ORIGINAL

BICKERTON LAW GROUP
A LIMITED LIABILITY LAW PARTNERSHIP
JAMES J. BICKERTON (3085-0)
BRIDGET G. MORGAN-BICKERTON (8705-0)
745 Fort Street, Suite 801
Honolulu, Hawaii 96813
Tel. (808) 599-3811
Fax. (808) 533-2467

PERKIN & FARIA LLLC
JOHN F. PERKIN (1673-0)
841 Bishop Street, Suite 1000
Honolulu, Hawaii 96813
Tel. (808) 523-2300
Fax. (808) 697-5302

AFFINITY LAW GROUP LLLC
VAN-ALAN H. SHIMA (8176-0)
1188 Bishop Street, Suite 3408
Honolulu, Hawaii 96813
Tel. (808) 545-4600
Fax. (808) 545-4601
Attorneys for Plaintiffs
NANCY L. MANCHESTER,
WILLARD J. RAPOZA, and PATRICK I. CHAI

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

NANCY L. MANCHESTER; WILLARD J. RAPOZA; and PATRICK I. CHAI, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

JPMORGAN CHASE BANK, N.A.,

Defendant.

CIVIL NO. 19-1-0523-03 11th Div.
(Class Action)

MOTION FOR CERTIFICATION OF CLASS FOR SETTLEMENT PURPOSES ONLY AND FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, CLASS NOTICE, AND DISSEMINATION PLAN; MEMORANDUM IN SUPPORT OF MOTION; DECLARATION OF JAMES J. BICKERTON; EXHIBITS "1" – "2"; NOTICE OF HEARING; CERTIFICATE OF SERVICE

Hearing Date: _____

Time: _____
Judge: _____

Trial Date: None

MOTION FOR CERTIFICATION OF CLASS FOR SETTLEMENT PURPOSES ONLY AND FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, CLASS NOTICE, AND DISSEMINATION PLAN

Plaintiffs NANCY L. MANCHESTER, WILLARD J. RAPOZA, and PATRICK I. CHAI ("Plaintiffs"), individually and on behalf of all others similarly situated (the "Settlement Class"), by and through their counsel, hereby move the Court for an order preliminarily approving the Settlement between Plaintiffs on behalf of the Settlement Class on the one hand, and Defendant JPMORGAN CHASE BANK, N.A. ("Defendant" or "JPMC") on the other hand, and approving the Class Notice and Dissemination Plan. As is demonstrated in the supporting memorandum, the proposed Settlement is fair, reasonable, and adequate under Hawaii law and warrants preliminary approval.

This Motion is made pursuant to Rules 7, 23, and 58 of the Hawaii Rules of Civil Procedure and is based on the supporting memorandum, exhibits, Declaration of James J. Bickerton, and the record and files herein.

DATED: Honolulu, Hawaii, March 29, 2019.

JAMES J. BICKERTON
BRIDGET G. MORGAN-BICKERTON
JOHN FRANCIS PERKIN
VAN-ALAN H. SHIMA

Attorneys for Plaintiffs NANCY L. MANCHESTER, WILLARD J. RAPOZA, and PATRICK I. CHAI, individually and on behalf of all others similarly situated

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

NANCY L. MANCHESTER; WILLARD J. RAPOZA; and PATRICK I. CHAI, individually and on behalf of all others similarly situated, Plaintiffs, vs. JPMORGAN CHASE BANK, N.A., Defendant.	CIVIL NO. _____ (Class Action) **MEMORANDUM IN SUPPORT OF MOTION**

MEMORANDUM IN SUPPORT OF MOTION

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

NANCY L. MANCHESTER; WILLARD J. RAPOZA; and PATRICK I. CHAI, individually and on behalf of all others similarly situated, Plaintiffs, vs. JPMORGAN CHASE BANK, N.A., Defendant.	CIVIL NO. 19-1-0523-03 (Class Action) **MEMORANDUM IN SUPPORT OF MOTION**

MEMORANDUM IN SUPPORT OF MOTION

I. INTRODUCTION

This case involves claims by Plaintiffs Nancy L. Manchester, Willard J. Rapoza, and Patrick I. Chai ("Plaintiffs"), on behalf of themselves and other similarly situated homeowners (the "Settlement Class"), against JPMorgan Chase Bank, N.A. ("JPMC") for alleged (1) unfair and deceptive acts and practices under Chapter 480 of the Hawaii Revised Statutes ("HRS"), and (2) wrongful foreclosure for allegedly failing, in part through the actions of third parties, to conduct non-judicial foreclosures in compliance with the power of sale contained in the mortgages of the Settlement Class and HRS §§ 667-5 *et seq.* As set forth in the Settlement Agreement, JPMC denies all claims alleged in the for-settlement Complaint, denies all allegations of wrongdoing, liability and damages as alleged in the *Manchester* Case (defined below), the Federal Class Actions (defined below), and otherwise, and does not and has not conceded any defenses.[1] A copy of the Settlement Agreement, including all exhibits thereto, is attached as Exhibit "1".

After litigating these claims for several years in actions asserted against third parties in which JPMC was not named as a defendant, through extensive negotiations over the course of multiple mediations, the Parties have reached a resolution of certain claims. *See* Exhibit "1",

[1] Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Settlement Agreement.

§§ I.H, III.K.5. The instant lawsuit is simultaneously being filed for settlement purposes to facilitate that resolution. Thus, Plaintiffs move for preliminary approval of a class action settlement, which provides a gross recovery of $12,500,000 to a Settlement Class of 242 members. *See* Exhibit "1", § III.C.1. The proposed Settlement Class is defined as follows:

> All persons or entities who owned real property in Hawai'i and who were subject to a non-judicial foreclosure sale between June 2008 and May 2011 as to which the loan(s) on the property was serviced at the time of the non-judicial foreclosure sale by or on behalf of (a) JPMC as servicer or (b) JPMC's predecessors, successors, parents, subsidiaries, affiliates or merged entities as servicers.

