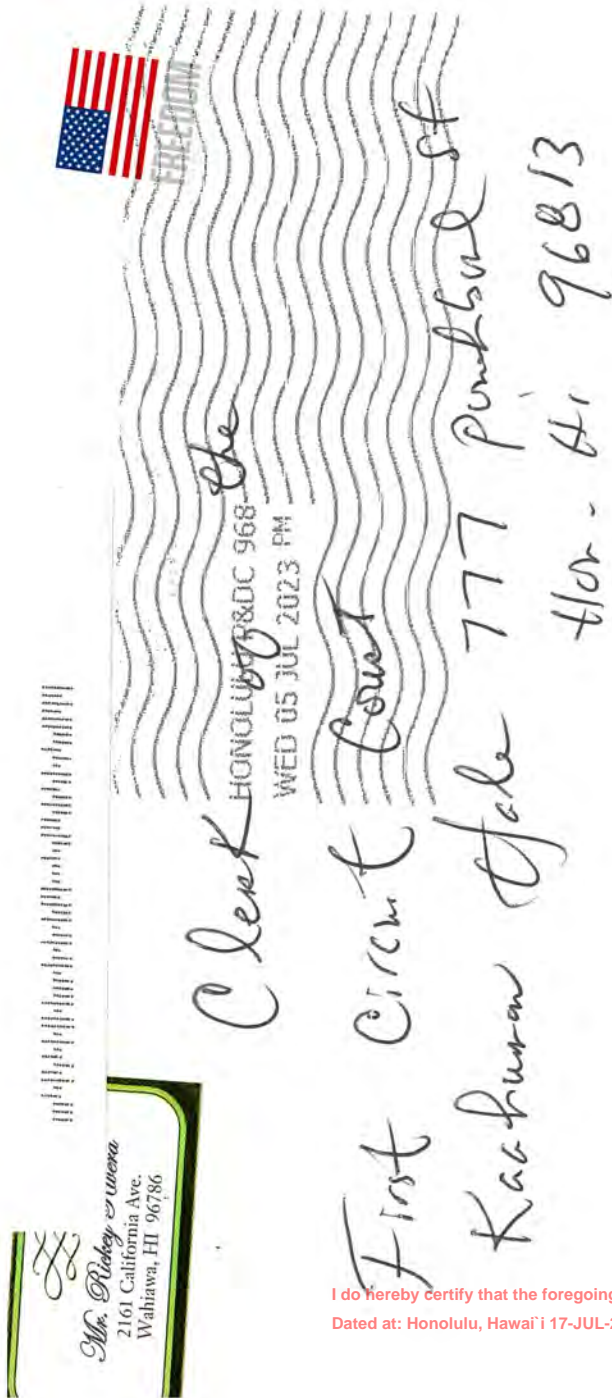
Enclosures: Copies of accepted applications
Copy of Title 10 Excerpts from

The request for Approval & Attorney fees
incentive Awards and Claims Administration
Costs should be Re-Adjusted, Respectfully

Since Class Counsel proposed a Value
of 500,000. I propose paying a Claim
for the 500,000 and Approving my Claim.
Then I would be happy and approve
the fees being requested. for 40
million and 75,000 for the Reps
and 1,256,547 for Claims Administration
should be Re-Adjusted.

Res. P

July 01, 2023



I do hereby certify that the foregoing is a full, true and correct copy of the official court record of the Courts of the State of Hawai'i.
Dated at: Honolulu, Hawai'i 17-JUL-2023, /s/ Lori Ann Okita, Clerk of the First Judicial Circuit, State of Hawai'i



Electronically Filed
FIRST CIRCUIT
1CC990004771
14-JUL-2023
04:23 PM
Dkt. 1780 LT

Notice of Appearance
and Special Request
To be heard

20 minutes
July 03, 2023

The issues to be presented are:

- 1.) Undisputed claims still exist.
- 2.) I disagree with the Assumption of the Claims Administrator, and Special Master, made to mistake or a series of errors associated with my claims.
- 3.) To Approve my moms claims, and at the same time, deny my claims looks too suspicious.
- 4.) Both of us had existing Lost trip liability claims in which both of us filed with the Hawaiian Claims Office before the deadline, on the same form.

