

EMILY H. KAWASHIMA, 6498-0
AAL, LLLC

Topa Financial Center
700 Bishop Street, Suite 1700
Honolulu, Hawaii 96813
Telephone No.: (808)744-4688
Facsimile No.: (888)777-5405
E-mail: emily@kawashimalaw.com

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PROBATE SPECIAL MASTER

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

IN THE MATTER

OF

THE KALIMA CLASS ACTION
SETTLEMENT TRUST, DATED
JUNE 23, 2023.

T. No. 1CTR-23-0000142
(Trust)

***EX PARTE* PETITION FOR APPROVAL
OF ALLOCATION OF FEES AND COSTS
AND PAYMENT INFORMATION;
DECLARATION OF COUNSEL; EXHIBITS
“A” – “C”**

***EX PARTE* PETITION FOR APPROVAL OF ALLOCATION
OF FEES AND COSTS AND PAYMENT INFORMATION**

Comes now Emily H. Kawashima, Esq., Probate Special Master in, *Kalima v. State of Hawaii*, Civ. No. 99-4771-12 LWC (hereinafter “*Kalima*”), and hereby petitions this Court *ex parte*, for an order approving the allocation of fees and costs and payment information, pursuant to *Hawaii Revised Statutes* §554D-201(a) and (c) and Rules 3 and 23(d) of the *Hawaii Probate Rules*, as follows:

1. Probate Special Master seeks the Court’s approval of the allocation of fees and costs from the Claims Administrator, Probate Special Counsel and Probate Special Master as to each beneficiary’s share of their Deceased Class Member’s settlement award.

2. A true and correct copy of the Epiq Class Action & Claims Solutions Summary Report Regarding Notice Administration and Payment Distribution is attached hereto as Exhibit “A.”

3. Said Exhibit “A” provides an overview of the estimated the fees and costs for the Probate Plan approved by this Honorable Court by that certain Omnibus Order Re Kalima Class Qualified Settlement Trust Proceedings filed herein on or about December 29, 2023.

4. The total estimated cost of carrying out the Probate Plan is \$2,857,752.62.

5. The total estimated cost consists generally of \$1,624,052.62 for the Claims Administrator (inclusive of the Trustee’s duties), \$531,700 for the Probate Special Master and \$702,000 for the Probate Special Counsel.

6. While the majority of the estimated costs relate to the multiple petitions for instructions to determine the correct beneficiaries of the Kalima Class Action Settlement Trust, there are some fees and costs for the Claims Administrator, the Probate Special Master and Probate Special Counsel which are not specifically attributable to any specific deceased class member, estate, or petition.

7. It is necessary and appropriate to develop a methodology to apportion the fees and costs that are not attributable to a particular deceased class member, estate, or petition.

8. With the support of Class Counsel, Special Master, the Claims Administrator, and Probate Special Counsel, your Probate Special Master recommends a pro rata allocation of these general fees and costs among all claims of the Deceased Class Members. This would follow the same methodology employed when all class member awards were calculated prior to Final Approval. **(Category 1 Reduction).**

9. For the Probate Special Master and Probate Special Counsel's fees and costs which are attributable to a particular estate as awarded through the Probate Court's orders granting petitions for instructions, it is recommended they are allocated on a pro rata basis to each Deceased Class Member's claim, and by extension through each of the beneficiaries' respective interest. **(Category 2 Reduction).**

Example:

Beneficiary's Share of the Award
Less Epiq's General Probate Costs Allocation **(Category 1a)**
Less Probate Special Master and Special Counsel's
General Probate Fees and Costs Allocation **(Category 1b)**
Less Probate Fees and Costs Attributable to the Petition **(Category 2)**
Beneficiary's Final Share (\$)

10. This methodology is the best possible way to fairly allocate fees and costs that are and are not attributable to any one estate without creating an undue administrative burden on the Probate Special Master, Probate Special Counsel, and the Claims Administrator.

11. With regard to the information provided on the check stubs, your Master submits the proposed language as Exhibit "B."

12. The check stub will also include the calculation of the award, but the deductions will be combined as follows:

Example:

Beneficiary's Share of the Award
Less the Total of Categories 1a, 1b and 2
Beneficiary's Final Share (\$)

13. The pro rata share of individual fee and cost allocation shall be based on the amount of the Deceased Class Member's award.

