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**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 SETTLEMENT  
PAYMENTS AND ORDER**

Judge: The Hon. Jeffrey P. Crabtree

Trial: None set

**STIPULATION ON 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 recent order on settlement administration, Class Counsel again updated taxpayer address

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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.

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 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 2,194 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
10/16/20	127	\$ 322,070.73
11/17/20	3	\$ 7,607.97
<b>Total</b>	<b>2,194</b>	<b>\$ 5,561,426.07</b>

WHEREAS, to date, 94.12% of the MM-Wind Class Members have submitted a Form W-9 to redeem their settlement payments;

WHEREAS, as of February 26, 2021, 31 checks have not been cashed by the MM-Wind Class Members, representing a total amount of \$78,615.69 in uncashed funds;

WHEREAS, out of the 31 MM-Wind Class Members with outstanding checks, 25 MM-Wind Class Members will receive reissued checks to their updated addresses, contact was made with 4 MM-Wind Class Members with a reminder to cash their check, and 2 MM-Wind Class Members remain unreachable;

WHEREAS on March 12, 2021, the Claims Administrator will send a further round of checks to MM-PEX Brass Fittings Class Members for checks that were stale and uncashed and for which valid MM-PEX Brass Fittings Class Member addresses were updated;

WHEREAS, as of February 24, 2021, the remaining funds that have not been distributed due to a valid W9 not being received from MM-PEX Wind Class Members is \$352,502.61;

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 a higher rate of checks cashed for the MM-Wind Settlement, 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. and

WHEREAS Class Counsel has identified a *cy pres* recipient for the remaining balance as described in the foregoing paragraphs, the Hawaii Community Foundation, and shall file a motion seeking distribution of the *cy pres* funds following efforts to encourage Class Members to cash their checks.

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 cashed their checks: Class Counsel and/or the Administrator shall contact the Class Members who have not cashed their checks to encourage them to do so promptly in order to present the Court with a final settlement funds report as described in the following paragraph.

2. Class Counsel shall file a final settlement funds report to update the Court on the status of these final check cashing 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 March 31, 2021; and

3. 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  
GRAHAM B. LIPPSMITH  
CELENE CHAN ANDREWS

Dated: February 26, 2021

Attorneys for Plaintiffs and the Class

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

Dated: February 26, 2021

APPROVED AND SO ORDERED:

/s/ Jeffrey P. Crabtree



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

Dated: March 1, 2021