5.) I am respectfully asking this Honorable Court to Review my Records should confirm my eligibility in this Settlement and respectfully ask this Honorable Court, to order the Claims Administrator to process my claims.

Notice of Appearance

July 03, 2023

Reverend Honorable Judge Lisa W. Catledge,
Kaliine et al.

vs.

State of Hawaii et al.)


Civil # 99-4771-12

Aloha!

I am respectfully requesting an appearance to appear and to file a special request to be heard and to confirm my eligibility to participate in the Kaliine Settlement and to verify that the Claims Administrator and Special Master were incorrect and made errors in Rivera's Ricker Jr Claims which is identical in description in relation to Jimmons claims, in their "No quality" for Settlement" but allows mother's claim to proceed. I am respectfully asking this Honorable Court to force and demand the Claims Administrator and Special Master to process my ~~claim~~ ^{claims}. I wish to file a claim of \$50,000 in Waiver of Attorney's fees, support, and claim filed.

this concludes my Request and
special request.

Thank you: Michael! and Alot!

Ricard T. Rivera Jr. 

Margaret L. Rivera

2161 California Ave

Watson, Calif 96786

QUE 852-2787

July 03, 2023

Attn: Honorable Judge: Lisa W. Cataldo

GRANDE LAW OFFICES
THOMAS R. GRANDE 3954-0
41-859 Kalanianaʻole Highway, #271
Waimānalo, Hawaiʻi 96795
Telephone: (808) 271-7500
E-mail: tgrande@grandelawoffices.com

LAW OFFICE OF CARL M. VARADY
CARL M. VARADY 4873-0
Pauahi Tower, Suite 1730
1003 Bishop Street
Honolulu, Hawaiʻi 96813
Telephone: (808) 523-8447
E-mail: carl@varadylaw.com

CLASS COUNSEL

Electronically Filed
FIRST CIRCUIT
1CC990004771
01-AUG-2023
09:31 AM
Dkt. 1846 FJ

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

LEONA KALIMA, DIANE BONER,
RAYNETTE NALANI AH CHONG,
special administrator of the estate of JOSEPH
CHING, deceased, CAROLINE BRIGHT,
DONNA KUEHU, and JAMES
AKIONA, et al.,

Plaintiffs,

vs.

STATE OF HAWAII, STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME
LANDS; et al.,

Defendants.

CIVIL NO. 99-4771-12 LWC
(Class Action)

FINAL JUDGMENT

POST-TRIAL PROCEEDINGS JUDGE:
HON. LISA W. CATALDO

SETTLEMENT JUDGE:
HON. GARY W.B. CHANG

FINAL JUDGMENT

Pursuant to Rules 54(a) and 58 of the Hawaiʻi Rules of Civil Procedure and the Order Granting Final Approval of Class Action Settlement and Motion for Attorneys' Fees filed herein on July 28, 2023 [Dkt. 1838] (the "Final Approval Order"), Final Judgment is hereby entered as set forth in the Settlement Agreement and the Final Approval Order.

All claims against Defendants State of Hawaiʻi, State of Hawaiʻi Department of Hawaiian Home Lands, State of Hawaiʻi Hawaiian Home Lands Trust Individual Claims Review

Panel, and Josh Green, M.D., in his official capacity as Governor of the State of Hawai‘i¹ (collectively, “State Defendants”), brought in this matter are hereby dismissed on the merits with prejudice, and without attorneys’ fees or costs except for those attorneys’ fees awarded to Class Counsel pursuant to the terms of the Final Approval Order.

This Final Judgment resolves all claims and issues as to all parties to this action. Any and all remaining claims and issues, if any, are dismissed with prejudice. There is no just reason for delay and this Final Judgment shall be final and appealable as of the date it is filed.

DATED: Honolulu, Hawai‘i, August 1, 2023.

/s/ Lisa W. Cataldo



JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:

BY: /s/ Craig Y. Iha
ANNE E. LOPEZ
Attorney General, State of Hawai‘i

DATED: July 28, 2023.

