

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and between Named Plaintiffs, on behalf of themselves and Plaintiffs as defined in paragraph I.(25), below (collectively, “Plaintiffs”), and State Defendants. Plaintiffs and State Defendants are collectively referred to as the “Parties.”

Subject to Court approval as required by Rule 23, Hawai‘i Rules of Civil Procedure (“HRCP”), the Parties hereby stipulate and agree that, in consideration of the mutual promises, covenants, and consideration set forth in this Agreement, the above-captioned action titled *Leona Kalima, et al. v. State of Hawai‘i, et al.*, Civil No. 99-4771-12 LWC (the “Lawsuit”), shall be settled and compromised in accordance with the terms herein.

### RECITALS

WHEREAS, the Lawsuit was commenced by the filing of a Complaint on December 29, 1999, which included class claims asserted on behalf of over 2,700 persons who asserted a right to sue for breach of trust pursuant to Chapter 674, Hawai‘i Revised Statutes (“HRS”), and for breach of settlement agreement under HRS Chapter 661; and

WHEREAS, the Court certified a “Right To Sue” class on August 29, 2000, and determined that the Complaint’s claims could properly be maintained against State Defendants; and

WHEREAS, State Defendants appealed the Court’s determination that claims could be maintained for breach of trust or breach of settlement agreement; and

WHEREAS, the Hawai‘i Supreme Court held that the Right to Sue class could maintain claims under HRS Chapter 674 but not under HRS Chapter 661 in an opinion titled *Kalima v. State*, 111 Hawai‘i 84, 137 P.3d 990 (2006) (“*Kalima I*”); and

WHEREAS, on remand from the Supreme Court’s *Kalima I* decision, a First Amended Complaint was filed in the Lawsuit on February 1, 2007, a Second Amended Complaint was filed on May 9, 2007, and a Supplemental Complaint for Waiting List Damages was filed on July 15, 2013; and

WHEREAS, the operative Second Amended Complaint and Supplemental Complaint are pled as a class action lawsuit and assert claims under HRS Chapter 674 on behalf of over 2,700 individuals who filed over 4,000 claims with the Panel; and

WHEREAS, the operative Second Amended Complaint, in addition to the “Right to Sue” class, identified nine (9) putative subclasses including: (i) waiting list; (ii) ultra vires qualifications; (iii) uninhabitable awards; (iv) lost applications; (v) construction defects; (vi) successor rights; (vii) loans; (viii) leases; and (ix) other claims; and

WHEREAS, through multiple orders the Court certified subclass (i), the waiting list subclass, for purposes of liability, causation, fact of damage, and the amount of damage (the “Waiting List Damages Subclass”); and

WHEREAS the Court certified the following subclasses for purposes of liability only: (ii) ultra vires qualifications (iii) uninhabitable awards; (iv) lost applications; and (vi) successor rights; and was not asked to certify the following subclasses: (v) construction defects, (vii) loans, (viii) leases, and (ix) other claims; and

WHEREAS, all Right To Sue class members are members of the Waiting List Damages Subclass; and

WHEREAS, the liability, causation and fact of damage claims of the Waiting List Damages Subclass were litigated, with the Court having found State Defendants liable for breaches of trust, and having found that the breaches of trust were the cause of Plaintiffs’ damages; and

WHEREAS, the Parties litigated and the Court ruled on how actual damages (as defined in HRS Chapter 674) for the Waiting List Damages Subclass would be determined, using a fair market rental value model, and further determined how the claims administration process would be carried out; and

WHEREAS, no liability, causation, or damages was or has been found by the Court with regard to the other eight (8) subclasses; and

WHEREAS, an HRCPC Rule 54(b) final judgment was entered in favor of the Waiting List Damages Subclass and against State Defendants on January 9, 2018; and

WHEREAS, the Parties cross-appealed from the Rule 54(b) judgment, raising various issues; and

WHEREAS, in *Kalima v. State*, 148 Hawai‘i 129, 468 P.3d 143 (2020) (*Kalima II*), the Supreme Court decided, among other things, that the trial court did not err by adopting the fair market rental value damages model for the Waiting List Damages Subclass; the trial court correctly ruled that adjusting damages to present value constitutes an award of prejudgment interest in violation of HRS § 661-8; the trial court erred in ruling that damages for Waiting List Damages Subclass members do not begin to accrue until six years after receipt of a beneficiary’s homestead application; the trial court did not err in finding that State Defendants breached their trust duties by not recovering lands that were withdrawn from the Hawaiian Home Lands Trust before statehood; and the trial court did not err in establishing the waiting list subclass list such that it included individuals who were not properly part of the waiting list subclass so as to bind such individuals to the judgment in the Lawsuit; and

WHEREAS, on remand, the Parties disagreed about the effect of the *Kalima II* decision on the Court’s waiting list subclass claims administration process including how members of the

waiting list subclass prove their claims and amount of damages, if any, to which they are entitled; and

WHEREAS, on remand, the non-waiting list claims remain unresolved as to liability, causation, and damages, and the Parties disagreed about the merits of such claims; and

WHEREAS, Plaintiffs and their counsel have extensively analyzed and evaluated the merits of the Parties' respective claims and defenses in this Lawsuit, and recognize the risks of continued litigation including the possibility that if not settled now, a fair and final resolution of all claims, including non-waiting list claims, may not occur for several years, and there remain unresolved issues regarding the claims administration process for and defenses applicable to waiting list subclass claims that could negatively impact damages calculations; and

