

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

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

Plaintiff,

v.

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

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

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

The Honorable Robert S. Lasnik

1 KEVIN KIHNKE, an individual,
2 Defendants.
3

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

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

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

13 3. I have submitted declaration in support of each of Class Counsel’s requests for
14 attorneys’ fees, reimbursement of expenses, and service awards in connection with settlements
15 reached earlier in this case, and a second declaration in connection with a similar request from a
16 subsequent set of settlements. *See* Dkt. 416, 655, and 743. Those declarations set forth KTC’s
17 work in this matter, the experience and expertise we brought to this case, the core team at KTC
18 assigned to this litigation, our assessment of the case-specific risks present in this litigation, and
19 KTC’s lodestar and expenses up to that point. I stand by and incorporate all of the statements I
20 made in those prior declarations, and provide updated information about this case that is relevant
21 to the accompanying Motion.

22 **I. KTC’s Work in this Matter**

23 4. My previous declarations explained that KTC, along with co-Class Counsel at
24 Leiff Cabraser Heimann & Bernstein, LLP, have actively litigated this case since its inception in
25 February 2019. At the time, this Court had adjudicated motions to dismiss filed by all defendants
26 (Dkt. 100, 106, 107), a motion for summary judgment (Dkt. 121), a motion to strike (Dkt. 179),

1 several motions to compel or for a protective order (Dkt. 180, 188, 206, 211, 222, 227, 252, 257,
2 294, 300, 304, 317, 330, 355, 372, 433, 621), a motion for sanctions (Dkt. 319), and several
3 motions to amend the pleadings to add new defendants (Dkt. 71, 268, 344). The pace of activity
4 did not relent. By the end of discovery, Plaintiffs had filed additional motions to compel,
5 successfully defended a motion to dismiss for lack of personal jurisdiction (Dkt. 606), filed for
6 class certification against non-settling defendants, and moved for case terminating sanctions
7 against one defendant (Mulvadi).

8 5. Fact discovery ended on March 11, 2022. During discovery, Plaintiffs served 781
9 requests for production and 177 interrogatories and Plaintiffs ultimately received and reviewed
10 more than 113,000 documents including 427,000 pages (including large spreadsheets of data).
11 There have been 31 depositions taken in this case, including experts and third parties.

12 6. The parties also engaged in extensive third-party discovery, collectively serving
13 52 subpoenas, which have yielded 7,248 documents and more than 123,000 pages.

14 7. Expert discovery closed on November 18, 2022. Plaintiffs served seven expert
15 reports, six of whom were deposed, and deposed all five of the experts disclosed by the now
16 single remaining non-bankrupt non-settling defendant. Plaintiffs filed a summary judgment
17 motion and *Daubert* motions on December 15, 2022. Plaintiffs also opposed MNS's motions for
18 summary judgment and to exclude certain of Plaintiffs' experts.

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

22 a. Authored or edited briefs and motions that have been presented in the
23 litigation to date, including oppositions to motions to dismiss and discovery motions;

24 b. drafted and propounded dozens of requests for production, interrogatories,
25 and requests for admissions;

- 1 c. oversaw the production of tens of thousands of documents;
- 2 d. reviewed hundreds of thousands of documents produced by defendants;
- 3 e. prepared for and conducted five full-day depositions, all occurring during
- 4 the pandemic presenting its own unique challenge;
- 5 f. assisted with the preparation of the depositions of five named plaintiffs,
- 6 and then defended the same in Kona;
- 7 g. identified and interviewed dozens of lay and expert witnesses;
- 8 h. prepared and served multiple subpoenas to third parties and then worked
- 9 with those third parties or their counsel to secure the production of responsive documents;
- 10 i. helped to defend certain third parties from defendants' subpoenas;
- 11 j. identified and worked with numerous consulting experts in preparation for
- 12 mediation and litigation, on issues such as damages, marketing, consumer behavior, and
- 13 accounting;
- 14 k. developed numerous settlement proposals and negotiated extensively with
- 15 Defendants, with the assistance of Judge Garcia and Judge Infante, as well as Mr. LeHocky;
- 16 l. helped prepare and finalize multiple settlement agreements as well as the
- 17 motions for the Court's preliminary approval of same;
- 18 m. multiple in-person court appearance;
- 19 n. deposed and defended the depositions of expert witnesses;
- 20 o. commenced and then oversaw the proceedings in the Hawaii District
- 21 Court to enforce subpoenas on defendants' uncooperative witnesses;
- 22 p. conducted three site inspections; and
- 23 q. advocated for the plaintiffs' claim asserted against Mulvadi after it
- 24 petitioned for bankruptcy in Hawaii.

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

2 9. Attached as **Exhibit A** is a true and correct summary by individual of the hours,
3 billing rate, and lodestar for each biller's work on this matter from its inception to March 30,
4 2021. During this period of time, KTC expended **15,694.70** hours on this matter, with work still
5 continuing. This total does not include approximately 1400 hours of time that KTC wrote off in
6 accordance with its standard billing practices to remove time entries that I determined were not
7 reasonable for the associated task. Calculated at current rates and taking into consideration
8 excluded time, for purposes of the cross-check, the lodestar invested in this case by KTC since
9 the inception of this matter comes to **\$8,078,891.00**.

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

19 11. KTC's rate structure has been approved by courts in numerous jurisdictions,
20 sometimes as a lodestar, others as a cross-check and finally has a hold-back/success fee.