Id. § II.33.[2] The Settlement Class definition includes the claims of members of the putative classes defined in the operative complaints in five (5) putative class action lawsuits whose mortgages were serviced at the time of the non-judicial foreclosure by JPMC or its predecessors, successors, parents, subsidiaries, affiliates or merged entities.[3]

The Parties' counsel have each separately researched the composition of the Settlement Class and agree that all of the persons or entities who fall within the definition of the Settlement Class and the properties at issue are included in the list attached to the Settlement Agreement as Exhibit "A", which list has been filed under seal to protect the privacy of the members of the Settlement Class. *See id.*

---

[2] Excluded from the Settlement Class are: (1) all persons or entities whose claims against the foreclosing mortgagee are time-barred; (2) the plaintiffs in the Individual Actions; (3) the plaintiffs and, as applicable, the defendants in the Settled Actions (provided that such persons may be in the Settlement Class with respect to claims and properties that were not the subject of the Settled Actions); (4) the Lee Plaintiffs; (5) any persons or entities whose claims arising out of the acts alleged herein have been released; (6) all persons who timely and validly request exclusion from the Settlement Class; (7) all judges assigned to hear any aspect of this litigation, as well as their immediate family members and staff; and (8) JPMC's employees, directors and officers. Exhibit "1", § II.33.

[3] Those class action lawsuits are: (a) *Manchester v. U.S. Bank, N.A.*, Civil No. 14-1-1540 (1st Circuit, State of Hawai'i) (the "*Manchester* Case"); (b) *Degamo v. Bank of America, N.A.* Civil No. 13-00141 (USDC Hawai'i) ("*Degamo*") (Degamo was recently dismissed on March 14, 2019 and will soon be pending appeal); (c) *Bald v. Wells Fargo Bank, N.A.*, Civil No. 13-00135 (USDC Hawai'i) ("*Bald*"); (d) *Gibo v. U.S. Bank, N.A.*, Civil No. 12-00514 (USDC Hawai'i) ("*Gibo*"); and (e) *Lima v. Deutsche Bank National Trust Company*, Civil No. 12-00509 (USDC Hawai'i) ("*Lima*"). Hereinafter, *Degamo, Bald, Gibo, and Lima* will be collectively referred to as the "Federal Class Actions."

The Court's preliminary approval of the Settlement will allow for an expeditious process and schedule for notifying Settlement Class members of the proposed Settlement and carrying out the schedule of future events as contemplated in the Settlement Agreement and set forth in the Proposed Preliminary Approval Order (Exhibit "D" to the Settlement Agreement). For the reasons discussed herein, the proposed Settlement is fair, adequate, and reasonable to the Settlement Class, and within the reasonable range of final approval.

II. THE FOR-SETTLEMENT INSTANT ACTION

Having presided over the *Manchester* Case, the Court is familiar with the history of litigation in the State of Hawaii over the claims alleged in the for-settlement Complaint in this action and in the Federal Class Actions. Attached as Exhibit "2" are the dockets in the Federal Class Actions, which provide a detailed history of the intensive discovery, motions practice, and appeals that these types of claims generally have endured throughout the past several years.

In sum, this matter arises from the alleged actions of JPMC or its purported agents between June 2008 to May 2011 in purporting to exercise the power of sale, as a servicer for a mortgagee, to non-judicially foreclose mortgages on properties owned by Plaintiffs and other members of the Settlement Class. Plaintiffs allege that in exercising that power on behalf of the mortgagee, JPMC or its purported agents breached their duties on behalf of the foreclosing mortgagee to sell the properties to the owners' best advantage and to use reasonable diligence to secure the best possible price because, among other things, the sales of the properties were advertised as being by "quitclaim deed" rather than by "limited warranty deed" and without a sufficient property description. Plaintiffs further allege that in certain cases, JPMC or its purported agents also caused non-judicial foreclosure auctions to be postponed either without giving at least 29 days' published notice of the first scheduled auction date or without publishing notices of the rescheduled auctions' new dates and times as required by the mortgage terms and/or the applicable statute. Based on the foregoing, Plaintiffs allege claims of wrongful foreclosure and unfair or deceptive acts or practices.

JPMC denies all claims asserted in the for-settlement Complaint in this action, denies all allegations of wrongdoing, liability and damages as alleged by Plaintiffs in the *Manchester* Case, the Federal Class Actions and otherwise, and expressly disclaims and denies any wrongdoing or liability whatsoever. *See* Exhibit "1", §§ I.C, I.H, III.O. The proposed

Settlement was jointly agreed to between Plaintiffs and JPMC as a compromise of disputed claims to avoid the uncertainty and expense of litigation. *See id.* §§ I.C, I.F.

III. THE SETTLEMENT

A. Terms of the Settlement

It took significant time to negotiate and draft the Settlement Agreement and proposed notices and notice plan. The Settlement resulted from extensive arm's-length negotiations, including numerous mediations spanning multiple days, as well as substantial involvement from the mediator in finalizing the deal terms. The Settlement provides for the creation of a settlement fund in the total amount of $12,500,000 (the "Settlement Fund") which will pay for: (1) all payments to Settlement Class Members; (2) attorneys' fees and costs, if any are awarded by the Court; (3) Service Awards to Class Representatives, if any are awarded by the Court; and (4) all costs of administering the Settlement. *Id.* § III.C.

i. Allocation Plan

Exhibit "A" to the Settlement Agreement is the Settlement Class List (which has been filed under seal to protect the privacy of the Settlement Class members). The Settlement Fund (less Settlement Costs, which as defined in the Settlement Agreement (*see id.* § II.35) include any Attorneys' Fees and Expenses awarded by the Court, any Service Awards to the Class Representatives awarded by the Court, all costs of notifying the Settlement Class about the Settlement, all costs of administering the Settlement, and the fees, expenses and all other costs of the Settlement Administrator) will be distributed to the Settlement Class Members (i.e., all persons and entities in the Settlement Class who do not properly opt-out of the Settlement, *see id.* § II.34) pursuant to an allocation plan, as set forth further below. *Id.* § III.F.1.

More specifically, the Settlement Agreement contemplates that the Settlement Administrator will distribute the Settlement Fund (less Settlement Costs) to Settlement Class Members in fixed, tiered amounts, payable by check, based upon strength of claim factors as determined and calculated solely by Class Counsel, including property value, time since foreclosure, and whether the applicable foreclosure had one of the following circumstances: (a) the auction was postponed without publishing the new auction date in a newspaper, (b) the first publication of the auction date was less than 29 days before the proposed auction date, and/or (c) the property was sold at the auction to a third party and was conveyed by limited warranty deed. *Id.* § III.F.1.

Class Counsel has determined how to calculate the individual payments that will be made to each of the Settlement Class Members. Class Counsel estimates that the average value of the Settlement Payments for properties that had circumstances (a), (b) and/or (c) is approximately $75,000, with 20% of that sum being related to loss of use as measured by the length of time since foreclosure and property value at time of foreclosure reflected in county records. The average gross value for properties that did not have one of circumstances (a), (b) or (c) is approximately $30,000, with 25% of that sum being related to the length of time since foreclosure and property value at time of foreclosure reflected in county records. *See* Bickerton Declaration. Only one payment will be made per property at issue (to be paid jointly to all former mortgagors claiming through the property at the time of foreclosure).[4] *Id.* The method used to calculate the individual payments is set forth in greater detail in ¶¶ 10-16 of the Bickerton Declaration.

