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 on behalf of themselves and others similarly situated,

Plaintiff,

v.

L&K COFFEE CO. LLC, a Michigan limited liability company; MNS LTD., a Hawaii Corporation; and KEVIN KIHNKE, an individual,

Defendants.

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

MOTION FOR FINAL APPROVAL BRIEF AND MEMORANDUM IN SUPPORT

The Honorable Robert S. Lasnik

Noted for consideration: February 16, 2023

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10013-1413
Tel. 212.355.9500 • Fax 212.355.9592

TABLE OF CONTENTS

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10013-1413
Tel. 212.355.9500 • Fax 212.355.9592

TABLE OF AUTHORITIES

Page(s)

Cases

Rules

Other Authorities

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10013-1413
Tel. 212.355.9500 • Fax 212.355.9592

I. Introduction

Plaintiffs are pleased to move for final approval of their class settlement with Defendant L&K Coffee Company, LLC ("L&K"). With this settlement, Plaintiffs and Class Counsel continue to deliver on their goal of delivering immediate and meaningful relief to the class of Kona coffee farmers they represent. This settlement, which leaves only one non-bankrupt defendant remaining in a litigation that originally included more than twenty defendants, adds an additional $6.15 million to the more than $15.2 million obtained in prior settlements, and like previous settlements, includes injunctive terms that will strengthen and protect the reputation of Kona coffee. Also like each of the settlements previously approved and implemented, this settlement elicited **no objections and no opt-outs**. This is especially noteworthy because class members have been repeatedly notified of settlements and received their checks from the first set of settlements: they are familiar with the litigation, have seen the results, and continue to offer their support.

This Court recently granted preliminary approval to this settlement with L&K, finding that it was likely to be able to approve the proposed settlements applying the criteria set out in Rule 23(e)(2), and to certify the class for purposes of settlement, and directed notice to issue to the class. *See* Dkt. 707. Following the same process that it carried out last year with respect to prior settlements, the Settlement Administrator then effectuated the notice plan approved by this Court, including both direct notice and publication in the *West Hawaii Daily*, and it updated the settlement website and toll-free number for class members. The opt-out and objection deadline of January 10, 2023 passed, again with ***zero*** opt-outs and objections.

Plaintiffs now seek final approval, so that the benefits promised in this settlement can begin to flow to class members. As set out below, this settlement represents an excellent result for the Settlement Class and satisfies all criteria for final approval under Ninth Circuit law.

II. Background and Procedural History

Class Counsel detailed the procedural history of this litigation most recently in the

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10013-1413
Tel. 212.355.9500 • Fax 212.355.9592

motion for preliminary approval of these settlements. *See* Dkt. 701. That motion, and the declarations that accompanied it, recount this case's specific challenges, the hurdles that Plaintiffs have cleared at each stage of the case, and the hard-fought history of the litigation through discovery, class certification, expert discovery, and now dispositive motions and trial preparation with the lone remaining defendant. That work made possible and led to the arms-length negotiations, including with the assistance of a mediator, that produced this settlement. Plaintiffs reference and incorporate that motion and declarations herein.

III. Summary of Settlement Terms

Plaintiffs' motion for preliminary approval also summarized the terms of each of the settlements that this Court preliminarily approved. *See* Dkt. 701. Plaintiffs again provide a brief summary here for the sake of completeness.[1]

First, L&K will pay $6,150,000. Second, it will, like previously settling defendants, alter its labeling of Kona-labeled coffee so that such products "will accurately and unambiguously state on the front label of the product the minimum percentage of authentic Kona coffee beans contained in the product using the same font type and same (or similar) color as the word Kona, and no smaller than one-half (1/2) the size as the word "Kona" appears, on the front of the package." Dkt. 702-1 ¶ 11(a). The agreements clarifies, "Only Kona coffee certified and graded by the Hawaii Department of Agriculture as 100% Kona shall be considered authentic Kona coffee." *Id.* HIKC also agrees "to use at least the percentage of Kona coffee required by Hawaiian law, or as may be required by Hawaii law in the future, in any product labeled as "'Kona' or "'Kona Blend.'" *Id.* ¶ 11(b). These injunctive terms compound the benefits of the agreements of the previously settling defendants that increase and improve the information found on Kona-labeled products in the marketplace.