CRAIG Y. IHA
JORDAN A.K. CHING
Deputy Attorneys General

LINDA LEE K. FARM
DONNA H. KALAMA
Special Deputy Attorneys General

ATTORNEYS FOR STATE DEFENDANTS

¹ Pursuant to Hawai‘i Rules of Civil Procedure 25(d)(1), Governor Green has been automatically substituted as a party herein upon taking office.

Electronically Filed
FIRST CIRCUIT
1CC990004771
17-AUG-2023
11:27 AM
Dkt. 1856 OT

STATE OF HAWAII
IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

LETTER

(CASE TYPE/CASE NUMBER IDENTIFIED IN ELECTRONIC FILE MARK)

I do hereby certify that the foregoing is a full, true and correct copy of the official court record of the Courts of the State of Hawai'i.
Dated at: Honolulu, Hawai'i 22-AUG-2023, /s/ Lori Ann Okita, Clerk of the First Judicial Circuit, State of Hawai'i



08/14/2023

Kalima V. State
CIV NO. 99-4771-12

NIA
1856

I wish to file an Appeal
before the Deadline of August 31, 2023

Ricany T. Rivera Jr.
2161 California Avenue
Wahiawa, Hawaii 96786 (808) 295-8609
Jr ricanyrivera@gmail.com

The Appeal is limited to the
issue of Special Master and Claim
Administrator failing to process my
Claim in a timely fashion.

Ricany T. Rivera Jr.

RECEIVED
LDB (NIA) AUG 17 2023

2023 AUG 17 AM 11:25
N. ANAYA
CLERK
FIRST CIRCUIT COURT
STATE OF HAWAII
FILED

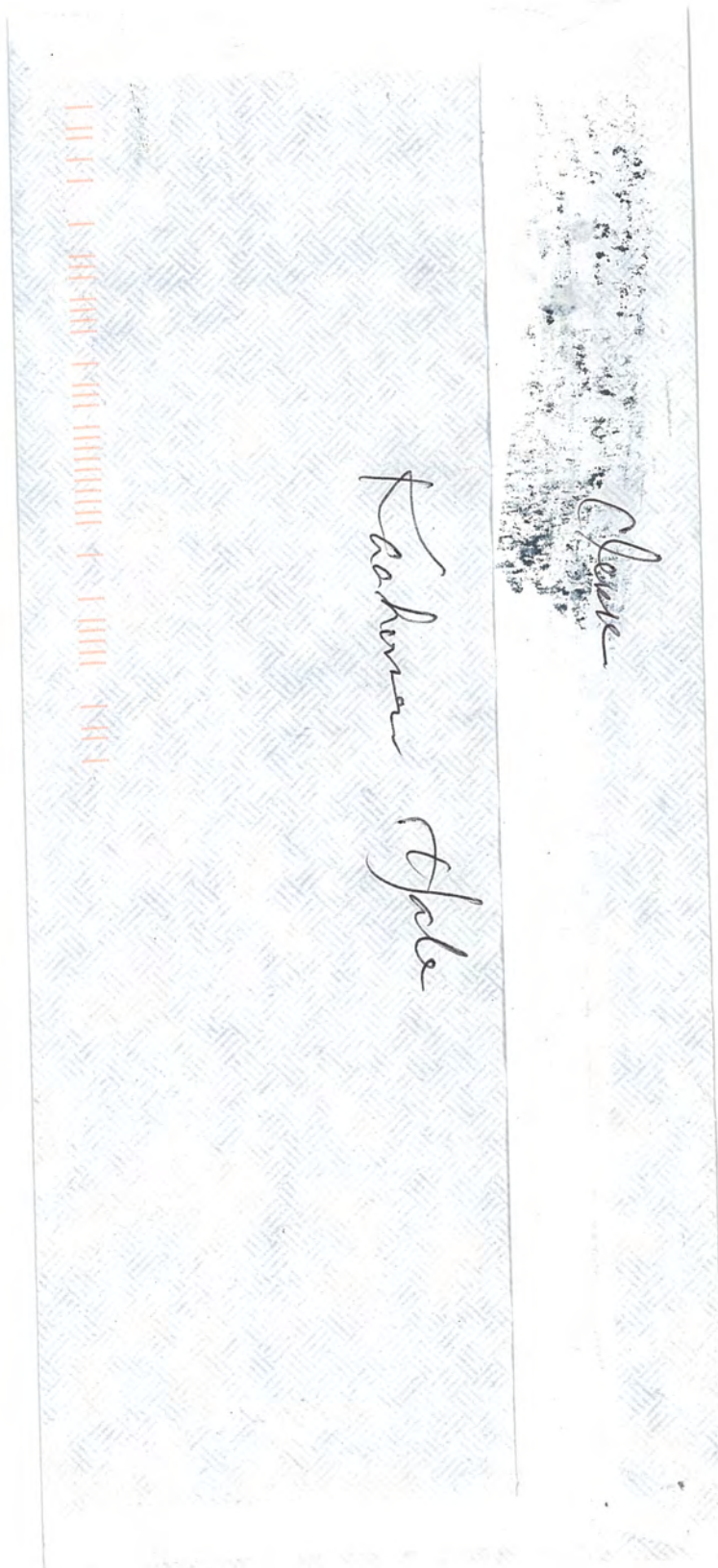
Roger T. Riera Jr.
2161 California Ave
Wahiawa HI 96706







