



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, 2023, 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



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JUDGE OF THE ABOVE-ENTITLED COURT