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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)

**STIPULATION REGARDING  
TRANSFER OF CLASS SETTLEMENT  
AMOUNT TO THE TRUSTEE AND  
AMENDED JOINT ORDER; EXHIBITS  
1-3**

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

SETTLEMENT JUDGE:  
HON. GARY W.B. CHANG



**STIPULATION REGARDING TRANSFER OF CLASS SETTLEMENT AMOUNT TO  
THE TRUSTEE AND AMENDED JOINT ORDER**

Pursuant to Cir. Ct. R. 19, Plaintiffs, through their Counsel, Carl M. Varady and Thomas R. Grande, and Defendants, through their Counsel, Attorney General Anne E. Lopez, Deputy Attorney General Craig Y. Iha, Special Deputy Attorneys General Linda Lee K. Farm and Donna H. Kalama hereby stipulate:

WHEREAS, the Parties have entered into a settlement intended to achieve a full and final resolution on a class-wide basis of all claims that have been asserted and could have been asserted in this matter (the “Settlement”) and have executed a Settlement Agreement to effectuate those terms (the “Settlement Agreement”);

WHEREAS, the Legislature has appropriated \$328,000,000.00 to fund the Settlement, and those funds have been deposited into a Court account (the “Settlement Fund”) to be used exclusively for (1) payments to be made to Payment Recipients as defined in the Agreement, (2) costs necessary to implement the Settlement, (3) reasonable and necessary costs related to probate proceedings for deceased Settlement Class Members, and (4) payment of Plaintiffs’ Attorneys Fees, as described in the Settlement Agreement;

WHEREAS, on June 23, 2023, this Court and the Probate Court issued their *First Amended Joint Order Approving Probate Plan and Qualified Settlement Trust* [Dkt. 1724](the “Probate Plan and QST Order”), which adopted the Probate Special Master’s *Findings and Recommendations for a Joint Order Approving Probate Plan and Qualified Settlement Trust* [Dkt. 1653] and expressly approved the Probate Plan and Qualified Settlement Trust (“QST”) attached to the Probate Plan and QST Order as Exhibit “A”;

WHEREAS, the Probate Plan and QST Order established the Kalima Class Action Settlement Trust and ordered that the settlement funds be transferred to “Sylvius H. Von

Saucken, General Manager - Mass Torts, EPIQ Class Action & Claims Solutions, Inc.,

Trustee of the Kalima Class Action Settlement Trust,” (the “Trustee”);

WHEREAS, the Trustee executed the QST and accepted his appointment on June 23, 2023, a copy of which is attached hereto as Exhibit 1;

WHEREAS, on August 1, 2023, the Court entered the *Order Granting Final Approval of Class Action Settlement and Motion for Attorneys’ Fees* [Dkt. 1844](the “Order Granting Final Approval”), approving the Settlement Agreement in this case, and entered its *Final Judgment* [Dkt. 1846];

WHEREAS, “Final Approval” is defined by ¶ I.12., of the Settlement Agreement to mean 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.

WHEREAS, on October 9, 2023, the Court ordered [Dkt. 1925] the Clerk of the Circuit Court to file Dkt. 1856, a document filed by Rickey T. Rivera, Jr., on August 17, 2023, with the appellate court, and the appeal was subsequently docketed by the Intermediate Court of Appeals as *Leona Kalima, et al. v. State of Hawai‘i, et al. and Rickety T. Rivera, Jr.*, CAAP-23-0000572;

WHEREAS, on October 10, 2023, a document submitted by Rickey T. Rivera, Jr., was filed with the Hawai‘i Supreme Court, which the Court construed as a petition for a writ of mandamus or extraordinary relief by Mr. Rivera, asking the Hawai‘i Supreme Court to direct this

Court to permit Mr. Rivera to obtain a settlement payment, which was docketed as SCPW-23-0000571;

WHEREAS, on October 26, 2023, the Hawai‘i Supreme Court issued its opinion and order denying Rickey T. Rivera, Jr.’s petition for a writ of mandamus to receive a settlement payment in *Rickey T. Rivera, Jr. v. Hon. Lisa W. Cataldo, Leona Kalima, et al., and State of Hawai‘i, et al.*, SCPW-23-0000571, on the merits, dismissed the petition, and ordered the Intermediate Court of Appeals to dismiss *Rickey T. Rivera, Jr. v. Leona Kalima, et al., and State of Hawai‘i, et al.* CAAP-23-0000572, on the merits (Exhibit 2, hereto);

WHEREAS, on October 26, 2023, pursuant to the Hawai‘i Supreme Court’s order of even date, the Intermediate Court of Appeals dismissed *Leona Kalima, et al., v. State of Hawai‘i, et al., and Rickey T. Rivera, Jr.*, CAAP-23-0000572, on the merits (Exhibit 3, hereto);

WHEREAS, “Final Approval” as defined by ¶ I.12, of the Settlement Agreement now has occurred through the dismissals of SCPW-23-0000571 and CAAP-23-0000572, with prejudice, which exhaust all possible appellate review, and the August 1, 2023, Order Granting Final Approval has not been modified, amended, or reversed in any way;

NOW THEREFOR, pursuant to the instant stipulation and to effectuate paragraph 26 of the Order Granting Final Approval, it is hereby ORDERED:

1. The Clerk of the Court shall immediately transfer **Three-Hundred Twenty Six Million and no/100 Dollars (\$326,000,000.00)** from the Court’s Kalima Settlement Fund to Jan Choy, CPA;
2. Upon receipt of the monies remaining in the Kalima Settlement Fund, Ms. Choy will immediately transfer those monies and all monies remaining in the Kalima Settlement Claims Administration Fund (sometimes referred to as the Kalima

Interim Costs Fund) 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, to be held in trust under the terms of the QST;

3. Within one business day after Ms. Choy's transfer of monies under paragraph 2 above, Ms. Choy shall file a report in this case stating: (a) the date on which the transfer was completed; (b) the means by which the funds were transferred, by wire transfer or by check; and (c) if by check, the name of the person to whom the check was delivered, and that person's relationship to the Trustee. Plaintiffs' counsel shall provide a certified copy of this stipulation and order to Ms. Choy and, if requested, assist Ms. Choy with preparing and filing the report required by this paragraph.
4. This stipulation and order is entered for administrative purposes pursuant to the express provisions of paragraph 26 of the Order Granting Final Approval and is an exercise of the Court's continuing jurisdiction that does not affect the finality of the Final Judgment for purposes of appeal.

[SIGNATURES ON NEXT PAGE]

DATED: Honolulu, Hawai'i, October 30, 2023.

/s/ Craig Y. Iha

ANNE E. LOPEZ

Attorney General

CRAIG Y. IHA

Deputy Attorney General

and

LINDA LEE K. FARM

DONNA H. KALAMA

Special Deputy Attorneys General

ATTORNEYS FOR DEFENDANTS

/s/ Carl M. Varady

CARL M. VARADY

THOMAS R. GRANDE

CLASS COUNSEL

APPROVED AND SO ORDERED

  
\_\_\_\_\_  
HON. R. MARK BROWNING

CHIEF ADMINISTRATIVE JUDGE AND  
PROBATE COURT JUDGE

APPROVED AND SO ORDERED:

/s/ Lisa W. Cataldo



\_\_\_\_\_  
HON. 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, STIPULATION  
REGARDING TRANSFER OF CLASS SETTLEMENT AMOUNT TO THE QUALIFIED  
SETTLEMENT TRUST AND AMENDED JOINT ORDER; EXHIBITS 1-3**

## **KALIMA CLASS ACTION SETTLEMENT TRUST**

THIS TRUST AGREEMENT is established this date of June 23, 2023, by order of the Circuit Court of the First Circuit, State of Hawaii, pursuant to its FIRST AMENDED JOINT ORDER APPROVING PROBATE PLAN AND QUALIFIED SETTLEMENT TRUST entered in *Kalima et al. v. State of Hawaii et al.* (Civil No. 99-4771-12 LWC) on or about June 23, 2023, which Order is hereby incorporated by reference and attached hereto as Schedule B and referred to herein as the "Order". The initial Trustee is SYLVIOUS H. VON SAUCKEN, GENERAL MANAGER – MASS TORTS, EPIQ CLASS ACTION & CLAIMS SOLUTIONS, INC. (hereinafter referred to as the "Trustee"). By said Order, the initial Trust corpus shall consist of the property described in Schedule A. The Trustee accepts such property as the initial trust estate. The Trustee shall hold and dispose of the trust estate upon the terms of the trust set forth in this Agreement.