HONOLULU HI 967

14 AUG 2023 PM 1 L



LWC
Katime V. State Civ No. 99-4771-12
Clerk of the First Circuit
Kachuan Hale
777 Punchbowl Street
Honolulu HI 96813



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		C002	
RICKEY T RIVERA, JR. 2161 CALIFORNIA AVE WAHIAWA HI 96786-2743			
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Trans. #: 595617514 Print Date: 10/06/2023 Ship Date: 10/06/2023 Expected Delivery Date: 10/10/2023	Priority Mail® Postage: \$10.40 Total: \$10.40
From: CARL M VARADY ATTORNEY AT LAW STE 1730 1003 BISHOP ST HONOLULU HI 96813-6454	
To: RICKEY T RIVERA, JR. 2161 CALIFORNIA AVE WAHIAWA HI 96786-2743	
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LAW OFFICE OF CARL M. VARADY
CARL M. VARADY 4873-0
Pauahi Tower, Suite 1730
1003 Bishop Street
Honolulu, Hawai'i 96813
Telephone: (808) 523-8447
E-mail: carl@varadylaw.com

Electronically Filed
FIRST CIRCUIT
1CC990004771
25-SEP-2023
11:44 AM
Dkt. 1885 ORDG

GRANDE LAW OFFICES
THOMAS R. GRANDE 3954-0
41-859 Kalaniana'ole Highway, #271
Waimānalo, Hawai'i 96795
Telephone: (808) 271-7500
Email: tgrande@grandelawoffices.com

****Note revision**

CLASS COUNSEL

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

LEONA KALIMA, DIANE BONER,
RAYNETTE NALANI AH CHONG,
special administrator of the estate of JOSEPH
CHING, deceased, CAROLINE BRIGHT,
DONNA KUEHU, and JAMES
AKIONA, et al.,

Plaintiffs,

vs.

STATE OF HAWAI'I, STATE OF HAWAI'I
DEPARTMENT OF HAWAIIAN HOME
LANDS; et al.,

Defendants.

CIVIL NO. 99-4771-12 LWC
(Class Action)

ORDER GRANTING CLASS COUNSELS'
MOTION TO WITHDRAW AS COUNSEL
FOR CLASS MEMBER RICKEY T.
RIVERA, JR.

