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**Electronically Filed**  
**FIRST CIRCUIT**  
**1CC111001524**  
**03-AUG-2020**  
**02:26 PM**

**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, and later extended that deadline to May 28, 2020;

WHEREAS, the Administrator and Class Counsel have both previously sent direct mail letters to the structures and taxpayer addresses for Class Member Structures homes to encourage redemption well in advance of the February 23, 2020 Forms W-9 deadline. Pursuant to the Court's most recent order on settlement administration, Class Counsel again updated taxpayer

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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.

address information for all Class Members still missing Forms W-9 and sent additional direct mail letters to the structures and updated taxpayer addresses requesting for Class Members to submit Forms W-9 to redeem their settlement payments. Also pursuant to the Court’s most recent order on settlement administration, the Administrator mailed letters to all Class Members with deficiencies in their Forms W-9, indicating the nature of the deficiencies and providing a deadline of May 28, 2020 to cure the deficiencies;

WHEREAS, the Administrator and Class Counsel have also received and responded to dozens of emails and phone calls by Class Members and provided assistance to Class Members to facilitate compliance with the settlement payment redemption requirements;

WHEREAS to date, KCC has issued the following in settlement payments to MM-Wind Class Members who own 2,064 of the 2,331 Class Structures that qualify for the MM-Wind Settlement payments as follows:

<b>Date issued</b>	<b>Number of checks</b>	<b>Amount</b>
3/25/20	1849	\$ 4,689,045.51
5/4/20	31	\$ 76,079.70
6/24/20	184	\$ 466,622.16
<b>Total</b>	<b>2064</b>	<b>\$ 5,231,747.37</b>

WHEREAS, to date, 92.5% of the MM-Wind Class Members have submitted a Form W-9 to redeem their settlement payments;

WHEREAS on July 28, 2020, the Administrator provided Class Counsel with the following additional data on Class Members who have not completed the steps or provided sufficient information required to redeem their settlement payments:

- **Class Members with No Forms W-9**—Class Member owners of 173 qualifying MM-Wind Class Member Structures have not submitted Forms W-9 to redeem their settlement payments.
- **Class Members with Uncured Deficiencies**—Class Members owners of the 34 qualifying MM-Wind Class Member Structures still have uncured deficiencies in their attempts to redeem settlement payments after the Administrator provided notice and descriptions of their deficiencies.

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

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. The Settling Parties and the Administrator agree on and jointly propose the following steps in response to each of these categories of Class Members who have still not redeemed their payments because they did not timely submit Forms W-9, submitted deficient Forms W-9, and/or did not submit Forms W-9 in time to be validated for earlier payments:

**Class Members with No Forms W-9:**

- (1) By August 11, 2020, Class Counsel will send another round of direct mail

letters to the structures and taxpayer addresses (a) requesting that these Class Members submit Forms W-9, (b) alerting them that this will be their final opportunity to submit Forms W-9 to redeem settlement payments, and (c) alerting them that their settlement payments will be forfeited for lack of compliance with the Settlement's payment redemption requirements if they do not submit Forms W-9 by September 26, 2020;

- (2) For the remaining Class Members whose Forms W-9 are received by September 26, 2020 and validated, the Administrator will mail settlement payments on or before October 17, 2020; and
- (3) For the remaining Class Members whose Forms W-9 are **not** received by September 26, 2020, the Court will deem that those settlement payments have not been redeemed and are, thus, forfeited for lack of compliance with the Settlement's payment redemption requirements.

**Class Members with Uncured Deficiencies:**

- (1) By August 11, 2020, the Administrator will send a second and final mailing of deficiency letters (a) indicating the nature of the deficiencies; (b) alerting them that this will be their final opportunity to cure those deficiencies to redeem settlement payments; and (c) alerting them that their settlement payments will be forfeited for lack of compliance with the Settlement's payment redemption requirements if they cure their deficiencies by September 10, 2020;
- (2) For the Class Members with deficiencies cured by September 10, 2020, the Administrator will mail settlement payments on or before October 17,

2020; and

- (3) For the Class Members with deficiencies that are **not** cured by September 10, 2020, the Court will deem that those settlement payments have not been redeemed and are, thus, forfeited for lack of compliance with the Settlement's payment redemption requirements

2. Class Counsel and the Administrator may continue their efforts to procure, accept, process, cure deficiencies for, and validate Forms W-9s from MM-Wind Class Members. If the Administrator receives any valid Forms W-9 by September 26, 2020, the Administrator shall schedule settlement payment for those Class Members on or before October 17, 2020;

3. Class Counsel shall file a final settlement funds report to update the Court on the status of these final redemption efforts, request approval of final accountings, and request approval of distributions of the final settlement remaining sums—including proposed *cy pres* allocations—on or before October 26, 2020; and

4. The Administrator shall post a copy of this order on and update the Class website with the new deadlines within five days of the Court's approval and execution of this order.

SO STIPULATED.

By: /s/ Celene Chan Andrews  
MELVIN Y. AGENA  
GLENN K. SATO  
KENNETH S. KASDAN  
GRAHAM B. LIPPSMITH  
SHARLA MANLEY  
CELENE CHAN ANDREWS

Dated: July 30, 2020

Attorneys for Plaintiffs and the Class

By: /s/ Lennes N. Omuro  
LENNES N. OMURO  
Attorneys for Defendant

Dated: July 30, 2020

APPROVED AND SO ORDERED:

/s/ Jeffrey P. Crabtree



By:

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

Dated: August 3, 2020

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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**