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FIRST CIRCUIT

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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. 13-1-2276-08
(Construction Defects)

**ORDER GRANTING FINAL APPROVAL OF
SETTLEMENT AND MOTION FOR
ATTORNEY FEES, COSTS, AND ALL OTHER
EXPENSES**

Trial: None set

CASTLE & COOKE WAIKOLOA, LLC, a
Domestic Limited Liability Company;
CASTLE & COOKE HOMES HAWAII INC.,
a Domestic Corporation,

Third-Party Plaintiffs,

vs.

UPONOR, INC. aka UPONOR NORTH
AMERICA fka WIRSBO, an Illinois
corporation, JOHN DOES 1-10, JANE DOES
1-10, DOE PARTNERSHIPS 1-10, DOE
CORPORATIONS 1-10 and DOE
GOVERNMENTAL ENTITIES 1-10,

Third-Party Defendants.

**ORDER GRANTING FINAL APPROVAL OF SETTLEMENT AND 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-PEX Brass Fittings Class*”¹), 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-PEX Brass Fittings* 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-PEX Brass Fittings* Settlement, and a Final Judgment implementing the terms of the *Waikoloa-PEX Brass Fittings* Settlement Agreement; and

WHEREAS the Court has read and considered the *Waikoloa-PEX Brass Fittings* 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-PEX Brass Fittings* 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, 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-PEX Brass Fittings* Settlement is fair, reasonable, and adequate and, therefore, grants its final approval; and

¹ Terms not defined in this Order shall have the definitions ascribed to them in the April 28, 2021 *Waikoloa-PEX Brass Fittings* 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 all disbursements from the *Waikoloa-PEX Brass Fittings* Settlement Fund pursuant to the *Waikoloa-PEX Brass Fittings* Settlement Fund shall be subject to further review and approval by the Court.

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

Waikoloa-PEX Brass Fittings Class Definition, Class Representatives, and Class Counsel

1. Consistent with the certified Class definition and the *Waikoloa-PEX Brass Fittings* 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-PEX Brass Fittings* Settlement defines the *Waikoloa-PEX Brass Fittings* Class as follows:

All individual and entity homeowners who on the date of Final Judgment own homes constructed with brass fittings made from UNS C36000 or UNS C37700 brasses 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. A fitting is defined as a piping component used to join or terminate sections of pipe or to provide changes of direction or branching in a pipe system.

The class definition specifically excludes (1) all individuals, entities and associations of homeowners whose homes have only fittings that are compliant with ASTM F877-89 or ASTM F877-93, which standards are included in the 1994 (ASTM F877-89) and 1997 (ASTM F877-93) Uniform Plumbing Codes; (2) all individuals, entities, and associations of homeowners who have only homes completed prior to August 20, 2003; (3) persons who validly and timely exclude themselves from the *Waikoloa-PEX Brass Fittings* Class; and (4) any judicial officer who has presided or will preside over this case.

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

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

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

Final Findings on the *Waikoloa-PEX Brass Fittings* Settlement

6. Pursuant to Hawai‘i Rule of Civil Procedure 23, the Court finds that the *Waikoloa-PEX Brass Fittings* 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-PEX Brass Fittings* Settlement among *Waikoloa-PEX Brass Fittings* Class Members. The terms of the *Waikoloa-PEX Brass Fittings* Settlement Agreement do not have any obvious deficiencies and do not improperly grant preferential treatment to any individual *Waikoloa-PEX Brass Fittings* Class Member. In addition, the Court notes that the Settling Parties reached the proposed *Waikoloa-PEX Brass Fittings* 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-PEX Brass Fittings* Settlement in good faith, that the proposed *Waikoloa-PEX Brass Fittings* Settlement meets the standards for final approval, and the *Waikoloa-PEX Brass Fittings* Settlement is sufficiently fair, reasonable, and adequate to warrant final approval and the distributions of the *Waikoloa-PEX Brass Fittings* Settlement Fund provided in the *Waikoloa-PEX Brass Fittings* Settlement.