[1] The settlement agreement itself was attached to one of the declarations of counsel accompanying the preliminary approval motion, at Docket 702-1.

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10013-1413
Tel. 212.355.9500 • Fax 212.355.9592

IV. The Class Notice Plan Was Successfully Implemented.

This Court's Preliminary Approval Order directed that the parties effectuate a multi-faceted notice plan, including direct notice to Settlement Class Members, and the establishment of a dedicated settlement website, post office box, and toll-free telephone number. The parties, in consultation with the Settlement Administrator, have carried out the notice plan. Consistent with the Court's orders, the Settlement Administrator will provide a declaration on February 2, 2023 (two weeks before the final approval hearing) confirming its implementation of the notice plan. That affidavit will also report on whether any of the more than 700 Settlement Class Members who were sent direct notice have elected to opt out of or object to the settlements. Not a single opt-out or objection has been received. Following final approval, the Settlement Administrator will effectuate the claims and payment process to class members, which is described in more detail below, and which resembles and builds on the successful notice and claims campaign carried out in connection with previous settlements in this case.

V. Final Approval is Warranted.

A. Settlement Approval Process

Federal Rule of Civil Procedure 23(e) provides that class actions "may be settled … only with the court's approval." Rule 23(e) governs a district court's analysis of the fairness of a proposed class action settlement and creates a multistep process for approval. This Court has already taken the first two steps. First, it has determined that it is likely to (i) approve the proposed settlement as fair, reasonable, and adequate, after considering the factors outlined in Rule 23(e)(2), and (ii) certify the settlement class after the final approval hearing. *See* Fed. R. Civ. P. 23(e)(1)(B). Second, it has directed notice to the class, approving notice that describes the terms of the proposed settlement and the definition of the proposed class, and explains how class members can object to or opt out of the proposed settlement. *See* Fed. R. Civ. P. 23(c)(2)(B); Fed. R. Civ. P. 23(e)(1), (5). Plaintiffs now ask that this Court take the third and final step, which is to grant final approval of this settlement with L&K. *See* Fed. R. Civ. P. 23(e)(2).

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10013-1413
Tel. 212.355.9500 • Fax 212.355.9592

B. The Settlement Is Fair, Reasonable, and Adequate.

All of the factors set forth in Fed. R. Civ. P. 23(e)(2) weigh strongly in favor of final approval. In granting preliminary approval, the Court already observed that the proposed Settlement appeared "fair, reasonable, and adequate," so that notice was appropriate. Dkt. 707 ¶ 4. The Court can and should reach the same conclusion here at final approval.

1. Rule 23(e)(2)(A): Class Counsel and the Settlement Class Representatives Have and Will Continue to Zealously Represent the Class.

The Court's preliminary determination, under Rule 23(e)(2)(A), that Class Counsel and the Plaintiffs have zealously advanced the interests of the Plaintiffs and the proposed Settlement Class, was correct. As the motion for preliminary approval detailed, Class Counsel and Plaintiffs have worked tirelessly to advance this case, from the extensive pre-filing investigation through challenges to the pleadings, intensive discovery against over twenty defendants and from numerous third parties, through class certification, expert discovery, and through the negotiations of these settlements. The Plaintiffs, too, have devoted countless hours to representing the class, even as they have continued to operate their small coffee farms through the pandemic and beyond. Their commitment to this case has not wavered through the implementation of the first set of settlements, and as this litigation continues against the lone non-settling and non-bankrupt defendant.

2. Rule 23(e)(2)(B): The Settlement Is the Result of Arms-Length, Informed Negotiations.

Rule 23(e)(2)(B) directs the Court to determine if a class action settlement was negotiated at arm's-length. Here, too, the Court's preliminary determination was correct.

