

The Honorable Robert S. Lasnik

IN THE 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, a Hawaii limited liability company, on behalf
of themselves and others similarly situated,

Plaintiffs,

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

CASE NO. 2:19-CV-00290-RSL

**DECLARATION OF JASON L.
LICHTMAN IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENTS**

Noted for Consideration: February 11,
2022

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 KEVIN KIHNIKE, an individual,

Defendants.

I, Jason L. Lichtman, declare as follows:

1. I am a partner in the law firm of Lief Cabraser Heimann & Bernstein, LLP (“LCHB”). I am Plaintiffs’ counsel of record in this litigation, along with Karr Tuttle Campbell. I am a member in good standing of the bars of Illinois, New York, and the District of Columbia. I respectfully submit this declaration in support of Plaintiffs’ Motion for Preliminary Approval of Three Class Settlements: one with The Kroger Co. (“Kroger”), one with Safeway Inc. and Albertsons Companies Inc. (“Safeway/Albertsons”), and one with Hawaiian Isles Coffee Co. Ltd. (“HIKC”). Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration and could testify competently to them if called upon to do so.

2. I have been involved in all aspects of this litigation since March 2019.

3. As part of the present motion, Plaintiffs respectfully ask that this Court appoint Jason L. Lichtman, Daniel E. Seltz, and Andrew R. Kaufman of my law firm and Paul Brown and Nathan Paine of Karr Tuttle Campbell as Settlement Class Counsel on behalf of the Class. Mr. Seltz, Mr. Kaufman, and I have extensive experience investigating, prosecuting, and resolving complex class actions, and are well-qualified to serve as Settlement Class Counsel here. I attached LCHB’s firm resumé to my declaration submitted with a previous round of settlements in this litigation (*see* Dkt. 394-8), and incorporate it here. My co-counsel, Nathan Paine, also previously submitted his qualifications to the Court. *See* Dkt. 395.

I. Settlement Negotiations and Settlement Agreements

4. These settlements, like the ones previously presented to the Court (Dkt. 393 and 411), are the result of intensive litigation and arms-length negotiations.

5. After this Court ruled on the defendants' motions to dismiss, discovery commenced in the fall of 2019.

6. In the spring of 2020, the parties agreed to a brief pause in most discovery activity to engage in a near-global, all-day, remote mediation before Hon. Edward Infante (ret.), of JAMS, on June 2. The defendants in the settlements that are the subject of Plaintiffs' motion – participated in that mediation, but did not reach an agreement with Plaintiffs at that time.

7. The parties returned to litigating immediately after the mediation with Judge Infante. Plaintiffs and Kroger subsequently returned to mediation, this time engaging Mark LeHocky of ADR Services, Inc., a nationally recognized and experienced mediator who supervised one of the settlements previously presented to the Court.

8. The parties participated in a mediation with Mr. LeHocky on May 3, 2021, which did not produce an agreement. Even as the parties continued to litigate, I continued to explore resolution with Kroger's counsel, engaging in continuous discussions and communications, much of them focused on understanding and confirming Kroger's sales volumes of the at-issue coffee. The parties engaged Mr. LeHocky for another mediation on August 11, 2021, at which time they were able to reach an agreement. The Kroger Settlement Agreement is attached hereto as Exhibit 1.

9. Safeway/Albertsons participated in the mediation with Judge Infante, and then negotiated separately with Class Counsel during the spring and summer of 2021, ultimately leading to an agreement in August 2021. The Safeway/Albertsons agreement is attached as Exhibit 2.

10. HIKC also participated in the unsuccessful mediation with Judge Infante. Immediately following that mediation, counsel for both parties explored potential resolution

1 throughout the remainder of 2020 and 2021, with much of those negotiations focused on
 2 verifying HIKC's representations of its financial condition, which affected the company's ability
 3 to pay. The parties ultimately reached an agreement in principle in October 2021. The HIKC
 4 agreement is attached as Exhibit 3.

5 **II. Investigation and Discovery**

6 11. These Settlement Agreements were negotiated by counsel with knowledge of the
 7 issues and litigation risks as a result of their thorough investigation and discovery efforts. Mr.
 8 Paine, Mr. Seltz, Mr. Kaufman, and I performed many tasks that were vital to the investigation,
 9 prosecution, and partial resolution, of the claims of the proposed Class. Mr. Paine and I
 10 described these tasks in prior Declarations submitted with the previous sets of settlements (Dkt.
 11 394, 395, 412, and 413), and I set them out again here for completeness of the record. Among
 12 these tasks, we:

- 13 a. Authored or edited the briefs and motions that have been presented in the
- 14 litigation to date, including oppositions to motions to dismiss and discovery motions;
- 15 b. propounded dozens of requests for production, interrogatories, and
- 16 requests for admissions;
- 17 c. oversaw the production of tens of thousands of documents;
- 18 d. assisted with the preparation of the depositions of five named plaintiffs;
- 19 e. identified and worked with numerous consulting experts in preparation for
- 20 mediation and litigation, on issues such as damages, marketing, consumer behavior, and
- 21 accounting;
- 22 f. identified and worked with these experts in connection with Plaintiffs'
- 23 recently filed motion for class certification; and
- 24 g. developed numerous settlement proposals and negotiated extensively with
- 25 Defendants, including the settling Defendants here.
- 26

1 **III. The Settlement Agreements**

2 12. The Kroger settlement includes both monetary and injunctive terms. First, Kroger
 3 will pay \$1,350,000. It will also now be subject to labeling obligations for the coffee that it sells
 4 either under its own name or any brand name that it wholly owns and that is labeled as “Kona
 5 coffee” or “Kona Blend.” Those products will state on the front of the product’s label the
 6 minimum percentage (or the percentage) of Kona coffee beans contained in the product using the
 7 same font type and same (or similar) color as the word Kona, and no smaller than one-half (1/2)
 8 the size as the word “Kona” appears, on the front of the package. Exh. 1 ¶ 13. The injunctive
 9 terms of Kroger’s settlement compound the benefits of the agreements of the previously settling
 10 defendants that increase and improve the information found on Kona-labeled products in the
 11 marketplace

12 13. Under their settlement agreement, Safeway/Albertsons agrees to sell coffee
 13 labeled as “Kona” or “Kona blend” only if certain labeling standards are met, and will require its
 14 vendors to certify that its Kona-labeled products will meet such standards, ensuring that the
 15 labeling information is clear and conspicuous. *See* Exh. 2 ¶ 13. It agree that “any coffee product
 16 labeled as ‘Kona coffee’ or ‘Kona Blend coffee’ will state on the front of the product’s label the
 17 minimum percentage (or percentage) of Kona coffee beans the supplier of the products states is
 18 contained in the Kona Coffee Product using the same font type and same (or similar) color as the
 19 word Kona and no smaller than one-half (1/2) the size as the word ‘Kona’ appears, on the front
 20 of the package.” *Id.*

21 14. The HIKC settlement also includes both monetary and injunctive terms. First,
 22 HIKC will pay \$800,000. The non-monetary terms of the HIKC settlement are, in my
 23 experience, extraordinary. HIKC will change its company name to remove the word “Kona.”
 24 Exh. 3 ¶ 12(c). Next, it will, like previously settling defendants, alter its labeling of Kona-
 25 labeled coffee so that such products “will accurately and unambiguously state on the front label
 26 of the product the minimum percentage of authentic Kona coffee beans contained in the product

1 using the same font type and same (or similar) color as the word Kona, and no smaller than one-
 2 half (1/2) the size as the word “Kona” appears, on the front of the package.” Exh. 3 ¶ 12(a). The
 3 agreements clarifies, “Only Kona coffee certified and graded by the Hawaii Department of
 4 Agriculture as 100% Kona shall be considered authentic Kona coffee.” *Id.* HIKC also agrees
 5 “to use at least the percentage of Kona coffee required by Hawaiian law, or as may be required
 6 by Hawaii law in the future, in any product labeled as “‘Kona’ or “‘Kona Blend.’” *Id.* ¶ 12(b).
 7 Finally, it will send a special communication to its subscriber list, explaining the difference
 8 between 100 percent Kona coffee and Kona blend coffees, and that HIKC’s current offerings are
 9 Kona blends and not 100 percent Kona coffee. *Id.* ¶ 13.

