

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”) dated the latest date among the signatories below, by and between Plaintiffs Bruce Corker d/b/a Rancho Aloha, Colehour and Melanie Bondera d/b/a Kanalani Ohana Farm, Robert and Cecelia Smith d/b/a Smithfarms, and Smithfarms LLC (“Plaintiffs”), on behalf of all others similarly situated (“Class Members”), on the one hand, and Defendant MNS, Ltd. (“MNS”) parties in *Corker, et al. v. Costco Wholesale Corporation, et al.*, 2:19-00290-RSL (W.D. Wash.) (“Case”).¹ This Agreement contains all material terms of the settlement in this action, and MNS and Plaintiffs (“Parties”) intend for it to be binding to the fullest extent of the law. The Agreement shall be subject only to the contingencies set forth below, binding court approval, and class notice.

RECITALS

1. Plaintiffs are coffee growers in the Kona district of Hawaii. Plaintiffs are class representatives of a class of all persons and entities who farmed Kona coffee in the Kona District and then sold their coffee.
2. The Court granted Plaintiffs’ motion for class certification on February 13, 2023 (Dkt. 839).
3. Plaintiffs alleged that MNS falsely advertised coffee as originating from the Kona region in violation of the Lanham Act, 15 U.S.C. § 1125(a). MNS has denied Plaintiffs’ claims and has asserted affirmative defenses to Plaintiffs’ claims.
4. Plaintiffs alleged that MNS violated the Lanham Act, 15 U.S.C. § 1125(b), with respect to the coffee products it sold containing Kona coffee or labeled as containing Kona coffee. MNS has denied Plaintiffs’ claims and asserted affirmative defenses to Plaintiffs’ claims.
5. Plaintiffs and MNS, with the assistance of their respective counsel, engaged in arm’s-length negotiations to resolve the Case without the need for further litigation. This included mediation before Robert A. Meyer of JAMS on February 24, 2023 as well as a prior mediation before the Honorable Edward A. Infante (Ret.).
6. Plaintiffs have concluded that it would be in the best interests of the Class Members to enter into this Agreement to avoid the uncertainties of litigation and trial and to provide to the Class Members immediate benefits.
7. Similarly, MNS has concluded that, despite its belief that it is not liable for the claims asserted and has good defenses thereto, and without admission of any wrongdoing of any kind, it is in its best interests to enter into this Agreement to avoid the time, expense, and uncertainty of litigation.
8. Although MNS believes that the Agreement can and should be approved to avoid the time, expense, and uncertainty of litigation, in the event that the Agreement does not receive

¹ All capitalized terms are as defined herein.

final and binding approval from the Court or is terminated according to its terms, MNS expressly reserves the right to defend against the claims, including without limitation deny all liability and raise any and all defenses.

9. In light of the investigations undertaken and conclusions reached by the Parties and discussed above, Plaintiffs and MNS have agreed, subject to approval by the Court, to fully and finally compromise, settle, extinguish, and dismiss with prejudice the Settled Claims.

10. This Agreement is for settlement purposes only, and neither the fact of, nor any provision contained in this Agreement, nor any negotiations or proceedings related thereto, nor any action taken hereunder, shall constitute or be construed as any admission of the validity of any claim or any fact alleged by Plaintiffs or of any wrongdoing, fault, violation of law, or liability of any kind on the part of MNS, or any admission by MNS of any claim or allegation made in any action or proceeding against MNS, or as a waiver of any applicable defense, including, without limitation, any applicable statute of limitations. MNS acknowledges this Agreement is made without duress, under advice of its counsel, and for the purpose of resolving the Case. For the Plaintiffs' part, neither the fact of, nor any provision contained in, this Agreement, nor any negotiations or proceedings related thereto, nor any action taken hereunder, shall constitute or be construed as any admission of the validity of any affirmative defense asserted by MNS, specifically including the equitable defense of laches.

Terms of the Settlement Agreement

11. **Class Definition.**

a. The Class is defined as: "All persons and entities who farmed Kona coffee in the Kona District and then sold their coffee from February 27, 2015 to the date of the Court's order granting preliminary approval to this settlement." (Dkt. 839) at 14.

b. Excluded from the Class are any defendants to the action, as well as any judge assigned to the action, and the judge's immediate family and staff.

