

## **KALIMA CLASS ACTION SETTLEMENT**

### **FIRST NOTICE TO HEIRS AND DEVISEES OF DECEASED CLASS MEMBERS IN *KALIMA et al. v. STATE OF HAWAII', et al.*, Civil No. 99-4771-12 LWC WHO MAY BE ENTITLED TO A SETTLEMENT PAYMENT.**

This is an official communication of the First Circuit Court, State of Hawai'i and is not a solicitation.

This notice is intended for the rightful heirs and devisees of Deceased Class Members in *Kalima et al. v. State of Hawai'i, et al.*, Civil No. 99-4771-12 LWC. An "heir" is a spouse, child or other person who may share in the estate of a Deceased Class Member as defined by H.R.S. §§560:1-201, 560:2-101, 560:2-102 and 560:2-701, and who may be entitled to receive Settlement Payment in this case. A "devisee" means a person designated in a will to receive a share in the estate of a Deceased Class Member, including a trustee, and as defined by H.R.S. §560:1-201. This notice is being sent to potential heirs and devisees of Deceased Class Members' estates where the estate is eligible to receive a Settlement Payment. The fact that you are receiving this notice does not mean that you will receive a payment. This notice provides important information for you to participate in the process by which eligibility to receive payments will be determined by the Court.

If you are not a family member or devisee of a Deceased Class Member and received this mailing in error, but know the family of the Deceased Class Member to whom it is addressed, please forward this notice to the family. Mahalo.

If you are or believe you are an heir or devisee of a Deceased Class Member, please review this notice carefully and follow the instructions.

#### **OVERVIEW OF THE STATUS OF THE SETTLEMENT AND PROBATE PROCESS**

On July 21, 2023, First Circuit Court Judge Lisa W. Cataldo orally granted final approval of the Kalima Class Action Settlement. On August 1, 2023, the Order Granting Final Approval and Judgment were filed. One class member filed an appeal, temporarily pausing the payment process.

On October 26, 2023, the Hawai'i Supreme Court dismissed the appeal and ruled that the appellant had no claim. The case was sent back to the circuit court. This was the only appeal and the payment process can now begin.

In order to distribute the Settlement Payments to the rightful heirs and devisees of a Deceased Class Member, the Court has approved a "Probate Plan" and appointed a Probate Special Master and Probate Special Counsel. The Probate Plan outlines the process for distributing the Settlement Payments to the proper parties. The Probate Plan is available online at [www.kalima-lawsuit.com/important-documents](http://www.kalima-lawsuit.com/important-documents) listed under the "Probate Documents" heading.

The Probate Special Master and Probate Special Counsel will work with the Claims Administrator and family members to collect the required information and documentation to identify the rightful heirs and devisees of Deceased Class Members. Once identified, the Probate Special Counsel will petition the Court for approval to disburse the Settlement Payment to the rightful heirs and devisees. The Probate Special Master will review these petitions and make recommendations to the Court.

You do not have to pay any money out of pocket to be included in the Probate Plan - that includes fees and costs for the Probate Special Counsel to petition the Court on behalf of your Deceased Class Member and the fees and costs for the Probate Special Master's services. Any fees and costs associated with the Probate Plan will be taken out of the Settlement Payment. You may choose to use a private attorney to obtain the documentation required under the Probate Plan for distribution of the Settlement Payment, but you will be responsible for payment of the privately retained attorney's fees and costs. The Probate Plan is a very cost-effective process to ensure the proper heirs and devisees receive the Settlement Payment.

#### **STEPS TO TAKE**

In order to deliver Settlement Payments to the proper heirs and devisees of Deceased Class Members, and to help expedite this process, we must receive complete information about the Deceased Class Members' family members. It is best if ONE person for each Deceased Class Member's family be designated as the point of contact to provide and receive information. Probate Special Counsel and Probate Special Master may contact this person in order to gather additional information, as needed.

Not all family members will receive Settlement Payments. However, you must complete and submit the following two forms to be considered for a share of a Deceased Class Member's Settlement Payment.

1. Deceased Class Member Information Request Form.

If you have already submitted a Deceased Class Member Information Request Form, thank you. If you have not, please submit one as soon as possible.

2. Detailed Family Information Form.

This is a new form that requests additional detailed information regarding the families of Deceased Class Members. It requests some of the same information as the Deceased Class Member Information Form but requests additional details and is submitted under penalty of perjury.