10 15. Based on my experience and knowledge about the facts and issues in this case, I
 11 firmly believe that the Settlement Agreements reached in this litigation thus far represent an
 12 excellent result that is in the best interests of the Settlement Class Members.

13 **IV. Settlement Administration and Notice**

14 16. After the receipt of multiple bids, my colleagues and I previously selected JND
 15 Legal Administration (“JND”), which is headquartered in Seattle, to serve as the notice and
 16 claims administrator for the settlements previously presented to the Court and for these
 17 settlements. I have worked with JND in other class settlements and am satisfied that they can
 18 carry out their duties as settlement administrator in accordance with the highest professional
 19 standards.

20 17. Under the supervision of proposed Settlement Class Counsel and as they did in
 21 connection with prior settlements, JND will, within the time period established by the Court,
 22 effectuate the notice plan. The notice plan includes:

23 a. **Direct mail.** Proposed Class Counsel developed a class list of 697 class
 24 members and located mailing addresses for nearly all of those members. In connection with prior
 25 settlements, JND refined that list and collected additional class member names who identified
 26 themselves during the claims process. JND will directly mail and email both the long-form

1 notice (attached as Exhibit 4) and the publication notice (attached as Exhibit 5) to each known
2 class member's mailing addresses, using the refined list.

3 b. **Publication notice.** JND will again arrange for publication of the
4 publication notice in the *West Hawaii Daily*, which Class Counsel understand to be the most
5 widely read and circulated periodical in the Kona region.

6 c. **Settlement website.** JND has established a website, at
7 www.KonaCoffeeSettlement, which will host documents related to all settlements in this
8 litigation, including these, including the settlement agreements, notices, and future filings,
9 including Plaintiffs' motion for final approval and any application for attorneys' fees and
10 reimbursement of expenses.

11 d. **Toll-free telephone number.** JND has set up a toll-free telephone number
12 that settlement class member can call to receive information or ask questions about the
13 settlements.

14 18. JND will also receive notice of any requests for exclusion from the settlement
15 class, and promptly forward those requests to counsel for the settling parties.

16 **V. Proposed Settlement Class Representatives**

17 19. As part of this motion, as in the previous motion for preliminary approval of the
18 prior settlements (Dkt. 393), Plaintiffs ask the court to appoint them as Settlement Class
19 Representatives to represent the Settlement Class. Based on my experience in complex class
20 actions and my observations during the course of this litigation, it is my opinion that each of the
21 Plaintiffs willingly, constructively, and effectively contributed to the prosecution of this
22 litigation.

23 20. As I stated in my previous declaration, Plaintiffs have provided information and
24 documents relevant to the prosecution of this case, responded to discovery, and maintained
25 communication with proposed class counsel. Plaintiffs have also prepared for and sat for all-day
26 depositions. Plaintiffs have stayed abreast of the developments in the litigation and fully

1 participated in the mediations that led to the settlements and subsequent negotiations. Each
2 Plaintiff was consulted on the terms of the Settlement Agreements before they were signed,
3 approve their terms, and support their approval by the Court. Plaintiffs have expressed their
4 continued willingness to protect the Class with the implementation of the Settlement Agreements
5 and until the litigation reaches a final resolution with the non-settling Defendants.

6 21. In light of the commitment of time, effort, and dedication of the Plaintiffs, I
7 believe it is appropriate under applicable Ninth Circuit case law that Plaintiffs receive service
8 awards to be paid from the Settlement Fund if approved by the Court. Plaintiffs were not
9 promised, nor conditioned their representation, service, or support, on the expectation of a
10 service award. The amounts of the proposed service awards will be included in the proposed
11 notice to the Settlement Class so that Settlement Class Members can review, comment on, or
12 object to those awards.

13 I declare under penalty of perjury that the forgoing is true and correct. Executed this 11th
14 day of February, 2022, in Salt Lake City, UT.


15 
16 _____
Jason L. Lichtman

EXHIBIT 1

SETTLEMENT AGREEMENT

THIS MEMORANDUM OF SETTLEMENT (“Agreement”) is made as of the last date of the signatures 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 (“Settlement Class Members”), on the one hand, and The Kroger Co. (“Kroger”), 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 Kroger 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 proposed class representatives of a class of all persons and entities who farmed Kona coffee in the Kona District and then sold their coffee.
2. Plaintiffs alleged that Kroger falsely advertised coffee as originating from the Kona region in violation of the Lanham Act, 15 U.S.C. § 1125(a). Kroger has denied Plaintiffs’ claims and has asserted affirmative defenses to Plaintiffs’ claims.
3. Plaintiffs alleged that Kroger violated the Lanham Act, 15 U.S.C. § 1125(b) with respect to its coffee products containing Kona coffee or labeled as containing Kona coffee. Kroger has denied Plaintiffs’ claims and asserted affirmative defenses to Plaintiffs’ claims.
4. Plaintiffs and Kroger, 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 Judge Edward A. Infante (Ret.) on June 2, 2020 and multiple subsequent negotiations, and a second mediation with mediator Mark LeHocky on August 11, 2021.
5. Discovery has been ongoing in this Case for over two years, through which certain data and information was obtained from both Plaintiffs and Kroger related to this Case. This Agreement is specifically predicated on the fact that Kroger has provided Plaintiffs with a substantially complete and accurate accounting of all sales for its coffee products labeled as containing Kona coffee for the period requested by Plaintiffs.
6. Plaintiffs have concluded that it would be in the best interests of Plaintiffs and the proposed class to enter into this Agreement to avoid the uncertainties of litigation, and to provide to the Settlement Class Members a benefit that is fair and reasonable.
7. Similarly, Kroger 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 will enter into this Agreement to avoid the time, expense, and uncertainty of litigation.

¹ All capitalized terms are as defined herein. References to “final approval” and “preliminary approval” are to the settlement approval process provided for in Fed.R.Civ.P. 23.

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

9. In light of the investigations undertaken and conclusions reached by the Parties and discussed above, Plaintiffs and Kroger 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 Kroger, or any admission by Kroger of any claim or allegation made in any action or proceeding against Kroger, or as a waiver of any applicable defense, including, without limitation, any applicable statute of limitations. 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 Kroger, specifically including the equitable defense of laches.

11. This Agreement 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, in which case it shall be filed under seal.

Terms of the Settlement Agreement

12. **Class Definition.**

a. The Settlement Class is defined as all persons and entities who, between February 27, 2015, and the date of Court's order granting preliminary approval to this settlement, farmed Kona coffee in the Kona District and then sold their Kona coffee ("Settlement Class").

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.** All coffee products manufactured or packaged for sale by Kroger that are under Kroger's name, or any brand name wholly owned by Kroger, and labeled as "Kona coffee" or "Kona Blend" ("Kroger Branded Kona Coffee Products") will state on the front of the product's label the minimum percentage (or the percentage) of Kona coffee beans contained in the product using the same font type and same (or similar) color as the word Kona, and no smaller than one-half (1/2) the size as the word "Kona" appears, on the front of the package. The percentage shall be equal to or greater than 10%. Not limiting the foregoing, for illustrative purposes only, compliant label examples include: "10% Minimum Kona Beans"; "10% Kona Blended with Premium Arabica Coffee." Notwithstanding the foregoing, the labeling requirements contained in this paragraph do not apply to the labels on individual K-Cups that are not offered for sale individually, but only as part of a box. For clarity, the box containing the K-Cups would be subject to the labeling requirements herein.

14. Sell Through Period. The Product Requirements described in Paragraph 13 shall not apply to any products sold by Kroger until ten (10) months after the signing of a Settlement Agreement, or ten (10) court days after Final Approval is entered by the Court, whichever is later.

15. Notice and Cure. The Product Requirements described in Paragraph 13 are subject to a notice and cure period. Prior to instituting any legal proceedings or claims process regarding Kroger's alleged failure to implement or adhere to the Product Requirements described in Paragraph 13, notice must be given to Kroger. Such notice must reference this case, attach this Agreement, and describe the alleged breach. Kroger will have ninety (90) calendar days from receipt of notice to cure such alleged breach ("Cure") before any legal proceeding or claim may be brought ("Cure Period"). If Kroger cures the alleged breach within the Cure Period, there shall be no cause of action or damages. If the alleged breach is not cured within the Cure Period, any potential damages are limited to Kroger's profit on such products for the time after expiration of the Cure Period. Notwithstanding the foregoing, if Kroger 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 consistent with the Product Requirements described in Paragraph 13.

