

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BRUCE CORKER d/b/a RANCHO ALOHA;
COLEHOUR BONDERA and MELANIE
BONDERA, husband and wife d/b/a
KANALANI OHANA FARM; ROBERT
SMITH and CECELIA SMITH, husband and
wife d/b/a SMITHFARMS, and SMITHFARMS,
LLC on behalf of themselves and others
similarly situated,

Plaintiff,

v.

COSTCO WHOLESALE CORPORATION, a
Washington corporation; AMAZON.COM,
INC., a Delaware corporation; HAWAIIAN
ISLES KONA COFFEE, LTD., LLC, a
Hawaiian limited liability company; COST
PLUS/WORLD MARKET, a subsidiary of BED
BATH & BEYOND, a New York corporation;
BCC ASSETS, LLC d/b/a BOYER'S COFFEE
COMPANY, INC., a Colorado corporation;
L&K COFFEE CO. LLC, a Michigan limited
liability company; MULVADI
CORPORATION, a Hawaii corporation;
COPPER MOON COFFEE, LLC, an Indiana
limited liability company; GOLD COFFEE
ROASTERS, INC., a Delaware corporation;
CAMERON'S COFFEE AND DISTRIBUTION
COMPANY, a Minnesota corporation; PACIFIC
COFFEE, INC., a Hawaii corporation; THE
KROGER CO., an Ohio corporation;
WALMART INC., a Delaware corporation; BED
BATH & BEYOND INC., a New York
corporation; ALBERTSONS COMPANIES
INC., a Delaware Corporation; SAFEWAY
INC., a Delaware Corporation; MNS LTD., a
Hawaii Corporation; THE TJX COMPANIES
d/b/a T.J. MAXX, a Delaware Corporation;
MARSHALLS OF MA, INC. d/b/a
MARSHALLS, a Massachusetts corporation;
SPROUTS FARMERS MARKET, INC. a
Delaware corporation; COSTA RICAN GOLD
COFFEE CO., INC., a Florida Corporation; and

Case No. 2:19-CV-00290-RSL

**DECLARATION OF NATHAN T. PAINE
IN SUPPORT PLAINTIFFS' MOTION
FOR ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES,
AND SERVICE AWARDS**

The Honorable Robert S. Lasnik

1 KEVIN KIHNKE, an individual,
2 Defendants.
3

4 I, Nathan T. Paine, declare as follows:

5 1. I am a partner in the law firm of Karr Tuttle Campbell (“KTC”). I am Plaintiffs’
6 counsel of record in this litigation, along with counsel from Lief Cabraser Heimann & Bernstein
7 (“LCHB”). I am a member in good standing of the bar of Washington. I respectfully submit this
8 declaration in support of Plaintiffs’ Motion for Attorneys’ Fees, Reimbursement of Expenses,
9 and Service Awards. Except as otherwise noted, I have personal knowledge of the facts set forth
10 in this declaration and could testify competently to them if called upon to do so.

11 2. I have been involved in all aspects of this litigation since its pre-filing
12 investigation and filing of initial complaint in February 2019.

13 **I. KTC’s Work in this Matter**

14 3. KTC is one of Seattle’s oldest law firms with a diverse practice that includes a
15 robust commercial litigation group involving intellectual property, asset recovery, class action
16 litigation, employment law, and other complex commercial matters. A copy of the firm’s resume
17 was filed with my declaration in support of preliminary approval, at Dkt. 395-1.

18 4. My former partner Paul Richard Brown and I, along with other KTC attorneys
19 and staff, were exclusively responsible for all the pre-suit investigation into potential claims that
20 authentic Kona coffee growers might have against the manufacturers and retailers of coffee
21 products that falsely designated Kona as the origin of the coffee. The pre-suit investigation was
22 expansive yet meticulous, and included the following:

23 a. Multiple meetings with Kona coffee farmers, processors, potential
24 witnesses and industry insiders in Hawaii to understand the unique Kona coffee industry, coffee
25 farming and processing practices, the universal harm being inflicted on the farmers, the
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1 commonality between the farmers, and any potential claims and remedies that might be available
2 to the farmers;

3 b. Multiple visits to various Kona coffee farms and processing facilities
4 throughout the Kona region;

5 c. Extensive lay and potential expert witness interviews;

6 d. Interviews of potential scientific experts to determine the available science
7 that might be employed to identify the origin of the coffee beans contained in a retail coffee
8 product with Kona on the label;

9 e. Collection of over 150 samples of Kona coffee beans grown on farms
10 within the Kona region;

