

FIRST CIRCUIT COURT  
STATE OF HAWAII  
FILED

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

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 CASES)**)

**ORDER TENTATIVELY GRANTING  
IN PART AND DENYING IN PART  
PLAINTIFFS' MOTION FOR THE  
AWARD OF ATTORNEYS' FEES  
PURSUANT TO H.R.S. § 607-14**

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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 HAWAI`I BOARD OF  
EDUCATION; DEPARTMENT OF  
EDUCATION, STATE OF HAWAI`I,

Defendants.

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DIANNE KAWASHIMA, individually  
and on behalf of others similarly  
situated,

Plaintiff,

vs.

STATE OF HAWAI`I, DEPARTMENT  
OF EDUCATION; PATRICIA  
HAMAMOTO, in her official capacity  
as Superintendant of Schools;  
DARWIN CHING, MARY COCHRAN,  
MAGGIE COX, BREENE HARIMOTO,  
CEC HEFTEL, LEI AHU ISA, KAREN  
KNUDSEN, DENISE MATSUMOTO,  
SHIRLEY A. ROBINSON, LAURA

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

CIVIL NO. 06-1-0244-02 (ECN)  
(Class Action)

No Trial Date Set.

THIELEN, GARRETT TOGUCHI,  
HERBERT WATANABE, and  
RANDALL YEE, in their official  
capacity as members of the STATE  
OF HAWAII, BOARD OF  
EDUCATION; DOE DEFENDANTS 1  
10,

Defendants.

**ORDER TENTATIVELY GRANTING IN PART AND DENYING IN  
PART PLAINTIFFS' MOTION FOR THE AWARD OF ATTORNEYS'  
FEES PURSUANT TO H.R.S. § 607-14**

Whereas, these cases have been consolidated for the purpose of considering the Plaintiffs' requests for the award of attorneys' fees and costs under H.R.S. § 607-14;

Whereas, the Plaintiffs have requested fees of \$4,496,851.20 in the *Garner* and *Klitternick* cases and fees of \$1,522,342.07 in the *Kawashima* case;

Whereas, the Defendants have disputed Plaintiffs' claims and contend they are entitled to only a fraction of the amounts requested;

Whereas, all parties agree that a portion of the Plaintiffs' claims at issue is contingent on pending appeals from the judgments entered in these consolidated cases; and

Whereas, the Defendants have agreed that they will not oppose the awarding of fees in the amounts set forth below on the conditions stated herein and Plaintiffs' counsel believe that the interests of the class with respect to avoiding further delays in the resolution of the disputed issues justifies compromising by reducing the fee requests to the amounts stated.

Whereas, the Court has considered the parties' submissions for and against the awarding of fees under H.R.S. § 607-14 and finds good cause to award fees in the amounts stated herein;

Whereas, the Court agrees that it is in the best interests of the Class Members in all of the consolidated cases to resolve the fee disputes as stated herein; and

Whereas, the Court believes it is appropriate under HRCP 23 to provide notice to the Class Members through posting notice in the form of Exhibit "A," attached, on (1) the website maintained by Plaintiffs' Counsel; and (2) on the official website of the State of Hawai'i Department of Education at <http://www.hawaiipublicschools.org/ConnectWithUs/Employment/Pages/Home.aspx>. For the purposes of this fee award, such notice is reasonably calculated to provide notice to interested Class Members and deemed sufficient to satisfy the requirements of HRCP 23; and

Whereas, this Order will take effect unless the Court decides to rescind it after receiving cogent written objections from Class Members (via Plaintiffs' Counsel) within 20 days after the notices are posted, as described above;

Now, therefore, based upon the success already achieved (that is, the per diem pay owed and already paid to Substitute Teachers), the past work performed, and the work to be performed during and after the pending appeals, the Court orders that Plaintiffs shall be paid a maximum of \$5,000,000.00 in attorneys' fees pursuant to H.R.S. § 607-14, as follows:

- (1) In *Garner/Klitternick*, on account of their past success, the

Plaintiffs will be paid \$3,000,000.00, contingent on legislative appropriation, in fees plus Plaintiffs' costs in the amount of \$25,942.99. Defendants agree to request an appropriation by the 2016 Legislature;

(2) In addition to the \$3,000,000 paid pursuant to the preceding paragraph, Defendants agree to pay, contingent on legislative appropriation, additional fees in an amount equal to 25% of any final, fully appealed judgment awarded to plaintiffs or the class for hourly wages and interest, if any, up to a cap of \$2,000,000.00 additional fees in the aggregate. These future fees, if awarded, will be allocated equally between *Garner/Klitternick* and *Kawashima*. If and when Plaintiffs' entitlement to wages and/or interest is finally confirmed on appeal or otherwise, Defendants agree to request an appropriation by the next legislative session following the final judgment on appeal.

