

**UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII**

STEPHEN G. AQUILINA and LUCINA J. AQUILINA, Individually and on Behalf of All Others Similarly Situated; and DONNA J. CORRIGAN and TODD L. CORRIGAN, Individually and on Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

CERTAIN UNDERWRITERS AT LLOYD’S LONDON; LLOYD’S SYNDICATE #2003; LLOYD’S SYNDICATE #318; LLOYD’S SYNDICATE #4020; LLOYD’S SYNDICATE #2121; LLOYD’S SYNDICATE #2007; LLOYD’S SYNDICATE #1183; LLOYD’S SYNDICATE #1729; LLOYD’S SYNDICATE #510; BORISOFF INSURANCE SERVICES, INC. d/b/a MONARCH E&S INSURANCE SERVICES; SPECIALTY PROGRAM GROUP, LLC d/b/a SPG INSURANCE SOLUTIONS, LLC; ALOHA INSURANCE SERVICES, INC.; ILIKEA LLC d/b/a MOA INSURANCE SERVICES HAWAII; and DOES 1-100,

Defendants.

No. 1:18-cv-00496-ACK-KJM

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement Agreement” or “Agreement”) is made as of July 29, 2021, by and between, as hereinafter defined, (a) Plaintiffs, on behalf of themselves and Class Members, and (b) Lloyd’s Syndicates 2003, 318, 4020, 2121, 2007, 1183, 1729, and 510 (collectively, “Underwriters”), Borisoff Insurance Services, Inc. d/b/a Monarch E&S Insurance Services, Specialty Program Group, LLC d/b/a SPG Insurance Solutions, LLC (collectively, “Monarch”), Aloha Insurance Services, Inc. (“Aloha”), and Ilikea LLC d/b/a Moa Insurance Services Hawaii (“Moa”) (and together with Aloha, Monarch, and Underwriters, “Defendants”), and subject to preliminary and final Court approval as required by Rule 23 of the Federal Rules of Civil Procedure. Plaintiffs and Defendants enter into this Agreement by and through their respective counsel. By this Agreement, Plaintiffs and Defendants seek to and do hereby resolve all claims of the Plaintiffs and the Class Members (as defined in this Agreement) as specifically set forth herein and that were asserted in the action titled *Aquilina v. Certain*

Underwriters at Lloyd's London, et al., No. 18-cv-00496-ACK-KJM (D. Haw.) (the "Litigation"). Plaintiffs and Defendants are collectively referred to herein as the "Parties."

Recitals

- 1.1. This Litigation arose in part from the purchase and sale of surplus lines homeowners' insurance for residential properties located in Lava Zone 1 on the island of Hawai'i that was brokered by Monarch and was underwritten and/or subscribed to by Underwriters that contained an exclusion for the peril of lava and/or lava flow.
- 1.2. On December 21, 2018, Plaintiffs filed a class action lawsuit on behalf of themselves and a class of those who were similarly situated against Defendants alleging violations of certain Hawai'i statutes and Hawai'i common law relating to the offering, marketing, and sale of surplus lines insurance. On December 12, 2019, Plaintiffs filed a First Amended Class Action Complaint. On February 10, 2021, Plaintiffs filed a Second Amended Class Action Complaint.
- 1.3. This Settlement resulted from good faith, arm's-length settlement negotiations, including a full-day mediation before Keith Hunter of Dispute Prevention & Resolution, Inc. and numerous subsequent telephonic mediation sessions with Mr. Hunter.
- 1.4. Class Counsel conducted a thorough examination and evaluation of the relevant law and facts to assess the merits of the claims to be resolved in the Settlement and how best to serve the interests of Class Members. Based on this investigation and the negotiations described above, Class Counsel have concluded, taking into account the sharply contested issues involved, the risks, uncertainty, and cost of further prosecution of the Litigation, and the substantial benefits to be received by Class Members pursuant to this Settlement, that a settlement with Defendants on the terms set forth in this Settlement is fair, reasonable, adequate, and in the best interests of Class Members.
- 1.5. Defendants deny any wrongdoing whatsoever, and this Agreement shall in no event be construed or deemed to be evidence of or an admission or concession on the part of Defendants with respect to any claim of fault or liability or wrongdoing or damages whatsoever, any infirmity in the defenses that Defendants asserted or would assert, or to Plaintiffs' ability to satisfy the requirements of the Federal Rule of Civil Procedure Rule 23. Nevertheless, given the risks, uncertainties, burden, and expense of continued litigation, Defendants have agreed to settle the Litigation on the terms as set forth in this Settlement, subject to Court approval.
- 1.6. The Parties now agree to settle the Litigation in its entirety, without any admission of liability, with respect to all Released Claims (as defined below) of Class Members. The Parties intend this Agreement to bind Plaintiffs, Defendants, and all Class Members that do not timely and validly exclude themselves from the Settlement.

NOW, THEREFORE, in light of the foregoing, for good and valuable consideration, the receipt of which is hereby mutually acknowledged, it is hereby stipulated and agreed by the Parties

that the Litigation be settled, compromised, and dismissed on the merits and with prejudice, subject to preliminary and final Court approval, as required by Rule 23, on the following terms and conditions:

Definitions

- 2.1. **Aloha:** The term “Aloha” shall mean Aloha Insurance Services, Inc. and its successors, predecessors, trustees, subsidiaries, parents, divisions, affiliates, officers, directors, principals, partners, employees, attorneys, stockholders, agents, and any and all firms, corporations and entities in which they have an interest, including but not limited to, Peter B. “Tad” Nottage, John P. Greenlee, and Marilou Schmidt, exclusive of any defendants in the State Court Lawsuits that are not Releasees.
- 2.2. **Claims Administration:** The term “Claims Administration” shall mean the Notice Program, providing notice pursuant to the Class Action Fairness Act (“CAFA”), 28 U.S.C. §1715(b), as well as the processing of and payment of claims by the Settlement Administrator, as well as any other duties and obligations of the Settlement Administrator, as set forth in the Settlement.
- 2.3. **Class Counsel:** The term “Class Counsel” shall mean Scott+Scott Attorneys at Law, LLP, Wood Law Firm, LLC, and Damon Key Leong Kupchak Hastert, a Law Corporation, and any owner, officer, principal, partner, member, shareholder, employee, and/or agent thereof.
- 2.4. **Class Members:** The term “Class Members” wherever used herein shall mean all persons who purchased a surplus lines insurance policy for a residential property located in Lava Zone 1 on the island of Hawai‘i with a Lava Exclusion at any time during the period of January 1, 2012 through and including May 4, 2018 (“Class Period”) that was brokered through Monarch and underwritten and/or subscribed to by Underwriters. Specifically excluded from the definition of “Class Members” are Defendants; all officers, directors, or employees of Defendants; any entity in which any Defendant has a controlling interest; and any affiliate, legal representative, heir, or assign of any Defendant. Also excluded are any federal, state, or local governmental entities, any judicial officer presiding over this Litigation and the members of his/her immediate family and judicial staff.
- 2.5. **Complaints:** The term “Complaints” shall mean the original Complaint, First Amended Complaint, and/or Second Amended Complaint filed in *Aquilina v. Certain Underwriters at Lloyd’s London, et al.*, No. 18-cv-00496-ACK-KJM (D. Haw.).
- 2.6. **Costs of Settlement Administration:** The term “Costs of Settlement Administration” shall mean all reasonable actual costs and expenses of the Settlement Administrator associated with or arising from the Claims Administration and the Notice Program. The Costs of

Settlement Administration shall be paid to the Settlement Administrator as set forth in this Settlement.

- 2.7. **Court:** The term “Court” shall mean the United States District Court for the District of Hawaii.
- 2.8. **Defendants:** The term “Defendants” shall mean Underwriters, Monarch, Aloha, and Moa, collectively.
- 2.9. **Effective Date:** The term “Effective Date” shall mean the first business day after which all of the following events have occurred: (a) Class Counsel and Defendants’ counsel have executed this Settlement; (b) following notice to Class Members, the Court has entered the Final Approval Order and Judgment without material change to either the Parties’ Settlement or agreed-upon proposed Final Approval Order and Judgment, as described in this Settlement and attached hereto as Exhibit D; and (c)(i) the time for seeking rehearing, appellate, or other review of the Final Approval Order and Judgment has expired with no appeal, motion for rehearing, or motion for further review being filed, except as specifically described further in this definition; or (ii) the Final Approval Order and Judgment is affirmed on appeal or review without material change, no other appeal or petition for rehearing or review is pending, and the time period during which further petition for hearing, review, appeal, or certiorari could be taken has finally expired. The Effective Date shall not be altered, precluded, or delayed in the event the Court declines to approve, in whole or in part, the payment of attorneys’ fees, costs, and expenses or Service Awards in the amounts that Class Counsel requests but otherwise enters a Final Order and Judgment without material change to the remainder of the Settlement or the agreed-upon proposed Final Order and Judgment. Further, the Effective Date shall not be altered, precluded, or delayed in the event that an appeal is filed, with the sole issues on appeal being the award of attorneys’ fees, costs, and/or expenses to Class Counsel and/or Service Award.
- 2.10. **Enumerated State Court Lawsuits:** The term “Enumerated State Court Lawsuits” shall mean the following lawsuits: *Aquilina et al. v. Certain Underwriters et al.* (3CC) No. 19-1-144; *Compere et al. v. Certain Underwriters et al.* (3CC) No. 3CCV-19-055; *Golden et al. v. Certain Underwriters et al.* (3CC) No. 18-1-327; *Gribi et al. v. Certain Underwriters et al.* (3CC), Civ. No. 3CCV-20-171; *Haysmer et al. v. Certain Underwriters et al.* (3CC) No. 18-1-173; *Lane et al. v. Certain Underwriters et al.* (3CC) No. 18-1-182; *Osborne v. Certain Underwriters et al.* (3CC) No. 18-1-197; *Holder et al. v. Certain Underwriters at Lloyd’s, London, et al.* (3CC) No. 3CCV-20-0000235; *Honua Real Estate Group, LLC et al. v. Certain Underwriters et al.* (3CC) No. 18-1-267; *MacKnight v. Certain Underwriters at Lloyd’s London et al.* (3CC) No. 19-1-0173; *Szuromi v. Certain Underwriters et al.* (3CC) No. 20-000179.

- 2.11. **Escrow Account:** The term “Escrow Account” shall mean the interest-bearing account to be established by the Settlement Administrator consistent with the terms and conditions described in the Settlement. The Parties agree that the Escrow Account is intended to be maintained as a qualified settlement fund within the meaning of Treasury Regulation §1.468B-1, and that the Settlement Administrator, within the meaning of Treasury Regulation §1.468B-2(k)(3), shall be responsible for filing tax returns and any other tax reporting for or in respect of the Escrow Account and paying from the Escrow Account any Taxes owed with respect to the Escrow Account. The Parties agree that the Escrow Account shall be treated as a qualified settlement fund from the earliest date possible, and agree to any relation-back election required to treat the Escrow Account as a qualified settlement fund from the earliest date possible.
- 2.12. **Final Approval Order and Judgment:** The term “Final Approval Order and Judgment” shall mean the order and judgment that the Court enters upon Final Approval and in the form of, or materially in the form of, the proposed Final Approval Order and Judgment attached hereto as Exhibit D. In the event that the Court issues separate orders addressing the matters constituting Final Approval, then the Final Approval Order and Judgment includes all such orders.
- 2.13. **Final Approval:** The term “Final Approval” shall mean the date that the Court enters an order and judgment granting final approval of the Settlement and determines the amount of fees, costs, and expenses awarded to Class Counsel and the amount of the Service Award. In the event that the Court issues separate orders addressing the foregoing matters, then Final Approval means the date of the latest of such orders.
- 2.14. **Lava Exclusion:** The term “Lava Exclusion” means an exclusion for the peril of lava and/or lava flow causing direct or indirect physical damage or loss of use of the insured property that was contained in a surplus lines insurance policy for a residential property located in Lava Zone 1 on the island of Hawai‘i.
- 2.15. **Lava Zone 1:** The term “Lava Zone 1” means the zone or area designated by the U.S. Geological Survey map on the island of Hawai‘i for volcanic hazard zones as having the highest risk of experiencing lava flow.
- 2.16. **Moa:** The term “Moa” shall mean Ilikea LLC d/b/a Moa Insurance Services Hawaii and its successors, predecessors, trustees, subsidiaries, parents, divisions, affiliates, officers, directors, principals, partners, employees, attorneys, stockholders, agents, and any and all firms, corporations and entities in which they have an interest, including but not limited to Judy Moa, exclusive of any defendants in the State Court Lawsuits that are not Releasees.
- 2.17. **Monarch:** The term “Monarch” shall mean Borisoff Insurance Services, Inc. d/b/a Monarch E&S Insurance Services, Specialty Program Group, LLC d/b/a SPG Insurance

Solutions, LLC and all of their respective successors, predecessors, trustees, subsidiaries, parents, divisions, affiliates, officers, directors, principals, partners, employees, attorneys, stockholders, agents, and any and all firms, corporations and entities in which they have an interest, including but not limited to, Derek Borisoff, Dave Skogstrom, Bea Maldonado, Debbie Perry, and Mark Kaufman, exclusive of any defendants in the State Court Lawsuits that are not Releasees.

- 2.18. **Notice:** The term “Notice” shall mean the notices of proposed class action settlement that the Parties will ask the Court to approve in connection with the motion for preliminary approval of the Settlement.
- 2.19. **Notice Date:** The term “Notice Date” shall mean the date by which the Settlement Administrator is required to send out Mail Notice, which shall be 30 days after entry of the Preliminary Approval Order unless a different deadline is set by the Court.
- 2.20. **Notice Program:** The term “Notice Program” shall mean the notice plan and methods provided for in this Settlement and consists of: (a) a direct mail notice to Class Members (“Mail Notice”); (b) publication notice (as described in more detail below) (“Publication Notice”); (c) notice posted on the Settlement Website; and (d) such other notice as is required by due process and Rule 23. The Notice Program shall be effected in substantially the manner provided for in this Settlement.
- 2.21. **Objection Deadline:** The term “Objection Deadline” shall mean 114 days after entry of the Preliminary Approval Order.
- 2.22. **Opt-Out Deadline:** The term “Opt-Out Deadline” shall mean 114 days after entry of the Preliminary Approval Order.
- 2.23. **Parties:** The term “Parties” shall mean Plaintiffs and Defendants.
- 2.24. **Plaintiffs:** The term “Plaintiffs” shall mean Plaintiffs Stephen and Lucina Aquilina (the “Aquilina Plaintiffs”) and Todd and Donna Corrigan (the “Corrigan Plaintiffs”).
- 2.25. **Preliminary Approval Order:** The term “Preliminary Approval Order” shall mean the order preliminarily approving the Settlement and, among other things, ordering that notice be provided to Class Members, and in the form of, or materially in the form of, the proposed Preliminary Approval Order attached hereto as Exhibit C.
- 2.26. **Released Claims:** The term “Released Claims” shall mean those claims described in the mutual releases set forth in Section 9 below.
- 2.27. **Releasees:** The term “Releasees” shall mean Underwriters, Monarch, Aloha and Moa collectively.

- 2.28. **Releasers:** The term “Releasers” shall mean the Class Members who do not opt out of the settlement, collectively.
- 2.29. **Service Award:** The term “Service Award” shall mean a payment of up to \$2,500 each to the Aquilina Plaintiffs and the Corrigan Plaintiffs, subject to Court approval, in compensation for their involvement in this Litigation and service on behalf of other Class Members.
- 2.30. **Settlement Administrator:** The term “Settlement Administrator” shall mean the entity mutually selected by the Parties and approved by the Court to effectuate the Notice Program and Claims Administration per the terms of this Settlement.
- 2.31. **Settlement Agreement or Settlement:** The term “Settlement Agreement” or “Settlement” shall mean this settlement agreement and release, including exhibits hereto.
- 2.32. **Settlement Website:** The term “Settlement Website” shall mean the website that the Settlement Administrator will establish as soon as practicable following entry of the Preliminary Approval Order, but no later than the Notice Date, as a means for Class Members to obtain notice of and information about the Settlement, through and including hyperlinked access to the Settlement, Notice, Preliminary Approval Order, Complaint, and such other documents as Class Counsel posts, or that the Court orders posted, on the website. These documents shall remain on the Settlement Website at least 60 days after the Effective Date. The URL of the Settlement Website shall be decided by Class Counsel. The Settlement Website shall not include any advertising and shall remain operational until at least 60 days after the Effective Date.
- 2.33. **State Court Lawsuits:** The term “State Court Lawsuits” wherever used herein shall mean any lawsuits filed by plaintiffs who own residential property in Lava Zone 1 who filed suit in state court in Hawai‘i against Underwriters and any other Defendants involving homeowner’s insurance policies with a Lava Exclusion issued between January 1, 2012 through and including May 4, 2018 that were brokered through Monarch and underwritten and/or subscribed to by Underwriters.
- 2.34. **Underwriters:** The term “Underwriters” shall mean Lloyd’s Syndicates 2003, 318, 4020, 2121, 2007, 1183, 1729, and 510 doing business within the Lloyd’s of London insurance market, their current, former or future members, capital providers or managing agents and in each case all of their respective successors, predecessors, trustees, managing agencies, subsidiaries, parents, divisions, affiliates, members, officers, directors, principals, partners, employees, attorneys, stockholders, agents, and any and all firms, corporations and entities in which they have an interest (in each such case, whether current, former or future), exclusive of any defendants in the State Court Lawsuits that are not Releasees.

