

# **If you farmed Kona coffee in the Kona District and then sold that coffee, you may be able to get benefits in a class action settlement**

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

- Additional Proposed Settlements have been reached in a class action lawsuit. The new settlements are with The Kroger Co. (“Kroger”), Safeway Inc. and Albertsons Companies Inc. (“Safeway/Albertsons”), and Hawaiian Isles Kona Coffee Co., Ltd. (“HIKC”) (collectively, the “New Settling Defendants”). The lawsuit is about the alleged mislabeling of coffee as originating from the Kona region. The Settling Defendants deny the Plaintiffs’ allegations but have agreed to settle the class action to avoid the time and expense of continuing the lawsuit. **These settlements are in addition to the ones of which you recently received notice.** Information on the prior Proposed Settlements and Settling Defendants can be found on the website, [www.KonaCoffeeSettlement.com](http://www.KonaCoffeeSettlement.com).
- There are other defendants involved in the lawsuit. However, they are not involved in the Proposed Settlements. **The lawsuit continues against those defendants to the extent they still have any products at issue and have not previously reached settlements with the Plaintiffs.**
- You are a member of the Settlement Class for the Proposed Settlements if you farmed Kona coffee in the Kona District and then sold that coffee between February 27, 2015, and February 14, 2022. The full class definition is described under Question 3, below.
- If approved by the Court, a gross settlement amount of \$2,150,000 will be distributed among the Settlement Class Members on a pro-rata basis, (as calculated by Settlement Class Members’ reported sales volumes), less Court-awarded attorneys’ fees and expenses and service awards to the Class Representatives, less any voluntary contributions for the benefit of the Kona region. Kroger and HIKC will also modify the label of coffee products labeled as “Kona,” or “Kona Blend,” and Safeway/Albertsons will institute labeling requirements for their vendors of such coffee products. HIKC will also change its name to remove “Kona” from the company name. The settlements payments are in addition to the settlement amounts from prior settlements with certain other defendants in this case. Notice of those prior settlements was previously sent to you.

**A SUMMARY OF YOUR RIGHTS AND CHOICES**

<b>SUBMIT A CLAIM FORM</b>	<ul style="list-style-type: none"> <li>• Submit a valid claim to receive money from the Proposed Settlements as outlined in Question 5.</li> <li>• Be bound by the Proposed Settlements.</li> <li>• Give up your right to sue or continue to sue the New Settling Defendants for the claims in this case.</li> </ul> <p><b>Due Date: <u>TBD</u></b></p>
<b>EXCLUDE YOURSELF FROM THE PROPOSED SETTLEMENT(S) (“OPT OUT”)</b>	<ul style="list-style-type: none"> <li>• Remove yourself from the Settlement Class as outlined in Questions 7 and 8.</li> <li>• Receive no payment.</li> <li>• Keep your right to sue or continue to sue the New Settling Defendants for the claims in this case.</li> </ul> <p><b>Due Date: <u>Post-marked on or before May 2, 2022</u></b></p>
<b>OBJECT OR COMMENT ON THE PROPOSED SETTLEMENT(S)</b>	<ul style="list-style-type: none"> <li>• Write the Court about why you do not like the Proposed Settlement(s) as outlined in Question 13.</li> </ul> <p><b>Due Date: <u>Post-marked on or before May 2, 2022</u></b></p>
<b>SPEAK AT THE FINAL HEARING</b>	<ul style="list-style-type: none"> <li>• If you submit a Notice of Appearance, you may speak to the Court about the Proposed Settlements at the Final Hearing set for June 3, 2022.</li> </ul> <p><b>Due Date: <u>Post-marked on or before May 2, 2022</u></b></p>
<b>DO NOTHING</b>	<ul style="list-style-type: none"> <li>• Receive no payment.</li> <li>• Be bound by the Proposed Settlements.</li> <li>• Give up your right to sue or continue to sue the New Settling Defendants for the claims in this case.</li> </ul>

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## 1. Why did I receive this Notice?

Records show that you farmed Kona coffee in the Kona District and sold Kona coffee between February 27, 2015, and February 14, 2022. For more details, please refer to Question 3 below.

