

EXPANDING ACCESS TO JUSTICE
THROUGH
CLASS ACTION RESIDUAL FUNDS

A Toolkit

| | | |
|------|--|---------|
| I. | INTRODUCTION: CLARIFICATION OF USES OF RESIDUAL FUNDS IN CLASS ACTION CASES | Page 2 |
| II. | COMPLETE TEXT OF RULE 23 OF THE HAWAII RULES OF CIVIL PROCEDURE | Page 5 |
| III. | LEGAL SERVICES PROVIDERS | Page 7 |
| IV. | HAWAII JUSTICE FOUNDATION | Page 8 |
| V. | PRACTICE POINTERS AND TIPS | Page 9 |
| VI. | SAMPLE DOCUMENTS: | |
| | A. INTERIM ORDER REGARDING PAYMENT TO CLASS MEMBERS | Page 11 |
| | B. STIPULATION AND FINAL ORDER FOR APPROVAL OF DISTRIBUTION OF RESIDUAL SETTLEMENT FUNDS | Page 13 |
| | C. DECLARATION OF _____, SETTLEMENT ADMINISTRATOR | Page 18 |
| | D. DECLARATION OF ROBERT J. LECLAIR | Page 20 |
| | E. DECLARATION OF LEGAL SERVICE PROVIDER | Page 22 |
| | F. EXCERPTS FROM SAMPLE SETTLEMENT AGREEMENT | Page 24 |

I. INTRODUCTION: CLARIFICATION OF USES OF RESIDUAL FUNDS IN CLASS ACTION CASES

The Hawaii Supreme Court adopted an amendment to Haw. R. Civ. P. 23, effective July 1, 2011, which provides direction to parties and the trial courts regarding the distribution of residual funds in class action cases.

In a class action case, it is common that not all members of the class can be located or, even if located, do not submit required claims. The result is that a portion of the total amount payable to the class, commonly referred to as the “residual funds,” may not be distributed unless some disposition of those funds is specified. Amended Rule 23(f) provides a process by which the parties are to make payments to the class members (as required by a judgment or settlement) and then report to the court the amount actually paid to class members. The Rule further provides that there must be an order for the distribution of any residual funds. The amended rule states that it is within the discretion of the court to approve the timing and method of distribution of residual funds to entities, as agreed to by the parties, which may include (but are not necessarily limited to) nonprofit tax exempt organizations that provide legal services to indigent persons or the Hawaii Justice Foundation (for distribution to one or more such organizations).¹

Definition of Cy Pres

The amendment to Rule 23 operates in a manner similar to the doctrine of “*cy pres*,” which means “as near as possible.” The *cy pres* doctrine was developed as a means of enabling the distribution of a trust fund whose primary purpose could not be fulfilled, such as where the designated trust beneficiary was no longer in existence. The *cy pres* doctrine enables funds to be distributed to their “next best use.” Today, a variation of the *cy pres* doctrine, normally achieved by court rule or statute (or provided for by court order, typically approving the terms of a negotiated settlement of claims) allows for the reallocation of class action residual funds where not all funds can be distributed to class claimants, and distribution of these funds often goes to organizations serving compelling public purposes..” The funds become residual where members cannot be located, class members fail to submit claims, distribution is not economically feasible, or the court determines that the benefit of the awards to individual class

¹ This procedural rule would not override any provision of substantive law that would require a contrary disposition of the residual funds. The rule was designed to apply only in those cases in which the court approves or authorizes the creation of residual funds.

members is so small that it will provide merely a negligible benefit to such members. By analogy to the *cy pres* doctrine, for example, the amendment to Rule 23 allows residual funds in class actions to be distributed to organizations which provide legal services to vindicate the rights of individuals who could not otherwise afford the counsel they require to enforce those rights, much in the same way as the class action procedure itself allows the assertion of claims on behalf of numerous members of the class whose claims could not economically be asserted if required to be pursued in separate individual proceedings.

Expanding Access to Justice with Cy Pres Funds

“Distribution of residual funds to nonprofit organizations that are eligible to receive funding for the services they provide in helping individuals achieve access to the justice system serves a purpose that is very similar to the purpose served by the class action procedure—i.e., both enable individuals who could not otherwise do so to vindicate their legal rights,” says David J. Reber, member of the Administration Committee of the Hawaii Access to Justice Commission who worked on the amendment proposal.

