

REVERE & ASSOCIATES, LLLC  
TERRANCE M. REVERE 5857  
970 N. Kalaheo Ave., #A301, Kailua, HI 96734  
Telephone No.: (808) 791-9550  
Email: terry@revereandassociates.com

LAW OFFICE OF KYLE SMITH  
P. KYLE SMITH 9533  
604 Ilimano St., Kailua, HI 96734  
Telephone No.: (808) 799-5104  
kyle@smithlawhawaii.com

LAW OFFICES OF MICHAEL J. GREEN  
MICHAEL JAY GREEN 4451  
841 Bishop St., #2201, Honolulu, HI 96813  
Telephone No.: (808) 521-3336  
michael@michaeljaygreen.com

*Attorneys for Class Plaintiffs*

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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT  
STATE OF HAWAII

MATTHEW LOPRESTI, et al.,  
Class Plaintiffs,

vs.

HASEKO (HAWAII), INC., et al.,  
Defendants

CIVIL NO. 1CC131001995 (SRN)  
(Other Non-Vehicle Tort)

ORDER GRANTING CLASS PLAINTIFFS'  
MOTION FOR FINAL APPROVAL OF  
CLASS ACTION SETTLEMENT

Hearing Held:

Date: July 2, 2025

Time: 9:00 a.m.

Judge: Hon. Steven R. Nichols

ORDER GRANTING CLASS PLAINTIFFS'  
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

On July 2, 2025, at 9:00 a.m., Class Plaintiffs MATTHEW LOPRESTI, JULIA LOPRESTI, ROBERT JOHNSON, REGENA JOHNSON, KYLE MCKEE, MARITES MCKEE, EMIL GOCONG, LIZ GOCONG, and KENNETH TYLER's Motion for Final Approval of Class Action

Settlement, Filed June 24, 2025, [DKT 1217] (“Motion”) came on for hearing before the Honorable Steven R. Nicholas, Judge of the Above-Entitled Court.

Steven Chung, Esq. appeared on behalf of Defendants HASEKO (HAWAII), INC.; HASEKO (EWA), INC.; HASEKO DEVELOPMENT, INC.; HASEKO HOMES, INC.; HASEKO INVESTMENTS, INC.; HASEKO REALTY (HAWAII), INC.; HOAKALEI; HOAKALEI CORPORATION; HOAKALEI DEVELOPMENT, LLC; HOAKALEI RESIDENTIAL, LLC (collectively, “Haseko”); and Kyle Smith, Esq., appeared on behalf of Class Plaintiffs with Class Representatives Matthew LoPresti, Julia LoPresti, and Kenneth Tyler appearing. No other counsel or parties appeared at the hearing of the Motion.

No opposition to the Motion was filed by Defendant in writing or at the hearing. One Objection/Request for Exclusion was received by Marion Lane Basiliali in advance of the hearing.

Having reviewed the submissions of the Parties and having heard the arguments of counsel, and good cause appearing therefor, IT IS HEREBY ORDERED, ADJUDGED and DECREED that the Motion is GRANTED for the reasons stated at the hearing on this matter and as follows:

1. Hawaii Rule of Civil Procedure 23(e) requires the Court to approve the compromise of any class action. Generally, Courts consider whether a Settlement is fair, reasonable, and adequate and may consider multiple factors in evaluating a Settlement Agreement, which include: “the strength of plaintiffs’ case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed and the stage of proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement.” *See, e.g. Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982); *accord Torrasi v. Tuscon Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993).

2. Here, the Court finds the proposed Settlement Agreement is fair, adequate, and reasonable in light of these factors.
  - a. The Settlement reflects the strength of Class Plaintiffs' case as well as Haseko's positions that have been hard fought through contentious litigation spanning more than a decade.
  - b. HASEKO is the developer of the 1,100-acre project known as Ocean Pointe/Hoakalei and represented in its marketing material that the development would include a marina. On November 6, 2011, after several thousand homes had been sold, HASEKO announced that it would build a recreational lagoon instead of a marina. On July 17, 2013, Class Representatives filed their Class Action Complaint for Damages as a putative class action lawsuit in the Circuit Court of the First Circuit, State of Hawai'i against HASEKO. On August 24, 2015, Class Representatives filed a First Amended Class Action Complaint for Damages. The complaint and the first amended complaint alleged that members of the Class were damaged or injured by the change from a marina to a lagoon. On August 23, 2013, HASEKO filed an Answer to Class Action Complaint, on August 26, 2013, HASEKO filed a First Amended Answer to Class Action Complaint, and on September 8, 2015, HASEKO filed an Answer to the First Amended Class Action Complaint for Damages. Haseko's Answers denied liability and that members of the Class sustained damages or injuries as a result of the change from a marina to a lagoon.
  - c. On October 1, 2014, the Court entered an Order Granting Plaintiffs' Motion for Class Certification, filed June 19, 2014, certifying the Lawsuit as a class action. On January 9, 2015, a Stipulation and Order Re: Class Notice Definition & Procedure was entered in the Lawsuit, defining the Class as follows:

All owners of real property in the Ocean Pointe/Hoakalei Project who purchased their property before November 6, 2011, and own or sold said property after November 6, 2011.