WHEREAS, prior to finalization of the Court's waiting list subclass claims administration process – with certain issues regarding the waiting list subclass claims process and all non-waiting list claims still unresolved – the Parties engaged in arms-length settlement discussions through their respective counsel with the assistance of the Honorable Gary W.B. Chang, Judge of the First Circuit Court, 14<sup>th</sup> Division, State of Hawai'i; and

WHEREAS, the Parties have reached a proposed comprehensive settlement of the Lawsuit, including all claims asserted or which could have been asserted in the Complaint, First Amended Complaint, Second Amended Complaint and the Supplemental Complaint for Waiting List Damages, including the claims of the waiting list subclass and the claims of all other certified and uncertified subclasses identified in the Second Amended Complaint and the Supplemental Complaint which to date have not been litigated or ruled upon; and

WHEREAS, the Settlement Class is defined to include the claims of all Plaintiffs, including class members of the certified and uncertified subclasses;

WHEREAS, on April 14, 2022, the Parties stipulated to the material terms of a valid and binding settlement agreement which material terms were memorialized in a signed document, approved by the Settlement Judge, titled Stipulated Terms of Settlement; and

WHEREAS, the Parties expressly contemplated that the material terms set forth in the Stipulated Terms of Settlement would be incorporated into a full settlement agreement, and this Agreement is the contemplated full settlement agreement; and

WHEREAS, Named Plaintiffs and Plaintiffs' counsel are satisfied that the terms and conditions of this Agreement are fair, reasonable, and adequate, and that this Agreement is in the best interests of all Plaintiffs;

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this Agreement, as well as the good and valuable consideration provided for herein, the Parties hereto agree to a full and complete settlement of the Lawsuit on the following terms and conditions:

## TERMS OF AGREEMENT

### I. Definitions

In addition to the definitions set forth above, the following definitions shall apply:

1. **“Agreement”** means this Settlement Agreement.
2. **“Claims Administration Process”** means the process by which the Claims Administrator determines which members of the Settlement Class are Payment Recipients, determines the amount payable to each Payment Recipient, and issues settlement payments to Payment Recipients.
3. **“Claims Administrator”** means the person responsible for implementing the Notice Plan and Claims Administration Process, subject to supervision by the Settlement Special Master and the Court.
4. **“Class Counsel”** means:
  - a. Carl M. Varady, Esq.  
Law Office of Carl M. Varady  
Pauahi Tower, Suite 1730  
1003 Bishop Street  
Honolulu, HI 96813
  - b. Thomas R. Grande, Esq.  
Grande Law Offices  
41-859 Kalaniana‘ole Highway, #271  
Waimanalo, HI 96795

Class Counsel are sometimes referred to as **Plaintiffs’ counsel**.

5. **“Class Notice”** means the forms of notice approved and required by the Court to be provided to Settlement Class Members pursuant to the Notice Plan.
6. **“Class Settlement Amount”** means exactly three hundred twenty-eight million and no/100 dollars (\$328,000,000.00).
7. **“Complaint”** means the Complaint, First Amended Complaint, Second Amended Complaint and Supplemental Complaint filed in this Lawsuit, individually and collectively (unless the context otherwise requires), and all claims which arose out of the facts alleged in the Lawsuit or which were or could have been brought in the Lawsuit.
8. **“Court”** means the Circuit Court of the First Circuit, State of Hawai‘i. The Court is sometimes referred to as the **trial court**.

9. **“Day”** means a calendar day.
10. **“DHHL”** means the Department of Hawaiian Home Lands, State of Hawai‘i.
11. **“Fairness Hearing”** means the hearing on the Motion for Final Approval of Settlement.
12. **“Final Approval”** means the occurrence of the following:  
Following the Fairness Hearing, the Court has entered a final appealable order or judgment approving the Settlement, and
  - i. The time for appellate review and review by application for certiorari has expired, and no notice of appeal has been filed; or
  - ii. If appellate review or review by application for certiorari is sought, after any and all avenues of appellate review have been exhausted, the order approving settlement has not been modified, amended, or reversed in any way.
13. **“Legislation Enactment Deadline”** means July 13, 2022, or such later date as the Parties may agree to in writing.
14. **“Motion for Final Approval of Settlement”** means the motion to be filed by Plaintiffs seeking the Court’s final approval of the Settlement which motion shall be heard at the Fairness Hearing.
15. **“Motion for Preliminary Approval of Settlement”** means the motion to be filed by Plaintiffs seeking the Court’s preliminary approval of the Settlement.
16. **“Named Plaintiffs”** means the Class Representatives representing the Class named in the Complaint filed in the Lawsuit on December 29, 1999, the Second Amended Complaint filed in the Lawsuit on May 9, 2007, and the Supplemental Complaint for Waiting List Damages filed in the Lawsuit on July 15, 2013, except those individuals who have been removed as named plaintiffs or whose claims have been dismissed, and those named individuals who have died. In the latter case, Named Plaintiff refers to the authorized representative of an individual who has died if the authorized representative has been properly substituted in the Lawsuit as a named plaintiff in place of the deceased individual.
17. **“Net Settlement Amount”** means the amount available for settlement payments to Payment Recipients pursuant to the Payment Distribution Plan.
18. **“Notice Plan”** means the plan by which Settlement Class Members are to be notified of the Settlement and their options under the Settlement.
19. **“Panel”** means the Hawaiian Home Lands Trust Individual Claims Review Panel established by HRS Chapter 674.