“Nonprofit organizations providing access to justice have been presented with financial challenges, with severely reduced state, city, federal, and private contributions, while needs continue to grow for those they serve,” says Associate Judge Daniel R. Foley, Chair, Hawaii Access to Justice Commission. “Providing increased funding to support the efforts of these organizations will serve a compelling public purpose.”

Amended Rule 23 Does Not Preclude Other Judicial Applications of the Cy Pres Doctrine to Provide Funds to Support Nonprofit Legal Services Providers and the Hawaii Justice Foundation

While the amendment to Rule 23 requires that parties and the court in a class action (or purported class action) consider the issue of residual funds and make specific provision for the appropriate distribution of those funds, including to qualified nonprofit legal services providers or to the Hawaii Justice Foundation, this amendment should **not** be regarded as the exclusive vehicle for providing such funding as part of the disposition of a civil legal proceeding. Similar awards were made in some class action proceedings before the amendment and a plaintiff could advocate for similar awards as part of the relief requested in a particular proceeding.

For example, in a case where there are numerous individuals whose rights have been violated but where the cost of identifying them, giving them notice of the proceedings and administering their claims would far exceed the total amount of damages that they suffered individually or collectively, it could be appropriate for the parties to agree, and the court to accept as a settlement,

that the damages suffered by all of these individuals as a group be paid to a nonprofit legal services provider or the Hawaii Justice Foundation in lieu of having the case proceed as a class action. The theory for such a result would be that the defendant would thereby be required to “pay” for its violation of the rights of the affected individuals (whose individual recoveries would otherwise be *de minimus*) and the funds would go to organizations that would be in a position to bring proceedings to redress future violations.

II. COMPLETE TEXT OF RULE 23 OF THE HAWAII RULES OF CIVIL PROCEDURE

Rule 23 of the Hawaii Rules of Civil Procedure sets forth the class action procedures. The amendment to Rule 23, which added subsection(f), enables and encourages possible awards to legal aid providers or the Hawaii Justice Foundation of residual funds in class actions.

Rule 23. CLASS ACTIONS.

(a) Prerequisites to a class action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(b) Class actions maintainable. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include:

(A) the interest of members of the class in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum;

(D) the difficulties likely to be encountered in the management of a class action.

(c) Determination by order whether class action to be maintained; notice; judgment; actions conducted partially as class actions.

(1) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits.

(2) In any class action maintained under subdivision (b)(3), the court shall direct to the members of the class the best notice practicable under the circumstances,

including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that

(A) the court will exclude the member from the class if the member so requests by a specified date;

(B) the judgment, whether favorable or not, will include all members who do not request exclusion; and

(C) any member who does not request exclusion may, if the member desires, enter an appearance through counsel.

(3) The judgment in an action maintained as a class action under subdivision (b)(1) or (b)(2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under subdivision (b)(3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subdivision (c)(2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(4) When appropriate (A) an action may be brought or maintained as a class action with respect to particular issues, or (B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.

(d) Orders in conduct of actions. In the conduct of actions to which this rule applies, the court may make appropriate orders: (1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action; (3) imposing conditions on the representative parties or on intervenors; (4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; (5) dealing with similar procedural matters. The orders may be combined with an order under Rule 16, and may be altered or amended as may be desirable from time to time.

(e) Dismissal or compromise. A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

(f) Distribution. Prior to the entry of any judgment under subdivision (c)(3) or the approval of any compromise under subdivision (e), the court shall determine the total amount payable to each class member. The court shall set a date when the parties shall report to the court the total amount actually paid to class members. After the report is received, the court shall direct the defendant, by order entered on the record, to distribute the sum of any unpaid residue after the payment of approved class member claims, expenses, litigation costs, attorneys' fees, and other court-approved disbursements. Unless otherwise required by governing law, it shall be within the discretion of the court to approve the timing and method of distribution of residual funds and to approve the recipient(s) of residual funds, as agreed to by the parties, including nonprofit tax exempt organizations eligible to receive assistance from the indigent legal assistance fund under HRS section 607-5.7 (or any successor provision) or the Hawaii Justice Foundation, for distribution to one or more of such organizations.

III. LEGAL SERVICES PROVIDERS

Rule 23(f) specifically authorizes the distribution of residual funds in class actions to the Hawaii Justice Foundation and/or to organization(s) eligible to receive assistance from the indigent legal assistance fund under Haw. Rev. Stat. § 607-5.7, which is administered by the Hawaii Justice Foundation. As of July 1, 2011, all of the groups listed below are eligible to receive cy pres residual funds under amended Rule 23 and the services that they provide are described at their indicated web sites.