The Court sent you this Notice to inform you of Proposed Settlements in the class action lawsuit *Corker, et al. v. Costco Wholesale Corp., et al.*, No. 1:19-cv-00290, United States District Court for the Western District of Washington. This Notice outlines the terms of the Proposed Settlements, who is a Settlement Class Member, your right to remain a member of the Settlement Class in the Proposed Settlements, how Settlement funds will be paid, how to comment on or object to the Proposed Settlements, and how to exclude yourself from the Settlement Class in any of the new Proposed Settlements.

Judge Lasnik of the United States District Court for the Western District of Washington is overseeing this class action.

Those who brought the lawsuit are the “Plaintiffs,” and the parties being sued are the “Defendants.” As noted above, there were other Defendants in this lawsuit who had not reached settlements with the Plaintiffs at the time this notice was issued. Those Defendants not included in these Proposed Settlements are not part of the new Proposed Settlements. There are also other Defendants who previously reached settlements with the Plaintiffs. Notice of those settlements was previously sent to you.

## 2. What is this lawsuit about?

Plaintiffs allege that the Settling Defendants advertised, falsely designated, and/or sold coffee as originating from the Kona region in violation of the federal Lanham Act. Plaintiffs seek monetary damages and other relief allowed under the Lanham Act.

Although the Settling Defendants deny Plaintiffs’ claims for liability and damages, they have agreed to settle the class action to avoid the time and expense of continuing the lawsuit.

A more complete description of the lawsuit is available at [www.KonaCoffeeSettlement.com](http://www.KonaCoffeeSettlement.com), or in the file for the lawsuit maintained by the United States District Court for the Western District of Washington. See Question 17, below. Additionally, should you have questions regarding the lawsuit, you can submit them in writing to Class Counsel at the addresses provided under Question 13 of this Notice.

The Court has not ruled in favor of Plaintiffs or the Settling Defendants. Instead, both sides agreed to the Proposed Settlements before the case proceeded to a trial. Plaintiffs and their counsel believe that the Proposed Settlements are best for all members of the proposed Settlement Class.

## 3. How do I know if I am part of the Settlement Class?

The Settlement Class includes all persons and entities who, between February 27, 2015, and February 14, 2022, farmed Kona coffee in the Kona District and then sold their Kona coffee.

Excluded from the Settlement Class are the Settling Defendants, any Judges to whom the case is assigned, and their immediate families and staffs.

**If you are a Settlement Class Member and the Judge approves the Proposed Settlements, you will be bound by all orders and judgments of the Court and by the Court’s final**

**resolution of the Settlement Class claims in the lawsuit. See Question 13 for your right to comment on or object to the Proposed Settlement.**

**4. I am still not sure if I am included.**

If you are still not sure if you are part of the Settlement Class, please visit [www.KonaCoffeeSettlement.com](http://www.KonaCoffeeSettlement.com), email [info@KonaCoffeeSettlement.com](mailto:info@KonaCoffeeSettlement.com) or call (toll-free) 1-833-667-1227. You may also contact Class Counsel (See Question 9).

**Please do not contact the Court.**

**5. What does the Proposed Settlement provide?**

The Proposed Settlements provides money for Settlement Class Members, requires Kroger and HIKC to modify the label of coffee products labeled as containing beans originating from the Kona region, and create labeling requirements for Safeway/Albertsons' vendors of such coffee products.

Under the Proposed Settlements, Kroger will make a total payment of \$1,350,000, and HIKC will make a total payment of \$800,000. The Settlement Amount will be distributed to Settlement Class Members on a pro-rata basis (as calculated by Settlement Class Members' reported sales volumes), less Court-awarded attorneys' fees and expenses and service awards to the Class Representatives, and less any voluntary contributions for the benefit of the Kona region.

You do not need to do anything at this time. If you previously submitted a claim for payment in connection with the prior settlements, you will not need to re-submit your information. **However, if you did not make a prior claim, you will need to submit a claim form to receive a payment in the Proposed Settlement at a later time.** You will be notified when the deadline to submit your claim form for payment is determined. You may also check the Settlement Website, [www.KonaCoffeeSettlement.com](http://www.KonaCoffeeSettlement.com), for updates.

In exchange for the benefits received by the Class, the Settling Defendants will be released from claims the Settlement Class Members may have against them relating to the claims asserted in the lawsuit, including claims relating to the Settling Defendants' labeling of coffee products that use the word "Kona."