12. **Product Requirements, Procedures, Notice, and Cure.**

a. MNS agrees that any coffee product that it sells labeled as "Kona" or "Kona Blend" will accurately and unambiguously state on the front label of the product the minimum percentage of authentic Kona coffee beans the supplier of the product states are contained in the product in compliance with the labeling standards set forth in the "Hawaii-grown roasted or instant coffee; labeling requirements" law (Hawaii Revised Statute § 486-120.6) as it currently exists today, or as it may be modified in the future, and regardless of whether any such product is sold in Hawaii or elsewhere. The current requirements imposed by Hawaii Revised Statute § 486-120.6 pertaining to the "Kona" or "Kona Blend" portion of the label ("identity statement") provide:

Each word or character in the identity statement shall be of the same type size and shall be contiguous. The smallest letter or character of the identity statement on packages of sixteen ounces or less net weight shall be at least one and one-half times the type size required under federal law for the statement of net weight or

three-sixteenths of an inch in height, whichever is smaller. The smallest letter or character of the identity statement on packages of greater than sixteen ounces net weight shall be at least one and one-half times the type size required under federal law for the statement of net weight. The identity statement shall be conspicuously displayed without any intervening material in a position above the statement of net weight. Upper and lower case letters may be used interchangeably in the identity statement.

Notwithstanding the foregoing, the labeling requirements contained in this paragraph do not apply to the labels on individual K-Cups or other single-serving packages of coffee that are not offered for sale individually, but only as part of a box or package. For clarity, such box or package containing the K-Cups or other single-serving packages of coffee would be subject to the labeling requirements herein. Only Kona coffee beans satisfying the criteria of “Kona coffee” as defined by Hawaii Administrative Rules § 4-143-3 in effect at the time such product is packaged for sale shall be considered authentic Kona coffee beans.

b. The labeling requirements in the foregoing section 12(a) shall not apply to any products sold by MNS before the date that is 60 days after Final Approval of this Agreement is entered by the Court.

c. MNS shall provide only to its vendors who supply to MNS any coffee products labeled as “Kona” or “Kona Blend” coffee a letter, substantially in the form attached as Exhibit A, requesting return information. Assuming that (i) all of the requested information is received from such vendors and (ii) the labeling complies with section 12(a), MNS will be deemed to have sufficiently complied with section 12(a) and the Plaintiffs and Class Members would not have a cause of action, grievance, claim, or right to any damages or equitable relief regarding the labeling of Kona coffee products sold by MNS. MNS shall retain all letters sent to such vendors and all information received in response for four (4) years.

d. The requirements in the foregoing section 12(a) are subject to a notice and cure period. Prior to instituting any legal proceedings or claims process regarding an alleged violation of section 12(a), written notice must be given to MNS’ recipients identified section 12(e). Such notice must reference this Agreement, this Case, and provide evidence of the alleged breach. MNS will have ninety (90) days from receipt of notice to cure such alleged breach before any legal proceeding or claim may be brought (“Cure Period”). To make its cure, MNS must have the alleged non-compliant product(s) removed from store shelves within the Cure Period. If MNS cures the alleged breach within the Cure Period, there shall be no cause of action or damages (“Cure”). Prior to the expiration of the Cure Period, MNS shall provide Plaintiffs with written notice confirming the complete Cure of the alleged breach and provide Plaintiffs, upon request, of reasonable proof or assurances of same. If the alleged breach is not Cured within the Cure Period, any potential damages are limited to MNS’ profit on such alleged non-compliant product(s) for the time after expiration of the Cure Period. Notwithstanding the foregoing, if MNS does not Cure before the expiration of the Cure Period, Plaintiffs shall be permitted to have an injunction issued by the United States District Court for the Western District of Washington to require labeling consistent with the labeling requirements in section 12(a) upon proof that such requirements have been violated.

e. Any notice or other communication required or permitted to be given under this Agreement to MNS, including under this Paragraph 12, must be in writing and delivered either by certified mail (postage prepaid), or by nationally recognized overnight courier, at the below address. Notice so given shall be deemed to have been received on the actual date of MNS' receipt.

