

## **SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

THIS SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS (“Agreement”) is made this \_\_\_ day of November, 2020, by and between Plaintiffs Bruce Corker d/b/a Rancho Aloha, Colehour Bondera and Melanie Bondera d/b/a Kanalani Ohana Farm, and Robert and Cecelia Smith d/b/a Smithfarms (“Plaintiffs”), on behalf of all others similarly situated (“Settlement Class Members”), and Defendant Pacific Coffee, Inc., dba Maui Coffee Company (“MCC”) (Plaintiffs, Settlement Class Members, and MCC are collectively the “Settling Parties”), who are all parties in the lawsuit captioned *Corker, et al. v. Costco Wholesale Corporation, et al.*, 2:19-cv-00290-RSL (W.D. Wash.) (“*Corker case*”).

This Agreement contains all material terms of the settlement in this action, and the Settling Parties intend for it to be binding to the fullest extent of the law, and it shall remain so unless superseded by a written agreement signed by all parties to this agreement. The Agreement shall be subject only to the terms set forth below, binding court approval, and class notice.

### **RECITALS**

1. Plaintiffs are coffee growers in the Kona region of Hawaii. Plaintiffs are proposed class representatives of a class of all persons and entities who commercially farmed Kona coffee in the Kona District and then sold their coffee.

2. Plaintiffs alleged that MCC falsely advertised coffee as originating from the Kona region in violation of the Lanham Act, 15 U.S.C. § 1125(a). MCC denied Plaintiffs’ claims and asserted affirmative defenses that it would pursue if this case were to proceed in litigation.

3. Plaintiffs alleged that MCC falsely designated coffee as originating from the Kona region in violation of the Lanham Act, 15 U.S.C. § 1125(b). MCC denied Plaintiffs’ claims and asserted affirmative defenses that it would pursue if this case were to proceed in litigation.

4. Plaintiffs’ Counsel and Counsel for MCC engaged in discovery, and MCC produced a substantial amount of sales and financial information and documents to Plaintiffs.

5. Counsel for Plaintiffs and MCC engaged in arm’s length negotiations - including, but not limited to, direct negotiations and mediation before Judge Edward A. Infante (Ret.) - to resolve the case without the need for further litigation. As part of the negotiation process, Plaintiffs’ Counsel requested and MCC provided data and other information regarding MCC’s volume of Kona-labeled coffee sales from February 27, 2015, to the present. Plaintiffs’ Counsel has investigated the information provided. Based on the information in Plaintiffs’ possession, Plaintiffs have concluded that it would be in the best interests of Plaintiffs and the Settlement Class Members to enter into this Agreement to avoid the uncertainties of litigation, and to provide to Plaintiffs and the Settlement Class Members a benefit that is fair and reasonable. Similarly, MCC has concluded that, despite its assertion and 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 will enter into this Agreement in order to avoid the time, expense, and uncertainty of protracted litigation.

6. While MCC believes that the Agreement can and should be approved to avoid the time, expense and uncertainty of protracted litigation, in the event that the Agreement does not receive final and binding approval from the Court or is terminated according to its terms, MCC expressly reserves the right to challenge class certification and reserves all other defenses.

7. In light of the investigations undertaken and conclusions reached by the Settling Parties and discussed above, Plaintiffs and MCC have agreed, pursuant to the terms set forth below, and subject to approval by the Court, to fully and finally compromise, settle, extinguish and dismiss with prejudice the claims asserted or which could have been asserted against MCC and its products in the *Corker* case (including all claims against MCC products identified in the First Amended Complaint in the *Corker* case and all claims against any and all other of MCC's "Kona"-labeled coffee products that were not identified in the First Amended Complaint), as well as any liability for any other person or entity that in any way relates to or arises from any conduct associated with MCC or any of its products, as further described below in this Agreement.

8. 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, an 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 MCC or any admission by MCC of any claim or allegation made in any action or proceeding against MCC or as a waiver of any applicable defense, including, without limitation, any applicable statute of limitations. This Agreement and its exhibits shall not be offered or be admissible in evidence in any action or proceeding in any forum for any purpose whatsoever, except any action or proceeding brought to enforce its terms.