14. The checks will include an insert with additional information regarding the payments such as a fiduciary's duties, tax implications and whether public benefits will be affected by the payment. Your Master submits the proposed insert language as Exhibit "C."

15. Petitioner therefore respectfully request that the Court grant this *Ex Parte* Petition for Approval of the Allocation of Fees and Costs and Payment Information.

WHEREFORE, Petitioner prays:

- A. That hearing and notice be waived;
- B. That the Court grant the *Ex Parte* Petition for Approval of Allocation of Fees and Costs and Payment Information;
- C. That upon granting the *Ex Parte* Petition for Approval of Allocation of Fees and Costs and Payment Information, the Claims Administrator may begin processing payments as set forth in this Court's Orders Granting Petitions for Instructions and in the manner approved in this *Ex Parte* Petition; and
- D. That the Court grant other such relief as the Court may deem as proper.

THE UNDERSIGNED UNDERSTANDS THAT THIS DOCUMENT IS DEEMED TO INCLUDE AN OATH, AFFIRMATION, OR STATEMENT TO THE EFFECT THAT ITS REPRESENTATIONS ARE TRUE AS FAR AS UNDERSIGNED KNOWS OR IS INFORMED, AND PENALTIES FOR PERJURY MAY FOLLOW DELIBERATE FALSIFICATION.

DATED: Honolulu, Hawaii, on June 21, 2024.

/s/ Emily H. Kawashima
EMILY H. KAWASHIMA, ESQ.
Probate Special Master

Hawaii Probate Rule 5(b) Certification:

/s/ Emily H. Kawashima
EMILY H. KAWASHIMA

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

IN THE MATTER

OF

THE KALIMA CLASS ACTION
SETTLEMENT TRUST, DATED
JUNE 23, 2023.

T. No. 1CTR-23-0000142
(Trust)

DECLARATION OF COUNSEL

DECLARATION OF COUNSEL

EMILY H. KAWASHIMA, hereby declares as follows:

1. I am licensed to practice before this Court. I am the Probate Special Master in, *Kalima v. State of Hawaii*, Civ. No. 99-4771-12 LWC (hereinafter “*Kalima*”), and I am authorized and competent to make this Declaration based upon personal knowledge and am competent to testify as to the matters stated herein.

2. This Declaration is made in support of the *Ex Parte* Petition for Approval of Allocation of Fees and Costs and Payment Information.

3. A true and correct copy of the Epiq Class Action & Claims Solutions Summary Report Regarding Notice Administration and Payment Distribution is attached as Exhibit “A.”

4. A true and correct copy of the proposed language to be included on the payment check stub is attached as Exhibit “B.”

5. A true and correct copy of the proposed language to be included on the insert with the check is attached as Exhibit “C.”

6. This Ex Parte Petition is brought pursuant to Hawaii Probate Rule 23(d), as we request the Court to exercise its discretion in deciding this petition without notice or hearing.

I DO DECLARE UNDER PENALTY OF LAW THAT THE FOREGOING IS TRUE AND CORRECT.

DATED: Honolulu, Hawaii, June 21, 2024.

/s/ Emily H. Kawashima
EMILY H. KAWASHIMA



Epiq Class Action & Claims Solutions
Summary Report Regarding Notice Administration

Epiq Class Action and Claims Solutions (“Epiq”) has prepared this report to 1) summarize Notices sent to Class Members and Family Representatives; 2) provide statistical data on contact with Class Members and Family Representatives; 3) summarize Exclusions by the class; 4) report on the receipt of Declarations of Support of Settlement and Requests for the Opportunity to be Heard; 5) outline payment distribution and return procedures, and 6) provide an outline for follow-up procedures for checks not negotiated and Class Members for whom there has been no contact.

I. Summary of All Notices

Epiq provided the following notices pursuant to the Notice Plan contained in the Order Granting Preliminary Approval:

FIRST NOTICE		
Date	Document Sent	Count
7/5/22	Postal Notices	2,669
7/11/22	Email Notices	1,895
8/24/22	Postal Notices to Prior Opt Outs	25
8/24/22	Postal Notices to Prior Settled Claims	31
9/22/22	Postal Notices to Updated Addresses	266

SECOND NOTICE			
Date	Document Sent	Count	Deadline ¹
1/17/23	Postal Notices to Prior Opt Outs or Settled Claims	56	4/3/23
1/31/23	Postal Notices to Claims Eligible for Payment	2,555	4/3/23
1/31/23	Postal Notices to Construction Claims Eligible for Payment	103	4/3/23
1/31/23	Postal Notices to Claims Ineligible for Payment	202	4/3/23

¹ This is the deadline to submit corrections or additional documentation.