This trust is made of three parts and Schedules A and B. PART ONE disposes of the trust estate. PART TWO relates to the trusteeship and the powers for the Trustee. PART THREE contains definitions and other formal provisions.

### **PART ONE: DISPOSITION OF TRUST ESTATE**

#### **ARTICLE 1-1: NAME AND PURPOSE OF TRUST**

1-1.1 NAME: This trust shall be known as the KALIMA CLASS ACTION SETTLEMENT TRUST (the "Trust")

1-1.2 PURPOSE: In addition to the other purposes more specifically defined herein, the purpose of this trust is to establish and govern the administration of a Qualified Settlement Fund as described in Treasury Regulation Section 1.468B-1 and the Order.

*Kalima et al. v. State of Hawaii et al.* (Civil No. 99-4771-12 LWC) (sometimes referred to herein as the "Civil Matter") is a civil matter filed in the Circuit Court of the First Circuit State of Hawaii. The Civil Matter was filed in 1999 when the State of Hawaii eliminated the Hawaiian Claims Office that reviewed breaches of trust by the State of Hawaii regarding the Hawaiian Home Lands Trust that occurred between 1959 and 1988.

The Civil Matter is a class action lawsuit. The plaintiffs are members of a defined Settlement Class (sometimes referred to herein as the "Class Members"). The Class Members are beneficiaries of this Trust, as more specifically detailed herein.

The Defendants in the Civil Matter are the State of Hawaii, and others (sometimes collectively referred to herein as the "Defendant"). Claims against Defendant were extinguished upon execution of a settlement agreement. Settlement funds pursuant to the settlement agreement were transferred to this Trust to permit the release of all claims as to the Defendant and to authorize the Trustee to resolve other issues regarding settlement funds as to the Plaintiff and other entities claiming an interest in the trust assets to be deposited into the KALIMA CLASS ACTION SETTLEMENT TRUST. The Trustee shall administer all funds of the Trust in accordance with the provisions set forth herein and as required by the Order, and as otherwise ordered by a court.

Specific purposes of this Trust include, but are not limited to, (i) the proper financial management of settlement proceeds, (ii) determining the true beneficiaries and parties entitled to settlement proceeds, (iii) and appropriately distributing to the true beneficiaries the correct amounts of settlement proceeds to which such true beneficiaries are entitled.

#### **ARTICLE 1-2: TRUST BENEFICIARIES**

1-2.1 TRUST BENEFICIARIES: The Beneficiaries of the Trust are 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. The Trustee shall distribute Trust assets to or for the benefit of the Beneficiaries pursuant to the terms of this Trust and appropriate orders of a court. No settlement funds or Trust assets shall be set apart for or distributed to any Class Member or any other individual or entity claiming an interest in Trust assets except as ordered by a court. Neither Class Member, nor any other individual or entity claiming an interest in Trust assets shall have access to the Trust assets, and may not draw upon or otherwise control any of the assets of this Trust. The Trustee shall take all such actions as shall be necessary or advisable to resolve creditor claims, expenses related to the Civil Matter, including but not limited establishing an administrative fee reserve, the payment of attorney fees, consultant fees, costs, taxes, and any statutory claims of subrogation. Once the Trustee has been presented with an appropriate court order that resolves all interests of all parties claiming an interest in the Trust, the Trustee shall have the authority to wind down and terminate the Trust without further court approval.

1-2.2 RESTRICTIONS ON BENEFICIAL INTERESTS: No Beneficiary shall have any authority to process any rights to demand or receive any portion of the Trust assets or to mortgage, pledge, or encumber the same in any manner. To the extent possible, no Beneficiary shall be deemed to have been in constructive receipt, as determined under federal income tax principles, of any amounts held by the Trust prior to the distribution from the trust to the Beneficiary.

#### **ARTICLE 1-3: TRUSTEE'S BASIC DUTIES**

During the term of this trust, the Trustee shall hold, manage, invest, and reinvest the trust estate, collect the income and profits from it, pay the necessary expenses of trust administration, and distribute the net income and principal as provided in this PART ONE and the Order. All decisions regarding distributions from this Trust shall be made at the sole and absolute discretion of the Trustee, acting exclusively in the capacity as Trustee and not as an agent of any Beneficiary.



**ARTICLE 1-4: ADMINISTRATION OF THE QUALIFIED SETTLEMENT FUND**

**1-4.1 TOTAL SETTLEMENT PROCEEDS:** Pursuant to the ORDER GRANTING PETITION TO ESTABLISH A QUALIFIED SETTLEMENT FUND, the total settlement proceeds are the sole property of this Trust. No portion of the total settlement proceeds shall be made available to any beneficiary or any other individual or entity claiming any interest in the settlement funds absent a valid court order. The purpose of the Trust is limited to the matters set forth in Article 1-1.2 hereinabove. The Trust shall not be construed to confer upon a Trustee any authority to carry on any business or activity for profit (except the holding and investment of the Trust assets and distributions pursuant to this Trust Agreement).

Upon receipt of the total settlement proceeds, the Trustee shall hold and administer the Trust estate prudently. The beneficial interests of each Beneficiary shall be calculated in accordance with the court orders in the Civil Matter. The Trustee shall have no duty to segregate the beneficial interests by the respective Class Member, but may pool all Trust assets, including Total Settlement Proceeds, for managerial and administrative purposes. Distributions of beneficial interest of the Trust estate shall be governed in accordance with the provisions set forth in Article 1-5.

**1-4.2 DURATION:** The Trust shall remain in operation and effect until all matters relating to the Civil Matter have been fully resolved, including but not limited to the payment of attorney fees and costs, and administrative expenses. Upon full resolution, the Trust shall terminate in accordance with an appropriate Court Order.

**1-4.3 TRUST ADMINISTRATION:** For the duration of the administration of the Trust, the Trustee shall have the full authority and power to administer the Trust as consistent with law.

**1-4.3 INDEMNIFICATION:** The Trustee shall be indemnified and held harmless by Class Members, their successors and their estates, from any claims made by any alleged lienholder, or other person or entity that attempts to assert a right of payment, reimbursement or garnishment against this Trust. Should the Trustee be named as a party to, or threatened to be made a party to, any threatened pending or completed action, suit or proceeding of any kind, whether civil, administrative or arbitrators, and whether brought by or against or otherwise involving the Trust, the Trustee shall be indemnified and held harmless by the Class Members, their successors and their Estates against reasonable expenses, costs and fees (including attorney fees), judgments, awards, costs, amounts paid in settlement, and liabilities of all kinds incurred by the Trustee in connection with or resulting from such actual or threatened action, suit or proceeding; except to the extent that it is finally determined by a court of competent jurisdiction that the Trustee was negligent or acted with willful misconduct in connection with the administration of this Trust.

**1-4.4 INVESTMENTS:** During the administration of this Trust, the Trustee shall be authorized to deposit and invest any and all funds as the Trustee shall deem to be appropriate and prudent under the circumstances. Any income, interest, dividends, or other increase to the value of the funds shall be retained in the Trust until final distribution and shall be apportioned among all of

the undistributed shares of the Trust as of the date the receipt of the same, unless otherwise provided by court order.

The Trustee may, in the Trustee's sole and absolute discretion, purchase and assign any structured settlements created under any court order or Fund Agreement, provided that any structured settlement annuities shall be issued by a life insurance company that is rated A+ or better by A.M. Best Company. The Trustee may also distribute to, and establish, appropriate trusts, separate and apart from this Trust, for the benefit of any beneficiary, pursuant to any court order. Examples of appropriate trusts may include, but not be limited to "special needs trusts" or "settlement preservation trusts" for beneficiaries who may then be eligible for means-tested public benefits or who may need additional assistance with financial management.

