

FIRST CIRCUIT COURT  
STATE OF HAWAII  
FILED

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Of Counsel:  
ALSTON HUNT FLOYD & ING  
Attorneys at Law  
A Law Corporation

PAUL ALSTON 1126-0  
ERIC G. FERRER 6828-0  
MEI-FEI KUO 7377-0  
1001 Bishop Street, Suite 1800  
Honolulu, Hawai'i 96813  
Telephone: (808) 524-1800  
Facsimile: (808) 524-4591

MURRAY T. S. LEWIS (pro hac vice)  
LEWIS LAW FIRM  
Lewis Law Firm  
6550 Columbia Tower  
701 Fifth Avenue  
Seattle Washington 98104  
Tele: (206) 223-7008  
Fax: (206) 223-7009

Attorneys for Plaintiffs, Individually  
and on Behalf of All Those Similarly Situated  
Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

DAVID GARNER; PATRICIA SMITH;  
ANDREA CHRISTIE; ALLEN  
KLITERNICK; KAREN SOUZA; JO  
JENNIFER GOLDSMITH; and DAVID  
HUDSON on behalf of themselves and all  
others similarly situated,

Plaintiffs,

vs.

STATE OF HAWAII, DEPARTMENT OF  
EDUCATION; JOHN DOES 1-5; JOHN  
DOE CORPORATIONS 1-5; ROE NON-  
PROFIT CORPORATIONS 1-5; AND ROE  
GOVERNMENTAL AGENCIES 1-5,

Defendants.

Civil No. 03-1-000305 (KKS)  
(Class Action)

**(CONSOLIDATED CASE)**

**SECOND AMENDED ORDER  
GRANTING PLAINTIFFS' MOTION  
FOR PRELIMINARY APPROVAL OF  
SETTLEMENT, FILED SEPTEMBER 12,  
2013; EXHIBIT "1"**

Hearing Date: September 16, 2013  
Hearing Time: 11:00 a.m.  
Hearing Judge: Honorable Karl K. Sakamoto

ALLAN KLITERNICK; DAVID GARNER;  
JO JENNIFER GOLDSMITH; and DAVID  
HUDSON, individually and on behalf of all  
others similarly situated,

Plaintiffs,

vs.

KATHRYN S. MATAYOSHI, in her official  
capacity as Superintendent of Schools;  
DONALD G. HORNER, BRIAN J. DELIMA,  
WESLEY P. LO, KEITH AMEMIYA,  
CHERYL KA'UHANE LUPENI,  
KIMBERLY GENNAULA HAGI, NANCY  
JO YAMAKAWA BUDD, JIM D.  
WILLIAMS, CHARLENE CUARESMA,  
AND ANGELICA WAI SAM LAO, in their  
official capacity as members of the STATE  
OF HAWAII BOARD OF EDUCATION;  
DEPARTMENT OF EDUCATION, STATE  
OF HAWAII,

Defendants.

CIVIL NO. 05-1-00031 (KKS)  
(Class Action)

**SECOND AMENDED ORDER GRANTING PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF SETTLEMENT, FILED SEPTEMBER 12, 2013**

Plaintiffs David Garner, Patricia Smith, Andrea Christie, Allan Kliternick, Karen Souza, Jo Jennifer Goldsmith and David Hudson (hereinafter "Plaintiffs") filed a Motion for Preliminary Approval of Settlement ("Motion") on September 12, 2013, which was heard by the Honorable Karl K. Sakamoto on September 16, 2013. Paul Alston and Eric G. Ferrer appeared for Plaintiffs and James Halvorson appeared for Defendants.

The Court has carefully reviewed the Motion and the oral arguments of Counsel, and the record of this case. Good cause appearing, it is hereby ordered that the Motion is GRANTED as follows:

(1) The Court preliminarily approves the "Settlement Agreement Regarding Class Action Damages and Distribution" (hereinafter, "Settlement Agreement"), which was entered into between the Parties' counsel on September 10, 2013 and attached to the Motion as Exhibit "A";

(2) The Court approves the "Notice of Proposed Partial Settlement of Consolidated Class Action" (hereinafter, "Class Notice"), which was attached as Exhibit "B" to the Motion. Pursuant to the Parties' agreement, the Class Notice is being amended to provide the Class Members until November 8, 2013 to file any objections with the Court on the Partial Settlement. Reply memoranda, if any, will be submitted no later than November 12, 2013. The Amended Class Notice is attached to this Order as Exhibit "1" for the Court's execution. The Class Notice will be separately filed with the Clerk of the Court upon execution by the Court and it will be subsequently mailed to the class members, published in the newspaper, and posted on the class action website according to the terms and conditions agreed upon between the Parties in the Settlement Agreement;

(3) The Defendants will promptly notify Plaintiffs' Counsel if any notices mailed by Defendants to Class Members at the last address known to the State are returned undelivered. When that occurs, Plaintiffs' Counsel will promptly request change of address and boxholder information" from the U.S. Postal Service pursuant to 39 C.F.R. §265.6(d) and, then, send such notices via certified mail and request forwarding, as appropriate . The expenses associated with re-mailing will be borne as a litigation expense chargeable to the Class.