Final Approval Hearing on Waikoloa-PEX Brass Fittings Settlement

7. On August 13, 2021 at 9:00 a.m., the Court held its hearing on the Motion for Final Approval of Settlement pursuant to Hawai‘i Rule of Civil Procedure 23. During and upon conclusion of the Final Approval Hearing, the Court considered the following factors and made the following findings:

- a. The *Waikoloa-PEX Brass Fittings* Settlement is fair, reasonable, and adequate;
- b. The Court should enter this Final Order granting final approval the *Waikoloa-PEX Brass Fittings* Settlement and Final Judgment implementing its terms;
- c. The Notices and the Notice Plan implemented pursuant to the *Waikoloa-PEX Brass Fittings* 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-PEX Brass Fittings* Class Members of the pendency of the Lawsuit, the nature of the proposed *Waikoloa-PEX Brass Fittings* Settlement (including Class Counsels’ request for awards of attorney fees and reimbursement of costs), their right to object to the proposed *Waikoloa-PEX Brass Fittings* Settlement, their right to exclude themselves from the *Waikoloa-PEX Brass Fittings* 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-PEX Brass Fittings* Settlement Agreement are fair, reasonable, adequate, and approved in light of the *Waikoloa-PEX Brass Fittings* Settlement benefits;
- e. The Administrator shall allocate and distribute \$2,400.00 of the *Waikoloa-PEX Brass Fittings* Settlement Fund pursuant the terms of and procedures provided in the *Waikoloa-PEX Brass Fittings* Settlement;

- f. The *Waikoloa-PEX Brass Fittings* Class Representatives and Class Counsel adequately represented the *Waikoloa-PEX Brass Fittings* Class for the purposes of entering into and implementing the proposed Settlement and will continue to adequately represent the *Waikoloa-PEX Brass Fittings* Class for carrying out the *Waikoloa-PEX Brass Fittings* Settlement;
- g. 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-PEX Brass Fittings* Settlement Funds after Castle & Cooke has paid the Settlement Fund:
- i. Attorney Fees to Class Counsel:
\$ 200,594.84
 - ii. General Excise Tax for the City and County of Honolulu to Class Counsel:
\$ 9,452.03
 - iii. Litigation Costs to Class Counsel:
\$ 4,363.90
 - iv. Incentive Awards to Class Representative (\$2,500.00 per Structure)
\$ 2,500.00
- h. Class Counsel have incurred an additional \$2,715.83 in costs for notice and administration to date that will not be reimbursed from the Settlement Fund at this time. Class Counsel and/or the Administrator may also incur future costs for their reasonable efforts to locate and effectuate payments to Class Members. Pursuant to Settlement ¶ 56, If amounts remain in the Settlement Fund after completing the Settlement's procedures for administering Class Member payments, Class Counsel may apply for the Court to reimburse \$2,715.83 in costs incurred to date, plus any

reasonable, additional Settlement administration costs Class Counsel and/or the Administrator incur going forward.