9. This Agreement is specifically predicated on the accuracy of the documents that MCC produced to Plaintiffs containing MCC's sales of Kona-products: in particular, that MCC has provided a substantially complete accounting of all sales. Similarly, the Agreement is specifically predicated on MCC's representations that it currently is experiencing substantial financial hardship and likely could not withstand a judgment for the full damages sought by Plaintiffs in this matter. The accuracy of MCC's sales records for its Kona-products and its representations concerning its financial hardship are material representations upon which Plaintiffs have relied in agreeing to compromise their claims. MCC will provide a sworn declaration to the Court affirming those representations in support of preliminary approval.

10. Should the Court determine that any additional settlement memorandum is required, Plaintiffs and MCC agree to take steps to finalize such an agreement within 30 days or as otherwise ordered by the Court.

11. In consideration of the above Recitals, all of which shall be considered fully incorporated into this Settlement Agreement, and the mutual promises and covenants set forth herein, the Parties agree as follows:

**Terms of the Settlement Agreement**

12. Class Definition.

a. The Settlement Class will include all persons and entities who, between February 27, 2015, and the date of the Court’s Order granting preliminary approval to this settlement, commercially farmed Kona coffee in the Kona District and then sold their Kona coffee.

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

13. Product Requirements.

a. The Parties to this Agreement note that, since Plaintiffs filed suit on February 27, 2019, MCC voluntarily suspended all of its sales of Kona-labeled coffee. MCC agrees that any of its current or future products labeled as “Kona,” will accurately and unambiguously state on the front label of the product the minimum percentage (addressed in subparagraph b., below) of authentic Kona coffee beans contained in the product. Only Kona coffee certified and graded by the Hawaii Department of Agriculture as 100% Kona shall be considered authentic Kona coffee. This requirement shall not apply to any products produced by or on behalf of MCC before the date that is 60 days following the execution of this Agreement.

b. MCC agrees that any of its current or future products labeled as “Kona” will comply with the labeling standards set forth in the “Hawaii-Grown Coffee Law” (Hawaii Revised Statute §486-120.6). Should the statute be modified in the future or superseded by another statute, MCC agrees to comply with the most recent statutory language. All MCC packages shall comply with the Hawaii state labeling standards, whether or not a particular package is intended for use in Hawaii.

14. Settlement Payment. Plaintiffs and MCC have agreed on a settlement amount of Four Hundred Twenty Thousand Seven Hundred Fifty Dollars (\$420,750.00) (“Settlement Amount”). The timing of payment is set forth in Paragraph 17, below. MCC shall not be liable for any payment of any kind beyond the Settlement Amount.

15. Settlement Approval and Post-Settlement Cooperation. Through discovery and otherwise, MCC has cooperated, and intends to continue to cooperate in good faith to secure approval of the Agreement by providing supporting documentation. MCC has already produced in discovery admissible proof of the volume of coffee it manufactured, sold, or distributed with a “Kona” label, the price for which it sold that coffee, the profit that it made from the sale of that coffee; and copies of all Hawaii Department of Agriculture 100% Kona Certifications for all Kona coffee purchased by MCC. To the extent that MCC identifies such information as a trade secret or commercial business information, Plaintiffs will maintain such information in confidence and cooperate with MCC’s efforts to ensure that any disclosure of such information to the Court will not result in its disclosure to the public or to competitors of MCC, some of whom will remain defendants in the *Corker* case. MCC’s post-settlement cooperation will be limited to providing commercially reasonable, readily accessible documents and any information in its possession about other retailers or distributors. J.D. Sheveland, the President and Owner of

MCC, has confirmed in discovery responses that he has no additional sales documents, information, or records beyond the QuickBooks data MCC has provided in support of its COG and other sales data, but Mr. Sheveland and MCC will provide other readily accessible information or documents moving forward that are helpful to obtaining court approval of this settlement. Plaintiffs will not seek production of duplicative information or documents already supplied by MCC during the litigation of the *Corker* case and MCC has no further obligation to object to or respond to any outstanding written discovery Plaintiffs had propounded on MCC to which MCC has not yet responded.

### **Effectuation of the Settlement Agreement**

16. Timing of Notification to the Court. Within seven days of the execution of this Agreement, Plaintiffs will file a notice with the Court informing the Court that the Settling Parties have reached an agreement in principle and requesting that any and all deadlines related to MCC or associated with the products MCC supplied that are the subject of this litigation be stayed, including but not limited to, discovery as to such products, provided that nothing in this settlement shall prevent Plaintiffs from obtaining sales volume, revenue, and profit information about those products from third parties or from a defendant who is producing sales volume, revenue, and profit information about any other product.

