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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 SETTLEMENT**

1 Corporation; THE TJX COMPANIES d/b/a T.J.  
2 MAXX, a Delaware Corporation; MARSHALLS OF  
3 MA, INC. d/b/a MARSHALLS, a Massachusetts  
4 corporation; SPROUTS FARMERS MARKET,  
5 INC. a Delaware corporation; COSTA RICAN  
6 GOLD COFFEE CO., INC., a Florida Corporation;  
7 and KEVIN KIHNKE, an individual,

8 Defendants.

9 I, Jason L. Lichtman, declare as follows:

10 1. I am a partner in the law firm of Lief Cabraser Heimann & Bernstein, LLP  
11 (“LCHB”). I am Plaintiffs’ counsel of record in this litigation, along with Karr Tuttle Campbell. I  
12 am a member in good standing of the bars of Illinois, New York, and the District of Columbia. I  
13 respectfully submit this declaration in support of Plaintiffs’ Motion for Preliminary Approval of  
14 Plaintiffs’ settlement with Defendant L&K Coffee Company, LLC (“L&K”). Except as  
15 otherwise noted, I have personal knowledge of the facts set forth in this declaration and could  
16 testify competently to them if called upon to do so.

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

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

26 **I. Settlement Negotiations and Settlement Agreements**

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

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

3           6.       In the spring of 2020, the parties agreed to a brief pause in most discovery activity  
4 to engage in a near-global, all-day, remote mediation before Hon. Edward Infante (ret.), of  
5 JAMS, on June 2. L&K participated in that mediation, but did not reach an agreement with  
6 Plaintiffs at that time. The parties returned to litigating immediately after the mediation with  
7 Judge Infante.

8           7.       L&K and Plaintiffs participated in a mediation with Mark LeHocky, of ADR  
9 Services, Inc., on February 3, 2021, and another mediation with Mr. LeHocky on May 5, 2021, a  
10 nationally recognized and experienced mediator who facilitated several of the settlements  
11 previously presented to the Court. After returning to discovery, including fully litigating class  
12 certification, the parties again mediated, this time with Robert Meyer of JAMS, on June 9, 2022.  
13 Counsel continued to hold settlement discussions after that mediation, and kept Mr. Meyer  
14 involved and informed in those discussions. Mr. Meyer ultimately made a mediator’s proposal,  
15 which both parties accepted on September 12, 2022, with the parties signing the settlement  
16 agreement immediately thereafter on September 13, 2022. The Settlement Agreement is attached  
17 hereto as Exhibit 1.

18       **II.     Investigation and Discovery**

19           8.       The Settlement Agreement was negotiated by counsel with knowledge of the  
20 issues and litigation risks as a result of their thorough investigation and discovery efforts. Mr.  
21 Paine, Mr. Seltz, Mr. Kaufman, and I performed many tasks that were vital to the investigation,  
22 prosecution, and partial resolution, of the claims of the proposed Class. Mr. Paine and I  
23 described these tasks in prior Declarations submitted with the previous sets of settlements (Dkt.  
24 394, 395, 412, 413, 603), and I set them out again here for completeness of the record. Among  
25 these tasks, we:  
26

- 1           a.        Authored or edited the briefs and motions that have been presented in the  
2 litigation to date, including oppositions to motions to dismiss and discovery motions;
- 3           b.        propounded dozens of requests for production, interrogatories, and  
4 requests for admissions;
- 5           c.        oversaw the production of tens of thousands of documents;
- 6           d.        assisted with the preparation of the depositions of five named plaintiffs;
- 7           e.        identified and worked with numerous consulting experts in preparation for  
8 mediation and litigation, on issues such as damages, marketing, consumer behavior, and  
9 accounting;
- 10          f.        identified and worked with these experts in connection with Plaintiffs’  
11 motion for class certification and additional experts who served merits reports; and
- 12          g.        developed numerous settlement proposals and negotiated extensively with  
13 Defendants, including L&K.

14 **III.    The Settlement Agreement**

15           9.        The L&K settlement includes both monetary and injunctive terms. First, L&K  
16 will pay \$6,150,000. Second, it will, like previously settling defendants, alter its labeling of  
17 Kona-labeled coffee so that such products “will accurately and unambiguously state on the front  
18 label of the product the minimum percentage of authentic Kona coffee beans contained in the  
19 product using the same font type and same (or similar) color as the word Kona, and no smaller  
20 than one-half (1/2) the size as the word “Kona” appears, on the front of the package.” Ex. 1 ¶  
21 11(a). The agreements clarifies, “Only Kona coffee certified and graded by the Hawaii  
22 Department of Agriculture as 100% Kona shall be considered authentic Kona coffee.” *Id.* HIKC  
23 also agrees “to use at least the percentage of Kona coffee required by Hawaiian law, or as may  
24 be required by Hawaii law in the future, in any product labeled as “‘Kona’ or “‘Kona Blend.’”  
25 *Id.* ¶ 11(b). These injunctive terms compound the benefits of the agreements of the previously  
26

1 settling defendants that increase and improve the information found on Kona-labeled products in  
2 the marketplace.

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

6 **IV. Settlement Administration and Notice**

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

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

16 a. **Direct mail.** Proposed Class Counsel initially developed a class list of 697  
17 class members and located mailing addresses for nearly all of those members. In connection with  
18 prior settlements, JND refined that list and collected additional class member names who  
19 identified themselves during the claims process. JND will directly mail and email both the long-  
20 form notice (attached as Exhibit 2) and the publication notice (attached as Exhibit 3) to each  
21 known class member’s mailing addresses, using the refined list.

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

25 c. **Settlement website.** JND has established a website, at  
26 [www.KonaCoffeeSettlement](http://www.KonaCoffeeSettlement), which will host documents related to all settlements in this

1 litigation, including these, including the settlement agreements, notices, and future filings,  
2 including Plaintiffs' motion for final approval and any application for attorneys' fees and  
3 reimbursement of expenses.

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

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

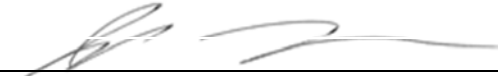
9 **V. Proposed Settlement Class Representatives**

10 14. As part of this motion, as in the previous motion for preliminary approval of the  
11 prior settlements (e.g., Dkt. 393), Plaintiffs ask the court to appoint them as Settlement Class  
12 Representatives to represent the Settlement Class. Based on my experience in complex class  
13 actions and my observations during the course of this litigation, it is my opinion that each of the  
14 Plaintiffs willingly, constructively, and effectively contributed to the prosecution of this  
15 litigation.

16 15. As I stated in my previous declaration, Plaintiffs have provided information and  
17 documents relevant to the prosecution of this case, responded to discovery, and maintained  
18 communication with proposed class counsel. They have assisted with the claims process  
19 associated with prior settlements, answering numerous questions from class members. Plaintiffs  
20 have also prepared for and sat for all-day depositions. Plaintiffs have stayed abreast of the  
21 developments in the litigation and fully participated in the mediations that led to the settlements  
22 and subsequent negotiations. Each Plaintiff was consulted on the terms of the Settlement  
23 Agreement before they were signed, approve their terms, and support their approval by the  
24 Court. Plaintiffs have expressed their continued willingness to protect the Class with the  
25 implementation of the Settlement Agreement and until the litigation reaches a final resolution  
26 with the non-settling Defendants.

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

8           I declare under penalty of perjury that the forgoing is true and correct. Executed this 29th  
9 day of September, 2022, in Salt Lake City, UT.

10   
11 \_\_\_\_\_  
12 Jason L. Lichtman