20. **“Parties”** means Plaintiffs and State Defendants.
21. **“Payment Distribution Plan”** means, the plan that requires the Claims Administrator to pay the Net Settlement Amount in the form of settlement payments to Payment Recipients after Final Approval.
22. **“Payment of Plaintiffs’ Attorneys Fees”** means the amount the Court determines is payable to Plaintiffs or Plaintiffs’ attorneys as and for attorneys’ fees, as described in Section IV(C), below.
23. **“Payments to Plaintiffs”** means the distribution of the Net Settlement Amount to Payment Recipients in accordance with the Payment Distribution Plan.
24. **“Payment Recipients”** means those Settlement Class Members described in Section VII(C), below.
25. **“Plaintiffs”** means, collectively, (i) all Named Plaintiffs, (ii) all individuals who are members of any class or subclass certified during the course of the Lawsuit, (iii) all individuals who are putative members of any putative class or subclass identified but not certified during the course of the Lawsuit; and (iv) all individuals whose claims were or could have been brought pursuant to the Complaint.
26. **“Preliminary Approval Order”** means an order entered by the Court following the hearing on the Motion for Preliminary Approval of Settlement preliminarily approving the terms set forth in this Agreement and approving the Notice Plan and the proposed forms of Class Notice.
27. **“Release of Claims”** means the release of claims described and defined in Section V, below.
28. **“Releasees”** means the State Defendants, i.e., the State of Hawai‘i, the Department of Hawaiian Home Lands, the Hawaiian Home Lands Trust Individual Claims Review Panel, David Y. Ige, in his official capacity as Governor of the State of Hawai‘i, all State of Hawai‘i agencies, directors, officers, agents, employees, representatives, insurers, attorneys, administrators, and all other persons acting on behalf of the State.
29. **“Settlement”** means the compromise and settlement of the Lawsuit on the terms and conditions set forth in this Agreement.
30. **“Settlement Class”** means the class of persons defined in Section II, below.
31. **“Settlement Class Members”** means the members of the Settlement Class.
32. **“Settlement Fund”** means the account established with the Court into which the Class Settlement Amount is to be deposited as described in Section IV(A), below.

33. **“Settlement Payments”** or **“settlement payments”** means the individual payments to Payment Recipients made pursuant to the Payment Distribution Plan.
34. **“State Defendants”** means, collectively, the State of Hawai‘i, State of Hawai‘i Department of Hawaiian Home Lands, State of Hawai‘i Hawaiian Home Lands Trust Individual Claims Review Panel, and David Y. Ige, in his official capacity as Governor of the State of Hawai‘i. “State Defendants” does not include Doe Defendants, none of whom were identified during the course of the Lawsuit.
35. **“Stipulation Regarding Settlement Claims Administration Costs”** means the document of that title attached to this Agreement as Exhibit “A”.

## II. Settlement Class

The Hawai‘i Supreme Court in *Kalima v. State*, 148 Hawai‘i 129, 151-152 (2020) (*Kalima II*), held that the trial court’s certification of a litigation class consisting of all persons who filed a claim with the Panel was proper, “in order to bind all persons who could pursue a claim as a waitlist member to the judgment in this case.” *Id.* at 151. The Supreme Court further recognized that:

HRCP Rule 23(c)(3) (2011) provides that a judgment can only bind and preclude persons who are members of a class. As Plaintiffs note, “exclusion of these individuals from the class adjudication process means that they would be free to pursue their own claims against Defendants and that there would be no res judicata effect on these claims because they were not litigated and reduced to judgment.” Therefore, although some of these class members may not have viable claims, it is appropriate to include them in the class in order to preclude them from attempting to relitigate their non-viable claims.

*Id.* at 152. The Parties intend that this Settlement shall similarly bind all persons who filed a claim with the Panel, and that those persons without viable claims, including without limitation those who settled their claims or who opt out, shall not be entitled to a settlement payment.

The Parties intend that this Settlement shall bind *all* Plaintiffs as that term is defined in Section I.(25), above. Thus, at the conclusion of this Settlement, the claims of all Plaintiffs which were or which could have been brought under the Complaint will have been disposed of via the Settlement either through the Release of Claims provided for below in Section V (and the subsequent dismissal of said claims) or by the opting out of individual Settlement Class Members in accordance with the Opt-Out Process set forth in Section VI(D), below.

For purposes of this Settlement, there shall be one class called the Settlement Class, which shall be defined as:

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

The definition is coextensive with the definition of “Plaintiffs” and includes all persons listed on the “Class and Waiting List Subclass List” attached as Exhibit 1 to Plaintiffs’ Motion to Establish Class List and Waiting List Subclass List filed July 1, 2016, and which was adopted by the Court by the Order Granting Plaintiffs’ Motion to Establish Class List and Waiting List Subclass List [Filed July 1, 2016], filed July 26, 2017.

All Settlement Class Members are bound by the terms of this Agreement. However, not all Settlement Class Members are entitled to a settlement payment under this Settlement. To qualify for a payment under this Settlement, a Settlement Class Member must: (i) be a member of the Settlement Class, and (ii) meet the requirements of a Payment Recipient as described in Section VII.(C), below.

Plaintiffs shall take all steps reasonably necessary to ensure that this Settlement and the Release of Claims provided for herein shall be binding on all Settlement Class Members (meaning all Plaintiffs) including those Settlement Class Members who do not qualify for a settlement payment, including but not limited to: (i) providing class notice to all Settlement Class Members; (ii) providing all Settlement Class Members with adequate opportunity to exclude themselves from the Settlement or object to the Settlement; and (iii) obtaining all Court orders necessary to effectuate such binding effect on all Settlement Class Members.

