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Electronically Filed
FIRST CIRCUIT
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07-SEP-2022
12:39 PM
Dkt. 1529 STIP

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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, 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 STATE OF
HAWAI'I DEPARTMENT OF HEALTH
RECORDS AND ORDER**

POST-TRIAL PROCEEDINGS

JUDGE: HON. LISA W. CATALDO

SETTLEMENT JUDGE: HON. GARY W.B.
CHANG

**STIPULATION REGARDING STATE OF HAWAI‘I DEPARTMENT OF HEALTH
RECORDS AND ORDER**

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, approximately 1,100 of the class members in the instant action are believed to have died since the case was filed on December 29, 1999, and identifying them and their possible heirs is critical to prompt resolution of the settlement of the instant action;

WHEREAS, the Hawai‘i Department of Health (“DOH”) is the custodian of death certificates for the class members who died while residing in Hawai‘i, for marriage certificates of deceased class members who married in Hawai‘i, and birth certificates of deceased class members’ children who were born in Hawai‘i

WHEREAS, the Agreement provides that Defendants agree to support Plaintiffs’ or the Claims Administrator’s requests for an order under Haw. Rev. Stat. § 338-18, seeking records from the DOH 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 (Agreement ¶8.A.3.);

WHEREAS, the Plaintiffs have requested DOH provide them with the following DOH records and information involving deceased class members, to the extent that they are found in DOH's records: (1) certified copies of death certificates, subject to payment of DOH's standard charges; (2) information from marriage certificates of deceased class members which is reasonably calculated to lead to the identification of heirs of deceased class members; and (3) information from birth certificates listing deceased class members as parents (collectively and individually, and information therefrom comprising, "Confidential Information");

WHEREAS, Class Counsel, the Claims Administrator, defense counsel, and DOH staff and counsel are working cooperatively to address Plaintiffs' requests, given the resources available to DOH and within the legal and privacy restrictions that govern DOH's release of the records and information;

WHEREAS, the parties understand that the records and information requested by Plaintiffs contain Confidential Information;

NOW THEREFORE, the parties agree and hereby stipulate that,

1. Plaintiffs, Class Counsel, defense counsel, the Special Master, the Claims Administrator, and any attorneys engaged to pursue probate proceedings, have a direct and tangible interest, as set forth in Haw. Rev. Stat. § 338-18(b)(9), in the following documents in the possession of DOH, to identify potential heirs of deceased class members, who cannot otherwise be found, identified or verified:

a. Certified copies of death certificates of deceased class members, provided that Plaintiffs shall pay the ten-dollar fee charged by DOH for certified copies;

b. Information from marriage certificates of deceased class members which is reasonably calculated to lead to the identification of heirs of deceased class members; and

c. Information from birth certificates of potential heirs listing deceased class members as parents.

2. Certified copies of death certificates may be used and disclosed for any reason allowed by law.
3. Information from marriage certificates and information from birth certificates produced by DOH pursuant to this Order shall be treated as “Confidential Information”;
4. Unless otherwise ordered by the Court, Confidential Information shall not be discussed, disclosed, circulated, released, or otherwise published to any parties, persons and/or entities except as may be necessary to identify and provide class action notices to deceased class members at their last known addresses and to other persons identified in paragraph 7 below; to identify, provide notices, and locate potential heirs of deceased class members, and to resolve claims on behalf of deceased class members and their heirs, including identification of heirs and possible distribution of assets through informal or formal probate proceedings.
5. Confidential Information may only be provided to Class Counsel, defense counsel, the Special Master, Special Administrator, Claims Administrator, and persons employed or otherwise retained by them to perform the work described in paragraph 4., above. The Claims Administrator and all other persons receiving Confidential Information shall execute a copy of the Certification annexed to this Order as Exhibit “A” (which shall be provided to Class Counsel and defense counsel) before being shown or given any Confidential Information;

6. The parties and all those bound by this Order acknowledge that the Confidential Information provided by DOH may result in the production of Confidential Information regarding persons who are not heirs of deceased class members. After receipt of the Confidential Information, the Claims Administrator shall take action to confirm that all of the Confidential Information involves persons who are heirs of deceased class members. If the Claims Administrator determines it has inadvertently received Confidential Information of persons who are not heirs of deceased class members from the Department of Health, it shall inform Class Counsel and counsel for the Department of Health and shall delete the Confidential Information from its records.
7. The parties acknowledge that the following persons are “considered to have a direct and tangible interest in a public health statistics record” under Haw. Rev. Stat. § 338-18(b)(1)-(9);
 - (1) The registrant;
 - (2) The spouse of the registrant;
 - (3) A parent of the registrant;
 - (4) A descendant of the registrant;
 - (5) A person having a common ancestor with the registrant;
 - (6) A legal guardian of the registrant;
 - (7) A person or agency acting on behalf of the registrant;
 - (8) A personal representative or trustee of the registrant's estate or trust;
 - (9) A person whose right to inspect or obtain a certified copy of the record is established by an order of a court of competent jurisdiction;

- (10) All persons identified in paragraph 1 above.
8. The Claims Administrator may send notices to any of the persons identified in the preceding paragraph informing them of potential claims under the Settlement Agreement and will take steps to have the contacted person independently verify the names of their parents and siblings, as a means of determining whether the person is an heir of a deceased class member.
 9. Any persons receiving Confidential Information shall not reveal or discuss such information to or with any person who is not entitled to receive such information, except as set forth herein;
 10. At the conclusion of the work described in paragraph 4, above, or April 14, 2024, whichever occurs first, all those in possession of Confidential Information received under this Order, and any copies made thereof, other than Class Counsel, shall destroy the Confidential Information and notify defense counsel that the Confidential Information has been destroyed;
 11. Provisions of this Order shall be in effect until further modification by or notice from this Court; and
 12. Further disclosure or use of Confidential Information in any circumstance not expressly authorized herein is prohibited by this Order and violation of this Order shall be subject to the applicable statutes and/or court rules.

[SIGNATURES ON FOLLOWING PAGE]

DATED: Honolulu, Hawai'i, September 1, 2022.

/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

/s/ Carl M. Varady
CARL M. VARADY
THOMAS R. GRANDE
CLASS COUNSEL

APPROVED AND SO ORDERED:

/s/ Lisa W. Cataldo



JUDGE OF THE ABOVE-ENTITLED COURT

**Kalima et al., v. State of Hawai'i et al., Civil No. 99-4771-12 LWC, STIPULATION
REGARDING STATE OF HAWAII DEPARTMENT OF HEALTH RECORDS AND
ORDER**

CERTIFICATION

I HEREBY CERTIFY my understanding that Confidential Information is being provided to me pursuant to the terms and restrictions of the Stipulation Regarding State of Hawai‘i Department of Health Records and Order (the “Order”) approved and filed in *Kalima et al. v. State et al.*, CIVIL NO. 99-4771-12 LWC, First Circuit Court, State of Hawaii.

I have been given a copy of that Order and read it. I agree to be bound by the Order. I will not reveal the Confidential Information to anyone, except as allowed by the Order. I will maintain all such Confidential Information – including copies, notes, or other transcriptions made therefrom – in a secure manner to prevent unauthorized access to it. I will further abide by all terms of the Order, including but not limited to, any requirements regarding the use, disclosure, and destruction of Confidential Information. I hereby consent to the jurisdiction of the Circuit Court of the First Circuit, State of Hawaii, for the purpose of enforcing the Order.

Dated: _____.

Name: _____

EXHIBIT “A”