Domestic Violence Action Center
<http://www.stoptheviolence.org>

Hawaii Disability Rights Center
<http://www.hawaiidisabilityrights.org>

Hawaii Justice Foundation
<http://www.hawaiijustice.org>

Lawyers for Equal Justice
<http://www.lejhawaii.org>

Legal Aid Society of Hawaii
<http://www.legalaidhawaii.org>

Mediation Center of the Pacific
<http://www.mediatehawaii.org>

Native Hawaiian Legal Corporation
<http://www.nhlchi.org>

University of Hawaii Elder Law Program
<http://www.hawaii.edu/uhelp>

Volunteer Legal Services Hawaii
<http://www.vlsh.org>

IV. HAWAII JUSTICE FOUNDATION

The Hawaii Justice Foundation (“HJF”) is an independent, tax-exempt grant making organization whose primary purpose is to achieve justice for Hawaii’s people. It was established in 1969 as a vehicle for philanthropic law-related projects in the State of Hawaii and governed by a Board of Directors made up of members of the business and legal professions, often including members of the Judiciary.

HJF distributes funds from a variety of sources to help increase access to justice for Hawaii residents. For several years, HJF has worked in cooperation with the Hawaii State Judiciary to manage the Indigent Legal Assistance Fund (“ILAF”) set forth in Haw. Rev. Stat. § 607-5.7.

Under Hawaii Supreme Court Rule 11, HJF receives funds from the interest on attorney trust accounts (“IOLTA”). The purpose of this IOLTA program is to provide “funds for Hawaii Justice Foundation programs designed to improve the education of the public and the practicing bar on matters of legal significance, to provide legal aid to the poor, to enhance delivery of competent legal services, to make student loans, and to implement other programs aimed at improving the administration of justice in Hawaii.” Haw.S.Ct. Rule 11(a).

HJF also receives funds currently from three other foundations and distributes these funds in accordance with the instructions of the granting entities. HJF has a successful “track record” of distributing funds and supervising the projects and activities for which the funds are intended. HJF is willing to work diligently to ensure the effective distribution and use of residual funds from class actions.

V. PRACTICE POINTERS AND TIPS

1. **Raise the issue of a *cy pres* provision early.**

Raising the issue of a “residual funds” or *cy pres* provision relatively early in the settlement negotiations can have a positive impact on the process. Some defendants may find the prospect of paying money to settle a case more palatable when they consider that some of the money will benefit a good cause.

2. **Consider whether there are funds that can be made available.**

The parties should consider whether residual funds are likely to occur, or whether a provision requiring payment to a nonprofit organization would otherwise be an appropriate part of the relief to be granted in the proceeding, and these funds can be made available for court-authorized awards for legal assistance to low-income individuals. The decision to make a *cy pres* award in a class action or other settlement most often happens during the settlement process. Class action settlements must be approved by the court and must afford absent class members the opportunity to opt out or object.

3. **Negotiating a fixed percentage of the settlement fund.**

Even where settlement funds are to be distributed to identifiable plaintiffs, *cy pres* may still be used by negotiating, from the start, to set aside a fixed percentage of the settlement fund or a certain amount. However, the most common use of *cy pres* occurs in cases where a settlement provides that unclaimed or leftover funds will be used for the *cy pres* award.

4. **Review Haw.R.Civ.P. 23.**

Once the parties agree that a *cy pres* award is desirable and appropriate, the key is to fashion a remedy that will be approved by the court.

5. **Utilize Existing Expertise in Hawaii Regarding *Cy Pres***

Attorneys who are considering the possible distribution of funds under Rule 23 should contact the Hawaii Justice Foundation or any of the legal service providers listed in the previous section. There are attorneys in Hawaii who have experience with class actions and who may be willing to advise on how to designate one or more of these organizations as the recipient of residual funds.

VI. SAMPLE DOCUMENTS

- A. INTERIM ORDER REGARDING PAYMENT TO CLASS MEMBERS
- B. STIPULATION AND FINAL ORDER FOR APPROVAL OF DISTRIBUTION OF RESIDUAL SETTLEMENT FUNDS
- C. DECLARATION OF _____, SETTLEMENT ADMINISTRATOR
- D. DECLARATION OF ROBERT J. LECLAIR
(Executive Director, Hawaii Justice Foundation)
- E. DECLARATION OF EXECUTIVE DIRECTOR, LEGAL SERVICE PROVIDER

Disclaimer: All sample documents are for illustrative purposes only. None of these sample documents have been approved by any Judiciary or HSBA committee or other entity. Additionally, each document should be tailored to fit the facts and circumstances of the particular case. Each party should do his/her own research and review each sample document to determine independently if it, or some variation of it, is legally permissible, sufficient, and appropriate.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JOHN DOE, on behalf of himself and
others similarly situated,

Plaintiff,

vs.

