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Attorneys for Plaintiff and the Class

**IN THE CIRCUIT COURT OF THE FIRST CIRCUIT**

**STATE OF HAWAI'I**

IRENE O. BRITTON, Individually and in Her  
Representative Capacity, on Behalf of Herself  
and all Others Similarly Situated,

Plaintiffs,

vs.

CASTLE & COOKE WAIKOLOA, LLC. a  
Domestic Limited Liability Company;  
CASTLE & COOKE HOMES HAWAII INC.,  
a Domestic Corporation; and DOES 1-10,

Defendants.

CIVIL NO. 13-1-2277-08 GWBC  
(Construction Defects)

**ORDER GRANTING FINAL APPROVAL OF  
SETTLEMENT**

## ORDER GRANTING FINAL APPROVAL OF SETTLEMENT

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

WHEREAS Plaintiff and the Class Representative Irene O. Britton, on behalf of herself and all other Class Members (“*Waikoloa-Wind* Class<sup>1</sup>”), 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 final approval of the proposed settlement of this class action (“Lawsuit”) in accordance with the *Waikoloa-Wind* Settlement (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 *Waikoloa-Wind* Settlement, and a Final Judgment implementing the terms of the *Waikoloa-Wind* Settlement Agreement; and

WHEREAS the Court has read and considered the *Waikoloa-Wind* Settlement;

WHEREAS the Court has read and considered the Settling Parties’ Motion for Final Approval of Settlement, all memoranda and declarations in support thereof, and has heard argument of counsel thereon;

WHEREAS the Court has also read and considered the *Waikoloa-Wind* Class’ Motion for Attorney Fees, Costs, and All Other Expenses, all memoranda and declarations in support thereof, and has heard argument of counsel thereon. The Court addresses that motion in a separate order;

WHEREAS, based on the above submissions and presentations as well as the Settling Parties submissions and presentations in support of the earlier Motion for Preliminary Approval of Settlement, Approval of Notice Plan, and Appointment of Additional Class Counsel, the Court finds that the proposed *Waikoloa-Wind* Settlement is fair, reasonable, and adequate and, therefore, grants its final approval; and

WHEREAS all disbursements from the *Waikoloa-Wind* Settlement Fund pursuant to the *Waikoloa-Wind* Settlement Fund shall be subject to further review and approval by the Court.

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<sup>1</sup> Terms not defined in this Order shall have the definitions ascribed to them in the April 28, 2021 *Waikoloa-Wind* Settlement Agreement attached as Exhibit 1 to the April 30, 2021 Declaration of Graham B. LippSmith in Support of Plaintiff’s Motion for Preliminary Approval of Settlement, Class Certification, and Approval of Notice Plan.

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

**Waikoloa-Wind Class Definition, Class Representatives, and Class Counsel**

1. Consistent with the certified Class definition and the *Waikoloa-Wind* Settlement Class definition that the Court previously approved in granting the Motion for Preliminary Approval of Settlement, Approval of Notice Plan, and Appointment of Additional Class Counsel, the *Waikoloa-Wind* Settlement defines the *Waikoloa-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 August 20, 2003 with wind protection systems in the Castle & Cooke housing developments known as Kikaha at Wehilani and Makana Kai at Wehilani, located in the City of Waikoloa and County of Hawai‘i, Island of Hawai‘i, and all homeowners’ associations whose members consist of such individual and entity homeowners.

The class definition specifically excludes (1) all individuals, entities, and associations of homeowners who have only homes completed prior to August 20, 2003; (2) persons who validly and timely exclude themselves from the *Waikoloa-Wind* Class; and (3) any judicial officer who has presided or will preside over this case.

2. The Settling Parties have identified the *Waikoloa-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 *Waikoloa-Wind* Settlement. The list of *Waikoloa-Wind* Class Member Structures is attached as Exhibit 6 to the *Waikoloa-Wind* Settlement.

3. Plaintiff Irene O. Britton shall continue to serve as Class Representative to effectuate the *Waikoloa-Wind* Settlement.

4. 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 LippSmith LLP shall continue to serve as Class Counsel to effectuate the *Waikoloa-Wind* Settlement.