Subject to Court approval, the representatives of the Settlement Class shall be Leona Kalima, Diane Boner, and Raynette Nalani Ah Chong, Special Administrator of the Estate of Joseph Ching. Class Counsel shall, in the Motion for Preliminary Approval of Settlement, seek the Court’s appointment of these individuals to be the representatives of the Settlement Class under HRCF Rule 23.

Attorneys Thomas R. Grande and Carl M. Varady shall, in the Motion for Preliminary Approval of Settlement, request that the Court appoint them as class counsel pursuant to HRCF Rule 23 to represent all Plaintiffs, including the Settlement Class, for purposes of this Settlement. This Settlement is contingent upon the Court’s appointment of qualified class counsel to represent the Plaintiffs, including the Settlement Class.

The Parties and Class Counsel agree that, if approved, certification of the Settlement Class is a conditional certification for settlement purposes only, and if for any reason the Court does not grant final approval of the Settlement, or if for any other reason the Settlement does not become effective, the certification of the Settlement Class for settlement purposes shall be deemed null and void without further action by the Court or any of the Parties, each Party shall retain their respective rights and shall be returned to their relative legal positions *status quo ante* as they existed prior to execution of this Agreement, and neither this Agreement nor any of its accompanying exhibits or orders entered by the Court in connection with this Agreement shall be admissible or used for any purpose in the Lawsuit.

### **III. Legislation**

The Parties acknowledge and agree that this Agreement is contingent on the enactment of legislation by the Hawai’i Legislature to authorize the appropriation of monies to fund the Class



Settlement Amount. The Parties agree that enactment of this legislation is material and essential to this Agreement and that if such legislation is not enacted into law by the Legislation Enactment Deadline, unless such date is mutually agreed by the Parties in writing to be extended, the Settlement shall automatically become null and void and the Lawsuit shall proceed.

#### **IV. Payment by the State of Hawai‘i to Fund the Settlement**

##### **A. Deposit of Class Settlement Amount in Court’s Settlement Fund**

In consideration of, and subject to, the terms and conditions of this Agreement, and subject to Court approval, not more than thirty (30) days after the required legislative appropriation(s) becomes effective, the State of Hawai‘i shall deposit the Class Settlement Amount into the Settlement Fund.

Other than the Class Settlement Amount, State Defendants owe no other sums to Plaintiffs or Plaintiffs’ attorneys whatsoever.

No distributions from the Class Settlement Amount shall be made until the conditions precedent to distributing said funds under this Agreement have been satisfied.

Notwithstanding the foregoing paragraph, and subject to the Court’s approval and entry of the Stipulation Regarding Settlement Claims Administration Costs attached as Exhibit “A” hereto, the Claims Administrator may be paid during the interim between when the legislative appropriation becomes effective and Final Approval. Costs paid under this paragraph shall not exceed One Million and no/100 dollars (\$1,000,000.00), or another amount agreed to by the Parties in writing, or as may be ordered by the Court. The costs shall be paid out of the moneys deposited into the Settlement Fund as directed by the Settlement Special Master. Any amount paid under this paragraph shall be credited to the State as set forth in the Stipulation Regarding Settlement Claims Administration Costs.

##### **B. Authorized Uses of Class Settlement Amount**

The Class Settlement Amount shall be used to pay for only the following:

1. Payments to Plaintiffs in accordance with the Court’s approved Payment Distribution Plan.
2. Costs necessary to implement the Settlement including, but not limited to, reasonable and necessary costs to:
  - a. Retain a Settlement Special Master and Probate Special Master subject to Court appointment;
  - b. Retain a qualified Claims Administrator subject to Court appointment;
  - c. Implement the Notice Plan;
  - d. Implement the Claims Administration Process including the Payment Distribution Plan;

- e. Subject to Court approval, retain such additional qualified professionals the Court, the Special Masters, or the Claims Administrator may deem necessary to efficiently and effectively implement the Claims Administration Process.
3. Reasonable and necessary costs related to probate proceedings for deceased Settlement Class Members.
4. Payment of Plaintiffs' Attorneys' Fees in accordance with Section IV(C), below.

**C. Payment of Plaintiffs' Attorneys' Fees**

The amount of the Payment of Plaintiffs' Attorneys' Fees shall be determined as follows:

1. On proper notice and motion to be heard at the Fairness Hearing, Plaintiffs or Plaintiffs' attorneys may request that the Payment of Plaintiffs' Attorneys' Fees be paid *from the Class Settlement Amount* based on contingent fee, HRS Chapter 674, or any other theory, in an amount not to exceed forty million and no/100 dollars (\$40,000,000.00). The amount to be paid shall be determined by the Court except that Plaintiffs' attorneys shall not accept any fees in excess of \$40,000,000.00. Any amounts awarded in excess of \$40,000,000.00, if any, shall remain in the Class Settlement Amount to be paid to Payment Recipients pursuant to the Payment Distribution Plan.
2. State Defendants shall not oppose Plaintiffs' or Plaintiffs' attorneys' request for Payment of Plaintiffs' Attorneys' Fees in an amount less than or equal to twenty-eight million and no/100 dollars (\$28,000,000.00).
3. Class Counsel and State Defendants waive any appeal of the Court's award of Payment of Plaintiffs' Attorneys' Fees as set forth in this Section IV.(C).
4. Plaintiffs and Plaintiffs' attorneys waive and will not seek any additional amounts for payment of costs incurred in and for the Lawsuit. This limitation does not apply to expenditures authorized under Section IV.(B)(1) – (3).
5. The Court shall have sole discretion to decide the amount to be awarded as Payment of Plaintiffs' Attorneys' Fees at the Fairness Hearing.
6. Plaintiffs or Plaintiffs' attorneys shall give notice of the intent to seek attorneys' fees, including the amount they are permitted to seek pursuant to this Section IV.(C), in the Motion for Preliminary Approval of Settlement and in the Class Notice provided to Plaintiffs so that Plaintiffs may have an opportunity to object to the requested fee award prior to the Fairness Hearing.