(4) The Court has scheduled a hearing for the final approval of the proposed partial settlement on November 15, 2013 at 10:00 a.m. to determine whether the partial

settlement is fair, reasonable, and adequate. The Motion for Final Approval of the Partial Settlement must be filed no later than October 29, 2013.

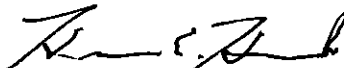
DATED: Honolulu, Hawai'i, OCT 01 2013

KARL K. SAKAMOTO



KARL K. SAKAMOTO  
JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:

  
\_\_\_\_\_  
JAMES HALVORSON  
HARVEY E. HENDERSON  
Attorneys for Defendants

*David Garner, et al. vs. State of Hawai'i, et al.*; Civil No. 03-1-000305 (KKS) and *Allan Kliternick, et al. vs. Kathryn S. Matayoshi, et al.*; Civil No. 05-1-00031 (KKS)  
(CONSOLIDATED CASE); **SECOND AMENDED ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT, FILED SEPTEMBER 12, 2013; EXHIBIT "1"**

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

DAVID GARNER, et. al.,  
Plaintiffs,

vs.

STATE OF HAWAII, DEPARTMENT OF  
EDUCATION; et. al.,  
Defendants.

Civil No. 03-1-000305 (KKS)  
(Class Action

(CONSOLIDATED CASE)

ALLAN KLITERNICK, et. al.,  
Plaintiffs,

vs.

KATHRYN S. MATAYOSHI, et. al.  
Defendants.

CIVIL NO. 05-1-00031 (KKS)  
(Class Action)

**AMENDED NOTICE OF PROPOSED PARTIAL SETTLEMENT OF  
CONSOLIDATED CLASS ACTION**

**TO: All Substitute Teachers Employed by the Department of Education from  
November 8, 2000 and June 30, 2005.**

**I. WHY YOU SHOULD READ THIS NOTICE**

Your rights will be affected by two class actions, known as *Garner, et. al., v. State of Hawaii, Department of Education*, Civ. No. 03-1-000305, and *Klitternick, et. al., v. Matayoshi, et. al.*, Civ. No. 05-1-000031, in the Circuit Court of the First Circuit, State of Hawaii (collectively referred to as the "Class Actions") and the proposed partial settlement of the Class Actions described below.

**II. THE CLAIMS BEING RESOLVED**

The Class Actions involved claims that the DOE underpaid the wages owed to Class Members for their work for per diem and per hour wages. The Intermediate Court of Appeals has affirmed the ruling that the Class Members are owed additional per diem wages.

The Defendants intend to appeal the Circuit Court's rulings that the Class Members are also owed interest, per hour wages, and attorneys' fees. Thus, any amounts due on account of those claims will be paid after the claims are resolved on appeal.

However, the Hawai'i State Legislature has agreed to pay the back wages that the Parties' experts have determined are due based upon their analysis of the payroll records. Based upon that appropriation, the Parties have agreed to distribute the per diem wages, minus any court-awarded attorneys' fees, stipends to the class representatives, and costs incurred by counsel on behalf of the Class Members.

### III. PLAINTIFFS AND THEIR COUNSEL

To act on behalf of the class members for the purposes of the Class Action, the Court has appointed the following counsel:

PAUL ALSTON  
ERIC G. FERRER  
MEI-FEI KUO  
ALSTON HUNT FLOYD & ING  
1001 Bishop Street, 18th Floor  
Honolulu, Hawai'i 96813  
Telephone: (808) 524-1800

MURRAY T.S. LEWIS (pro hac vice)  
Lewis Law Firm  
6550 Columbia Tower  
701 Fifth Avenue  
Seattle Washington 98104

### IV. THE PROPOSED PARTIAL SETTLEMENT

The Class Representatives have agreed to a proposed partial settlement<sup>1</sup> of this Class Action to resolve the Class Members' claim to the recovery of their per diem back pay from November 8, 2000 to June 30, 2005. The partial settlement of the Class Action has been preliminarily approved by the Court, but final approval is still pending, as set forth below.

The terms of the partial settlement are as follows:

a. Defendants will pay the Class Members their per diem wages up to FOURTEEN MILLION THIRTY-ONE THOUSAND EIGHT HUNDRED SEVENTY-FOUR AND 70/100 DOLLARS (\$14,031,874.70) (hereinafter referred to as, the "Covered Claim Fund") pursuant to the experts' agreed-upon calculation of the per diem back pay amount to be paid to each Class Member (the "Individual Payment").

After the deductions discussed below in subsection (e), all Class Members **are receiving 100% of the per diem back pay owed to them** as calculated jointly by the Parties' respective experts based on detailed payroll records for each Class Member received from the DOE.