POST-TRIAL PROCEEDINGS JUDGE:
HON. LISA W. CATALDO

SETTLEMENT JUDGE:
HON. GARY W.B. CHANG

Hearing Date: September 20, 2023
Hearing Time: 10:30 a.m.
Judge: Hon. Lisa W. Cataldo

**ORDER GRANTING CLASS COUNSELS' MOTION TO WITHDRAW AS COUNSEL
FOR CLASS MEMBER RICKEY T. RIVERA, JR.**

Class Counsels' Motion to Withdraw as Counsel for Class Member Rickey T. Rivera, Jr.,

[Dkt. 1858] filed on August 30, 2023 (the "Motion to Withdraw") was heard by the Honorable

I do hereby certify that the foregoing is a full, true and correct copy of the official court record of the Courts of the State of Hawai'i.
Dated at: Honolulu, Hawai'i 16-OCT-2023, /s/ Lori Ann Okita, Clerk of the First Judicial Circuit, State of Hawai'i



Lisa W. Cataldo on September 20, 2023, at 10:30 a.m. Carl M. Varady appeared for Class Counsel-movants. Deputy Attorney General Craig Y. Iha, and Linda Lee K. Farm and Donna H. Kalama, Special Deputy Attorneys General, appeared for Defendants.

Mr. Rivera was served by Class Counsel by U.S. Mail with notice of the hearing and e-mail. Mr. Rivera was not present at the time, date, and, place of the hearing. Three calls were made in person for Rickey T. Rivera, Jr., at the courthouse and the Court attempted to reach him by calling the telephone number listed by Mr. Rivera in his letter to the Court of August 17, 2023 [Dkt. 1856] at the time, date, and place of the hearing. Mr. Rivera did not respond to either the three calls in person or the call to his telephone number.

WHEREAS, Mr. Rivera has stated he wishes to appeal and "[t]he appeal is limited to the issue of Special Master and Claims Administrator failing to process my claims in a timely fashion." [Dkt. 1856];

WHEREAS, Mr. Rivera has demanded payment of \$500,000.00 and made accusations and demands that are inconsistent with the interests of the Class Members;

WHEREAS, Class Counsel have conferred with Office of Disciplinary Counsel and have been advised to consider Hawai'i Rules of Professional Conduct 1.4 and 1.16 in evaluating their continued representation of Mr. Rivera and, specifically: (1) that Mr. Rivera is not a client; and (2) that Mr. Rivera's interests are adverse to those of the Class Members;

NOW THEREFORE, the Court having been fully advised in the premises, and good cause having been found therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. Class Counsels' Motion to Withdraw is hereby GRANTED.
2. Class Counsel, the Settlement Special Master, Probate Special Master, Probate Special Counsel and Claims Administrator are not required to communicate further with Rickey

T. Rivera, Jr.

****Note revision.**

APPROVED AND SO ORDERED:

By: /s/ Lisa W. Cataldo
The Honorable Lisa W. Cataldo
State of Hawai'i, First Circuit Court Judge



DATED: September 25, 2023

APPROVED AS TO FORM:

BY: /s/ Craig Y. Iha
CRAIG Y. IHA
JORDAN A.K. CHING
Deputy Attorneys General

DATED: September 22, 2023 .

LINDA LEE K. FARM
DONNA H. KALAMA
Special Deputy Attorneys General

ATTORNEYS FOR STATE DEFENDANTS

***Kalima, et al. vs. State of Hawai'i, et al.*, Civil No. 99-4771 LWC, ORDER GRANTING
CLASS COUNSELS' MOTION TO WITHDRAW AS COUNSEL FOR CLASS MEMBER
RICKEY T. RIVERA, JR.**

**STATE OF HAWAII
CIRCUIT COURT OF THE
FIRST CIRCUIT**

September 29, 2023

From:
Ricard T. Rivera
2161 California
Honolulu, HI 96706

CASE NUMBER
CIVIL NO. 1CC990004771

**FILING PARTY/ATTORNEY NAME
& NO., ADDRESS, PHONE, EMAIL**

Electronically Filed
FIRST CIRCUIT
DKT 1856
1CC990004771

CASE NAME
LEONA KALIMA, et al.,
Plaintiff,

JUDGE LISA W. CATALDO
9TH DIVISION
1111 ALAKEA STREET
HONOLULU, HAWAII 96813

03-OCT-2023
10:03 AM
Dkt. 1891 LT

vs.
STATE OF HAWAII, ET AL.,
Defendants.