16. Address. Any notice or other communication required or permitted to be given under this Agreement to Kroger, including under Paragraph 15, must be in writing and delivered either by certified mail (postage prepaid), or by nationally recognized overnight courier, at the below addresses:

The Kroger Co.
c/o Christine Wheatley, General Counsel
1014 Vine Street, 10th Floor
Cincinnati, OH 45202

Notice so given shall be deemed to have been received on the actual date of Kroger's receipt.

17. Settlement Class and Notice. Plaintiffs shall be solely responsible for identifying the proposed Settlement Class Members, notifying them, and proposing the best practicable notice to Settlement Class Members. Kroger shall have the right to approve the notice plan, and such approval shall not be unreasonably withheld. The Settlement Class will be an opt-out class under FRCP 23(b)(3) and will cover all persons and entities within the Settlement Class.

18. Settlement Payment. Kroger shall pay One Million, Three Hundred and Fifty Thousand Dollars (\$1,350,000 USD) to divest its profits, pay for market damages or any other damages claimed by Plaintiffs in this Case or that could have been claimed by Plaintiffs in this Case, and pay for any other claimed damages, costs, or fees in the case ("Settlement Amount"). For clarity, Kroger shall not be liable for any payment beyond the Settlement Amount. The amounts listed elsewhere in this Agreement do not add to, and are included in, the Settlement Amount.

19. Cooperation in Settlement Approval. Kroger will cooperate in good faith to secure Court approval of the Settlement Agreement. Plaintiffs will provide ten (10) court days' notice of their proposed Motion for Preliminary Approval and Motion for Final Approval. Additionally, Plaintiffs agree not to seek discovery from Kroger other than their sales volume and price to use exclusively in their damages claims in this Case for claims in this Case. For clarity, no

additional discovery shall be requested from Kroger and the sole information requested from anyone else regarding Settled Products will be for sales volume and price information not already provided.

20. Affidavits. Kroger is providing one or more affidavits, concurrent with this Settlement Agreement, that state under the penalty of perjury that (1) Kroger's best estimate of the total sales of the Kivu Kona blend over the relevant period is approximately \$3.9 million, with a detailed explanation as to how Kroger arrived at that estimate; and (2) Kroger's internal documents, including specifically the documents produced as KROGER_000097 and KROGER_000103, are not inconsistent with this estimate, because the sales totals contained in those documents include sales for non-Kona products not at issue in this case.

21. Attorneys' Fees, Costs, and Plaintiffs' Service Awards. Plaintiffs shall ask the Court to schedule their Motion for Attorneys' Fees and Costs and Plaintiffs' Service Awards no later than one-hundred twenty (120) calendar days after Preliminary Approval.

Settlement Procedures

22. Timing of Motion for Settlement Approval. Plaintiffs will move the Court to preliminarily approve this settlement by February 11, 2022. Plaintiffs shall ask the Court to set a deadline for a hearing on final approval no later than one-hundred eighty (180) calendar days from preliminary approval.

23. Escrow. Within twenty (20) court days after Preliminary Approval, Kroger shall pay the Settlement Amount into an escrow account set up by the Settlement Administrator. If no escrow account has been established, it shall pay the Settlement Amount within five (5) court days after such account is established.

24. 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 Settlement Class Members. Costs of notice to the Settlement Class and settlement administration will be paid from the Settlement Amount. The parties shall ask the Court to set claims, opt-out, and exclusion deadlines for Settlement Class Members at thirty (30) calendar days, or the next court day if the deadline lands on a non-court day, after the deadline for Plaintiffs to file their Motion to Approve Attorneys' Fees and Costs and Plaintiffs' Service Award.

25. Class Notice. Plaintiffs will provide a proposed class notice plan to Kroger no later than ten (10) calendar days before Plaintiffs file their motion for preliminary approval of the Settlement. Kroger shall have the right to approve the notice plan and such approval shall not be unreasonably withheld. Plaintiffs will be solely responsible for providing the Settlement Administrator with a list of potential Settlement Class Members, including their identifying information, no later than ten (10) calendar days after preliminary approval. Kroger shall have no obligations, nor expectations, to provide any information to identify Settlement Class Members. The Parties will ask the Court to order class notice shall occur thirty (30) calendar days after preliminary approval.

26. Distribution of Monies to the Settlement Class. The Settlement Administrator will distribute monies to the Settlement Class Members approximately pro rata, less any voluntary

contributions for the benefit of the Kona region, based on a reasonable and fair formula to be proposed by Class Counsel and approved by the Court. Any uncashed amounts shall be redistributed using the same formula to those Settlement Class Members who cashed their original distribution checks.² Any remaining uncashed amounts after this second distribution shall be donated *cy pres* to the Legal Foundation of Washington.

27. Scope of Release: Plaintiffs and Settlement Class Members.

28. As of final approval, and as part of the consideration for this Agreement, Plaintiffs and the Settlement Class Members hereby expressly agree that they fully and irrevocably release and discharge all Settled Claims, as defined below. Plaintiffs and Settlement Class Members hereby release Kroger and its present or former administrators, 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, customers, distributors, co-packers, manufacturers, and roasters (“Defendant Releasees”) from any and all of the Settled Claims, except for the rights and obligations created by this Agreement, and Plaintiffs and the Settlement Class Members 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 Kroger in the Case. This Release of Settled Claims covers, without limitation, any and all claims for attorneys’ fees, costs, or disbursements incurred by Class Counsel or any other counsel representing Plaintiffs or Settlement Class Members or by Plaintiffs or the Settlement Class Members regarding the Settled Products or Settled Claims. In addition to the foregoing, Plaintiffs and Settlement 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. Nothing in this Agreement shall be construed as an agreement from Settlement Class Members to waive, release, or dismiss any claims they have against Defendant Releasees that do not arise from their purchase or sale of the Settled Products. Nothing in the foregoing releases Plaintiffs’ claims against L&K Coffee, Mulvadi Corporation, Sprouts, or MNS.

29. Limitation of Release in the Event of a Change of Hawaiian Law. In the event that Hawaiian law changes in the future to require coffee sold in Hawaii labeled as ‘Kona’ to contain more than 10% coffee grown in the Kona District, Plaintiffs or any Settlement Class Member (who can demonstrate they are a member of the Settlement Class) will notify Kroger’s General Counsel of this fact and the new percentage of Kona coffee required by the new law (“Notification”). For the Notification to be effective, it must reference the Case and this

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.

Agreement. For clarity, the Settlement does not create any obligation for Kroger to comply with the new Hawaiian law. However, the above release does not extend to any sales made more than 120 calendar days after Notification that do not include the minimum percentage of Kona coffee required by the new law.

30. 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 regarding non-Settled Products, that might be attributable to Defendant Releasees. This release does not extend to the Settlement Class Members.

31. 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 the Settled Products, 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 Settlement 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.

32. Scope of Release: Kroger. As of final approval, Kroger, its officers, directors, managers, 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, but excluding any claims that are asserted against Kroger by third parties related thereto. Kroger, 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 Settlement Class Members, provided in this paragraph covers, without limitation, any and all claims for attorneys' fees, costs, or disbursements incurred by: counsel for Kroger related to the Settled Products, or any other counsel representing Kroger or its insurers in connection with or related in any manner to the Settled Products or the administration of this Agreement and the settlement contemplated thereunder or 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 Settlement Class Members. Kroger, 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 the Settled Claims, whether or not concealed or hidden, without regard to any subsequent discovery or existence of different or additional facts.

33. Statement of Present Intent. Plaintiffs and Plaintiffs' Counsel represent and warrant that (1) 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 (2) 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.