Settlement Class

- 3.1. For settlement purposes only, Class Counsel shall seek, and Defendants shall not oppose, the certification of the following Settlement Class pursuant to Fed. R. Civ. P. 23(b)(2) and (b)(3), defined as:

All persons who purchased a surplus lines insurance policy for a residential property located in Lava Zone 1 on the island of Hawai'i with a Lava Exclusion at any time during the period of January 1, 2012 through and including May 4, 2018 ("Class Period") that was brokered through Monarch and underwritten and/or subscribed to by Underwriters.

Excluded from the Settlement Class are Defendants; all officers, directors, or employees of Defendants; any entity in which any Defendant has a controlling interest; and any affiliate, legal representative, heir, or assign of any Defendant. Also excluded are any federal, state, or local governmental entities, any judicial officer presiding over this Litigation and the members of his/her immediate family and judicial staff.

- 3.2. For settlement purposes only, Class Counsel shall seek, and Defendants shall not oppose, the appointment of Class Counsel as settlement class counsel and the appointment of Plaintiffs as settlement class representatives. Plaintiffs will move for provisional certification of the Settlement Class, for settlement purposes only, contemporaneously with their motion for preliminary approval of the Settlement. Defendants agree not to contest provisional certification of the Settlement Class for settlement purposes only.
- 3.3. Within seven (7) days after preliminary approval, or as soon as practicable, Class Counsel shall provide, or cause to be provided, to the Settlement Administrator and Defendants with a class list reflecting: the available contact information (*i.e.*, name and mailing address) of each person falling under Class Members definition (the "Class List").

Settlement Consideration

- 4.1. In exchange for the mutual promises and covenants in this Agreement, including, without limitation, the Releases set forth below and the dismissal of the Litigation upon the Effective Date, Defendants agree to pay and provide the settlement consideration described in this Section 4 (the "Settlement Consideration").
- 4.2. In no event shall Defendants be required to pay or provide more than the Settlement Consideration in connection with this Settlement.
- 4.3. Within 60 (sixty) days of the Final Approval Order, Releasees agree to pay into a common fund \$1,800,000 (the "Settlement Fund") in the following amounts:

- a. Underwriters - \$1,400,000 (one million four hundred thousand dollars);
 - b. Monarch - \$200,000 (two hundred thousand dollars);
 - c. Aloha - \$100,000 (one hundred thousand dollars); and
 - d. Moa - \$100,000 (one hundred thousand dollars).
- 4.4. Releasees also agree to pay up to \$50,000 to the Settlement Administrator to defray the actual expenses of notice of the Settlement and all expenses attendant to the administration of the proposed class action settlement, with the allocation of this amount to be agreed upon by Releasees (“Settlement Administration Payment”). Releasees will pay actual invoiced costs no earlier than 30 (thirty) days of preliminary approval of this Settlement. Underwriters and Monarch have agreed as part of the consideration for this settlement to each pay 50% of these expenses, up to the \$50,000 maximum combined expense. To the extent the Costs of Settlement Administration exceed the Settlement Administration Payment (“Additional Costs of Settlement Administration”), those Additional Costs of Settlement Administration will be paid by the Settlement Fund.
- 4.5. The Settlement Fund shall fund the following payments of the Settlement Consideration, as set forth below:
- a. Payment of Additional Costs Associated with Administration of Settlement, Service Awards, Attorneys’ Fees, and Expenses of Litigation. The Settlement Fund will first be used to pay any Additional Costs of Settlement Administration and all Plaintiffs’ attorneys’ fees and expenses and Plaintiffs’ Service Awards as awarded by the Court. For the avoidance of doubt, all Additional Costs of Settlement Administration, attorneys’ fees (including any interest earned thereon), costs, and expenses, and Service Awards approved by the Court shall be paid from the Settlement Fund as follows:
 - i. *Payment of Additional Costs of Settlement Administration.* Any Additional Costs of Settlement Administration will be paid by the Settlement Fund.
 - ii. *Service Awards.* Class Counsel will ask the Court to approve, and Defendants will not oppose, Service Awards of up to \$2,500 to each of the Aquilina Plaintiffs and the Corrigan Plaintiffs (collectively \$5,000) to compensate them for their uncompensated time, expenses, and efforts in the litigation and commitment on behalf of the Settlement Class. Any Service Awards approved by the Court will be paid from the Settlement Fund. Neither Class Counsel’s application for, nor any individual’s entitlement to, a Service Award shall be conditioned in any way upon such individual’s

support for this Settlement. The Service Awards shall be severable and separate, such that the Court's failure to approve any or all of the amount of the Service Awards shall not invalidate or otherwise affect the settlement.

iii. *Attorneys' Fees and Expenses of Litigation.* Class Counsel will request up to 33.3% of the gross Settlement Fund, including any interest earned thereon, from the Court for their attorneys' fees and will additionally request reimbursement of their reasonable costs and expenses incurred in this litigation from the Settlement Fund.

b. Payment of Approved Claims to Class Members. The balance of the Settlement Fund, after paying Costs of Settlement Administration, Service Awards, attorneys' fees, and expenses of litigation, and any taxes (the "Net Settlement Fund"), shall be used to fund Class Member distributions, as follows:

i. The Parties have agreed on the following plan to distribute the Net Settlement Fund to Class Members (the "Distribution Plan"): The Net Settlement Fund shall be distributed to Class Members based on the proportion of total premium dollar amount each Class Member paid during the Class Period. No specific documentation shall be required.

4.6. Defendants shall be under no obligation to fund any other, additional, or greater amount than the Settlement Consideration amounts reflected in Section 4. Class Counsel will not seek attorneys' fees, expenses of litigation, Service Awards, and Additional Costs of Settlement Administration other than as provided for in Section 4.5(a). The finality, effectiveness, fairness, or approval of the Settlement Agreement shall not depend upon the Court awarding any particular amount of attorneys' fees, expenses, Service Awards, or Costs of Settlement Administration.

4.7. The Parties intend that, after these payments and disbursements are made, there will be no funds remaining; however, to the extent there are any funds remaining, those funds shall be conveyed to a *cy pres* trust of the Parties' mutual selection after approval by the Court.

4.8. The funds in the Escrow Account, if any, shall be deemed a "qualified settlement fund" within the meaning of United States Treasury Reg. §1.468B-1, at all times, from the creation of the Escrow Account. All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by the Escrow Account or otherwise, including any taxes or tax detriments that may be imposed upon Defendants, Plaintiffs, and/or Class Counsel, with respect to income earned by the Escrow Account, for any period during which the Escrow Account does not qualify as a "qualified settlement fund" for the purpose of federal or state income taxes or otherwise (collectively, "Taxes"), shall be paid out of the Escrow Account. The Escrow Account shall indemnify and hold Defendants, Plaintiffs, and Class Counsel harmless for all Taxes (including,

without limitation, Taxes payable by reason of any such indemnification) and Defendants, Plaintiffs, and Class Counsel shall have no liability or responsibility for any of the Taxes.

- 4.9. The Parties and their respective counsel have made no representation or warranty with respect to the tax treatment to any Plaintiff or any Class Member of any payment or transfer made pursuant to this Agreement. Each Plaintiff and Class Member shall be solely responsible for the federal, state and local tax consequences to it of the receipt of any funds pursuant to this Agreement.

Preliminary Approval

- 5.1. Upon execution of this Settlement, Class Counsel shall promptly move the Court for an order granting the Preliminary Approval Order, substantially in the form attached hereto as Exhibit C. The motion for preliminary approval shall request that the Court: (a) preliminarily approve the terms of the Settlement as within the range of fair, adequate, and reasonable; (b) provisionally certify Class Members pursuant to Fed. R. Civ. P. 23(b)(3) and 23(e) for settlement purposes only; (c) approve the Settlement Administrator and Notice Program set forth herein, form and content of the Notice, and Claim Form as meeting the standard of “best notice practicable” under Fed. R. Civ. P. 23(c)(2)(B); (d) approve the procedures set forth in this Settlement for Class Members to exclude themselves from the Settlement Class or to object to the Settlement; (e) stay all proceedings in the Litigation unrelated to the Settlement pending Final Approval of the Settlement; (f) stay and/or enjoin, pending Final Approval of the Settlement, any actions brought by Class Members concerning any Released Claims; (g) appoint Class Counsel and Plaintiffs; and (h) schedule a Final Approval hearing at a date that provides sufficient time for the deadlines contemplated by this Settlement and that is convenient for the Court, at which time the Court will conduct an inquiry into the fairness of the Settlement, determine whether it was made in good faith and should be finally approved, and determine whether to approve Class Counsel’s application for attorneys’ fees, costs, and expenses and Service Awards (the “Final Approval Hearing”).
- 5.2. Within 10 days of the filing of the motion for preliminary approval, Defendants shall serve, or cause to be served a notice of the proposed Settlement on appropriate state officials in accordance with the requirements under CAFA.

Settlement Administrator

- 6.1. The Parties will mutually select and hire a Settlement Administrator. As stated in Section 4.4, Releasees shall pay the first \$50,000 in notice and settlement administration costs with the remainder of such costs to be paid by the Settlement Fund.
- 6.2. Defendants agree that, subject to the Court approving the form and manner of notice and for the purposes of complying with Fed. Rule Civ. P 23(c) and (e), Class Counsel and the

Court-approved Settlement Administrator are authorized to use the Class Member names and addresses that Defendants have produced in discovery to effectuate notice. Class Counsel shall provide the Settlement Administrator with sufficient information about Class Members to permit the Settlement Administrator to process and validate payments to Class Members, including, at a minimum, the names and mailing addresses of all Class Members.

- 6.3. The Mail Notice shall inform all Class Members of the certification of this Settlement Class, the fact that a class Settlement has been reached and preliminarily approved by the Court, the details of that Settlement, the date and time of the Final Approval Hearing, and the opt-out and claims procedures.
- 6.4. The Final Approval Hearing shall be held no earlier than 194 days after the entry of the Preliminary Approval Order.
- 6.5. The Settlement Administrator shall administer various aspects of the Settlement and perform such other functions as are specified for the Settlement Administrator elsewhere in this Settlement, the Claims Administration, and Distribution Plan, including, but not limited to, overseeing administration of the Escrow Account; providing Mail Notice to Class Members, as described in this Settlement; effecting Publication Notice; establishing and operating the Settlement Website and a toll-free number; and distributing cash payments according to the processes and criteria established by this Settlement and the Distribution Plan.
- 6.6. The duties of the Settlement Administrator, in addition to other responsibilities that are described in this Settlement, include:
 - a. implementing the Notice Program required by this Settlement;
 - b. establishing and maintaining a post office box for mailed written notifications of exclusion from Class Members;
 - c. establishing and maintaining the Settlement Website;
 - d. establishing and maintaining a toll-free telephone line for Class Members to call with Settlement Agreement-related inquiries;
 - e. responding to Class Member inquiries;
 - f. processing all written notifications of exclusion from Class Members and providing deficiency notices as set forth herein;
 - g. providing weekly reports and, no later than 10 days after the Opt-Out Deadline, a final report to Class Counsel and Defendants that summarizes the number of written

requests for exclusion received that week, total number of written requests for exclusion received to date, and other pertinent information as requested by Class Counsel and Defendants' counsel;

- h. in advance of the Final Approval Hearing, preparing an affidavit to submit to the Court that: (i) attests to implementation of the Notice Program in accordance with the Preliminary Approval Order; and (ii) identifies each Class Member who timely and validly provided a written request for exclusion;
 - i. after the Effective Date, processing and transmitting payments to Class Members, pursuant to criteria established by this Settlement Agreement and Distribution Plan;
 - j. performing any function related to Claims Administration at the agreed-upon instruction of the Parties, including, but not limited to, verifying that payments have been distributed in accordance with this Settlement.
- 6.7. The Parties, Class Counsel, and Defendants' counsel shall not have any liability whatsoever with respect to (i) any act, omission or determination of the Settlement Administrator, or any of its respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment or distribution of the Escrow Account; (iii) the formulation, design or terms of the disbursement of the Escrow Account; (iv) the determination, administration, calculation or payment of any claims under this Agreement; (v) any losses suffered by or fluctuations in the value of the Escrow Account; or (vi) the payment or withholding of any Taxes, expenses or costs incurred in connection with the taxation of the Escrow Account or the filing of any returns.
- 6.8. The Settlement Administrator shall indemnify and hold harmless the Parties, Class Counsel, and Defendants' counsel for (i) any act or omission or determination of the Settlement Administrator, or any of Settlement Administrator's designees or agents, in connection with the administration of the Settlement; (ii) the management, investment or distribution of the Escrow Account; (iii) the formulation, design or terms of the disbursement of the Escrow Account; (iv) the determination, administration, calculation or payment of any claims asserted under this Agreement; (v) any losses suffered by, or fluctuations in the value of the Escrow Account; or (vi) the payment or withholding of any Taxes, expenses, or costs incurred in connection with the taxation of the Escrow Account or the filing of any returns.

Notice, Opt-Outs, and Objections

- 7.1. Upon entry of the Preliminary Approval Order, at the direction of Class Counsel, the Settlement Administrator will begin implementing the Notice Program provided herein,

using the forms of Notice approved by the Court in the Preliminary Approval Order. The Notice will include, among other information: a description of the material terms of the Settlement; a date by which Class Members may opt-out or object to the Settlement; the date upon which the Final Approval Hearing will occur; and the address of the Settlement Website at which Class Members may access this Settlement Agreement and other related documents and information.

7.2. The Notice Program includes: (1) Mail Notice; (2) Publication Notice, and (3) Notice on the Settlement Website. The Notice Program is to be implemented as follows:

- a. Within seven (7) days after preliminary approval, or as soon as practicable, Class Counsel shall provide, or cause to be provided, the Settlement Administrator with the Class List;
- b. Mail Notice, substantially in the form attached hereto as Exhibit A, will be sent to those on the Class List by the Notice Date. For any Mail Notices that are returned undeliverable with forwarding address information, the Settlement Administrator shall re-mail the Mail Notice to the updated address as indicated. For any Mail Notices that are returned undeliverable without forwarding address information, the Settlement Administrator shall use reasonable efforts to identify updated mailing addresses (such as running the mailing address through the National Change of Address Database) and re-mail the Mail Notice to the extent updated addresses are identified. The Settlement Administrator need only make one attempt to re-mail any Mail Notices that are returned as undeliverable;
- c. The Settlement Administrator will cause to be published in the media outlets that are widely read by residents on the Island of Hawai‘i the summary notice attached hereto as Exhibit B. The publications in which the notice will appear and the dates and frequency of the publication notice will be determined by the Settlement Administrator in consultation with the Parties.
- d. By the Notice Date, the Settlement Administrator will create and maintain the Settlement Website, which will contain the information and documents required by this Settlement.

7.3. The Notice shall include a procedure for Class Members to opt-out and exclude themselves from the Settlement by notifying, in writing, the Settlement Administrator, Class Counsel, and Defendants’ counsel of their intent to exclude themselves from the Settlement. Such written requests for exclusion must be postmarked no later than the Opt-Out Deadline, as specified in the Notice. The written request for exclusion must include the name of this Litigation (*Aquilina, et al. v. Certain Underwriters at Lloyd’s London, et al.*, No. 18-cv-00496-ACK-KJM (D. Haw.)); the full name, mailing address, property address, email

address, and telephone number of the Class Member; and the words “Request for Exclusion” at the top of the document or a statement in the body of the document requesting exclusion from the Settlement. No opt outs may be made by representation, unless by an attorney duly retained by the person opting out.