First, as Plaintiffs explained, the involvement of experienced mediators in the negotiations creates a presumption of fairness. *See* Joseph M. McLaughlin, *McLaughlin on Class Actions* (8th ed. 2011); *see also Sandoval v. Tharaldson Emp. Mgmt., Inc.*, No. 08-482, 2010 WL 2486346, at *6 (C.D. Cal. June 15, 2010) ("The assistance of an experienced mediator

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10013-1413
Tel. 212.355.9500 • Fax 212.355.9592

in the settlement process confirms that the settlement is non-collusive."); *Free Range Content, Inc. v. Google, LLC*, No. 14-02329, 2019 WL 1299504, at *6 (N.D. Cal. Mar. 21, 2019) (holding that a "presumption of correctness" attaches where, as here, a "class settlement [was] reached in arm's-length negotiations between experienced capable counsel after meaningful discovery"). Here, the parties have worked with three different mediators. Judge Infante conducted an early mediation. Mark LeHocky conducted two separate mediations between Plaintiffs and L&K. Finally, Robert Meyer of JAMS held an in-person mediation on June 9, 2022 and ultimately made a mediator's proposal that the parties accepted on September 12, 2022. *See* Dkt. 702 ¶¶ 6-7.

Second, Class Counsel negotiated the Settlements with a full understanding of the legal claims and their factual basis. The parties reached this settlement after the close of extensive discovery, after class certification had been briefed, and after Plaintiffs had served their expert reports. Where extensive information has been exchanged, "[a] court may assume that the parties have a good understanding of the strengths and weaknesses of their respective cases and hence that the settlement's value is based upon such adequate information." William B. Rubenstein, et al., *Newberg on Class Actions* § 13:49 (5th ed. 2012); *see also In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 320 (N.D. Cal. 2018) (concluding that the "extent of discovery" and factual investigation undertaken by the parties gave them "a good sense of the strength and weaknesses of their respective cases in order to 'make an informed decision about settlement'") (quoting *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000)). Class Counsel are now preparing for trial; there is no question that they understand the risks and benefits of settlement at this point.

3. Rule 23(e)(2)(C): The Settlements Provide for Substantial Compensation.

The Court may also find for purposes of final approval that the relief provided for the class is "adequate." Fed. R. Civ. P. 23(e)(2)(C). This subsection asks the Court to take into

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10013-1413
Tel. 212.355.9500 • Fax 212.355.9592

account: "(i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)." *Id.* The Court can readily adhere to and confirm its preliminary determination that the settlement is adequate upon review of these factors.

a. The Settlement delivers excellent monetary and injunctive relief.

This settlement delivers immediate monetary relief and practice changes. It provides for $6.15 million in monetary relief alone, the largest payment from a single defendant to date in this litigation. Further, Plaintiffs previously presented evidence that similar practice changes by defendants who settled earlier in the case would mitigate millions of dollars in market-price damages. *See* Dkt. 428 (sealed Schreck Declaration). These settlements, structured similarly to those previously approved, will build on those positive effects.

b. The costs, risks, and delay of trial and appeal weigh in favor of final approval.

The amount obtained is reasonable in light of the risks, delays, and costs attendant to class certification, potential interlocutory appeal under Rule 23(f), summary judgment motions, trial, and appeals. Plaintiffs have previously explained some of those risks in connection with the prior set of settlements. *See* Dkt. 416 ¶¶ 10-16. To start, Defendants have advanced a legal theory that the Lanham Act does not authorize the central claim in this case: false designation of geographic origin. Although the Court denied the motions to dismiss on that basis, the issue would remain alive in this case through summary judgment, trial, and appeal. Defendants also had a factual defense that consumers were not confused by false designations of Kona geographic origin and that Plaintiffs' claims were barred by laches. Although Plaintiffs are confident in the merits of their claims, each of those issue created risk (as to these defendants) at summary judgment and trial. In particular, whether consumers were confused or likely to be

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10013-1413
Tel. 212.355.9500 • Fax 212.355.9592

confused by Defendants' product labels would likely come down to a "battle of the experts" at trial, the result of which is always uncertain. Plaintiffs also faced risk at class certification, compounded by the potential lengthy delay of an appeal under Rule 23(f). *See* Dkt. 416 at ¶ 14.

Success at each stage can never be assured, but delay and costs would be certain. The settlement is an outstanding outcome under any measure, but particularly in light of those risks.

c. The method of distributing relief is simple and fair.