34. Public Statements Regarding the Case. Plaintiffs and Kroger are permitted to make only the following statements regarding the Case: The plaintiffs filed a lawsuit about the mislabeling of Kona coffee; Kroger has denied all liability or fault; and the parties amicably resolved this matter through settlement on terms acceptable to both parties. The parties are glad to have the matter behind them. You may find the complaint(s) and Settlement Agreement at [insert location]. If any statement is made prior to preliminary or final approval, it must state that the settlement is subject to those events occurring. For clarity, any statement to a journalist or news organization is a "public statement," regardless of whether or not the statement is "off the record," "on background," or otherwise made with a request that it not be attributed to the speaker. Nothing in this paragraph precludes any class representative from discussing this litigation or settlement with class members, including but not limited to the settlement claims process. Communications between class representatives and class members are not "public statements" for purposes of this paragraph.

35. Settlement Agreement. This Settlement Agreement includes the terms of the settlement set forth herein, a proposed order preliminarily approving the settlement, a proposed short-form and long-form class notice, and a proposed final approval order dismissing with prejudice the Case as to Plaintiffs and all Settlement Class Members who do not validly opt out. There is no admission of wrongdoing or liability by Defendant Releasees. There is no obligation imposed on Defendant Releasees to pay any monetary amount in excess of the Settlement Amount.

36. Settled Products. The "Settled Products" are any products that are or have been manufactured or sold by Kroger labeled as Kona products, including blended and 100% labeled products, excluding products sold in the future that are not Kroger Branded Kona Coffee Products.

37. Supplemental Agreement. Simultaneously herewith, the parties, by and through counsel, are executing a "Supplemental Agreement" setting forth certain conditions under which the parties may terminate the Settlement Agreement if Settlement Class Members who meet certain criteria exclude themselves from the Settlement Class. The Parties shall maintain the confidentiality of the Supplemental Agreement as stated therein, and the Supplemental Agreement shall not be filed with the Court, unless requested by the Court, and in that event, shall be submitted to the Court under seal.

38. 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.

39. Authority. Counsel signing below warrant they have full authority to bind their clients.

40. Construction. Plaintiffs and Kroger 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 desired. Accordingly, this Agreement shall be construed according to its plain meaning and not strictly for or against any party.

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

[Remainder of page left intentionally blank. Signature page to follow]

PLAINTIFFS

DATED: January 25, 2022

Bruce Corker
Bruce Corker
d/b/a Rancho Aloha

DATED: January __, 2022

Colehour Bondera
d/b/a Kanalani Ohana Farm

DATED: January __, 2022

Melanie Bondera
d/b/a Kanalani Ohana Farm

DATED: January __, 2022

Robert Smith, individually and on behalf of
Smithfarms LLC

DATED: January __, 2022

Cecelia Smith, individually and on behalf of
Smithfarms LLC

DATED: January __, 2022

By: _____
Karr Tuttle Campbell
on behalf of the proposed Settlement Class

DATED: January __, 2022

By: _____
Lief Cabraser Heiman & Bernstein LLP
on behalf of the proposed Settlement Class

DEFENDANT

DATED: January 26, 2022

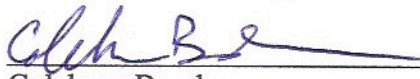
Carlo Baldan
The Kroger Co.
By: Carlo Baldan
Its: Group VP, Center Store Merchandising

PLAINTIFFS

DATED: January __, 2022

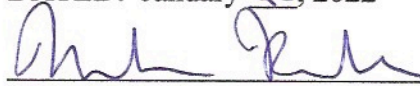
Bruce Corker
d/b/a Rancho Aloha

DATED: January 25, 2022



Colehour Bondera
d/b/a Kanalani Ohana Farm

DATED: January 25, 2022



Melanie Bondera
d/b/a Kanalani Ohana Farm

DATED: January __, 2022

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Smithfarms LLC

DATED: January __, 2022

Cecelia Smith, individually and on behalf of
Smithfarms LLC

DATED: January __, 2022

By: _____
Karr Tuttle Campbell
on behalf of the proposed Settlement Class

DATED: January __, 2022

By: _____
Lief Cabraser Heiman & Bernstein LLP
on behalf of the proposed Settlement Class

DEFENDANT

DATED: January __, 2022

The Kroger Co.
By: _____
Its: _____

PLAINTIFFS

DATED: January __, 2022

Bruce Corker
d/b/a Rancho Aloha

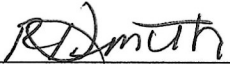
DATED: January __, 2022

Colehour Bondera
d/b/a Kanalani Ohana Farm

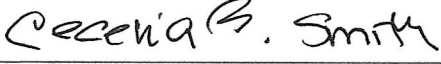
DATED: January __, 2022

Melanie Bondera
d/b/a Kanalani Ohana Farm

DATED: January 25, 2022


Robert Smith, individually and on behalf of
Smithfarms LLC

DATED: January 25, 2022


Cecelia Smith, individually and on behalf of
Smithfarms LLC

DATED: January __, 2022

By: _____
Karr Tuttle Campbell
on behalf of the proposed Settlement Class

DATED: January __, 2022

By: _____
Lief Cabraser Heiman & Bernstein LLP
on behalf of the proposed Settlement Class

DEFENDANT

DATED: January __, 2022

The Kroger Co.
By: _____
Its: _____

PLAINTIFFS

DATED: January ___, 2022

Bruce Corker
d/b/a Rancho Aloha

DATED: January ___, 2022

Colehour Bondera
d/b/a Kanalani Ohana Farm

DATED: January ___, 2022

Melanie Bondera
d/b/a Kanalani Ohana Farm

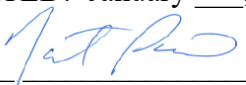
DATED: January ___, 2022

Robert Smith, individually and on behalf of
Smithfarms LLC

DATED: January ___, 2022

Cecelia Smith, individually and on behalf of
Smithfarms LLC

DATED: January 25, 2022



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

DATED: January ___, 2022

By: _____
Lief Cabraser Heiman & Bernstein LLP
on behalf of the proposed Settlement Class

DEFENDANT

DATED: January ___, 2022

The Kroger Co.
By: _____
Its: _____

PLAINTIFFS

DATED: January ___, 2022

Bruce Corker
d/b/a Rancho Aloha

DATED: January ___, 2022

Colehour Bondera
d/b/a Kanalani Ohana Farm

DATED: January ___, 2022

Melanie Bondera
d/b/a Kanalani Ohana Farm

DATED: January ___, 2022

Robert Smith, individually and on behalf of
Smithfarms LLC

DATED: January ___, 2022

Cecelia Smith, individually and on behalf of
Smithfarms LLC

DATED: January ___, 2022

By: _____
Karr Tuttle Campbell
on behalf of the proposed Settlement Class

DATED: January 25, 2022

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

DEFENDANT

DATED: January ___, 2022

The Kroger Co.
By: _____
Its: _____

EXHIBIT 2

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement” or “Settlement Agreement”) is made as of the last date of the signatures 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 (“Settlement Class Members”), on the one hand, and Albertsons Companies, Inc. and Safeway Inc. (collectively “Albertsons”), 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 Albertsons and Plaintiffs (collectively, “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 proposed class representatives of a class of all persons and entities who farmed Kona coffee in the Kona District and then sold their coffee.
2. Plaintiffs alleged that Albertsons falsely advertised coffee as originating from the Kona region in violation of the Lanham Act, 15 U.S.C. § 1125(a). The Court dismissed these claims as to Albertsons.
3. Plaintiffs alleged that Albertsons violated the Lanham Act, 15 U.S.C. § 1125(b) with respect to its coffee products containing Kona coffee or labeled as containing Kona coffee. Albertsons has denied Plaintiffs’ claims and asserted affirmative defenses to Plaintiffs’ claims.
4. Plaintiffs and Albertsons, 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 Judge Edward A. Infante (Ret.) on June 2, 2020 and multiple subsequent negotiations.
5. Discovery has been ongoing in this Case for over a year through which certain data and information was obtained from both Plaintiffs and Albertsons related to this Case.
6. Plaintiffs have concluded that it would be in the best interests of Plaintiffs and the proposed class to enter into this Agreement to avoid the uncertainties of litigation, and to provide to the Settlement Class Members a benefit that is fair and reasonable.
7. Similarly, Albertsons 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 will enter into this Agreement to avoid the time, expense, and uncertainty of litigation.

¹ All capitalized terms are as defined herein. The terms “final approval” and “preliminary approval” have the meanings provided for in Fed.R.Civ.P. 23.