- d. The Honorable Gary W.B.C. Chang presided over a jury trial that commenced on July 21, 2015, on legal claims raised in the Lawsuit. The jury returned a verdict on September 8, 2015, finding that four of the defendants had violated the Unfair and Deceptive Trade Practice (“UDAP”) statute, and awarded \$1,300 per household in compensatory damages plus \$20 million in punitive damages. On October 28, 2015, Judge Chang set aside the jury verdict, ruling that there was no evidence that Class members were damaged by the change from a marina to a lagoon and that UDAP does not authorize punitive damages.
- e. The case was then transferred to the Honorable Karen T. Nakasone, for disposition of the equitable claims, and on January 29, 2018, Judge Nakasone entered her Findings of Fact, Conclusions of Law, and Order Regarding Counts 1 and 9, which included an award of rescission for certain contracts as well as an award for unjust enrichment in the amount of \$20,000,000.
- f. On September 27, 2019, a Final Judgment was entered in the Lawsuit and the Settling Parties both filed appeals to the Intermediate Court of Appeals (“ICA”).
- g. Five years later, on September 16, 2024, the ICA issued its Memorandum Opinion, affirming in part and vacating in part the Final Judgment and ordering the matter remanded to the Court for further proceedings.
- h. During litigation of this matter, the parties engaged in multiple unsuccessful mediations and settlement efforts before the Circuit Court and respected mediators. Ultimately, however, after entry of the Memorandum Opinion by the ICA, the Parties

engaged in settlement negotiations with Mediator John Bates (“Mediator”), wherein the parties were able to reach an agreement to resolve this dispute.

- i. As both the Circuit and Appellate courts have been “‘exposed to the litigants and their strategies, positions and proof,’” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1988) (quoting *Officers for Justice*, 688 F.2d at 626), the Circuit Court finds that the judicial policy favoring the compromise and settlement of class action suits is applicable here. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). In particular, the Court notes that this Settlement will provide substantial benefits to Class homeowners that include: a) the monetary payment of over \$8,600 to all Class households; b) payment of all attorney’s fees and costs associated with bringing this action on the Class’ behalf; and c) avoidance of the significant uncertainty and risk associated with ongoing appeals.
- j. The Settlement was reached after arm’s length negotiations by capable counsel, aided by an experienced mediator, and was not the product of fraud, overreaching, or collusion among the parties.
- k. The extent of litigation supports approval. As mentioned, the parties participated in more than a decade of hard-fought litigation, two separate trials, and a five-year cross appeal. Further, this matter involved novel legal issues and theories under Hawaii law that has resulted in new legal precedent for Hawaii consumers. Accordingly, the parties and the Court have ample information to weigh the relative merits of settlement and continued litigation.
- l. The risks, expense, complexity, and duration of litigation support approval. Trial of any case, let alone a class action, is inherently risky. Here, the trials in this matter were ably undertaken by Class Counsel against a determined and professional defense

before a jury on legal issues and a wholly separate bench trial on equitable claims. The parties engaged in multi-year litigation over every aspect of the case, which included: a) multiple battles over certification; b) wide-ranging discovery requiring the review of thousands of documents; c) extensive depositions of experts and lay witnesses; d) multiple dispositive motions challenging the Class on a variety of novel legal issues; e) a jury trial to verdict; f) a bench trial to judgment on equitable claims; h) multiple cross appeals; and multiple post-appellate motions.

- m. The consideration provided – i.e., a Settlement Fund of \$40 million – is substantial, and the parties have structured the benefits to maximize the benefits to the Class. Indeed, the Settlement fully pays for all attorney’s fees, interest, and costs, while preserving close to the total original value of the legal and equitable verdicts for the benefit of the Class while resulting in individual payments to Class households in excess of the amount obtained at trial.
- n. The views of Class Counsel, who are experienced in litigating consumer class actions, also weigh strongly in favor of final approval. *See Linney v. Cellular Alaska P’Ship*, No. 96-3008-DJL, 1997 WL 450064, at \*5 (N.D. Cal. July 18, 1997), *aff’d* 151 F.3d 1234 (9th Cir. 1998). Here, Class Counsel endorse the Settlement as fair, adequate, and reasonable and the case was only settled after litigating through multiple trials and appeal for more than ten years.
- o. Finally, the reaction of the Class strongly supports final approval of the Settlement. Following the best notice practicable to the Class, one (1) person, Marion Lane Basiliari, filed a Request for Exclusion/Objection to the Settlement seeking to either: a) be excluded from the Class and Settlement so they may pursue their own claims; or b) if exclusion were denied, to remain in the Class and object to the terms of the Settlement. Although Marion

Lane Basiliari did not appear at the Final Fairness hearing, neither Class Counsel nor Haseko oppose Basiliari's request for exclusion. Accordingly, the Court hereby GRANTS Marion Lane Basiliari's request for exclusion from the Class and Settlement so that Marion Lane Basiliari may pursue their separate course of action as they may choose.