17. Timing of Motion for Settlement Approval. Because this litigation involves numerous other defendants, Plaintiffs will move the Court to preliminarily approve this settlement within three months of execution of this Agreement, unless otherwise provided in any subsequent agreement. This will reduce notice and administrative costs to the class.

18. Escrow. MCC or its insurance carriers shall pay the Settlement Amount in two installments. Within 21 days of preliminary approval of the settlement by the Court, MCC or its insurance carriers shall pay a sum sufficient to cover MCC's proportional pro rata share of the costs of notice and administration for notice of the preliminary settlement approval to the settlement class. The cost of notification of the preliminary settlement approval will be determined by the class action administrator and MCC's pro rata share will be based on the number of defendants for which notice and administration is being undertaken. The components of administration will be consistent with the preliminary bids obtained prior to the signing of this Settlement Agreement. Following final approval of the settlement by the Court, MCC or its insurance carriers shall pay the remaining balance of the Settlement Amount on the schedule set out in the final approval order.

19. Class Settlement Administration: Plaintiffs' Counsel has the right to choose the class Settlement Administrator, which shall be a professional firm with experience in this field. MCC shall have the right to approve Plaintiffs' choice of Settlement Administrator unless another defendant in this action has already approved that choice. Such approval shall not be withheld unreasonably.

20. Distribution of Monies to Plaintiffs. The Settlement Administrator will distribute monies to the Plaintiffs and the Settlement Class Members approximately pro rata based on a reasonable and fair formula.

21. Scope of Release:

a. As of the Effective Date of this Agreement, Plaintiffs and the Settlement Class Members hereby expressly agree that they shall fully and irrevocably release and discharge all Settled Claims, as defined in this paragraph. Plaintiffs and the Settlement Class Members hereby settle and forever release all actions, claims, demands, rights, suits, or causes of action, including without limitation all claims that arise from, involve, or in any way relate to any MCC product that used the word “Kona” on its packages, labels, advertisements, coupons, website, or other medium of communication, or that arise from or relate to the allegations made or conduct described in the First Amended Complaint (Dkt. No. 81 in the *Corker* case), including any subsequent amendments thereto and including allegations related to the labeling, packaging, advertising, promotion, branding, marketing, manufacturing, design, formulation, and distribution or sale of any and all MCC products that used the word “Kona,” regardless of the statute, regulation, common law legal theory, or other legal basis on which the allegations may be asserted (the “Settled Claims”). This release does not, however, extend to any of the rights or obligations created by this Agreement. Plaintiffs and the Settlement Class Members release, acquit, and forever discharge MCC, its retail customers, distributors, co-packers, manufacturers, and roasters, including but not limited to Walmart Inc., Amazon.com, Inc., Albertsons Companies Inc., Safeway Inc., MNS LTD., and their respective officers, directors, members, shareholders, managers, owners, employees, agents, related or subsidiary entities, insurers, reinsurers, and attorneys, (collectively “Defendant Releasees”) from all claims related to or arising from the use of the term “Kona” in connection with MCC’s products. Plaintiffs and the Settlement Class Members shall dismiss with prejudice the class action claims filed against MCC in the *Corker* case. The release provided in this paragraph covers, without limitation, any and all claims for attorneys’ fees, costs, or disbursements incurred by Counsel for Plaintiffs and the Settlement Class Members or any other counsel representing Plaintiffs or Settlement Class Members in connection with or related in any manner to this Agreement or the *Corker* case, the settlement of the *Corker* case, the administration of this Agreement and the settlement contemplated thereunder, Settlement and/or the Settled Claims. Plaintiffs and the Settlement Class Members 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.

b. As of the Effective Date of this Agreement, MCC, 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, expressly including (but not limited to) any claim under antitrust or other unfair competition laws. MCC, 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 lawsuit (Dkt. No. 81 in the *Corker* case) was brought with an improper purpose. The release provided in this paragraph covers, without limitation, any and all claims for attorneys’ fees, costs, or disbursements incurred by Counsel for MCC, its insurers, or any other counsel representing MCC or its insurers in connection with or related in any manner to this Agreement or the *Corker* case, the settlement of the *Corker* case, the administration of this Agreement and the settlement contemplated thereunder, and the Settlement. MCC 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 litigation, whether or not concealed or hidden, without regard to any subsequent discovery or existence of different or additional facts.