JANE DOE,

Defendant.

CIVIL NO. 00-0-0000

(_____)

**INTERIM ORDER REGARDING
PAYMENT TO CLASS MEMBERS**

INTERIM ORDER REGARDING PAYMENT TO CLASS MEMBERS

The Court, having considered the motion and memorandum filed by the Plaintiff and having considered the arguments presented at the hearing on _____, 20____, and having been fully advised, hereby enters the following interim order pursuant to Rule 23(f) of the Hawaii Rules of Civil Procedure:

1. Based upon the record and evidence presented by the parties, the Court finds that after payment of attorneys' fees, costs, and other expenses, each class member shall be entitled to a total payment in the amount of \$_____, minus expenses incurred in distributing payments;

2. Plaintiff shall retain the services of a Settlement Administrator to collect the funds from the Defendant and distribute final payment to each class member within the next ____ months;

3. Plaintiffs and Defendant shall file a report with the court on or before _____, 20__ informing the court as to the total amount actually paid to the class members and setting forth the total remaining sum that could not be distributed;

4. Upon receipt of that report, the Court will set a hearing to determine whether any unpaid fees, costs, or expenses from the fund remain and to whom the remaining residual funds will be distributed.

DATED: Honolulu, Hawai'i, _____.

JUDGE OF THE ABOVE-ENTITLED COURT

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JOHN DOE, on behalf of himself and
others similarly situated,

Plaintiff,

vs.

JANE DOE,

Defendant.

CIVIL NO. 00-0-0000

(_____)

**STIPULATION AND FINAL ORDER
FOR APPROVAL OF DISTRIBUTION
OF RESIDUAL SETTLEMENT
FUNDS; DECLARATION OF _____,
SETTLEMENT ADMINISTRATOR;
DECLARATION OF ROBERT
LECLAIR; EXHIBITS 1-2**

**STIPULATION AND FINAL ORDER FOR APPROVAL OF
DISTRIBUTION OF RESIDUAL SETTLEMENT FUNDS**

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto that the Court order the distribution of the remainder of the Common Fund created by the settlement of this class action and the Court's Order entered on _____, as follows: \$_____ [the amount of residual funds] to [designated legal services providers and/or Hawaii Justice Foundation]. In further support of this stipulation, the parties state as follows:

1. After preliminary approval of class settlement, dissemination of notice to the class, and a hearing, the Court entered an Interim Order in this action on _____20____, approving a settlement of this matter on behalf of the plaintiff class in the amount of \$_____. Exhibit 1.

2. The Court ordered that after payment of attorneys' fees and costs and other approved expenses, that Plaintiff's attorneys retain a Settlement Administrator to undertake the distribution of the remainder of the Common Fund created by the Settlement Agreement to the class members on a pro rata basis. The Court also ordered, pursuant to Rule 23(f) of the Hawaii Rules of Civil Procedure, that the parties report to the court the total amount actually paid to class members, which report was filed with the court on _____, 20____, Ex. 2 attached hereto and incorporated herein.

3. Pursuant to the Court's Order, Plaintiff retained _____ to act as Settlement Administrator to undertake the distribution of the remainder of the Common Fund to class members.

4. Pursuant to the Court's Order, Defendant transferred \$_____ to the Settlement Administrator for distribution to the class members on _____, 20____. Declaration of _____, Settlement Administrator, para. _____, attached hereto.

5. The Settlement Administrator mailed _____ checks totaling \$_____ to the class members. Of the checks distributed, _____ checks totaling \$_____ have been cashed. *Id.*

6. Plaintiff undertook a supplemental effort to contact class members that failed to cash checks distributed by the Settlement Administrator in an effort to insure the maximum number of class members would receive and cash checks. As set forth in the attached declaration, this

supplemental effort distributed another _____ checks to the class members. Of these checks, _____ were subsequently cashed, totaling \$_____. Declaration of _____, para. _____.

