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CLASS COUNSEL

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

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

Plaintiffs,

vs.

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

Defendants.

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

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

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

SETTLEMENT JUDGE:
HON. GARY W.B. CHANG

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

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

Plaintiffs. Craig Y. Iha, Deputy Attorney General, and Linda Lee K. Farm

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Dkt. 1634 & 1642];

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

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

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

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

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

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

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

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

processed in probate; and

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

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

1. Jurisdiction and Final Approval of Settlement Agreement

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

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

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

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

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

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

2. Specific Findings Regarding the Settlement Agreement

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

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

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

the Settlement Class.

3. Second Amended Payment Distribution Plan

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

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

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

4. Class Definition and Exclusions

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

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

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

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

5. Class Recertification

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

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

Members;

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

6. Reappointment of Class Representatives and Settlement Class Counsel

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

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

7. Reappointment of Settlement Special Master

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

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

expenses for class-wide claims administration activities;

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

8. Reappointment of Probate Special Master and Probate Special Counsel

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

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

9. Reappointment of Claims Administrator

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

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

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

10. Payment Recipients

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

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

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

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

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

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

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

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

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

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

14. Probate Plan and Qualified Settlement Trust

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

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

15. The Notice Plan and the Administration of the Settlement

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

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

16. Notices to the Class

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

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

17. Administration of the Probate Plan and Qualified Settlement Trust

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

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

18. Objections

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

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

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

19. Claims Administration Following the Final Approval Hearing

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

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

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

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

20. Release of Claims

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

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

21. Final Accounting and Supplemental Payment Distribution.

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

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

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

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

22. Disposition of Residual Funds

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

23. Retention of Jurisdiction

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

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

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

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

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

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

25. Appeals

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

26. Funding of the Kalima Class Action Settlement Trust

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

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

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

27. Settlement Class List

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

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

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

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

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

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

IT IS SO ORDERED:

By: /s/ Lisa W. Cataldo
The Honorable Lisa W. Cataldo
State of Hawai‘i, First Circuit Judge



DATED: August 1, 2023 , 2023

APPROVED AS TO FORM:

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

DATED: July 28 , 2023

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ATTORNEYS FOR STATE DEFENDANTS

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