CORRECTED SECOND NOTICES			
Date	Document Sent	Count	Deadline
3/10/23	Postal Corrected Notices to Prior Settled Claims	18	3/17/23
3/10/23	Postal Corrected Notices to Prior Opt Outs	21	3/17/23
3/10/23	Postal Corrected Notices to Triplicate Claims	14	4/3/23
3/14/23	Postal Corrected Notices to Incorrect Start and/or End Dates	454	4/3/23

SECOND NOTICE RESPONSES			
Date	Document Sent	Count	Deadline²
Varies	Claim Date Correction Forms Received	210	Varies
Varies	Objections to Award Date Decisions Received	15	Varies

CLAIM ELIGIBILITY UPDATES			
Date	Document	Count	Deadline
4/18/23	Postal Notices to Class Members Ineligible for Payment	5	6/1/23
5/9/23	Postal Notice to Class Member Ineligible for Payment	1	6/19/23
5/16/23	Postal Notice to Class Member Ineligible for Payment	1	6/26/23
6/14/23	Postal Notices to Class Members Ineligible for Payment	22	7/6/23
6/29/23	Postal Notices to Class Members Ineligible for Payment	3	7/6/23
6/30/23	Postal Notice to Class Member Eligible for Payment	1	7/14/23

THIRD NOTICE			
Date	Document	Count	Deadline
6/13/23	Postal Notices to Class Members Eligible for Payment	2,518	7/6/23
6/20/23	Postal Notices to Class Members Ineligible for Payment	287	7/14/23

II. Statistical Data on Contact with Class Members

As of June 30, 2023, Epiq has mailed the First and/or Second Notice to 2,797 unique records, of which 114 unique records are undeliverable. Prior to each mailing, Epiq performed address searches against the National Change of Address (“NCOA”) database to check for updated addresses. Additionally, where a Notice from the First or

² At the direction of the Settlement Special Master, Epiq accepted corrections beyond the deadlines stated up to and including June 14, 2023.

Second Notices was returned as undeliverable, Epiq performed skip trace searches using a third-party service, to seek additional address updates to remail these notices. As a result of these efforts, this is a deliverable rate of 95.92%.

As of June 30, 2023, Epiq has mailed a total of 2,514 Third Notices (reduced from 2,518 through the correction process) to unique Class Member records that were known then to be eligible for an award. Notices were sent to the 1,349 Living Class Members to representatives or the last known addresses of the 1,165 Estates of Deceased Class Members. Of the Third Notices sent to Class Member records eligible for an award, 7 unique Class Member records are currently known to be undeliverable. This is a deliverable rate of 99.7%.

Information Requests Forms have been collected since the First Notice was sent. Epiq has received 827 Information Request Forms from 672 Living Class Members (approximately 49%) eligible for an award. Epiq has received 654 Information Request Forms from relatives or representatives of 480 Deceased Class Members (approximately 41%) eligible for an award.

Additionally, Epiq has had direct contact (phone calls, postal or email correspondence) with 1,880 members or their representatives. This represents a 67.21% contact rate with the Class.

Epiq is maintaining a toll-free interactive Voice Response Unit “VRU” to provide information and accommodate inquiries from Settlement Class Members. Callers also have the option of leaving a voicemail for a call center representative to call them back. As of June 30, 2023, there were 14,414 total calls to the toll-free number representing 16,474 minutes, and call center representatives have handled 3,730 outbound calls representing 21,485 minutes of use.

Epiq is maintaining a dedicated mailbox and email inbox, info@kalima-lawsuit.com, for Settlement Class Members to submit documents and ask and receive answers to questions regarding the Settlement. As of June 30, 2023, Epiq has received 106 letters, sent 161 letters in response to Class Member questions, received 6,016 incoming emails, and sent 1,233 emails in response to Class Member questions.

Epiq is maintaining a website with information about the settlement, including important documents, copies of all notices sent, and information request forms.

As of June 30, 2023, the settlement website had 30,058 unique visitors and 72,156 website pages have been viewed. See Exhibit “1”: June 30, 2023 Client Activity Report.

