

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

BRUCE CORKER, *et. al.*, on behalf of
themselves and other similarly situated,

Plaintiffs,

v.

COSTCO WHOLESALE
CORPORATION, *et al.*,

Defendants.

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

**DECLARATION OF MICHAEL J. SCHRECK, PH.D.
IN SUPPORT OF SETTLEMENT**

APRIL 20, 2021

TABLE OF CONTENTS

I. Introduction.....3

 A. Qualifications3

 B. Case Background.....4

 C. Assignment.....6

II. Summary of Opinions.....6

III. Damages and Valuation Methodology7

 A. Market Price Damages.....9

 1. Actual Authentic Kona Price10

 2. But-for Authentic Kona Price.....12

 3. Actual Authentic Kona Quantity15

 4. Calculation of Market Price Damages16

 B. Time to Recovery of Consumer Perceptions of Authentic Kona16

 C. Forward-Looking Value of Injunctive Relief.....19

 D. Allocation to Settling Defendants.....21

I. INTRODUCTION

A. Qualifications

1. I am a Manager at Analysis Group, Inc., a consulting firm headquartered in Boston, Massachusetts. I have a Ph.D. and master's degree in Economics from the University of Virginia, and bachelor's degrees in Mathematics and in Economics from Saint Vincent College in Pennsylvania. Before starting my consulting career at Analysis Group in 2013, I was a lecturer in the University of Virginia's Department of Economics from 2007 to 2013, serving as instructor of record for elective courses in Experimental Economics and Economics of the Public Sector and serving as teaching assistant for the first-year Ph.D. microeconomics sequence. In my capacity as an academic researcher, I have published peer-reviewed articles in academic economics journals and have received competitive grants to conduct research and present my findings to academic and practitioner audiences.
2. I have experience working on complex litigation matters, including but not limited to intellectual property, antitrust, tax, and financial and commercial disputes. My work has involved analyzing data in a variety of industries including but not limited to agriculture, food, beverage, technology, energy trading, pharmaceuticals, and fashion apparel. This work has included supporting experts in conducting analyses related to alleged trademark and trade dress infringement and analyses related to damages quantification and valuation. My curriculum vitae is attached as **Appendix A**.

B. Case Background

3. Plaintiffs in this case represent a proposed class of farmers who grow authentic, premium, Kona coffee beans.¹ Defendants in this case are (1) Hawaiian Isles Kona Coffee Ltd., LLC (“HIKC”); (2) Cost Plus/World Market (“Cost Plus”); (3) BCC Assets, LLC d/b/a Boyer’s Coffee Company, Inc. (“Boyer’s”); (4) L&K Coffee Co. LLC; (5) Mulvadi Corporation (“Mulvadi”); (6) Copper Moon Coffee, LLC (“Copper Moon”); (7) Gold Coffee Roasters, Inc. d/b/a Gold Coffee Co. (“Gold”); (8) Costa Rican Gold Coffee Company, Inc.; (9) Cameron’s Coffee and Distribution Company (“Cameron’s”); (10) Pacific Coffee, Inc. d/b/a Maui Coffee Company (“MCC”); (11) The Kroger Co. (“Kroger”); (12) Amazon.com, Inc.; (13) Walmart, Inc.; (14) Costco Wholesale Corporation (“Costco”); (15) Bed Bath & Beyond Inc.; (16) Albertsons Companies Inc.; (17) Safeway Inc.; (18) MNS Ltd.; (19) The TJX Companies (“TJ Maxx”); (20) Marshalls of MA, Inc. (“Marshalls”); (21) Sprouts Farmers Market, Inc. (“Sprouts”); and (22) Kevin Kihnke.²

¹ Third Amended Complaint - Class Action False Designation of Origin Lanham Act (15 U.S.C § 1125), *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 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; Kevin Kihnke, an individual*, No.2:19-cv-00290-RSL, United States District Court Western District of Washington at Seattle, January 8, 2021, (“Complaint”), ¶ 32.

² Complaint, ¶¶ 8-28.

4. Kona coffee beans are a rare specialty coffee grown only in the Kona District of the Big Island of Hawaii, a region of 3,800 acres.³ Only beans grown in the Kona District can be sold as Kona coffee.⁴ According to Plaintiffs' complaint, Kona coffee has a distinctive flavor stemming from the volcanic soil, elevation, moderate temperatures, and humidity of the Kona District, which historically has led consumers to associate the Kona name with perceptions of high quality and uniquely flavored coffee.⁵ Plaintiffs allege that Defendants sell coffee that is marked as "Kona," but which contains no discernible amount of authentic Kona coffee.⁶ Plaintiffs allege that Defendants' sales of counterfeit Kona have diminished consumer perceptions of the value of authentic Kona coffee, resulting in lower prices for authentic Kona coffee.⁷
5. I understand from Counsel that Plaintiffs have reached settlement agreements with the following defendants in this matter: (1) Copper Moon; (2) Cameron's; (3) Boyer's; (4) MCC; (5) Cost Plus; (6) Gold, (7) Costco, (8) TJ Maxx, and (9) Marshalls (collectively, "Settling Defendants"). I understand that, as part of these settlement agreements, Settling Defendants have agreed to cease selling and never again sell falsely labeled Kona coffee. I also understand from Counsel that to the extent that Settling Defendants continue to sell Kona-labeled products, such products will contain at least 10 percent authentic Kona coffee beans and will be labeled as Kona blends with the percentage of authentic Kona beans that they contain.

³ Complaint, ¶ 39.

