

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI‘I

ANTHONY CHATMAN,
FRANCISCO ALVARADO,
ZACHARY GRANADOS,
TYNDALE MOBLEY, and
JOSEPH DEGUAIR, individually
and on behalf of all others similarly
situated,

Plaintiffs,

v.

MAX N. OTANI, Director of the
State of Hawai‘i Department of
Public Safety, in his official
capacity,

Defendant.

CIVIL NO. 21-00268 JAO-KJM

**NOTICE TO THE CLASS OF
SETTLEMENT AGREEMENT**

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This Notice is to inform you that the parties in the above-referenced lawsuit have entered into a Settlement Agreement and General Release (“Settlement Agreement”) resolving a class action lawsuit over the response of the State of Hawai‘i Department of Public Safety (“DPS”) regarding the 2019 coronavirus, SARS-CoV-2, and its variants. This Notice is also to give you an opportunity to comment on and/or object to the Settlement Agreement, and how, when and where to mail your written comments and/or objections to it.

I. CASE BACKGROUND

On April 28, 2021, Plaintiffs filed this action challenging the adequacy of mitigation measures and DPS’ efforts to reduce the risk of contracting the SARS-CoV-2 virus, the virus that causes COVID-19, in its correctional facilities. This is not a money damages case, but instead seeks class-wide systemic benefits for all

members of the class. Plaintiffs contended that DPS had inadequate policies and procedures and/or failed adequately to enforce such policies for managing the risk of infection in violation of the Eighth and Fourteenth Amendments to the Constitution of the United States. Defendant Max N. Otani, the Director of DPS, denied the allegations. On September 2, 2021, after negotiations under the supervision of the Honorable Kenneth J. Mansfield, the parties reached a Settlement Agreement.

On July 13, 2021, the Court provisionally certified two classes, and two subclasses, of plaintiffs defined as follows:

Post-Conviction Class: All present and future sentenced prisoners incarcerated in a Hawai'i prison.

Post-Conviction Medical Subclass: Includes all present and future Post-Conviction Class members whose medical condition renders them especially vulnerable to COVID-19 as determined by guidelines promulgated by the CDC.

Pretrial Class: All present and future pretrial detainees incarcerated in a Hawai'i jail.

Pretrial Medical Subclass: Includes all present and future Pretrial Class members whose medical condition renders them especially vulnerable to COVID-19 as determined by guidelines promulgated by the CDC.

The class includes persons incarcerated beginning on July 13, 2021 and extending until the termination date of the Settlement Agreement. As a person incarcerated in a Hawai'i prison or jail operated by DPS, you are a member of the class and you have a right to comment and/or object to the Settlement Agreement.

II. THE SETTLEMENT AGREEMENT

The parties in this lawsuit have recently entered into a Settlement Agreement, which is subject to final approval by the Court. Copies of the Settlement Agreement will be available upon written request to the warden for each facility, or you may request one by writing to Plaintiffs' counsel (listed below).

The main terms of the Agreement are:

- a. DPS will make best efforts to implement the Pandemic Response Plan and adapt it to the CDC guidelines based on best practices and recommendations from the State of Hawai‘i Department of Health, based on the individual facilities’ physical space, staffing, population, operations, and other resources and conditions;
- b. A five-person Agreement Monitoring Panel (“AMP”) will be established to serve as an advisory panel and provide non-binding, informed guidance and recommendations to aid DPS in its continuing efforts to implement and update PRP and its ongoing COVID-19 response;
- c. DPS will implement quarantine and isolation, vaccination and testing, and sanitation procedures as described in the Settlement Agreement;
- d. Director Otani will issue a formal directive prohibiting DPS staff from retaliating against any inmate or staff member for their participation in this lawsuit;
- e. Plaintiffs will release all claims for declaratory and injunctive relief and for attorneys’ fees and costs as specified in the Settlement Agreement;
- f. The parties agree that the purpose of the Settlement Agreement is a settlement and compromise of the parties’ differences and to resolve any and all claims raised in this lawsuit and it is not to be construed as an admission of liability or of the truth of the allegations, claims, or contentions of any party;
- g. Plaintiffs will dismiss this lawsuit with prejudice and Defendant will dismiss with prejudice any appeals relating to this lawsuit upon final approval of the settlement and dismissal of this action; and
- h. DPS agrees to pay Plaintiffs’ counsel’s reasonable fees and costs.

To the extent there is a difference between the summary here and the Settlement Agreement, the latter controls. Further details of the settlement terms

are in the Settlement Agreement, which will be made available upon request to the wardens for each facility or Plaintiffs' counsel.

III. PURPOSES OF THIS NOTICE

The Settlement Agreement is under review by the Court, and it will not take effect until and unless it is approved by the Court. If you wish to submit any objections to or comments in support of the Settlement Agreement, you should submit an explanation in writing why you do or do not believe that the Settlement Agreement is fair, reasonable, and adequate. This Notice is not intended to be, and should not be construed as, an expression or any opinion by the Court with respect to the truth of the allegations in the litigation or the merits of the claims or defenses asserted. This Notice is sent to advise you of this action and proposed settlement and of your rights with respect to this action.

IV. NOTICE OF FAIRNESS HEARING

The Court will consider any objections or comments you may have regarding the Settlement Agreement, provided they are received no later than **October 1, 2021 at 9:00 a.m.** All written objections to the pending Settlement Agreement must be mailed to: Eric A. Seitz, Esq., Gina Szeto-Wong, Esq., Jonathan M. F. Loo, Esq., or Kevin A. Yolken, Esq., 820 Mililani Street, Suite 502, Honolulu, Hawai'i 96813.

A hearing, which may be conducted by teleconference or ZOOM video conference, will be held on **October 22, 2021 at 9:00 a.m.**, at which time the Court will consider the fairness of the Settlement Agreement and whether to approve it. Your objection will only be considered if it is in writing, and is received by Plaintiffs' counsel by **October 1, 2021 at 9:00 a.m.** Your personal presence in court will not be required, and no testimony will be taken. The attorneys for the Plaintiffs will collect, summarize and file your comments and objections with the Court by October 8, 2021, and will, if permitted by the Court, make them part of the record in this case. If you want to comment and/or object, it is important that you do so in writing and that you send your written comments or objections sufficiently in advance of the deadline. Any comments/objections received after that time will not be considered.