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

9. In light of the investigations undertaken and conclusions reached by the Parties and discussed above, Plaintiffs and Albertsons 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 Albertsons, or any admission by Albertsons of any claim or allegation made in any action or proceeding against Albertsons, or as a waiver of any applicable defense, including, without limitation, any applicable statute of limitations. Albertsons 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 Albertsons, specifically including the equitable defense of laches.

11. This Agreement 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, in which case it shall be filed under seal.

Terms of the Settlement Agreement

12. Class Definition.

a. The Settlement Class is defined as all persons and entities who, between February 27, 2015, and the date of Court's order granting preliminary approval to this settlement, farmed Kona coffee in the Kona District and then sold their Kona coffee ("Settlement Class").

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, Procedures, Notice, and Cure.

Albertsons agrees that as to any coffee product labeled as "Kona coffee" or "Kona Blend coffee" ("Kona Coffee Products"):

a. It will state on the front of the product's label the minimum percentage (or the percentage) of Kona coffee beans the suppliers of the Kona Coffee Products states is contained in the Kona Coffee Product using the same font type and same (or similar) color as the

word Kona, and no smaller than one-half (1/2) the size as the word “Kona” appears, on the front of the package. Not limiting the foregoing, for illustrative purposes only, compliant label examples include: “10% Minimum Kona Beans”; “10% Kona Blended with Premium Arabica Coffee.”

b. The requirement in Paragraph 13(a) shall not apply to any products sold by Albertsons until after April 1, 2022 or ten (10) days after Final Approval is entered by the Court, whichever is later (“Sell Through Period”).

c. The requirement in Paragraph 13(a) is subject to, and not binding unless, Plaintiffs provide Albertsons’s registered agent, as registered with the Washington Secretary of State, and the recipients listed in Paragraph 13(f) below, an annual notice in January of each year identifying the agreement and the terms in Paragraph 13(a). If no annual notice is sent to Albertsons for three (3) consecutive years, this Agreement shall be deemed expired.

d. Albertsons will provide its current Kona Coffee Products vendors who sell any coffee product labeled as “Kona coffee” or “Kona Blend” coffee (“Kona Coffee Vendors”) a letter, substantially in the form attached as **Exhibit A** (“Kona Coffee Vendor Letter”). Assuming that (a) the requested certificate, as set forth in the Kona Coffee Vendor Letter, is received by Albertsons from the applicable Kona Coffee Vendors and (b) the labeling complies with Paragraph 13(a), Albertsons will be deemed to have sufficiently complied with the labeling requirements in Paragraph 13(a), and the Plaintiffs and Settlement Class 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 Albertsons. Albertsons will retain any letters received from its vendors for four (4) years.

e. The requirement in section 13(a) is subject to a notice and cure period. Prior to instituting any legal proceedings or claims process regarding an alleged violation of section 13(a), notice must be given to Albertsons’s registered agent and to the recipients in Paragraph 13(f). Such notice must reference this Agreement, this Case, and the alleged breach. Albertsons 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, Albertsons must have the non-compliant product removed from store shelves within the Cure Period. If Albertsons cures the alleged breach within the Cure Period, there shall be no cause of action or damages (“Cure”). If the alleged breach is not Cured within the Cure Period, any potential damages are limited to Albertsons’s profit on such products for the time after expiration of the Cure Period. Notwithstanding the foregoing, if Albertsons 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 consistent with the labeling requirements in Paragraph 13(a).

f. Any notice or other communication required or permitted to be given under this Agreement to Albertsons, including under this Paragraph 13, 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 Albertsons’ receipt.

Albertsons Companies, Inc.
250 Parkcenter Boulevard
Boise, Idaho 83706
Attn: General Counsel (Legal)

With a copy to:

Albertsons Companies, Inc.
250 Parkcenter Boulevard
Boise, Idaho 83706
Attn: Michael Dingel (Legal)

14. Settlement Class and Notice. Plaintiffs shall be solely responsible for identifying the proposed Settlement Class Members, notifying them, and proposing the best practicable notice to Settlement Class Members. Albertsons shall have the right to approve the notice plan, and such approval shall not be unreasonably withheld. The Settlement Class will be an opt-out class under FRCP 23(b)(3) and will cover all persons and entities within the Settlement Class.

15. No Monetary Payment. Albertsons shall not make any monetary payment as part of this Settlement. It shall not contribute any funds to Class Notice, Attorneys' Fees, Costs, Plaintiffs' Service Awards, or otherwise.

16. Cooperation Settlement Approval. Albertsons will cooperate in good faith to secure Court approval of the Settlement Agreement. Plaintiffs will provide ten (10) court days' notice of their proposed Motion for Preliminary Approval and Motion for Final Approval.

17. Attorneys' Fees, Costs, and Plaintiffs' Service Awards. Plaintiffs shall ask the Court to schedule their Motion for Attorneys' Fees and Costs and Plaintiffs' Service Awards no later than one-hundred twenty (120) days after Preliminary Approval. Attorneys' Fees and Costs and Plaintiffs' Service Awards will be paid by others and not by Albertsons.

Settlement Procedures

18. Timing of Notification to the Court. Within five (5) court days of the execution of this Agreement by the Parties, Plaintiffs will file a notice with the Court informing the Court that the parties have reached an agreement in principle and requesting that the Court stay any and all deadlines pertaining to Albertsons. Additionally, Plaintiffs agree not to seek discovery from Albertsons other than their sales volume and price to use exclusively in their damages claims in this Case for claims in this Case. For clarity, no additional discovery shall be requested from Albertsons and the sole information requested from anyone else regarding Settled Products will be for sales volume and price information not already provided.

19. Timing of Motion for Settlement Approval. Plaintiffs will move the Court to preliminarily approve this settlement by December 21, 2021. Plaintiffs shall ask the Court to set a deadline for a hearing on final approval no later than one-hundred eighty (180) calendar days from preliminary approval.

20. 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. Costs of notice to the Settlement Class and settlement administration will not be paid by Albertsons. The parties shall ask the Court to set claims, opt-out, and exclusion deadlines for Settlement Class Members at thirty (30) calendar days, or the next court day if the deadline lands on a non-court day, after the deadline for Plaintiffs to file their Motion to Approve Attorneys’ Fees and Costs and Plaintiffs’ Service Award. Attorneys’ Fees and Costs and Plaintiffs’ Service Awards will be paid by others and not by Albertsons.

21. Class Notice. Plaintiffs will provide a proposed class notice plan to the Settlement Administrator no later than ten (10) calendar days after preliminary approval of the Settlement. Albertsons shall have the right to approve the notice plan and such approval shall not be withheld unreasonably. Plaintiffs will be solely responsible for providing the Settlement Administrator with a list of potential Settlement Class Members, including their identifying information, no later than ten (10) calendar days after preliminary approval. Albertsons shall have no obligations, nor expectations, to provide any information to identify Settlement Class Members. The Parties will ask the Court to order class notice shall occur thirty (30) calendar days after preliminary approval.

22. Scope of Release: Plaintiffs and Settlement Class Members. As of final approval, and as part of the consideration for this Agreement, Plaintiffs and the Settlement Class Members hereby expressly agree that they fully and irrevocably release and discharge all Settled Claims, as defined below. Plaintiffs and Settlement Class Members hereby release Albertsons and its predecessors, successors, assigns, parent companies, subsidiaries, corporate affiliates, holding companies, investors, owners, divisions, corporate affiliates, 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, 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 and the Settlement Class Members 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 Albertsons in the Case that arise from the sale of the Settled Products. This Release of Settled Claims also covers, without limitation, any and all claims for attorneys’ fees, costs, or disbursements incurred by Class Counsel² or any other counsel representing Plaintiffs or Settlement Class Members or by Plaintiffs or the Settlement Class Members regarding the Settled Products or Settled Claims. Nothing in this Agreement shall be construed as an agreement from Settlement Class Members to waive, release, or dismiss any claims they have against Defendant Releasees that do not arise from their purchase or sale of the

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

Settled Products. Notwithstanding the foregoing, Plaintiffs do not release Hawaiian Isles Kona Coffee Co. (“Hawaiian Isles”), the Mulvadi Corporation (“Mulvadi”), or any supplier of Kona-labeled coffee, their predecessors, successors, assigns, parent companies, subsidiaries, corporate affiliates, holding companies, investors, owners, divisions, employees, agents, representatives, consultants, independent contractors, service providers, vendors (not including Albertsons), 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, and investment advisors, customers (other than Albertsons and Albertsons related releasees), distributors, co-packers, manufacturers, and roasters for the claims and damages sought in the Case, but notwithstanding the foregoing, Plaintiffs and the Settlement Class Members, with the knowledge that Albertsons sells Kona Coffee Products supplied to it by Hawaiian Isles, Mulvadi, and other suppliers, do explicitly agree to dismiss Albertsons from the Case and agree that they may not bring any claims to recover directly from Albertsons for any of the claims at issue in this Case in consideration for Albertsons’s agreement in Paragraph 13 (including any Kona Coffee Products supplied to Albertsons by Hawaiian Isles, Mulvadi, or other suppliers).