All payments from the Settlement Fund will be made directly to eligible Settlement Class Members; the Settlement does not contemplate a "claims made" process. *See id.* §§ III.F, III.G. Class Counsel and the Settlement Administrator will separately attempt to identify the most current address information for the members of the Settlement Class. *See id.* §§ III.D.1, III.E.3, III.G.1. Any distribution to a deceased Settlement Class Member may be made payable to the estate, beneficiary, or heir of the deceased Settlement Class Member, provided that the Settlement Class Member's estate, beneficiary, or heir timely informs the Settlement Administrator and provides the Settlement Administrator with the requisite proof. *Id.* § III.G.3. If there are any funds remaining in the Settlement Fund following the foregoing distributions, they will be distributed to the Legal Aid Society of Hawaii and Prosperity Now as the designated recipients of the Cy Pres Distribution. *Id.* § III.G.4.

ii. Notice Program

Plaintiffs request approval of the Class Notice that is attached to the Settlement Agreement as Exhibit "B", which includes summary information pursuant to Hawaii Rule of Civil Procedure 23(c)(2) and also refers to the Settlement Website that will be established for the purposes of providing the Settlement Class with information regarding the Settlement and

[4] The calculations by Class Counsel set forth herein are before the deduction of Settlement Costs, including Attorneys' Fees and Expenses of Class Counsel, which will reduce the amount of the payments to Settlement Class Members. *See* Exhibit "1", § III.F.1.

the status of the settlement approval proceedings. The Notice Program provides for direct mail notice to the Settlement Class. *See id.* § III.E.

IV. CERTIFICATION OF THE CLASS FOR SETTLEMENT PURPOSES ONLY IS WARRANTED

The Settlement Agreement contemplates certification of the proposed Settlement Class for settlement purposes only. For the reasons that follow, conditional certification is warranted.

1. The Settlement Class Meets the Requirements of Rule 23(a)

Under HRCP Rule 23(a) there are four requirements for certification of a settlement class: (1) the settlement class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the settlement class, (3) the claims or defenses of the representative party is typical of the claims or defenses of the settlement class, and (4) the representative party will fairly and adequately protect the interests of the settlement class. The Settlement Class here, with Plaintiffs Nancy L. Manchester, Willard J. Rapoza, and Patrick I. Chai as its representatives, meets the four requirements of Rule 23(a). Plaintiffs also satisfy the requirements of HRCP Rule 23(b)(3).

Class action lawsuits have long been a part of American jurisprudence and have been firmly incorporated into the jurisprudence of this State under Rule 23 of the Hawai'i Rules of Civil Procedure ("HRCP"). This Court "is vested with broad discretion in deciding whether to certify a class." *Levi v. University of Hawai'i*, 67 Haw. 90, 92, 679 P.2d 129, 131 (1984). Certification should be granted if Plaintiffs demonstrate that the proposed Settlement Class meets the requirements of HRCP Rule 23(a), and at least one of the alternate requirements of HRCP Rule 23(b). *Life of the Land v. Land Use Comm'n*, 63 Haw. 166, 180-1, 623 P.2d 431, 443 (1981).

2. The Numerosity Requirement Is Met

Rule 23(a)(1) requires that the settlement class be so numerous that the joinder of all members would be impracticable. In Hawai'i, this "numerosity" requirement has been satisfied with as few as thirteen potential class members. *Life of the Land v. Burns,* 59 Haw. 244, 254, 580 P.2d 405, 411 (1978); *see also Life of the Land v. Land Use Commission*, 63 Haw. 166, 182, 623 P.2d 431, 444 (1981) (class of 150 individuals satisfied numerosity requirement). As noted above, Hawai'i has reported decisions with certified classes of as few

as 13 and 150 members. Classes with as few as 35 known members have been certified in other jurisdictions. *See Weiss v. York Hosp.*, 745 F.2d 786, 807-08 (3d Cir. 1984), *cert. denied*, 470 U.S. 1060 (1985) (92 members); *In Re Gap Stores Sec. Litigation,* 79 F.R.D. 283, 302 (N.D. Cal. 1978) (91 members); *Fidelis Corp. v. Litton Indus., Inc.,* 293 F. Supp. 164 (S.D.N.Y. 1968) (35 members); *Arkansas Ed. Ass'n v. Board of Ed. of Portland*, 446 F.2d 763, 765 (8th Cir. 1971) (fewer than two dozen).

Here, after substantial vetting, the Parties' counsel have determined that the Settlement Class in this case consists of the former owners of 242 properties. Plaintiffs acknowledge that while class size should not be based on pure speculation, it is well-established that plaintiffs need not allege an exact number; a good faith estimate is sufficient. *Evan v. Unites States Pipe & Foundry Co.,* 696 F.2d 925 (11th Cir. 1983); *Bartleston v. Dean Witter & Co.*, 86 F.R.D. 657 (E.D.Pa.1980) (where exact size is unknown but common sense indicates it is large, judicial notice may be taken of the fact and impractically of joinder may be assumed). Here, the number is known with certainty and has been ascertained from public records, and confirmed by the Parties' counsel. Numerous decisions have held that the numerosity requirement is satisfied if there is a reasonable basis for believing that the number of class members exceeds the minimum required. *Jackson v. Foley*, 156 F.R.D. 538 (E.D.N.Y. 1994); *Ventura v. N.Y. City Health & Hosps. Corp.*, 125 F.R.D. 595, 599 (S.D.N.Y. 1989); *Lewis v. Gross*, 663 F. Supp. 1164, 1169 (E.D.N.Y. 1986).

A settlement class of owners of 242 properties makes it both difficult and inconvenient for the members of the Settlement Class to proceed by individual actions or to be joined in a single action as individual plaintiffs. *See Jordan v. County of L.A.*, 669 F.2d 1311, 1319 (9th Cir.), *vacated on other grounds*, 459 U.S. 810, 103 S.Ct. 35, 74 L. Ed. 2d 48 (1982). *See generally* Herbert Newberg & Alan Conte, *Newberg on Class Actions,* § 3:5 at 233-234 (4th ed. 2002) ("*Newberg*") ("In light of prevailing precedent, the difficulty inherent in joining as few as 40 Class Members should raise a presumption that joinder is impracticable, and the plaintiff whose class is that large or larger should meet the test of Rule 23(a)(1) on that fact alone.").