11 f. Retention of various experts across multiple fields to assist in our pre-suit
12 investigation at considerable expense to KTC;

13 g. Research of laws and regulations concerning the production, distribution,
14 sale, and labeling of Kona coffee products;

15 h. Legal research into potential causes of action and remedies potentially
16 available to the Kona coffee farmers;

17 i. Identification and research into Kona coffee products sold within the
18 continental United States and then the collection of the same for potential testing to determine
19 whether the labels of the products accurately identified Kona as the origin of the coffee beans;
20 and

21 5. The information learned throughout the course of the extensive pre-suit
22 investigation culminated in a 65-page complaint for a proposed class of over 600 Kona coffee
23 farms, most operating only small farms of three to five acres on average, bringing Lanham Act
24 claims against nineteen different defendants, some of whom are the largest most sophisticated
25 corporations in the world. This was only made possible by the tremendous amount of time,
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1 costs, and effort that KTC, Mr. Brown and I were willing to commit to help these Kona coffee
2 farmers who otherwise did not have the resources or the means to develop the case.

3 6. Shortly after filing suit in February 2019, KTC also brought aboard attorneys
4 from LCHB to assist in the prosecution of the case. We identified LCHB primarily for their
5 expertise in the litigation and certification of complex class actions, including cases requiring the
6 modelling of economic damages on a class-wide basis. As Jason Lichtman explains in his
7 declaration, LCHB has extensive experience in litigating issues involving class-wide damages in
8 complex consumer class actions.

9 7. My previous declaration explained that KTC, along with co-Class Counsel Leiff
10 Cabraser Heimann & Bernstein, LLP, have actively litigated this case since its inception in
11 February 2019. At the time, this Court had adjudicated motions to dismiss filed by all defendants
12 (Dkt. 100, 106, 107), a motion for summary judgment (Dkt. 121), a motion to strike (Dkt. 179),
13 several motions to compel or for a protective order (Dkt. 180, 188, 206, 211, 222, 227, 252, 257,
14 294, 300, 304, 317, 330, 355, 372), a motion for sanctions (Dkt. 319), and several motions to
15 amend the pleadings to add new defendants (Dkt. 71, 268, 344). The pace of activity has not
16 relented. Since then, Plaintiffs have filed additional motions to compel, successfully defended a
17 motion to dismiss for lack of personal jurisdiction, filed for class certification against non-
18 settling defendants, moved for default sanctions against one defendant (Mulvadi), filed a motion
19 to compel discovery against the remaining defendants, opposed a motion to compel from
20 Mulvadi, petitioned the court in the District of Hawaii to compel compliance with subpoenas we
21 issued to Mulvadi's vendors, and worked with numerous experts in preparation of the upcoming
22 expert disclosure deadline of May 12, 2022.

23 8. Discovery has been extensive and difficult. This case initially involved 19
24 separate defendants. That meant that every element of discovery—issuing of requests, analyzing
25 responses, initiating meet and confers, resolving disputes, moving to compel where no resolution
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1 was possible, receiving, reviewing, and analyzing documents and information, formulating and
2 serving follow-up requests, meeting and conferring over those, etc. —was multiplied by 19 and
3 then by 22, with the addition of new defendants. Plaintiffs served discovery and received
4 responses and documents from every defendant other than Copper Moon and Cost Plus (who
5 each entered into early litigation stays, but who produced information for mediation purposes).

6 9. This case also involved Electronically Stored Information (ESI). Plaintiffs
7 negotiated search terms with, and received ESI from, most of the 19 defendants. In total,
8 Plaintiffs have served 781 requests for production and 177 interrogatories. Plaintiffs have
9 received and reviewed more than 106,000 documents including 341,000 pages (including large
10 spreadsheets of data). Plaintiffs have also taken twelve depositions, including two experts.

11 10. Defensive discovery has also required extensive effort. The named plaintiffs have
12 responded to 598 requests for production, 271 interrogatories, and 514 requests for admission.
13 Plaintiffs have produced more than 58,027 documents together with 114,087 pages. Plaintiffs
14 production includes both paper documents gathered by hand (with in-person assistance from Mr.
15 Brown, myself and others from LCHB at the plaintiffs' farms), which were collated and ESI.
16 Each of the five named plaintiffs has sat for a full-day deposition, which required Paul and I to
17 travel to Kona when Hawaii was in the midst of a mandated lockdown due to the pandemic.

18 11. The parties also engaged in extensive third-party discovery, collectively serving
19 52 subpoenas, which have yielded 7,428 documents and more than 123,000 pages.