**6. What do I need to do to remain a Settlement Class Member?**

If you want to remain a Settlement Class Member, you do not need to take any action. However, if you want to receive your payment from the Proposed Settlement **and did not submit a claim in connection with the prior settlements**, you will need to submit a claim form at a later time to be determined (See Question 5 above). Class Counsel will represent your interests as a member of the Settlement Class. You have the right to retain your own counsel, but do not have to do so.

**7. Can I get out of the Settlement Class?**

If you don't want to be in the Settlement Class in any or all of the new Proposed Settlements and you want to keep the right to sue the Settling Defendants about the same claims on your own, you must take steps to get out of the Settlement Class. This is called excluding yourself from or "opting out of" the Settlement Class. By excluding yourself, you keep the right to file your own lawsuit. If you exclude yourself from the Settlement Class, you will not receive any benefits from the Proposed Settlements.

## 8. How do I get out of the Proposed Settlements?

To exclude yourself from (“opt out of”) the Settlement Class, you must send a letter personally signed by you that includes all of the following:

- a) Your name, address, and telephone number;
- b) The following Civil Action Number: 2:19-cv-000290; and
- c) A statement that you want to be excluded from the Settlement Class.

Your request for exclusion letter must be mailed first class, postage pre-paid, **postmarked on or before May 2, 2022**, to:

Kona Coffee Farmers Settlement Administrator  
c/o JND Legal Administration  
P.O. Box 91232  
Seattle, WA 98111

You cannot exclude yourself from only part of a Settlement or Settlement Class. If you previously excluded yourself from the prior set of settlements and wish to exclude yourself from one or more of these settlements, you need to send a new, signed exclusion request. Also, please remember that you can’t exclude yourself by phone or by sending an email.

## 9. Do I have lawyers representing my interests in the case?

The Court has appointed the following law firms to represent the Settlement Class:

Nathan T. Paine  
Karr Tuttle Campbell  
701 5th Ave, Suite 3300  
Seattle, WA 98104

Jason L. Lichtman  
Daniel E. Seltz  
Lieff, Cabraser, Heimann  
& Bernstein, LLP  
250 Hudson St., 8<sup>th</sup> Floor  
New York, NY 10013

Andrew R. Kaufman  
Lieff, Cabraser, Heimann  
& Bernstein LLP  
222 2<sup>nd</sup> Ave South, Suite 1640  
Nashville, TN 37201

These lawyers are called “Class Counsel.” You do not have to directly pay Class Counsel. If you want your own lawyer, and to have that lawyer appear in court, you may hire one at your own expense.

## 10. How will the lawyers be paid?

Class Counsel will request that the Court award Class Counsel partial reimbursement of their Litigation Expenses to date, totaling \$450,000, approve a Service Award to the Class Representatives, and award attorneys’ fees to Class Counsel in an amount not exceeding 25 percent of the settlement amount. The Court, at its own discretion, may award less than these requested amounts without further notice to the Settlement Class Members. Any attorneys’ fees, expenses, and service awards awarded by the Court will be paid from the Settlement Funds. Again, if you choose to hire your own attorney, you will be responsible for that attorney’s fees and expenses.

## 11. Should I get my own lawyer?

You don’t need to hire your own lawyer, but you may elect to do so. If you want your own lawyer to speak for you or to appear in Court, you or your lawyer must file a Notice of Appearance. Question 16 explains how to submit a Notice of Appearance. If you hire a lawyer to appear for you in the lawsuit, you will have to pay that lawyer on your own.

**You should also consult your own tax advisor regarding the tax consequences to you of the proposed settlements, including, without limitation, any tax reporting obligations you may have with respect to the proposed settlements.**

**12. Who are the Class Representatives and how will they be compensated?**

If the Proposed Settlements are approved, the Court will appoint Plaintiffs Bruce Corker d/b/a Randho Aloha, Colehour Bondera and Melanie Bondera d/b/a Kanalani Ohana Farm, Robert Smith and Cecelia Smith d/b/a Smithfarms, and Smithfarms LLC as Class Representatives. The Class Representatives work with Class Counsel on behalf of all Settlement Class Members to present the views of Settlement Class Members to Class Counsel and the Court. The Class Representatives may each be entitled to a Service Award, not to exceed \$2,500 per farm, if approved by the Court.