MNS, Ltd.
Attn: Paul Kosasa, President and CEO
766 Pohukaina Street
Honolulu, Hawaii 96813

With a copy to:
Cades Schutte LLP
Attn: Kelly G. LaPorte, Amanda Jones, & Lisa Ayabe
Cades Schutte Building
1000 Bishop Street, 12th Floor
Honolulu, Hawaii 96813

13. Settlement Notice. Plaintiffs shall be solely responsible for identifying the Class Members, providing notice pursuant to FRCP 23(e), and proposing the best practicable notice to Class Members. The Class will be an opt-out class under FRCP 23(b)(3) and will cover all persons and entities within the Class.

14. Settlement Payment. MNS shall pay twelve million dollars (\$12,000,000.00 USD) ("Settlement Amount") in two equal installments: \$6,000,000 paid within 30 days after the execution of this Agreement by all parties, and \$6,000,000 paid within 60 days after the first payment. For clarity, MNS shall not be liable for any payment beyond the Settlement Amount. The payments shall be made to the Settlement Administrator as defined below. In the event that the Court denies final approval of the Settlement Agreement, any payments made by MNS as of the date of such denial shall be refunded to MNS.

15. Cooperation in Settlement Approval. MNS will cooperate in good faith to secure Court approval of the Settlement Agreement.

Settlement Procedures

16. Class Settlement Administration. The Settlement Administrator shall be JND Legal Administration ("Settlement Administrator"). The Settlement Administrator shall provide all aspects of settlement administration, including but not limited to class notice and payments to Class Members. Costs of notice to the Class and settlement administration will be paid from the Settlement Amount, and MNS shall not be required to contribute financially beyond its obligations detailed in paragraph 14 of this Agreement.

17. Class Notice. Plaintiffs will provide a proposed class notice plan with their motion for preliminary approval of the Settlement. MNS shall have no obligations, nor expectations, to provide any information to identify Class Members.

18. Distribution of Monies to the Class. The Settlement Administrator will distribute monies to the Class Members approximately pro rata, less any voluntary contributions for the benefit of the Kona region, based on the formula used in previous settlements approved by the Court in this Case. Any uncashed amounts shall be redistributed using the same formula.² Any remaining uncashed amounts after this second distribution shall be donated *cy pres* to the Legal Foundation of Washington.

19. Scope of Release: Plaintiffs and Class Members. As of final approval, and as part of the consideration for this Agreement, Plaintiffs and the Class Members hereby expressly agree that they fully and irrevocably release and discharge all Settled Claims, as defined below.

a. Plaintiffs and Class Members hereby release MNS and its predecessors, successors, assigns, parents, subsidiaries, corporate affiliates, holding companies, investors, owners, divisions, employees, agents, representatives, consultants, independent contractors, service providers, vendors, directors, managing directors, officers, partners, principals, members, attorneys, accountants, fiduciaries, financial and other advisors, investment bankers, insurers (including, without limitation, Mitsui Sumitomo Insurance USA Inc. and Allied World National Assurance Company), reinsurers, employee benefit plans, underwriters, shareholders, lenders, auditors, and investment advisors, customers, distributors, co-packers, manufacturers, and roasters of each (“Defendant Releasees”) from any and all of the Settled Claims, except for the rights and obligations created by this Agreement, and Plaintiffs covenant and agree that they will not commence, participate in, prosecute, or cause to be commenced or prosecuted any action or other proceeding based upon any of the Settled Claims released pursuant to the Settlement Agreement and shall dismiss with prejudice the claims alleged against MNS in the Case. This Release of Settled Claims also covers, without limitation, any and all claims for attorneys’ fees, costs, or disbursements incurred by Class Counsel or any other counsel representing Plaintiffs or Class Members or by Plaintiffs or the Class Members regarding the Settled Claims.

b. The phrase “Defendant Releasees” does not include Mulvadi Corporation or its predecessors, successors, assigns, parents, subsidiaries, corporate affiliates, holding companies, investors, owners, divisions, employees, agents, representatives, consultants, independent contractors, service providers, vendors, directors, managing directors, officers, partners, principals, members, attorneys, accountants, fiduciaries, financial and other advisors, investment bankers, insurers, reinsurers, employee benefit plans, underwriters, shareholders, lenders, auditors, investment advisors, attorneys, customers, distributors, co-packers, manufacturers, and roasters of each (“Mulvadi Defendants”) other than MNS itself.

c. Nothing in this Agreement shall be construed as an agreement from Class Members to waive, release, or dismiss any claims they have against Defendant Releasees that do not arise from their purchase or sale of coffee products labeled as originating from the Kona region of Hawaii.