3. With respect to attorneys' fees and costs negotiated as part of the Settlement, the court may award reasonable attorney's fees and nontaxable costs authorized by law or by the parties' agreement.<sup>1</sup> Pursuant to Rule 23(h), the parties' Settlement Agreement alone is a sufficient basis for an award of reasonable attorneys' fees for Class Counsel. However, the Court has independently reviewed the requested award for reasonableness.
  - a. Where a settlement obtains a monetary benefit for the Class, courts may consider the percentage of the monetary benefit obtained as an indicator of reasonableness.<sup>2</sup>
  - b. Courts look to the entire value of benefits made available to class members even in cases where it is unlikely all or most of that benefit would be claimed.<sup>3</sup> Benefits considered include all amounts paid by the defendant including, for example, the cost of notice, settlement administration, and attorneys' fees.<sup>4</sup> Here, 100% of the benefits of the Settlement will be shared by the Class.

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<sup>1</sup> HAW. R. CIV. P. 23; *see Evans v. Jeff D.*, 475 U.S. 717, 734–35, 738 n. 30, 106 S.Ct. 1531, 1540–42, 1543 n. 30, 89 L.Ed.2d 747 (1986).

<sup>2</sup> *In re Bluetooth Headset Products Liability Litigation*, 654 F.3d 935, 941 (9th Cir. 2011); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002); *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (C.A.9 (Ariz.),1990); *Chun v. Bd. Of Trs. Of the Emples. Ret. Sys.*, 106 Haw. 416, 106 P.3<sup>rd</sup> 339. (2005).

<sup>3</sup> *Lopez v. Youngblood*, No. CV–F–07–0474 DLB, 2011 WL 10483569, at \*12 (E.D. Cal. Sept. 1, 2011); accord *Boeing Co. v. Van Gemert*, 444 U.S. 472, 479-81 (1980); *Williams v. MGM-Pathe Commc'ns Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997).

<sup>4</sup> *Staton*, 327 F.3d at 974-75; *Lopez*, 2011 WL 10483569, at \*31; *Hartless v. Clorox Co.*, 273 F.R.D. 630, 645 (S.D. Cal. 2011).

- c. Courts frequently reference five factors in evaluating the reasonableness of a requested fee. Those are: (1) the result achieved; (2) the skill required and the quality of the work of plaintiffs' counsel; (3) the customary fees for similar cases; and (4) the contingent nature of the fee and financial burden carried by counsel; and (5) the risks inherent in the litigation.<sup>5</sup>
  - d. Class Counsel obtained significant results for the Class in the face of a determined defense. Class Counsel did substantial work to research, develop, and assert claims and remedies on behalf of the Class against multiple sophisticated parties that spanned many years of litigation. Class Counsel risked substantial time, effort, and resources in addition to advancing costs and expenses for the Class with no ultimate guarantee of compensation. Class Counsel committed substantial resources to prosecuting this case, including hiring experts.
  - e. Finally, the one-third attorney's fee requested by Class Counsel has been transparent throughout and the fact that virtually all class members, with the exception of Marion Lane Basiliari, voiced no objection to the Settlement's terms supports the fairness of the Settlement and its terms including attorney's fees.
  - f. Accordingly, the Court finds that the one-third attorney's fees is manifestly fair, reasonable, and adequate.
4. In light of the above, the Court finds that the Settlement Agreement is in the best interests of the Class and is fair, reasonable, and adequate within the meaning of Hawaii Rule of Civil Procedure 23 and GRANTS final approval of the Settlement Agreement and all of the terms and conditions contained therein.

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<sup>5</sup> *Vizcaino*, 290 F.3d at 1048-50.

5. The Parties are directed to implement the terms of the Settlement and Class Counsel may provide Notice of Final Approval of Class Action Settlement, attached to Class Counsel's Memorandum in Support of Motion for Final Approval, with appropriate dates and information inserted by Class Counsel, to the Class in the manner previously approved by the Court and contemplated by the Settlement.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, July 8, 2025.

/s/ Steven R. Nichols



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JUDGE OF THE ABOVE-ENTITLED COURT

APPROVAL AS TO FORM:

*/s/ Steven K.S. Chung*

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Steven K. S. Chung, Esq.  
Counsel for Defendants