3. The Commonality Requirement Is Met

"The test or standard for meeting the Rule 23(a)(2) prerequisite is qualitative rather than quantitative -- that there need only be a single issue common to all members of the Class. Therefore, this requirement is easily met in most cases." *Newberg,* § 3:10 at 271-290 (4th ed.

2002); *see also Harris v. General Dev. Corp.,* 127 F.R.D. 655 (N.D. Ill. 1989) (single issue common to all members of class adequate to meet commonality requirement); *Ashe v. Board of Elections,* 124 F.R.D. 45 (E.D.N.Y. 1989) (racial discrimination issue common to all class members); *Joseph v. General Motors Corp.,* 109 F.R.D. 635 (D. Colo. 1986) (defective engine design common to entire class).

A question is considered common when it arises from a common nucleus of operative facts, even though underlying facts of the case may fluctuate over the entire class period and vary among the individual class members. *In re Asbestos School Litigation,* 104 F.R.D. 422 (E.D. Pa. 1984), *affd in part, vacated in part,* 789 F.2d 996 (3rd Cir. 1986), *cert denied,* 479 U.S. 852 (1986); *Bowling v. Pfizer, Inc.,* 143 F.R.D. 141 (S.D. Ohio 1992) (Defendants' conduct arose out of singular nucleus of fact and law); *Newberg,* 3:10, at 271-290 (4th ed. 2002). As one court has explained:

> The threshold of commonality is not high. Aimed in part at determining whether there is a need for combined treatment and a benefit to be derived there from, the rule requires only that resolution of the common question affect all or a substantial number of the class members.

Jenkins v. Raymark Industries, 782 F.2d 468 (5th Cir. 1986); *Specialty Cabinets & Fixtures v. American Equitable*, 140 F.R.D 474, 476 (S.D. Ga. 1991); *see also Moilina v. Mallah Organization, Inc.*, 144 F.R.D. 37, 41 (S.D.N.Y. 1992) (The Court stated that "not every question of fact or law need be common to every member of the class"); *Newberg*, § 3:10, at 275-277 (4th ed. 2002).

Commonality is established "if there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). The commonality requirement is construed "permissively." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998) ("All questions of fact and law need not be common to satisfy the rule."). The existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class. *Id.*; *In re THQ Inc. Secs. Litig.*, 2002 WL 1832145 (C.D. Cal. March 22, 2002). Under the provisions of HRCP Rule 23(b)(2), "commonality" exists if the plaintiffs share a common harm or violation of their rights, even if individualized facts supporting the alleged harm or violation may diverge. Conversely, shared core facts support a commonality finding. *See Doe v. Los Angeles Unified Sch. Dist.*, 48 F. Supp.2d 1233 (C.D. Cal 1999). "Factual identity between the plaintiff's claims and those of the class he seeks to

represent is not necessary. *Senter v. GM Corp.*, 532 F.2d 511, 524 (6th Cir. 1976).

As alleged, common questions of law and fact exist as to all members of the Settlement Class and predominate over any questions solely affecting individual members of the Settlement Class, and a class action for settlement purposes is superior to other available methods for the fair and efficient adjudication of the controversy. Among the questions of law and fact common to the Settlement Class are, *inter alia:*

a. Whether JPMC and/or its purported agents, when acting on behalf of a foreclosing mortgagee under power of sale, breached the duty to secure the best advantage for members of the Settlement Class in the sale of their properties under the power of sale in their mortgages;

b. Whether JPMC and/or its purported agents, when acting on behalf of a foreclosing mortgagee under power of sale, breached contractual or other duties by offering to convey the properties of members of the Settlement Class to the high bidders at auction by a "quitclaim deed" as compared to a "limited warranty deed";

c. Whether offering real property for sale at non-judicial foreclosure auctions by "quitclaim deed" and/or without any covenants or warranties of title was an unfair and deceptive practice under HRS Chapter 480;

d. Whether offering real property for sale at non-judicial foreclosure auctions by "quitclaim deed" entitles Settlement Class members to recover damages;

e. Whether Hawai'i law requires the Notice of Sale to contain any description of the property in addition to its address and Tax Map Key number and, if so, whether a metes and bounds of the land satisfies that requirement;

f. Whether the above-described alleged conduct constitutes an unfair and/or deceptive trade practice within the meaning of H.R.S. Chapter 480;

g. The measure of damages under Hawai'i law, if any, for non-judicially foreclosing a mortgagor's property through an auction sale in which the seller's Notice of Sale offered only a "quitclaim deed" and allegedly did not adequately describe the property or otherwise violated the power of sale or the foreclosure statute in giving notice of the sale;

h. Whether the sales of property by JPMC and/or its purported agents on behalf of the foreclosing mortgagees are void or merely voidable or neither, and the effect of such determination, if any, on damages; and

i. The nature and extent of class-wide damages, if any.

Given the questions common to the claims of the proposed Settlement Class, the requirement of commonality is satisfied.

4. The Typicality Requirement is Met.

The HRCP Rule 23(a)(3) requirement that the named plaintiffs' claims be "typical" is satisfied where there is no conflict of interest between the claims of the named plaintiffs and the claims of the class. *See Life of the Land v. Land Use Commission,* 63 Haw. at 183, 623 P.2d at 444-45 ("[r]eading the third and fourth preconditions together, we too equate 'typicality with the absence of conflict of interest.'") Typicality does not mean the representative's claims must be coextensive with, or factually identical to, those of the putative class. *Blackie v. Barrack,* 524 F.2d 891, 910 (9th Cir. Cal. 1975); *Guenther v. Pacific Telecom, Inc.,* 123 F.R.D. 333, 336 (D. Or. 1988). "Varying factual differences between the claims or defenses of the class and the class representative will not render the named representative's claim atypical." *Von Collin v. County of Ventura*, 189 F.R.D. 583, 591 (C.D. Cal. 1999). *See generally Westways World Travel v. AMR Corp.*, 218 F.R.D. 223, 235 (C.D. Cal. 2003).

Plaintiffs' claims in this action arise from the same course of alleged conduct as all the other proposed Settlement Class members' claims. All claims are based on the same legal theories – unfair and deceptive trade practices in violation of HRS § 480-2 and § 480-13(a), and wrongful foreclosure. Moreover, each Settlement Class member's claim, including each Plaintiff's claim, presents the same questions of law: (1) whether the alleged conduct at issue violates HRS Chapter 480, and (2) whether the aforesaid alleged violations were a legal cause of injury.