⁴ Complaint, ¶ 40

⁵ Complaint, ¶¶ 41-42, 52-53.

⁶ Complaint, ¶ 46.

⁷ Complaint, ¶ 2.

C. Assignment

6. I have been asked by Counsel for Plaintiffs to provide an assessment of the value of the injunctive relief contemplated in settlement agreements with the Settling Defendants.
Specifically, I have been asked to:
 - a. Estimate the increase in Plaintiffs' profits stemming from injunctive relief that removes sufficient counterfeit Kona from the market that consumer perceptions of authentic Kona are able to fully recover (i.e., recover to levels that would have been attained absent the alleged counterfeiting), relative to a world where Defendants' sales of allegedly counterfeit Kona had continued unabated and unaffected by any legal action taken by Plaintiffs.
 - b. Apportion the value of this injunctive relief to the Settling Defendants according to their combined share of the allegedly counterfeit Kona coffee, and in so doing, calculate the value associated with the injunction agreed to by the Settling Defendants.
7. In addressing this assignment, in addition to my experience and expertise, I relied upon the materials cited within this report. Analysis Group is being compensated at a rate of \$530 per hour for my time on this case. Part of the work conducted in connection with this assignment was performed under my direction by others at Analysis Group. No compensation is contingent on the nature of my findings or on the outcome of this litigation.

II. SUMMARY OF OPINIONS

8. I have reached the following opinions:
 - a. Plaintiffs would realize increased profits from injunctive relief that removes sufficient counterfeit Kona from the market that consumer perceptions of authentic Kona are able

to fully recover. These increased profits stem from the fact that improved consumer perceptions of authentic Kona would yield greater consumer demand for authentic Kona (all other factors held constant). I estimate the value of this injunctive relief based on my calculation of (1) annual market price damages incurred by Plaintiffs; (2) the time required for consumer perceptions of authentic Kona to recover; and (3) an appropriate discount factor. Based on these calculations, I estimate the value of this injunctive relief at \$71.2 million in 2021 dollars.

- b. I understand from a declaration submitted in this matter by Dr. Jeremy Verlinda and Dr. Yong Paek that the Settling Defendants accounted for 53 percent of the aggregate sales of allegedly counterfeit Kona. Applying the 53 percent share to the above injunctive relief value of \$71.2 million, I therefore calculate the value of the injunction agreed to by the Settling Defendants as \$37.9 million in 2021 dollars.

III. DAMAGES AND VALUATION METHODOLOGY

9. I address the portion of my assignment articulated in paragraph 6(a) by comparing Plaintiffs' profits between two possible worlds. In one of those worlds, Defendants' sales of allegedly counterfeit Kona would continue unabated and unaffected by any legal action taken by Plaintiffs. I call this the Continued Counterfeiting World. In the other world, the removal of allegedly counterfeit Kona from the marketplace as a result of legal action taken by Plaintiffs, including the injunctive relief offered by settlement agreements with Settling Defendants, would allow consumer perceptions of authentic Kona to recover to levels that would have been attained absent the alleged counterfeiting. I call this the Permanent Injunction World.

10. My comparison between these two worlds is forward-looking. That is, I estimate the difference in Plaintiffs' profits between the two worlds in *future* years. This is conceptually distinct from calculating damages to Plaintiffs that occurred in the past. Nevertheless, measures of past damages stemming from the alleged counterfeiting are informative for assessing the value of the relevant injunctive relief. In my opinion, damages in prior years reflect the best basis for estimating future annual damages stemming from continued counterfeiting.
11. The injunctive relief is valuable to Plaintiffs because Plaintiffs' profits are higher in the Permanent Injunction World than in the Continued Counterfeiting World. In the Continued Counterfeiting World, damages to Plaintiffs would be expected to continue to accrue on a yearly basis. In the Permanent Injunction World, once Defendants cease marketing and selling counterfeit Kona coffee, consumer perceptions of authentic Kona would begin to recover from the damage caused by the counterfeit coffee. As these consumer perceptions recover, the price of authentic Kona would also begin to recover, by virtue of increased consumer demand in the context of a fixed supply of authentic Kona.
12. I estimate the value of the injunctive relief by calculating the present value of the difference in the flows of annual profits to Plaintiffs between the two worlds. Each future year in which the Permanent Injunction World entails a higher price of authentic Kona than in the Continued Counterfeiting World thus contributes to the value of the injunctive relief.
13. The value of the injunctive relief depends on how quickly the price of authentic Kona would recover in the Permanent Injunction World. The faster the recovery of the authentic Kona price, the more valuable the injunctive relief. For example, if the authentic Kona price were to immediately fully recover, Plaintiffs' profits in the first year of injunctive relief would

increase by the full annual damages amount (i.e., damages in that year would be *fully* eliminated by the injunction). If the authentic Kona price recovery took longer, then Plaintiffs' profits in the first year of injunctive relief would increase by a lesser amount (i.e., damages in that year would be *partially* eliminated by the injunction).

14. In Section III.A, I discuss the calculation of yearly damages. In Section III.B, I discuss the time to full recovery of the authentic Kona price. In Section III.C, I estimate the value of the injunctive relief. Finally, in Section III.D, I apportion this value to the Settling Defendants.

