

LAW OFFICES OF MELVIN Y. AGENA
MELVIN Y. AGENA 2632
55 Merchant Street, Suite 1850
Honolulu, Hawai'i 96813
Telephone: (808) 536-6647

LAW OFFICE OF GLENN K. SATO
GLENN SATO 2176
888 Mililani St., Suite 308
Honolulu, Hawai'i 96813
Telephone: (808) 537-1625

KASDAN LIPPSMITH LLLC
KENNETH S. KASDAN 10710
GRAHAM B. LIPPSMITH 9593
SHARLA MANLEY 8868
CELENE CHAN ANDREWS 9902
1003 Bishop Street, Suite 1180
Honolulu, Hawai'i 96813
Tel: (808) 369-8393

Attorneys for Plaintiffs and the Class

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

JOHN PUPUHI BAKER, JR., individually
and as Trustee of The Revocable Trust of John
Pupuhi Baker, Jr., *et al.*,

Plaintiffs,

vs.

CASTLE & COOKE HOMES HAWAI'I,
INC., a Hawai'i Corporation; JOHN and
JANE DOES 1-100; DOE PARTNERSHIPS
1-100; DOE CORPORATIONS 1-100; DOE
GOVERNMENTAL AGENCIES 1-100; and
DOE ASSOCIATIONS 1-100,

Defendants.

FIRST CIRCUIT COURT
STATE OF HAWAII
FILED

2019 MAY -6 PM 2:25

N. MIYATA
CLERK

CIVIL NO. 11-1-1524-07 JPC
(Construction Defects)

**ORDER GRANTING PRELIMINARY
APPROVAL OF SETTLEMENT,
APPROVAL OF NOTICE PLAN, AND
APPOINTMENT OF ADDITIONAL
CLASS COUNSEL**

Trial: None set

**ORDER GRANTING PRELIMINARY APPROVAL OF SETTLEMENT, APPROVAL
OF NOTICE PLAN, AND APPOINTMENT OF ADDITIONAL CLASS COUNSEL**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

WHEREAS Plaintiffs and the Class Representatives John Pupuhi Baker, Jr., individually and as Trustee of the Revocable Trust of John Pupuhi Baker, Jr., Diane T. Baker, individually and as Trustee of the Revocable Trust of Diane Theresa Baker, Branden H. Baker, and Kim Salva Cruz Baker, on behalf of themselves and all other Class Members (“MM-Wind Class”), and Defendant Castle & Cooke Homes Hawaii, Inc. (“Castle & Cooke”) (jointly, “Settling Parties”) have applied to the Court pursuant to Hawai‘i Rule of Civil Procedure 23 for an Order granting preliminary approval of the proposed settlement of this class action (“Lawsuit”) in accordance with the MM-Wind Settlement¹ (including its exhibits) on file with the Court, which sets forth the terms and conditions for a proposed settlement of the Lawsuit and for entry of an order granting final approval of the MM-Wind Settlement, and a Final Judgment implementing the terms of the MM-Wind Settlement Agreement; and

WHEREAS the Court has read and considered the MM-Wind Settlement;

WHEREAS the Court has read and considered the Settling Parties’ Motion for Preliminary Approval of Settlement, Approval of Notice Plan, and Appointment of Additional Class Counsel, all memoranda and declarations in support thereof, and has heard argument of counsel thereon;

WHEREAS, based on the above submissions and presentations, the Court finds that the proposed MM-Wind Settlement is within the range of possible approval and that notifying the Class about the terms and conditions of the proposed Settlement and scheduling a formal final approval is worthwhile; and

WHEREAS MM-Wind Class Counsel intends to file a Motion for Final Approval of Settlement along with a Motion for Attorney Fees, Costs, and All Other Expenses to be heard after the Notice Plan has been accomplished; and

¹ Terms not defined in this Order shall have the definitions ascribed to them in the MM-Wind Settlement Agreement.