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<sup>1</sup> The proposed partial settlement includes any and all claims, allegations, actions, causes of action, liabilities, costs, expenses and/or damages made by and for Plaintiffs and the class related to the per diem back wages due for work at or for the Department of Education as substitute teachers prior to June 30, 2005. The Settlement Agreement does not include claims for underpayment of unemployment benefits, hourly wage claims, per diem wage claims after June 30, 2005, interest, and attorneys' fees and costs under Haw. Rev. Stat. 607-14.

b. In exchange for early pre-appeal distribution of the per diem back pay and in consideration of Defendants' agreement to expedite the Individual Payments to the Class Members, the Parties agree that any claim for interest, if ultimately awarded, on the per diem amount will cease accruing as of May 31, 2013.

c. Defendants agreed to bear the administrative burden of distributing the net sums due to the Class Members at no cost to the Class.

d. From each Individual Payment, the Claims Administrator will calculate and deduct the following in the order listed: (1) the Class Member's legally required contribution to Social Security and Medicare; (2) the amounts required for Federal and State withholding for taxes; and (3) the Class Member's pro-rata (not per capita) share of the common fund attorneys' fees, costs and class representatives' stipends, if any, ordered by the court to be deducted from the Covered Claim Fund (the resulting sums are hereinafter referred to as the "Net Individual Payments").

e. In conjunction with the Settlement, the attorneys for the class will ask the Court to award the Plaintiffs' Counsel 25% of (1) the amounts recovered for the Class Members, (2) the amount paid by the Defendants for the Class Members' social security benefits, (3) amounts previously paid to Class Members by the Defendants on account of their claims for per diem wages during the pendency of the Class Actions, and (4) any fees the Defendants may be required to pay for the work of the Plaintiffs' Counsel. This is intended to be a partial award; the attorneys for the Class will seek additional fees when the Remaining Claims are resolved on appeal or by settlement.

f. The employer's legally required contributions to Social Security and Medicare will be paid by the State in addition to payment of the Covered Claim Fund.

g. Having jointly determined the amount of the Covered Claim Fund, with expert assistance, upon the approval of this Settlement, the Class Members are bound by that determination and have no right to appeal either the calculation of that amount or the allocation of each Class Member.

A COMPLETE COPY OF THE PROPOSED SETTLEMENT AGREEMENT IS AVAILABLE ONLINE AT [www.hawaiiclassaction.com](http://www.hawaiiclassaction.com).

## **V. COURT APPROVAL OF THE PARTIAL SETTLEMENT**

The Court will conduct a hearing on this partial settlement on November 15, 2013 at 10:00 a.m. The purpose of that hearing is to determine whether this partial settlement is fair, reasonable, and adequate.

## **VI. YOUR OPTIONS AS A CLASS MEMBER**

You may do nothing. In that event, you (1) will receive a check for the monetary relief described above and (2) will be bound by the partial settlement and dismissal of the per diem wage claims.

You may object to the settlement terms. In that event, you must **file your written objections with the Clerk of the Court, and serve them on Class Counsel and counsel for Defendants, no later than November 8, 2013.**

To be valid, each objection must include: (i) the name and case number of the actions (*Garner et al. v. State of Hawaii, Department of Education*, Civil No. 03-1-000305 and *Kliternick, et al. v. Matayoshi, et al.*, Civil No. 05-1-000031); (ii) the objector's full name and address; (c) a detailed statement of the specific objections; (d) the grounds for the objections; and (e) copies of any documents the objector wishes the Court to consider.

Any Class Member who has filed and served a timely written objection may also appear at the Final Approval Hearing in person or through counsel. A notice of intention to appear must be filed with the Court and a copy mailed to Class Counsel and counsel for Defendants at Garner Defendants, 425 Queen Street, Honolulu, Hawaii 96813 no later than the Objection Deadline. Any Class Member who does not provide a timely written objection and notice to appear in the manner described above shall not be permitted to appear at the Final Approval Hearing.

Any Class Member who does not provide a timely written objection and notice to appear in the manner described above shall not be permitted to appear at the Final Approval Hearing and shall be deemed to have waived any objection and shall forever be foreclosed from making any objection to the fairness, reasonableness or adequacy of the proposed Settlement or the award of any attorneys' fees, costs and Class Representatives' stipends.

## **VII. ADDITIONAL INFORMATION**

This notice provides only a summary of the Class Action and the partial settlement. The Settlement Agreement and other relevant documents, including information on the per diem wages due to each Class Member is available for inspection at [www.hawaii.classaction.com](http://www.hawaii.classaction.com). The information on the website includes the class member's DOE Identification Number and the gross amount owed (before any of the deductions described above).

If you have any questions, you may also contact Class Counsel by email (at [www.hawaii.classaction.com](http://www.hawaii.classaction.com)) or at 808-524-1800.

**PLEASE DO NOT TELEPHONE OR SEND CORRESPONDENCE TO THE COURT REGARDING THIS NOTICE.**

DATED: \_\_\_\_\_, 2013

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BY ORDER OF THE CIRCUIT COURT FOR  
THE FIRST CIRCUIT OF HAWAII  
THE HONORABLE KARL S. SAKAMOTO