**1-4.5 ADMINISTRATIVE DISBURSEMENTS:** The Trustee shall be authorized to distribute all attorney fees and litigation expenses to counsel, consistent with existing contingency fee contracts and/or court orders approving fees prior, or subsequent to the establishment of this Trust. The Trustee shall obtain a court order to obligate the Trust to pay for legal fees and costs relating to the establishment of this Trust. The Trustee shall be authorized to pay all expenses incurred in the establishment and administration of this Trust, including, but not limited to, fees related to the preparation of this instrument, other trust-administrative documentation, trustee fees, accounting expenses, taxes, investment advisor expenses, fees and costs to any "Master" or other court-appointed position, and the fees of the Trustee. All taxes on the income of the Trust and expenses and costs incurred in connection with the taxation of the Fund (including, without limitation, the expenses of tax attorneys and accountants, for reasonable and ordinary services, for each year, incurred in preparing and filing of the Trust's annual income taxes) shall be (i) paid out of the Trust, (ii) considered to be a cost of administration of the settlement, and (iii) timely paid by the Trustee without prior order of the Court. All administrative disbursements made pursuant to this Article 1-4.5 shall be apportioned equally among the undistributed shares remaining in the Trust as of the time of the disbursement, unless otherwise provided by court order or Fund Agreement.

**1-4.6 TAXES AND EXPENSES:** The Trustee shall obtain a Federal Taxpayer Identification Number for this Trust. It is the intent of this Trust that all steps be taken by the Trustee and Beneficiaries to ensure that the Trust established by the Court will qualify as, and remain, a "Designated" or "Qualified" settlement fund within the meaning of IRC § 468B, and the Treasury Regulations promulgated pursuant thereto and codified at 26 C.F.R. § 1.468B-1. The Trustee will elect to apply settlement fund rules, if appropriate, by filing a "Section 1.468B-5(b)(2) Election."

It is further intended that the transfers to the Trust will satisfy the "all events test" and the "economic performance" requirement of IRC § 461(h)(1), and Treas. Reg. § 1.461-1(a)(2).

All taxes on the income of this trust and expenses and costs incurred in connection with the taxation of this trust, including without limitation, the expenses of tax attorneys and accountants, for reasonable and ordinary services, shall be paid out of the trust, considered to be a cost of administration, and timely paid by the fund administrator without prior order of any court. All expenses incurred in the settlement of claims, including, but not limited to, fees related to the establishment of this agreement, the administration of this trust, accounting, investment, and other professional services related to the administration of this trust, may be paid by the trustee as

accrued. Both the taxes and expenses paid shall be apportioned equally among the undistributed shares remaining in the Trust as of the time of the payment, unless otherwise provided by court order or Fund Agreement.

**1-4.7 ACCOUNTS AND REPORTS:** Upon request, and at least once per calendar year, the Trustee will prepare and deliver an accounting or other report to the known "qualified beneficiaries" of the Trust, or to their respective known agents, representatives, and/or estate, as the circumstances may provide. Prior to termination of this Trust, the Trustee shall seek Court approval of a Final Accounting. These documents will be made available online at [www.kalima-lawsuit.com](http://www.kalima-lawsuit.com).

**1-4.8 RELIANCE:** The Trustee shall have the right to rely upon any affidavit, government document, certificate, letter, notice, electronic mail or other documentation believed by the Trustee to be genuine and sufficient, and upon any other evidence believed by the Trustee, in its reasonable judgment, to be genuine and sufficient, which may be provided to the Trustee.

**1-4.9 TERMINATION:** Upon full resolution of all matters relating to the settlement of the Civil Matter, the Trust shall terminate and all of the rest, residue and remainder of the funds shall be administered in accordance with the provisions set forth in Article 1-5.

**ARTICLE 1-5: DISTRIBUTION THROUGH TERMINATION OF THE QUALIFIED SETTLEMENT FUND**

**1-5.1** The Trustee shall distribute the net value of each separate share allocated to each Class Member as follows:

(A) **SHARE FOR LIVING CLASS MEMBER:** The Trustee shall distribute the share for each living Class Member outright and free of any trust to such living Class Member. If such living Class Member shall be incapacitated, the Trustee shall distribute such share to the duly appointed Conservator, Guardian of the Property/Estate, or duly designated agent under a power of attorney for such incapacitated Class Member. Upon receipt of the share by such Class Member, such Class Member's interest in and to this Trust shall be considered fully satisfied and terminated.

(B) **SHARE FOR DECEASED CLASS MEMBER:** The Trustee shall administer the share of any deceased Class Member as follows:

(1) If the Estate of the deceased Class Member shall be the subject of an open probate proceeding, the Trustee shall distribute the share of the deceased Class Member to the duly appointed and currently acting Personal Representative (or similar person acting as legal representative of the decedent pursuant to state distribution and/or probate laws) of such deceased Class Member's probate estate. Upon receipt of the share by such Personal Representative of such deceased Class Member's estate, such deceased Class Member's interest in and to this Trust shall be considered fully satisfied and terminated.

(2) If the Estate of the deceased Class Member has previously been subject to a probate proceeding, the Trustee shall distribute the share of such deceased Class Member

to the heirs/devisees in the proportions as adjudicated in such deceased Class Member's probate proceeding. Upon receipt by the heirs/devisees of such deceased Class Member's estate, such deceased Class Member's interest in and to this Trust shall be considered fully satisfied and terminated.

(3) If the Estate of the deceased Class Member has not previously been probated and is not currently subject to probate administration, the Trustee shall distribute the share of such deceased Class Member to the heirs/devisees of the deceased Class Member as established by clear and convincing evidence as ordered by the Probate Court, First Circuit, State of Hawaii, and following service of appropriate notice to the heirs and purported devisees. Should any of the heirs and/or purported devisees wish to contest the proposed distribution, the Trustee shall abstain from making the distribution until the heirs and purported devisees have fully resolved their differences and upon such resolution, the Trustee shall distribute said share in accordance with the agreement of such resolution. Upon receipt by such heirs/devisees of such deceased Class Member's estate, such deceased Class Member's interest in and to this Trust shall be considered fully satisfied and terminated.

(4) In the event that any distributee eligible to receive a distribution pursuant to Article 1-5.1(B)(1) through (3) hereinabove shall be (a) under the age of majority, (b) the subject of a current guardianship or conservatorship proceeding, and/or (c) eligible for means-tested public benefits including but not limited to Supplemental Security Income and/or Medicaid, the Trustee shall be authorized to complete the distribution to such distributee by making the distribution instead to the minor distributee's legal parent as custodian, or to an appropriate trust (or similar account) for the benefit of such distributee, and as ordered by the Probate Court of the First Circuit, State of Hawaii.

(5) In the event that an appropriate distributee cannot be located, and the Probate Court of the First Circuit, State of Hawaii, is satisfied that all reasonable means to locate such distributee have been exhausted, the allocable share for such distributee shall be distributed in a manner as Ordered by the Court.

(C) PROBATE SPECIAL COUNSEL AND PROBATE SPECIAL MASTER: The Probate Special Counsel and Probate Special Master have been appointed by the Probate Court of the First Circuit, State of Hawaii (hereinafter the "Probate Court"). The Probate Special Counsel shall initiate a Trust Proceeding in the Probate Court and shall file petition(s) seeking an order or orders of said Probate Court instructing the Trustee to make the disbursements outlined herein above at Article 1-5.1(B)(1) through (5). In seeking such instructions, the Probate Special Counsel shall set forth the name(s) and address(es) of the proposed distributee(s), cause notice to be provided to parties interested in the subject share allocated to the deceased Class Member, and set forth the basis for the calculation of any distribution to any distributee, as well as any additional relief that may be appropriate under the circumstances. The Probate Special Master shall report and make recommendations to the Probate Court regarding the petition(s) of the Probate Special Counsel. The Trustee shall make disbursements as outlined hereinabove at Article 1-5.1(B)(1) through (5) only pursuant to the order(s) of the Probate Court.