- 7.4. The Settlement Administrator shall provide the Parties with copies of all opt-out requests on a weekly basis and a final list of all who have timely and validly excluded themselves from the Settlement, which Class Counsel may move to file under seal with the Court no later than 10 days prior to the Final Approval Hearing. Any Class Member who does not provide a timely request for exclusion, or who does not provide all information required by this Settlement to exclude itself, shall be bound by the terms of the Settlement, including all releases in the Settlement.
- 7.5. It is stipulated and agreed that Releasees shall have the unilateral right to declare this proposed settlement null and void and of no legal effect:
 - a. If Class Members representing more than a previously-agreed to number of properties opt out of participating in this settlement; or
 - b. If any Class Member who is also a plaintiff in any of the Enumerated State Court Lawsuits opts out of participating in this settlement, subject to the provisions of Section 7.6 and 7.7 below.
- 7.6. If Releasees elect to terminate the Settlement pursuant to this provision, it must notify Class Counsel that it intends to pursue that right pursuant to this provision, if any such right exists, no later than thirty-five (35) days after the Opt-Out Deadline.
- 7.7. If the requirements to terminate the Settlement are met and Releasees provide Class Counsel with notice of their intent to terminate the Settlement, Class Counsel will have 45 days from the date of such notice for the purposes of communicating with any opt-outs to attempt to have such Class Members withdraw their opt-outs and remain in the Settlement. The Parties will use their best efforts to resolve any issues of Class Members who have elected to opt-out, and Releasees agree to cooperate fully with respect to the handling of opt-outs, including communicating to any would-be opt-outs at Class Counsel’s request, to attempt to have such Class Members revoke their opt-outs and remain in the Settlement.
- 7.8. Three Releasees must agree to elect to terminate the Settlement pursuant to this provision. No individual Releasee may elect to terminate the Settlement.
- 7.9. If Releasees elect to terminate the Settlement, the Settlement shall be considered null and void; all of the Parties’ obligations under the Settlement shall cease to be of any force and effect and the Parties shall return to the *status quo ante* in the Litigation as if the Parties had not entered into this Settlement. In addition, in the event of such a termination, all of

the Parties' respective pre-Settlement claims and defenses, including defenses to class certification, will be preserved.

- 7.10. In the event that a Class Member purports to provide notice of its intention to opt out of the Settlement but fails to provide information sufficient to confirm her/his membership in the Settlement Class, the Settlement Administrator shall, within 5 days of receiving the deficient notice, send the Class Member a deficiency notice. The deficiency notice shall inform the Class Member that its attempt to opt out is deficient, invalid, and without legal effect. The deficiency notice shall be sent by the Settlement Administrator via email and, if email is not feasible, then by a USPS Priority Express mail. The deficiency notice shall also inform the Class Member that it must re-submit a valid notice requesting exclusion that includes all of the required information to an email address to be provided by the Settlement Administrator, no later than 10 days from the date of the deficiency notice in order for its opt out to be effective. If the Class Member fails to provide all of the required information necessary to determine her/his membership in the Settlement Class on or before that deadline, then its attempt to opt out shall be invalid and have no legal effect, and the Class Member shall be bound by the Settlement, including the releases.
- 7.11. The Notice shall also include a procedure for Class Members to object to the Settlement, Class Counsel's request for attorneys' fees, expenses, Service Awards, and/or the Costs of Settlement Administration. Objections to the Settlement, Class Counsel's request for attorneys' fees, expenses, Service Awards, and/or the Costs of Settlement Administration must be filed electronically with the Court, or mailed to the Clerk of the Court, Class Counsel, and Defendants' counsel. For an objection to be considered by the Court, the objection must be: (a) electronically filed by the Objection Deadline; or (b) mailed first-class postage prepaid to the Clerk of Court, Class Counsel, and Defendants' counsel at the addresses listed in the Notice and postmarked by no later than the Objection Deadline, as specified in the Notice. For an objection to be considered by the Court, the objection must also set forth:
- a. the name of the Litigation: *Aquilina, et al. v. Certain Underwriters at Lloyd's London, et al.*, No. 18-cv-00496-ACK-KJM (D. Haw.);
 - b. the full name of the objecting Class Member and the full name, address, email address, and telephone number of the person acting on its behalf;
 - c. an explanation of the basis upon which the objector claims to be a Class Member;
 - d. whether the objection applies only to the objecting Class Member, a specific subset of Class Members, or the entire Settlement Class;
 - e. all grounds for the objection stated, with specificity, accompanied by any legal support for the objection;

- f. the identity of all counsel who represent the objecting Class Member, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement Agreement, Class Counsel's request for attorneys' fees, expenses, Service Awards, and/or notice and administration costs;
- g. the identity of all representatives (including counsel representing the objecting Class Member) who will appear at the Final Approval Hearing;
- h. the number of times in which the objecting Class Member has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior such objections that were issued by the trial and appellate courts in each listed case;
- i. the number of times in which the objecting Class Member's counsel and/or counsel's law firm have objected to a class action settlement within the five years preceding the date that the objector filed the objection, the caption of each case in which the counsel or the firm has made such an objection, and a copy of any orders related to or ruling upon counsel's or the firm's prior such objections that were issued by the trial and appellate courts in each listed case;
- j. if the objecting Class Member is represented by an attorney who intends to seek fees and expenses from anyone other than the objectors he or she represents, the objection should also include: (i) a description of the attorney's legal background and prior experience in connection with class action litigation; (ii) the amount of fees sought by the attorney for representing the objector and the factual and legal justification for the fees being sought; (iii) a statement regarding whether the fees being sought are calculated on the basis of a lodestar, contingency, or other method; (iv) the number of hours already spent by the attorney and an estimate of the hours to be spent in the future; and (v) the attorney's hourly rate;
- k. any and all agreements that relate to the objection or the process of objecting, whether written or verbal, between the objector or objector's counsel and any other person or entity;
- l. a description of all evidence to be presented at the Final Approval Hearing in support of the objection, including a list of any witnesses, a summary of the expected testimony from each witness, and a copy of any documents or other non-oral material to be presented;
- m. a statement indicating whether the objecting Class Member intends to personally appear and/or testify at the Final Approval Hearing; and

- n. the objecting Class Member's (or the objecting Class Member's attorney's) signature on the written objection.
- 7.12. In addition, any Class Member that objects to the proposed Settlement must make itself available to be deposed regarding the grounds for its objection and must provide, along with its objection, the dates when the objector will be available to be deposed during the period from when the objection is filed through the date 7 days before the Final Approval Hearing.
- 7.13. Any Class Member who both objects to the Settlement Agreement and opts-out will be deemed to have opted-out and the objection shall be deemed null and void.
- 7.14. The Mail Notice shall be sent or issued by the Notice Date, excluding any re-mails for Mail Notices that are returned undeliverable and any reminder mail notices to be sent during the claims period.
- 7.15. At least 35 days before the Final Approval Hearing, the Settlement Administrator shall provide Class Counsel and Defendants with one or more affidavits confirming that the Notice Program was completed in accordance with the Parties' instructions and the Court's approval. Class Counsel shall file such affidavit(s) with the Court as an exhibit to, or in conjunction with, Plaintiffs' motion for Final Approval of the Settlement.
- 7.16. In the event that the Effective Date does not occur, the Settlement Administrator will take reasonable steps to ensure that no further Costs of Settlement Administration are incurred without the express written approval of the Parties.

Final Approval Order and Judgment

- 8.1. Plaintiffs' motion for preliminary approval of the Settlement will include a request to the Court for a scheduled date on which the Final Approval Hearing will occur, which shall be sufficiently far in advance to allow for the deadlines contemplated by this Settlement. The Final Approval Hearing shall be scheduled no earlier than 194 days after the entry of the Preliminary Approval Order. By no later than 100 days after the entry of the Preliminary Approval Order, Class Counsel shall file a motion for final approval of the Settlement and a motion for attorneys' fees, expenses, Service Awards, and notice and administration costs. Objectors, if any, shall file any response to Class Counsel's motions no later than 114 days after the entry of the Preliminary Approval Order. By no later than 160 days after the entry of the Preliminary Approval Order, responses shall be filed, if any, to any filings by objectors, and any replies in support of final approval of the Settlement and/or Class Counsel's request for attorneys' fees, expenses, Service Awards, and/or notice and administration costs shall be filed. At the Final Approval Hearing, the Court will consider the motion for final approval of the Settlement, and Class Counsel's application for

attorneys' fees, expenses, Service Awards, and notice and administration costs. In the Court's discretion, the Court also may hear argument at the Final Approval Hearing from any Class Members (or their counsel), who object to the Settlement and/or Class Counsel's request for attorneys' fees, expenses, Service Awards, and/or notice and administration costs, provided the objectors filed timely objections that meet all of the requirements listed in this Settlement.

8.2. At or following the Final Approval Hearing, the Court will determine whether to enter the Final Approval Order and Judgment granting Final Approval of the Settlement, and whether to approve Class Counsel's request for attorneys' fees, expenses, Service Awards, and notice and administration costs. The proposed Final Approval Order and Judgment that will be filed with the Final Approval Motion shall be in a form agreed upon by Class Counsel and Defendants as set forth in Exhibit D attached hereto. Such proposed Final Approval Order and Judgment shall, among other things:

- a. determine that the Settlement is fair, adequate, and reasonable;
- b. finally certify Class Members for settlement purposes only;
- c. determine that the Notice provided satisfied Rule 23 and due process requirements;
- d. dismiss all claims in the Complaints and Litigation with prejudice;
- e. bar and enjoin the Releasors from asserting any of the Released Claims, including during the pendency of any appeal from the Final Approval Order and Judgment;
- f. release and forever discharge Releasees as provided in this Settlement Agreement;
- g. determine upon a petition prepared and submitted, and not to be opposed by Plaintiffs, that the settlement embodied in this Agreement constitutes a good faith settlement within the meaning of Haw. Rev. Stat. Section 663-15.5; that the releases contained in the Agreement shall operate as joint obligor releases as contemplated and within the meaning of Sections 483-1 through 483-6 of the Hawaii Revised Statutes. Defendants will be responsible for filing the petition for determination to have the Settlement considered a good faith settlement pursuant to H.R.S. §663-15.5 and will provide notice to the appropriate parties that Defendants intend to bar other joint tortfeasors from claims against the settling joint tortfeasors, except where there is a written indemnity agreement; and
- h. reserve the Court's continuing and exclusive jurisdiction over Defendants and all Class Members (including all objectors) to administer, supervise, construe, and enforce this Settlement in accordance with its terms.

Releases

- 9.1. Upon payment of the amounts due under this Settlement, Releasors shall release, remise, acquit and forever discharge Releasees of and from any and all liability alleged against any one or more of them in the Complaints, including without limitation any and all liability alleged to exist under the Hawai'i Unfair Deceptive Acts and Practices Act (Haw. Rev. Stat. §§480-1, *et seq.*), the Hawai'i Uniform Deceptive Trade Practices Act (Haw. Rev. Stat. §§481A-1, *et seq.*), and Hawai'i common law, including claims for tort damages, statutory damages, attorneys' fees, costs, interests, or other damages, known or unknown, suspected, fixed or contingent, liquidated or unliquidated, trebled or otherwise multiplied, direct or indirect, past, present, or future, in law or in equity, arising out of the allegations made against Releasees in the Complaints.
- 9.2. It is further understood and agreed that the foregoing release by Releasors shall extend to any allegations made against Releasees in the State Court Lawsuits that are predicated upon: (1) violation of Section 8:301 or Section 8:312(b) of the Hawai'i Surplus Lines Act (Haw. Rev. Stat. §431:8-301 and 431:8-312(b)); (2) violation of the Lloyd's Minimum Standards as alleged in the Complaints as a result of any alleged violations of Section 8:301 or Section 8:312(b) of the Hawai'i Surplus Lines Act (Haw. Rev. Stat. §§431:8-301 and 8:312(b)); (3) the policies of insurance subscribed to by Underwriters and provided to the Class Members being not suitable or inappropriate, or constituting a breach of the covenant of good faith and fair dealing, because they failed to comply with Haw. Rev. Stat. §431:8-301 and 431:8-312(b); (4) the policies of insurance subscribed to by Underwriters and provided to the Class Members being not suitable or inappropriate or constituting a breach of the covenant of good faith and fair dealing because: they contained a Lava Exclusion, they offended the public policy behind the enactment of the Hawaii Property Insurance Association, they provided coverage amounts that were artificially inflated beyond what would be available through admitted insurers or the Hawaii Property Insurance Association, or lava coverage was available through the Hawaii Property Insurance Association or other provider of surplus lines insurance as alleged in the Complaints; and, (5) the failure by Releasees to advise Class Members of the existence of coverage available through admitted insurers, the Hawaii Property Insurance Association or lava coverage from any surplus lines provider of insurance.
- 9.3. It is further understood and agreed that the foregoing release shall not extend to any allegations made against any non-settling parties, nor shall it extend to any allegation made in the State Court Lawsuits that are predicated upon alleged violations that were not alleged in the Complaints or described above, *e.g.*, allegations predicated upon Monarch's failure to have a valid, active surplus lines license, or Defendants' failure to include the surplus lines stamp on the policy provided to the Plaintiffs, allegations predicated upon common law bad faith claims handling and unfair or deceptive practices in the handling and denial

of insurance loss claims arising under the terms of policies, and allegations for coverage predicated upon property damage or losses suffered on properties from the 2018 eruption of Kilauea.

- 9.4. It is understood and agreed that this release shall apply to, prevent, and bar, with immediate and permanent effect, any plaintiff in the State Court Lawsuits who qualifies as a Class Member and does not opt out of this Settlement from asserting against Releasees any liability released as part of this Settlement. This Release also shall apply to, prevent, and bar, with immediate and permanent effect, any plaintiff in the State Court Lawsuits who qualifies as a Class Member and does not opt out of this Settlement from prosecuting Released Claims against Releasees. Consistent with this understanding, any one or more of the Releasees may use the Agreement or Final Approval Order and Judgment with binding force and effect against any plaintiff in the State Court Lawsuits that qualifies as a Class Member and does not opt out of this Settlement, should any such plaintiff seek to prosecute Released Claims against Releasees, or seek to admit evidence tending to establish liability as to Released Claims against Releasees. It is further understood and agreed that the foregoing release shall not extend to any allegations made against any non-settling parties, nor shall it extend to any allegation made in the State Court Lawsuits that are predicated upon alleged violations that were not alleged in the Complaints or described above, *e.g.*, allegations predicated upon Monarch's failure to have a valid, active surplus lines license, allegations predicated upon the failure to include the surplus lines stamp on the policy, allegations predicated upon common law bad faith claims handling and unfair or deceptive practices in the handling and denial of claims arising under the terms of policies, and claims for coverage predicated upon property damage or losses suffered on properties from the 2018 eruption of Kilauea.
- 9.5. This Settlement expressly includes a mutual release among Defendants, inclusive of a release of any indemnity/contribution arguments among the Defendants vis-à-vis the allegations made in, and liabilities arising from, the Complaints. However, this mutual release does not release Defendants' rights to assert, or continue to assert, indemnity and/or contribution actions against one another in the State Court Lawsuits related to fees and costs incurred, or liabilities resulting from, the State Court Lawsuits.
- 9.6. The Parties, including their respective counsel, including but not limited to counsel of record, agree mutually to release each other from any and all liabilities, claims, cross-claims, causes of action, rights, actions, suits, debts, liens, contracts, agreements, damages, costs, attorneys' fees, losses, expenses, obligations, or demands, of any kind whatsoever, whether known or unknown, existing or potential, or suspected or unsuspected, whether raised by claim, counterclaim, setoff, or otherwise, including any known or unknown claims, which they have or may claim now or in the future to have, relating to the institution, prosecution, or settlement of the captioned lawsuit, including but not limited to

any allegations of violation of Rule 11 of the Federal Rules of Civil Procedure or 28 U.S.C. §1927.

- 9.7. With respect to any and all Released Claims, the Parties stipulate and agree that upon the Effective Date, Plaintiffs expressly shall have, and each of the other Class Members shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have, waived the provisions, rights, and benefits conferred by Cal. Civ. Code §1542 to the extent applicable, and also any and all provisions, rights, and benefits conferred by any law of any state, province, or territory of the United States, which is similar, comparable, or equivalent to Cal. Civ. Code §1542, which provides:

A general release does not extend to claims which the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that, if known by him or her would have materially affected his or her settlement with the debtor or released party.

(Emphasis added.) Class Members, including Plaintiffs, and any of them, may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Released Claims, but Plaintiffs expressly shall have, and each other Class Member shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have, upon the Effective Date, fully, finally, and forever settled and released any and all Released Claims, including unknown claims. The Parties acknowledge, and Class Members shall be deemed by operation of the Final Approval Order and Judgment to have acknowledged, that the foregoing waiver is a material element of the Settlement Agreement of which this release is a part.