20 12. Attorneys from KTC (principally Paul Richard Brown, Dan Hagen, Josh Howard,
21 Mark Bailey and I) have played a significant and active role in virtually every aspect of this case,
22 including:

23 a. Authored or edited briefs and motions that have been presented in the
24 litigation to date, including oppositions to motions to dismiss and discovery motions;
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- 1 b. drafted and propounding dozens of requests for production,
2 interrogatories, and requests for admissions;
- 3 c. oversaw the production of tens of thousands of documents;
- 4 d. reviewed hundreds of thousands of documents produced by defendants;
- 5 e. prepared for and conducted five full-day depositions, all occurring during
6 the pandemic presenting its own unique challenge;
- 7 f. assisted with the preparation of the depositions of five named plaintiffs,
8 and then defended the same in Kona;
- 9 g. identified and interviewed dozens of lay and expert witnesses;
- 10 h. prepared and served multiple subpoenas to third parties and then worked
11 with those third parties or their counsel to secure the production of responsive documents;
- 12 i. helped to defend certain third parties from defendants’ subpoenas;
- 13 j. identified and worked with numerous consulting experts in preparation for
14 mediation and litigation, on issues such as damages, marketing, consumer behavior, and
15 accounting;
- 16 k. developed numerous settlement proposals and negotiated extensively with
17 Defendants, with the assistance of Judge Garcia and Judge Infante, as well as Mr. LeHocky; and
- 18 l. helped prepare and finalize multiple settlement agreements as well as the
19 motions for the Court’s preliminary approval of same.

20 13. The core team of personnel litigating this case for KTC consisted of the following
21 attorneys.

22 a. I am a shareholder at KTC where I am the chair of the intellectual property
23 group. I graduated from the University of California’s Berkeley law school with my JD in 2003.
24 While attending law school I externed with Earthjustice and worked for Dakota Plains Legal
25 Services on the Rosebud Reservation in South Dakota. I graduated Wesleyan University in
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1 Connecticut with honors. I am a member of the IP Inn of Court. For the past 18 years I have
2 litigated complex intellectual property matters involving patents, trademarks, trade secrets and
3 copyrights. I joined Karr Tuttle Campbell as a shareholder in 2016. I was the attorney who
4 originally developed the case and identified the potential claims the farmers might bring under
5 the Lanham Act. I then brought my former partner Paul Richard Brown and current partner
6 Mark Bailey into the fold, who were integral in the considerable amount of work that was
7 performed in the pre-suit investigation. The pre-suit investigation included, but was not limited
8 to, multiple trips to Kona to meet and interview potential witnesses, learn about all aspects of the
9 Kona coffee industry, interviews of multiple consulting experts, retention of a scientific expert to
10 conduct the testing of products with Kona on the label to determine the origin of the coffee, and
11 an investigation into potential defendants and their products. I was the attorney who then took
12 the information learned in our investigation and used it to draft the 65-page complaint naming 19
13 separate defendants at the time. Since the commencement of the suit, I have been involved in
14 every aspect of the case including drafting briefs, legal research, drafting discovery requests,
15 interacting with the class representatives on all matters, taking depositions, preparing the class
16 representatives for their depositions and then defending them, negotiation and settlement with
17 multiple defendants, and multiple mediations. For KTC, I have managed the litigation team of
18 approximately 12 attorneys.

19 b. Paul Richard Brown is a former shareholder in KTC's litigation group,
20 with over 31 years of trial experience. As lead trial counsel, Mr. Brown has handled patent,
21 trademark, trade dress, false advertising, and other complex commercial matters. Mr. Brown has
22 extensive experience in asset recovery and financial fraud matters, representing high net worth
23 individuals and financial institutions. He has conducted more than 100 bench trials and
24 numerous jury trials in various jurisdictions across the country. He is admitted to practice before
25 the Ninth Circuit Court of Appeals and the Supreme Court of the United States. Mr. Brown has
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1 negotiated complex multimillion-dollar transactions for domestic and international high-
2 technology businesses worldwide, including in foreign jurisdictions such as Hong Kong, Taiwan,
3 Switzerland, the Peoples' Republic of China, Germany, Russia, Mongolia, Sweden, and the
4 Netherlands. He has been named "Super Lawyer" for the last seven years. Mr. Brown was the
5 second lawyer to join this case and worked with me in tandem all aspects of the pre-suit
6 investigation, during which he played a particularly critical role in the scientific testing. Since
7 the suit was filed, Mr. Brown had been involved in all aspects of the litigation including motions
8 practice, management of KTC's document reviewers, taking and defending depositions, vetting
9 and working with selected experts, multiple farm site visits, extensive interaction with class
10 representatives including document production and deposition preparation, mediation and
11 settlement negotiations, with particular emphasis concerning financial issues. Although Mr.
12 Brown is no longer working for KTC, Mr. Brown's primary responsibility had been to ensure
13 that the case is ready for trial. I have taken over Mr. Brown's responsibilities since he has left
14 KTC.