Based on the foregoing, it is apparent that Plaintiffs' claims are "typical" of the proposed Settlement Class members' claims and the typicality requirement is readily satisfied.

5. The Adequacy Requirement Is Met

The fourth requirement of HCRP Rule 23(a) is satisfied where "the representative part[y] will adequately protect the interests of the class" and class counsel is able to prosecute the action vigorously on behalf of the class. *Hanlon v. Chrysler Corp.,* 150 F.3d 1011, 1029 (9th Cir. 1998); *In re THQ*, 2002 U.S. Dist. LEXIS 7753 at 20. (2002).

Here, the proposed Class Representatives will fairly and adequately protect the interests of the Settlement Class. As noted, the interests of the proposed Class Representatives are

coextensive and wholly compatible with those of Settlement Class members. *See Sosna v. Iowa*, 419 U.S. 393, 403 (1975) (finding that the requirement of adequacy of representation was met because the interests of the plaintiffs did not conflict with those of the other class members). Plaintiffs are able representatives of the proposed Settlement Class and are fully aware of their duties to the Settlement Class and there are no special circumstances which would prevent Plaintiffs from acting in this representative capacity. *Id.*

Plaintiffs are represented by the firms of Bickerton Law Group LLLP ("BLG"), Perkin & Faria, and Affinity Law Group. Plaintiffs' counsel are experienced and capable civil litigators, with significant background and experience in consumer class action cases. In just the past five years, BLG has served as counsel for plaintiffs in more than twenty consumer or employee class actions and has handled additional class actions with other firms. *See* Bickerton Declaration. Class Counsel is therefore demonstrably competent and has a track record that shows that they will fairly and skillfully pursue this action with vigor on behalf of all Settlement Class members. *See Specialty Cabinets & Fixtures v. Am. Equitable Life Ins.*, 140 F.R.D. 474, 476 (S.D. Ga. 1991). The adequacy element is satisfied.

Application of the above criteria to this case establishes that a class action for settlement purposes is the only practicable way for this action to be maintained. Moreover, every requirement of HRCP 23 is satisfied with respect to the proposed Settlement Class, especially in light of the "traditional flexibility afforded by Rule 23." *Buchholtz v. Swift & Company*, 62 FRD 581, 600 (D. Minn. 1973).

6. Common Factual and Legal Questions Predominate Over the Interests of Individual Members of the Settlement Class

The comments of the Federal Rules Advisory Committee provide the following guidance:

> The interests of individuals in conducting separate lawsuits may be so strong as it calls for denial of a class action. On the other hand, these interests may be theoretic rather than practical; the class may have a high degree of cohesion and prosecution of the action through representatives would be quite unobjectionable, or the amounts at stake for individuals may be so small that separate suits would be impracticable.

Rules Advisory Committee Notes to 1966 Amendments to Rule 23, Fed. R. Civ. P.

In this case, class action treatment for settlement purposes is a superior method of adjudication. Rule 23(b)(3)'s procedural device was designed to conserve the resources of

both the court and the parties. Therefore, in determining whether to certify a settlement class under Rule 23(b)(3), the central inquiry is whether economies of time, effort, and expense will be achieved, and whether uniformity of decisions will be attained. *See Newberg,* § 17:1-17:12 at 296-335 (4th. ed. 2002). *See also Philadelphia Electric Co. v. Anaconda American Brass Co.*, 43 F.R.D. 452, 458-59 ("the proper function of the court is to apply the Rule in a manner best calculated to...advance, or at least not prejudice, recognized goals of public policy").

V. THE SETTLEMENT AGREEMENT IS FAIR, REASONABLE, AND ADEQUATE AND SHOULD BE PRELIMINARILY APPROVED

It is well established that "the law favors the resolution of controversies through compromise or settlement rather than by litigation." *Kamaunu v. Kaaea*, 99 Hawaii 503, 507, 57 P.3d 428, 432 (2002) (citing *Sylvester v. Animal Emergency Clinic*, 72 Haw. 560, 566, 825 P.2d 1053, 1056 (1992)). Toward that end, the Hawaii Supreme Court recognizes that:

> this alternative to court litigation not only brings finality to the uncertainties of the parties, but is consistent with this court's policy to foster amicable, efficient and inexpensive resolutions of disputes. In turn, it is advantageous to judicial administration and thus to government and its citizens as a whole.

Id.

The law's partiality toward settlement has "particular force in class actions." *Newberg* § 13:63. Thus, in considering a proposed class settlement, "courts generally view facts in a light favorable to settlement." *Id.* The settlement must be evaluated as a whole to determine whether it is generally fair to the class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Court have identified factors which may be considered in evaluating the fairness of a class action settlement:

> Although Rule 23(e) is silent respecting the standard by which a proposed settlement is to be evaluated, the universally applied standard is whether the settlement is fundamentally fair, adequate and reasonable. The district court's ultimate determination will necessarily involve a balancing of several factors which may include, among others, some or all of the following: strength of Plaintiffs' case; the risk, expense, complexity and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed, and the stage of the proceedings; the experience and views of counsel... and the reaction of the class members to the proposed settlement.

Officers for Justice v. Civil Serv., 688 F.2d 615, 625 (9th Cir. 1982); *cert. denied* 459 U.S. 1217 (1983); *see also In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 944 (9th Cir. 2015);

In re Bluetooth Headset Products Liab. Litig., 654 F.3d 935 (9th Cir. 2011); *Churchhill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004).

The proposed Settlement before the Court is fair, adequate, and reasonable. *See, e.g. In re Pacific Enterprises Sec. Litig.*, 47 F.3d 373, 377 (9th Cir. 1995); *Officers for Justice v. Civil Serv.*, 688 F.2d 615, 625 (9th Cir. 1982); *cert. denied* 459 U.S. 1217 (1983). It was negotiated at arm's-length by experienced counsel on all sides and meets the foregoing criteria. Under the terms of the Settlement, Settlement Class Members will be substantially compensated, with the Court directing the distribution of the Settlement Fund to the Settlement Class Members based upon the equitable formula determined by Class Counsel and described above.

A. The Settlement Agreement Fairly Balances the Risk of Litigation and the Benefit to the Settlement Class of a Certain Recovery

Several years of litigation—in actions against third parties in which JPMC was not named as a defendant—preceded the resolution of the claims being settled herein. Discovery and extensive motions practice took place during those years, as well as long stays pending appeals in certain related cases. Further litigation, including appeals, poses risk to both sides in this action. It is Plaintiffs' position that JPMC faces liability for treble damages if all potential defenses could be overcome, and would be required to pay a substantial sum in statutory attorneys' fees if it did not prevail on Plaintiffs' UDAP claim. On the other hand, the Settlement Class risks recovering nothing on its claims, many of which have yet to be tested in the Hawaii courts, including with respect to the issue of proving damages.