Both forms will be used by the Probate Special Master and Probate Special Counsel to identify the heirs and devisees as well as petition the Court for approval to disburse a Deceased Class Member's Settlement Payment. If additional information is required after submission of the forms, you will be contacted. **BOTH FORMS MUST BE COMPLETED.**

These forms are included with this Notice and also available online at [www.kalima-lawsuit.com](http://www.kalima-lawsuit.com). You may also email [info@kalima-lawsuit.com](mailto:info@kalima-lawsuit.com) or call 1-808-650-5551 or 1-833-639-1308 to ask to have the forms mailed or emailed to you.

Please use the enclosed Checklist to make sure that the forms are as complete as possible and all documentation is submitted. Failure to provide complete information and documentation will delay the probate process and the distribution of the Settlement Payment.

### **FREQUENTLY ASKED QUESTIONS**

The following are Frequently Asked Questions regarding the probate process. Please refer to [www.kalima-lawsuit.com](http://www.kalima-lawsuit.com) for updates.

**1. Who are the family members who can share in the Settlement Payment?**

In accordance with the Probate Plan, the Probate Special Master and Probate Special Counsel will work with the Claims Administrator and family members to collect the required information and documentation to identify the rightful heirs and devisees. The Probate Court will make the final decision on how the Settlement Payment will be divided based on Hawai'i law. All spouses, children and step-children should be listed on the Deceased Class Member Information Request Form and the Detailed Family Information Form. Please be aware that step-children and *hanai* children may not be recognized as an heir under the Hawai'i laws of intestacy. Step-children may impact the amount due to a surviving spouse, so information relating to step-children is important.

Please note that the Probate Plan will ONLY determine how the Settlement Payment is distributed to the rightful heirs and devisees. The Probate Plan will NOT determine who is entitled to other assets or property of the Deceased Class Member.

**2. How will the Settlement Payment Be Made to Heirs and Devisees?**

If a Deceased Class Member qualifies to receive a Settlement Payment, the Settlement Payment may be distributed pursuant to an order of the Probate Court of the First Circuit, State of Hawai'i as detailed in the Probate Plan, as follows:

- A. Distributions will be made to the Personal Representative (or Legal Representative) of Deceased Class Members' Estates upon the presentation of appropriate court documents establishing the appointment of the Estate's Personal Representative (or Legal Representative). The Personal Representative will be responsible for distributing the Settlement Payment to any Heirs and Devisees.
- B. Distributions will be made to the Trustee of a Deceased Class Member's validly executed Trust upon the presentation of appropriate documents establishing the Trust, the appointment of a Trustee, and verification that the Trust is entitled to the Settlement Payment. The Trustee will be responsible for distributing the Settlement Payment to the appropriate beneficiaries of that Trust.
- C. Distributions will be made to the heirs and devisees of Deceased Class Members who do not have Personal Representatives (or Legal Representatives), as ordered by the Probate Court of the First Circuit, State of Hawaii.

### **3. What Is the Probate Plan?**

In order to distribute the Settlement Payments to the rightful heirs and devisees of a Deceased Class Member, the Court has approved a Probate Plan and appointed a Probate Special Master and Probate Special Counsel. The Probate Plan outlines the process for distributing the Settlement Payments to the proper parties. The Probate Plan is available online at [www.kalima-lawsuit.com/important-documents](http://www.kalima-lawsuit.com/important-documents) under the “Probate Documents” heading.

In accordance with the Probate Plan, the Probate Special Master and Probate Special Counsel will work with the Claims Administrator and family members to collect the required information and documentation to identify the rightful heirs and devisees. Once identified, the Probate Special Master and Probate Special Counsel will petition the Court to authorize distribution of the Settlement Payment to the appropriate heirs or devisees of each Deceased Class Member.

### **4. Is There A Cost For The Probate Plan?**

All of the fees and costs associated with the Probate Plan, which will include attorney fees, administrative fees and related costs will be divided on a *pro rata* basis among all the Deceased Class Members and deducted from each Settlement Payment. This is expected to be a very cost-effective process. Families who retain private counsel will be personally responsible for their own attorneys’ fees and costs.

### **5. Who Will Represent Deceased Class Members in Probate Court?**

The Court has appointed a Probate Special Counsel to petition the Probate Court for instructions regarding the distribution of the Settlement Payments to the rightful heirs and devisees. Pursuant to the Probate Plan, the Probate Special Counsel will petition the Probate Court for orders detailing the heirs and devisees that should receive the Settlement Payments.

### **6. Can we hire our own attorney?**

You may retain your own attorney, at your own personal expense, to assist you with a probate proceeding for the Estate of a Deceased Class Member. Please note that the Probate Special Master and Probate Special Counsel will be involved to a certain extent in all disbursements for Settlement Payments allocated for Deceased Class Members.

