

**LAW OFFICES OF MELVIN Y. AGENA**

MELVIN Y. AGENA 2632  
55 Merchant Street, Suite 1850  
Honolulu, Hawai'i 96813  
Tel: (808) 536-6647

**LIPPSMITH LLP**

GRAHAM B. LIPPSMITH 9593  
CELENE CHAN ANDREWS 9902  
55 Merchant Street, Suite 1850  
Honolulu, Hawai'i 96813  
Tel: (213) 344-1820

**KASDAN TURNER THOMSON BOOTH LLC**

KENNETH S. KASDAN 10710  
SHARLA MANLEY 8868  
1003 Bishop Street, Suite 1180  
Honolulu, Hawai'i 96813  
Tel: (808) 369-8393

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Attorneys for Plaintiffs and the Class

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

**STATE OF HAWAI'I**

TADASHI MITSUOKA, VICTORIA  
MITSUOKA and JOHN G. STEWART,  
individually and on Behalf of a Class of All  
Persons Similarly Situated,

Plaintiffs,

vs.

HASEKO HOMES, INC., a Hawai'i  
corporation, HASEKO CONSTRUCTION,  
INC., a Hawai'i corporation, KE NOHO KAI  
DEVELOPMENT, LLC, a Hawai'i  
corporation; SPINNAKER PLACE  
DEVELOPMENT, LLC, a Hawai'i  
corporation; FAIRWAY'S EDGE  
DEVELOPMENT, LLC, a Hawai'i  
Corporation; and DOES 1-10,

Defendants.

CIVIL NO. 12-1-3020-11 JHA  
(Construction Defects)

**ORDER GRANTING FINAL  
APPROVAL OF SETTLEMENT, AND  
AWARDING CLASS  
REPRESENTATIVE INCENTIVES,  
ATTORNEY FEES, COSTS, AND ALL  
OTHER EXPENSES**

**ORDER GRANTING FINAL APPROVAL OF SETTLEMENT, AND AWARDING  
CLASS REPRESENTATIVE INCENTIVES, ATTORNEY FEES, COSTS, AND ALL  
OTHER EXPENSES**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

WHEREAS Plaintiffs and the Class Representatives John Stewart, Tadashi Mitsuoka, and Victoria Mitsuoka on behalf of themselves and all other Class Members (“the Class”), and Defendants Haseko Homes, Inc., Haseko Construction, Inc., Ke Noho Kai Development, LLC, and Fairway’s Edge Development, LLC (jointly, “Haseko”) (collectively, “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 May 12, 2021 Settlement Agreement and Release (including its exhibits) on file with the Court (“Settlement”), which sets forth the terms and conditions for a proposed settlement of the Lawsuit<sup>1</sup> and for entry of the Final Judgment implementing the terms of the Settlement. The Class also applied for an Order awarding Class Representative incentives, attorney fees, costs, and all other expenses;

WHEREAS, on June 16, 2017, the Court entered its Order Granting Plaintiffs’ Motion for Class Certification (“Class Certification Order”), certifying the following class:

All eligible[] current individual and entity homeowners who purchased homes in the development known as Ocean Pointe, located in the District of Ewa, City and County of Honolulu, Island of Oahu, State of Hawai‘i, that were designed, developed, and constructed with wind protection systems with foundation anchor bolts, said homes having been constructed after August 1, 2005 and identified in Exhibit 3 to Plaintiffs’ Motion for Class Certification.

WHEREAS, the Court’s Class Certification Order excluded from the Class, “(a) judges who have presided over this case; (b) persons employed by Haseko; (c) government entities and

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<sup>1</sup> Terms not defined in this Order shall have the definitions ascribed to them in the May 12, 2021 Settlement Agreement and Release.

agencies; and (d) affiliates of Haseko.”