(3) The amounts set forth herein and paid are in full and complete satisfaction of all claims for attorneys' fees against the Defendants under H.R.S. § 607-14 which have been or will be incurred in or in any way related to these cases and appeals. Plaintiffs, Class Members, through counsel, and counsel specifically waive any further award of attorneys' fees from Defendants pursuant to H.R.S. § 607-14 or any other basis and release Defendants from any other claim for attorneys' fees. Nothing herein will be deemed to limit or impair the rights of Plaintiffs' counsel to seek fees from the Plaintiffs under the common benefit/common fund doctrine or otherwise.

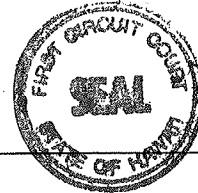
All amounts paid pursuant to this order shall be paid by way of check payable to Alston Hunt Floyd and Ing Client Trust Account. Defendants

shall have no further responsibility for accounting or disbursing any such amounts beyond payment to that account.

JAN 15 2016

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

KARL K. SAKAMOTO



KARL K. SAKAMOTO  
JUDGE OF THE ABOVE-ENTITLED  
COURT

APPROVED AS TO FORM:

A handwritten signature in black ink, appearing to be "Paul Alston", written over a horizontal line.

PAUL ALSTON  
ERIC G. FERRER  
MURRAY T. S. LEWIS

Attorneys for Plaintiffs

A handwritten signature in black ink, appearing to be "Douglas S. Chin", written over a horizontal line.

DOUGLAS S. CHIN  
HARVEY E. HENDERSON, JR.  
JAMES E. HALVORSON  
WILLIAM J. WYNHOFF

Attorneys for Defendants

*David Garner, et al. vs. State of Hawai'i, et al.*; Civil No. 03-1-000305 (KKS);  
*Allan Kliternick, et al. vs. Kathryn S. Matayoshi, et al.*; Civil No. 05-1-00031  
(KKS) and *Diane Kawashima vs. State of Hawai'i, Department of Education, et al.*;  
Civil No. 06-1-0244-02 (ECN); **ORDER TENTATIVELY GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION FOR THE AWARD OF ATTORNEYS' FEES PURSUANT TO H.R.S. § 607-14**

**EXHIBIT A**

**NOTICE OF PENDING SETTLEMENT OF DISPUTED CLAIM  
AFFECTING SUBSTITUTE TEACHERS AND PART-TIME  
TEACHERS COMPENSATION CLAIMS**

TO ALL PERSONS WHO WORKED AS SUBSTITUTE TEACHERS AND PART-TIME TEACHERS BETWEEN NOVEMBER 2000 AND JUNE 2012:

In the pending class actions,<sup>1</sup> the representatives of the substitute and part-time teachers have filed motions seeking to compel the Department of Education to pay legal fees for their efforts to recover back pay during the years where it has been held that the DOE underpaid both Substitute Teachers and Part-time Teachers (2000 to 2012), according to rulings by the courts (many of which are still on appeal).

With respect to the claims for Substitute Teachers, the DOE has agreed to pay a fee award of \$3,000,000.00. With respect to the claims for Part-time Teachers (which remain on appeal), the DOE has agreed not to oppose a fee award of up to \$2,000,000.00 depending upon the results of the pending appeals.

These fees will be added to the back wages recovered in the lawsuits. Both the back wages and the fees will be subject to any attorneys' fees awarded to the attorneys for the class members from the total award to the substitute and part-time teachers on the basis of the common benefit doctrine.

If you object to the amounts the DOE is to pay, you should send your objections to the following BEFORE DECEMBER 15, 2015:

**PAUL ALSTON  
ALSTON HUNT FLOYD & ING  
1001 BISHOP STREET SUITE 1800  
HONOLULU, HAWAI'I 96813**

**DO NOT SEND ANY COMMUNICATIONS TO THE COURT. ALL  
OF YOUR COMMUNICATIONS WILL BE FORWARDED TO THE  
COURT BY COUNSEL.**

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<sup>1</sup> *David Garner, et al. vs. State of Hawai'i, et al.*; Civil No. 03-1-000305 (KKS);  
*Allan Kliternick, et al. vs. Kathryn S. Matayoshi, et al.*; Civil No. 05-1-00031 (KKS)  
*Diane Kawashima vs. State of Hawai'i, Department of Education, et al.*; Civil No. 06-1-0244-02 (ECN)