If you do hire your own attorney, please advise the Claims Administrator as soon as possible and no later than December 1, 2023 and ask your private attorney to reference the Kalima settlement in any documents that they file with the Court.

### **7. How do we find an attorney?**

You can contact the Hawai‘i State Bar Association Lawyer Referral and Information Service and request a referral to attorneys who are willing to work on the “Kalima Probate” claims:

Hawai‘i State Bar Association  
Lawyer Referral and Information Service  
Monday – Friday 8:30 a.m. – 4:30 p.m.  
Phone: 1-808-537-9140  
Email: [LRIS@hsba.org](mailto:LRIS@hsba.org)  
[www.hawaiilawyerreferral.com](http://www.hawaiilawyerreferral.com)

You may also contact community legal service providers that may (but also may not) be able to provide free or low-cost legal services, depending on their availability and other factors. These service providers include the following:

Volunteer Legal Services of Hawai‘i: 1-808-528-7046  
Legal Aid Society of Hawai‘i: 1-808-696-6322  
University of Hawai‘i Elder Law Program: 1-808-956-6544

Please note that this is not an endorsement of any services or attorneys.

### **8. We want to designate a family member to be the Personal Representative or Legal Representative. What do we do?**

Please note that a Personal Representative (or Legal Representative) is not necessarily the person that is on record as the point of contact. A Personal Representative is officially appointed by a probate court. If you want to have a

family member be appointed as the Personal Representative, you **must obtain a probate court order appointing the Personal Representative**. You may wish to consult with an attorney about obtaining appointment as personal representative. The cost for your own attorney will be your own responsibility. Initiating probate proceedings independently for the distribution of the Settlement Award is NOT required.

The following types of documents are NOT sufficient to establish a person as a Personal or Legal Representative:

- Documents such as a funeral program, an obituary, or statements from family members are NOT sufficient.
- Documents showing that you inherited property from the deceased (such as a will) or which establish your family relationship (such as birth certificates or death certificates) are NOT sufficient.
- Documents indicating the decedent's desire that you be appointed legal representative or executor of his or her estate (such as a will or Power of Attorney) are NOT sufficient.
- Documents designating you as the successor to Hawaiian Home Lands Homestead Lease or other real estate holdings.

#### **9. My relative had a will and/or trust.**

If the Deceased Class Member had a will or trust, please provide a copy to the documentation to the Claims Administrator. This will assist the Probate Special Master and Probate Special Counsel in identifying the proper heirs and devisees. Please make sure that you copy or scan both sides of the documentation so that any certification, seal, or stamp on the front or back of it is clear and visible. **Do not send the original copy.**

#### **10. We have documentation establishing the Legal Representative, Personal Representative, an Affidavit of Collection, Small Estate Affidavit or other relevant documentation.**

Please send a copy of the documentation to the Claims Administrator. Please make sure that you copy or scan both sides of the documentation so that any certification, seal, or stamp on the front or back of it is clear and visible. **Do not send the original copy.** Once you submit documentation that you or your attorney believe are acceptable, the Claims Administrator with the Probate Special Master and the Probate Special Counsel will review the documentation to ensure that it conforms with the requirements in the Probate Plan. If additional information is required, we will reach out to you or your attorney. If no additional information is needed, the Probate Special Counsel will petition the Probate Court for final approval to issue the Settlement Payment according to the submitted documentation.

#### **11. Will an Affidavit of Collection (or Small Estate Affidavit) be sufficient?**

If the value of the Deceased Class Member's Settlement Payment PLUS all of the Deceased Class Member's other personal assets (*i.e.*, assets that were not transferred to a successor, beneficiary or joint owner upon death) is under \$100,000 (note that this amount does not include the value of motor vehicles, but would include the value of boats), **and** the Deceased Class Member owned no real property (*i.e.*, no real estate, time shares etc.), then an Affidavit of Collection may be appropriate but also may not be sufficient, depending on each case.

Please note that the amount and requirements may vary depending on if the Deceased Class Member lived out of state. You may not use an Affidavit of Collection if probate has already been opened for the Deceased Class Member. You may wish to check with an attorney, legal aid providers or other estate/probate professional as to whether it can be used for your Deceased Class Member. An Affidavit of Collection is NOT required and may not expedite processing any payments. Please note that submission of multiple Affidavits of Collection for one Deceased Class Member will DELAY the processing of the Settlement Payment.