21 12. KTC attorneys and staff enter their time contemporaneously. Firm policy requires
22 timekeepers to keep their time on a daily basis through its timekeeping software. KTC's
23 accounting department runs regular time reports, which were reviewed by me to ensure accuracy
24 and reasonableness. Through this process, I have collectively written off approximately 1400
25 hours of attorney and staff time.

1 13. KTC has devoted, and will continue to devote, its time and resources to prosecute
2 the class action claims in this matter.

3 14. I understand from co-Class Counsel that LCHB's total lodestar in this case is
4 \$5,995,040.00 comprised of 8,939.70 hours billed (also, like KTC's total above, this number
5 excludes those who billed fewer than 40 hours to this litigation). The two firms' combined
6 lodestar is thus \$14,073,931. In connection with the previous settlements, which Class Counsel
7 began presenting to the Court in 2021, this Court has awarded fees totaling \$8.16 million. *See*
8 Dkt. 477, 664, and 843. If the Court were to award the requested fee of \$5.837 million, the total
9 fees awarded would amount to \$13,997,000, which equates to a multiplier of 0.99. Based on my
10 experience, Class Counsel will continue to devote time to this litigation to ensure that the notice
11 and claims processes are effectuated smoothly, to answer inquiries from Class Members, and to
12 monitor the terms of the injunctive relief in each settlement.

13 **III. KTC's Expenses Submission**

14 15. To-date, KTC has incurred **\$1,586,952.50** in expenses in connection with the
15 investigation, prosecution, and settlement of this case, as set forth in the table attached as
16 **Exhibit B**, of which **\$236,687.50** remains unreimbursed. The expenses listed in **Exhibit B** are
17 reflected in the books and records KTC maintains in the ordinary course of business, which
18 books and records are prepared from invoices, expense vouchers and check records.

19 16. These costs were reasonable and necessary to prosecute this matter, and include
20 typical litigation costs such as expert work, filing fees, electronic database research, and travel.

21 17. Based on my experience with this case, I believe that Class Counsel will continue
22 to incur expenses in connection with the implementation and administration of this settlement,
23 prior settlements (such as following up on uncashed checks or inquiries from class members who
24 have made claims), and the recently negotiated settlement involving Mulvadi Corporation.
25
26

1 I declare under penalty of perjury that the forgoing is true and correct. Executed this 18th
2 day of July 2023, at Seattle, WA.

3 /s/ Nathan T. Paine
4 Nathan T. Paine

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

EXHIBIT A

KARR TUTTLE CAMPBELL, PSC

Kona Coffee (72448)

From: Inception
To: 7/17/2023

SHAREHOLDER

Name	Hours	Rate	Total
Brown, Paul R.	3,055.50	875.00	2,673,562.50
Paine, Nathan	2,974.30	595.00	1,769,708.50
Bailey, Mark A.	889.30	595.00	529,133.50
Brady, Barbara J.	801.50	510.00	408,765.00
Vaughn, Mitzi	538.30	525.00	282,607.50
Radcliffe, Robert A.	300.30	515.00	154,654.50
Adams, Thomas D.	228.70	695.00	158,946.50
Feinberg, Michael M.	103.30	645.00	66,628.50
	8,891.20		6,044,006.50

ASSOCIATE

Name	Hours	Rate	Total
Hagen, Daniel	1,535.30	325.00	498,972.50
Howard, Joshua M.	1,207.30	345.00	416,518.50
Durland, Andrew W.	524.10	320.00	167,712.00
Rosenberg, Joshua R.	235.30	295.00	69,413.50
Hodgins, Maria Y.	162.40	295.00	47,908.00
Arndorfer, Lauren	104.00	325.00	33,800.00
Strauss, Nathaniel	44.70	320.00	14,304.00
	3,813.10		1,248,628.50

LAW CLERK

Name	Hours	Rate	Total
Rosenberg, Joshua R.M.	99.30	295.00	29,293.50
Sturgeon, Luke	53.80	325.00	17,485.00
Virk, Ruby	41.60	250.00	10,400.00
	194.70		57,178.50

PARALEGAL/CLERK

Name	Hours	Rate	Total
Dickie, Christopher	1,608.40	265.00	426,226.00
Fagan, Morgan	887.20	245.00	217,364.00
Stanton, Amy	189.00	305.00	57,645.00
Oppie, Pamela	56.90	275.00	15,647.50
Smith, Jessica	54.20	225.00	12,195.00
	2,795.70		729,077.50

CASE TOTALS	15,694.7		8,078,891.0
--------------------	-----------------	--	--------------------

EXHIBIT B

Service Code Summary ReportBilled and Unbilled
Kona Coffee (72448)

Description	Orig Amt
Client Cost Check	96,218.33
Outside Printing	42,469.39
Online Research	898.08
Delivery Services/Messengers	12,314.77
Out-of-town travel	86,573.34
Meals	14,355.00
Court Fees	2,030.64
Deposition Transcripts	71,561.03
Trial Transcripts	2,570.65
Litigation Support Vendors	210,746.68
Experts/Investigators/Other Professionals	932,229.36
Arbitrators/Mediators	15,287.50
Local Counsel	36,858.66
Copies	4,462.80
On-Line Research Recovery	54,628.93
Color Copies & Prints	1,150.50
Postage	256.87
Facsimile	15.00
Document Scanning	26.25
Copy Center	2,298.72
Previous Reimbursements	-1,350,265.00
	236,687.50