ADDITIONAL KEY NOTICE STATISTICS³		
Category	Statistic	Count
Notice	Living Class Members whose Notice was Undeliverable	32
Notice	Deceased Class Members whose Notice was Undeliverable	82
Notice	Living Class Members for whom no contact occurred	667
Notice	Deceased Class Members for whom no contact occurred	250
Telephone	IVR Calls Received	14,414
Telephone	IVR Minutes	16,474
Telephone	Voicemails Received	4,217
Telephone	Outgoing Calls	3,730
Telephone	Outgoing Operator Minutes	21,485
Website	Unique Website Visitors	30,058
Website	Website Pages Viewed	72,156
Correspondence	Total Information Request Forms – Living Class Members	888
Correspondence	Total Information Request Forms – Deceased Class Members	695
Correspondence	Emails Received	6,016
Correspondence	Emails Sent	1,233

III. Class Claims, No Claims, Settled and Opt Out

These are Class Claims, No Claims, Settled and Opt Out as of the date of this Report.

Category	Count
Claim - Living	1,349
Claim - Deceased	1,165
No Claim	227
Settled	30
Opted-Out	28
Total	2,799⁴

³ Notice statistics are through June 30, 2023.

⁴ We have been informed by Class Counsel that additional Payment Recipients were added as a result of the addition of 1) two claims listed on one Hawaiian Claims Office

IV. Report on Statements of Support & Requests to Be Heard

Epiq has received 115 Statements of Support as of the July 6, 2023 deadline. These Statements of Support are attached as Exhibit “2”.

Epiq has received 6 requests for an opportunity to be heard at the Final Approval Hearing as of the July 6, 2023 deadline. These requests are listed in Exhibit “3”.

V. Payment and Distribution and Return Procedures

Epiq is informed of the requirements of the Settlement Agreement⁵ and Payment Distribution Plan for payment procedures. Epiq will commence the disbursement of awards starting September 1, 2023, unless there are any appeals to the Settlement. For awards less than \$25K, Epiq will send checks via First Class USPS. For awards greater than \$25K, Epiq will confer with Counsel on a mail service (Priority USPS, UPS or FedEx) which offers tracking and signature requirements. For any checks returned to Epiq as undeliverable, a “skip-trace” search using a third party vendor, Transunion, will be performed to determine if an updated address can be found. For any checks where a Class Member requests a reissue, Epiq will void the initial check and reissue a new check pending the receipt of documentation which supports the reason for reissue request.

VI. Timetable and Follow-up to Checks Not Cashed and “No Contact” Class Members

(“HCO”) claims form and 2) claims for deceased parents or relatives that were excluded by the HCO Panel.

⁵ Settlement Agreement, ¶ VII.D at 15:

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.

Under the Settlement Agreement and Payment Distribution Plan, checks will expire and become void 120 days after issuance. Epiq will file a report on or about February 1, 2024 identifying 1) all class members whose checks have not been cashed and 2) all living⁶ class members for whom there has been “no contact”. In consultation with the Settlement Special Master and Class Counsel, Epiq will formulate an appropriate plan for follow-up to each category of claims and for apportionment of costs to these claims.

I declare under penalty of perjury under the laws of the United States and the State of Hawai’i that the foregoing is true and correct.

/s/ Robert Coomes
Robert Coomes
Senior Settlement Project Manager
Epiq Class Action & Claims Solutions, Inc.

⁶ Epiq has been informed that follow-up for deceased class members’ heirs will be the responsibility of the Probate Special Master and Probate Special Counsel.

KALIMA CLAIMS ADMINISTRATOR
PO BOX 4199
PORTLAND OR 97208-4199

Check Date: <<Mail Date>>
Check Number: <<Check Number>>
Check Amount: <<Check Amount>>
Tracking Number: <<TN>>



678900001111

[STUBADDRESSNAME1]
[STUBADDRESSNAME2]
[STUBADDRESSNAME3]
[STUBADDRESS1]
[STUBADDRESS2]
[STUBADDRESS3]
[CITY] [STATE] [POSTALCODE]
[COUNTRY]

AK2681 v.01

This check is being issued to you as a Beneficiary of the Kalima Class Action Settlement Trust ("Trust"), as adjudicated by order of the Probate Court. Your beneficial interest relates to the Settlement Payment of a Deceased Class Member in the class action lawsuit *Kalima v. State of Hawai'i*, Civil No. 99-4771-12, First Circuit Court, State of Hawai'i, and the Payment Distribution Plan ("PDP") approved on August 1, 2023. The enclosed check constitutes full satisfaction of your beneficial interest in the Trust relating to the Deceased Class Member's claim(s).