A. Market Price Damages

15. In this section, I make use of the traditional damages concepts of the “actual world” and the “but-for world.” The actual world reflects the world as it actually occurred, thereby incorporating the alleged counterfeiting. The but-for world reflects a counterfactual world where the alleged counterfeiting did not occur. My use of these terms is backward-looking. These worlds are therefore distinct from the forward-looking concepts of the Continued Counterfeiting World and the Permanent Injunction World.
16. Plaintiffs allege that, but for Defendants' unlawful conduct, the price of authentic Kona coffee beans would be higher.⁸ Damages can be estimated as the difference between the but-for authentic Kona price and the actual authentic Kona price, multiplied by the amount of authentic Kona sold, as seen in **Figure 1**.⁹

⁸ Complaint, ¶¶ 2-3.

⁹ This calculation assumes that the amount of authentic Kona sold is unaffected by the alleged conduct. This assumption may be conservative in the sense that a higher price of authentic Kona could in principle incentivize farmers to harvest more of their crop.

Figure 1
Market Price Damages Formula

$$\text{Damages} = \left(\text{But-for Price} - \text{Actual Price} \right) \times \text{Actual Quantity}$$

17. In the remainder of this section, I discuss my calculations of each of these values and the amount of damages incurred by Plaintiffs on a yearly basis.

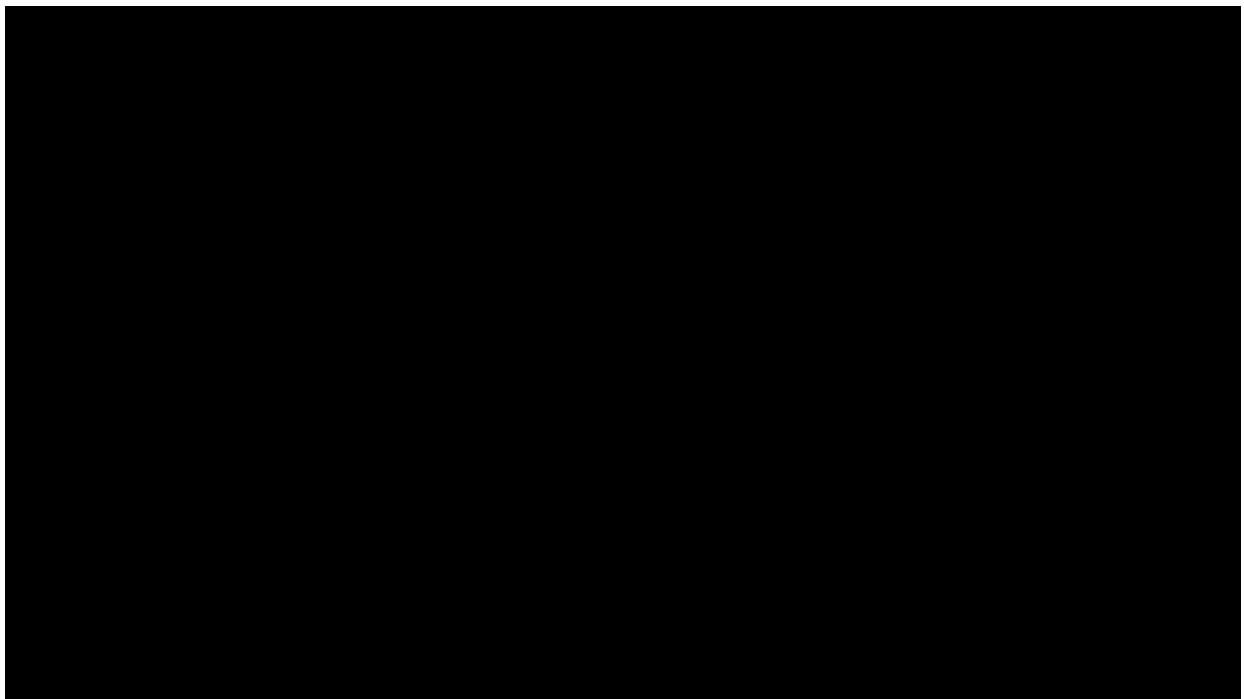
1. Actual Authentic Kona Price

18. Coffee can be sold in four primary forms: (1) cherry, the raw cherries from the coffee plant without any processing; (2) parchment, the beans inside the cherry that still have a paper hull covering; (3) green beans, coffee beans that have been cleaned and sorted, but not roasted; and (4) roasted beans, the final coffee product typically sold to consumers.¹⁰ As shown below, prices for coffee depend on the form of coffee sold (cherry, parchment, green, or roasted) with fully processed roasted coffee commanding higher prices than unprocessed cherry.

¹⁰ “What is a Coffee Bean? The Anatomy of the Coffee Cherry,” Perfect Daily Grind, February 21, 2019, available at <https://perfectdailygrind.com/2019/02/what-is-a-coffee-bean-the-anatomy-of-the-coffee-cherry/>; “The Coffee Guide: Conversions and Statistics,” The Coffee Guide, available at <http://www.thecoffeeguide.org/coffee-guide/world-coffee-trade/conversions-and-statistics/>.

19. Plaintiffs in this matter sell authentic Kona coffee primarily in three different forms, each at different prices: cherry, green, and roasted.¹¹ Thus, my calculations take into account the prices of each of these different forms of coffee.
20. Counsel provided me with data produced by a large processor of authentic Kona coffee, Greenwell Farms, for 2015-2019. These data include the prices Greenwell paid to purchase cherry, parchment, and green coffee from farmers and the prices Greenwell charged for green and roasted coffee. **Table 1** summarizes Greenwell's weighted average annual prices per pound for cherry, green, and roasted coffee.