15 c. Mark Bailey is a shareholder in KTC's litigation department. Mr. Bailey
16 graduated with high honors from the University of Washington School of Law and served as the
17 articles editor for the Washington Law Review. He spent two years as a law clerk at the
18 Washington State Court of Appeals, Division I. Mr. Bailey has authored and edits the
19 *Bankruptcy Practice* Chapter of the Washington Lawyer's Practice Manual, published by the
20 King County Bar Association. Mr. Bailey joined Karr Tuttle Campbell in 2011, after working as
21 an associate for Davis Wright Tremaine 1998 to 2002 and as a partner with Beresford Booth
22 from 2002 to 2011. He concentrates his practice in the areas of commercial litigation, creditors'
23 rights and asset recovery. Mr. Bailey was the third attorney to join this case, playing a key role
24 in the pre-suit investigation. He helped to identify and interview potential consulting experts and
25 helped with the initial legal research into complex issues that needed to be resolved before filing
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1 suit. Since the complaint was filed, Mr. Bailey has assisted in discovery matters and motions
2 practice.

3 d. Daniel Hagen is an associate in KTC's litigation group. Mr. Hagen joined
4 KTC in 2018 immediately after graduating from the University of Washington School of Law.
5 He also serves on the board of CENTS, an organization affiliated with the King County Bar
6 Association that promotes financial literacy and provides funding for financial education and
7 assistance programs. Mr. Hagen was responsible for conducting legal research, corresponding
8 with clients and opposing counsel, conducting numerous discovery conferences, drafting and
9 revising motions and memoranda, and reviewing and responding to discovery. Along with Mr.
10 Howard, Mr. Hagen was also responsible for reviewing, summarizing, and analyzing
11 Defendants' discovery responses and document production.

12 e. Joshua Howard is an associate in KTC's litigation department, joining the
13 firm after graduating law school. He graduated *cum laude* from Seattle University School of Law
14 in 2016. There he was an active member of the Alpha Sigma Nu Honor Society and helped
15 found the Homeless Rights Advocacy Project. Mr. Howard obtained his B.A from the
16 University of Washington. Mr. Howard was primarily responsible for of the day-to-day
17 litigation (in partnership with our co-counsel at LCHB), including legal research, brief writing,
18 conducting numerous discovery conferences, drafting memoranda, and assisting with deposition
19 preparation. Along with Mr. Hagen, Mr. Howard was also responsible for reviewing,
20 summarizing, and analyzing Defendants' discovery responses and document production.

21 f. Other members of KTC's litigation team that Paul and I managed includes
22 shareholders Tom Adams, Barbara Brady, Mitzi Vaughn, and Robert Radcliffe. The following
23 KTC associates also had active roles in supporting the case: Andrew Durland, Maria Hodgins,
24 Nathaniel Strauss, and Lauren Arndorfer. The bios for each of these attorneys (excluding Mr.
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1 Strauss and Ms. Arndorfer, who have since left KTC) are available for review in KTC's attorney
2 directory at www.karrtuttle.com. These attorneys had roles in all aspects of the case.

3 **II. KTC's Lodestar Cross-Check Submission**

4 14. Attached as **Exhibit A** is a true and correct summary by individual of the hours,
5 billing rate, and lodestar for each biller's work on this matter from its inception to March 30,
6 2021. During this period of time, KTC expended **13,642.40** hours on this matter, with work still
7 continuing. This total does not include approximately 1000 hours of time that KTC wrote off in
8 accordance with its standard billing practices to remove time entries that Mr. Brown and I
9 determined were not reasonable for the associated task. Calculated at current rates and taking
10 into consideration excluded time, for purposes of the cross-check, the lodestar invested in this
11 case by KTC since the inception of this matter comes to **\$5,592,842.50**.

12 15. The rates set forth in **Exhibit A** are KTC's average billing rates since inception of
13 this engagement to present, as KTC's rates change from year-to-year based upon market
14 evaluations. Hence, the hourly rates charged by timekeepers are the firm's standard rates set by
15 the firm's management based on the market rate in Seattle for attorneys of comparable
16 experience. As one of Seattle's oldest law firms, the firm management maintains an excellent
17 working knowledge of Seattle's legal market, which it uses to determine each attorney and staff
18 person's hourly rate. Compared to other markets such as Los Angeles, San Francisco, or New
19 York, the market rates in Seattle are on the lower end of the spectrum. All of the KTC attorneys
20 and staff typically bill their clients on an hourly basis at these rates, which the clients agree to
21 pay in the standard engagement. Unlike LCHB, KTC's attorneys principally are paid for their
22 work on an hourly basis.