WHEREAS all terms of the proposed MM-Wind Settlement are subject to this Court's decisions on MM-Wind Class Counsel's Motion for Final Approval of Settlement and Motion for Attorney Fees, Costs, and All Other Expenses.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

MM-Wind Class Definition, Class Representatives, and Class Counsel

1. Pursuant to Hawai'i Rule of Civil Procedure 23, on September 5, 2018, the Court previously certified the MM-Wind Class, applying the following Class Definition:

All eligible individual and entity homeowners who own homes whose construction was completed on or after July 20, 2001 with wind protection systems in the housing development known as Mililani Mauka, located in the City and County of Honolulu, Island of Oahu, State of Hawaii, and all homeowners associations whose members consist of such individual and entity homeowners ... [and excluding] (a) judges who have presided over this case; (b) persons employed by Defendant; (c) governmental entities and agencies; and (d) affiliates of Defendants.

2. The Court previously appointed Plaintiffs John Pupuhi Baker, Jr., Diane T. Baker, individually and as Trustee of the Revocable Trust of Diane Theresa Baker, Branden H. Baker, and Kim Salva Cruz Baker to serve as the Class Representatives and appointed Melvin Y. Agena of the Law Offices of Melvin Y. Agena, Glenn K. Sato of the Law Office of Glenn K. Sato, and Graham B. LippSmith, and Celene Chan Andrews of Kasdan LippSmith LLC to serve as Class Counsel.

3. Consistent with the certified Class and Subclass definitions, the MM-Wind Settlement defines the MM-Wind Class as follows:

All individual and entity homeowners who on the date of Final Order and Judgment own homes whose construction was completed on or after July 20, 2001 with wind protection systems in the housing development known as Mililani Mauka, located in the City and County of Honolulu, Island of Oahu, and all homeowners associations whose members consist of such individual and entity homeowners.

The class definition specifically excludes any judicial officer who has presided or will preside over this case.

In terms of representing the best interests of the previously-certified Class and Subclass, the MM-Wind Settlement Class definition does not materially differ from the original Class definitions that the Court previously certified and adequately protects and preserves those interests.

4. The Settling Parties have identified the MM-Wind Class Member Structures whose owners at the time of Final Judgment are to be enrolled in and qualify for the benefits provided in the MM-Wind Settlement. The list of MM-Wind Class Member Structures is attached as Exhibit 6 to the MM-Wind Settlement.

5. Plaintiffs John Pupuhi Baker, Jr., Diane T. Baker, Branden H. Baker, and Kim Salva Cruz Baker shall continue to serve as Class Representatives for approval proceedings on and to effectuate the MM-Wind Settlement.

6. Melvin Y. Agena of the Law Offices of Melvin Y. Agena, Glenn K. Sato of the Law Office of Glenn K. Sato, and Graham B. LippSmith and Celene Chan Andrews of Kasdan LippSmith LLC shall continue to serve as Class Counsel for approval proceedings on and to effectuate the MM-Wind Settlement. The Court finds Kenneth S. Kasdan of Kasdan LippSmith LLC also meets the criteria for class counsel required by Hawai'i Rule of Civil Procedure 23 and authorities interpreting it. Accordingly, the Court hereby appoints Mr. Kasdan is to serve as additional Class Counsel.

Preliminary Findings on the Proposed MM-Wind Settlement

7. Pursuant to Hawai'i Rule of Civil Procedure 23, the Court preliminarily finds that the proposed MM-Wind Settlement, including its proposed allocations of and methodology for distributing the MM-Wind Settlement Fund for Class Member payments, to pay the Administrator's costs, and to pay Attorney Fees, Costs, and Other Expenses, is within the range of possible approval and appears to have resulted from serious, informed, non-collusive negotiations conducted at arm's length by the Settling Parties and their counsel.