- 9.8. The Parties understand that if the facts upon which this Agreement is based are found hereafter to be different from the facts now believed to be true, each Party expressly assumes the risk of such possible difference in facts, and agrees that this Agreement, including the releases contained herein, shall remain effective notwithstanding such difference in facts. The Parties agree that in entering this Agreement, it is understood and agreed that each Party relies wholly upon its own judgment, belief, and knowledge and that each Party does not rely on inducements, promises, or representations made by anyone other than those embodied herein.
- 9.9. For purposes of clarity, the releases described herein are not intended to, and shall not apply, to claims relating to the enforcement of this Agreement.
- 9.10. As of the Effective Date, Class Members shall be enjoined from initiating, prosecuting, or otherwise pursuing any Released Claims, whether directly or in any other capacity, against any of Releasees or based on any actions taken by any of Releasees that are authorized or required by this Settlement or by the Final Approval Order and Judgment. It is further

agreed that the Settlement may be pleaded as a complete defense to any proceeding or action asserting claims released by this Settlement.

Attorneys' Fees, Costs, Expenses and Service Award

- 10.1. The Settlement Fund provided by Defendants shall pay for the Court-approved Service Awards, attorneys' fees, expenses, and Additional Costs of Settlement Administration as set forth in Section 4.5(a). Class Counsel will request no more than 33.3% of the Settlement Fund, including any interest earned thereon, from the Court for their attorneys' fees and will additionally request reimbursement of their reasonable costs and expenses incurred in the Litigation from the Settlement Fund. Payment shall be made to Class Counsel, by wire transfer, within 30 days of the Effective Date or within 30 days of the Court's approval of such fees, expenses, or costs of notice and administration, whichever is later.
- 10.2. Notwithstanding anything herein, any decision by the Court, or modification or reversal or appeal of any decision by the Court, that fails to approve, in whole or in part, the amounts of the requested Service Award, attorneys' fees, expenses, and/or Additional Costs of Settlement Administration shall not constitute grounds for cancellation or will prevent the Settlement Agreement from becoming effective, nor will it be grounds for termination of this Agreement. If the Court declines to approve, in whole or in part, the requested Service Award, attorneys' fees, expenses, and/or Additional Costs of Settlement Administration in the amount set forth in this Agreement, or at all, the remaining provisions of this Settlement Agreement will remain in full force and effect. The finality or effectiveness of the Settlement will not be dependent on the Court awarding Class Counsel any particular amount of attorneys' fees, expenses, or costs of notice and administration, or Service Awards.
- 10.3. Neither Class Counsel's application for nor any individual's entitlement to a Service Award shall be conditioned in any way upon such individual's support for this Settlement.
- 10.4. Class Counsel, in their sole discretion, shall allocate and distribute the amount of attorneys' fees, costs, and expenses awarded by the Court among Plaintiffs' counsel of record.

Termination

- 11.1. Defendants shall have the sole discretion to terminate the Settlement Agreement if potential Class Members who meet certain criteria exclude themselves from the Settlement Class. The terms of the agreement are set forth in a confidential term sheet which shall not be filed with the Court except upon agreement of the Parties or as directed by the Court.

- 11.2. This Settlement Agreement may be terminated by either Plaintiffs or Defendants by serving on counsel for the opposing Party; and filing with the Court a written notice of termination after any of the following occurrences:
- a. Class Counsel and Defendants mutually agree to termination before the Effective Date;
 - b. the Court rejects, materially modifies, materially amends or changes, or declines to preliminarily or finally approve the Settlement;
 - c. an appellate court reverses the Final Approval Order and Judgment, and the Settlement is not reinstated and finally approved without material change by the Court on remand;
 - d. the Court, or any reviewing appellate court, incorporates material terms or provisions into, deletes or strikes material terms or provisions from, or materially modifies, amends, or changes the proposed Preliminary Approval Order, Preliminary Approval Order, proposed Final Approval Order and Judgment, Final Approval Order and Judgment, or Settlement; or
 - e. the Effective Date does not occur.
- 11.3. In the event of a termination, as provided for in the Settlement, the Settlement shall be considered null and void; all of the Parties' obligations under the Settlement shall cease to be of any force and effect; and any Court orders approving certification of Class Members and any other orders entered pursuant to this Agreement shall be deemed null and void and vacated and shall not be used in or cited by any person or entity in support of claims or defenses or in support or in opposition to a class certification motion; the Parties shall return to the *status quo ante* in the Litigation, as if the Parties had not entered into this Settlement. In such an event, the fact of this Settlement and that Defendants did not oppose certification of any class under the Settlement, shall not be used or cited by any person or entity, including in any contested proceeding relating to certification of any proposed class. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement claims and defenses will be preserved, including all defenses to class certification.

No Admission of Liability

- 12.1. This Agreement, whether or not consummated, any communications and negotiations relating to this Agreement or the Settlement, and any proceedings taken pursuant to this Agreement:
- a. Shall not be offered or received against any Defendant as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by any

Defendant with respect to the truth of any fact alleged by any Plaintiff or the validity of any claim that has been or could have been asserted in the Litigation or in any other litigation, or the deficiency of any defense that has been or could have been asserted in the Litigation or in any other litigation, or of any liability, negligence, fault, breach of duty, or wrongdoing of any Defendant;

- b. Shall not be offered or received against any Defendant as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by any Defendant;
 - c. Shall not be offered or received against any Defendant as evidence of a presumption, concession or admission with respect to any liability, negligence, fault, breach of duty, or wrongdoing, or in any way referred to for any other reason as against any Defendant, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Agreement; provided, however, that if this Agreement is approved by the Court, the Parties may refer to it to effectuate the liability protection granted them hereunder;
 - d. Shall not be construed against any Defendant as an admission or concession that the consideration to be given hereunder represents the amount that could be or would have been recovered after trial; and
 - e. Shall not be construed as or received in evidence as an admission, concession or presumption against any Plaintiff or any Class Member that any of their claims are without merit, or that any defenses asserted by any Defendant have any merit, or that damages recoverable in the Litigation would not have exceeded the amounts provided for in this Agreement.
- 12.2. Defendants dispute the claims alleged in the Litigation and do not, by this Settlement or otherwise, admit any liability or wrongdoing of any kind. Defendants have agreed to enter into this Settlement solely to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation and to be completely free of any further claims that were asserted or could have been asserted in the Litigation.
- 12.3. Class Counsel and Plaintiffs believe that the claims asserted in the Litigation have merit, and they have examined and considered the benefits to be obtained under the Settlement, risks associated with the continued prosecution of this complex, costly, and time-consuming Litigation, and likelihood of success on the merits of the Litigation. Class Counsel and Plaintiffs have concluded that the Settlement Agreement is fair, adequate, reasonable, and in the best interests of Class Members.

- 12.4. The Parties understand and acknowledge that this Settlement constitutes a compromise and settlement of disputed claims. No action taken by the Parties, either previously or in connection with the negotiations or proceedings connected with this Settlement, shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any Party of any fault, liability, or wrongdoing of any kind whatsoever.
- 12.5. Neither the Settlement nor any act performed or document executed pursuant to or in furtherance of the Settlement: (a) is, may be deemed to be, or may be used as an admission of, or evidence of, the validity of any claim made by Plaintiffs or Class Members, or of any wrongdoing or liability of the Releasees; or (b) is, may be deemed to be, or may be used as an admission of, or evidence of, any fault or omission of the Releasees in the Litigation or in any proceeding in any court, administrative agency, or other tribunal.

No Election of Remedies

- 13.1 The Parties agree and stipulate that Releasees shall not use the existence of this settlement, or the payment of any funds to participating Class Members, as a basis for a defense against any participating Class Members that any other lawsuits those participating Class Members have filed, or may file in the future, should be dismissed on the basis of an argument that the Class Members have elected their remedy. Provided, however, that no Class Member will seek or be entitled to recover in any other lawsuit a return of premiums paid, or augmented damages or interest or fines or fees or costs based on the return of any premiums, during the Class Period.

Miscellaneous

- 14.1 **Confidentiality.** Prior to the filing of the motion for preliminary approval, the Parties agree to keep the Settlement's terms and existence strictly confidential unless otherwise required by law or as reasonably determined by Defendants as necessary or appropriate in order to comply with financial reporting and disclosure obligations. The limitations in this Section shall not apply to: (1) communications between Class Counsel and their clients (including Class Members); (2) any SEC or other contractual or legal disclosure obligations that Defendants may have; (3) Defendants' communications with its employees; (4) the ability of Defendants to notify its insurers about the Settlement; (5) the ability of the Parties to communicate with necessary third parties for the purpose of facilitating the administration of the Settlement. The Parties may also disclose the Settlement's terms and existence to its insurers or auditors provided that they agree to maintain such information as confidential. Neither party shall make any oral or written statement about the other party that is intended or reasonably likely to disparage the other party, or otherwise degrade the other party's reputation in connection with the Settlement.

- 14.2 Escrow Account Bank. Class Counsel shall select the bank at which the Escrow Account shall be deposited, and all funds shall be held exclusively in an interest-bearing account or accounts where the principal will not decrease and is fully insured by the United States Government or an agency thereof, including certificates of deposit, a U.S. Treasury Fund or a bank account that is either (a) fully insured by the Federal Deposit Insurance Corporation (“FDIC”) or (b) secured by instruments backed by the full faith and credit of the United States Government. The Escrow Account Bank shall reinvest the proceeds of these instruments as they mature in similar instruments at their then-current market rates. Defendants shall not bear any responsibility for or liability related to the investment of the Escrow Account by the Escrow Account Bank.
- 14.3 Singular and Plurals. As used in this Settlement, all references to the plural shall also mean the singular and all references to the singular shall also mean the plural whenever the context so indicates.
- 14.4 Binding Effect. This Settlement shall be binding upon, and inure to the benefit of, the successors and assigns of the Releasors and Releasees.
- 14.5 Class Member Communications. Defendants shall not substantively communicate with any Class Member during the pendency of the settlement approval process regarding this Litigation, the Settlement, the decision to opt out, or relief being awarded in the Settlement, unless expressly requested to do so by Class Counsel. For purposes of clarity, this provision restricts only communications regarding the Litigation and/or Settlement; it does not purport to limit any other communications between the Defendants and Class Members.
- 14.6 Cooperation of Parties. The Parties to this Settlement agree to cooperate in good faith to prepare and execute all documents, seek Court approval, defend Court approval, and do all things reasonably necessary to complete and effectuate the Settlement, as described herein. Nothing in this provision is intended to limit any Party’s right to terminate the Settlement in accordance with its terms.
- 14.7 Obligation to Meet and Confer. Before filing any motion in the Court raising a dispute arising out of, or related to, this Settlement, the Parties shall consult with each other and certify to the Court that they have consulted in good faith.
- 14.8 Entire Agreement. This Settlement (along with any exhibits attached hereto) constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.

- 14.9 Drafting. The Parties agree that no single Party shall be deemed to have drafted this Agreement, or any portion thereof, for purpose of the invocation of the doctrine of *contra proferentem*. This Agreement is a collaborative effort of the Parties and their attorneys.
- 14.10 Modification or Amendment. This Agreement may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by the Parties who executed this Agreement or their Successors.
- 14.11 Waiver. The failure of a Party hereto to insist upon strict performance of any provision of this Agreement shall not be deemed a waiver of such Party's rights or remedies or a waiver by such Party of any default by another Party in the performance or compliance of any of the terms of this Agreement. In addition, the waiver by one Party of any breach of this Agreement by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.
- 14.12 Survival. The Parties agree that the terms set forth in this Agreement shall survive the signing of this Agreement.
- 14.13 No Conflict Intended. Any inconsistency between the headings used in this Settlement and the text of the paragraphs of this Settlement shall be resolved in favor of the text.
- 14.14 Governing Law. The Settlement shall be construed in accordance with, and be governed by, the laws of the state of Hawai'i, without regard to the principles thereof regarding choice of law.
- 14.15 Counterparts. This Settlement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument, even though all signatories do not sign the same counterparts. Original signatures are not required. Any signature submitted by facsimile or through email of an Adobe PDF shall be deemed an original.
- 14.16 Jurisdiction. The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Settlement and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of, or relating to, this Settlement that cannot be resolved by negotiation and agreement by counsel for the Parties, including any disputes regarding the scope, interpretation or enforcement of this Settlement, and the resolution of any dispute regarding any alleged breach of this agreement by any Releasor, Releasee, or counsel. The Court shall retain jurisdiction with respect to the administration, consummation, and enforcement of the Settlement and shall retain jurisdiction for the purpose of enforcing all terms of the Settlement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Program and Claims Administration. As part of its agreement to render services in connection with this

Settlement Agreement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose.

14.17 Exhibits. The Exhibits to this Agreement are expressly incorporated by reference and made part of the terms and conditions set forth herein.

14.18 Notices. All notices to Class Counsel provided for herein, shall be sent by overnight mail and email to:

Joseph P. Guglielmo
SCOTT+SCOTT ATTORNEYS AT LAW LLP
230 Park Avenue, 17th Floor
New York, New York 10169
jguglielmo@scott-scott.com

E. Kirk Wood
WOOD LAW FIRM, LLC,
P. O. Box 382434
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ekirkwood1@bellsouth.net

Gregory W. Kugle
DAMON KEY LEONG KUPCHAK HASTERT, LLC
1003 Bishop Street, Suite 1600
Honolulu, Hawai'i 96813
gwk@hawaiiilawyer.com

All notices to Defendants provided for herein, shall be sent by overnight mail and email to:

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mshannon@legalthawaii.com

The notice recipients and addresses designated above may be changed by written notice. Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of objections, requests for exclusion, or other filings received as a result of the Notice Program.

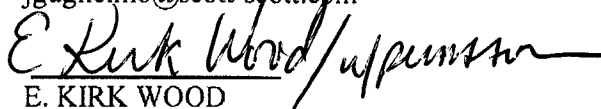
14.19 Authority. Any person executing this Settlement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Settlement to all of the terms and provisions of this Settlement.

14.20 Arms' Length Negotiation. The Parties agree that the amounts paid and the other terms of the Settlement were negotiated at arm's length and in good faith by the Parties, and reflect the Settlement that was reached voluntarily after extensive negotiations and consultation with experienced legal counsel, who were fully competent to assess the strengths and weaknesses of their respective clients' claims or defenses.

DATED: July 29, 2021



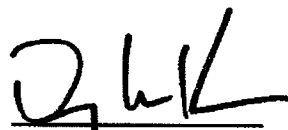
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DATED: July __, 2021

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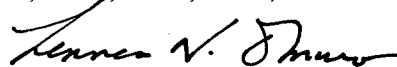
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Attorneys for Defendant Ilikea d/b/a Moa Insurance Services

EXHIBIT A

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII**

If you purchased a surplus lines insurance policy for a residential property located in Lava Zone 1 on the Island of Hawai‘i with a Lava Exclusion at any time during the period of January 1, 2012 through and including May 4, 2018 that was brokered through Monarch and underwritten and/or subscribed to by Underwriters, you are eligible to receive a payment from a class action settlement.

A federal court authorized this notice. This is not a solicitation from a lawyer.

Your legal rights are affected whether you act or don’t act. Read this notice carefully.

- Defendants Lloyd’s Syndicates 2003, 318, 4020, 2121, 2007, 1183, 1729, and 510 (collectively, “Underwriters”), Borisoff Insurance Services, Inc. d/b/a Monarch E&S Insurance Services, Specialty Program Group, LLC d/b/a SPG Insurance Solutions, LLC (collectively, “Monarch”), Aloha Insurance Services, Inc. (“Aloha”), and Iiikea LLC d/b/a Moa Insurance Services Hawaii (“Moa”) (and together with Aloha, Monarch, and Underwriters, “Defendants”) have agreed to settle a class action brought by Plaintiffs on behalf of themselves and a putative class of individuals who purchased a residential surplus lines insurance policy for a residential property located in Lava Zone 1 on the island of Hawai‘i with a Lava Exclusion at any time during the period of January 1, 2012 through and including May 4, 2018 (the “Class Period”) that was brokered through Monarch and underwritten and/or subscribed to by Underwriters.
- The lawsuit—*Aquilina v. Certain Underwriters at Lloyd’s London, et al.*, No. 18-cv-00496-ACK-KJM (D. Haw.)—arises from the purchase of surplus lines homeowners’ insurance for residential properties located in Lava Zone 1 on the Island of Hawai‘i that was brokered by Monarch and was underwritten and/or subscribed to by Underwriters that contained an exclusion for the peril of lava and/or lava flow.
- The lawsuit asserts claims for violations of HRS §§480-1, *et seq.* (as to all Defendants), breach of the implied covenant of good faith and fair dealing (as to Underwriters), and negligence and unjust enrichment (as to Moa and Aloha). The lawsuit primarily alleges that Defendants violated the diligent search requirement of the Hawai‘i Surplus Lines Act. Defendants deny these allegations, any wrongdoing, and that they are liable in any amount to the affected individuals.
- The Settlement provides that Defendants have agreed to pay \$1.8 million dollars into a common fund which will be used to pay all Class Member distributions, and any Court-approved reasonable Plaintiffs’ attorneys’ fees and expenses, Settlement Administrator’s costs and expenses, and Plaintiffs’ Service Awards up to \$2,500 to each of the two sets of Plaintiffs (for a maximum total of \$5,000). Certain Defendants also have agreed to pay up to an additional \$50,000 to defray the Settlement Administrator’s costs and expenses.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	<p>If you do nothing, you automatically will receive a cash payment. No specific documentation is required. If you do nothing, you also will forfeit your right to sue or bring any claim against Defendants and/or Releasees related to the Released Claims as defined in Section 9 of the Settlement.</p> <p>The Release in the Settlement specifically provides that certain claims are included in the Release and others are not. If you have any questions as to whether the Release applies to any claim you have made in any other lawsuit, including any State Court Lawsuit (as defined in the Settlement Agreement), please review Section 9 of the Settlement Agreement.</p>
EXCLUDE YOURSELF	<p>If you ask to be excluded, you will not receive a cash payment, but you may be able to file your own lawsuit against Defendants for the same claims. This is the only option that leaves you the right to file your own lawsuit against</p>

Questions? Visit [Website]

	Defendants and/or Releasees (defined in the Settlement Agreement) for the claims that are being resolved by the Settlement. In order to be effective, a request to be excluded from the Settlement must include all information required by the Settlement to confirm your identity as a Class Member.
OBJECT	You can remain in the Settlement Class and file an objection telling the Court why you do not like the Settlement. If your objections are overruled, you will be bound by the Settlement.