5. CPT Group, Inc. shall continue to serve as the Administrator to effectuate the *Waikoloa-Wind* Settlement.

### **Final Findings on the Waikoloa-Wind Settlement**

6. Pursuant to Hawai‘i Rule of Civil Procedure 23, the Court finds that the *Waikoloa-Wind* Settlement is fair, reasonable, and adequate and resulted from serious, informed, non-collusive negotiations conducted at arm’s length by the Settling Parties and their counsel. In making these final 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 *Waikoloa-Wind* Settlement among *Waikoloa-Wind* Class Members. The terms of the *Waikoloa-Wind* Settlement Agreement do not have any obvious deficiencies and do not improperly grant preferential treatment to any individual *Waikoloa-Wind* Class Member. In addition, the Court notes that the Settling Parties reached the proposed *Waikoloa-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 finds that the Settling Parties entered into the proposed *Waikoloa-Wind* Settlement in good faith, that the proposed *Waikoloa-Wind* Settlement meets the standards for final approval, and the *Waikoloa-Wind* Settlement is sufficiently fair, reasonable, and adequate to warrant final approval and the distributions of the *Waikoloa-Wind* Settlement Fund provided in the *Waikoloa-Wind* Settlement.

### **Final Approval Hearing on Waikoloa-Wind Settlement**

7. On August 25, 2021 at 3:00 p.m., the Court held its hearing on the Motion for Final Approval of Settlement the Class’ related Motion for Attorney Fees, Costs, and All Other Expenses provided therein pursuant to Hawai‘i Rule of Civil Procedure 23. With respect to the Motion for Final Approval of Settlement, during and upon conclusion of the Final Approval Hearing, the Court considered the following factors and made the following findings:

- a. The *Waikoloa-Wind* Settlement is fair, reasonable, and adequate;
- b. The Court should enter this Final Order granting final approval the *Waikoloa-Wind* Settlement and Final Judgment implementing its terms;
- c. The Notices and the Notice Plan implemented pursuant to the *Waikoloa-Wind* Settlement and the Court’s Preliminary Approval Order (i) constituted the best practicable notice; (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise potential

*Waikoloa-Wind* Class Members of the pendency of the Lawsuit, the nature of the proposed *Waikoloa-Wind* Settlement (including Class Counsels' request for awards of attorney fees and reimbursement of costs), their right to object to the proposed *Waikoloa-Wind* Settlement, their right to exclude themselves from the *Waikoloa-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. The releases in the *Waikoloa-Wind* Settlement Agreement are fair, reasonable, adequate, and approved in light of the *Waikoloa-Wind* Settlement benefits;
- e. The *Waikoloa-Wind* Class Representatives and Class Counsel adequately represented the *Waikoloa-Wind* Class for the purposes of entering into and implementing the proposed Settlement and will continue to adequately represent the *Waikoloa-Wind* Class for carrying out the *Waikoloa-Wind* Settlement;
- f. Class Counsel's request for awards of Attorney Fees, Costs, and All Other Expenses is substantiated, fair, reasonable, and adequate.

### **The Notice Plan, and the Administration of the Settlement**

8. In its Order Granting Motion for Preliminary Approval of Settlement, Approval of Notice Plan, and Appointment of Additional Class Counsel, the Court previously approved and ordered the Administrator to carry out the Notice Plan. Pursuant to the Notice Plan, the Administrator: (i) distributed the *Waikoloa-Wind* Class Notice; (ii) arranged for publication of the *Waikoloa-Wind* Class Notice; (iii) posted the Notice on the Administrator's website; (iv) facilitated *Waikoloa-Wind* Class Member inquiries; (v) answered written inquiries from potential *Waikoloa-Wind* Class Members and/or forwarded such inquiries to Class Counsel; (vi) provided additional copies of the Notice(s) upon request; (vii) received and maintained on behalf of the Court any objections to the *Waikoloa-Wind* Settlement received from potential

*Waikoloa-Wind* Class Members; and (viii) received and maintained on behalf of the Court any exclusions from the *Waikoloa-Wind* Settlement received from potential *Waikoloa-Wind* Class Members. The Administrator shall continue to assist in the coordination and inclusion of authorized *Waikoloa-Wind* Class Members for participation in the *Waikoloa-Wind* Settlement and continue to otherwise administer and implement the *Waikoloa-Wind* Settlement.

9. Consistent with what was set forth in the Order Granting Motion for Preliminary Approval of Settlement, Approval of Notice Plan, and Appointment of Additional Class Counsel, the Administrator still estimates its costs for the Notice Plan and administration of the *Waikoloa-Wind* Settlement will not exceed \$4,000.00. The estimated amount for the Administrator's costs and payment therefor from the *Waikoloa-Wind* Settlement Fund is fair, reasonable, and adequate and, therefore, approved.

10. If any Class Member submits a form W9 to redeem payments in the related *Waikoloa-Wind* Settlement, that form W9 shall also serve to satisfy requirements to redeem payments in this *Waikoloa-PEX Brass Fittings* Settlement. In other words, Class Members need only submit one W9 in either case to qualify for payments in both case Settlements.