The proposed method of distributing relief to the class, including claims processing, is straightforward, simple, and designed to maximize participation in the settlement. As the Settlement Administrator attested, it worked effectively to distribute checks to hundreds of class members. *See* Dkt. 600. For this settlement, the distribution of money will be even more streamlined. Any Settlement Class Member who did not previously submit a claim will have the opportunity to do so for this settlement, but those who submitted claims in connection with the first distribution will not have to do so again. Instead, the Settlement Administrator will use the information previously submitted to calculate their pro rata share of the settlement funds.

As the experience with the first set of settlements showed, notice and claims here are straightforward and easily implemented. First, the Settlement Class is defined by a reference to a discrete geographic area (the Kona region), such that direct notice was feasible, with publication notice acting as informational reinforcement, making it easier to identify and reach the class. Settlement Class Members will again be sent a straightforward, two-page claim form that asks for basic information about their farm and the acreage used to produce coffee over the relevant time period. Those who previously filled this out will not have to do so again; the Settlement Administrator has their information. As Plaintiffs have explained, the information requested is that which coffee farmers typically maintain and keep accessible, and will allow for a fair and efficient distribution of the net settlement proceeds. *See, e.g.*, *Hefler v. Wells Fargo & Co.*, No. 16- 05479, 2018 WL 6619983, at *12 (N.D. Cal. Dec. 18, 2018) (approving pro rata settlement distribution based on the purchase and sales data provided by class members); *Thomas v.*

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10013-1413
Tel. 212.355.9500 • Fax 212.355.9592

MagnaChip Semiconductor Corp., No. 14-01160, 2017 WL 4750628, at *8-9 (N.D. Cal. Oct. 20, 2017) (same).

Class Counsel developed the claim form in consultation with the Settlement Administrator, which has extensive experience designing plain-English forms and implementing claims processes, and solicited input from class members to ensure that the form will be intelligible and prompt claims. As before, the form will also be available in Japanese. Class members will be able to make claims by returning hard copy forms by mail or by obtaining the form through the settlement website. The Settlement Administrator will then calculate class members' pro rata share of the net settlement funds at the end of the claims period and promptly send checks to class members who made valid claims.

d. The request for attorneys' fees is reasonable and supported.

As explained in the separately-filed motion for attorneys' fees, Class Counsel have sought a percentage of the settlement fund, a request that is consistent with fee awards in other cases involving significant and valuable injunctive relief, and reasonable for all of the reasons described in that motion. *See* Dkt. 742. Class Counsel's request was consistent with what was described in the notice, and no class member has objected to the request. The application itself was made sufficiently prior to the expiration of the opt-out and objection deadlines, consistent with *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 992 (9th Cir. 2010).

e. There are no agreements bearing on final approval.

Rule 23(e)(2)(C)(iv) requires that the proponents of the settlement identify any agreement (other than the settlement agreement) entered into in connection with the proposed settlement. There are no such agreements.

4. Rule 23(e)(2)(D): The Settlement Treats All Class Members Equitably Relative to One Another.

Finally, Rule 23(e)(2)(D) directs the Court to consider whether the proposed settlement treats class members equitably. This subsection of Rule 23(e) determines "whether the

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10013-1413
Tel. 212.355.9500 • Fax 212.355.9592

apportionment of relief among class members takes appropriate account of differences among their claims, and whether the scope of the release may affect class members in different ways that bear on the apportionment of relief." Fed. R. Civ. P. 23(e)(2)(D), Advisory Committee's Note to 2018 amendments. As explained in previous preliminary approval motions, each member of the proposed Class will receive a pro rata share of the settlement based on their coffee production during the claims period, such that class members will receive meaningful compensation directly proportional to the harm they suffered based on their actual sales. Additionally, Plaintiffs have requested service awards for each plaintiff farm (three in total), as are commonly awarded in class actions, and are justified here by Plaintiffs' efforts in prosecuting the litigation, as explained in Plaintiffs' motion for approval of those awards and in the supporting declarations filed with the motion. *See* Dkt. 701.

5. The Settlement Satisfies the Ninth Circuit's Additional Factors for Final Approval.

The Ninth Circuit has identified a number of additional factors for courts to consider when evaluating the fairness, reasonableness, and adequacy of a class action settlement. Those factors include: (1) the strength of the plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members of the proposed settlement. *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011). Many of these—*e.g.*, the strength of plaintiffs' case, the risk and duration of further litigation, and the amount offered—overlap with the Rule 23(e)(2)(C) factors and are addressed above. The remaining relevant factors favor final approval as well.