Thirty-one days after Final Approval, the Claims Administrator shall disburse the amount approved by the Court for Payment of Plaintiffs' Attorneys' Fees from the Class Settlement Amount.

Class Counsel represent that there are no outstanding attorney liens to which the Payment of Plaintiffs' Attorneys' Fees or any portion of the Class Settlement Amount are subject and shall defend and indemnify State Defendants against any such liens or claims if any person(s) enforces or attempts to enforce such liens or claims against said funds.

**D. Payments to be Returned to the State if Settlement is Not Approved**

In the event there is no Final Approval of the Settlement, the funds remaining on deposit in the Settlement Fund shall be returned to the State of Hawai'i, and any payments made from the funds shall be credited to any future administrative costs the State may be ordered to pay in the Lawsuit as set forth in the Stipulation Regarding Settlement Claims Administration Costs.

**V. Release of Claims**

In consideration for the payment of the Class Settlement Amount, Plaintiffs, for themselves, their heirs, successors, and assignees, will, upon Final Approval, release all Releasees from all claims arising out of the facts alleged in the 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 at the moment of, and be conditioned upon Final Approval of the Settlement, as defined in section I, above, without further action by the Parties.

**VI. Court Approval of Settlement; Notice Plan; Procedures for Settlement Class Members to Exclude Themselves From (Opt Out of) or Object to Settlement**

**A. Motion for Preliminary Approval of Settlement**

Plaintiffs shall file the Motion for Preliminary Approval of Settlement at such time as the Court may direct. The motion shall include a summary of the terms of this Settlement, a description of the proposed Payment Distribution Plan, notice of an intent to seek the Payment of Plaintiffs' Attorneys' Fees including the amount allowed by this Settlement, a request for approval of the Notice Plan, a request for approval of the specific form of Class Notice to be sent to Settlement Class Members, information on how Settlement Class Members may exclude themselves from the Settlement (opt-out) or object to the Settlement or the Payment of Plaintiffs' Attorneys' Fees, and shall include a complete copy of this Agreement and its exhibits. The motion shall also request certification of the Settlement Class, appointment of the Settlement Class Representatives and Class Counsel, and shall request that the Court schedule a Fairness Hearing.

## **B. Notice Plan**

The Claims Administrator shall implement the Notice Plan approved by the Court. The Notice Plan shall, to the extent practicable, be designed to provide individual notice to Settlement Class Members or their authorized representatives or successors.

Prior to mailing the approved Class Notices, the Claims Administrator shall process the Settlement Class List against the National Change of Address Database maintained by the United States Postal Service (“USPS”).

## **C. Content of Class Notice**

Class Notices or other written communications sent to Settlement Class Members shall first be approved by the Court.

## **D. Opt-Out Process**

Plaintiffs not wanting to participate in this Settlement and not wanting to release claims pursuant to this Settlement shall submit a valid and timely Opt-Out Letter.

To be valid, the Opt-Out Letter shall contain a statement which clearly conveys a request to be excluded from and not participate in the Settlement, the individual’s full name, mailing address, and telephone number, and must be signed and dated. To be timely, an Opt-Out Letter must be postmarked by the date approved by the Court and set forth in the Class Notice. Opt-Out Letters shall be sent to the Claims Administrator.

A Plaintiff who submits a valid and timely Opt-Out Letter shall not be entitled to a settlement payment and forever waives their right to receive a share of the Class Settlement Amount.

### **1. Individuals Who Settled Their Claims**

Individuals who settled their claims at the Panel level or directly with DHHL do not have valid claims in this Lawsuit and are not eligible for a settlement payment under this Settlement. Inasmuch as the claims they submitted to the Panel have already been dismissed with prejudice, individuals who settled their claims at the Panel level also cannot opt out and pursue their claims in a separate lawsuit. These individuals will be provided with a form of Class Notice or other communication that informs them they have no right to a settlement payment. *See also* Section VII.(C), below.

### **2. Individuals Who Previously Opted Out of the Lawsuit**

Individuals who previously opted out of this Lawsuit in 2007 or 2012 do not have valid claims in this Lawsuit and are not eligible for a settlement payment under this Settlement. Inasmuch as the previous decision to opt out in 2007 or 2012 meant that these individuals were no longer part of this Lawsuit as of the opt out date, such individuals cannot now opt out and

pursue their claims in a separate lawsuit. These individuals will be provided with a form of Class Notice or other communication that informs them they have no right to a settlement payment. *See also* Section VII.(C), below.

**E. Objections to Settlement or to Payment of Plaintiffs' Attorneys' Fees**

A Settlement Class Member who wishes to object to this Agreement, the Settlement, or the Payment of Plaintiffs' Attorneys' Fees must timely file with the Clerk of the Court and serve on counsel for the Parties a statement of their objections and whether the Settlement Class Member intends to appear at the Fairness Hearing.