8. In making these preliminary findings, the Court considered the nature of the claims, the amounts and kinds of benefits to be paid in settlement, the information available to the Settling Parties, and the allocation of the MM-Wind Settlement among MM-Wind Class Members. The terms of the MM-Wind Settlement Agreement do not have any obvious deficiencies and do not improperly grant preferential treatment to any individual MM-Wind

Class Member. In addition, the Court notes that the Settling Parties reached the proposed MM-Wind Settlement after substantial discovery, motion practice, arbitration proceedings, and multiple formal and informal settlement discussions before the respected third-party mediator Keith Hunter of Dispute Prevention & Resolution, Inc. Accordingly, the Court preliminarily finds that the Settling Parties entered into the proposed MM-Wind Settlement in good faith, that the proposed MM-Wind Settlement meets the standards for preliminary review and approval, and the MM-Wind Settlement appears to be sufficiently fair, reasonable, and adequate to warrant KCC's execution of the Notice Plan that will provide notice to the MM-Wind Class and scheduling a hearing for final approval of the proposed MM-Wind Settlement.

Final Approval Hearing on MM-Wind Settlement

9. Pursuant to the Hawai'i Rule of Civil Procedure 23, the Court will hold a Final Approval Hearing.

10. The Court hereby sets the Final Approval Hearing for July 10, 2019 at 9:00 a.m. The Court may approve the proposed MM-Wind Settlement at or after the Final Approval Hearing with such modifications to which the Settling Parties may consent and without further notice to the MM-Wind Class. At the Final Approval Hearing, the Court will consider, among other things:

- a. Whether the proposed MM-Wind Settlement is fair, reasonable, and adequate;
- b. Whether the Court should enter its Final Order granting final approval the MM-Wind Settlement and Final Judgment implementing its terms;
- c. Whether the Notices and the Notice Plan implemented pursuant to the MM-Wind Settlement and this Preliminary Approval Order (i) constituted the best practicable notice; (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise potential MM-Wind Class Members of the pendency of the Lawsuit, the nature of the proposed MM-Wind Settlement (including Class Counsels' request for awards of attorney fees and reimbursement of costs), their right to object to the proposed MM-Wind Settlement, their right to exclude themselves from the MM-Wind Class, and their right to appear at the Final Approval Hearing,

- (iii) were reasonable and constituted due, adequate, and sufficient notice to all persons entitled to notice, and (iv) met all applicable requirements of Hawai‘i Rule of Civil Procedure 23, the United States Constitution (including the Due Process Clause), the Rules of the Court, and any other applicable law;
- d. Whether the Court should approve the releases in the MM-Wind Settlement Agreement;
 - e. Whether the MM-Wind Class Representatives and Class Counsel adequately represented the MM-Wind Class for the purposes of entering into and implementing the proposed Settlement and will continue to adequately represent the MM-Wind Class for carrying out the MM-Wind Settlement;
 - f. Whether the Court should grant Class Counsel’s request for an award of Attorney Fees, Costs, and All Other Expenses;
 - g. Whether the Court should grant the request for Class Representative incentive awards; and
 - h. Any other matters that the Court may deem appropriate to consider.

Approval, Appointment, and Retention of the Administrator, the Notice Plan, and the Administration of the Settlement

11. The Court approves the retention of Kurtzman Carson Consultants LLC (“KCC”) to serve as the Administrator for the Settlement, including but not limited to implementation and management of the Notice Plan, MM-Wind Class Member verification process, and Settlement Escrow.

12. The Court also approves the proposed Notice Plan and settlement administration to be completed by the Administrator, including among other tasks: (i) distributing the MM-Wind Class Notice; (ii) arranging for publication of the MM-Wind Class Notice; (iii) posting the Notice on the Administrator’s website; (iv) facilitating MM-Wind Class Member inquiries; (v) answering written inquiries from potential MM-Wind Class Members and/or forwarding such inquiries to Class Counsel; (vi) providing additional copies of the Notice(s) upon request; (vii) receiving and maintaining on behalf of the Court any objections to the MM-Wind

Settlement received from potential MM-Wind Class Members; (viii) receiving and maintaining on behalf of the Court any exclusions from the MM-Wind Settlement received from potential Class Members; (ix) assisting in the coordination and inclusion of authorized MM-Wind Class Members for participation in the MM-Wind Settlement; and (x) otherwise administering and implementing the MM-Wind Settlement.

