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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

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

Plaintiffs,

vs.

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

Defendants.

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

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

Hearing:

Date: June 6, 2022

Time: 9:00 a.m.

Judge: Hon. Lisa W. Cataldo

Post-Trial Proceedings

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

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

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

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

THE COURT HEREBY FINDS AND ORDERS:

1. Preliminary Approval of Settlement Agreement

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

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

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

2. Decertification of Subclasses 1-4, 6

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

3. Class Certification

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

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

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

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

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

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

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

4. Appointment of Class Representative and Settlement Class Counsel

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

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

5. Appointment of Settlement Special Master

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

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

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

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

6. Appointment of Claims Administrator

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

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

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

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

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

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

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

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

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

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

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

a. Plan of Distribution – October 1, 2022

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

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

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

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

c. Deadline for Exclusion – December 15, 2022

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

d. Probate Plan – December 15, 2022

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

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

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

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

f. Deadline to Object – March 15, 2023

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

g. Responses to Objections – March 27, 2023

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

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

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

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

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

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

i. Final Accounting

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

j. Miscellaneous

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

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

[SIGATURES ON NEXT PAGE]

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

/s/ Lisa W. Cataldo



THE HONORABLE LISA W. CATALDO

APPROVED AS TO FORM:

/s/ Donna H. Kalama

HOLLY T. SHIKADA

Attorney General

CRAIG Y. IHA

Deputy Attorney General

and

LINDA LEE K. FARM

DONNA H. KALAMA

Special Deputy Attorneys General

ATTORNEYS FOR DEFENDANTS

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