- These rights and options—and the deadlines to exercise them—are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made if the Court approves the Settlement and after any appeals are resolved. Please be patient.

WHAT THIS NOTICE CONTAINS

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1. Why did I get this notice?
2. What is this lawsuit about?
3. Why is this a class action?
4. Why is there a settlement?

Who is Part of the Settlement Page X

5. How do I know if I am part of the Settlement?
6. Are there exceptions to being included?
7. I am still not sure if I am included.

The Settlement Benefits..... Page X

8. What does the Settlement provide?
9. How much will my payment be?

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10. How can I get a payment?
11. When would I get my payment?
12. What am I giving up to get a payment or remain in the Settlement Class?

Excluding Yourself from the Settlement..... Page X

13. How can I opt out of the Settlement?
14. If I don't opt out, can I sue Defendants for the same thing later?
15. If I exclude myself, can I get money from this Settlement?

The Lawyers and Individuals Representing You..... Page X

16. Do I have a lawyer in the case?
17. How will the lawyers and individuals representing the Settlement Class be paid?

Objecting to the Settlement..... Page X

18. How do I tell the Court that I do not like the Settlement?
19. What is the difference between objecting and excluding/opting out?

The Court's Final Approval Hearing..... Page X

Questions? Visit [Website]

- 20. When and where will the Court decide whether to approve the Settlement?
- 21. Do I have to attend the hearing?

If You Do Nothing..... Page X

- 22. What happens if I do nothing at all?

Getting More Information Page X

- 23. How do I get more information?

Questions? Visit [Website]

BASIC INFORMATION

1. Why did I get this notice?

You purchased a surplus lines insurance policy for a residential property located in Lava Zone 1 on the Island of Hawai‘i with a Lava Exclusion during the Class Period that was brokered through Monarch and underwritten and/or subscribed to by Underwriters. The term “Lava Exclusion” means an exclusion for the peril of lava and/or lava flow causing direct or indirect physical damage or loss of use of the insured property that was contained in a surplus lines homeowner’s insurance policy for a home located in Lava Zone 1 on the island of Hawai‘i. The term “Lava Zone 1” means the zone or area designated by the U.S. Geological Survey map on the island of Hawai‘i for volcanic hazard zones as having the highest risk of experiencing lava flow.

The Court authorized this notice because you have a right to know about your rights under a proposed class action settlement before the Court decides whether to approve the Settlement. If the Court approves the Settlement, and after objections and appeals are resolved, a settlement administrator appointed by the Court will make the cash payments that the Settlement allows.

This package explains the lawsuits, the Settlement, your rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the litigation is the United States District Court for the District of Hawaii, and the Litigation is named *Aquilina, et al. v. Certain Underwriters at Lloyd’s London, et al.*, No. 18-cv-00496-ACK-KJM (D. Haw.). The individuals who sued are called “Plaintiffs,” and the entities they sued, Underwriters, Monarch, Aloha, and Moa, are the “Defendants.”

2. What is this lawsuit about?

The lawsuit—*Aquilina v. Certain Underwriters at Lloyd’s London, et al.*, No. 18-cv-00496-ACK-KJM (D. Haw.)—asserts claims on behalf of a class of individuals who purchased a Lloyd’s of London surplus lines insurance policy for a residential property located in Lava Zone 1 on the Island of Hawai‘i that was brokered through Monarch and underwritten and/or subscribed to by Underwriters and contains an exclusion for the peril of lava and/or lava flow. These claims include alleged violations of HRS §§480-1, et seq. (as to all Defendants), breach of the implied covenant of good faith and fair dealing (as to Underwriters), and negligence and unjust enrichment (as to Moa and Aloha). The lawsuit primarily alleges that Defendants violated the diligent search requirement of the Hawai‘i Surplus Lines Act. Defendants deny these allegations, any wrongdoing, and that they are liable in any amount to the affected individuals. The Court has not decided whether Defendants have any legal liability.

3. Why is this a class action?

In a class action, one or more persons called “class representatives” sue on behalf of themselves and other persons with similar claims. All of these persons together are the “class” or “class members.” One court resolves the issues for all class members, except for those who exclude themselves from the settlement class.

4. Why is there a settlement?

The Court has not decided in favor of Plaintiffs or Defendants. Instead, both sides agreed to the Settlement. The Settlement is not an admission that Defendants did something wrong, but rather a compromise to end the lawsuit. By agreeing to settle, both sides avoid the costs, risks, and uncertainties of litigation, a trial and related appeals, while providing benefits to members of the Settlement Class. Plaintiffs and Class Counsel think the Settlement is best for all Class Members.

WHO IS PART OF THE SETTLEMENT

5. How do I know if I am part of the Settlement?

Questions? Visit [Website]

You are a member of the Settlement Class and affected by the Settlement if:

- You purchased a surplus lines insurance policy for a residential property located in Lava Zone 1 on the Island of Hawai'i with a Lava Exclusion at any time during the period of January 1, 2012 through and including May 4, 2018 that was brokered through Monarch and underwritten and/or subscribed to by Underwriters.

Specifically *excluded* from the Settlement Class are Defendants; all officers, directors, or employees of Defendants; any entity in which any Defendant has a controlling interest; and any affiliate, legal representative, heir, or assign of any Defendant. Also excluded are any federal, state, or local governmental entities, any judicial officer presiding over this Litigation and the members of his/her immediate family and judicial staff, and any juror assigned to this action.

6. Are there exceptions to being included?

If you exclude yourself from the Settlement, you are no longer part of the Settlement Class and will no longer be eligible to receive any of the Settlement benefits. This process of excluding yourself is also referred to as "opting out" of the Settlement which is explained in more detail below in question 13.

7. I am still not sure if I am included.

If you are still not sure whether you are included, you can ask for free help. You can contact Class Counsel:

Joseph P. Guglielmo
SCOTT+SCOTT ATTORNEYS AT LAW LLP
230 Park Avenue, 17th Floor
New York, New York 10169
Telephone: (212) 223-6444
Facsimile: (212) 223-6334
jguglielmo@scott-scott.com

E. Kirk Wood
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Gregory W. Kugle
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1003 Bishop Street, Suite 1600
Honolulu, Hawai'i 96813
Telephone: (808) 531-8031
Facsimile: (808) 533-2242
gwk@hawaiilawyer.com

You also may visit the Settlement Website [website] for more information.

THE SETTLEMENT BENEFITS

8. What does the Settlement provide?

Under the Settlement, Defendants have agreed to pay \$1.8 million dollars into a common fund, which will be used to pay all Class Member distributions, and any Court-approved reasonable Plaintiffs' attorneys' fees and expenses, Settlement Administrator's costs and expenses, and Plaintiffs' Service Awards up to \$2,500 to each of the two sets of Plaintiffs (for a maximum total of \$5,000). Certain Defendants also have agreed to pay up to an additional \$50,000 to defray the Settlement Administrator's costs and expenses.

9. How much will my payment be?

Questions? Visit [Website]

If you do not “opt out” of the Settlement, you will automatically receive a proportion of the Net Settlement Fund based on the total premium dollar amount you paid during the Class Period compared to the total aggregate premium paid by all Class Members during the Class Period. No specific documentation is required.

HOW TO GET A PAYMENT

10. How can I get a payment?

To qualify for a payment, you do not need to do anything. No specific documentation is required. Defendants have provided to Class Counsel information regarding the total premium dollar amounts paid by Class Members during the Class Period, which will be used to compute your proportional payment under the Settlement. Based on Class Counsel’s and their expert’s review of the information, you will be eligible to receive at least 100% of the premium dollar amounts you paid during the Class Period. The specific amount will be determined after the Court approves the Settlement and the specific costs, expenses, attorneys’ fees, and Service Awards have been deducted from the Settlement Fund.

To confirm or update your mailing address, please go to the Settlement Website at [Website], call the Settlement Administrator at XX, or write to the Settlement Administrator at:

[INSERT]

11. When would I get my payment?

The Court will hold a hearing on _____ to decide whether to approve the Settlement. If the Court approves the Settlement, there may be appeals. It is always uncertain whether these appeals can be resolved and resolving them takes time, perhaps years. Payments to Class Members will be made after the Settlement is finally approved and any appeals or other related proceedings have been completed as set forth in the Settlement Agreement. You may visit [Website] for updates on the progress of the Settlement. Please be patient.

12. What am I giving up to get a payment or remain in the Settlement Class?

Unless you exclude yourself from the Settlement, you cannot sue, or be part of any other lawsuit against, Defendants or Releasees (as defined in the Settlement) relating to the Released Claims. The specific claims you are giving up against Defendants and Releasees are described in the Settlement Agreement. The terms of the Releases are described in Section 9 of the Settlement Agreement. Read it carefully. The Settlement Agreement is available at [Website]. The Release in the Settlement specifically provides that certain claims are included in the Release and others are not.

For example, the Release provides that claims predicated upon: (1) violation of Section 8:301 or Section 8:312(b) of the Hawai‘i Surplus Lines Act (Haw. Rev. Stat. §431:8-301 and 431:8-312(b)); (2) violation of the Lloyd’s Minimum Standards as alleged in the Complaints (as defined in the Settlement) as a result of any alleged violations of Section 8:301 or Section 8:312(b) of the Hawai‘i Surplus Lines Act (Haw. Rev. Stat. §§431:8-301 and 8:312(b)); (3) the policies of insurance subscribed to by Underwriters and provided to the Class Members being not suitable or inappropriate, or constituting a breach of the covenant of good faith and fair dealing, because they failed to comply with Haw. Rev. Stat. §431:8-301 and 431:8-312(b); (4) the policies of insurance subscribed to by Underwriters and provided to the Class Members being not suitable or inappropriate or constituting a breach of the covenant of good faith and fair dealing because: they contained a Lava Exclusion, they offended the public policy behind the enactment of the Hawaii Property Insurance Association, they provided coverage amounts that were artificially inflated beyond what would be available through admitted insurers or the Hawaii Property Insurance Association, or lava coverage was available through the Hawaii Property Insurance Association or other provider of surplus lines insurance as alleged in the Complaints; and, (5) the failure by Releasees to advise Class Members of the existence of coverage available through admitted insurers, the Hawaii Property Insurance Association or lava coverage from any surplus lines provider of insurance.

Questions? Visit [Website]

The Release does not extend to any allegations made against any non-settling parties, nor does it extend to any allegation made in the State Court Lawsuits (as defined in the Settlement) that are predicated upon alleged violations that were not alleged in the Complaints or not described above, e.g., allegations predicated upon Monarch’s failure to have a valid, active surplus lines license, or Defendants’ failure to include the surplus lines stamp on the policy provided to the Plaintiffs, allegations predicated upon common law bad faith claims handling and unfair or deceptive practices in the handling and denial of insurance loss claims arising under the terms of policies, and allegations for coverage predicated upon property damage or losses suffered on properties from the 2018 eruption of Kilauea.

Please note that the Settlement provides that Defendants and Releasees will not use the existence of the Settlement, or the payment of any monies to participating Class Members, as a basis for a defense against any participating Class Members that any other lawsuits those participating Class Members have filed, or may file in the future, should be dismissed on the basis of an argument that the Class Members have elected their remedy. See Section 13 of the Settlement. However, if you participate in this Settlement, you will not be able to recover damages based on the liabilities released in Section 9 of the Settlement.

If you have any questions, you can talk to Class Counsel listed in Question 13 for free, or you can, of course, talk to your own lawyer or have your lawyer speak with Class Counsel if you have questions about what this means.

If you want to keep your rights to sue or continue to sue Defendants based on claims this Settlement resolves, you must take steps to exclude yourself from the Settlement Class (see Questions 13-15).

EXCLUDING YOURSELF FROM THE SETTLEMENT

13. How can I opt out of the Settlement?

To exclude yourself from the Settlement, or “opt out,” you must send a letter by U.S. Mail that includes the information in the bullet points below. If you fail to include this information, the notice of exclusion will be ineffective and you will be bound by the Settlement, including all Releases. Your request for exclusion must include:

- The name of this Litigation—*Aquilina, et al. v. Certain Underwriters at Lloyd’s London, et al.*, No. 18-cv-00496-ACK-KJM (D. Haw.);
- Your full name, mailing address, property address, email address, and phone number; and
- The words “Request for Exclusion” at the top of the document or a statement in the body of the document requesting exclusion from the Settlement.

You must mail via first class postage prepaid United States mail the completed above-described letter, postmarked no later than _____, 2021, to each of the following addresses:

Settlement Administrator

[INSERT]

Settlement Class Counsel

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Honolulu, Hawai‘i 96813
mshannon@legalthawaii.com

If you ask to be excluded, you will not get any payment as part of this Settlement, and you cannot object to this Settlement. You will not be legally bound by anything that happens in the Settlement and related proceedings. You may be able to sue (or continue to sue) Defendants in the future. If you object to the Settlement and seek to exclude yourself, you will be deemed to have excluded yourself.

14. If I don’t opt out, can I sue Defendants for the same thing later?

No. Unless you exclude yourself from the Settlement, you give up any right to sue Defendants and Releasees (as defined in the Settlement Agreement) for any Released Claims as defined in Section 9 of the Settlement. See Question 12 above.

If you have a pending lawsuit that asserts claims that may be Released by this Settlement, you should speak to your lawyer in that case to discuss your options. You or your lawyer can also talk to Class Counsel listed in Question 13 for free.

. Please note that you must exclude yourself from this Settlement to continue to pursue any Released Claims against the Releasees . Remember, the exclusion deadline is _____, 2021.

Although this Settlement will release any claims as defined in Section 9 of the Settlement, the Release does not extend to any allegations made against any non-settling parties, nor does it extend to any allegation made in the State Court Lawsuits (as defined in the Settlement) that are predicated upon alleged violations that were not alleged in the Complaints or not described above, *e.g.*, allegations predicated upon Monarch’s failure to have a valid, active surplus lines license, or Defendants’ failure to include the surplus lines stamp on the policy provided to the Plaintiffs, allegations predicated upon common law bad faith claims handling and unfair or deceptive practices in the handling and denial of insurance loss claims arising under the terms of policies, and allegations for coverage predicated upon property damage or losses suffered on properties from the 2018 eruption of Kilauea.

15. If I exclude myself, can I get money from this Settlement?

No. If you exclude yourself, you will not receive a payment.

THE LAWYERS AND INDIVIDUALS REPRESENTING YOU

16. Do I have a lawyer in the case?

Yes. The Court appointed to represent you and other members of the Settlement Class the following law firms: Scott+Scott Attorneys at Law LLP, in New York, New York, Wood Law Firm, LLC in Birmingham, Alabama; and Damon Key Leong Kupchak Hastert in Hawai‘i (“Class Counsel.”). You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

17. How will the lawyers and individuals representing the Settlement Class be paid?

Questions? Visit [Website]

Class Counsel initiated the lawsuits and prosecuted the litigation on behalf of the Plaintiffs and Class Members. Class Counsel worked on a contingent basis, which means that they would receive a fee only if the lawsuits were successful. None of the lawyers has yet received any payment for their time or expenses. If approved by the Court, the common fund will fund Class Counsel's reasonable attorneys' fees and expenses, Service Awards to each Settlement Class Representative (discussed next), and notice and settlement administration costs. Class Counsel intend to ask the Court to approve an award of reasonable attorneys' fees, not to exceed 33.3% of the Settlement, and expenses.

