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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 THE CLASS' MOTION
FOR ATTORNEY FEES, COSTS, AND ALL
OTHER EXPENSES**

**ORDER GRANTING THE CLASS' MOTION FOR ATTORNEY FEES, COSTS, AND
ALL OTHER EXPENSES**

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* Class¹”), 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 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;

WHEREAS the Court has also 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. 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 found that the proposed *Waikoloa-Wind* Settlement is fair, reasonable, and adequate and, therefore, grants its final approval;

¹ 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 A 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.

WHEREAS, based on these submissions, the Court also finds that the proposed Attorney Fees, Costs, and All Other Allocations in the proposed *Waikoloa-Wind* Settlement are fair, reasonable, and adequate and, therefore, awards those amounts provided therein; 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.

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

1. On August 25, 2021 at 3:00 p.m., the Court held its hearing on the Class' Motion for Attorney Fees, Costs, and All Other Expenses in conjunction with the Class' related Motion for Final Approval of Settlement.

2. During and upon conclusion of the hearings, the Court considered the following factors and made the following findings:

- a. The *Waikoloa-Wind* Settlement, including its terms providing for Attorney Fees, Costs, and All Other Expenses, is fair, reasonable, and adequate;
- b. The Administrator shall allocate and distribute \$2,400.00 of the *Waikoloa-Wind* Settlement Fund for effectuating the Notice Plan and Settlement administration pursuant the terms of and procedures provided in the *Waikoloa-Wind* Settlement;
- c. In addition, Class Counsel's request for awards of Attorney Fees, Costs, and All Other Expenses is substantiated, fair, reasonable, and adequate. Accordingly, the Court awards the following global amounts that the Court shall more specifically allocate to individual persons and law firms upon the Court's consideration and approval of the Class' anticipated Motion to Allocate and Distribute *Waikoloa-Wind* Settlement Funds after Castle & Cooke has paid the Settlement Fund:

i. Attorney Fees to Class Counsel:

\$ 57,061.48

- ii. General Excise Tax for the City and County of Honolulu (“GET”) to Class Counsel:
 - \$ 2,380.60
- iii. Litigation Costs to Class Counsel:
 - \$ 1,736.01
- iv. Incentive Awards to Class Representative (\$2,500.00 per Structure)
 - \$ 2,500.00

3. Although the Class Notice disclosed that Class Counsel would apply for GET up to 4.172%, Class Counsel made a clerical error in its calculation of GET in the Settlement. Instead of calculating that tax at 4.712%, Class Counsel mistakenly calculated GET at the lower amount of 4.172%, representing a GET award shortfall of \$308.14 for Class Counsel. To preserve the Settlement’s estimated individual Class Member payment amounts, Class Counsel does not seek an award of their GET shortfall at this time.

4. Although the Settlement provided for only \$1,736.01 in litigation costs to Class Counsel, Class Counsel incurred a total of \$4,451.84 in costs due to additional charges of \$2,715.83 for Settlement notice and administration. Class Counsel and/or the Administrator may also incur future costs for their reasonable efforts to locate and effectuate payments to Class Members. To further preserve the Settlement’s individual Class Member payment amounts, Class Counsel does not seek an award of additional notice and administration costs at this time.

5. If sums remain in the Settlement Fund after completing the Settlement’s procedures for administering Class Member payments, Class Counsel may apply for the Court to approve additional payments out of the Settlement Fund for:

- a. Class Counsel’s \$308.14 GET shortfall;
- b. Class Counsel’s \$2,715.83 in additional notice and administration costs incurred to date pursuant to Settlement ¶ 55; and
- c. Reasonable, additional Settlement administration costs Class Counsel

and/or the Administrator incur going forward pursuant to Settlement ¶ 55.

6. 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*
LENNES 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 THE CLASS' MOTION FOR ATTORNEY FEES, COSTS, ORDER AND ALL OTHER EXPENSES; *Irene O. Britton. vs. Castle & Cooke Waikoloa, LLC, et al.*, Civil No. 13-1-2277-08 GWBC