**13. Can I object or comment on the Proposed Settlements?**

If you have comments about, or disagree with, any aspect of the Proposed Settlements, including the requested attorneys' fees, you may express your views to the Court through a written response to the Proposed Settlements. Only Settlement Class Members who have not opted out can object or comment. The written comment or objection should include your name, address, and telephone number. In addition, any objection must include (a) a written statement of your objection, (b) a written statement of the grounds or reasons for your objection, (c) copies of any papers, briefs, or other documents supporting your objection, and (d) a statement that that it relates to Civil Action Number: 2:19-cv-000290. The document must be signed to ensure the Court's review. In order to be considered by the Court, your comment or objection must be postmarked on or before May 2, 2022, and mailed to:

Clerk of the Court  
United States District Court, Western District of Washington  
700 Stewart Street, Suite 2310  
Seattle, WA 98101

Your comment or objection must also be mailed to the following attorneys:

Class Counsel  
Jason L. Lichtman  
Daniel E. Seltz  
Lieff, Cabraser, Heimann & Bernstein, LLP  
250 Hudson St., 8<sup>th</sup> Floor  
New York, NY 10013

**14. Will there be a Hearing on the Proposed Settlement?**

The Court will hold a Final Approval Hearing to consider whether the Proposed Settlements are fair, reasonable, and adequate. The Hearing will be on June 3, 2022, at 11:00 a.m. (Pacific Time) by remote means. A link to the proceedings will be posted on the Settlement Website as soon as it is available. At the Hearing, the Court will decide whether to approve the Proposed Settlements and the motion for attorneys' fees and expenses. If comments or objections have been received, the Court will consider them at this time.

Note: The Hearing may be postponed to a different date without additional notice. Settlement Class Members should check the Settlement Website, [www.KonaCoffeeSettlement.com](http://www.KonaCoffeeSettlement.com) to confirm that the date has not been changed.

### 15. Must I attend the Hearing?

Attendance is not required, even if you properly mailed a written objection or comment. Class Counsel is prepared to answer the Court's questions, including concerning objections or comments. If you or your lawyer still want to attend the Hearing, you are welcome to come at your own expense. However, it is not necessary that you attend. If you filed an objection to or comment about the Proposed Settlements as long as the objection or comment was postmarked before the deadline, the Court will consider it, regardless of whether you or your privately retained attorney appear at the Hearing.

### 16. May I speak at the Hearing?

If you want to speak or have your own lawyer speak at the Final Approval Hearing, you must give the Court a paper that is called a "Notice of Appearance." The Notice of Appearance must refer to *Corker, et al. v. Costco Wholesale Corp., et al.*, No. 2:19-cv-00290, United States District Court for the Western District of Washington, and state that you or your lawyer wish to enter an appearance at the Final Approval Hearing. It must also include your name, address, telephone number, and signature. Your "Notice of Appearance" must be postmarked no later than May 2, 2022. You cannot speak at the Hearing if you asked to be excluded (i.e., "opt out") from the Proposed Settlement Class.

The Notice of Appearance must be filed with the Court at the address provided under Section 13 above and also mailed to the attorneys listed in Section 13 above.

### 17. How do I get more information about the Proposed Settlement?

This notice summarizes the Proposed Settlements and your rights and options as a Settlement Class Member. To find out more information, visit [www.KonaCoffeeSettlement.com](http://www.KonaCoffeeSettlement.com), call 1-833-667-1227, or write to:

Kona Coffee Farmers Settlement Administrator  
c/o JND Legal Administration  
P.O. Box 91232  
Seattle, WA 98111

If you have a question about whether or not you are in the Settlement Class, or about your rights and options as a Settlement Class Member, you may contact Class Counsel (see Question 9).

All court records, including the Settlement Agreement and other documents for the Lawsuit, may be examined in person and copied at the United States District Court, Western District of Washington, United States Courthouse, 700 Stewart Street, Suite 2310, Seattle, WA 98101.

**PLEASE DO NOT TELEPHONE THE COURT, THE CLERK OF THE COURT,  
OR COUNSEL FOR THE SETTLING DEFENDANTS.**