Classmember Ricard T. Rivera Jr., memorandum in support of DKT 1856, should be granted, and Class Counsel motion to withdraw as Class Counsel on August 30, 2023, be denied outright. "Since there is clear and convincing evidence that Class Counsel, and Special Master had attempted to block and complicate Classmembers Ricard Rivera efforts to file an Appeal before the August 31, 2023 Deadline." and the Special Master and Claims Administrator failing to process my Claims based upon my first attempt to Apply

June 15, 1988, as evidenced by the February 11, 2002 letter that the June 15, 1988 Claim Application filed with the Hawaiian Claims Office on August 31, 1995, was labeled a Lost Application Claim, my Second Application filed on May 13, 1994 was accepted by DHHL, and was later lost by DHHL, and filed another Application on January 27, 2005, based on these historical facts, falls within the Breach of Trust period from August 21, 1959 thru June 30, 1988. my Claims is valid and true; from June 15, 1988

Ricard T. Rivera Jr.

96813

Judge: Lisa W. Cataldo
9th Division

1111 Alakea Street

Hon. Hi 96813

ivera
ia Ave
96786



Honolulu, HI 96813

30 SEP 2023 PM 1 L

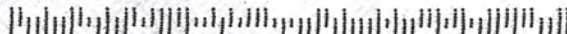
Castro
Thinking



9th Division

1111 Alakea Street
Honolulu Hawaii 96813

96813-280111



Master and Claims Administrator failing to process my claims in a timely fashion.”

(underscore added). Upon filing this document, the Court Administrator for Legal Documents (“Legal Docs”) then scheduled Dkt. 1856 as a non-hearing motion in this Court, and did not file it as a notice of appeal with the appellate court. This Court is informed and believes, and has advised all counsel, that the appellate court has been aware of Dkt. 1856 since the end of August 2023 and has never advised Legal Docs to file Dkt. 1856 as a notice of appeal with the appellate court pursuant to HRAP 3.

Initially after Dkt. 1856 was filed, counsel attempted to negotiate a stipulation that permitted the long-awaited transfer of settlement funds to the QST Trustee so that class members with cognizable claims could receive their portion of the settlement amount immediately. Near completion of that effort, the State changed course, advising that the filing of Dkt. 1856 divested this Court of jurisdiction and as such, the Court could not take any action related to the transfer of funds, including entry of the stipulation. The State claimed that despite the limiting language of Dkt. 1856 and despite the fact that Dkt. 1856 was not filed with the appellate court, this Court had to assume that Dkt. 1856 amounted to a notice of appeal of the Order Granting Final Approval of Class Action Settlement and Motion for Attorneys’ Fees, filed August 31, 2023 (Dkt. 1844) (“Final Approval Order”) and/or Final Judgment (Dkt. 1846). The State’s position was necessarily premised on the argument that the term “notice of appeal” referenced in the settlement agreement’s definition of “Final Approval” – which triggered the transfer of the settlement funds for distribution – was an appeal of the Final Approval Order/Final Judgment and not the objections filed by Mr. Rivera related to his individual claims.

Given the content of Dkt. 1856, the action of Legal Docs in scheduling a non-hearing motion, the fact that Dkt. 1856 was not filed with the appellate court after the appellate court became aware of it, and the fact that the limited scope of Dkt. 1856 is consistent with other documents Mr. Rivera filed in this Court that object *only* as to the determination of his claim and *not* to the Final Approval Order/ Final Judgment (see Dkt. Nos. 1776, 1778, 1780), this Court scheduled an in-person hearing to permit Mr. Rivera to confirm whether he was appealing the Final Approval Order/Final Judgment. The goal was to determine whether Dkt. 1856 was an objection that fell within this Court's retention of jurisdiction to address and adjudicate, or amounted to an actual appeal of the Final Approval Order/Final Judgment. From September 25, 2025, until October 5, 2023, the State never objected to the hearing. Then, in a letter dated October 5, 2023, the State changed course, stating: "Mr. Rivera's August 17, 2023 filing [i.e., Dkt. 1856] is a timely notice of appeal that must be immediately filed with the appellate court. State Defendants assert that this Court does not have jurisdiction to dispose of Mr. Rivera's August 17 filing at the hearing currently scheduled for October 13, 2023." (underscore added).