23. 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 regarding non-Settled Products, that might be attributable to Defendant Releasees. This release does not extend to the Settlement Class Members.

24. 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. 271 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 the Settled Products, regardless of the statute, regulation, common law legal theory, or other legal basis on which the allegations may be asserted. Plaintiffs and Settlement Class Members acknowledge that they may hereafter discover Settled Claims or facts now unknown or unsuspected from those which the Parties now know or believe to be true with respect to the Dispute. Nevertheless, by way of this Agreement (i) Plaintiffs and Settlement Class Members intend to fully, finally, and forever waive, discharge and release any and all Settled Claims even those that may be unknown as of the Effective Date, and (ii) the releases contained in this Agreement shall remain in full force and effect as a complete release of any and all such Settled Claims notwithstanding the discovery or existence of any such additional or different claims or facts before or after the Effective Date. Thus, in connection with the release of the Settled Claims, Plaintiffs and Settlement 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.

California Civil Code § 1542 states: “A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her would have materially affected his or her settlement with the debtor or released party.” In addition to the foregoing, Plaintiffs and Settlement 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.

25. Scope of Release: Albertsons. As of final approval, Albertsons, 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 and Settlement Class Members, expressly including (but not limited to) any claim under antitrust or other unfair competition laws. Albertsons, 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 Settlement Class Members, provided in this paragraph covers, without limitation, any and all claims for attorneys’ fees, costs, or disbursements incurred by counsel for Albertsons related to Albertsons or the Settled Products, its insurers, or any other counsel representing Albertsons or its insurers in connection with or related in any manner to this Agreement, Albertsons or the Settled Products, 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 Settlement Class Members. Albertsons, 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, as between Albertsons and Plaintiffs, whether or not concealed or hidden, without regard to any subsequent discovery or existence of different or additional facts.

26. Statement of Present Intent. Plaintiffs and Plaintiffs’ Counsel represent and warrant that (1) 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 (2) 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.

27. Public Statements Regarding the Case: Plaintiffs and Albertsons are permitted to make only the following statements regarding the Case: The plaintiffs filed a lawsuit about the mislabeling of Kona coffee; Albertsons has denied all liability or fault; and the parties amicably resolved this matter with no monetary payment by Albertsons. The settlement includes an agreement that, after a sell-through period, Albertsons will not sell Kona coffee products that are not labeled by the supplier with the minimum percentage (or the percentage) of Kona coffee in the product. If any statement is made prior to preliminary or final approval, it must state that the settlement is subject to those events occurring.

28. Settlement Agreement for Filing. The Settlement Agreement when filed shall contain the terms of the settlement, a proposed order preliminarily approving the settlement, a proposed short-form and long-form class notice, and a proposed final approval order dismissing with prejudice the Case as to Plaintiffs and all Settlement Class Members who do not validly opt out. There will be no admission of wrongdoing or liability by Defendant Releasees. There will be no obligation imposed on Defendant Releasees to pay any monetary amount.

29. “Settled Products” Definition. The “Settled Products” are any products sold by Albertsons labeled as Kona coffee products, including blended and 100% labeled Kona coffee products.

30. Supplemental Agreement. Simultaneously herewith, the parties, by and through counsel, are executing a “Supplemental Agreement” setting forth certain conditions under which the parties may terminate the Settlement Agreement if Settlement Class Members who meet certain criteria exclude themselves from the Settlement Class. The Parties shall maintain the confidentiality of the Supplemental Agreement as stated therein, and the Supplemental Agreement shall not be filed with the Court, unless requested by the Court, and in that event, shall be submitted to the Court under seal.

31. Electronic Execution and Counterparts. This Agreement may be executed and delivered by facsimile, 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.

32. Authority. Counsel signing below warrant they have full authority to bind their clients.


33. Construction. Plaintiffs and Albertsons 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.

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

[Remainder of page left intentionally blank. Signature page to follow]

PLAINTIFFS

DATED: August __, 2021


Bruce Corker
d/b/a Rancho Aloha
DATED: August 12, 2021

Colehour Bondera
d/b/a Kanalani Ohana Farm

DATED: August __, 2021

Melanie Bondera
d/b/a Kanalani Ohana Farm

DATED: August __, 2021

Robert Smith, individually and on behalf of
Smithfarms LLC

DATED: August __, 2021

Cecelia Smith, individually and on behalf of
Smithfarms LLC

DATED: August __, 2021

By: _____
Karr Tuttle Campbell
on behalf of the proposed Settlement Class

DEFENDANT

DATED: August __, 2021

Albertsons Companies, Inc.

By: _____
Its: _____

DATED: August __, 2021


Safeway Inc.

By: _____
Its: _____

PLAINTIFFS

DATED: August __, 2021

Bruce Corker
d/b/a Rancho Aloha
DATED: August 12, 2021




Colehour Bondera
d/b/a Kanalani Ohana Farm

DATED: August 12, 2021




Melanie Bondera
d/b/a Kanalani Ohana Farm

DATED: August 13, 2021




Robert Smith, individually and on behalf of
Smithfarms LLC

DATED: August 13, 2021 .



Cecelia Smith, individually and on behalf of
Smithfarms LLC

DATED: August 13, 2021



By: _____
Karr Tuttle Campbell
on behalf of the proposed Settlement Class

DEFENDANT

DATED: August __, 2021

Albertsons Companies, Inc.

By: _____
Its: _____

DATED: August __, 2021

Safeway Inc.

By: _____
Its: _____

PLAINTIFFS

DATED: August __, 2021

Bruce Corker
d/b/a Rancho Aloha

DATED: August __, 2021

Colehour Bondera
d/b/a Kanalani Ohana Farm

DATED: August __, 2021

Melanie Bondera
d/b/a Kanalani Ohana Farm

DATED: August __, 2021


Robert Smith, individually and on behalf of
Smithfarms LLC

DATED: August __, 2021


Cecelia Smith, individually and on behalf of
Smithfarms LLC

DATED: August __, 2021

By: _____
Karr Tuttle Campbell
on behalf of the proposed Settlement Class**DEFENDANT**DATED: August 25, 2021

DocuSigned by:

728CD401C0E1498...
Albertsons Companies, Inc.

By: Jon-Peter KelleyIts: SVP, LitigationDATED: August 25, 2021

DocuSigned by:

728CD401C0E1498...
Safeway Inc.

By: Jon-Peter KelleyIts: SVP, Litigation

DATED: August 13, 2021

A handwritten signature in black ink, appearing to read "Jason L. Lichtman", written over a horizontal line.

By: Jason L. Lichtman
Lieff Cabraser Heiman & Bernstein LLP
on behalf of the proposed Settlement Class

Exhibit A to Settlement Agreement

[Date]

[Insert Vendor Address]

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

Dear *[Insert Vendor Name]*:

Albertsons Companies, Inc., including Albertson's LLC and Safeway Inc. (collectively, "Albertsons"), requires all of the products it sells that are labeled as "Kona coffee" or "Kona Blend coffee" ("Kona coffee product(s)") to comply with certain labelling standards. This letter is to confirm that the Kona coffee product(s) you supply to Albertsons conform to those requirements. Specifically, in order for Albertsons to sell your Kona coffee product(s), your Kona Coffee product(s) must state on the front of the product's label the minimum percentage of Kona coffee beans contained in the product using the same font type and same (or similar) color as the word Kona and no smaller than one-half the size as the word "Kona" appears, on the front of the package.