1-5.3 TERMINATION: Once the Trustee has obtained necessary court orders, as appropriate and in the sole discretion of the Trustee, resolving all interests of all parties claiming an interest in the Trust, the Trustee shall have the authority to wind down and terminate the Trust without further court approval.

## **PART TWO: TRUSTEESHIP**

### **ARTICLE 2-1: RESIGNATION**

The Probate Court of the First Circuit, State of Hawaii, shall approve any resignation of any Trustee, and the resignation shall become effective as the Probate Court of the First Circuit, State of Hawaii shall order.

The resigning Trustee shall transfer and deliver to the successor Trustee all of the Trust estate and shall thereupon be discharged as Trustee hereunder.

### **ARTICLE 2-2: REMOVAL**

The Probate Court of the First Circuit, State of Hawaii, , shall have the right to remove any Trustee. Such removal shall become effective at such date as the Court may order or the parties shall agree. Any Trustee may be removed by the Court for reasonable cause upon application by any interested party.

### **ARTICLE 2-3: LIABILITY OF TRUSTEES**

No Trustee shall be responsible or liable for the manner in which any discretion is exercised pursuant thereto, or for any misinterpretation of this Agreement, or, unless the Trustee's own conduct amounts to fraud or willful misconduct, for any act or omission of its, his or her own. The successor Trustee shall be responsible only for its, his or her acts or omissions in bad faith and shall in no event be responsible for any action in which the successor Trustee shall not be pecuniarily interested and which shall be taken upon the advice of competent legal, accounting or other counsel concerning the construction or interpretation of this instrument or the administration of the trust estate. The Trustee shall retain such competent legal, accounting, investment or other counsel at the expense of the trust estate, as the Trustee shall deem necessary or desirable in the best interest of the trust estate.

### **ARTICLE 2-4: VACANCY IN TRUSTEESHIP**

The initial Trustee is SYLVIOUS H. VON SAUCKEN, GENERAL MANAGER – MASS TORTS, EPIQ CLASS ACTION & CLAIMS SOLUTIONS, INC. A vacancy in the Trusteeship due to the death, disability, dissolution, bankruptcy, removal or resignation of an acting trustee shall be filled by a successor Trustee appointed by the Probate Court of the First Circuit, State of Hawaii.

**ARTICLE 2-5: PROVISIONS RELATING TO THE TRUSTEE**

**2-5.1 COMPENSATION:** The Trustee shall be entitled to reasonable compensation for the Trustee's services, plus the then current rate of applicable sales or excise tax imposed on such services. Fees shall not exceed the amount permitted by statute to be charged by Trustees under HRS Section 607-18. The Trustee shall also be entitled to reimbursement for expenses necessarily incurred in the administration of the trust estate.

**2-5.2 BOND:** No bond or surety on bond shall be required from any Trustee.

**2-5.3 WAIVER OF ACCOUNTING:** No Trustee need examine the accounts, records and acts of any previous Trustee.

**2-5.5 EXERCISE OF DISCRETION:** The Trustee (or successor Trustee, as the case may be) should carefully consider the income tax effects, if any, when the Trustee makes any discretionary distribution to any beneficiary that would discharge that Trustee's individual legal obligations, including the obligation of support, toward such beneficiary. The Trustee shall also consider the special or supplemental needs of the Beneficiary in making any discretionary distribution.

**2-5.6 TAX IDENTIFICATION NUMBER:** The Trustee shall have the authority to obtain a Federal Employer Tax Identification Number for the Kalima Class Action Settlement Trust upon establishment of the Trust.

**ARTICLE 2-6: POWERS OF THE TRUSTEE**

**2-6.1 GRANT:** The Trustee shall have discretion and complete power to administer the Trust estate. In addition to those statutory powers now or subsequently conferred by law (including, but not limited to, Hawaii Revised Statutes Chapter 554A and the Hawaii Uniform Trust Code, as the same may be amended from time to time), such grant shall include without limitation the following powers:

**2-6.2 RECEIVE ASSETS:** To receive, take possession of, sue for, recover and preserve the assets of the Trust estate, both real and personal, coming to the Trustee's attention or knowledge, and the rents, issues and profits arising from such assets;

**2-6.3 RETAIN INITIAL ASSETS:** To retain the initial assets of the Trust (including the Total Settlement Proceeds), without liability for loss or depreciation or diminution in value of any residential property or closely-held stock resulting from such retention until the Trustee decides to dispose of such assets;

**2-6.4 ABANDON ASSETS:** To abandon, charge off or otherwise dispose of any part of the trust estate that is of no value or of insufficient value to justify collection, care, administration or protection;

**2-6.5 INVEST:** To invest, reinvest and, to the extent deemed advisable by the Trustee, to keep invested, the assets of the trust estate, however derived, in stocks (common and preferred,

and including shares in investment companies, investment trusts or mutual funds as well as stock or obligations of any corporate Trustee), bonds, debentures, notes, or any other type of securities, interests, assets or property, whether real or personal or in shares or units of participation in common trust funds, or to participate in making investments with others, all without regard to diversification or to whether or not the security, interest, asset or property so purchased or acquired is legal for trust fund investment under the constitution, statutes or laws of the state in which the trust shall have its principal situs of administration or elsewhere; provided, further, that the Trustee shall have the power to invest in non-income producing property for the satisfaction of the Beneficiary's supplemental needs;

**2-6.6 EXECUTE CONTRACTS:** To enter into contracts that are reasonably incident to the administration of the Trust;

**2-6.7 PERFORM AGREEMENTS:** To carry out the terms of any valid agreement concerning property owned by the Trust;

**2-6.8 EXECUTE INSTRUMENTS:** To execute, acknowledge, and deliver all instruments necessary or appropriate for the administration of the Trust;

**2-6.9 INSURE:** To carry insurance for fiduciaries including Directors and Operators policies, Errors and Omissions policies, and insurance against such hazards, including public liability, in either stock or mutual companies and to purchase annuity policies or life insurance (of whatever form) on the life of any beneficiary or other person in whom any of the beneficiaries have an insurable interest, naming as beneficiary of any such policy either the trust itself or the beneficiary on whom or with respect to whom the policy was taken out; to pay premiums, assessments and proper charges on any such policy as beneficial distributions, charging the same to income or principal as permitted by the distributive provisions of this Agreement relating to the beneficiary on whom or with respect to whom the policy was taken out; and to exercise all or any rights granted under such policy;

**2-6.10 DEAL WITH FIDUCIARIES:** To purchase from, borrow from, sell to, and generally to deal with the Trustee, individually and as a fiduciary, or with partnerships, corporations, and financial or business organizations in which the Trustee may have an interest;

**2-6.11 DEPOSIT:** To deposit funds of the Trust in one or more banks, including the banking department of a corporate trustee;

**2-6.12 ACCOUNTS:** To open or close checking, savings, stock, bond and any other type of accounts, to deposit funds of the Trust in one or more banks, including the banking department of a corporate trustee;

**2-6.13 EMPLOY AGENTS AND DELEGATE:** To employ and compensate out of the principal or income, or both, of the Trust estate, agents, accountants, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, realtors, investment counsel and other assistants and advisors, and to delegate powers and duties to other persons, partnerships or corporations, and to employ and

delegate as so provided without liability for any neglect, omission, misconduct or default of any such agent, provided such agent was selected and retained with reasonable care;

**2-6.14 TAKE LEGAL ACTION:** To prosecute or defend judicial and administrative proceedings for the protection of the trust estate, or of the Trustee in the performance of the Trustee's duties;

**2-6.15 DETERMINE ACCOUNTING PRACTICES:** To determine all matters of trust accounting in accordance with generally accepted principles of trust accounting as established by controlling law or customary practices, provided, that:

(A) Dividends, interest, rents and other similar payments received in cash by the Trustee shall normally be dealt with as income, whether ordinary or extraordinary and whether or not in the nature of liquidating dividends or payments or dividends or payments on mining, oil, timber or other stocks or assets of a wasting nature, or a return of capital, or a distribution of realized capital gains, or a distribution from depletion reserves (and irrespective of any statement the corporation, association or person declaring such dividends or making such payments may make with reference thereto) and irrespective of the character of the assets or account out of which they are paid or the time when they shall have accrued or accumulated or shall have been earned, declared or payable or the time for the determination of the persons entitled thereto, but the Trustee shall have full power and authority in the absolute discretion of the Trustee, to allocate to principal the whole or any part of any dividend or payment which in the Trustee's opinion is extraordinary, in the nature of a liquidating dividend or payment, a wasting asset dividend or payment, a return of capital, a distribution of realized capital gains, or a distribution from depletion reserves. All determinations with respect to the allocation of such dividends or payments in whole or in part to principal, made in good faith by the Trustee, shall be final and binding on all persons interested in the Trust estate.