23 16. KTC's rate structure has been approved by courts in numerous jurisdictions,
24 sometimes as a loadstar, others as a cross-check and finally has a hold-back/success fee.

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17. KTC attorneys and staff enter their time contemporaneously. Firm policy requires timekeepers to keep their time on a daily basis through its timekeeping software. KTC's accounting department runs regular time reports, which were reviewed by Mr. Brown and I to ensure accuracy and reasonableness. Through this process, Mr. Brown and I have collectively written off approximately 1000 hours of attorney and staff time.

18. KTC has devoted, and will continue to devote, its time and resources to prosecute the class action claims in this matter on a contingent-fee basis.

III. KTC's Expenses Submission

19. KTC has to date incurred \$1,291,104.63 in expenses in connection with the investigation, prosecution, and settlement of this case, as set forth in the table attached as **Exhibit B**, of which **\$511,104.63** is unreimbursed. The expenses listed in **Exhibit B** are reflected in the books and records KTC maintains in the ordinary course of business, which books and records are prepared from invoices, expense vouchers and check records.

I declare under penalty of perjury that the forgoing is true and correct. Executed this 18th day of April, 2022, at Seattle, WA.

/s/ Nathan T. Paine

Nathan T. Paine

EXHIBIT A

Summary Report

Billed

Kona Coffee / Growers' Class Action (72448-1)

Attorney	Name	Description	Rev Hrs	Rev Amt	Rev Rate
1001	Adams, Thomas D.	Shareholder	104.20	66,383.50	637.08
1004	Bailey, Mark A.	Shareholder	887.30	376,376.00	424.18
1007	Brady, Barbara J.	Shareholder	801.50	325,730.00	406.40
1009	Brown, Paul R.	Shareholder	2,990.00	1,814,356.50	606.81
1013	Durland, Andrew W.	Associate	523.40	167,488.00	320.00
1040	Radcliffe, Robert A.	Shareholder	300.30	121,070.00	403.16
1048	Strauss, Nathaniel	Associate	44.70	12,292.50	275.00
1057	Paine, Nathan	Shareholder	2,387.00	1,209,827.00	506.84
1059	Howard, Joshua M.	Associate	901.60	259,788.00	288.14
1060	Arndorfer, Lauren	Associate	104.00	33,800.00	325.00
1063	Hagen, Daniel	Associate	1,107.30	301,224.50	272.04
1070	Vaughn, Mitzi	Shareholder	538.30	269,150.00	500.00
1072	Hodgins, Maria Y.	Associate	162.40	43,036.00	265.00
2036	Oppie, Pamela	Paralegal	56.90	15,647.50	275.00
2039	Stanton, Amy	Paralegal	180.40	49,610.00	275.00
2040	Dickie, Christopher	Paralegal	1,458.60	365,004.00	250.24
3012	Smith, Jessica	Legal Assistant	54.20	10,970.00	202.40
3022	Fagan, Morgan	Paralegal	887.20	126,819.00	142.94
5009	Rosenberg, Joshua R.M.	Law Clerk	99.30	16,200.00	163.14
5013	Sturgeon, Luke	Law Clerk	53.80	8,070.00	150.00
			13,642.40	5,592,842.50	6,688.37

EXHIBIT B

Service Code Summary Report

Billed

Kona Coffee (72448)

Service Code	Description	Amount
00100	Miscellaneous Costs	52,530.26
00102	Outside Printing	42,469.39
00106	Online Research	878.08
00107	Delivery Services/Messengers	11,950.54
00110	Out-of-town travel	84,859.77
00111	Meals	14,137.72
00112	Court Fees	1,730.64
00115	Deposition Transcripts	47,615.89
00116	Trial Transcripts	76.30
00118	Litigation Support Vendors	191,444.80
00119	Experts	590,365.43
00120	Private Investigators	70,127.50
00122	Local Counsel	20,327.79
00123	Other Professionals	106,434.25
00510	Copies	2,195.77
00540	On-Line Research Recovery	50,715.08
00560	Color Copies & Prints	997.50
00580	Postage	81.45
00590	Facsimile	15.00
00600	Document Scanning	8.80
00610	Copy Center	2,142.67
		1,291,104.63