Additionally, in order for Albertsons to sell your Kona coffee product(s), you must certify that the Kona coffee product(s) you sell to Albertsons contain no less than the percentage of Kona coffee beans stated on the label by completing and executing the certification below and returning it no later than fourteen (14) days after receipt of this letter *[insert date]* to:

[Insert Return Address]

Thank you for being a valued Albertsons vendor.

Sincerely,

[Insert Name]

Enclosure

cc:

CERTIFICATION

I, _____ *[name]*, by signing below, hereby certify that the Kona coffee products sold by _____ *[vendor name]* to Albertsons Companies, Inc., including its subsidiaries Albertson's LLC and Safeway Inc. (collectively, "Albertsons"), contain no less than the percentage of Kona coffee beans stated on the label and use the same font type and same (or similar) color as the word Kona and no smaller than one-half the size as the word "Kona" appears, on the front of the package.

By: _____
Title: _____
Date: _____

EXHIBIT 3

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”) is made this [REDACTED] day of January, 2022, 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 (“Settlement Class Members”), on the one hand, and Hawaiian Isles Kona Coffee Company, Ltd. (“HIKC”), 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 HIKC 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 proposed class representatives of a class of all persons and entities who farmed Kona coffee in the Kona District and then sold their coffee.
2. Plaintiffs alleged that HIKC falsely advertised coffee as originating from the Kona region in violation of the Lanham Act, 15 U.S.C. § 1125(a). HIKC has denied Plaintiffs’ claims and has asserted affirmative defenses to Plaintiffs’ claims.
3. Plaintiffs alleged that HIKC violated the Lanham Act, 15 U.S.C. § 1125(b) with respect to its coffee products containing Kona coffee or labeled as containing Kona coffee. HIKC has denied Plaintiffs’ claims and asserted affirmative defenses to Plaintiffs’ claims.
4. Plaintiffs and HIKC, 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 Judge Edward A. Infante (Ret.) on June 2, 2020 and multiple subsequent negotiations.
5. Discovery has been ongoing in this Case since September 2019, during which time certain data and information were obtained from both Plaintiffs and HIKC related to this Case.
6. Plaintiffs have concluded that it would be in the best interests of Plaintiffs and the proposed class to enter into this Agreement to avoid the uncertainties of litigation, and to provide to the Settlement Class Members a benefit that is fair and reasonable.
7. Similarly, HIKC 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 will enter into this Agreement to avoid the time, expense, and uncertainty of litigation.

¹ All capitalized terms are as defined herein.

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

9. In light of the investigations undertaken and conclusions reached by the Parties and discussed above, Plaintiffs and HIKC 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 HIKC, or any admission by HIKC of any claim or allegation made in any action or proceeding against HIKC, or as a waiver of any applicable defense, including, without limitation, any applicable statute of limitations. HIKC 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 HIKC, specifically including the equitable defense of laches.

Terms of the Settlement Agreement

11. Class Definition.

a. The Settlement Class is defined as all persons and entities who, between February 27, 2015, and the date of Court's order granting preliminary approval to this settlement, farmed Kona coffee in the Kona District and then sold their Kona coffee ("Settlement Class").

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.

12. Product Requirements.

a. HIKC agrees that any product that it manufactures or 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 contained in the product using the same font type and same (or similar) color as the word Kona, and no smaller than one-half (1/2) the size as the word "Kona" appears, on the front of the package. Only Kona coffee certified and graded by the Hawaii Department of Agriculture as 100% Kona shall be considered authentic Kona coffee.

b. HIKC agrees to use at least the percentage of Kona coffee required by Hawaiian law, or as may be required by Hawaii law in the future, in any product labeled as "Kona" or "Kona Blend." HIKC further agrees that any product that it manufactures or sells labeled as "Kona" or "Kona Blend" will comply with the labeling standards set forth in the "Hawaii-Grown

Coffee 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.

c. By 60 days following Final Approval of this Settlement, or by March 31, 2022, whichever is later, HIKC shall formally change the name of the company to remove “Kona” from its name and shall not include on the label of any coffee product the name of any entity, DBA, or tradename with “Kona.”

d. The requirements in the foregoing sections 12(a) and 12(b) shall not apply to any products produced by or on behalf of HIKC before the date that is 60 days following Final Approval.

13. Communication to HIKC subscribers. HIKC will send an email communication to its subscribers, with language to be agreed upon by the parties, explaining the difference between 100 percent Kona coffee and Kona blend coffees, and that HIKC’s current offerings are Kona blends and not 100 percent Kona coffee. HIKC will send such communication within 60 days following Final Approval.

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

15. Settlement Payment. HIKC shall pay eight hundred thousand dollars (\$800,000.00 USD) (“Settlement Amount”) in three installments: \$375,000 (already provided by HIKC as of the execution of this Agreement), \$275,000 by April 30, 2022, and \$150,000 by October 31, 2022. In the event that the Court denies final approval of the Settlement Agreement, any payments made by HIKC as of the date of such denial shall be refunded to HIKC.

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

17. Affidavit Concerning Financial Condition. HIKC (as defined in the introductory paragraph to this Agreement) has provided a sworn affidavit, designated as Highly Confidential and Attorneys’ Eyes Only per the operative Protective Order (Dkt. 148), stating: (1) neither HIKC nor its owners would have any liquid assets remaining if they paid the Settlement Amount plus reasonable attorneys’ fees and costs to litigate the case through trial, with reference to specific amounts of assets available at the time of the execution of the affidavit; and (2) since February 27, 2019, neither HIKC nor its owners or affiliates has transferred, conveyed or assigned any assets to third parties to prevent Plaintiffs from recovering those assets or to hide or conceal those assets from the financial information provided to Plaintiffs. This Agreement is specifically predicated on representations of HIKC and its owners that they are currently experiencing substantial financial hardship. The accuracy and truth of these representations concerning financial hardship are material representations upon which Plaintiffs have relied in agreeing to compromise their claims.

Settlement Procedures

18. 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 Settlement Class Members. Costs of notice to the Settlement Class and settlement administration will be paid from the Settlement Amount, and HIKC shall not be required to contribute financially beyond its obligations detailed in paragraph 15 of this Agreement.

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

20. Distribution of Monies to the Settlement Class. The Settlement Administrator will distribute monies to the Settlement 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.

21. Scope of Release: Plaintiffs and Settlement Class Members. As of final approval, and as part of the consideration for this Agreement, Plaintiffs and the Settlement Class Members hereby expressly agree that they fully and irrevocably release and discharge all Settled Claims, as defined below. Plaintiffs and Settlement Class Members hereby release HIKC and its predecessors, successors, assigns, parents, subsidiaries, corporate affiliates, holding companies, investors, owners, divisions, corporate affiliates, 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, 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 and the Settlement Class Members 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 HIKC in the Case as well as claims against other defendants in the Case that arise from the sale of the Settled Products. This Release and the dismissal of Settled Claims specifically includes but is not limited to each of the Defendants that sold the Settled Products: including Cost Plus/World Market, Albertsons Companies Inc. and Safeway Inc., and each of their respective present or former administrators, predecessors, successors, assigns, parents, subsidiaries, corporate affiliates, holding companies, investors, divisions, corporate affiliates, employees, agents, representatives, consultants, independent contractors, service providers,

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).

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, and investment advisors, customers, distributors, co-packers, manufacturers, and roasters (also included as “Defendant Releasees”). 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 Settlement Class Members or by Plaintiffs or the Settlement Class Members regarding the Settled Products or Settled Claims. Nothing in this Agreement shall be construed as an agreement from Settlement Class Members to waive, release, or dismiss any claims they have against Defendant Releasees that do not arise from their purchase or sale of the Settled Products.

22. 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 regarding non-Settled Products, that might be attributable to Defendant Releasees. This release does not extend to the Settlement Class Members.

23. 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 the Settled Products, 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 Settlement 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 Settlement 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.

24. Scope of Release: HIKC. As of final approval, HIKC, 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, but excluding any claims that are asserted against HIKC by third parties related thereto. HIKC, 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 Settlement Class Members, provided in this paragraph covers, without limitation, any and all claims for attorneys' fees, costs, or disbursements incurred by counsel for HIKC related to HIKC or the Settled Products, its insurers, or any other counsel representing HIKC or its insurers in connection with or related in any manner to this Agreement, HIKC or the Settled Products, 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 Settlement Class Members. HIKC, 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.