Any Settlement Class Member may appear at the Fairness Hearing to object to any aspect of this Agreement, the Settlement, or Plaintiffs' Request for Attorneys' Fees. Settlement Class Members may act either on their own or through counsel employed at their own expense.

To be considered timely, a Settlement Class Member's objections must be postmarked on or before the date approved by the Court and set forth in the Class Notice.

**F. Fairness Hearing**

Plaintiffs shall file a Motion for Final Approval of Settlement at such time as the Court may direct which shall include a summary of the Claims Administrator's implementation of the Notice Plan and a report on requests to opt out of and objections to the Settlement.

The Fairness Hearing is to be held on a date determined by the Court in consultation with the Parties. At the Fairness Hearing, Class Counsel will request that the Court:

1. Consider any objections by Plaintiffs, including Settlement Class Members;
2. Give final approval to the Settlement as fair, reasonable, and adequate, and binding on those Settlement Class Members who did not validly and timely submit Opt-Out Letters;
3. Determine the amount of the Payment of Plaintiffs' Attorneys' Fees;
4. Determine the Net Settlement Amount to be distributed to Payment Recipients, including for distribution in probate proceedings to be conducted after Final Approval.

**G. Effect of Failure to Grant Final Approval**

In the event the Settlement and this Agreement are not granted Final Approval, they shall be deemed null, void, and unenforceable and shall not be used or admissible in any subsequent proceedings against State Defendants or other agencies, officials, or employees of the State of Hawai'i either in this Court or in any other judicial, arbitral, administrative, investigative, or other forum; and the Lawsuit shall recommence. In the event the Settlement and this Agreement are not approved by the Court or Final Approval is otherwise not obtained, State Defendants will not be deemed to have waived, limited, or affected in any way their defenses to the Lawsuit.

## **VII. Claims Administration Process**

The Claims Administration Process shall be implemented as approved by the Court.

### **A. Role and Responsibilities of the Claims Administrator**

The Claims Administrator shall have primary responsibility for implementing the Notice Plan and the Claims Administration Process approved by the Court.

Under the supervision of the Settlement Special Master, the Claims Administrator shall submit regular progress reports to the Parties and the Court regarding all disbursements including settlement payments to Payment Recipients.

### **B. Role and Responsibilities of the Settlement Special Master**

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:

1. Work with Class Counsel and the Claims Administrator to implement the Claims Administration Process, including:
  - a. Notice and outreach to Settlement Class Members;
  - b. Settlement payment computation; and
  - c. The Payment Distribution Plan.
2. Supervise and coordinate disbursement of monies for Claims Administration expenses.
3. Supervise and coordinate issuance of settlement payments to living Settlement Class Members.
4. 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.
5. 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.
6. Make periodic and final reports to the Court as ordered or as needed.
7. Perform such other duties necessary to administer the Claims Administration Process as requested or as the Court may order.

**C. Payment Recipients; Certain Settlement Class Members Not Entitled to Settlement Payments**

All Settlement Class Members are Payment Recipients except that the following individuals shall *not* be entitled to a settlement payment under this 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, as described above.

The Parties are not aware of any separate lawsuits filed by individuals who opted out of this Lawsuit in 2007 or 2012.

**D. Payment Distribution Plan**

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.

Payment to each Payment Recipient is deemed made at the moment the settlement payment check for a Payment Recipient is issued, i.e., prepared and signed by the Claims Administrator, payable to the Payment Recipient and mailed to the Payment Recipient's last known address. The completion of this Settlement is not contingent upon Payment Recipients negotiating their respective payment checks. Settlement Class Members who do not opt out are bound by this Agreement, including the Release of Claims, even if some Payment Recipients do not negotiate their checks for any reason.

Interest on any funds held pending issuance of settlement payments shall be used to pay for claims administration expenses.

**E. Disposition of Residual Funds**

Any remainder of the Class Settlement Amount that cannot be distributed after all authorized payments are made in accordance with this Agreement 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.

**F. Court Approval Required**

Class Counsel shall seek the Court's approval of the Claims Administration Process, including the Payment Distribution Plan, referenced in this Section VII.

**VIII. Other Responsibilities of the Parties Under this Agreement**

The Parties shall take the following actions in furtherance of the Settlement herein:

**A. Defendants shall:**

1. To the extent practicable, and for information not already provided to Class Counsel during the litigation of this Lawsuit, provide Plaintiffs and the Claims Administrator information in their possession reasonably necessary to advance the resolution of the payment of claims, including, without limitation, known original lease application dates and award dates for all applications and awards to Settlement Class Members, including known accelerated and undivided award effective dates.
2. To the extent practicable, but not more than every two weeks unless otherwise ordered by the Court, and for information not already provided to Class Counsel during the litigation of this Lawsuit, have DHHL provide Plaintiffs and the Claims Administrator regular updates of Settlement Class Members' addresses and telephone numbers and the names of deceased Plaintiffs' successors to the extent such information is known or becomes known to DHHL. The foregoing is subject to first obtaining a protective order from the Court as to the release of any information deemed confidential under section 10-2-3(d), Hawai'i Administrative Rules.
3. Support Plaintiffs' or the Claims Administrator's requests to the Court for an order under section 338-18, Hawai'i Revised Statutes, or other state law in seeking records from the Hawai'i Department of Health or other agency to provide Plaintiffs and the Claims Administrator information reasonable and



necessary to advance the resolution of the payment of claims, including maintaining and updating the list of all deceased class members.