(B) Dividends paid in, and rights to subscribe to, property other than cash, including securities, whether or not of the same corporation, and shares of stock received as the result of any stock split, shall normally be dealt with as principal, but the Trustee shall have full power and authority, in the Trustee's absolute discretion, to allocate the whole or any part of any such dividend, right or shares of stock received as the result of such stock split to income if in the Trustee's opinion such dividend, right, or shares of stock should be considered as a distribution of current earnings by the corporation declaring or issuing the same. All determinations with respect to the allocation of such dividends or rights or shares of stock so received in whole or in part to income, made in good faith by the Trustee, shall be final and binding on all persons interested in the Trust estate;

(C) The Trustee shall determine the provision, if any, to be made in accordance with accounting principles, methods and formulas determined by the Trustee to be generally accepted and applicable, for the amortization out of income of any premium paid on the purchase or other acquisition of any security, and shall credit the same to principal. The Trustee shall also determine the amount of depreciation, cost recovery, and depletion chargeable against the tangible assets of the trust estate during each year, in accordance with accounting principles, methods and formulas determined by the Trustee to be generally accepted and applicable, and shall charge



against income and credit to principal the sum so determined; provided that the Trustee shall not be required to charge depreciation, cost recovery, or depletion with respect to any improvement constructed on trust property by a lessee. All determinations with respect to amortization, depreciation, cost recovery, and depletion made in good faith by the Trustee shall be final and binding on all persons interested in the Trust estate; and

(D) The proceeds from the sale, redemption or other disposition, whether at a profit or loss, of any property constituting principal, including mortgages and real estate, no matter how acquired, shall normally be dealt with as principal, even if the property shall have produced no income, but the Trustee shall have full power and authority, in the absolute discretion of the Trustee, to allocate the whole or any part of any such proceeds to income if the property disposed of produced no income or in the Trustee's opinion substantially less than the current rate of return on trust investments. All determinations with respect to the allocation of such proceeds in whole or in part to income, made in good faith by the Trustee, shall be final and binding on all persons interested in the Trust estate.

2-6.16 **ESTABLISH RESERVES:** To establish reserves for taxes, assessments, insurance premiums, repairs, improvements, depreciation and cost recovery, depletion, obsolescence, and general maintenance of buildings, and other property, and for the equalization of payments to or for beneficiaries entitled to receive income, out of the rents, profits, or other income received;

2-6.17 **SETTLE CLAIMS:** To pay, contest, or otherwise settle claims by or against the trust, including taxes, assessments, and expenses, by litigation, compromise, arbitration, or otherwise;

2-6.18 **EMPLOY CUSTODIAN:** With respect only to an individual Trustee, to employ a custodian of any trust property, the cost of which shall be a proper charge against the Trust estate;

2-6.19 **USE NOMINEE:** To hold title to a trust asset in the Trustee's name, in registered form or in the name of nominee, without disclosure of the Trust's interest in such asset;

2-6.20 **PROTECT SECURITIES:** To pay calls, assessments and any other sums chargeable to or accruing against or on account of shares of stock or other securities that are part of the Trust estate;

2-6.21 **EXERCISE RIGHTS:** To sell or exercise stock subscription rights, participate in foreclosures, reorganizations, recapitalizations, consolidations, mergers, liquidations, or other corporate adjustments, to enter into voting trust agreements or other similar arrangements, and to consent to corporate sales, leases or encumbrances; to deposit stocks or other securities that are part of the trust estate with any protective or other similar committee, or with voting Trustees;

2-6.22 **DISTRIBUTE IN KIND:** To make distributions in kind, in money, or partly in each, without requiring pro rata distribution of specific assets, at fair market value as determined by the Trustee on the effective date of distribution;

2-6.23 **RELEASE POWERS:** To release by an instrument in writing any power expressly or impliedly conferred in this Agreement;

**2-6.24 APPOINT TRUSTEE IN OTHER JURISDICTIONS:** If at any time any Trust property is situated in a jurisdiction in which any Trustee is unable or unwilling to act, to appoint in an instrument signed by the Trustee a person or corporation to act as special Trustee with respect to that property in that jurisdiction, and such special Trustee and every successor special Trustee so appointed shall have all the title, powers and discretion with respect to that property that is given to the special Trustee by the Trustee. The net income from that property in the other jurisdiction and any net proceeds of its sale shall be paid over to the Trustee;

**2-6.25 INVESTMENT IN SECURITIES:** With respect to any investments owned by the Trust:

(A) To buy, sell and deal in stocks, bonds, commodities, futures, options, and other securities of any kind and in any amount, including short sales;

(B) To write or purchase call or put options, or other derivative securities;

(C) To carry stock certificates and other property in the form of street certificates, or in any other form, without disclosing the existence of any trust. The Trustee may permit Trust property to be held in the custody of a banking institution or brokerage firm;

(D) To maintain margin accounts with brokerage firms and to pledge securities to secure loans and advances made to the Trustee or to (or for the benefit of) a beneficiary hereunder;

**2-6.26 RENT SAFE DEPOSIT BOXES:** To open, have access to, add to, and remove the contents from one or more safe deposit boxes in the name of the trust; to allow fewer than all Trustees to enter and remove contents from a safe deposit box if there is more than one Trustee; and to appoint one or more agents by a writing signed by all acting Trustees to enter and remove the contents of a safe deposit box; and

**2-6.27 TRANSFER SITUS:** To transfer the administrative situs of the Trust from its original jurisdiction to any other jurisdiction and to take all necessary actions to submit to and gain the protection of the laws of the new situs, subject to the approval of the Probate Court of the First Circuit, State of Hawaii;

**2-6.28 ACCUMULATE:** To accumulate and add to Trust principal or to keep segregated for later distribution any net income of any trust in any trust accounting year that is not disposed of by the terms of such trust;

**2-6.29 EXERCISE POWERS:** To exercise all powers expressly or impliedly conferred in this Agreement without seeking the aid, authorization, order, or approval of any court. All powers shall:

(A) be exercisable by the Trustee in any jurisdiction;

(B) be exercisable in respect of all assets of the Trust estate held by the Trustee or under the Trustee's control;

(C) remain exercisable as fiduciary powers of administration only, and without affecting the vesting of any interests, until final distribution of all of the Trust estate; and

(D) be exercisable without any duty on any person dealing with the Trustee to inquire into the Trustee's authority.

In the event that the relevant federal or State agencies change the laws, rules or policies concerning irrevocable supplemental or special needs trusts, the Trustee is hereby instructed to handle the trust assets and income according to the revised laws, rules, and policies, and according to the Hawaii Uniform Trustees' Powers Act, as in effect and as amended from time to time.

1-6.30 RELIANCE ON DOCUMENTATION: to rely upon any affidavit, certificate, letter, notice, government document, electronic mail, or other document believed by the Trustee to be genuine and sufficient, and upon any other evidence believed by the Trustee, in its reasonable judgment, to be genuine and sufficient.