Your share of the total Settlement Payment is comprised of the following:

Total Beneficial Interest Relating to Deceased Class Member: <<\$#,###.##>>
Claims Administrator & Probate Fees and Costs: <<\$#,###.##>>
Net Total Beneficial Interest: <<\$#,###.##>>

This check is only valid for <<120>> days from the issue date, so please deposit promptly. Your negotiation of this check (depositing it in a bank account, etc.) means you are accepting the above net total beneficial interest amount as your full beneficial interest in the Trust relating to the Deceased Class Member. Cashing or depositing this check (or other negotiation of the check) is also proof of: (1) your receipt of these monies and (2) your release of the Trustee and the Claims Administrator from all liability and responsibility whatsoever in connection with the Trustee's administration of the Trust and the payment of your claims as represented by this check. Further, by cashing, depositing, or otherwise negotiating this check, you agree to return to the Trustee and/or the Claims Administrator any amount determined to be improper or in excess of the amount due to you.

If the Beneficiary to whom this check is issued is deceased, this check is not valid. Please contact the Claims Administrator immediately to provide updated information regarding the deceased Trust Beneficiary.

KALIMA CLAIMS ADMINISTRATOR
PO BOX 4199
PORTLAND OR 97208-4199

The Huntington National Bank

25-2
440

CHECK NUMBER
1

DATE
01/07/2015

Void if not negotiated within <<DaysUntilStale>> days of date of issue

PAY EXACTLY ***** EIGHT HUNDRED EIGHTY EIGHT THOUSAND EIGHT
HUNDRED EIGHTY EIGHT AND 88/100 DOLLARS

AMOUNT
\$888,888.88

This check may not be cashed at a check cashing agency or money service business.

PAY TO THE ORDER OF:
[PAYEENAMECOMBINED]
[PAYEENAME2]
[PAYEENAME3]

Authorized Signature

EXHIBIT "B"

Check Date: <<Mail Date>>
Check Number: <<Check Number>>
Check Amount: <<Check Amount>>
Tracking Number: <<TN>>

Additional Information About Your Distribution

If you are receiving this check in your capacity as a Personal Representative, trustee, or other fiduciary, you remain obligated (as part of your duty) to further distribute these monies to the appropriate parties consistent with the rules that apply to your fiduciary responsibilities, whether state distribution laws or otherwise. Neither the Trustee nor the Claims Administrator can advise you as to your duties or any legal consequences should you breach any such duties, whether through improperly paying these monies to the incorrect beneficiary or otherwise.

The tax treatment of this payment may vary based upon the individual circumstances and tax status of each Class Member/Beneficiary. Neither the Trustee, Class Counsel, nor the Claims Administrator can determine or advise you about the impact this payment may have on your tax responsibilities. You should consult with a tax professional to determine the potential consequences this payment may have for your taxes. An opinion by an independent tax consultant has been provided on behalf of the Settlement Class and can be found at [kalima-lawsuit.com/Content/Documents/Tax Opinion Letter.pdf](http://kalima-lawsuit.com/Content/Documents/Tax%20Opinion%20Letter.pdf). We encourage each Beneficiary and their independent tax consultant to check the Kalima website, kalima-lawsuit.com, for any updates the Trustee or Claims Administrator may post or have posted concerning the tax treatment of this payment.

This payment may also impact certain public benefits of the recipient of these monies. If you are a Personal Representative and have disbursed these monies to a Beneficiary (or Beneficiaries) who receive(s) public assistance benefits, such as Supplemental Security Income, Medicaid, food stamps, or housing vouchers, you should share this information with that Beneficiary (or Beneficiaries). If you are the recipient of these monies (and are not going to further disburse to another Beneficiary), you should report receipt of this payment to any public benefit administrator, as required by law. Neither the Trustee, Class Counsel, nor the Claims Administrator can advise you about public benefits. You should seek legal advice if you need assistance. Also, please review your prior mailed notice or the kalima-lawsuit.com website about special needs trusts.

EXHIBIT "C"