² As used in this Agreement, Class Counsel refers to the attorneys of record in this matter Andrew Kaufman, Jason Lichtman, Nathan Paine, and Daniel Seltz, and their firms (Karr Tuttle Campbell and Lieff Cabraser Heiman and Bernstein LLP).

20. Plaintiffs' Release. Notwithstanding, and in addition to, the above release, as of final approval, each of the named Plaintiffs, Bruce Corker d/b/a Rancho Aloha, Colehour and Melanie Bondera d/b/a Kanalani Ohana Farm, Robert and Cecelia Smith d/b/a Smithfarms, and Smithfarms LLC ("Individual Plaintiffs"), for themselves and on behalf of their respective agents, successors, heirs, assigns, and any other person who can claim by or through them in any manner, fully, finally and forever irrevocably release, relinquish and forever discharge with prejudice all Settled Claims against the Defendant Releasees. The Plaintiffs also release any claims each of them may have arising out of any conduct or omissions occurring as of the date of signing, other than the Lanham Act claims asserted in this Case, that might be attributable to Defendant Releasees. Nothing in this Agreement shall be construed as an agreement from Plaintiffs to waive, release, or dismiss any claims they have against the Mulvadi Defendants. This release does not extend to Class Members who are not Individual Plaintiffs.

21. Definition of Settled Claims. "Settled Claims" means any and all actions, claims, demands, rights, suits, or causes of action, whether asserted or not asserted, that arise from or relate to the allegations made or conduct described in the Third Amended Complaint (Dkt. No. 381 in the Case), including but not limited to allegations related to the labeling, packaging, advertising, promotion, branding, marketing, manufacturing, design, formulation, distribution or sale of coffee labeled as "Kona", regardless of the statute, regulation, common law legal theory, or other legal basis on which the allegations may be asserted. In connection with the release of the Settled Claims, Plaintiffs and Class Members shall be deemed to have waived any and all provisions, rights, and benefits conferred by § 1542 of the California Civil Code and any statute, rule, and legal doctrine similar, comparable, or equivalent to California Civil Code § 1542. In addition to the foregoing, Plaintiffs and Class Members hereby expressly waive and fully, finally, and forever settle and release any known or unknown, suspected or unsuspected, contingent or non-contingent claims with respect to the Settled Claims, whether or not concealed or hidden, without regard to any subsequent discovery or existence of different or additional facts.

22. Mulvadi Defendants Not Released. Nothing in this Agreement shall be construed as releasing any claims against the Mulvadi Defendants by Class Members or any Individual Plaintiff.

23. Scope of Release: MNS. As of final approval, MNS, its officers, directors, managers, owners, and related entities hereby expressly agree that they shall fully and irrevocably release and discharge any claim or counterclaim that they could have asserted in this matter against Plaintiffs, Class Counsel, and Class Members, expressly including (but not limited to) any claim under antitrust or other unfair competition laws. MNS, its officers, directors, managers, owners, and related entities settle and forever release all actions, claims, demands, rights, suits, or causes of action, including without limitation all claims that this Case was brought with an improper purpose. The release to Plaintiffs and Class Members, provided in this paragraph covers, without limitation, any and all claims for attorneys' fees, costs, or disbursements incurred by counsel for MNS related to MNS, its insurers, or any other counsel representing MNS or its insurers in connection with or related in any manner to this Agreement, MNS, the administration of this Agreement and the settlement contemplated thereunder, and the Settlement. For clarity, the release does not include any claims for attorneys' fees or costs other than precluding such claims against Plaintiffs, Class Counsel, any other Plaintiffs' attorneys, or

the Class Members. MNS, its officers, directors, managers, owners, and related entities expressly waive and fully, finally, and forever settle and release any known or unknown, suspected or unsuspected, contingent or non-contingent claims with respect to Plaintiffs, Class Counsel, or the Class Members related in any manner to this Case, whether or not concealed or hidden, without regard to any subsequent discovery or existence of different or additional facts.