### **PART THREE: FORMAL PROVISIONS**

#### **ARTICLE 3-1: DEFINITIONS APPLYING TO THIS AGREEMENT**

3-1.1 TRUSTEE, PRONOUNS, SINGULAR AND PLURAL: Unless a contrary meaning or reference shall be expressly indicated or clearly implied from the context, the word "Trustee" and the pronoun "it" in reference to the Trustee always refer interchangeably to the male or female person or persons or to the institution or to any combination of them then holding the trusteeship. Any pronoun used in the masculine, feminine or neuter shall be interpreted as the context requires; and words used in the singular shall denote the plural and words used in the plural shall denote the singular when the context so requires. "Trustee" also refers to any successor or alternate trustee or co-trustees, including corporations that succeed another corporation by merger, consolidation, change of name or otherwise, and the appointment of a corporate trustee shall be deemed to include appointment of its corporate successor. Any corporate trustee shall be a corporation organized under the laws of any state or of the United States, authorized by law to administer trusts and maintaining a full time trust department. All successor or alternate trustees or co-trustees shall have the same powers, authorities, obligations and limitations as the original Trustee unless other provisions specifically provide to the contrary.

3-1.2 CHILDREN, ADOPTED CHILDREN, DESCENDANTS AND PER STIRPES: The words "child," "children," "descendant," and "issue" include persons who are legally adopted; "child" and "children" do not include grandchildren or more remote descendants of the applicable ancestor; "issue" and "descendants" include lineal descendants of whatever degree.

The words "per stirpes" means a division into as many equal shares as there are: (1) surviving children of the designated ancestor; and (2) deceased children who left surviving descendants. Each surviving child, if any shall be allocated one share. The share of each deceased child with surviving descendants shall be divided in the same manner, with subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

3-1.3 CHILD IN BEING: A child in gestation who is later born alive shall be considered as a child in being throughout the period of gestation.

3-1.4 TRUST ESTATE: The Trust estate shall consist of the Total Settlement Proceeds, as described in Schedule A, and any other property that may be added at any time to the trust estate.

3-1.5 AGREEMENT: "Agreement" refers to this Agreement as it exists as amended from time to time.

3-1.6 DISABILITY: As used herein, "disability" means any physical or mental disability or capacity that has been brought to the Trustee's attention (or that of a potential successor Trustee) by the submission of a statement of a licensed physician or licensed clinical psychologist, that the individual is unable to attend to or effectively administer the individual's financial affairs. Such individual shall be determined to have recovered from any such disability upon the submission to the Trustee of a statement of the same physician that the disability has been removed.

"Disability" and/or "disabled" shall be synonymous with the appropriate tenses of the terms "incapacitated" or "incompetent" and shall also include any period of time during which the person has been missing and unaccounted for more than thirty (30) days and such disappearance is supported by police or other governmental record.

#### **ARTICLE 3-2: MODIFICATION**

This Agreement and the Trust hereby created may only be amended by order of a court.

#### **ARTICLE 3-3: REPORTS**

Upon request, the Trustee shall provide to the Probate Court of the First Circuit, State of Hawaii, a report setting forth all of the receipts, disbursements, and distributions to or from the trust.

#### **ARTICLE 3-4: PARTIAL INVALIDITY**

If any provision is unenforceable or invalid for any reason, the remainder of this Agreement shall continue in effect.

#### **ARTICLE 3-5: JURISDICTION**

The laws of the State of Hawaii shall govern this Agreement and the construction of any of its terms.

### **ARTICLE 3-6: SITUS**

The initial situs of this trust shall be the State of Hawaii. Consistent with Article 2-6.27, the Trustee shall have authority to transfer the situs of the Trust within the United States, subject to the approval of the Probate Court of the First Circuit, State of Hawaii.

### **ARTICLE 3-7: PROTECTIVE PROVISIONS**

No beneficiary shall have any right to anticipate, transfer or encumber any part of any interest in the Trust estate nor shall any part of the beneficiary's interest be liable for that beneficiary's debts or obligations (including alimony) or be subject to attachment, garnishment, execution, creditor's bill, or other legal or equitable process..

### **ARTICLE 3-8: DISTRIBUTION BEFORE NOTICE**

The Trustee shall not be liable for any distribution or other action that is made upon order of a court, or which would have been proper, unless made in bad faith, or unless made after receiving notice of a court proceeding that would modify a prior order of a court.

### **ARTICLE 3-9: DISCLAIMER**

Any person competent to act may disclaim or renounce any part or all of any property, interest or power hereunder by any one or more written instruments which shall be delivered to the Trustee; and thereupon the property, interest or power disclaimed or renounced shall be treated as if that person had died immediately preceding such event that made said person entitled to the benefit involved.

### **ARTICLE 3-10: RULES OF CONSTRUCTION**

No provision of this trust shall be interpreted in such manner as would cause it to not comply with the provisions of Treasury Regulation Section 1.468B-1.

### **ARTICLE 3-11: ACCEPTANCE OF TRUST**

The Trustee, by joining in the execution of this Agreement, acknowledges receipt of the property described in Schedule A, acknowledges that the Trust will be administered in accordance with Schedule B, and signifies the acceptance of the KALIMA CLASS ACTION SETTLEMENT TRUST, and covenants that the Trust will be executed with all due fidelity.

The parties hereto agree that this instrument may be executed in counterparts, whether electronic or otherwise, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument,

duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

The Trust is established pursuant to that certain FIRST AMENDED JOINT ORDER APPROVING PROBATE PLAN AND QUALIFIED SETTLEMENT TRUST entered by the Circuit Court of the First Circuit, State of Hawaii on or about June 23, 2023. The Trustee is signing below to acknowledge its acceptance of the trust created by this Agreement.

Established pursuant to that certain FIRST AMENDED JOINT ORDER APPROVING PROBATE PLAN AND QUALIFIED SETTLEMENT TRUST entered by the Circuit Court of the First Circuit, State of Hawaii on or about June 23, 2023

DocuSigned by:  
*Sylvius von Saucken*  
18A143D05D4544E...

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SYLVIVUS H. VON SAUCKEN  
GENERAL MANAGER – MASS TORTS|  
EPIQ CLASS ACTION & CLAIMS  
SOLUTIONS, INC.

TRUSTEE

STATE OF Kansas

)  
)  
)

SS.

On this date of June 23<sup>rd</sup>, 2023, before me personally appeared SYLVIOUS H. VON SAUCKEN, GENERAL MANAGER – MASS TORTS, EPIQ CLASS ACTION & CLAIMS SOLUTIONS, INC., as a Trustee of the KALIMA CLASS ACTION SETTLEMENT TRUST dated June 23, 2023, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed as Trustee.



A handwritten signature in black ink, appearing to read 'Barbara Shogbamimu', written over a horizontal line.

Print Name: Barbara Shogbamimu  
Notary Public, State of Kansas

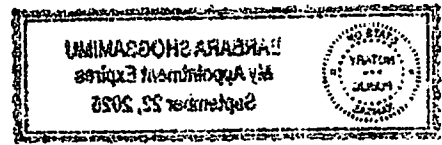
My Commission expires: 9/22/2025

10-10-2020

10-10-2020

10-10-2020

10-10-2020





Schedule A

The following is a description of the original assets of KALIMA CLASS ACTION SETTLEMENT TRUST.

All of the Consideration in the settlement of *Kalima et al. v. State of Hawaii et al.*, Civil No. 99-4471-12 LWC, filed in the Circuit Court of the First Circuit, State of Hawaii, in the gross amount of \_\_\_\_\_ AND NO/100 DOLLARS\_(\$\_\_\_\_\_.00)

Dated: Honolulu, Hawaii, \_\_\_\_\_.

As ordered by that certain FIRST AMENDED  
JOINT ORDER APPROVING PROBATE  
PLAN AND QUALIFIED SETTLEMENT  
TRUST entered by the Circuit Court of the First  
Circuit, State of Hawaii on or about  
\_\_\_\_\_

Schedule B

FIRST AMENDED JOINT ORDER APPROVING PROBATE PLAN AND QUALIFIED SETTLEMENT TRUST entered in *Kalina et al. v. State of Hawaii et al.*, Civil No. 99-4471-12 LWC, filed in the Circuit Court of the First Circuit, State of Hawaii, on or about June 23, 2023.

Electronically Filed  
Supreme Court  
SCPW-23-0000571  
26-OCT-2023  
08:41 AM  
Dkt. 37 OP

IN THE SUPREME COURT OF THE STATE OF HAWAII

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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.