The Settlement Class is represented by four named individuals (the "Plaintiffs"). In addition to the benefits that the Plaintiffs will receive as members of the Settlement Class—and subject to the approval of the Court—Defendants have agreed that the common fund will provide Service Awards of up to a maximum of \$2,500 to each of the two sets of Plaintiffs (*i.e.*, a maximum total of \$5,000) for the efforts that they have expended on behalf of the Settlement Class.

The Court will determine whether to approve the amount of fees and costs and expenses requested by Class Counsel and the proposed Service Awards to the Plaintiffs at the Final Approval Hearing scheduled for _____, 2022. Class Counsel will file an application for fees, expenses, and Service Awards no later than [100 days after the entry of the Preliminary Approval Order, and 14 days before the Opt-out and Objection Deadline]. The application will be available on the Settlement Website ([Website]) or you can request a copy by contacting the Settlement Administrator (*see* Question 23).

OBJECTING TO THE SETTLEMENT

18. How do I tell the Court that I do not like the Settlement?

If you are a Class Member, you can object to the Settlement if you do not think it is fair, reasonable, or adequate. You can give reasons why you think the Court should not approve it. The Court will consider your views. If you both object to the Settlement and seek to exclude yourself, you will be deemed to have excluded yourself and your objection will be deemed null and void.

Your objection must be in writing, and must include:

- The name of the Litigation: *Aquilina, et al. v. Certain Underwriters at Lloyd's London, et al.*, No. 18-cv-00496-ACK-KJM (D. Haw.);
- Your full name, address, email address, and telephone number;
- An explanation of the basis for why you are a Class Member;
- Whether the objection applies only to you, to a specific subset of the Settlement Class, or to the entire Settlement Class;
- All grounds for the objection stated, with specificity, accompanied by any legal support for the objection;
- The identity of all counsel who represent you, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement Agreement, Class Counsel's request for attorney's fees, Service Awards, and/or notice and administration costs;
- The identity of all representatives (including counsel representing you) who will appear at the Final Approval Hearing;
- The number of times in which you have objected to a class action settlement within the five years preceding the date that you file the objection, the caption of each case in which you have made such objection, and a copy of any orders related to or ruling upon your prior such objections that were issued by the trial and appellate courts in each listed case;
- The number of times in which your counsel and/or your counsel's law firm have objected to a class action settlement within the five years preceding the date that you filed the objection, the caption of each case in which the counsel or the firm has made such an objection, and a copy of any orders related to or ruling upon counsel's or the firm's prior such objections that were issued by the trial and appellate courts in each listed case;
- If you are represented by an attorney who intends to seek fees and expenses from anyone other than the objectors he or she represents, the objection should also include: (i) a description of the attorney's legal background and prior experience in connection with class action litigation; (ii) the amount of fees sought by the attorney for representing you and the factual and legal justification for the fees being sought; (iii) a statement regarding whether the fees being sought are calculated on the basis of a lodestar, contingency, or other method; (iv) the number of hours already spent by the attorney and an estimate of the hours to be spent

Questions? Visit [Website]

in the future; and (v) the attorney’s hourly rate;

- Any and all agreements that relate to the objection or the process of objecting, whether written or verbal, between you or your counsel and any other person or entity;
- A description of all evidence to be presented at the Final Approval Hearing in support of the objection, including a list of any witnesses, a summary of the expected testimony from each witness, and a copy of any documents or other non-oral material to be presented;
- A statement indicating whether you intend to personally appear and/or testify at the Final Approval Hearing;
- *All other information specified in the Preliminary Approval Order* (available on the settlement website, [Website]), and
- Your signature on the written objection.

Any objection must be either filed electronically with the Court or mailed to the Clerk of the Court, Class Counsel, *and* Defendants’ counsel at the addresses set forth below. The objection must be electronically filed, or if mailed postmarked, no later than _____, 2021.

Court	Class Counsel	Defense Counsel
Clerk of the Court USDC, District of Hawaii Senior Judge Alan C. Kay United States Courthouse 300 Ala Moana Blvd C-338 Honolulu, HI 96850	Joseph P. Guglielmo SCOTT+SCOTT ATTORNEYS AT LAW LLP 230 Park Avenue, 17th Floor New York, New York 10169 jguglielmo@scott-scott.com E. Kirk Wood WOOD LAW FIRM, LLC P. O. Box 382434 Birmingham, Alabama 35238-2434 Telephone: (205) 908-4906 Facsimile: (866) 747-3905 ekirkwood1@bellsouth.net Gregory W. Kugle DAMON KEY LEONG KUPCHAK HASTERT, Law Corporation 1003 Bishop Street, Suite 1600 Honolulu, Hawai‘i 96813 Telephone: (808) 531-8031 Facsimile: (808) 533-2242 gwk@hawaiiilawyer.com	David E. Walker WALKER WILCOX MATOUSEK LLP One North Franklin, Suite 3200, Chicago, Illinois 60606 dwalker@walkerwilcox.com Paul Alston DENTONS US LLP 1001 Bishop Street, Suite 1800 Honolulu, Hawai‘i 96813 paul.alston@dentons.com Lennes N. Omuro GOODSILL ANDERSON QUINN & STIFEL LLP 999 Bishop Street, Suite 1600 Honolulu, Hawai‘i 96813 lomuro@goodsill.com Steven L. Goto CHONG, NISHIMOTO, SIA, NAKAMURA & GOYA LLP 1003 Bishop Street, Ste 2500 Honolulu, Hawai‘i 96813 steven.goto@hawadvocate.com Matthew C. Shannon BAYS LUNG ROSE VOSS 700 Bishop Street, Suite 900 Honolulu, Hawai‘i 96813 mshannon@legalthawaii.com

In addition, any Class Member who objects to the proposed Settlement Agreement may be required to appear for a deposition regarding the grounds for their objection, and must provide along with their objection the dates when the objector will be available to be deposed during the period from when the objection is filed through the date 7 days before the Final Approval Hearing.

19. What is the difference between objecting and excluding myself/opting out?

Questions? Visit [Website]

Objecting is simply telling the Court that you don't like something about the Settlement. You can still obtain a Settlement payment and also object to the benefits provided by the Settlement or other terms of the Settlement only if you stay in the Settlement Class. Excluding yourself or "opting out" is telling the Court that you don't want to be included in the Settlement Class. If you exclude yourself, you have no basis to object to the Settlement and related releases because the Settlement no longer affects you.

THE COURT'S FINAL APPROVAL HEARING

20. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing on _____ 2022, in Courtroom __ before Senior United States District Judge Alan C. Kay of the United States District Court for the District of Hawaii, at 300 Ala Moana Blvd C-338, Honolulu, HI 96850, or at such other time, location, and venue as the Court may Order. This hearing date and time may be moved. Please refer to the settlement website ([Website]) for notice of any changes.

By no later than [100 days after the entry of the Preliminary Approval Order, and 14 days prior to Opt-out and Objection Deadline,] Class Counsel shall file a motion for final approval of the Settlement and a motion for attorneys' fees, costs, expenses, and for Service Awards. Objectors, if any, shall file any response to Class Counsel's motions [no later than 114 days after the entry of the Preliminary Approval Order]. By no later than [128 days after the entry of the Preliminary Approval Order], responses shall be filed, if any, to any filings by objectors, and any replies in support of final approval of the Settlement and/or Class Counsel's application for attorneys' fees, costs, expenses, and for Service Awards shall be filed.

At the Final Approval Hearing, the Court will consider, among other things, whether the Settlement is fair, reasonable, and adequate; how much Plaintiffs' lawyers will receive as attorneys' fees and costs and expenses; and whether to approve Service Awards to the Plaintiffs. If there are objections, the Court will consider them. The Court will listen to people at the hearing who file in advance a timely notice of their intention to appear (*see* Question 18). At or after the Final Approval Hearing, the Court will decide whether to approve the Settlement. There is no deadline by which the Court must make its decision.

21. Do I have to attend the hearing?

No. Class Counsel will answer questions the Court may have. You are welcome, however, to come at your own expense. If you submit an objection, you do not have to come to the Court to talk about it. As long as you submitted your objection timely and in accordance with the requirements for objecting set out of the Settlement (*see* Question 18), the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

IF YOU DO NOTHING

22. What happens if I do nothing at all?

If you are a Class Member and do nothing, you will remain a part of the Settlement Class and will automatically get a payment from the Settlement. Unless you exclude yourself, you will not be able to sue Defendants about the claims being resolved through this Settlement. See the Settlement Agreement, Section 9 for more details about the Releases.

If you do nothing, you will not impact any rights you have in any State Court Lawsuits you may have filed.

GETTING MORE INFORMATION

23. How do I get more information?

This notice summarizes the Settlement. More details are in the Settlement Agreement itself. You can get a copy of the Settlement Agreement at ([Website]).

Please do not contact the Court or Defendants with questions about the Settlement.

Questions? Visit [Website]

EXHIBIT B

LEGAL NOTICE

If you purchased a surplus lines insurance policy for a residential property located in Lava Zone 1 on the Island of Hawai‘i with a Lava Exclusion at any time during the period of January 1, 2012 through and including May 4, 2018 that was brokered through Monarch and underwritten and/or subscribed to by Underwriters, you are eligible to receive a payment from a class action settlement.

A federal court authorized this notice. This is not a solicitation from a lawyer.

Your legal rights are affected whether you act or don't act. Read this notice carefully.

A Settlement has been proposed to resolve litigation against Defendants Lloyd's Syndicates 2003, 318, 4020, 2121, 2007, 1183, 1729, and 510 (collectively, "Underwriters"), Borisoff Insurance Services, Inc. d/b/a Monarch E&S Insurance Services, Specialty Program Group, LLC d/b/a SPG Insurance Solutions, LLC (collectively, "Monarch"), Aloha Insurance Services, Inc. ("Aloha"), and Ilikea LLC d/b/a Moa Insurance Services Hawaii ("Moa") (collectively, "Defendants") brought by a putative class of individuals who purchased a certain surplus lines insurance policy for a residential property located in Lava Zone 1 on the Island of Hawai‘i with a Lava Exclusion. If you qualify, you may receive a cash payment, or you can exclude yourself from the Settlement, or object to it. The United States District Court for the District of Hawaii authorized this notice. Before any money is paid, the Court will have a hearing to decide whether to approve the Settlement.

Who Is Included?

You are a member of the Settlement Class and affected by the Settlement if you purchased a surplus lines insurance policy for a residential property located in Lava Zone 1 on the Island of Hawai‘i with a Lava Exclusion at any time during the period of January 1, 2012 through and including May 4, 2018 ("Class Period") that was brokered through Monarch and underwritten and/or subscribed to by Underwriters. "Lava Exclusion" means an exclusion for the peril of lava and/or lava flow causing direct or indirect physical damage or loss of use of the insured property. "Lava Zone 1" means the zone or area designated by the U.S. Geological Survey map on the island of Hawai‘i for volcanic hazard zones as having the highest risk of experiencing lava flow.

What Is This Case About?

The lawsuit—*Aquilina, et al. v. Certain Underwriters at Lloyd's London, et al.*, No. 18-cv-00496-ACK-KJM (D. Haw.)—asserts claims for violations of HRS §§480-1, *et seq.* (as to all Defendants), breach of the implied covenant of good faith and fair dealing (as to Underwriters), and negligence and unjust enrichment (as to Moa and Aloha). The lawsuit primarily alleges that Defendants violated the diligent search requirement of the Hawai‘i Surplus Lines Act. Defendants deny these allegations, any wrongdoing, and that they are liable in any amount to the affected individuals.

What Does the Settlement Provide?

Under the Settlement, Defendants have agreed to pay \$1.8 million dollars into a common fund, which will be used to pay all Class Member distributions, and any Court-approved reasonable Plaintiffs' attorneys' fees and expenses, Settlement Administrator's costs and expenses, and Plaintiffs' Service Awards up to \$2,500 to each of the two sets of Plaintiffs. Certain Defendants also have agreed to pay up to an additional \$50,000 to defray the Settlement Administrator's costs and expenses.

What Are Your Options?

If you do nothing, you automatically will receive a cash payment. No specific documentation is required. The settlement payment will come from the Settlement Fund and will be based on the proportional amount you paid in total premiums paid during the Class Period compared to the aggregate total premiums paid by all Class Members during the Class Period, after paying the above Service Awards, attorneys' fees, and expenses of litigation, and costs of settlement administration (the "Net Settlement Fund"). If you do nothing, you also will forfeit your right to sue or bring any claim against Defendants and/or Releasees related to the Released Claims as defined in Section 9 of the Settlement. The Release in the Settlement specifically provides that certain claims are included in the Release and others are not.

If you do not want to be legally bound by the Settlement, you must exclude yourself by **[Month 00, 2021]**, or you will not be able to sue, or continue to sue, Defendants or any other Releasees (as defined in the Settlement Agreement) for any of the claims resolved by the Settlement. To exclude yourself, you must provide all required information. If you exclude yourself, you cannot get money from this Settlement. If you stay in the Settlement Class but wish to object, you must do so by **[Month 00, 2021]**. Details for excluding yourself or objecting to the Settlement can be found in the Settlement Agreement and the Mail Notice, both of which are available on the Settlement Website.

The Court will hold a hearing in this case on **[Month 00, 2021]**, to consider whether to approve the Settlement. At the hearing, the Court will also consider a request by the lawyers representing all Class Members for attorneys' fees, costs, and expenses for investigating the facts, litigating the case, and negotiating the Settlement, as well as for Service Awards to the Plaintiffs for their time participating in the case. You may ask to appear at the hearing, but you do not have to.

Want More Information?

If you have any questions, you may contact the attorneys for Plaintiffs: Joseph P. Guglielmo at Scott+Scott Attorneys at Law LLP, The Helmsley Building 230 Park Avenue, 17th Floor New York, NY 10169, Tel.: 212-223-6444, Fax: 212-223-6334, jguglielmo@scott-scott.com or E. Kirk Wood at Wood Law Firm, LLC, P. O. Box 382434 Birmingham, AL 35238-2434, Tel.: 205-908-4906, Fax: 866-747-3905, ekirkwood1@bellsouth.net or Gregory W. Kugle at Damon Key Leong Kupchak Hastert, a Law Corporation, 1003 Bishop Street, Suite 1600, Honolulu, Hawai‘i 96813, Tel.: (808) 531-8031, Fax: (808) 533-2242, gwk@hawaiiilawyer.com.

You can also visit the Settlement Website at [\[Website\]](#).

**UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII**

STEPHEN G. AQUILINA and LUCINA J. AQUILINA, Individually and on Behalf of All Others Similarly Situated; and DONNA J. CORRIGAN and TODD L. CORRIGAN, Individually and on Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

CERTAIN UNDERWRITERS AT LLOYD'S LONDON; LLOYD'S SYNDICATE #2003; LLOYD'S SYNDICATE #318; LLOYD'S SYNDICATE #4020; LLOYD'S SYNDICATE #2121; LLOYD'S SYNDICATE #2007; LLOYD'S SYNDICATE #1183; LLOYD'S SYNDICATE #1729; LLOYD'S SYNDICATE #510; BORISOFF INSURANCE SERVICES, INC. d/b/a MONARCH E&S INSURANCE SERVICES; SPECIALTY PROGRAM GROUP, LLC d/b/a SPG INSURANCE SOLUTIONS, LLC; ALOHA INSURANCE SERVICES, INC.; ILIKEA LLC d/b/a MOA INSURANCE SERVICES HAWAII; and DOES 1-100,

Defendants.

No. 1:18-cv-00496-ACK-KJM

EXHIBIT C

[PROPOSED] PRELIMINARY APPROVAL ORDER

This matter is before the Court on Plaintiffs' Unopposed Motion for Preliminary Approval of the Settlement between Plaintiffs Stephen and Lucina Aquilina and Todd and Donna Corrigan (collectively "Plaintiffs"), for themselves and on behalf of the Settlement Class, and Lloyd's Syndicates 2003, 318, 4020,

2121, 2007, 1183, 1729, and 510 (collectively, “Underwriters”), Borisoff Insurance Services, Inc. d/b/a Monarch E&S Insurance Services, Specialty Program Group, LLC d/b/a SPG Insurance Solutions, LLC (collectively, “Monarch”), Aloha Insurance Services, Inc. (“Aloha”), and Ilikea LLC d/b/a Moa Insurance Services Hawaii (“Moa”) (and together with Aloha, Monarch, and Underwriters, “Defendants”) for consideration of whether the Settlement reached by the parties should be preliminarily approved, the proposed Settlement Class preliminarily certified, and the proposed plan for notifying the Settlement Class approved. Having reviewed the proposed Settlement, together with its exhibits, and based upon the relevant papers and all prior proceedings in this matter, the Court has determined the proposed Settlement satisfies the criteria for preliminary approval, the proposed Settlement Class is likely to be certified for settlement purposes, and the proposed Notice Program is approved.¹

Accordingly, good cause appearing in the record, Plaintiffs’ Motion is GRANTED, and **IT IS HEREBY ORDERED THAT:**

Provisional Certification of the Settlement Class

(1) The Court finds that it is likely to certify the following Settlement Class:

¹ Unless otherwise indicated, capitalized terms used herein have the same meaning as in the Settlement.