22. Public Statements. The Settling Parties agree to coordinate any statement to the press related to the proposed settlement and to make no statements to the press concerning the proposed settlement without the approval of the other, which shall not be unreasonably withheld.

23. Entire Agreement. This Agreement constitutes the entire agreement between the Settling Parties hereto with respect to settlement of the *Corker* case and release of the Defendant Releasees, and supersedes all prior agreements, understandings, negotiations, and/or discussions, whether oral or written, of the Settling Parties with respect to settlement of the *Corker* case and release of the Defendant Releasees. There are no representations or agreements between the Settling Parties in connection with settlement of the *Corker* case and release of the Defendant Releasees except as specifically set forth herein. No supplement, modification, waiver, or termination of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No delay or omission on the part of either party in exercising any right in this Agreement shall operate as a waiver of such right or any other right. A waiver on one occasion shall not be construed as a bar to or waiver of any right on any further occasion.

24. Governing Law. The Settling Parties hereby agree that the validity, construction, and interpretation of this Agreement shall be governed by the laws of the State of Washington.

25. Binding Agreement. This Agreement shall be binding upon and shall inure to the benefit of the Settling Parties and the Defendant Releasees and their representatives, parents, affiliates, subsidiaries, servants, attorneys, agents, insurers, experts, consultants, heirs, successors, officers, directors, partners, administrators, trustees, receivers, employees, executors, and assigns, and any legal or personal representative, whether past, present or future.

26. Warranty of Authorization. The undersigned persons warrant and represent that they have read, understood, and voluntarily accepted the terms in this agreement, that the agreement is fairly made, and that they have authority to enter into this Agreement and to bind the party who is represented by the signing person.

27. Benefit of Counsel. The Settling Parties acknowledge that they have consulted with their respective attorneys of record herein concerning the terms of this Agreement and have been fully advised by their respective attorneys with respect to the rights and obligations contained herein. The settlement which forms the basis of the Agreement has been arrived at after thorough bargaining and negotiation and represents a final agreement.

28. Construction. All Settling Parties 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 it desires. Accordingly, this Agreement shall be construed according to its plain meaning and not strictly for or against any party as though it were the sole drafter.

29. Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile or photocopy signatures shall be binding as though original.

30. Dispute Resolution. The District Court retains continuing jurisdiction to resolve any disagreements regarding this Agreement.

31. Attorneys' Fees for Breach. In any legal action that is brought to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable costs, including attorney fees, incurred to enforce the Agreement.

**SO AGREED:**

Dated this 23 day of November, 2020



Bruce Corker dba Rancho Aloha,  
Plaintiff

Dated this \_\_\_ day of November, 2020

\_\_\_\_\_  
Colehour Bondera dba Kanalani Ohana Farm,  
Plaintiff

Dated this \_\_\_ day of November, 2020

\_\_\_\_\_  
Melanie Bondera dba Kanalani Ohana Farm,  
Plaintiff

Dated this \_\_\_ day of November, 2020

\_\_\_\_\_  
Robert Smith dba SmithFarms,  
Plaintiff

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\_\_\_\_\_  
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Plaintiff

Dated this 23 day of November, 2020

  
\_\_\_\_\_  
Colehour Bondera dba Kanalani Ohana Farm,  
Plaintiff

Dated this 23 day of November, 2020

  
\_\_\_\_\_  
Melanie Bondera dba Kanalani Ohana Farm,  
Plaintiff

Dated this \_\_\_ day of November, 2020

\_\_\_\_\_  
Robert Smith dba SmithFarms,  
Plaintiff

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Bruce Corker dba Rancho Aloha,  
Plaintiff

Dated this \_\_\_ day of November, 2020

\_\_\_\_\_  
Colehour Bondera dba Kanalani Ohana Farm,  
Plaintiff

Dated this \_\_\_ day of November, 2020

\_\_\_\_\_  
Melanie Bondera dba Kanalani Ohana Farm,  
Plaintiff

Dated this 23 day of November, 2020

RSmith  
\_\_\_\_\_  
Robert Smith dba SmithFarms,  
Plaintiff

Dated this 23 day of November, 2020

Cecelia B. Smith

Cecelia Smith dba SmithFarms,  
Plaintiff

Dated this 24 day of November, 2020

  
Pacific Coffee Inc., dba Maui Coffee Company,  
Defendant