#### **12. My relative who is the Deceased Class Member lived out of state. How do we proceed?**

If the Deceased Class Member lived out of state, you must send a certified death certificate to the Claims Administrator. You may submit a paper copy by mail or an electronic copy by email to [info@kalima-lawsuit.com](mailto:info@kalima-lawsuit.com). Please also complete both (1) the Deceased Class Member Information Request Form and (2) the Detailed Family Information Form. If the Deceased Class Member's Estate was previously probated or there was a will or trust, please submit a copy of such documentation. Please contact a local attorney if you have questions about the state's laws.

#### **13. One or more of the family members suffers from a disability, is incapacitated and/or cannot make their own decisions. What should we do?**

Please provide copies of powers of attorney, guardianship and/or conservatorship documentation for the family member to the Claims Administrator. This documentation will assist the Probate Special Master and Probate Special Counsel in ensuring that the rightful heirs and devisees are identified, and that any Settlement Payments are sent to the appropriate parties.

**14. One of more of the family members receives public benefits. What should we do?**

Contact the program's administrator regarding the family member's benefits immediately.

Certain public assistance programs, including, but not limited to, the Supplemental Nutrition Assistance Program (sometimes called "SNAP" or "food stamps"), subsidized housing/housing assistance (such as public housing or a voucher program sometimes called "Section 8"), some state-issued health insurance policies, some college tuition/grant programs, some Medicaid programs (sometimes known in Hawai'i as "Quest" or "Med-Quest"), some VA benefits, Social Security Disability Insurance, or Supplemental Security Income, may be affected by receipt of a Settlement Payment.

Each of these programs has complicated rules. Advice about your specific circumstances and public benefits are beyond the scope of this Settlement. We cannot advise you about these issues. You may also want to contact an attorney or community legal service provider for guidance. Please comply with all program rules and requirements for these programs, especially any rule or requirement that you must disclose changes in financial status to the relevant public assistance program. Certain program agencies may provide additional information about their unique rules. The loss or limitation of certain benefits can sometimes be avoided by directing payment into a special type of trust called a "Special Needs Trust." Please contact the Claims Administrator for more information regarding a Special Needs Trust.

**15. We have a dispute among family members about the Settlement Payment, process or other issue impacting this Settlement. What should we do?**

If there is a dispute among family members, the case will be referred for resolution by mediation. Please advise the Claims Administrator and the claim will be put on hold until the dispute is resolved. If there is still a disagreement after mediation, you must hire your own attorney to resolve any disputes regarding distribution of the Settlement Payment.

**16. How long until Settlement Payments are distributed for Deceased Class Members?**

You will receive additional mailings in the future. Please promptly comply with any requests for information and keep copies of these mailings for your reference. Because the Probate Plan requires separate proceedings with multiple petitions and multiple hearings, payments will likely not be processed until after January 1, 2024. We hope to complete the process by December 31, 2025, but it may take longer. This will be a lengthy process as there are now over 1,000 Deceased Class Members and your *kōkua* and patience are appreciated.

**Questions? Email [info@kalima-lawsuit.com](mailto:info@kalima-lawsuit.com) or call 1-808-650-5551 or 1-833-639-1308.**

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**CHECKLIST FOR FAMILIES OF DECEASED CLASS MEMBERS**

- Complete the (1) Information Request Form as well as the (2) Detailed Family Information Form and send both to the Claims Administrator. You must fill these out completely and promptly. Failure to complete these forms will result in significant delays for payments for all Deceased Class Members. Be sure to include the following when completing the forms:
  - Names, addresses and contact information for all family members of the Deceased Class Member.
  - Are any of these family members deceased? If so, please provide a copy of the deceased family members, heirs' and devisees' Death Certificates and contact information for their legal successors/representatives.
  - Are any of the family members, heirs or devisees minors? If so, please provide their birth certificates.
- Does the Deceased Class Member have a will or a trust? If yes, please send copies to the Claims Administrator.
- Was the Deceased Class Member's Estate previously probated? If yes, please send copies of the documentation to the Claims Administrator.
- Does the family have a private attorney? If yes, please advise the Claims Administrator before December 1, 2023.
- Did the Deceased Class Member reside outside of Hawai'i? If yes, please also send the Death Certificate to the Claims Administrator.
- Are any of the family members listed on the Information Request Form receiving public benefits? If so, please contact the Claims Administrator to request information about special needs trusts.
- Are any family members listed on the Information Request Form under a disability that makes it difficult for them to act without assistance? If so, please provide copies of powers of attorney, guardianship and/or conservatorship documentation.

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