### **Notices to the Class**

11. In the Order Granting Motion for Preliminary Approval of Settlement, Approval of Notice Plan, and Appointment of Additional Class Counsel, the Court approved the Notice Plan and Class Notices attached as Exhibits 1-4 to the *Waikoloa-Wind* Settlement Agreement. The Court finds that the Notice Plan and Class Notices fully and accurately informed the potential *Waikoloa-Wind* Class Members of all material elements of the proposed *Waikoloa-Wind* Settlement and of each *Waikoloa-Wind* Class Member's right and opportunity to object to the proposed *Waikoloa-Wind* Settlement. The Court further finds that the mailing and distribution of the *Waikoloa-Wind* Class Notice and the publication of the *Waikoloa-Wind* Class Notices substantially in the manner and form set forth in the Notice Plan and Settlement Agreement met 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, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all potential Class Members.

12. The Administrator shall continue its obligations required by the Notice Plan and *Waikoloa-Wind* Settlement until the *Waikoloa-Wind* Settlement Funds are completely allocated and exhausted.

13. The Settling Parties and their counsel may by agreement continue to effectuate any amendments or modifications of the proposed *Waikoloa-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 *Waikoloa-Wind* Class Members.

### **Communications with Class Members**

14. Because *Waikoloa-Wind* Class Members still might contact Castle & Cooke about this *Waikoloa-Wind* Settlement, if contacted, Castle & Cooke shall continue to respond, if at all, to *Waikoloa-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. The settlement is not an admission of any negligence, fault or wrongdoing on the part of Castle & Cooke. If you have any question regarding the details of the Settlement, please log onto the settlement website at [www.waikoloawind.com](http://www.waikoloawind.com), contact CPT Group, Inc., 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.

### **Objections**

15. No *Waikoloa-Wind* Class Members timely objected to the fairness, reasonableness, and/or adequacy of the *Waikoloa-Wind* Settlement.

16. All *Waikoloa-Wind* Class Members who failed 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 *Waikoloa-Wind* Settlement are deemed to have waived any objections, are foreclosed from making any objection, whether by appeal or otherwise, to the *Waikoloa-Wind* Settlement and Motion for Attorney Fees, Costs, and All Other Expenses, are bound by the terms of the *Waikoloa-Wind* Settlement Agreement and the Final Judgment, and are foreclosed forever from making any objection to the fairness or adequacy or any other aspect of the proposed *Waikoloa-Wind* Settlement and the Motion for Attorney Fees, Costs, and All Other Expenses unless

otherwise allowed by the Court.

### **Exclusions/Opt Outs**

17. No *Waikoloa-Wind* Class Members timely excluded themselves from the *Waikoloa-Wind* Settlement.

18. All *Waikoloa-Wind* Class Members who failed 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 *Waikoloa-Wind* Settlement are deemed to have waived any exclusion, are foreclosed from making any exclusion, are bound by the terms of the *Waikoloa-Wind* Settlement Agreement and the Final Judgment, and are foreclosed forever from making any exclusion unless otherwise allowed by the Court.

### **Termination of Settlement**

19. 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 the Settling Parties terminate the proposed *Waikoloa-Wind* Settlement in accordance with its terms or the *Waikoloa-Wind* Settlement does not become effective as required by its terms for any other reason. In such event, the *Waikoloa-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**

20. This Order 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 *Waikoloa-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.



**Retention of Jurisdiction**

21. The Court retains the exclusive jurisdiction to consider all further applications arising out of or connected with the *Waikoloa-Wind* Settlement, including but not limited to the Class’ anticipated Motion to Allocate and Distribute *Waikoloa-Wind* Settlement Funds after Castle & Cooke has paid the Settlement Fund. This Court, and only this Court, shall have exclusive jurisdiction to enforce or resolve any disputes related to the *Waikoloa-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 *Waikoloa-Wind* Class Counsel and/or before the *Waikoloa-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 *Waikoloa-Wind* Settlement, and/or the Court’s award of Attorney Fees, Costs, and All Other Expenses from the *Waikoloa-Wind* Settlement Fund.

APPROVED AS TO FORM:


By: /s/ *Graham B. LippSmith*  
MELVIN Y. AGENA  
GLENN K. SATO  
GRAHAM B. LIPPSMITH  
CELENE CHAN ANDREWS  
SHARLA MANLEY  
Attorneys for Plaintiffs and the Class

DATED: August 31, 2021

By: /s/ *Lenne N. Omuro*  
LENNE N. OMURO  
Attorneys for Defendant

DATED: August 31, 2021

**APPROVED AND SO ORDERED:**

By: /s/ Gary W. B. Chang   
The Honorable Gary W.B. Chang  
State of Hawai‘i, First Circuit Judge

DATED: October 11, 2021

**ORDER GRANTING FINAL APPROVAL OF SETTLEMENT;** *Irene O. Britton. vs. Castle & Cooke Waikoloa, LLC, et al.*, Civil No. 13-1-2277-08 GWBC