WHEREAS, Exhibit 3 to Plaintiffs’ Motion for Class Certification identified the 621 homes in the Class by, *inter alia*, street address, TMK number, area and lot number (“Subject Homes”);

WHEREAS, to ensure that the class notices are sent to the current owners of the Subject Homes, the Settlement confirms, in an abundance of caution, that the Class consists of “[a]ll eligible current individual and entity homeowners as of June 16, 2017 when the Circuit Court certified the Class, or their successors, who purchased homes in . . . Ocean Pointe . . . .”;

WHEREAS, the Settlement includes the same Subject Homes;

WHEREAS the Court has read and considered the Settlement;

WHEREAS the Court has also read and considered the Settling Parties and Dispute Prevention & Resolution, Inc. (“DPR”) Arbitration Panel’s (“Panel”) Stipulation and Order Setting Aside, Vacating, and Expunging, *Nunc Pro Tunc*, the Partial Final Arbitration Decision and Award Dated February 8, 2021, which was issued by the Panel on May 12, 2021 (“Stipulation and Order on Partial Award”), as well as the Partial Final Arbitration Decision and Award Dated February 8, 2021;

WHEREAS the Court has read and considered the Class’ Motion for Final Approval of Settlement, the Class’ Motion to Award Class Representative Incentives, Attorney Fees, Costs, and All Other Expenses, and all memoranda and declarations in support thereof. The Court has also 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 Settlement is fair, reasonable, and adequate and, therefore, grants its final approval; and

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

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

**Class Definition, and Continuing Appointment of Class Representatives, Class Counsel, Administrator, Contractor, Construction Manager, and Structural Engineer**

1. Pursuant to Hawai'i Rule of Civil Procedure 23, the Class Certification Order, and the Settlement, the Class Definition is as follows:

All eligible[] current individual and entity homeowners as of June 16, 2017 when the Circuit Court certified the Class, or their successors, who purchased homes in the development known as Ocean Pointe, located in the District of Ewa, City and County of Honolulu, Island of Oahu, State of Hawai'i, that were designed, developed, and constructed with wind protection systems with foundation anchor bolts, said homes having been constructed after August 1, 2005 and identified in Exhibit 3 to Plaintiffs' Motion for Class Certification.

Exhibit 3 to Plaintiffs' Motion for Class Certification and attached to the Order Granting Plaintiffs' Motion for Class Certification identifies the same 621 Class Member Structures/Subject Homes listed at "Exhibit G—Affected Unit Count" to the April 28, 2021 AIA Document A201-2007 General Conditions of the Contract for Construction attached to the Settlement as Exhibit 2. The Class excludes "(a) judges who have presided over this case; (b) persons employed by Haseko; (c) government entities and agencies; and (d) affiliates of Haseko."

2. No Class members timely excluded nor sought to belatedly exclude themselves from the Lawsuit.

3. The Settlement Class definition does not materially alter the original, applicable Class definition in the Lawsuit. The Settlement Class definition confirms that the Class consists of the current owners of the Subject Homes.

4. The Mitsuokas and Mr. Stewart have thus far adequately served as Class Representatives and will continue to serve as Class Representatives through completion of the Settlement.

5. Melvin Y. Agena of the Law Offices of Melvin Y. Agena, and Graham B. LippSmith and Celene Chan Andrews of LippSmith LLP, and Kenneth S. Kasdan and Sharla Manley of Kasdan Turner Thomson Booth LLC have thus far adequately served as Class Counsel and will continue to as Class Counsel through completion of the Settlement.

6. KCC shall continue to serve as the Administrator through completion of the Settlement.

7. SageBilt, Inc. shall continue to serve as the Contractor for the Shot Pin Repair Program.

8. Iopono Holdings Group, LLC, d/b/a Bergeman Group shall continue to serve as the Construction Manager for the Shot Pin Repair Program.

9. Engineering Design Group, Inc. shall continue to serve as the Structural Engineer for the Shot Pin Repair Program.

10. Upon an application by Class Counsel or on its own, the Court may consider and appoint any additional or replacement Contractor, Construction Manager, or Structural Engineer.

#### **Preliminary Findings on the Proposed Settlement**

11. Pursuant to Hawai'i Rule of Civil Procedure 23, the Court finds that the proposed Settlement, including its proposed allocations of and methodology for distributing the Settlement Fund for Class Member benefits, to pay the Administrator's costs, and to pay Attorney Fees, Costs, and Other Expenses, 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.

12. In making these final findings, the Court considered the nature of the claims, the benefits the Settlement provides, the information available to the Settling Parties, and the proposed allocation of the Settlement Fund. The terms of the Settlement do not have any obvious

deficiencies and do not improperly grant preferential treatment to any individual Class Member. In addition, the Court notes that the Settling Parties reached the proposed Settlement after substantial discovery, motion practice, arbitration proceedings, and multiple formal and informal settlement discussions before the respected third-party mediator Keith Hunter of DPR. Accordingly, the Court finds that the Settling Parties entered into the proposed Settlement in good faith, that the proposed Settlement meets the standards for preliminary review and approval, and the Settlement appears to be sufficiently fair, reasonable, and adequate to warrant final approval of the Settlement.

