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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.

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

**STIPULATION ON ADDITIONAL  
SETTLEMENT PAYMENTS AND  
ORDER**

Judge: The Hon. Jeffrey P. Crabtree

Trial: None set

**STIPULATION ON ADDITIONAL  
SETTLEMENT PAYMENTS AND ORDER**

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

WHEREAS on July 15, 2019, the Court entered its Order Granting Final Approval of the MM-Wind Settlement<sup>1</sup>;

WHEREAS on July 15, 2019, the Court entered its Final Judgment as to Settlement of Class Action Lawsuit;

WHEREAS pursuant to MM-Wind Settlement Paragraphs 121 and 128, this Court retains continuing and exclusive jurisdiction over the Settling Parties through final implementation and administration of the MM-Wind Settlement terms, including, but not limited to continuing and exclusive jurisdiction concerning all disbursements from the MM-Wind Settlement Fund;

WHEREAS on October 14, 2019, the MM-Wind Settlement Agreement achieved its Effective Date;

WHEREAS the Court previously set December 23, 2019 as the original deadline for MM-Wind Class Members to submit Forms W-9, and then extended that deadline for February 23, 2020;

WHEREAS to date, KCC has issued \$4,689,045.51 in settlement payments to MM-Wind Class Members who own 1,849 of the 2,331 Class Structures that qualify for the MM-Wind Settlement payments;

WHEREAS from April 26-29, 2020, the Administrator provided Class Counsel with the

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<sup>1</sup> Terms not defined in this Order shall have the definitions ascribed to them in the April 2019 MM-Wind Settlement Agreement attached as to the April 18, 2019 Declaration of Graham B. LippSmith in Support of the Class' Motion for Preliminary Approval of Settlement, Approval of Notice Plan, and Appointment of Additional Class Counsel.

following settlement redemption data. Class Counsel and the Administrator also conferred and agreed on the following steps in response to those datapoints to increase settlement redemption for MM-Wind Class Members who did not timely submit Forms W-9, submitted deficient Forms W-9, and/or whose Forms W-9 were not validated in time for earlier payments:

- The Administrator received and/or processed validations of Forms W-9 for the owners of 30 qualifying MM-Wind Class Member Structures since the February 23, 2020 deadline for Forms W-9. The Administrator proposes mailing a total of \$76,079.70 in settlement payments to these Class Members within 14 days of the Court's approval of this Stipulation and Proposed Order;
- The Administrator was notified of deficiencies in Forms W-9 for persons attempting to redeem payments for 48 qualifying MM-Wind Class Member Structures. Pursuant to the Settlement's procedures on Forms W-9 deficiencies, on April 28, 2020, the Administrator mailed letters to these persons indicating the nature of the deficiencies and providing a deadline of May 28, 2020 to cure the deficiencies. The Administrator proposes mailing settlement payments to Class Members who adequately cure deficiencies in their Forms W-9 on or before the estimated date of June 25, 2020;
- To date, the Administrator has not received Forms W-9 from owners of 404 qualifying MM-Wind Class Member Structures. Class Counsel previously sent direct mail correspondence to the structure and taxpayer addresses for these homes to encourage redemption well in advance of the February 23, 2020 Forms W-9 deadline. Class Counsel proposes they update taxpayer address information for these Class Members and send additional direct mail letters to the structure

and updated taxpayer addresses requesting that these Class Member submit Forms W-9 by May 28, 2020. For Class Members whose Forms W-9 received by May 28, 2020 are validated, the Administrator proposes mailing settlement payments on or before the estimated date of June 25, 2020; and

- Class Counsel proposes reserving the ability for Class Counsel and the Administrator to continue similar targeted efforts to procure, accept, process, cure deficiencies for, and validate Forms W-9s from MM-Wind Class Members after the extended May 28, 2020 Forms W-9 deadline and through June 28, 2020 should Class Counsel determine after the May 28, 2020 Forms W-9 deadline that additional similar efforts may effectuate more redemptions; and
- If the Administrator receives valid Forms W-9 by June 28, 2020, Class Counsel proposes that the Administrator may schedule an additional, prompt settlement payment date for those Class Members.

WHEREAS Class Counsel believe it is in the best interests of the Class for the Administrator and Class Counsel to take these steps to attempt to achieve even more MM-Wind Settlement payment redemptions, particularly given the broad and devastating impact of coronavirus.

WHEREAS the settlement payments are for fixed sums to the Class Member owners of each qualifying MM-Wind Structure, with the remaining balance to be distributed for a specified *cy pres* purpose. Thus, no Class Member's individual settlement recovery will be increased or reduced if the Court approves these additional procedures to increase Class Member settlement payment redemption.

NOW, THEREFORE, THE SETTling PARTIES HEREBY STIPULATE as follows:

1. Within 14 days of the Court's approval and execution of this Stipulation and Proposed Order, the Administrator shall mail a total of \$76,079.70 in settlement payments to the Class Member owners of the 30 qualifying MM-Wind Class Member Structures for which Forms W-9 were received and/or validated by the Administrator since the February 23, 2020 Forms W-9 deadline;
2. On or before the estimated date of June 25, 2020, the Administrator shall mail settlement payments to the Class Members owners of the 48 qualifying MM-Wind Class Member Structures with Forms W-9 deficiencies provided those Class Members cure those deficiencies by May 28, 2020;
3. On or before the estimated date of June 25, 2020, the Administrator shall mail settlement payments to the Class Member owners of any of the 404 qualifying MM-Wind Class Member Structures currently missing Forms W-9 provided these Class Members submit valid Forms W-9 by May 28, 2020;
4. After the May 28, 2020 Forms W-9 deadline and through June 28, 2020, Class Counsel and the Administrator may continue similar targeted efforts to procure, accept, process, cure deficiencies for, and validate Forms W-9s from MM-Wind Class Members. If the Administrator receives valid Forms W-9 by June 28, 2020, the Administrator shall schedule an additional, prompt settlement payment date for those Class Members;
5. Class Counsel shall file a report to update the status of MM-Wind Settlement payments and any remaining redemption issues on or before July 28, 2020; and
6. The Administrator shall post a copy of this order on the Class website within five days of the Court's approval and execution of this order.


SO STIPULATED.

By: /s/ Melvin Y. Agena Dated: April 30, 2020  
MELVIN Y. AGENA  
GLENN K. SATO  
KENNETH S. KASDAN  
GRAHAM B. LIPPSMITH  
SHARLA MANLEY  
CELENE CHAN ANDREWS

Attorneys for Plaintiffs and the Class

By: /s/ Lennes N. Omuro Dated: April 30, 2020  
LENNES N. OMURO  
Attorneys for Defendant

APPROVED AND SO ORDERED:

By: /s/ Jeffrey P. Crabtree  Dated: May 1, 2020  
The Honorable Jeffrey P. Crabtree  
State of Hawai'i, First Circuit Judge

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*John Pupuhi Baker, Jr. v. Castle & Cooke Homes Hawaii, Inc., et al.*, Civil No. 11-1-1524-07  
**JPC; STIPULATION ON ADDITIONAL SETTLEMENT PAYMENTS AND ORDER**