As the Court knows, the law of wrongful foreclosure in Hawaii has been vigorously litigated throughout the past several years. That issues relating to wrongful foreclosure have been up to the Hawaii Supreme Court several times since 2015, starting with *Kondaur Capital Corporation v. Matsuyoshi*, 136 Hawaii 227, 361 P.3d 454 (2015) and followed by *Hungate* and other cases, evidences the contested nature of these cases and the potential risk involved in continuing to litigate them.

B. The Proposed Notice Plan Should Be Approved

1. The Settlement Provides for the Best Method of Notice Practicable Under the Circumstances

In order to comply with the necessary notice requirements, set forth under HRCP Rule 23(c)(2), notice to the Settlement Class of the pendency of this action is warranted and appropriate at this juncture. Hawai'i Rules of Civil Procedure, Rule 23(c)(2) provides:

> In any class action maintained under subdivision (b)(3), the Court ***shall direct*** to the members of the class ***the best notice practicable under the circumstances***, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (A) the court will exclude the member from the class if the member so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusions; and (C) any member who does not request exclusion may, if the member desires enter an appearance through counsel.

HRCP Rule 23(c)(2) (emphasis added).

Notice is required upon conditional certification of the Settlement Class as the Court has an obligation to "protect the interests of absent class members at all stages of litigation." *Montalvo v. Chang,* 64 Haw. 345, 358, 641 P.2d 1321, 1331 (1982), *overruled on other grounds, Chun v. Board of Trustees of Employees' Retirement System,* 92 Haw. 432, 992 P.2d 127 (Hawai'i 2000). Notice serves to protect the interests of members that may wish to opt out and bind those that do not. *In re Gypsum Antitrust Cases*, 565 F.2d 1123, 1125 (9th Cir. 1977). Without prompt notice, the Settlement Class will not have adequate time to exercise the various options to opt out or to have separate counsel as allowed by Haw. R. Civ. P. 23.

With regard to the timing of class notice, Newberg on Class Actions provides:

> There is no occasion for any notice until the propriety of the class action has been determined, at least tentatively. But if it seems obvious that if notice is to be effective – if class members are to have a meaningful opportunity to request exclusion, appear in the action, object to the representation, etc. - ***the invitation must go out as promptly as the circumstances will permit. The Manual for Complex Litigation advises that notice generally be given promptly after class certification.***

Newberg, § 8:9 at 192 (4th ed. 2002) (emphasis added).

HRCP Rule 23(c)(2) requires the "best notice practicable under the circumstances." Courts have universally held that "best notice practicable" under the federal counterpart, FRCP Rule 23(c)(2), is satisfied by mailed notice to class members. *In re Nissan Motor Corp. Antitrust Litigation*, 552 F.2d 1088, 1097 (5th Cir. Fla. 1977) (where individual notice could be given to class members compiled from Defendants' retail delivery report cards, mail out was best); *Malby v. General Electric Credit Corp.,* 61 F.R.D. 59, 1973 U.S. Dist. LEXIS 11417, 18 Fed. R. Serv. 2d (Callaghan) 737 (N.D. Ohio 1973) (individual notice was most appropriate because individual members could be determined); *Ouellette v. International Paper Co.,* 86 F.R.D. 476, 1980 U.S. Dist. LEXIS 10930, 29 Fed. R. Serv. 2d (Callaghan) 789 (D. Vt. 1980), (when class members' identity could be found from town records, individual mail out notice

was most appropriate); *In re Gypsum Antitrust Cases*, 565 F.2d 1123, 1977 U.S. App. LEXIS 5723, 24 Fed. R. Serv. 2d (Callaghan) 1123, 1978-1 Trade Cas. (CCH) P61825 (9th Cir. Cal. 1977) (notice provisions require individual notice by mail).

Exhibit "B" to the Settlement Agreement is a Notice of Proposed Settlement of Class Action, which the Parties propose to send to the individuals identified on the Settlement Class List (sealed Exhibit "A" to the Settlement Agreement) within forty-five (45) days after entry of an order preliminarily approving the settlement (the "Notice Deadline"), as contemplated by the proposed Preliminary Approval Order (Exhibit "D" to the Settlement Agreement). *See* Exhibit "D" to Settlement Agreement ¶ 11; Exhibit "1", § III.B.1; *see also See The Manual for Complex Litigation (Third)*, §30.211. The proposed Preliminary Approval Order contemplates an objection and opt-out deadline of forty-five (45) days after the Notice Deadline. Exhibit "D" to Settlement Agreement ¶ 12.

This Court has jurisdiction over the claims at issue and the parties involved in this action. The proposed Class Notice contains the essential elements necessary to satisfy the requirement of Hawai'i law, including the Hawai'i Rules of Civil Procedure and federal and state due process provisions, such as: the Settlement Class definition, the identities of the parties and their counsel, and information regarding the manner in which requests for exclusions or to opt out may be submitted and a deadline for doing so. The proposed Class Notice provides detailed information to the Settlement Class regarding the terms of the Settlement, in an easy to digest, "plain English" format. The Class Notice also instructs the recipient to contact Class Counsel with any questions. A Settlement Website with information concerning the proceedings in this action, which will be updated as the approval process moves along, will also be established for the benefit of the Settlement Class. Plaintiffs submit that the foregoing notice plan satisfies due process and all requirements of Hawai'i law, and is the best notice practicable under the circumstances.

C. The Settlement Administrator Should Be Appointed

In connection with the Court's preliminary approval of the Settlement, the Parties also ask the Court to appoint KCC Class Action Services, LLC to serve as Settlement Administrator. *See* Exhibit "D" to Settlement Agreement ¶ 10; Exhibit "1", § II.32. KCC Class Action Services, LLC has over eighteen (18) years of experience serving as a settlement administrator in many large and complex class action lawsuits, including experience

administering class action settlements in Hawaii. JPMC will initially fund the Settlement Fund by depositing into a segregated account to be established by the Settlement Administrator the sum of $50,000 to cover the costs of notice and claims administration. *See* Exhibit "1", § III.C.1.a.

D. The Schedule for Final Approval

The next steps in the settlement approval process are to schedule a final approval hearing and notify the Settlement Class of the Settlement and hearing. A proposed schedule is set forth in the proposed Preliminary Approval Order (Exhibit "D" to Settlement Agreement) and set forth below for convenience.