24. Statement of Present Intent. Plaintiffs and Plaintiffs' Counsel represent and warrant that (a) they have no present intention to seek or solicit any plaintiffs or potential plaintiffs for the purpose of initiating any new or separate claim or lawsuit against the Defendant Releasees for the claims at issue in this Case; and (b) they have no present intention of communicating any information concerning the Case to third parties for the purpose of assisting or encouraging the filing or prosecuting of any action or proceeding against Defendant Releasees. Nothing in this paragraph shall be construed as a restriction of any attorney's right to practice in contravention of any applicable rules governing professional conduct.

25. Facsimile/Email/Electronic and Counterparts. This Agreement may be executed by facsimile or email or otherwise electronically, and 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.

26. Authority; Entire Agreement. Counsel signing below warrant they have full authority to bind their clients. This Agreement represents and embodies all the agreements and negotiations between the Parties hereto and no verbal or written representations or agreements prior to the date of execution of this Agreement shall be admissible to vary its provisions.

27. Construction. Plaintiffs and MNS have been represented in the negotiation and preparation of this Agreement, and each party has had an opportunity to participate in the drafting to the extent that she or it desires. Accordingly, this Agreement shall be construed according to its plain meaning and not strictly for or against any party.

28. Attorneys' Fees for Breach. In any action that is brought to enforce this Agreement, the prevailing party shall be awarded its reasonable costs, including attorneys' fees, incurred in connection with such enforcement.

PLAINTIFFS

DATED: April __, 2023



Bruce Corker
d/b/a Rancho Aloha

DATED: April 11, 2023

DEFENDANT

DATED: April __, 2023

Paul Kosasa, for MNS, Ltd.

the Class Members. MNS, its officers, directors, managers, owners, and related entities expressly waive and fully, finally, and forever settle and release any known or unknown, suspected or unsuspected, contingent or non-contingent claims with respect to Plaintiffs, Class Counsel, or the Class Members related in any manner to this Case, whether or not concealed or hidden, without regard to any subsequent discovery or existence of different or additional facts.

24. Statement of Present Intent. Plaintiffs and Plaintiffs' Counsel represent and warrant that (a) they have no present intention to seek or solicit any plaintiffs or potential plaintiffs for the purpose of initiating any new or separate claim or lawsuit against the Defendant Releasees for the claims at issue in this Case; and (b) they have no present intention of communicating any information concerning the Case to third parties for the purpose of assisting or encouraging the filing or prosecuting of any action or proceeding against Defendant Releasees. Nothing in this paragraph shall be construed as a restriction of any attorney's right to practice in contravention of any applicable rules governing professional conduct.

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PLAINTIFFS

DATED: April __, 2023

Bruce Corker
d/b/a Rancho Aloha

DATED: April __, 2023

DEFENDANT

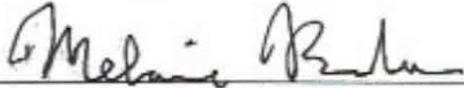
DATED: April 5, 2023

Paul Kosasa, for MNS, Ltd.



Colehour Bondera
d/b/a Kanalani Ohana Farm

DATED: April 5, 2023



Melanie Bondera
d/b/a Kanalani Ohana Farm

DATED: April 5, 2023

Robert Smith, individually and on behalf of
Smithfarms LLC

DATED: April ___, 2023

Cecelia Smith, individually and on behalf of
Smithfarms LLC

DATED: April ___, 2023

By: _____
Karr Tuttle Campbell
on behalf of the Class

DATED: April ___, 2023

By: _____
Lief Cabraser Heimann & Bernstein LLP
on behalf of the Class

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Colehour Bondera
d/b/a Kanalani Ohana Farm