4. Not oppose Plaintiffs' application to the Court for:
  - a. preliminary approval of the Settlement;
  - b. certification of the Settlement Class;
  - c. reappointment of Class Counsel as counsel for the Settlement Class;
  - d. appointment of the Settlement Class Representative(s);
  - e. retention of a Settlement Special Master;
  - f. retention of a Claims Administrator;
  - g. approval of the Notice Plan; and
  - h. scheduling of the Fairness Hearing.

Defendants' obligations under this paragraph are subject to Defendants being provided a reasonable opportunity to review, comment on, and concur with said applications prior to Plaintiffs' filing of the applications, which non-opposition shall not be unreasonably withheld, conditioned, or delayed.

5. Not oppose Plaintiffs' application to the Court for:
  - a. final approval of the Settlement;
  - b. final approval of the Payment Distribution Plan; and
  - c. Payment of Plaintiffs' Attorneys' Fees to Plaintiffs' counsel except as set forth in section VII(C), above.

Defendants' obligations under this paragraph are subject to Defendants being provided a reasonable opportunity to review, comment on, and concur with said applications prior to Plaintiffs' filing of the applications, which non-opposition shall not be unreasonably withheld, conditioned, or delayed.

**B. Plaintiffs shall:**

1. Prepare and submit all documents necessary to seek approval by the Court of the Settlement under HRCF Rule 23, including, but not limited to, submission of the Notice Plan to the Court for its review and approval.
2. Submit the Payment Distribution Plan to the Court for its review and approval.
3. Subject to Court appointment, retain the Settlement Special Master, Probate Special Master and Claims Administrator as provided for in this Agreement.

C. The Parties shall:

1. Cooperate fully and take all actions reasonably necessary to implement and achieve this Settlement, including actions reasonably necessary to conclude the Claims Administration Process.
2. If they receive original Opt-Out Letters or objections that should have been submitted to the Claims Administrator or the Court, as the case may be, promptly submit said communications to the proper person as contemplated by this Agreement with copies to opposing counsel.

**IX. Stipulation for Dismissal with Prejudice; Continuing Court Oversight**

**A. Stipulation for Dismissal With Prejudice**

Within thirty (30) days after the Final Approval and Release of Claims become effective, payment checks are issued to Payment Recipients, and Payment of Plaintiffs' Attorneys' Fees is disbursed to Class Counsel as provided herein, the Parties shall stipulate to a dismissal with prejudice of the Complaint and the Lawsuit in a form and substance approved by the Court.

**B. Continuing Court Oversight**

The Parties shall continue to confer with the Court at routine intervals set by the Court to assure the fulfillment of the Settlement and this Settlement Agreement. The Court shall retain jurisdiction over this matter to enforce the terms of the Settlement, including ensuring that payments are made in accordance with the Court-approved Payment Distribution Plan. Such jurisdiction shall terminate upon final distribution of all funds in the Court account, including payment of residual funds, if any, pursuant to paragraph VII(E), or 60 days after the submission of the final report by the Special Master, whichever is later.

**X. Additional Provisions**

1. **No Effect on Waiting List, DHHL Decision Making.** This Settlement does not affect the present status or qualification of any Plaintiff/Settlement Class Member on any waiting list maintained by DHHL or qualifications to receive a lease under the Hawaiian Homes Commission Act. Decisions or findings by the Claims Administrator shall not be binding on DHHL or the Hawaiian Homes Commission except for purposes of this Settlement.
2. **No Third-Party Beneficiaries.** This Agreement shall not be construed to create rights in, or to grant remedies to, or delegate any duty, obligation or undertaking established herein to any third party as a beneficiary of this Agreement.
3. The rule of construction that an agreement is to be construed against the drafting party is not to be applied in interpreting this Agreement. The Parties acknowledge that they have read this Agreement, that they understand its meaning and intent, that

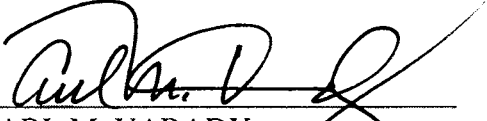
they have executed it voluntarily and with opportunity to consult with legal counsel, and have participated and had an equal opportunity to participate in the drafting and approval of drafting of this Agreement. No ambiguity shall be construed against any party based upon a claim that the party drafted the ambiguous language. This Agreement contains all essential terms of the settlement the Parties have reached. While other documents may be prepared hereafter to further effectuate the provisions hereof, the Parties intend that this Agreement is a valid, binding agreement, enforceable by the Court.

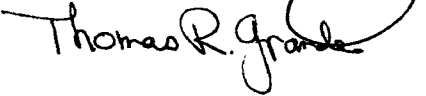
4. **This Agreement Incorporates the Stipulated Terms of Settlement.** This Agreement is intended to incorporate in all material respects and to supersede the Stipulated Terms of Settlement dated April 14, 2022. To the extent the terms of this Agreement conflict with the Stipulated Terms of Settlement, this Agreement shall control.
5. The representative signatories to this Agreement each represent that they are fully authorized to enter into this Agreement and bind the respective Parties to its terms and conditions. This Agreement may be executed in counterparts.

#### SIGNATURES

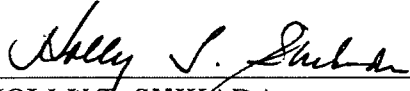
Wherefore, intending to be legally bound in accordance with the terms of this Agreement, the Parties hereby execute this Agreement, effective on June 2, 2022, which is the date on which the last signatory signed this Agreement.