Table 1



¹¹ I understand from Counsel that approximately 70 percent of Kona farmers sell only cherry, a negligible number sell parchment, 10 percent sell green bean, and 20 percent sell roasted. For the purposes of my analysis, I assume that these ratios apply to all authentic Kona produced.

21. I use the yearly average prices as actual world authentic Kona prices in my calculation of market price damages.

2. But-for Authentic Kona Price

22. Damages in this matter depend on the price authentic Kona could have commanded in the but-for world in which Defendants did not sell counterfeit coffee labeled with the Kona name. According to César Vega, a coffee industry expert, Jamaica Blue Mountain coffee is the “best analogue” and “closest point of comparison” to authentic Kona coffee.¹² Mr. Vega notes that both the Kona region and the Jamaica Blue Mountain region “have unique topographies that rely on increasingly difficult growing conditions leading to low yields, and they are limited to small overall acreage that can be designated as within the JBM or Kona designation, and, furthermore, the average producer is a small farmstead with modest yearly output.”¹³ From an economic perspective, the supply of both authentic Kona and Jamaica Blue Mountain coffee is constrained due to geography.¹⁴ Both types of coffees are grown on islands and exported to a broader market.¹⁵ According to Mr. Vega, the “key difference” between Kona and JBM is “the superior extent to which Jamaican authorities have sought to, and have been successful at, protecting JBM from counterfeit activity.”¹⁶

¹² Declaration of César Vega, April 20, 2021 (“Vega Declaration”), ¶¶ 2, 4.

¹³ Vega Declaration, ¶ 4.

¹⁴ See Complaint ¶ 40; “In Search of a Perfect Cup,” World Intellectual Property Organization, September 3, 2010, available at <https://www.wipo.int/ipadvantage/en/details.jsp?id=2612>.

¹⁵ Complaint ¶¶ 1-2, 5-7, 48; “In Search of a Perfect Cup,” World Intellectual Property Organization, September 3, 2010, available at <https://www.wipo.int/ipadvantage/en/details.jsp?id=2612>.

¹⁶ Vega Declaration, ¶ 7.

23. My damages calculation uses Jamaica Blue Mountain coffee as a benchmark for approximating the price of authentic Kona coffee in the but-for world. That is, my damages calculation assumes that, in the but-for world, consumer perceptions of authentic Kona would support a price that would be comparable to the actual-world price of Jamaica Blue Mountain coffee, on average over time. This assumption is made at the “green bean” level of the supply chain, at the point of sale by processors (e.g., Greenwell Farms in the case of authentic Kona).
24. The vast majority of Jamaica Blue Mountain coffee is sold outside of Jamaica.¹⁷ Thus, I estimate Jamaica Blue Mountain green bean prices using import/export data.¹⁸ In my opinion, the time period 2015-2017 allows for the most accurate comparison between Jamaica Blue Mountain and authentic Kona prices.¹⁹ I estimate the average price for Jamaica Blue Mountain green bean coffee over this time period to be \$25.15 per pound.²⁰ Relative to the

¹⁷ “Japan Ready to Reclaim Blue Mountain Coffee Market,” November 23, 2015, The Coffee Industry Board of Jamaica, available at <http://www.ciboj.org/content/japan-ready-reclaim-blue-mountain-coffee-market-mon-11232015-1421>.

¹⁸ I rely on two import/export data sources that yield similar results. One source is import data from the All Japan Coffee Association (AJCA), an organization established in 1980 to unify the coffee industry in Japan to promote the consumption of coffee and grow the coffee industry. The AJCA is comprised of five industry groups: (1) National Coffee Roasters Association of Japan, (2) Japan Instant Coffee Association, (3) Japan Retail Regular Coffee Industry Association, (4) Coffee Importers Association of Japan, (5) Nippon Green Coffee Association. “What is the All Japan Coffee Association?” All Japan Coffee Association, available at <http://coffee.ajca.or.jp/english>. The other source is data on Jamaican coffee exports from the United Nations Comtrade database. Both sources provide similar levels of Jamaica Blue Mountain prices over the periods where they can be compared.

¹⁹ The Greenwell Farms data range from 2015-2019, but prices for Jamaica Blue Mountain coffee in 2018-2019 were affected by negotiations in late 2017 with Japan, which is a major importer of Jamaican coffee. *See, e.g.*, “No new coffee agreement yet with Japan,” Jamaica Observer, October 4, 2017, available at http://www.jamaicaobserver.com/news/no-new-coffee-agreement-yet-with-japan_112799?profile=110. This represents an idiosyncratic factor affecting Jamaica Blue Mountain prices in 2018-2019 but not authentic Kona prices in the same time period. Moreover, the Comtrade data do not extend past 2017, thereby preventing price validation with the AJCA import data after that point.

²⁰ According to the AJCA data, the average price of *all* Jamaican green bean (not just Jamaica Blue Mountain green bean) from 2015-2017 was \$21.88 per pound. I adjust this number to account for production and export of different types of Jamaican coffee. Jamaica Blue Mountain (JBM) coffee represents approximately 86 percent of all Jamaican coffee production. (Data from Jamaica’s Coffee Industry Board (CIB) indicates that “[i]n the

average price of authentic Kona green bean charged by Greenwell Farms over the same time period (\$ [REDACTED] per pound),²¹ this represents a premium ratio, or “scale-up factor,” of [REDACTED] for Jamaica Blue Mountain.²² But-for prices of authentic Kona green bean at the point of sale by processors like Greenwell Farms are obtained by multiplying actual-world prices of authentic Kona at this point of sale by the scale-up factor.