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-PEX Brass Fittings* Class Notice; (ii) arranged for publication of the *Waikoloa-PEX Brass Fittings* Class Notice; (iii) posted the Notice on the Administrator's website; (iv) facilitated *Waikoloa-PEX Brass Fittings* Class Member inquiries; (v) answered written inquiries from potential *Waikoloa-PEX Brass Fittings* 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-PEX Brass Fittings* Settlement received from potential *Waikoloa-PEX Brass Fittings* Class Members; and (viii) received and maintained on behalf of the Court any exclusions from the *Waikoloa-PEX Brass Fittings* Settlement received from potential *Waikoloa-PEX Brass Fittings* Class Members. The Administrator shall continue to assist in the coordination and inclusion of authorized *Waikoloa-PEX Brass Fittings* Class Members for participation in the *Waikoloa-PEX Brass Fittings* Settlement and continue to otherwise administer and implement the *Waikoloa-PEX Brass Fittings* 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-PEX Brass Fittings* Settlement will not exceed \$4,000.00. The estimated amount for the Administrator's costs and payment therefor from the *Waikoloa-PEX Brass Fittings* 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-PEX Brass Fittings* Settlement, that form W9 shall also serve to satisfy requirements to redeem payments in this *Waikoloa-Wind* 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-PEX Brass Fittings* Settlement Agreement. The Court finds that the Notice Plan and Class Notices fully and accurately informed the potential *Waikoloa-PEX Brass Fittings* Class Members of all material elements of the proposed *Waikoloa-PEX Brass Fittings* Settlement and of each *Waikoloa-PEX Brass Fittings* Class Member's right and opportunity to object to the proposed *Waikoloa-PEX Brass Fittings* Settlement. The Court further finds that the mailing and distribution of the *Waikoloa-PEX Brass Fittings* Class Notice and the publication of the *Waikoloa-PEX Brass Fittings* 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-PEX Brass Fittings* Settlement until the *Waikoloa-PEX Brass Fittings* 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-PEX Brass Fittings* 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-PEX Brass Fittings* Class Members.

Communications with Class Members

14. Because *Waikoloa-PEX Brass Fittings* Class Members still might contact Castle & Cooke about this *Waikoloa-PEX Brass Fittings* Settlement, if contacted, Castle & Cooke shall continue to respond, if at all, to *Waikoloa-PEX Brass Fittings* 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.waikoloapex.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-PEX Brass Fittings* Class Members timely objected to the fairness, reasonableness, and/or adequacy of the *Waikoloa-PEX Brass Fittings* Settlement.

16. All *Waikoloa-PEX Brass Fittings* 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-PEX Brass Fittings* Settlement are deemed to have waived any objections, are foreclosed from making any objection, whether by appeal or otherwise, to the *Waikoloa-PEX Brass Fittings* Settlement and Motion for Attorney Fees, Costs, and All Other Expenses, are bound by the terms of the *Waikoloa-PEX Brass Fittings* 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-PEX Brass Fittings* Settlement and the Motion for Attorney Fees, Costs, and All Other Expenses unless otherwise allowed by the Court.

Exclusions/Opt Outs

17. No *Waikoloa-PEX Brass Fittings* Class Members timely excluded themselves from the *Waikoloa-PEX Brass Fittings* Settlement.

18. All *Waikoloa-PEX Brass Fittings* 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-PEX Brass Fittings* Settlement are deemed to have waived any exclusion, are foreclosed from making any exclusion, are bound by the terms of the *Waikoloa-PEX Brass Fittings* 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-PEX Brass Fittings* Settlement in accordance with its terms or the *Waikoloa-PEX Brass Fittings* Settlement does not become effective as required by its terms for any other reason. In such event, the *Waikoloa-PEX Brass Fittings* 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-PEX Brass Fittings* 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-PEX Brass Fittings* Settlement, including but not limited to the Class' anticipated Motion to Allocate and Distribute *Waikoloa-PEX Brass Fittings* 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-PEX Brass Fittings* 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-PEX Brass Fittings* Class Counsel and/or before the *Waikoloa-PEX Brass Fittings* 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-PEX Brass Fittings* Settlement, and/or the Court's award of Attorney Fees,

Costs, and All Other Expenses from the *Waikoloa-PEX Brass Fittings* 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 27, 2021

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

DATED: August 31, 2021

APPROVED AND SO ORDERED:

By: /s/ John M. Tonaki 
The Honorable John M. Tonaki
State of Hawai‘i, First Circuit Judge

DATED: September 20, 2021

**ORDER GRANTING FINAL APPROVAL OF SETTLEMENT AND MOTION FOR ATTORNEY FEES,
COSTS, AND ALL OTHER EXPENSES**

Irene O. Britton vs. Castle & Cooke Waikoloa, LLC, et al., Civil No. 13-1-2276-08, Circuit Court of the First
Circuit, State of Hawaii