All persons who purchased a surplus lines insurance policy for a residential property located in Lava Zone 1 on the island of Hawai‘i with a Lava Exclusion at any time during the period of January 1, 2012 through and including May 4, 2018 (“Class Period”) that was brokered through Monarch and underwritten and/or subscribed to by Underwriters.

Excluded from the Settlement Class are Defendants; all officers, directors, or employees of Defendants; any entity in which any Defendant has a controlling interest; and any affiliate, legal representative, heir, or assign of any Defendant. Also excluded are any federal, state, or local governmental entities, any judicial officer presiding over this Litigation and the members of his/her immediate family and judicial staff, and any juror assigned to this action.

This Settlement Class is provisionally certified for purposes of settlement only.

(2) The Court determines that for settlement purposes the proposed Settlement Class likely meets all the requirements of Federal Rule of Civil Procedure 23(a) and (b)(3), namely that the Settlement Class is so numerous that joinder of all members is impractical; that there are common issues of law and fact; that the claims of the Plaintiffs are typical of absent Class Members; that the Plaintiffs will fairly and adequately protect the interests of the Settlement Class as they have no interests antagonistic to or in conflict with the Settlement Class and have retained experienced and competent counsel to prosecute this matter; that common issues predominate over any individual issues; and that a class action is the superior means of adjudicating the controversy.

(3) Plaintiffs are designated and appointed as representatives of the Settlement Class.

(4) The following lawyers are designated as Class Counsel pursuant to Fed. R. Civ. P. 23(g): Joseph P. Guglielmo of Scott+Scott Attorneys at Law LLP, E. Kirk Wood of Wood Law Firm, LLC, and Gregory W. Kugle of Damon Key Leong Kupchak Hastert, Law Corporation. The Court finds that Messrs. Guglielmo, Wood, and Kugle and their respective law firms are experienced and will adequately protect the interests of the Settlement Class.

Preliminary Approval of the Proposed Settlement

(5) Upon preliminary review as required under Rule 23(e)(2), the Court finds it will likely be able to approve the proposed Settlement, that the Settlement appears to be fair, reasonable, and adequate, and that it warrants issuance of notice to the Settlement Class. Accordingly, the proposed Settlement is preliminarily approved.

Final Approval Hearing

(6) A Final Approval Hearing shall take place before the Court on _____, 2022 [no earlier than 194 days after entry of this Order] at ___ a.m./p.m. in Courtroom ___ before Senior United States District Judge Alan C. Kay of the United States District Court for the District of Hawaii, United States Courthouse, 300 Ala Moana Blvd., Honolulu, HI 96850, to determine, among other things, whether: (a) the proposed Settlement Class should be finally certified for settlement purposes pursuant to Federal Rule of Civil Procedure 23; (b) the

Settlement should be finally approved as fair, reasonable and adequate and, in accordance with the Settlement's terms, all claims in the Complaints and Litigation should be dismissed with prejudice; (c) Class Members should be bound by the releases set forth in the Settlement; (d) the proposed Final Approval Order and Judgment should be entered; (e) the application of Class Counsel for an award of attorneys' fees, expenses, and notice and administration costs should be approved; and (f) the application for Service Awards to the Plaintiffs should be approved. Any other matters the Court deems necessary and appropriate will also be addressed at the hearing.

(7) Class Counsel shall submit their application for attorneys' fees, expenses, and notice and administration costs, and the application for Service Awards no later than 100 days after the entry of this Order. Objectors, if any, shall file any response to Class Counsel's motions no later than 114 days after the entry of this Order. By no later than 160 days after the entry of this Order, responses, if any, shall be filed to any filings by objectors, and any replies in support of final approval of the Settlement and/or Class Counsel's application for attorneys' fees, expenses, notice and administration costs, and Service Awards shall be filed.

(8) Any Class Member that has not timely and properly excluded itself from the Settlement Class in the manner described below, may appear at the Final Approval Hearing in person or by counsel and be heard, to the extent allowed by the

Court, regarding the proposed Settlement; provided, however, that no Class Member that has elected to exclude itself from the Settlement Class shall be entitled to object or otherwise appear, and, further provided, that no Class Member shall be heard in opposition to the Settlement unless the Class Member complies with the requirements of this Order pertaining to objections, which are described below.

Administration

(9) RG2 Claims Administration LLC is appointed as the Settlement Administrator, with responsibility for Claims Administration, the Notice Program, and all other obligations of the Settlement Administrator as set forth in the Settlement. Within (30) thirty days of this order, the Settlement Administrator shall cause the Notice Program to be effectuated as set forth in the Settlement Agreement. Notice pursuant to the Class Action Fairness Act (“CAFA”), 28 U.S.C. §1715(b) will also be provided. Up to \$50,000 of the Settlement Administrator’s fees, as well as all other costs and expenses associated with notice and administration, will be paid by certain of the Releasees, with the remainder of such costs, if approved by the Court, to be paid by the Settlement Fund to the extent provided in the Settlement.

Notice to the Class

(10) The Notice Program set forth in the Settlement, including the forms of Notice attached as exhibits to the Settlement, satisfies the requirements of Federal Rule of Civil Procedure 23 and due process and thus are approved. Non-material

modifications to the exhibits may be made without further order of the Court. The Settlement Administrator is directed to carry out the Notice Program in conformance with the Settlement and to perform all other tasks that the Settlement requires.

(11) The Court finds that the form, content, and method of giving notice to the Settlement Class, as described in the Settlement and exhibits therefore: (a) constitute the best practicable notice to the Settlement Class; (b) are reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the action, the terms of the proposed Settlement, and their rights under the proposed Settlement; (c) are reasonable and constitute due, adequate, and sufficient notice to those persons entitled to receive notice; and (d) satisfy the requirements of Federal Rule of Civil Procedure 23, the constitutional requirement of due process, and any other legal requirements. The Court further finds that the notice is written in plain language, uses simple terminology, and is designed to be readily understandable by Class Members.

Exclusions from the Settlement Class

(12) Any Class Member that wishes to be excluded from the Settlement Class must mail a written notification of the intent to exclude itself to the Settlement Administrator, Class Counsel, and Defendants' counsel at the addresses provided in the Notice, postmarked no later than 114 days after the entry of this Order (the "Opt-Out Deadline") and sent via first class postage pre-paid United States mail. The

written notification must include the name of this Litigation, *Aquilina, et al. v. Certain Underwriters at Lloyd's London, et al.*, No. 18-cv-00496-ACK-KJM (D. Haw.); the full name, mailing address, property address, email address, and telephone number of the Class Member; and the words "Request for Exclusion" at the top of the document or a statement in the body of the document requesting exclusion from the Settlement. If the Class Member fails to provide all the required information necessary to confirm the identity of the Class Member on or before the deadlines specified in the Settlement and fails to cure any deficiency within the time allowed in the Settlement, then its attempt to opt out shall be invalid and have no legal effect, and the Class Member shall be bound by the Settlement, including the releases, if finally approved.

(13) All Class Members who submit valid and timely notices of their intent to be excluded from the Settlement shall not receive any benefits of or be bound by the terms of the Settlement. Any Class Member that does not timely and validly exclude itself from the Settlement shall be bound by the terms of the Settlement. If final judgment is entered, any Class Member that has not submitted a timely, valid written notice of exclusion from the Settlement (in accordance with the requirements of the Settlement) shall be bound by all subsequent proceedings, orders and judgments in this matter, the Settlement, including but not limited to the releases set forth in the Settlement, and the Final Approval Order and Judgment.

(14) The Settlement Administrator shall provide the Parties with copies of all opt-out notifications promptly upon receipt and a final list of all that have timely and validly excluded themselves from the Settlement Class in accordance with the terms of the Settlement.

Objections to the Settlement

(15) A Class Member that complies with the requirements of this Order may object to the Settlement, the request of Class Counsel for an award of attorneys' fees, costs, and expenses, and/or the request for Service Awards.

(16) No Class Member shall be heard, and no papers, briefs, pleadings, or other documents submitted by any Class Member shall be received and considered by the Court, unless the objection is (a) electronically filed with the Court by the objection deadline; or (b) mailed first-class postage prepaid to the Clerk of Court, Class Counsel, and Defendants' Counsel, at the addresses listed in the Notice, and postmarked by no later than the objection deadline, which shall be 114 days after the entry of this Order, as specified in the Notice. Objections shall not exceed twenty-five (25) pages. For the objection to be considered by the Court, the objection shall set forth:

- a. the name of the Litigation: *Aquilina, et al. v. Certain Underwriters at Lloyd's London, et al.*, No. 18-cv-00496-ACK-KJM (D. Haw.);
- b. the full name of the objecting Class Member and the full name, address, email address, and telephone number of the person acting on its behalf;

- c. an explanation of the basis upon which the objector claims to be a Class Member;
- d. whether the objection applies only to the objecting Class Member, a specific subset of Class Members, or the entire Settlement Class;
- e. all grounds for the objection stated, with specificity, accompanied by any legal support for the objection;
- f. the identity of all counsel who represent the objecting Class Member, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement Agreement, Class Counsel's request for attorneys' fees, expenses, Service Awards, and/or notice and administration costs;
- g. the identity of all representatives (including counsel representing the objecting Class Member) who will appear at the Final Approval Hearing;
- h. the number of times in which the objecting Class Member has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior such objections that were issued by the trial and appellate courts in each listed case;
- i. the number of times in which the objecting Class Member's counsel and/or counsel's law firm have objected to a class action settlement within the five years preceding the date that the objector filed the objection, the caption of each case in which the counsel or the firm has made such an objection, and a copy of any orders related to or ruling upon counsel's or the firm's prior such objections that were issued by the trial and appellate courts in each listed case;
- j. if the objecting Class Member is represented by an attorney who intends to seek fees and expenses from anyone other than the objectors he or she represents, the objection should also include: (i) a description of the attorney's legal background and prior experience in connection with class action litigation; (ii) the amount of fees sought by the attorney for representing the objector and the factual and legal justification for the fees being sought; (iii) a statement regarding whether the fees being sought are calculated on the basis of a lodestar, contingency, or other

method; (iv) the number of hours already spent by the attorney and an estimate of the hours to be spent in the future; and (v) the attorney's hourly rate;

- k. any and all agreements that relate to the objection or the process of objecting, whether written or verbal, between the objector or objector's counsel and any other person or entity;
- l. a description of all evidence to be presented at the Final Approval Hearing in support of the objection, including a list of any witnesses, a summary of the expected testimony from each witness, and a copy of any documents or other non-oral material to be presented;
- m. a statement indicating whether the objecting Class Member intends to personally appear and/or testify at the Final Approval Hearing; and
- n. the objecting Class Member's (or the objecting Class Member's attorney's) signature on the written objection.

(17) In addition, any Class Member that objects to the proposed Settlement must make itself available to be deposed regarding the grounds for its objection and must provide, along with its objection, the dates when the objector will be available to be deposed during the period from when the objection is filed through the date 7 (seven) days before the Final Approval Hearing.

(18) Any Class Member that fails to comply with the provisions in this Order will waive and forfeit any and all rights it may have to object, and shall be bound by all the terms of the Settlement, this Order, and by all proceedings, orders, and judgments, including, but not limited to, the releases in the Settlement, if finally approved. Any Class Member who both objects to the Settlement and opts out will be deemed to have opted out and the objection shall be deemed null and void.

Claims Process and Distribution Plan

(19) The Settlement establishes a methodology for paying Class Members. The Court preliminarily approves this process.

(20) The Net Settlement Fund shall be distributed to Class Members based on the proportion of total premium dollar each Class Member paid during the Class Period compared to the total aggregate premium paid by all Class Members during the Class Period. No specific documentation shall be required. If the Settlement is finally approved, all Class Members that qualify for any benefit under the Settlement will be subject to and bound by the provisions of the Settlement, including the releases included in the Settlement, and the Final Approval Order and Judgment.

Termination of the Settlement and Use of this Order

(21) This Order shall become null and void and shall be without prejudice to the rights of the Parties, all of which shall be restored to their respective positions existing immediately before this Court entered this Order, if the Settlement is not finally approved by the Court or is terminated in accordance with the terms of the Settlement. In such event, the Settlement shall become null and void and be of no further force and effect, and neither the Settlement (including any Settlement-related filings) nor the Court's orders, including this Order, relating to the Settlement shall be used or referred to for any purpose whatsoever.

(22) If the Settlement is not finally approved or there is no Effective Date under the terms of the Settlement, then this Order shall be of no force or effect; shall not be construed or used as an admission, concession, or declaration by or against Defendants of any fault, wrongdoing, breach, or liability; shall not be construed or used as an admission, concession, or declaration by or against any Plaintiff or any other Class Member that their claims lack merit or that the relief requested is inappropriate, improper, or unavailable; and shall not constitute a waiver by any party of any defense (including without limitation any defense to class certification) or claims they may have in this Litigation or in any other lawsuit.

Stay of Proceedings

(23) Except as necessary to effectuate this Order, this Litigation and any deadlines set by the Court in this matter are stayed and suspended pending the Final Approval Hearing and issuance of the Final Approval Order and Judgment, or until further order of this Court.

Continuance of Final Approval Hearing

(24) The Court reserves the right to adjourn or continue the Final Approval Hearing and related deadlines without further written notice to the Settlement Class. If the Court alters any of those dates or times, the revised dates and times shall be posted on the website maintained by the Settlement Administrator.

Summary of Deadlines

(26) The Settlement, as preliminarily approved in this Order, shall be administered according to its terms pending the Final Approval Hearing. Deadlines arising under the Settlement and this Order include but are not limited to the following:

- Notice Deadline: _____ [30 days after entry of this Order]
- Objection and Opt-Out Deadline: _____ [114 days after entry of this Order]
- Claims Deadline: _____ [180 days after entry of this Order]
- Final Approval Hearing: _____ [a date to be set by the Court no earlier than 194 days after entry of this order]
- Application for Attorneys’ Fees, Expenses and Service Awards (“Fee Application”): _____ [100 days after entry of this Order]
- Motion for Final Approval of the Settlement (“Final Approval Motion”): _____ [100 days after entry of this Order]
- Objectors’, if any, Response to Final Approval Motion and Fee Application: _____ [114 days after entry of this Order]

- Replies in Support of Final Approval and Fee Motion:

_____ [160 days after entry of this Order]

IT IS SO ORDERED this ____ day of _____, 2021.

Hon. Alan C. Kay
Senior United States District Judge

**UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII**

STEPHEN G. AQUILINA and LUCINA J. AQUILINA, Individually and on Behalf of All Others Similarly Situated; and DONNA J. CORRIGAN and TODD L. CORRIGAN, Individually and on Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

CERTAIN UNDERWRITERS AT LLOYD’S LONDON; LLOYD’S SYNDICATE #2003; LLOYD’S SYNDICATE #318; LLOYD’S SYNDICATE #4020; LLOYD’S SYNDICATE #2121; LLOYD’S SYNDICATE #2007; LLOYD’S SYNDICATE #1183; LLOYD’S SYNDICATE #1729; LLOYD’S SYNDICATE #510; BORISOFF INSURANCE SERVICES, INC. d/b/a MONARCH E&S INSURANCE SERVICES; SPECIALTY PROGRAM GROUP, LLC d/b/a SPG INSURANCE SOLUTIONS, LLC; ALOHA INSURANCE SERVICES, INC.; ILIKEA LLC d/b/a MOA INSURANCE SERVICES HAWAII; and DOES 1-100,

Defendants.

No. 1:18-cv-00496-ACK-KJM

EXHIBIT D

[PROPOSED] FINAL APPROVAL ORDER AND JUDGMENT

On _____ [DATE], this Court entered an order granting preliminary approval (the “Preliminary Approval Order”) (Doc. ____) of the Settlement between Plaintiffs Stephen and Lucina Aquilina and Todd and Donna Corrigan (collectively “Plaintiffs”), for themselves and on behalf of the Settlement

Class, and Lloyd’s Syndicates 2003, 318, 4020, 2121, 2007, 1183, 1729, and 510 (collectively, “Underwriters”), Borisoff Insurance Services, Inc. d/b/a Monarch E&S Insurance Services, Specialty Program Group, LLC d/b/a SPG Insurance Solutions, LLC (collectively, “Monarch”), Aloha Insurance Services, Inc. (“Aloha”), and Ilikea LLC d/b/a Moa Insurance Services Hawaii (“Moa”) (and together with Aloha, Monarch, and Underwriters, “Defendants”), as memorialized in Exhibit __ (Doc. __) to Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement;¹

On _____ [DATE], pursuant to the notice requirements set forth in the Settlement and in the Preliminary Approval Order, the Settlement Class was apprised of the nature and pendency of the Litigation, the terms of the Settlement, and their rights to request exclusion, object, and/or appear at the Final Approval Hearing;

On _____ [DATE], Plaintiffs filed their Motion for Final Approval of the Class Action Settlement (“Final Approval Motion”) and accompanying Memorandum of Law and supporting exhibits, and Class Counsel filed their Application for Attorneys’ Fees, Expenses, Notice and Administration

¹ The capitalized terms used in this Final Approval Order and Judgment shall have the same meaning as defined in the Settlement except as may otherwise be indicated.