### **Final Approval Hearing on Settlement**

13. On August 10, 2021 at 8:30 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 Settlement is fair, reasonable, and adequate;
- b. The Court should enter its Final Order granting final approval the Settlement and Final Judgment implementing its terms;
- c. The Notices and the Notice Plan implemented pursuant to the 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 Class Members of the pendency of the Lawsuit, the nature of the proposed Settlement (including Class Counsels’ request for awards of attorney fees and reimbursement of costs), their right to object to the proposed Settlement 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 Settlement are fair, reasonable, adequate, and approved in light of the Settlement benefits. The Administrator shall allocate and distribute the following amount of the Settlement Fund for the Shot Pin Repair Program pursuant to the terms of and procedures provided in the Settlement:

For services by the Contractor:	Up to \$9,703,000.00
For services by the Construction Manager:	Up to \$1,600,000.00
For services by the Structural Engineer:	Up to \$130,650.00
<b>Total for Shot Pin Repair Program:</b>	<b>\$11,508,150.00</b>

e. The Class Representatives and Class Counsel adequately represented the Class for the purposes of entering into and implementing the Settlement and will continue to adequately represent the Class for carrying out the Settlement;

f. The Class' request for awards of Class Representative incentive awards, 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 attorney firms upon the Court's consideration and approval of the Class' anticipated Motion to Allocate and Distribute Settlement Funds:

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Incentive awards to Class Representatives:	\$20,000.00
	(\$10,000.00 per Structure)
Attorney Fees to Class Counsel:	\$6,666,666.67
Hawai'i General Excise Tax for City and County of Honolulu to Class Counsel:	\$314,133.33
Reimbursement of litigation costs and any Special Master fees to Class Counsel:	\$1,491,050.00*
<b>Total for Attorney Fees, Costs, and All Other Expenses:</b>	<b>\$8,491,850.00</b>

\*The Settlement Funds earmarked and approved for reimbursement of litigation costs and any Special Master fees presently have a surplus of \$16,879.75. The Administrator shall hold that amount in the Settlement Fund Escrow until the Court approves its allocation and disbursement pursuant to the Settlement's terms for unused funds.

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

14. The Court previously approved the Administrator's Notice Plan. Pursuant to the Notice Plan, the Administrator accomplished the following:

- a. Distributed the Class Notice;
- b. Arranged for publication of the Class Notice;
- c. Posted the Notice on the Administrator's website;
- d. Facilitated Class Member inquiries;
- e. Answered any written inquiries from Class Members and/or forwarding such inquiries to Class Counsel;
- f. Provided additional copies of the Notice(s) upon any request;



g. Received and maintained on behalf of the Court any objections to the Settlement received from Class Members;

h. Assisting in the coordination and inclusion of authorized Class Members for participation in the Settlement; and

i. Otherwise administering and implementing the Settlement.

15. In the Order Granting Preliminary Approval of Settlement, the Court approved, as to form and content, the Notice Plan and Class Notices attached as Exhibits 1-4 to the Settlement. The Notice Plan and Class Notices fully and accurately informed the Class Members of all material elements of the proposed Settlement and of each Class Member's right and opportunity to object to the proposed Settlement. The Court further finds that the mailing and distribution of the Notice and the publication of the Class Notices substantially in the manner and form set forth in the Notice Plan and Settlement 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, constitutes the best notice practicable under the circumstances, and constitutes due and sufficient notice to all Class Members.

16. The Administrator shall continue to assist in the coordination and inclusion of Class Members for participation in the Settlement and continue to otherwise administer and implement the Settlement.

17. The Administrator estimated its total costs for all of its administration tasks to date and through completion of Settlement would not exceed \$74,500.00. This amount is fair, reasonable, and adequate and, therefore, approved for payment from the Settlement Fund.