13. The Administrator estimates its costs for the Notice Plan and administration of all documents for and payments from the MM-Wind Settlement will not exceed \$56,522.00. The MM-Wind Settlement further provides that the Administrator's costs shall be paid from the MM-Wind Settlement Fund. The estimated amount for the Administrator's costs and payment therefor from the MM-Wind Settlement Fund appear to be fair, reasonable, and adequate.

Notices to the Class

14. The Court approves, as to form and content, the Notice Plan and Class Notices attached as Exhibits 1-4 to the MM-Wind Settlement Agreement. The Court finds that the Notice Plan and Class Notices will fully and accurately inform the potential MM-Wind Class Members of all material elements of the proposed MM-Wind Settlement and of each MM-Wind Class Member's right and opportunity to object to the proposed MM-Wind Settlement. The Court further finds that the mailing and distribution of the MM-Wind Class Notice and the publication of the MM-Wind Class Notices substantially in the manner and form set forth in the Notice Plan and Settlement Agreement meets the requirements of Hawai'i Rule of Civil Procedure 23, the United States Constitution (including the Due Process Clause), the Rules of the Court, and any other applicable law, constitutes the best notice practicable under the circumstances, and constitutes due and sufficient notice to all potential Class Members.

15. The Settling Parties and their counsel may by agreement effectuate any amendments or modifications of the proposed MM-Wind Notice Plan and/or Class Notice, and any verification documents without notice to or approval by the Court if such changes are not materially inconsistent with this Order and do not materially limit the rights of MM-Wind Class Members.

Communications with Class Members

16. Because MM-Wind Class Members might contact Castle & Cooke about this MM-Wind Settlement, if contacted, Castle & Cooke shall respond, if at all, to MM-Wind Class Members in a manner materially consistent with the following:

The terms of the settlement were negotiated at arm's-length and in good faith by the parties and reflects a good faith resolution of disputed claims. If you have any question regarding the details of the Settlement, please log onto the settlement website at www.mililaniwind.com, contact Kurtzman Carson Consultants, the Claims Administrator, at [Claims Administrator's Telephone Number to be provided], or contact Class Counsel through the Law Offices of Melvin Y. Agena, (808) 536-6647.

17. The Settling Parties will not solicit, facilitate, or assist in any way, Objections by potential or actual MM-Wind Class Members.

Objections

18. All MM-Wind Class Members who intend to object to the fairness, reasonableness and adequacy of the Settlement ("Objections") must mail a timely written Objection to the Administrator by first-class mail with postage paid. The Administrator will then serve any Objections received on Class Counsel, Defense Counsel, and all other parties due notice in this case by U.S. Mail. The Administrator will then also file any such Objections with the Court by filing such documents directly or arranging for such documents to be filed by Class Counsel or Defense Counsel.

19. Objections must be postmarked no later than thirty (30) days after the date of the mailing of the MM-Wind Settlement Notice. The date of the postmark on the return-mailing envelope shall be the exclusive means used to determine whether an Objection has been timely submitted. In his/her/its Objections, an objecting MM-Wind Class Member must:

- a. Set forth his/her/its full name, current address, and telephone number;
- b. Identify the address of the Structure giving rise to standing to make an Objection and establish the sender's status as a MM-Wind Class Member, if the sender's current address is different;
- c. Identify the owner of the MM-Wind Class Member Structure;

- d. State that the objector has reviewed the definitions of the MM-Wind Class and understands that he/she/it is a member of the MM-Wind Class, and has not opted out of the MM-Wind Class;
- e. Set forth a complete statement of all legal and factual bases for any Objection that the objector wishes to assert; and
- f. Provide copies of any documents that the objector wishes to submit relating to his/her/its position.