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SCPW-23-0000571

ORIGINAL PROCEEDING  
(CASE NO. 1CC990004771)

OCTOBER 26, 2023



RECKTENWALD, C.J. AND EDDINS, J., CIRCUIT JUDGE VIOLA,  
IN PLACE OF McKENNA, J., RECUSED, CIRCUIT JUDGE TO'OTO'O AND  
CIRCUIT JUDGE OCHIAI, ASSIGNED BY REASON OF VACANCIES

OPINION OF THE COURT BY EDDINS, J.

I.

For decades, thousands of Native Hawaiians waited to lease land pledged to them under the federal government's 1920 Hawaiian Homes Commission Act. First the Territory of Hawai'i, then the State of Hawai'i, held homestead land in trust for Native Hawaiian beneficiaries. Both breached their fiduciary duties from the start. See Kalima v. State, 111 Hawai'i 84, 88, 137 P.3d 990, 994 (2006) (Kalima I).

Now Native Hawaiians will receive compensation for the State's failure. In a class action, trust beneficiaries successfully sued the State. The State breached its trustee responsibilities. The State settled.

Many beneficiaries died as the case progressed. Others waited. And waited. Like untold numbers of Native Hawaiians after 1920 who just wanted to live on the promised homelands. Our decision accelerates payout to the beneficiaries.

Because of its extraordinary public importance, we accepted a petition for a writ of mandamus, an appeal challenging final approval of the case's settlement.

We hold that Petitioner Rickey T. Rivera, Jr. has no right to compensation. He was born beyond the statutory period to receive a payout from the settlement.

Rivera also appealed to the Intermediate Court of Appeals (ICA). Our decision ends Rivera's appeal. We direct the ICA to dismiss CAAP-23-0000572.

## **II.**

The Hawaiian Homes Commission Act created a land trust to provide homesteads to Native Hawaiians. Kalima v. State, 148 Hawai'i 129, 133, 468 P.3d 143, 147 (2020) (Kalima II). Kalima I and Kalima II chronicle the messy history of the State's trust breaches. And the snail-paced struggles to redress those betrayals. Kalima I, 111 Hawai'i at 88-97, 137 P.3d at 994-1003; Kalima II, 148 Hawai'i at 133-42, 468 P.3d at 147-56. We recap some history.

In 1991, the legislature waived the State's sovereign immunity. It passed a law that allowed beneficiaries of the Hawaiian Homes Commission Act to sue the State. Hawai'i Revised Statutes (HRS) § 674-17 (2016). The law entitled qualified Native Hawaiians to compensation for individual trust breaches that happened between August 21, 1959 and June 30, 1988. HRS § 674-16 (2016).

In 1999, the plaintiffs filed a class action alleging breaches of the State's trust responsibility. In 2009, the

Circuit Court of the First Circuit sided with them. The State was liable. Kalima II, 148 Hawai'i at 136, 468 P.3d 150.

Drawn-out litigation, settlement talks, and law-making ensued.

In June 2022, the parties settled. The State agreed to pay the beneficiary class \$328 million. The legislature, in turn, appropriated funds for that settlement. S.B. 3041, S.D. 2, H.D. 1, C.D. 1, 31st Leg., Reg. Sess. (2022); see Act 280 (2022).

The settlement agreement has two key terms covering the time frame before eligible class members receive compensation: final approval by the circuit court, and judicial finality - an end to all appellate review.

The circuit court concluded that there were 2,515 eligible class members. 1,351 class members are alive; 1,164 passed away. Class members or their estates will receive \$286 million (the remaining funds appropriated by the legislature go to attorney's fees and other expenses).

The settlement excludes class members who are ineligible for payment. HRS § 674-16 has a cut-off date. Per that law, the settlement does not pay anyone who "asserted an individual breach of trust that occurred after June 30, 1988."

This law excludes Rivera. He did not become eligible to apply for a homestead lease until he turned 18 on August 21, 1988.

As final approval neared, the circuit court received objections. The court had to determine - at a Hawai'i Rules of Civil Procedure Rule 23 fairness hearing - whether the class settlement was "fair, reasonable, and adequate." See Pub. Access Trails Hawai'i v. Haleakala Ranch Co., 153 Hawai'i 1, 32, 526 P.3d 526, 557 (2023) (McKenna, J. concurring) (applying the "fair, reasonable, and adequate" standard from Federal Rule of Civil Procedure 23(e) to a Hawai'i class action).

In June 2023, Rivera objected. Later he withdrew his objection. But soon he reappeared, mailing two letters to the circuit court. In the first, Rivera insists that he deserves compensation: the "claim administrator made a mistake." Likewise, the second letter complains that the claim administrator erred. Rivera asks the circuit court to look at his claim.

On July 21, 2023, the court conducted the fairness hearing. The settlement was "fair, reasonable and adequate." All objections lacked merit. The court approved the settlement. And on August 1, it entered final judgment.

On August 17, 2023, the circuit court received and filed another letter from Rivera. Now he wanted to appeal: "I wish to file an appeal before the deadline of August 31, 2023." Rivera wrote: "The appeal is limited to the issue of special master and

claims administrator failing to process my claim in a timely fashion."

Because of the settlement's finality term, Rivera effectively paused payment to 2,515 class members with vetted claims. The circuit court sought input from the parties. The State said that so long as Rivera's appeal is unresolved, the settlement's finality term (no more appeals possible) is unmet. Class counsel countered: Rivera had no right to appeal.

Circuit Court of the First Circuit Judge Lisa Cataldo expressed dismay. "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 court's invite spurred no helpful solution.

On October 9, 2023, Judge Cataldo ordered the clerk to file Rivera's appeal with the ICA (case number CAAP-23-0000572).

Before the appeal was docketed, Rivera sent a letter to the Hawai'i Supreme Court:

Ref: Kalima Lawsuit Case File

I am a claimant plaintiff in the above case, I respectfully understand the Hawaii Supreme Court has established rules in order to qualify for settlement payment. I believe I do qualify under the rule, but the Special Master refused to process my claims. Can you please have [the Court] review my records for verification please; my defenses are the breach of trust period is from August 21, 1959 through June 30, 1988. My first attempt to apply was June 15, 1988. Enclosed are the records for your review.



Together with that letter were documents, like notices Rivera received from the Hawaiian Claims Office. Rivera didn't pay the petition filing fee, or ask to waive the fee. Then on October 10, the court clerk received a check from him. That day, the clerk docketed Rivera's letter as an original proceeding in this court.

We treated Rivera's letter as a petition for a writ of mandamus. See Erum v. Llego, 147 Hawai'i 368, 391, 465 P.3d 815, 838 (2020) (we construe self-represented filings liberally to provide a route to relief). Because Rivera's petition and appeal raise the same issue, we stayed the ICA proceedings pending resolution of the petition.

### **III.**

We reject Rivera's petition for a writ of mandamus.

Writs are rare. Writs are an exceptional remedy; they are no substitute for appeal. Gannett Pac. Corp. v. Richardson, 59 Haw. 224, 227, 580 P.2d 49, 53 (1978).

The Hawai'i Constitution and Hawai'i Revised Statutes allow us to issue writs. Art. VI of the Hawai'i Constitution vests the "judicial power of the State" in this court and the lower courts. Judicial power includes the ability to advance justice. State v. Moriwake, 65 Haw. 47, 55, 647 P.2d 705, 712 (1982).

HRS § 602-5(3) (2016 & Supp. 2022) confers original jurisdiction over writs. And HRS §602-5(5) allows us to issue writs or orders to aid our jurisdiction.

More broadly, HRS § 602-5(6) empowers the Hawai'i Supreme Court to do justice. This court has the power to "make and award such judgments, decrees, orders and mandates, issue such executions and other processes, and do such other acts and take such other steps as may be necessary to carry into full effect the powers which are or shall be given to it by law or for the promotion of justice in matters pending before it." HRS § 602-5(6).

The Hawai'i Supreme Court also has general supervisory powers over the state's lower courts. "The supreme court shall have the general superintendence of all courts of inferior jurisdiction to prevent and correct errors and abuses therein where no other remedy is expressly provided by law." HRS § 602-4 (2016).