7. Plaintiff paid the Settlement Administrator \$_____ for its services in distributing the remainder of the Common Fund to the class members. *Id.* Plaintiff has incurred \$_____ additional out-of-pocket expenses since final approval for distribution of the remainder of the Common Fund to the class members. *Id.*

8. After payment of all of these expenses, \$_____ [The amount of unclaimed residual funds] remains in the Common Fund held by the settlement administrator, including uncashed checks, and despite Plaintiff's best efforts to distribute the monies to the class members over the past _____ months, it cannot be practically distributed. Declaration of _____, para. _____.

9. Haw. R. Civ. Pro. 23 provides as follows:

(f) Distribution. Prior to the entry of any judgment under subdivision (c)(3) or the approval of any compromise under subdivision (e), the court shall determine the total amount payable to each class member. The court shall set a date when the parties shall report to the court the total amount actually paid to class members. After the report is received, the court shall direct the defendant, by order entered on the record, to distribute the sum of any unpaid residue after the payment of approved class member claims, expenses, litigation costs, attorneys' fees, and other court-approved disbursements. Unless otherwise required by governing law, it shall be within the discretion of the court to approve the timing and

method of distribution of residual funds and to approve the recipient(s) of residual funds, as agreed to by the parties, including nonprofit tax exempt organizations eligible to receive assistance from the indigent legal assistance fund under Haw.Rev.Stat. § 607-5.7 (or any successor provision) or the Hawaii Justice Foundation, for distribution to one or more of such organizations.

10. The parties stipulate and agree and request that the Court order the remainder of \$_____ in the Common Fund be distributed by the Settlement Administrator and/or Defendant to [e.g., legal services providers or Hawaii Justice Foundation] in a timely manner and in no event later than 30 days from the date of this Order.

11. Distribution of the residual funds to the [e.g., legal services providers or Hawaii Justice Foundation] is consistent with the purpose of Haw.R.Civ. Pro. 23(f), which recognizes the need to protect the legal rights of those who, because of their economic position, would otherwise be unrepresented. [Declaration of _____ [executive director of legal service provider or Hawaii Justice Foundation]

DATED: _____, Honolulu, Hawaii.

Attorney for Plaintiff

Attorney for Defendant

APPROVED AND SO ORDERED:

HONORABLE _____

John Doe, on behalf of himself and others similarly situated v. Jane Doe,
Civil No. 00-0-0000; *Stipulation and Final Order for Approval of Distribution of*
Residual Settlement Funds

Disclaimer: All sample documents are for illustrative purposes only. None of these sample documents have been approved by any Judiciary or HSBA committee or other entity. Additionally, each document should be tailored to fit the facts and circumstances of the particular case. Each party should do his/her own research and review each sample document to determine independently if it, or some variation of it, is legally permissible, sufficient, and appropriate.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JOHN DOE, on behalf of himself and
others similarly situated,

Plaintiff,

vs.

JANE DOE,

Defendant.

CIVIL NO. 00-0-0000
(_____)

**DECLARATION OF _____,
SETTLEMENT ADMINISTRATOR**

DECLARATION OF _____, SETTLEMENT ADMINISTRATOR

I, _____, hereby declare as follows:

1. I am _(title)_____ employed by _(company)_____. This declaration is based upon my personal knowledge of the facts and circumstances stated herein. I am competent to make this declaration.

2. As Settlement Administrator, I was responsible for assisting with the administration of the Settlement by, among other things: (a) mailing the Class Notice to Class Members at the addresses on the Class Member List; (b) mailing Class Notices returned by the United States Postal Service with a forwarding address on the fact of the returned envelop; and (c) replying, processing, and tracking correspondence from Class Members. I have participated in and/or supervised _____'s performance of these and other tasks.

3. I/(Company)___ received a total of \$_____ from the Common Fund for the purpose of disbursements to claimants. As of the close of business on __(date)___, __(Company)___ mailed to Class Members ___(no. of checks)___ totaling \$_____. Of those, ___(no. of checks)___ have been cashed, totaling \$_____.

4. A supplemental effort to contact Class Members that failed to cash checks distributed initially was made in an effort to insure the maximum number of class members would receive and cash checks. This supplemental effort distributed another ___(no. of checks)___ to the Class Members. Of these checks, \$_____ were subsequently cashed.

5. The remaining ___(no. of checks)___, totaling \$_____ have passed their stale date and have been voided. After deducting the final Claims Administration expenses of \$_____, a sum totaling \$_____ remains in the Settlement Fund account, with no balance remaining outstanding.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, Honolulu, Hawaii.