20. In addition to the requirements set forth in above paragraph, objecting MM-Wind Class Members must state in writing whether he/she/it intends to appear at the Final Approval Hearing(s) either with or without separate counsel. No MM-Wind Class Member shall be entitled to be heard at the Final Approval Hearing (whether individually or through separate counsel) or to object to the MM-Wind Settlement, and no written Objections or briefs submitted by any MM-Wind Class Member shall be received or considered by the Court at the Final Approval Hearing, unless written Notice of the MM-Wind Class Member's intention to appear at the Final Approval Hearing and copies of any written Objections or briefs were postmarked or served on the Administrator on or before thirty (30) days after the date of the mailing of the MM-Wind Settlement Notice.

21. In addition to its obligations to serve and file timely Objections received, the Administrator will also serve any Notices of a MM-Wind Class Member's intention to appear at the Final Approval Hearing and associated briefing received on Class Counsel, Defense Counsel, and all other parties due notice in this case by U.S. Mail. The Administrator will also file any such Notices of a MM-Wind Class Member's intention to appear at the Final Approval Hearing and associated briefing with the Court by filing such documents directly or arranging for such documents to be filed by Class Counsel or Defense Counsel.

22. All MM-Wind Class Members who fail to serve timely written objections in the manner specified in the Court's Order Granting Motion for Preliminary Approval of Settlement, Approval of Notice Plan, and Appointment of Additional Class Counsel and the MM-Wind Settlement will be deemed to have waived any objections, will be foreclosed from making any objection, whether by appeal or otherwise, to the MM-Wind Settlement and Motion for Attorney Fees, Costs, and All Other Expenses, will be bound by the terms of the MM-Wind Settlement Agreement and the Final Judgment, and will be foreclosed forever from making any objection to

the fairness or adequacy or any other aspect of the proposed MM-Wind Settlement and Motion for Attorney Fees, Costs, and All Other Expenses unless otherwise allowed by the Court.

Exclusions/Opt Outs

23. Any member of the MM-Wind Settlement Class shall have the right to exclude him/her/itself (or opt out) of the MM-Wind Settlement Class by timely submitting a written request for exclusion to the Administrator's address listed in the Notice. The request for exclusion must provide the following information:

- a. Set forth his/her/its full name, current address, and telephone number;
- b. Identify the address of the MM-Wind Class Structure to establish the sender's status as a MM-Wind Class Member, if the sender's current address is different;
- c. Identify the owner of the MM-Wind Class Structure; and
- d. Indicate a request to be excluded from of the MM-Wind Settlement.

24. MM-Wind Class Members' written requests for exclusion must be postmarked no later than thirty (30) days after the date of the mailing of the Notice, which deadline shall be set forth in the FAQ, Publication Notice, Settlement Notice, and Summary Notice.

25. Within ten (10) days after the Court-ordered deadline for timely and properly opting out from the MM-Wind Settlement, the Administrator shall provide to Class Counsel and Defense Counsel a list of the names and addresses of the members of the MM-Wind Class who timely excluded themselves from the MM-Wind Settlement.

26. All MM-Wind Class Members who fail to serve timely written exclusions in the manner specified in the Court's Order Granting Motion for Preliminary Approval of Settlement, Approval of Notice Plan, and Appointment of Additional Class Counsel and the MM-Wind Settlement will be deemed to have waived any exclusion, are foreclosed from making any exclusion, will be bound by the terms of the MM-Wind Settlement Agreement and the Final Judgment, and will be foreclosed forever from making any exclusion unless otherwise allowed by the Court.