25. I next estimate the prices that Plaintiffs would receive in the but-for world for their sales of authentic Kona cherry, green, and roasted beans. To obtain the but-for green bean price received by Plaintiffs, I apply the actual-world “reselling margin” to the but-for authentic Kona green bean price received by processors like Greenwell Farms, where the actual-world reselling margin reflects the difference between the price that Greenwell Farms pays for green beans and the price at which it sells green beans. To obtain the but-for roasted price received by Plaintiffs, I apply the actual-world “roasting margin” to the but-for green bean price received by Plaintiffs, where the actual-world roasting margin reflects the difference

decade of 2006-16, between 80-92% of Jamaica’s total coffee production was JBM coffee—in 2016, JBM’s share of total production was 87%.” I use the midpoint of this range, 86 percent, in my estimate. *See* Daly, Jack et. al., “Jamaica in the Arabica Coffee Global Value Chain,” Duke Global Value Chains Center, April 2018 (“Duke University 2018”), p. 21.) The remaining coffee production is estimated to be priced according to standard arabica prices (approximately \$1.81 per pound). *See* Duke University 2018, pp. 18-19, which provides average Arabica prices varying around approximately \$3-\$5 per kilogram, with an average of \$4.42 per kilogram. In my analysis, I use \$4 per kilogram, or \$1.81 per pound. Thus, the imputed price of Jamaica Blue Mountain coffee is \$25.15 (because it is the solution for \$X in the following weighted average price equation: $0.86 * \$X + 0.14 * \$1.81 = \$21.88$).

²¹ Greenwell Farms Data (“Greenwell Farms Inc - Docs produced (Purchases & Sales) (Revised 5-7-2020 MF).XLSX”).

²² A 2017 news article suggests that the scale-up factor could actually be greater than the value I calculate. The Jamaican Gleaner suggests Japanese importers were paying \$60 per kilogram for Jamaica Blue Mountain, which would convert to \$27.22 per pound and imply a scale-up factor of about [REDACTED] based on the 2015-2017 quantity-weighted average of \$ [REDACTED] per pound for Kona. *See* Myers, John Jr., “Coffee Blues Brew As Japan Refuses Jamaica’s Asking Price For Blue Mountain Beans,” Jamaican Gleaner, October 3, 2017, available at <http://66.132.217.141/article/news/20171003/coffee-blues-brew-japan-refuses-jamaicas-asking-price-blue-mountain-beans>; Greenwell Farms Purchased Green Bean Data, “Greenwell Farms Inc - Docs produced (Purchases & Sales) (Revised 5-7-2020 MF).XLSX”.

between the price that Greenwell Farms pays for green beans and the price at which it sells roasted authentic Kona. To obtain the but-for cherry price received by Plaintiffs, I multiply the but-for Kona green bean price received by Plaintiffs by the actual-world “green-to-cherry price ratio,” which reflects the actual-world cherry price received by Plaintiffs divided by the actual-world green bean price received by Plaintiffs.

3. *Actual Authentic Kona Quantity*

26. Estimates for the amount of authentic Kona green bean coffee produced on an annual basis range from 2.4 million pounds to 3.8 million pounds, with an average of 2.9 million pounds.²³ In my analysis, I assume 2.7 million pounds of green Kona are produced on an annual basis, consistent with the amount cited in the complaint in this matter.²⁴ I then convert the annual green bean coffee amounts to the estimated amounts in each form sold by Plaintiffs (70 percent cherry, 10 percent green, and 20 percent roasted) based on average weight ratios.²⁵

²³ See, e.g., Complaint ¶ 45; Smith, Cea, “The Kona Tradition,” Smith Farms, March 3, 2020, available at <https://www.smithfarms.com/category/about-kona-coffee/>; “Learn about Kona Coffee Family Farms in Hawaii,” Kona Coffee, available at <https://www.konacoffee.com/kona-coffee/family-farms/>; Greco, E.B., and M.G. Wright, “Dispersion and Sequential Sampling Plan for *Xylosandrus compactus* (Coleoptera: Curculionidae) Infesting Hawaii Coffee Plantations,” *Environmental Entomology* Vol. 42, No. 2, 2013, pp. 277-282; “Marketing,” Hawaii Coffee Industry, available at <http://www.hawaiicoffeeindustry.com/statistics/>; USDA NASS Data, “USDA NASS Data - 2014-2019 Hawaii Coffee Cherry Production.csv”; “100% Kona Coffee - What Makes It So Unique,” Kona Coffee Council, available at <http://www.kona-coffee-council.com/page-692163>; “100% Real Kona: From Seed to Cup,” Kona Coffee Farmers, available at <https://www.konacoffeefarmers.org/100-percent-kona/#:~:text=Farmed%20and%20Harvested%20by%20Hand&text=Kona%20coffee%20remains%20a%20family,cannot%20be%20called%20Kona%20coffee>.


²⁴ Complaint ¶ 45.

²⁵ To convert the 2.7 million pounds of green bean total annual Kona coffee produced into the estimated proportions of 70 percent cherry, 10 percent green, and 20 percent roasted the following weight ratios are used: 7 lbs of cherry = 1 lb of roasted bean, 1.19 lbs of green bean = 1 lb of roasted bean, 1.25 lbs of parchment = 1 lb of green bean, 4.71 lbs of cherry = 1 lb of parchment. I understand from Counsel that Bob Smith and Tommy Greenwell of Greenwell Farms report that it takes approximately seven pounds of cherry beans to produce one

4. *Calculation of Market Price Damages*

27. Applying the market price damages framework discussed throughout this section, including estimates for (1) actual Kona price; (2) but-for Kona price; and (3) actual Kona quantity, I estimate market price damages as approximately \$67.9 million for 2015-2019. On a yearly basis, damages range from \$11.9 million to \$15.7 million, with average annual damages of \$13.6 million per year. **Table 2** summarizes my calculation of market price damages.