Costs, and Service Awards and accompanying Memorandum of Law and supporting exhibits (“Fee Application”);

On _____ [DATE], the Court held a Final Approval Hearing to determine, among other things: (1) whether the Settlement is fair, reasonable, and adequate; and (2) whether judgment should be entered dismissing all claims in the Complaints with prejudice. Prior to the Final Approval Hearing, Class Counsel filed a declaration from the Settlement Administrator confirming that the Notice Program was completed in accordance with the Parties’ instructions and the Preliminary Approval Order. Therefore, the Court is satisfied that Class Members were properly notified of their right to appear at the Final Approval Hearing in support of or in opposition to the proposed Settlement, the award of attorneys’ fees, expenses, notice and administration costs, and the payment of Service Awards.

Having given an opportunity to be heard to all requesting persons in accordance with the Preliminary Approval Order, having heard the presentation of Class Counsel and counsel for Defendants, having reviewed all of the submissions presented with respect to the proposed Settlement, having determined that the Settlement is fair, adequate, and reasonable, having considered the application made by Class Counsel for attorneys’ fees, expenses, notice and administration costs, and the application for Service Awards, and having reviewed the materials in support

thereof, and good cause appearing in the record, Plaintiffs' Final Approval Motion is **GRANTED**, and Class Counsel's Fee Application is **GRANTED**, and:

IT IS HEREBY ORDERED THAT:

1. The Court has jurisdiction over the subject matter of this action and over all claims raised therein and all Parties thereto, including the Settlement Class. The Court also has personal jurisdiction over the Parties and the Class Members.

2. The Settlement was entered into in good faith following arm's length negotiations and is non-collusive.

3. Following notification and a hearing, the Settlement satisfies the requirements and constitutes a good faith settlement within the meaning of Haw. Rev. Stat. Section 663-15.5.

4. The Settlement is, in all respects, fair, reasonable, and adequate, is in the best interests of the Settlement Class, and is therefore approved. The Court finds that the Parties faced significant risks, expenses, delays, and uncertainties, including as to the outcome, of continued litigation of this complex matter, which further supports the Court's finding that the Settlement is fair, reasonable, adequate and in the best interests of the Class Members. The Court finds that the uncertainties of continued litigation in both the trial and appellate courts, as well as the expense associated with it, weigh in favor of approval of the Settlement.

5. This Court grants final approval of the Settlement, including but not limited to, the releases in the Settlement and the plans for distribution of the settlement relief. The Court finds that the Settlement is in all respects fair, reasonable, and in the best interest of the Settlement Class. Therefore, all Class Members who have not opted out are bound by the Settlement and this Final Approval Order and Judgment.

6. The Settlement and every term and provision thereof shall be deemed incorporated herein as if explicitly set forth herein and shall have the full force of an Order of this Court.

7. The Parties shall effectuate the Settlement in accordance with its terms.

OBJECTIONS AND OPT-OUTS

8. _____ objections were filed by Class Members. The Court has considered all objections and finds the objections do not counsel against Settlement approval, and the objections are hereby overruled in all respects.

9. All persons and entities who have not objected to the Settlement in the manner provided in the Settlement are deemed to have waived any objections to the Settlement, including but not limited to by appeal, collateral attack, or otherwise.

10. A list of those putative Class Members who have timely and validly elected to opt out of the Settlement and the Settlement Class in accordance with the requirements in the Settlement (the “Opt-Out Members”) has been submitted to the

Court in the Declaration of _____, filed in advance of the Final Approval Hearing. That list is attached as Exhibit A to this Order. The persons and/or entities listed in Exhibit A are not bound by the Settlement, this Final Approval Order and Judgment, and are not entitled to any of the benefits under the Settlement. Opt-Out Members listed in Exhibit A shall be deemed not to be Releasers.

CLASS CERTIFICATION

11. For purposes of the Settlement and this Final Approval Order and Judgment, the Court hereby finally certifies for settlement purposes only the following Settlement Class:

All persons who purchased a surplus lines insurance policy for a residential property located in Lava Zone 1 on the island of Hawai'i with a Lava Exclusion at any time during the period of January 1, 2012 through and including May 4, 2018 ("Class Period") that was brokered through Monarch and underwritten and/or subscribed to by Underwriters.

Excluded from the Settlement Class are Defendants; all officers, directors, or employees of Defendants; any entity in which any Defendant has a controlling interest; and any affiliate, legal representative, heir, or assign of any Defendant. Also excluded are any federal, state, or local governmental entities, any judicial officer presiding over this Litigation and the members of his/her immediate family and judicial staff, and any juror assigned to this action.

12. The Court determines that for settlement purposes the Settlement Class meets all the requirements of Federal Rule of Civil Procedure 23(a) and (b)(3), namely that the Settlement Class is so numerous that joinder of all members is

impractical; that there are common issues of law and fact; that the claims of the Plaintiffs are typical of absent Class Members; that the Plaintiffs have and will fairly and adequately protect the interests of the Settlement Class as they have no interests antagonistic to or in conflict with the Settlement Class and have retained experienced and competent counsel to prosecute this matter; that common issues predominate over any individual issues; and that a class action is the superior means of adjudicating the controversy.

13. The Court grants final approval to the appointment of Plaintiffs as representatives of the Settlement Class. The Court concludes that Plaintiffs have fairly and adequately represented the Settlement Class and will continue to do so.

14. The Court grants final approval to the appointment, pursuant to Rule 23(g), of Joseph P. Guglielmo of Scott+Scott Attorneys at Law LLP, E. Kirk Wood of Wood Law Firm, LLC and Gregory W. Kugle of Damon Key Leong Kupchak Hastert, Law Corporation as Class Counsel. The Court concludes that Class Counsel have adequately represented the Settlement Class and will continue to do so.

NOTICE TO THE SETTLEMENT CLASS

15. The Court finds that the Notice Program, set forth in the Settlement and effectuated pursuant to the Preliminary Approval Order, satisfied Rule 23(c)(2), was the best notice practicable under the circumstances, was reasonably calculated to provide and did provide due and sufficient notice to the Settlement Class of the

pendency of the Litigation, certification of the Settlement Class for settlement purposes only, the existence and terms of the Settlement, their right to exclude themselves, their right to object to the Settlement and to appear at the Final Approval Hearing, and satisfied the other requirements of the Federal Rules of Civil Procedure, the United States Constitution, and all other applicable laws.

16. The Court finds that Defendants have fully complied with the notice requirements of the Class Action Fairness Act of 2005, 28 U.S.C. §1715.

AWARD OF ATTORNEYS' FEES AND SERVICE AWARDS

17. The Court has considered Class Counsel's Fee Application.

18. The Court grants Class Counsel's request for Service Awards and awards \$2,500 to the Aquilina Plaintiffs and \$2,500 to the Corrigan Plaintiffs. The Court finds that this payment is justified by their service to the Settlement Class. These Service Awards shall be paid from the common fund in accordance with the Settlement.

19. Pursuant to Rule 23(h) and relevant Ninth Circuit authority, the Court awards Class Counsel \$_____ as an award of reasonable attorneys' fees, expenses, Service Awards, and notice and settlement administration costs to be paid out of the common fund in accordance with the Settlement. The Court finds the amount of fees and expenses to be fair and reasonable.

20. This award of attorneys' fees, expenses, Service Awards, and notice and settlement administration costs is independent of the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement.

OTHER PROVISIONS

21. The Parties to the Settlement shall carry out their respective obligations thereunder.

22. Within the time period set forth in the Settlement, the relief provided for in the Settlement shall be made available to the Class Members pursuant to the terms and conditions of the Settlement.

23. As of the Effective Date, the Releasers, each on behalf of themselves and any predecessors, successors, or assigns, shall release, remise, acquit and forever discharge Releasees of and from any and all liability alleged against any one or more of them in the Complaints, including without limitation any and all liability alleged to exist under the Hawai'i Unfair Deceptive Acts and Practices Act (Haw. Rev. Stat. §§480-1, *et seq.*), the Hawai'i Uniform Deceptive Trade Practices Act (Haw. Rev. Stat. §§481A-1, *et seq.*), and Hawai'i common law, including claims for tort damages, statutory damages, attorneys' fees, costs, interests, or other damages, known or unknown, suspected, fixed or contingent, liquidated or unliquidated, trebled or otherwise multiplied, direct or indirect, past, present, or future, in law or in equity, arising out of the allegations made against Releasees in the Complaints,

all as more specifically set forth in Section 9 of the Settlement (the “Released Claims”).

24. The Released Claims include, without limitation, any allegations made against Releasees in the State Court Lawsuits that are predicated upon: (1) violation of Section 8:301 or Section 8:312(b) of the Hawai‘i Surplus Lines Act (Haw. Rev. Stat. §431:8-301 and 431:8-312(b)); (2) violation of the Lloyd’s Minimum Standards as alleged in the Complaints as a result of any alleged violations of Section 8:301 or Section 8:312(b) of the Hawai‘i Surplus Lines Act (Haw. Rev. Stat. §§431:8-301 and 8:312(b)); (3) the policies of insurance subscribed to by Underwriters and provided to the Class Members being not suitable or inappropriate, or constituting a breach of the covenant of good faith and fair dealing, because they failed to comply with Haw. Rev. Stat. §431:8-301 and 431:8-312(b); (4) the policies of insurance subscribed to by Underwriters and provided to the Class Members being not suitable or inappropriate or constituting a breach of the covenant of good faith and fair dealing because: they contained a Lava Exclusion, they offended the public policy behind the enactment of the Hawaii Property Insurance Association, they provided coverage amounts that were artificially inflated beyond what would be available through admitted insurers or the Hawaii Property Insurance Association, or lava coverage was available through the Hawaii Property Insurance Association or other provider of surplus lines insurance as alleged in the Complaints; and, (5)

the failure by Releasees to advise Class Members of the existence of coverage available through admitted insurers, the Hawaii Property Insurance Association or lava coverage from any surplus lines provider of insurance.

25. The foregoing release shall not extend to any allegations made against any non-settling parties, nor shall it extend to any allegations made in the State Court Lawsuits that are predicated upon alleged violations that were not alleged in the Complaints or described above, *e.g.*, allegations predicated upon Monarch's failure to have a valid, active surplus lines license, or Defendants' failure to include the surplus lines stamp on the policy provided to the Plaintiffs, allegations predicated upon common law bad faith claims handling and unfair or deceptive practices in the handling and denial of insurance loss claims arising under the terms of policies, and allegations for coverage predicated upon property damage or losses suffered on properties from the 2018 eruption of Kilauea.

26. This release shall apply to, prevent, and bar, with immediate and permanent effect, any plaintiff in the State Court Lawsuits who qualifies as a Class Member and does not opt out of this Settlement from asserting against Releasees any liability released as part of this Settlement. This Release also shall apply to, prevent, and bar, with immediate and permanent effect, any plaintiff in the State Court Lawsuits who qualifies as a Class Member and does not opt out of this Settlement from prosecuting Released Claims against Releasees. Consistent with this

understanding, any one or more of the Releasees may use the Agreement or Final Approval Order and Judgment with binding force and effect against any plaintiff in the State Court Lawsuits that qualifies as a Class Member and does not opt out of this Settlement, should any such plaintiff seek to prosecute Released Claims against Releasees, or seek to admit evidence tending to establish liability as to Released Claims against Releasees.

27. It is further understood and agreed that the foregoing release shall not extend to any allegations made against any non-settling parties, nor shall it extend to any allegation made in the State Court Lawsuits that are predicated upon alleged violations that were not alleged in the Complaints or described above, *e.g.*, allegations predicated upon Monarch's failure to have a valid, active surplus lines license, allegations predicated upon the failure to include the surplus lines stamp on the policy, allegations predicated upon common law bad faith claims handling and unfair or deceptive practices in the handling and denial of claims arising under the terms of policies, and claims for coverage predicated upon property damage or losses suffered on properties from the 2018 eruption of Kilauea.

28. The Parties agree and stipulate that Releasees shall not use the existence of this Settlement, or the payment of any funds to participating Class Members, as a basis for a defense against any participating Class Members that any other lawsuits those participating Class Members have filed, or may file in the future, should be

dismissed on the basis of an argument that the Class Members have elected their remedy. Provided, however, that no Class Member will seek or be entitled to recover in any other lawsuit a return of premiums paid, or augmented damages or interest or fines or fees or costs based on the return of any premiums, during the Class Period.

29. Class Members are deemed to have waived the provisions, rights, and benefits conferred by Cal. Civ. Code §1542 to the extent applicable, and also any and all provisions, rights, and benefits conferred by any law of any state, province, or territory of the United States, which is similar, comparable, or equivalent to Cal. Civ. Code §1542, which provides:

A general release does not extend to claims which the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that, if known by him or her would have materially affected his or her settlement with the debtor or released party.

30. The Plaintiffs and Class Members are enjoined from prosecuting any Released Claims in any proceeding against any of the Releasees or prosecuting any claim based on any actions taken by any of the Releasees that are authorized or required by this Settlement or by the Final Approval Order and Judgment. It is further agreed that the Settlement and/or this Final Approval Order and Judgment may be pleaded as a complete defense to any proceeding subject to this section.

31. This Final Approval Order and Judgment and the Settlement, and all acts, statements, documents, and proceedings relating to the Settlement are not, and

shall not be construed as, used as, or deemed to be evidence of, an admission by or against Defendants of any claim, any fact alleged in the Litigation, any fault, any wrongdoing, any violation of law, or any liability of any kind on the part of Defendants or of the validity or certifiability for litigation of any claims that have been, or could have been, asserted in the Litigation.

32. This Final Approval Order and Judgment, the Settlement, and all acts, statements, documents, and proceedings relating to the Settlement shall not be offered, received, or admissible in evidence in any action or proceeding, or be used in any way as an admission, concession or evidence of any liability or wrongdoing of any nature or that Plaintiffs, any Class Member, or any other person has suffered any damage; *provided, however*, that nothing in the foregoing, the Settlement, or this Final Approval Order and Judgment shall be interpreted to prohibit the use of the Settlement or this Final Approval Order and Judgment in a proceeding to consummate or enforce the Settlement or this Final Approval Order and Judgment (including all releases in the Settlement and Final Approval Order and Judgment), or to defend against the assertion of any Released Claims in any other proceeding, or as otherwise required by law.

33. The Settlement's terms shall be forever binding on, and shall have res judicata and preclusive effect in, all pending and future lawsuits or other proceedings as to Released Claims (and other prohibitions set forth in this Final Approval Order

and Judgment) that are brought, initiated, or maintained by, or on behalf of, any Class Member who is not an Opt-Out Member or any other person subject to the provisions of this Final Approval Order and Judgment.

34. The Court hereby dismisses the Litigation and Complaints and all claims therein on the merits and with prejudice, without fees or costs to any Party except as provided in this Final Approval Order and Judgment.

35. Consistent with the Settlement, if the Effective Date, as defined in the Settlement Agreement, does not occur for any reason, this Final Approval Order and Judgment and the Preliminary Approval Order shall be deemed vacated and shall have no force and effect whatsoever; the Settlement shall be considered null and void; all of the Parties' obligations under the Settlement, the Preliminary Approval Order, and this Final Approval Order and Judgment shall cease to be of any force and effect, and the Parties shall return to the *status quo ante* in the Litigation as if the Parties had not entered into the Settlement. In such an event, the Parties shall be restored to their respective positions in the Litigation as if the Settlement Agreement had never been entered into (and without prejudice to any of the Parties' respective positions on the issue of class certification or any other issue).

36. Pursuant to the All Writs Act, 28 U.S.C. §1651, this Court shall retain the authority to issue any order necessary to protect its jurisdiction from any action, whether in state or federal court.

37. Without affecting the finality of this Final Approval Order and Judgment, the Court will retain jurisdiction over the subject matter and the Parties with respect to the interpretation and implementation of the Settlement for all purposes, including enforcement of its terms at the request of any party and resolution of any disputes that may arise relating in any way to, arising from, the implementation of the Settlement or the implementation of this Final Order and Judgment.

ENTERED:

DATED: _____, 2022

By: _____
Hon. Alan C. Kay
Senior United States District Judge