E. Applications for Attorney's Fees and Service Awards

Plaintiffs will separately apply for attorneys' fees and costs and the Service Awards for Class Representatives. *See* Exhibit "1", § III.L; Exhibit "D" to Settlement Agreement, ¶ 20.

VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court enter the proposed Preliminary Approval Order and set the schedule provided therein, also set forth here:

_____, **2019** [45 days after the date of this Order]	Deadline for Notice to be provided to the Settlement Class (Notice Deadline)
_____, **2019** [30 days prior to the Objection Deadline and Opt-Out Deadline]	Deadline for filing of Plaintiffs' Motion for Attorneys' Fees and Costs and Service Awards
_____, **2019** [45 days after the Notice Deadline]	Deadline to file objections or submit requests for exclusion (Objection Deadline and Opt-Out Deadline)
_____, **2019** [45 days after the Notice Deadline]	Deadline for Settlement Class Members to submit an Address Verification Form (Address Verification Deadline)
_____, **2019** [18 days prior to Final Approval Hearing]	Deadline for Parties to file the following: (1) List of persons who made timely and proper requests for exclusion (under seal); (2) Declaration of Notice Procedures; (3) List of names and addresses to whom the Notice was sent (under seal); and (4) Motion and memorandum in support of final approval, including responses to any objections

DATED: Honolulu, Hawaii, March 29, 2019.

JAMES J. BICKERTON
BRIDGET G. MORGAN-BICKERTON
JOHN FRANCIS PERKIN
VAN-ALAN H. SHIMA

Attorneys for Plaintiffs NANCY L. MANCHESTER, WILLARD J. RAPOZA, and PATRICK I. CHAI, individually and on behalf of all others similarly situated

BICKERTON LAW GROUP
A LIMITED LIABILITY LAW PARTNERSHIP
JAMES J. BICKERTON (3085-0)
BRIDGET G. MORGAN-BICKERTON (8705-0)
745 Fort Street, Suite 801
Honolulu, Hawaii 96813
Tel. (808) 599-3811
Fax. (808) 533-2467

PERKIN & FARIA LLLC
JOHN F. PERKIN (1673-0)
841 Bishop Street, Suite 1000
Honolulu, Hawaii 96813
Tel. (808) 523-2300
Fax. (808) 697-5302

AFFINITY LAW GROUP LLLC
VAN-ALAN H. SHIMA (8176-0)
1188 Bishop Street, Suite 3408
Honolulu, Hawaii 96813
Tel. (808) 545-4600
Fax. (808) 545-4601

Attorneys for Plaintiffs
NANCY L. MANCHESTER,
WILLARD J. RAPOZA, and PATRICK I. CHAI

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

NANCY L. MANCHESTER; WILLARD J. RAPOZA; and PATRICK I. CHAI, individually and on behalf of all others similarly situated,

Plaintiff,

vs.

JPMORGAN CHASE BANK, N.A.; and DOE DEFENDANTS 1-50,

Defendants.

CIVIL NO. 19-1-0523-03
(Class Action)

DECLARATION OF JAMES J. BICKERTON IN SUPPORT OF MOTION FOR CERTIFICATION OF CLASS FOR SETTLEMENT PURPOSES ONLY AND FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, CLASS NOTICE, AND DISSEMINTATION PLAN

DECLARATION OF JAMES J. BICKERTON IN SUPPORT OF MOTION FOR CERTIFICATION OF CLASS FOR SETTLEMENT PURPOSES ONLY AND FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, CLASS NOTICE, AND DISSEMINTATION PLAN

I, JAMES J. BICKERTON, hereby declare the following:

1. I am a Partner at the law firm of Bickerton Law Group LLLP ("BLG"). I am licensed and admitted to practice law before all courts in the State of Hawai'i. I am lead counsel for Plaintiffs Nancy L. Manchester, Willard J. Rapoza, and Patrick I. Chai ("Plaintiffs"), individually and on behalf of all persons similarly situated in the above-captioned matter, which has been filed for settlement purposes only, to facilitate the Settlement that is memorialized in Exhibit "1" hereto.

2. In addition to myself, Plaintiffs' legal team in this matter consists of Bridget G. Morgan-Bickerton of BLG, John F. Perkin of Perkin & Faria, and Van-Alan Shima of Affinity Law Group (Ms. Morgan-Bickerton, Mr. Perkin, Mr. Shima, and I are hereinafter collectively referred to as "Class Counsel" or "Plaintiffs' Counsel").

3. I make this declaration in support of the *Motion for Certification of Class for Settlement Purposes Only and for Preliminary Approval of Class Action Settlement, Class Notice, and Dissemination Plan*, filed by Plaintiffs on March 29, 2019 (the "Motion").

4. Attached hereto as Exhibit "1" is a true and accurate copy of a Settlement Agreement by and between Plaintiffs, on behalf of themselves and other similarly situated homeowners (the "Settlement Class", as further defined in Settlement Agreement and Motion) on the one hand, and JPMorgan Chase Bank, N.A. ("JPMC"), on the other hand, together with Exhibits "A" – "D" thereto. Exhibit "A" to the Settlement Agreement consists of a Settlement Class List and has been filed under seal to protect the privacy of the Settlement Class Members.

5. Attached as Exhibit "2" are true and accurate copies of the case dockets in the

following four (4) Federal Class Actions: (1) *Degamo v. Bank of America, N.A.* Civil No. 13-00141 (USDC Hawai'i) ("*Degamo*") (2) *Bald v. Wells Fargo Bank, N.A.*, Civil No. 13-00135 (USDC Hawai'i) ("*Bald*"); (3) *Gibo v. U.S. Bank, N.A.*, Civil No. 12-00514 (USDC Hawai'i) ("*Gibo*"); and (4) *Lima v. Deutsche Bank National Trust Company*, Civil No. 12-00509 (USDC Hawai'i) ("*Lima*"), which I caused to be downloaded from Pacer.

6. The Settlement Class will be adequately represented as Class Counsel have no conflicts of interest and Plaintiffs understand their duties and responsibilities as class representatives and will fairly and adequately represent the Settlement Class and have done so in approving the Settlement.

7. Plaintiffs' legal team will capably prosecute this for-settlement action on behalf of Plaintiffs and the Settlement Class toward the end of consummating the Settlement Agreement. Plaintiffs' legal team has the resources to represent the Settlement Class and consummate the Settlement, including ascertaining current notice addresses for the members of the Settlement Class.

8. Bickerton Law Group has served as lead counsel and co-lead counsel in more than 30 class action cases, and has represented or represents Plaintiffs in several other similar mortgage class action cases.