#### FOR PLAINTIFFS

  
\_\_\_\_\_  
CARL M. VARADY  
CLASS COUNSEL

  
\_\_\_\_\_  
THOMAS R. GRANDE  
CLASS COUNSEL

#### FOR DEFENDANTS

  
\_\_\_\_\_  
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Attorney General, State of Hawai'i

CRAIG Y. IHA  
Deputy Attorney General

LINDA LEE K. FARM  
DONNA H. KALAMA  
Special Deputy Attorneys General

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ATTORNEYS FOR STATE DEFENDANTS

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)

**STIPULATION REGARDING  
SETTLEMENT CLAIMS  
ADMINISTRATION COSTS**

POST-TRIAL PROCEEDINGS JUDGE:

HON. LISA W. CATALDO

SETTLEMENT JUDGE:

HON. GARY W.B. CHANG

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**STIPULATION REGARDING SETTLEMENT CLAIMS ADMINISTRATION  
COSTS**

Pursuant to Cir. Ct. R. 19, Plaintiffs, through their Counsel, Carl M. Varady and Thomas R. Grande, and Defendants, through their Counsel, Attorney General Holly T. Shikada, Deputy Attorney General Craig Y. Iha, and Special Deputy Attorneys General Linda Lee K. Farm and Donna H. Kalama, hereby stipulate:

WHEREAS, the parties have entered into a settlement intended to achieve a full and final resolution on a class-wide basis of all claims that have been asserted and could have been asserted in this matter (the “Settlement”) and have executed a Settlement Agreement to effectuate those terms (the “Agreement”);

WHEREAS, the Legislature has approved the appropriation of \$328,000,000.00 to fund the Settlement, which is subject to approval by the Governor;

WHEREAS, the Agreement provides that if the \$328,000,000.00 appropriation becomes law, the \$328,000,000.00 will be deposited into a court account (“Settlement Fund”) to be used exclusively for (1) payments to be made to Payment Recipients as defined in the Agreement, (2) costs necessary to implement the Settlement, (3) reasonable and necessary costs related to probate proceedings for deceased Settlement Class Members, and (4) Payment of Plaintiffs’ Attorneys Fees, as described in the Agreement;

WHEREAS, the Agreement provides that costs necessary to implement the Settlement may include, but are not limited to, costs for a Settlement Special Master and Probate Special Master, costs for a Claims Administrator, costs to implement the Court’s approved Notice Plan, and costs to implement the Claims Administration Process;

WHEREAS, the Settlement must be granted both preliminary approval and Final Approval by the Court under Haw. R. Civ. P. 23(e) to be effective as intended by the parties;

WHEREAS, Final Approval is defined by the Agreement and this Stipulation to mean the occurrence of the following:

Following the Fairness Hearing, the Court has entered a final appealable order or judgment approving the Settlement, and

- i. The time for appellate review and review by application for certiorari has expired, and no notice of appeal has been filed; or
- ii. If appellate review or review by application for certiorari is sought, after any and all avenues of appellate review have been exhausted, the order approving settlement has not been modified, amended, or reversed in any way.

WHEREAS, upon the Court's preliminary approval of the Settlement and approval and filing of this Stipulation, the Claims Administrator will be required to engage in substantial work prior to Final Approval, including implementing the Notice Plan, and determining which Plaintiffs are Payment Recipients and the amount proposed to be paid to each Payment Recipient;

WHEREAS, the parties have agreed that if preliminary approval of the Settlement is granted, the costs reasonably and necessarily expended to implement the Settlement during the interim period between when the legislative appropriation of \$328,000,000.00 becomes effective and Final Approval may be paid from the Settlement Fund, provided that such costs shall not exceed \$1,000,000.00 or another amount agreed to by the parties in writing or an amount ordered by the Court ("Interim Costs"); and

WHEREAS, the parties intend that in the event the Court does not grant preliminary approval or Final Approval of the Settlement, Defendants shall be credited for any Interim Costs paid from the Settlement Fund towards any obligations of Defendants with respect to claims administration in the subsequent litigation of this matter;

NOW THEREFORE, the parties agree that,

1. Interim Costs shall not exceed \$1,000,000.00, unless otherwise agreed to by the parties in writing, or as may be ordered by the Court;
2. In the event the Court does not grant preliminary approval or Final Approval of the Settlement, Defendants shall be credited for any Interim Costs paid from the Settlement Fund towards any obligations of Defendants with respect to claims administration in subsequent litigation of this matter.
3. In the event the Court does not grant preliminary approval or Final Approval of the Settlement, Plaintiffs and their counsel shall have no obligation to repay any costs paid for the Settlement claims administration provided that Plaintiffs, Class Counsel, the Claims Administrator, the Settlement Special Master, the Probate Special Master, and any other person appointed by the Court under the Settlement or paid from the Settlement Fund shall provide to Defendants all documents and other information gathered, all summaries and compilations prepared, and any and all other work product collected or generated for the Settlement's claims administration process.

[SIGNATURES ON FOLLOWING PAGE]

DATED: Honolulu, Hawai'i, June \_\_, 2022.

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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

---

CARL M. VARADY  
THOMAS R. GRANDE

CLASS COUNSEL

APPROVED AND SO ORDERED:

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JUDGE OF THE ABOVE-ENTITLED COURT

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*Kalima et al., v. State of Hawai'i et al.*, Civil No. 99-4771-12 LWC, **STIPULATION  
REGARDING SETTLEMENT CLAIMS ADMINISTRATION COSTS**