Filing Papers Concerning MM-Wind Settlement

27. All papers in support of or in opposition to the proposed MM-Wind Settlement

shall be filed as follows, with courtesy copies sent to the Court's Chambers:

- a. Motion for Final Approval of Settlement—No later than 14 days prior to the date initially set for the Final Approval Hearing; and
- b. Motion for Attorney Fees, Costs, and All Other Expenses—No later than 14 days prior to the date initially set for the Final Approval Hearing.

Termination of Settlement

28. This Order shall become null and void, and shall be without prejudice to the rights of the Settling Parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if (i) the Court declines to grant final approval of the proposed MM-Wind Settlement (or Settling Parties' later written modification thereof) pursuant to the terms of the MM-Wind Settlement Agreement; or (ii) the Settling Parties terminate the proposed MM-Wind Settlement in accordance with its terms or the MM-Wind Settlement does not become effective as required by its terms for any other reason. In such event, the MM-Wind Settlement Agreement shall become null and void and of no further force and effect, and shall not be used or referred to for any purpose whatsoever.

Use of Order

29. This Order shall be of no force or effect if the Court does not grant Final Approval to the MM-Wind Settlement. The MM-Wind Settlement shall not be construed or used as an admission, concession, or declaration by or against Castle & Cooke of any fault, wrongdoing, breach, or liability. Nor shall this Order be construed or used as an admission, concession, or declaration by or against Plaintiffs or other MM-Wind Class Members that their claims lack merit or that the relief requested in the Lawsuit is inappropriate, improper, or unavailable, or as a waiver by any party of any defenses or claims he, she, or it might have.

Service of Papers

30. Settling Parties' Counsel shall promptly furnish each other with copies of any and all objections or written requests for exclusion that come into their possession.

Continuance of Final Approval Hearing

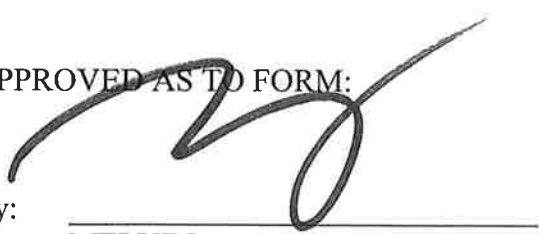
31. The Court reserves the right to continue the date of the Final Approval Hearing without further notice to MM-Wind Class Members.

Retention of Jurisdiction

32. The Court retains the exclusive jurisdiction to consider all further applications arising out of or connected with the MM-Wind Settlement. This Court, and only this Court, shall have exclusive jurisdiction to enforce or resolve any disputes related to the MM-Wind Settlement Agreement and Exhibits, including, but not limited to (i) any and all disputes arising out of applications for, claims concerning, claims related to, and/or allocations of Attorney Fees, Costs, and All Other Expenses by MM-Wind Class Counsel and/or before the MM-Wind Court; and (ii) any and all disputes arising out of claims by any other attorneys seeking attorney fees, costs, other expenses, or awards resulting from or in any way related to or arising out of this Lawsuit, the MM-Wind Settlement, and/or the Court's award of Attorney Fees, Costs, and All Other Expenses from the MM-Wind Settlement Fund.

APPROVED AS TO FORM:

By:



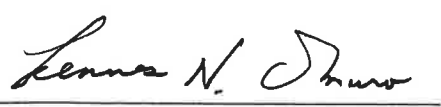
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CELENE CHAN ANDREWS
Attorneys for Plaintiffs and the Class

DATED:



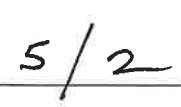
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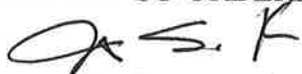
LENNES N. OMURO
Attorneys for Defendant

DATED:



, 2019

APPROVED AND SO ORDERED:



JAMES S. KAWASHIMA



By:

for

The Honorable Jeffrey P. Crabtree
State of Hawai'i, First Circuit Judge

DATED:

MAY - 6 2019

John Pupuhi Baker, Jr. v. Castle & Cooke Homes Hawaii, Inc., et al., Civil No. 11-1-1524-07
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