### **Communications with Class Members**

18. Because Class Members might contact Haseko about the Settlement, if contacted, Haseko shall continue to respond, if at all, to Class Members in a manner materially consistent with the following:

Haseko supports the Settlement. If you have any question regarding the details of the Settlement, please log onto the settlement website at [www.HasekoClass.com](http://www.HasekoClass.com) or contact Class Counsel through the Law Offices of Melvin Y. Agena, (808) 536-6647.

**Objections**

19. No Class Members timely objected to the fairness, reasonableness, and/or adequacy of the Settlement.

20. All 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 Settlement are deemed to have waived any objections, are foreclosed from making any objection, whether by appeal or otherwise, to the Settlement and Motion for Award of Class Representative Incentives, Attorney Fees, Costs, and All Other Expenses, are bound by the terms of the Settlement and the Final Judgment, and are foreclosed forever from making any objection to the fairness or adequacy or any other aspect of the Settlement and the Motion for Award of Class Representative Incentives, Attorney Fees, Costs, and All Other Expenses.

**Exclusions/Opt Outs**

21. No Class Member may opt out or exclude himself/herself/itself from the Settlement. The opportunity to opt out from the Class expired upon completion of the original Notice Plan in early 2019. Since no Class Members opted out at that time, all Class Members are bound by the orders of this Court in this Lawsuit.

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**Stipulation and Order on Partial Award**

22. Pursuant to the Panel’s Order on Partial Award, which was previously issued by the Panel on May12, 2021, and subject to final approval and implementation of the Settlement, the Partial Award is not and shall not be construed as a judgment or a final determination.

23. Pursuant to the Panel’s Order on Partial Award, the Partial Award, including any and all factual findings and legal conclusions therein, are set aside, vacated, expunged, *nunc pro tunc* by the Panel, and have been determined by the Panel to be of no force or effect for any purpose including, but not limited to, for any purported collateral estoppel or other preclusive effect purposes, effective only upon the Court’s final approval of the Settlement and Steadfast’s payment on behalf of Haseko of the Settlement Fund into the Settlement Escrow.

24. If the Settlement fails for any reason, for example but not exclusively, a Settling Party materially breaches the Settlement, the Panel’s jurisdiction over the Lawsuit shall be fully reinstated, that the Partial Award remains enforceable, and that the Class shall have twenty business days from reinstatement of the Panel’s jurisdiction to file their declaration and any supporting documents in support of their claims for costs, attorney fees, and general excise tax for the City and County of Honolulu.

**Termination of Settlement**

25. 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 Settlement in accordance with its terms or if the Settlement does not become effective as required by its terms for any other reason. In such event, the Settlement shall become null and void and of no further force and effect, and shall not be used or referred to for any purpose whatsoever.

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**Use of Order**

26. Neither this Order nor this Settlement shall be construed or used as an admission, concession, or declaration by or against Haseko 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 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**

27. The Court retains the exclusive jurisdiction to consider all further applications arising out of or connected with the Settlement. This Court, and only this Court, shall have exclusive jurisdiction to enforce or resolve any disputes related to the Settlement, including, but not limited to 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 Class Counsel; and 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 Settlement, and/or the Court's award of Attorney Fees, Costs, and All Other Expenses from the Settlement Fund.

APPROVED AS TO FORM:

/s/ Graham B. LippSmith  
MELVIN Y. AGENA  
GRAHAM B. LIPPSMITH  
CELENE S. CHAN  
KENNETH S. KASDAN  
SHARLA MANLEY  
Attorneys for Plaintiffs and the Class

DATED: August 17, 2021

/s/ Ross T. Shinyama

DATED: August 17, 2021

MELVYN M. MIYAGI  
ROSS T. SHINYAMA  
Attorneys for Defendants  
Haseko Homes, Inc.  
Haseko Construction, Inc.  
Ke Noho Kai Development, LLC  
Fairway's Edge Development, LLC

APPROVED AND SO ORDERED:

By: /s/ James H. Ashford  
Honorable James H. Ashford  
Judge of the Circuit Court



DATED: August 17, 2021

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*Tadashi Mitsuoka, et al., vs. Haseko Homes, Inc., et al., Civil No. 12-1-3020-11 JHA:*  
**ORDER GRANTING FINAL APPROVAL OF SETTLEMENT, AND AWARDED  
CLASS REPRESENTATIVE INCENTIVES, ATTORNEY FEES, COSTS, AND ALL  
OTHER EXPENSES**