The State's October 5, 2023, communication was the first time the State asserted the hearing could not be held. In fact, at the most recent off-record status conference on October 3, 2023, the State acknowledged that Mr. Rivera's statement regarding the scope of Dkt. 1856 would be beneficial *to the State* in determining the response to Dkt. 1856.

The October 3, 2023, status conference was in addition to several conferences the Court held throughout September to consider the terms of the settlement

agreement, the rules and case law applicable to Dkt. 1856 as a notice of appeal, and whether there was an available course of action that would allow the immediate transfer of the settlement funds for distribution to the class members with cognizable claims. To that end, counsel submitted several letters to the Court setting forth their positions, which the Court has filed. Despite the limiting language in Dkt. 1856; despite the fact that Dkt. 1856 has not been filed with the appellate court for approximately 6 weeks; despite the State's negotiation of the stipulation referenced above; and significantly, despite the terms of the Final Approval Order that give the State the right to depose Mr. Rivera so that the State could, on its own, ask Mr. Rivera whether he was appealing the Final Approval Order/Final Judgment, the State maintains that the only course of action this Court has available to it is to order Legal Docs to file Dkt. 1856 with the appellate court. The State further maintains that before the settlement proceeds may be distributed to the class members, either Mr. Rivera must withdraw his appeal or the appellate court must dispose of the appeal. The State's position is intractable despite all of the facts in this unique case set forth above, as well as the fact that, at best, resolution at the appellate court level will take at least 6 months and, class counsel recently stated that 3-4 class members die per month.

This case was filed in 1999 and the foundational allegations stretch back decades. After two trips to the Hawai'i Supreme Court, and the deaths of hundreds of class members while the case remained pending, the parties reached a historic settlement in 2022. The Final Approval hearing was held in July 2023 and the Final Approval Order and Final Judgment were filed August 1, 2023. Dkt. 1856 and its handling have created numerous issues, none of the class members' making, but yet,

they bear the full brunt of impact.

If any case demands that counsel bring to bear the full measure of their experience, expertise and talents to develop and consider strategies for a thoughtful, constructive, creative and legally-compliant resolution short of disposition by the appellate court, it is this one. The State sees otherwise – even though the State cannot articulate any actual real-world risk in the distribution of settlement proceeds short of withdrawal of Dkt. 1856 or disposition by the appellate court. Ultimately, however, it is the State's refusal to advise this Court if it would initiate its own appellate action if the Court ordered the transfer of funds – thereby even further delaying the class members' receipt of those funds – that ensures there will be no resolution at this stage. In light of the State's just-announced objection, and its refusal to disclose what action it might take thereafter, the risk of even more delay is too significant to move forward with the October 13, 2023, hearing.

At the July 24, 2023, Final Approval hearing, this Court was struck by the grace and resolve of the named class members who spoke to the Court, as well as their relief that the end of this lawsuit was finally in sight and the much needed (and long awaited) settlement monies would soon be theirs. Despite the long history of this case and the loss of life while awaiting resolution -- and through no fault of the class members who have cognizable claims -- their long-awaited receipt of their share of the settlement proceeds is again out of their hands and for now, out of their reach. It is a travesty.

In light of the foregoing, this Court orders the Clerk of Court to file Dkt. 1856 with the appellate court. The Court takes the October 13, 2023, hearing off the Court's calendar.

DATED: Honolulu, Hawai'i, October 9, 2023.

/s/ Lisa W. Cataldo



JUDGE OF THE ABOVE-ENTITLED COURT

EXHIBIT “30” [FILED UNDER SEAL]

EXHIBIT “31” [FILED UNDER SEAL]

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing documents were served through the Court's JEFS system to all parties registered to this case, and by other means specified on the date indicated below.

	<u>U.S. Mail</u>	<u>E-mail</u>
RICKEY T. RIVERA, JR. 2161 California Ave. Wahiawa HI 96786 jrrickeyrivera@gmail.com r49220081@gmail.com	X	X

DATED: Honolulu, Hawai'i, October 24, 2023.

/s/ Carl M. Varady

CARL M. VARADY

THOMAS R. GRANDE

CLASS COUNSEL FOR
RESPONDENTS-PLAINTIFFS