DATED: April ___, 2023

Melanie Bondera
d/b/a Kanalani Ohana Farm

DATED: April ___, 2023



Robert Smith, individually and on behalf of
Smithfarms LLC

DATED: April 5, 2023



Cecelia Smith, individually and on behalf of
Smithfarms LLC

DATED: April 5, 2023

By: _____
Karr Tuttle Campbell
on behalf of the Class

DATED: April ___, 2023

By: _____
Lief Cabraser Heimann & Bernstein LLP
on behalf of the Class

7683773.v2

Colehour Bondera
d/b/a Kanalani Ohana Farm

DATED: April ____, 2023

Melanie Bondera
d/b/a Kanalani Ohana Farm

DATED: April ____, 2023

Robert Smith, individually and on behalf of
Smithfarms LLC

DATED: April ____, 2023

Cecelia Smith, individually and on behalf of
Smithfarms LLC

DATED: April 5, 2023



By: Nathan T. Paine
Karr Tuttle Campbell
on behalf of the Class

DATED: April 5, 2023



By: Jason L. Lichtman
Lief Cabraser Heimann & Bernstein LLP
on behalf of the Class

Exhibit A to Settlement Agreement

[Date]

[Insert Vendor Address]

Re: *[Insert Product Name(s) and Number(s)]*

Dear *[Insert Vendor Name]*:

MNS, Ltd. (“MNS”) requires all of the products it sells that are labeled as “Kona coffee” or “Kona Blend coffee” (“Kona coffee product(s)”) to comply with the labeling standards set forth in the “Hawaii-grown roasted or instant coffee; labeling requirements” law (Hawaii Revised Statute § 486-120.6) as it currently exists today, or as it may be modified in the future, and regardless of whether any such product is sold in Hawaii or elsewhere. The current requirements imposed by Hawaii Revised Statute § 486-120.6 pertaining to the “Kona” or “Kona Blend” portion of the label (“identity statement”) provide:

Each word or character in the identity statement shall be of the same type size and shall be contiguous. The smallest letter or character of the identity statement on packages of sixteen ounces or less net weight shall be at least one and one-half times the type size required under federal law for the statement of net weight or three-sixteenths of an inch in height, whichever is smaller. The smallest letter or character of the identity statement on packages of greater than sixteen ounces net weight shall be at least one and one-half times the type size required under federal law for the statement of net weight. The identity statement shall be conspicuously displayed without any intervening material in a position above the statement of net weight. Upper and lower case letters may be used interchangeably in the identity statement.

Notwithstanding the foregoing, the labeling requirements contained in this paragraph do not apply to the labels on individual K-Cups or other single-serving packages of coffee that are not offered for sale individually, but only as part of a box or package. For clarity, such box or package containing the K-Cups or other single-serving packages of coffee would be subject to the labeling requirements herein. This letter is to confirm that the Kona coffee product(s) you supply to MNS conform to those requirements.

Additionally, in order for MNS to sell your Kona coffee product(s), you must (1) certify that the Kona coffee product(s) you sell to MNS contain the percentage of Kona coffee beans stated on the label satisfy the criteria of “Kona coffee” as defined by Hawaii Administrative Rules § 4-143-3 in effect at the time such product is packaged for sale by completing and executing the certification below; and (2) obtain and provide the most recent copy of a State of Hawaii, Department of Agriculture “Certificate of Quality and Condition” for the green coffee beans you utilize in your Kona coffee product(s) supplied to MNS stamped and signed by the State of Hawaii Department of Agriculture certifying that the sampled green beans have been graded as “Kona Prime” or higher grade to qualify as Kona Coffee.

You must return **both** the attached Certification and the stamped Department of Agriculture Certificate of Quality and Condition no later than fourteen (14) days after receipt of this letter to:

[Insert Return Address]

Thank you for being a valued MNS vendor.

Sincerely,

[Insert Name]

[Insert Title]

Enclosure

cc:

CERTIFICATION

I, _____ [*name*], by signing below, hereby certify that the Kona coffee product(s) sold by _____ [*vendor name*] to MNS, Ltd. contain the following percentages of Kona coffee beans that satisfy the criteria of “Kona coffee” as defined by Hawaii Administrative Rules § 4-143-3 at the time it is packaged for sale:

| Product Name | Product Number | % of Kona Coffee Beans |
|---------------------|-----------------------|-------------------------------|
| | | |
| | | |
| | | |
| | | |

By signing below, I further certify that the Kona coffee product(s) sold by _____ [*vendor name*] to MNS, Ltd. contain the percentage of Kona coffee beans stated on the label comply with the labeling standards set forth in the “Hawaii-grown roasted or instant coffee; labeling requirements” law (Hawaii Revised Statute § 486-120.6)

By: _____
 Title: _____
 Date: _____