"Extraordinary writs are appropriate in extraordinary circumstances." Womble Bond Dickinson (US) LLP v. Kim, \_\_\_ Hawai'i \_\_\_, 2023 WL 6861305, at \*9 (2023). "[T]here are rare and exceptional situations where despite the availability of alternative remedies, the special and exigent circumstances of the particular case may move this court to issue its writ."

Sapienza v. Hayashi, 57 Haw. 289, 293, 554 P.2d 1131, 1135 (1976).

When issues of "considerable public importance" are at stake, we may exercise our supervisory power. Kaneshiro v. Au, 67 Haw. 442, 446, 690 P.2d 1304, 1308 (1984). Sometimes lower courts require "immediate need of direction from this court on a procedural and substantive matter of public importance."

Gannett, 59 Haw. at 227, 580 P.2d 53. The value of speedy resolution may also prompt this court to step in: to "allow the matter to rest until the appeals process has run its course would forestall the expeditious presentation" of important public issues. Sapienza, 57 Haw. at 294, 554 P.2d 1135. A long lull may cause public harm. Id.

Because of this case's extraordinary public importance, we accepted the petition. Now we resolve it.

1,351 people, and the descendants of 1,164 more, await long-overdue compensation. We feel there is a critical and immediate need to provide decisive direction.

Here, the ordinary timeline for appellate review delays justice. Per Hawai'i Rules of Appellate Procedure (HRAP) Rule 28, an appellant gets 40 days to file their brief, and a respondent receives another 40 days to answer. Then the appellant has 14 days to reply. Extensions may happen. See HRAP 29(a). After that, the ICA takes time to decide.

Following the ICA's judgment, a party has 30 days to apply for cert. And this court has 30 days to accept or reject the cert application. HRAP 40.1.

The beneficiaries have waited decades, across two centuries. Many have died before receiving homestead land or compensation for the State's breach of its trust duties. Justice demands ending this case. Paying the beneficiaries. Now.

A prompt appellate resolution serves the public interest. Our resolution is an appropriate use of our authority under HRS §§ 602-4 and 602-5.

#### **IV.**

Rivera has standing to appeal the circuit court's order approving the settlement. His letters preserved grounds for appeal.

Courts liberally construe a self-represented litigant's filings to promote "equal access to justice and an opportunity to be heard." Makila Land Co., LLC v. Kapu, 152 Hawai'i 112, 121, 522 P.3d 259, 268 (2022). A court assesses a pro se submission to favor a route to relief when a reasonable construction lets the party go on. Erum, 147 Hawai'i at 391, 465 P.3d at 838.

Rivera has preserved the one issue that animates his appeal: eligibility to receive compensation. His letters to the circuit court protested: "I disagree with the notice that I do not qualify for payment." He included several claim-related documents and asked the circuit court to consider his eligibility. Later his August 17 letter announced: "I wish to file an appeal before the deadline of August 31, 2023." We must reasonably construe these filings to pave a route to relief. Rivera gets his day in appellate court. We decide the petition on the merits.

**V.**

The question Rivera raises in his ICA appeal mirrors the one he raises to this court: is he entitled to payment from the settlement pot?

He is not.

The reason is elementary. Rivera was too young to get a homestead lease during the statutory claim period.

In 1991, the legislature passed Act 323. The Act empowered Native Hawaiians to seek compensation for the State's fiduciary breaches. HRS § 674-1 (2016). The State waived its sovereign immunity. HRS § 674-16(a). The people of Hawai'i, through their elected officials, took responsibility. Native Hawaiians were gravely harmed. The legislature awarded "individual

beneficiaries under the Hawaiian home lands trust" compensation.  
HRS § 674-1.

HRS Chapter 674 limited the compensation period from statehood's first day - August 21, 1959 - to June 30, 1988. HRS § 674-16(a). The Hawaiian Homes Commission Act requires homestead applicants to be at least 18 years old. 1985 Haw. Sess. Laws, Act 60, § 2 at 93-94. To receive compensation, a class member must have been eligible for a lease - and thus at least 18 - by June 30, 1988.

Rivera was born too late, August 21, 1970. He turned 18 on August 21, 1988, almost two months after the June 30 statutory deadline.

Many settlement class members waited decades for homestead land that never came. But Rivera was too young to get a lease. So he lacks any claim to compensation. The claims administrator and circuit court correctly concluded that he was ineligible for compensation.

We end Rivera's case. Because the legal issue is the same, our holding moots Rivera's appeal in CAAP-23-0000572.

## **VI.**

We deny the petition. Per HRS §§ 602-4 and 602-5, we order the ICA to dismiss CAAP-23-0000572.

There are no appeals left. This petition ends all appellate review in case number 1CC990004771. We remand to the circuit court.

Rickey T. Rivera, Jr.  
(on the briefs)  
Petitioner

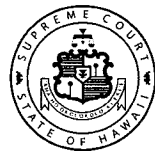
/s/ Mark E. Recktenwald

/s/ Todd W. Eddins

/s/ Fa'auuga L. To'oto'o

/s/ Dean E. Ochiai

/s/ Matthew J. Viola



Carl M. Varady, Thomas R.  
Grande (on the briefs)  
for respondents 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

Donna H. Kalama, Craig Y. Iha,  
Jordan A.K. Ching, Linda Lee K.  
Farm (on the briefs)  
for respondents State of Hawai'i  
and State of Hawai'i Department  
of Hawaiian Home Lands

**Electronically Filed  
Intermediate Court of Appeals  
CAAP-23-0000572  
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NO. CAAP-23-0000572

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

LEONA KALIMA, DIANE BONER AND RAYNETTE NALANI AH CHONG, special administrator of the estate of JOSEPH CHING, Deceased and IRENE CORDERO-VIERRA and CHARLES AHLO, on behalf of themselves and all others similarly situated, MAHEALANI WENDT, special administrator of the estate of PEARL PERRY, Deceased, EVANGELINE LANAI, special administrator of the estate of WILLIAM LANAI, Deceased, RAYMOND GURCZYNSKI, special administrator of the estate of ETHEL GURCZYNSKI, Deceased, HANNAH NAKA, DIANE MATHIAS, ISAIAH SONG, formerly known as Anthony Kea, LOUIS PELEKAI; LIBERTA HUSSEY-ALBAO, WEHILANI M. CHING, Plaintiffs-Appellees,

and

DOE PLAINTIFF NO. 1, on behalf of themselves and all other similarly situated, Plaintiff-Appellee,

v.

STATE OF HAWAII, STATE OF HAWAII DEPARTMENT OF HAWAIIAN HOME LANDS, STATE OF HAWAII HAWAIIAN HOME LANDS TRUST INDIVIDUAL CLAIM REVIEW PANEL, JOSHUA B. GREEN, in his official capacity as Governor of the State of Hawaii, Defendants-Appellees,

and

JOHN DOES 1-10, JANE DOES 1-10, DOE CORPORATIONS 1-10, DOE PARTNERSHIPS 1-10 AND DOE GOVERNMENTAL ENTITIES 1-10, Defendants-Appellees,

and

ALFRED NAPAHELUA SPINNEY, AMBROSE S. FERNANDEZ, JR., BARBARA NAKAGAWA, FRANCIS KEOUA GORA AND MATHILDA NOILANI MASON, Interested Persons-Appellees,

and

RICKEY T. RIVERA, JR., Interested Person-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CIVIL NO. 1CC990004771)





**ORDER**

(By: Leonard, Presiding Judge, Hiraoka and McCullen, JJ.)

On October 26, 2023, the Hawai'i Supreme Court, in Rivera v. Cataldo, No. SCPW-23-0000571, entered an opinion directing this court to dismiss self-represented Interested Person-Appellant Rickey T. Rivera, Jr.'s appeal in CAAP-23-0000572.

Therefore, IT IS HEREBY ORDERED that the appeal is dismissed.

DATED: Honolulu, Hawai'i, October 26, 2023.

/s/ Katherine G. Leonard  
Presiding Judge

/s/ Keith K. Hiraoka  
Associate Judge

/s/ Sonja M.P. McCullen  
Associate Judge