

## 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”).<sup>1</sup> 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.

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<sup>1</sup> 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 Counsel<sup>2</sup> 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

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<sup>2</sup> 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.

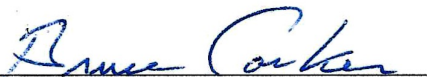
34. Attorneys’ Fees for Breach. In any action that is brought to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable costs, including attorneys’ fees, incurred in connection with such enforcement.

**[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**

**DEFENDANT**

DATED: August \_\_, 2021

DATED: August \_\_, 2021

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

\_\_\_\_\_  
Albertsons Companies, Inc.

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Colehour Bondera  
\_\_\_\_\_  
Colehour Bondera  
d/b/a Kanalani Ohana Farm

DATED: August 12, 2021

DATED: August \_\_, 2021

Melanie Bondera  
\_\_\_\_\_  
Melanie Bondera  
d/b/a Kanalani Ohana Farm

\_\_\_\_\_  
Safeway Inc.

By: \_\_\_\_\_  
Its: \_\_\_\_\_

DATED: August 13, 2021

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

DATED: August 13, 2021 .

Cecelia B. Smith  
\_\_\_\_\_  
Cecelia Smith, individually and on behalf of  
Smithfarms LLC

DATED: August 13, 2021

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