Table 2



28. For my forward-looking injunctive relief analysis, I assume annual damages of \$13.6 million per year.²⁶

B. Time to Recovery of Consumer Perceptions of Authentic Kona

29. As discussed above, the value of the injunctive relief depends on how quickly consumer perceptions of authentic Kona recover after the removal of counterfeit Kona from the

pound of roasted beans. *See also*, “The Coffee Guide: Conversions and Statistics,” The Coffee Guide, available at <http://www.thecoffeeguide.org/coffee-guide/world-coffee-trade/conversions-and-statistics/>.

²⁶ I note that damages have steadily increased over the period of interest; a continuation of this trend into the future would imply that average *past* annual damages would understate *future* annual future damages. This would result in my estimate of the value of the injunctive relief being conservative, i.e., lower than the true value.

marketplace. A faster recovery results in higher estimated value of the injunctive relief, while a slower recovery diminishes that value.

30. I rely on publicly available information on brand recovery timelines to inform the time-to-recovery input. Sources estimate that time to brand recovery can range from a few months to several years. On the lower end of that range, a reputation management firm estimates it typically takes about a year to fix online reputation problems for companies.²⁷ This one-year timeline corresponds to the time it took Johnson & Johnson's stock price to recover after a recall of all Tylenol in 1982 following the death of seven people due to tampered capsules laced with cyanide.²⁸ Other sources note a longer recovery timeline spanning multiple years. A corporate reputation textbook notes that while previous business estimates suggest two years for a brand to recover from a public relations incident, with 24/7 media coverage online it takes brands about four years to recover from damage and even longer for highly distinguished brands.²⁹ This time range aligns with estimates based on a survey of 950 global business executives who believe that proper management can allow brands to recover from a damaged reputation on average in three and a half years.³⁰ IBM's chief executive officer opined that it took four years for the company to recover from a 1993 scandal.³¹ After the

²⁷ Sickler, Jonas, "Online Reputation Repair Strategies You Can't Ignore," Reputation Management, January 12, 2020, available at <https://www.reputationmanagement.com/blog/online-reputation-repair/>.

²⁸ Shadbolt, Peter, "How can a company repair a damaged reputation," BBC News, October 12, 2016, available at <https://www.bbc.com/news/business-37630983>.

²⁹ Gaines-Ross Leslie, "Corporate Reputation: 12 Steps to Safeguarding and Recovering Reputation," John Wiley & Sons, 2008, p. xvi.

³⁰ Weber Shandwick, *Safeguarding Reputation*TM, 2006; Gaines-Ross Leslie, "Corporate Reputation: 12 Steps to Safeguarding and Recovering Reputation," John Wiley & Sons, 2008, p. 27.

³¹ Gaines-Ross Leslie, "Corporate Reputation: 12 Steps to Safeguarding and Recovering Reputation," John Wiley & Sons, 2008, p. 27.

Carnival cruise ship Costa Concordia capsized in 2013, the company projected that it would take up to three years for the Costa brand to fully recover.³²

31. Estimating the time at which consumer perceptions of authentic Kona will fully recover is subject to uncertainty. Overstating this recovery time would be conservative in the sense that it would lead to an understatement of the value of the injunctive relief. As discussed above, publicly available sources for brand recovery indicate typical brand recovery in one to five years. Given that Defendants allegedly sold counterfeit Kona coffee that damaged consumer perceptions of authentic Kona coffee over the course of multiple years, I conservatively assume that it would take five years for the price of authentic Kona to fully recover.
32. I understand that some Defendants ceased selling their allegedly counterfeit Kona coffee following the filing of this lawsuit, while others (including some of the Settling Defendants) continued selling their allegedly counterfeit Kona coffee. I understand that all of the Settling Defendants have now agreed to cease selling their allegedly counterfeit Kona coffee. I understand that some of the remaining Defendants continue to sell allegedly counterfeit Kona coffee. This staggered withdrawal of the allegedly counterfeit Kona coffee from the marketplace creates uncertainty with respect to the precise starting point of the recovery of consumer perceptions of authentic Kona. While this recovery may have already begun, my calculation assumes that Plaintiffs begin to realize the benefits of the injunctive relief in 2022.³³

³² Tesser, Lucy, "Can a brand survive a crisis long term?" MarketingWeek, August 13, 2014, available at <https://www.marketingweek.com/can-a-brand-survive-a-crisis-long-term/>.