NAME

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JOHN DOE, on behalf of himself and
others similarly situated,

Plaintiff,

vs.

JANE DOE,

Defendant.

CIVIL NO. 00-0-0000

(_____)

**DECLARATION OF ROBERT J.
LECLAIR**

DECLARATION OF ROBERT J. LECLAIR

I, ROBERT J. LECLAIR, declare as follows:

1. I am the Executive Director of the Hawaii Justice Foundation ("HJF") and an attorney duly admitted to practice in the State of Hawaii.

I submit this declaration based on personal knowledge of the facts and circumstances declared herein. I am competent to make this declaration.

2. HJF is a 501(c)(3) non-profit corporation whose mission is to achieve justice for Hawaii's people. It was established in 1969 as a vehicle for philanthropic law-related projects in the State of Hawaii, and its Board of Directors is made up of members of the business and legal professions, often including members of the Judiciary.

3. HJF distributes funds from a variety of sources to help increase access to justice for Hawaii's people. It does not provide direct client services but its funding activities provide HJF with a perspective on the

Disclaimer: All sample documents are for illustrative purposes only. None of these sample documents have been approved by any Judiciary or HSBA committee or other entity. Additionally, each document should be tailored to fit the facts and circumstances of the particular case. Each party should do his/her own research and review each sample document to determine independently if it, or some variation of it, is legally permissible, sufficient, and appropriate.

seriousness of the unmet civil legal needs in the state. For several years, HJF has worked in cooperation with the Hawaii State Judiciary to manage the funds from Indigent Legal Assistance Fund ("ILAF") program under Haw.Rev.Stat. § 607-5.7.

4. The application process for receipt of funds managed by HJF is quite extensive, with thorough documentation. The application includes an attestation clause, where the executive director of each organization attests to the truthfulness of the application. State unemployment reporting forms are used for verification of employees, and individual signed statements are received from each person providing legal services that attest to the veracity of the percentage of time that the person spends in providing qualified direct legal services.

5. All legal services providers receiving funds under the ILAF program and who would be eligible to receive class action residual funds or other awards are strictly monitored by the HJF. Quarterly reports and a yearly summary report are required of each organization, and these are reviewed by the HJF.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, Honolulu, Hawaii.

ROBERT J. LECLAIR

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JOHN DOE, on behalf of himself and
others similarly situated,

Plaintiff,

vs.

JANE DOE,

Defendant.

CIVIL NO. 00-0-0000
(_____)

DECLARATION OF _____

DECLARATION OF _____

I, _____, declare as follows:

1. I am the Executive Director of _____ (legal service provider). I submit this declaration based on personal knowledge of the facts and circumstances stated herein and am competent to make this declaration.

2. (Legal service provider)_____ is a 501(c)(3) non-profit corporation whose mission is to provide free legal assistance to low-income residents of Hawaii who have critical legal needs.

3. (Provide some facts of the type of work the legal service provider does here.)

4. (Legal service provider)_____ is unable to assist every family or individual who requests legal assistance due to lack of financial resources.

5. Monies provided to (legal service provider) would allow us to provide legal assistance to additional families and individuals with critical legal needs.

6. We are willing to provide a report to the court and/or parties confirming the distribution of these funds, if necessary.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, Honolulu, Hawaii.

EXCERPTS FROM SAMPLE SETTLEMENT AGREEMENT

Undistributed Settlement Funds.

The parties agree that insofar as unanticipated circumstances arise whereby certain Authorized Claimants' payments are returned or some residue remains in the escrow account after distribution of the settlement funds by the Settlement Administrator, lead class counsel shall apply to the Court for approval for the Settlement Administrator to distribute any undistributed funds in the Settlement Fund to one or more non-profit organizations agreed to by the parties. None of the Settlement Fund shall revert to the parties after the effective date of the Settlement.

OR

The parties recognize that there likely will be some amount of unclaimed funds after disbursement of the Settlement Fund for the payment of valid claims, payment of costs and expenses of administration and payment of costs and expenses of litigation. The parties agree the unclaimed funds resulting from the failure to file claims and from the denial of claims filed by class members shall be distributed to nonprofit organizations as set forth hereinafter.

The portion of the Settlement Fund distributed to *nonprofit* recipients shall be referred to as "Recipient's Share." The parties have agreed the unclaimed funds available for nonprofit recipients shall be divided among the following organizations enumerated below:

[name(s) of nonprofit recipient organizations]