9. Class counsel have previously handled claims for classes of up to 42,000 and had no problems handling the logistics in those cases, including facilitating settlements.

10. As noted above, Exhibit "A" to the Settlement Agreement is the Settlement Class List. The Settlement Fund (less Settlement Costs, which as defined in the Settlement Agreement (*see id.* § II.35) include any Attorneys' Fees and Expenses awarded by the Court, any Service Awards to the Class Representatives awarded by the Court, all costs of notifying the Settlement

Class about the Settlement, all costs of administering the Settlement, and the fees, expenses and all other costs of the Settlement Administrator) will be distributed to the Settlement Class Members (i.e., all persons and entities in the Settlement Class who do not properly opt-out of the Settlement, *see id.* § II.34) pursuant to an allocation plan, as set forth further below. *Id.* § III.F.1.

11. More specifically, the Settlement Agreement contemplates that the Settlement Administrator will distribute the Settlement Fund (less Settlement Costs) to Settlement Class Members in fixed, tiered amounts, payable by check, based upon strength of claim factors as determined and calculated by Class Counsel, including property value, time since foreclosure, and whether the applicable foreclosure had one of the following circumstances: (a) the auction was postponed without publishing the new auction date in a newspaper, (b) the first publication of the auction date was less than 29 days before the proposed auction date, and/or (c) the property was sold at the auction to a third party, advertised as a quitclaim but actually conveyed by limited warranty deed. *Id.* § III.F.1.

12. Class Counsel, using their experience in litigating and settling over 100 wrongful foreclosure cases in the past seven years, determined that cases with alleged claims backed by an appellate decision or apparent statutory law (i.e., in Class Counsel's opinion, circumstances (a), (b) or (c) listed above) (hereinafter, "Potential Hungate Violations") have a settlement value that is approximately 2.5 times those cases where the only alleged violation is lack of detailed property description in the Notice of Sale or offering a quitclaim deed in the Notice of Sale rather than a limited warranty deed, circumstances that appear to be present in most if not all of the nonjudicial foreclosures at issue in some form (circumstances (d) and (e), respectively) (hereinafter, "Other Potential Claims"). In the settlement context, and given the law that has developed, Class Counsel believes that (1) there is substantially more risk for the Other Potential

Claims and (2) defendants may not value equally, or pay for equally, an alleged claim that is not based on precedent the same as one that is supported by, for example, an appellate decision.

13. Class Counsel believes that all members of the Settlement Class have Other Potential Claims. Class Counsel believes there are 119 Settlement Class members who in addition have claims for Potential Hungate Violations. Thus, Class Counsel believes there are 123 Settlement Class members with **only** Other Potential Claims. Accordingly, a reasonable and fair allocation of the gross Settlement is $3,656,359 for the "Other Potential Claims Group" and $8,843,601 for the "Potential Hungate Violations Group". This means that the **average** Settlement Class Member with only Other Potential Claims be allocated $29,726.50, while those who in addition have claims for Potential Hungate Violations will **on average** be allocated $74,315.97. The calculations set forth herein are before the deduction of Settlement Costs, including Attorneys' Fees and Expenses of Class Counsel, which will reduce the amount of the actual payments to Settlement Class Members. *See* Exhibit "1" (Settlement Agreement) § III.F.1.

14. Having allocated the Settlement Payments between the two groups, it was also necessary to allocate it fairly ***within*** each group. Each Settlement Class Member allegedly suffered damages for being foreclosed upon in a manner that allegedly did not comply with certain legal requirements. However, some were foreclosed upon earlier than others and thus any time-based damages components would be greater for them. Likewise, some properties are worth more than others and would thus have correspondingly higher rental values. Class Counsel allocated 80% of the group award to the value of having "lost property" generally and thus that 80% is allocated in equal shares among the members of that group.

15. Class Counsel determined to allocate the remaining 20% among the group

members by a formula (the "Value-Time Factor") that allocated their share based upon a hypothetical "lost rental value" figure calculated by the number of months since foreclosure multiplied by 0.4167% of the property's county-assessed market value (a figure that, in Class Counsel's opinion, corresponds well to market rental value), but assuming a minimum monthly rental value of $1000 for any and all properties and a maximum rental value of $4000 per month for any property. (Class Counsel have a spreadsheet and can provide these figures to the Court and the Settlement Administrator upon request.) This accounted for both length of time and value of the property, and varied for each member of the group, providing a factor to calculate each group member's Value Time Factor.

16. Thus, for example, in the Potential Hungate Violations Group, the Value-Time Factor produced a sum that ranged from $8087 at the low end for a property foreclosed at the very end of the period and valued at only $151,000 by its County, to $40,620 at the high end for a property foreclosed nearly two years earlier that was valued by its County at $1,049,000. The variable Value-Time Factor figure is added to the fixed base sum of $59,453 that each member of the group is allocated equally.

17. In the Other Potential Claims Group, the base amount each Settlement Class Member receives is 80% of $29,726.50, or $23,781. The Value-Time Factor for the members of this group varies between $2387 (for a property valued by the County at $193,000 and foreclosed in late 2010) to $12,063 for a property worth nearly $1 million foreclosed in late 2008.

18. Accordingly, Class Counsel expects that participating Settlement Class Members will receive an average net payment of $34,000, with net payments ranging from approximately $17,000 up to $65,000 (i.e. after deducting costs for administering the Settlement and accounting

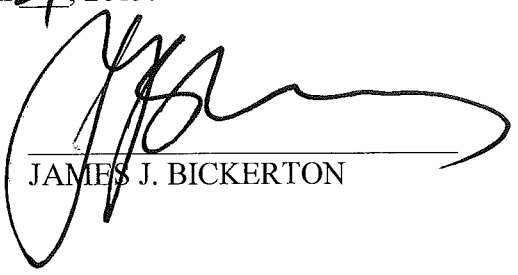
for any service awards to the named Plaintiffs and any award of attorneys' fees and costs to Class Counsel).

19. All of the above allocation figures would be reduced pro-rata by the applicable share of Settlement Costs to determine the net distribution amount to each Settlement Class member in a way that causes each member to have the same percentage reduction of their allocation after deduction of the Settlement Costs.

20. Class Counsel subscribes to a web-based skip tracing service through which they have ascertained and can update current notice addresses for Settlement Class Members. This service has proved to have a high accuracy of over 95% in our firm's prior use of the service.

I, James J. Bickerton, do declare under penalty of law that the foregoing is true and correct.

DATED: Honolulu, Hawai'i, March 29, 2019.



JAMES J. BICKERTON