³³ If certain Defendants do not settle and instead choose to litigate this matter, the total volume of counterfeit Kona still being sold in the marketplace may be undetermined, as a matter of fact, until the conclusion of the litigation. I understand that trial in this matter is scheduled for 2022. To the extent that any of these litigating Defendants are found innocent, this would mean that their accused products did not actually harm consumer

C. Forward-Looking Value of Injunctive Relief

33. I estimate the value of the injunctive relief by calculating the present value of the difference in the flows of annual profits to Plaintiffs between the Permanent Injunction World and the Continued Counterfeiting World. Conceptually, the present value calculation provides a way to value future money flows in today's dollars while accounting for the risks and uncertainties associated with obtaining these future money flows. The key input to the present value calculation is the discount rate applied. I understand that the Plaintiffs do not finance their operations with a significant amount of debt capital (if any). As a result, I estimate Plaintiffs' cost of equity (as opposed to weighted average cost of capital that includes both equity and debt components) as the discount rate by which to calculate the present value of the annual difference in profits. Plaintiffs' cost of equity is calculated using the build-up method as: risk-free interest rate + equity risk premium + industry risk premium + size premium. **Table 3** summarizes my estimation of the appropriate discount rate. I estimate that the discount rate for Kona coffee growers is 13.07 percent, based on a normalized risk-free interest rate of 2.5 percent from Duff & Phelps, an equity risk premium of 5.5 percent from Duff & Phelps, an industry risk premium for the farming and agriculture industry of -0.61 percent, and a size premium of 5.67 percent applicable to firms or projects with annual sales below \$284.5 million.³⁴

perceptions of authentic Kona and did not hinder the recovery of those consumer perceptions. In that instance, my calculation may understate the value of the injunctive relief by assuming that Plaintiffs do not realize the benefits of the injunctive relief until 2022.

³⁴ Duff & Phelps Cost of Capital Navigator as of December 10, 2020; Damodaran, Aswath, Total Beta By Industry Sector, as of January 2020, available at <http://pages.stern.nyu.edu/~adamodar/> (under Archived Data).

Table 3
Kona Coffee
Cost of Equity - Build-up Approach (CAPM + Size Premium)

<u>Cost of Equity</u>		<u>Rate</u>
Risk-Free Interest Rate (Normalized)	[1]	2.50%
Plus: Equity Risk Premium	[2]	5.50%
Plus: Industry Risk Premium	[3]	-0.61%
Plus: Size Premium	[4]	5.67%
	[5]	
Cost of Equity		13.07%
Rounded:		13.00%

Notes / Sources:

[1] I understand that Kona coffee growers have limited (if any) debt. As a result, I have calculated the cost of equity for Kona (instead of a weighted average cost of capital that would include both equity and debt capital).

[2] Normalized risk-free interest rate as per Duff & Phelps. (Duff & Phelps Cost of Capital Navigator as of 12/10/2020.)

[3] Recommended ERP as per Duff & Phelps (to be used with normalized risk-free interest rate). (Duff & Phelps Cost of Capital Navigator as of 12/10/2020.)

[4] As per Professor Aswath Damodaran of NYU, the industry beta for Farming/Agriculture companies was 0.89 as of January 2020. Industry Risk Premium = $\beta(\text{ERP}) - (\text{ERP}) = (0.89 \times 5.50\%) - 5.50\% = -0.61\%$.

[5] Under the assumption of the subject company's annual sales being \$43.2 million, the size premium as per Duff & Phelps's Cost of Capital Navigator was 5.67% (i.e., the size premium for companies with sales of up to \$284.5 million).

34. For the purposes of my forward-looking analysis, I round this discount rate to 13 percent.

Applying this discount rate yields a net present value benefit of injunctive relief to Plaintiffs of \$71.2 million in 2021 dollars. **Table 4** summarizes the key inputs to the value of the injunctive relief.³⁵

³⁵ I also calculated the value of the injunctive relief assuming shorter brand recovery times: if it takes one year for the price of authentic Kona to fully recover, then the value of the injunctive relief in 2021 dollars would be \$89.8 million; if it takes two years for the price of authentic Kona to fully recover, then the value of the injunctive relief in 2021 dollars would be \$84.6 million; if it takes three years for the price of authentic Kona to fully recover, then the value of the injunctive relief in 2021 dollars would be \$79.7 million; if it takes four years for the price of authentic Kona to fully recover, then the value of the injunctive relief in 2021 dollars would be \$75.3 million.

Table 4

Value of Injunctive Relief	
Annual Market Price Damages	\$13,581,844
Kona Brand Time to Recovery	5 years
Discount Rate	13%
Net Present Value of Injunctive Relief	\$71,154,888

D. Allocation to Settling Defendants

35. I now address the portion of my assignment articulated in paragraph 6(b), namely, to apportion the value of this injunctive relief to the Settling Defendants according to their combined share of the allegedly counterfeit Kona coffee, and in so doing, calculate the value associated with the injunction agreed to by the Settling Defendants.³⁶ I have reviewed the Declaration of Dr. Jeremy Verlinda and Dr. Yong Paek which includes information on each Settling Defendant's share of total allegedly counterfeit Kona sales.³⁷ According to Dr. Verlinda and Dr. Paek, the revenue share of the Settling Defendants is 53 percent.³⁸

³⁶ Calculating the Settling Defendants' share of counterfeit Kona volume depends on the total volume of counterfeit Kona. If certain Defendants do not settle and instead choose to litigate this matter, the total volume of counterfeit Kona may be undetermined, as a matter of fact, until the conclusion of the litigation. To the extent that any of these litigating Defendants are found innocent, this would mean that the total volume of counterfeit Kona in my calculation is overstated, and thus, that my calculation of Settling Defendants' share of counterfeit Kona volume is understated. This would tend to understate the value of the injunctive relief apportioned to the Settling Defendants. For example, if every Defendant that is not part of the Settling Defendants were to ultimately be found innocent, this would imply that the full value of the injunctive relief was in fact secured via settlement agreements with the Settling Defendants.

³⁷ Declaration of Dr. Jeremy Verlinda and Dr. Yong Paek, April 19, 2021 ("Verlinda and Paek Declaration").