25. Statement of Present Intent. Plaintiffs and Plaintiffs' Counsel represent and warrant that (1) 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 (2) 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.

26. Settled Products. "Settled Products" are any products manufactured or sold by HIKC labeled as Kona coffee products as described in the Third Amended Complaint (Dkt. 381). For clarity, the Third Amended Complaint did not describe HIKC products labeled as containing 10 percent Kona coffee, such as those sold by Walmart Inc. or MNS, Ltd., and such products are not among the Settled Products.

27. 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.

28. Authority. Counsel signing below warrant they have full authority to bind their clients.

29. Construction. Plaintiffs and HIKC 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.

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

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 Settlement Class Members. HIKC, 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.

8. Statement of Present Intent. Plaintiffs and Plaintiffs' Counsel represent and warrant that (1) 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 (2) 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.

9. Settled Products. "Settled Products" are any products manufactured or sold by HIKC labeled as Kona coffee products as described in the Third Amended Complaint (Dkt. 381). For clarity, the Third Amended Complaint did not describe HIKC products labeled as containing 10 percent Kona coffee, such as those sold by Walmart Inc. or MNS, Ltd., and such products are not among the Settled Products.

10. 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.

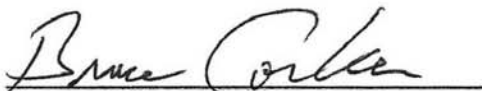
11. Authority. Counsel signing below warrant they have full authority to bind their clients.

12. Construction. Plaintiffs and HIKC 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.

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

PLAINTIFFS

DATED: January 16, 2022


Bruce Corker

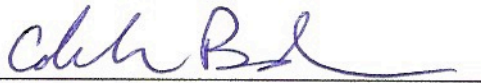
DEFENDANT

DATED: January __, 2022


Michael Boulware, for Hawaiian Isles Coffee

d/b/a Rancho Aloha
DATED: January 14, 2022

Company, Ltd.


Colehour Bondera
d/b/a Kanalani Ohana Farm

DATED: January 14, 2022


Melanie Bondera
d/b/a Kanalani Ohana Farm

DATED: January __, 2022

Robert Smith, individually and on behalf of
Smithfarms LLC

DATED: January __, 2022

Cecelia Smith, individually and on behalf of
Smithfarms LLC

DATED: January __, 2022

By: _____
Karr Tuttle Campbell
on behalf of the proposed Settlement Class

DATED: January __, 2022

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

PLAINTIFFS

DATED: January __, 2022

Bruce Corker
d/b/a Rancho Aloha

DATED: January __, 2022

Colehour Bondera
d/b/a Kanalani Ohana Farm

DATED: January __, 2022

Melanie Bondera
d/b/a Kanalani Ohana Farm

DATED: January 13, 2022

Robert Smith
Robert Smith, individually and on behalf of
Smithfarms LLC

DATED: January 13, 2022

Cecelia O. Smith
Cecelia Smith, individually and on behalf of
Smithfarms LLC

DATED: January 13, 2022

By: _____
Karr Tuttle Campbell
on behalf of the proposed Settlement Class


DATED: January __, 2022

DEFENDANT

DATED: January __, 2022

Michael Boulware
Michael Boulware, for Hawaiian Isles Coffee
Company, Ltd.

DATED: January 18, 2022

A handwritten signature in black ink, appearing to read "Jason L. Lichtman", is written over a horizontal line.

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

PLAINTIFFS

DATED: January ___, 2022

Bruce Corker
d/b/a Rancho Aloha
DATED: January ___, 2022

Colehour Bondera
d/b/a Kanalani Ohana Farm

DATED: January ___, 2022

Melanie Bondera
d/b/a Kanalani Ohana Farm

DATED: January ___, 2022

Robert Smith, individually and on behalf of
Smithfarms LLC

DATED: January ___, 2022

Cecelia Smith, individually and on behalf of
Smithfarms LLC

DATED: January 18, 2022

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

DATED: January ___, 2022

DEFENDANT

DATED: January ___, 2022

Michael Boulware, for Hawaiian Isles Coffee
Company, Ltd.

EXHIBIT 4

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON

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

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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 [date of preliminary approval]. 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, 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 [date of preliminary approval], 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, email 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, 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 [Date]**, 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	Jason L. Lichtman	Andrew R. Kaufman
Karr Tuttle Campbell	Daniel E. Seltz	Lieff, Cabraser, Heimann
701 5th Ave, Suite 3300	Lieff, Cabraser, Heimann	& Bernstein LLP
Seattle, WA 98104	& Bernstein, LLP	222 2 nd Ave South, Suite 1640
	250 Hudson St., 8 th Floor	Nashville, TN 37201
	New York, NY 10013	

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 [Date], 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., 8th 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 [date] at [] [].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 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 [Date]. 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, 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.**

EXHIBIT 5

LEGAL NOTICE**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.**

Additional Proposed Settlements have been reached 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. The new Proposed 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”). Information on the prior Settlements and New Settling Defendants can be found on the website, www.KonaCoffeeSettlement.com.

What is the lawsuit about? The lawsuit is about the alleged mislabeling of coffee as originating from the Kona region. The New Settling Defendants deny the Plaintiffs’ allegations, but have agreed to settle the class action to avoid the time and expense of continuing the lawsuit. There are other defendants involved in the lawsuit. However, they are not involved in the new Proposed Settlements. The lawsuit continues against those defendants who have not reached settlements with the Plaintiffs.

Who is affected? The Settlement Class includes all persons and entities who, between February 27, 2015, and [preliminary approval date], farmed Kona coffee in the Kona District and then sold their Kona coffee. For more details about who is affected, visit www.KonaCoffeeSettlement.com.

What do the new Proposed Settlements provide? The new Proposed Settlements provide money for Settlement Class Members, require Kroger and HIKC to modify labeling of products that use the name “Kona” or “Kona Blend,” and create labeling requirements for Safeway/Albertsons’ vendors who sell coffee labeled as “Kona” or “Kona Blend.” Kroger will pay a gross settlement amount of \$1.35 million, and HIKC will pay a gross amount of \$800,000. The settlement amount will be distributed among Settlement Class Members on a pro-rata basis, (as calculated by Settlement Class Members’ reported sales volumes), less Court-awarded attorneys’ fees (not to exceed 25 percent of the settlement amount) and any awarded Litigation Expenses (not to exceed \$450,000), and additional monetary awards, not to exceed \$2,500 per Class Representative farm, from the settlement proceeds requested by the Plaintiffs who initiated this case. Settlement Class Members who previously submitted a claim in this case’s prior settlements will not need to re-submit a claim to receive payment in the new Proposed Settlements. Those who did not previously submit a claim but wish to for these settlements will need to submit a claim at a later time, and will be notified when the deadline to submit a claim for payment is determined. You may also check the Settlement Website, www.KonaCoffeeSettlement.com, for updates.

What are your other options? If you do not want to be legally bound by the new Proposed Settlements, you may “opt out” by sending a request for exclusion. You will receive no payment, but you will keep your right to sue the New Settling Defendants for the claims in this case. If you do not exclude yourself, you may object to the new Proposed Settlements. You will still be bound by the new Proposed Settlements if your objection is rejected. For details on how to opt out or object, go to www.KonaCoffeeSettlement.com. Opt-outs and objections to the new Proposed Settlements must be postmarked by [Date].

When will the Court determine whether to approve the new Proposed Settlements? The Court will hold a Final Approval Hearing on [], at [] (Pacific Time), by remote means, to consider whether the new Proposed Settlements are fair, reasonable, and adequate. A link to the proceedings will be posted on the Settlement Website as soon as it is available. The Court will also decide whether to approve attorneys’ fees and reimbursement of litigation expenses, and service awards, which will be deducted from the gross settlement amount. You may ask to appear at the Final Approval Hearing, but you don’t have to.

Questions? Visit www.KonaCoffeeSettlement.com, call 1-833-667-1227, or write Kona Coffee Farmers Settlement Administrator, c/o JND Legal Administration, P.O. Box 91232, Seattle, WA 98111.

www.KonaCoffeeSettlement.com

1-833-667-1227