³⁸ Dr. Verlinda and Dr. Paek estimate the allegedly counterfeit Kona coffee revenue shares among defendant coffee blenders, defined as "companies that source coffee from various growers and/or roasters, to then blend, package and sell their labeled products." Not all Defendants and not all Settling Defendants are coffee blenders. The individual Settling Defendants' shares are [REDACTED]. See Verlinda and Paek Declaration, ¶ 5, Table 1.

36. Applying the 53 percent share to the injunctive relief value of \$71.2 million, I calculate the value of the injunction agreed to by the Settling Defendants as \$37.9 million in 2021 dollars.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 20, 2021.

A handwritten signature in black ink, appearing to read "Michael J. Schreck", is written over a horizontal line.

Michael J. Schreck, Ph.D.

APPENDIX A
CURRICULUM VITAE

MICHAEL J. SCHRECK, PH.D.
Manager

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14th Floor
Boston, MA 02199

EDUCATION

2013 Ph.D., economics, University of Virginia

2008 M.A., economics, University of Virginia

2005 B.S., mathematics and economics (Highest Honors and Outstanding Economics
Major), Saint Vincent College

PROFESSIONAL EXPERIENCE

2013–Present Analysis Group, Inc.
 Manager
 Associate

2007–2013 University of Virginia
 Instructor, Experimental Economics
 Instructor, Economics of the Public Sector
 Teaching Assistant, Ph.D. Microeconomics Sequence

2006 National Youth Science Foundation
 Associate Director

SELECTED CONSULTING EXPERIENCE

Intellectual Property

- Supported experts in the analysis of secondary meaning of alleged trademarks, including brand name, trade dress, and product design disputes
- Supported experts in the analysis of likelihood of confusion in cases of alleged trademark infringement
- Supported experts in the analysis of genericness in cases of alleged trademark infringement
- Supported experts in the analysis of alleged false advertising, including advertising at the Super Bowl and other major sporting events, as well as claims on product and package labeling
- Supported experts in the design and analysis of surveys to quantify alleged harm to plaintiffs in cases of alleged false advertising
- Industries analyzed include high-technology, fashion apparel, food, beverage, e-commerce, automobiles, sports, retail, and consumer goods
- Experience includes support of expert testimony at trial in multiple trademark disputes

Finance, Valuation, and Tax

- Supported experts in the analysis of liability and damage pertaining to alleged manipulation of financial markets
- Supported expert in the analysis of value of sales and marketing activities and associated intangibles related to transferred assets
- Supported experts in the estimation of useful economic life of marketing assets related to transfer pricing valuations
- Industries analyzed include high-technology, wholesale electricity trading, interbank loans, international currency trading, precious metals, e-commerce, and hedge funds
- Experience includes support of expert testimony at trial in one of the largest transfer pricing disputes in U.S. history, resulting in a favorable judgment for client in U.S. Tax Court

Antitrust and Competition

- Supported experts in the analysis of liability and damages pertaining to alleged conspiracies to fix prices
- Supported expert in the analysis of damages pertaining to allegedly anticompetitive reverse payment settlements
- Industries analyzed include food, pharmaceuticals, home construction, consumer electronics, and pharmacy
- Experience includes support of expert testimony at trial in price-fixing dispute

Regulatory and Commercial Disputes

- Supported experts in the analysis of factors affecting the success of commercial launch for certain pharmaceutical products, including claims of damages from breach of contract
- Supported expert in analysis of harm to consumer electronics startup pertaining to claims of alleged counterfeiting in e-commerce marketplace
- Supported expert in the analysis of likelihood of irreparable harm regarding a commercial dispute over ownership of a brand asset
- Supported expert in the analysis of damages related to allegedly defective products and alleged fraud
- Industries analyzed include agriculture, beverage, e-commerce, pharmaceuticals, and hospitals
- Experience include support of expert testimony at trial in Delaware's Chancery Court resulting in a \$70 million judgment in favor of client

SELECTED PUBLICATIONS AND RESEARCH

(*refereed journal, *invited book chapter)**

***“Do Donor Beliefs Matter for Donation Matching? Experiments in the Field & Laboratory,” with Laura K. Gee, *Games and Economic Behavior* (January 2018)

“Recent Developments in Litigation and Regulation Related to No-Hire and Employee Non-Compete Agreements: Implications for Franchise Systems,” with Aaron Fix and Jee-Yeon Lehmann, *Distribution: The Newsletter of the Distribution & Franchising Committee of the Section of Antitrust Law of the American Bar Association*, Vol. 22, No. 1 (February 2018)

***“From Lab to Field: Social Distance and Charitable Giving in Teams,” with Laura K. Gee and Ankriti Singh, *Economics Letters* (July 2020)

*“Taking a Second Look at Secondary Meaning: A Marketing Perspective on Circuit Court Factors,” with Peter N. Golder and Aaron C. Yeater, *Legal Applications of Marketing Theory*, Cambridge University Press (forthcoming in 2021)

*“Industry and Economic Research in Lost Profits Analysis,” with Benjamin March and Samuel Weglein (forthcoming in 2021)

INVITED PRESENTATIONS

Department of Justice, Federal Trade Commission, Science of Philanthropy Initiative Conference (hosted by The University of Chicago’s Booth School of Business), Whitman College, University of Puget Sound, Institute for Defense Analyses, Brattle Group, Analysis Group, Middle Tennessee State University, University of Virginia, National Youth Science Foundation, Economic Science Association Conference, University of Virginia Quantitative Collaborative Research Symposium, The Knowledge Group, Northeastern University, Boston College