Most significant is the "reaction of the class to the proposed settlement." For the third time, the class has voted with its feet: Not a single class member has objected to the settlement,

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10013-1413
Tel. 212.355.9500 • Fax 212.355.9592

or the requests for fees, costs, and service awards. Not a single class member has opted out. This universal support strongly favors approval. *See, e.g.*, *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998) ("[T]he fact that the overwhelming majority of the class willingly approved the offer and stayed in the class presents at least some objective positive commentary as to its fairness."); *Gaudin v. Saxon Mort. Servs., Inc.*, No. 11-1663, 2015 WL 7454183, at *7 (N.D. Cal. Nov. 23, 2015) ("[T]he absence of a large number of objections to a proposed class settlement raises a strong presumption that the terms of a proposed class settlement are favorable to the class members.") (citation and alteration omitted); *id.* (finding that "opt-out rate [] less than 1% … favors approval of settlement"); *Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 852 (N.D. Cal. 2010) (finding that 4.86% opt-out rate strongly supported approval).

Other factors weigh in favor of approval as well. First, there is a risk of "maintaining class action status through trial." As explained in prior counsel declarations, any class action carries risks of denial of certification or later de-certification. Dkt. 416 ¶ 14. This case is no exception. Second, the "experience and views of counsel" support approval. Counsel are experienced in both complex class actions and Lanham Act litigation, and well-versed in particular with the issues in this case, having investigated it thoroughly and litigated it extensively. *See* Dkt. 416 ¶¶ 4-9; Dkt. 417 ¶¶ 4-13; Dkt. 603, Dkt. 655, Dkt. 656. Counsel unreservedly support the settlement.

C. The Settlement Class Should be Finally Certified.

As the Court concluded in granting preliminary approval and directing notice to the Class, the Settlement Class "likely meets the requirements under Fed. R. Civ. P. 23(a) and 23(b)(3)." Dkt. 707 ¶ 3. This remains true, and the Settlement Class should be certified.

VI. Conclusion

For the foregoing reasons, Plaintiffs respectfully request that the Court grant final approval to the proposed settlement.

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10013-1413
Tel. 212.355.9500 • Fax 212.355.9592

Dated: January 25, 2023

KARR TUTTLE CAMPBELL

/s Nathan T. Paine
Nathan T. Paine, WSBA #34487
Daniel T. Hagen, WSBA #54015
Joshua M. Howard, WSBA #52189
701 Fifth Avenue, Suite 3300
Seattle, Washington 98104
206.223.1313

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

/s/ Jason L. Lichtman
Jason L. Lichtman (*pro hac vice*)
Daniel E. Seltz (*pro hac vice*)
250 Hudson Street, 8th Floor
New York, NY 10013-1413
Telephone: 212-355-9500

Andrew Kaufman (*pro hac vice*)
222 2nd Avenue South, Suite 1640
Nashville, TN 37201
615.313.9000

Attorneys for the Plaintiffs and the Proposed Settlement Class

CERTIFICATE OF SERVICE

I, Daniel E. Seltz, certify that on January 25, 2023, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to those attorneys of record registered on the CM/ECF system.

/s *Daniel E. Seltz*
Daniel E. Seltz

2735186.1

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10013-1413
Tel. 212.355.9500 • Fax 212.355.9592

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

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

Plaintiff,

v.

COSTCO WHOLESALE CORP., et al.,

Defendants.

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

FINAL JUDGMENT AND ORDER OF DISMISSAL

The Honorable Robert S. Lasnik

THIS MATTER comes before the Court upon the unopposed "Motion for Final Approval of the Class Settlement" filed by Plaintiffs. The Court, being fully advised of the premises of the Motion, FINDS:

1. Plaintiff commenced this action by filing their Complaint on February 27, 2019, and ultimately filed a Third Amended Complaint on April 30, 2020 (Dkt. 381) ("Complaint"). Plaintiffs alleged that the defendants violated the Lanham Act, 15 U.S.C. § 1125, by misleadingly labeling and selling coffee not from the Kona region as "Kona" coffee. On November 12, 2019, this Court denied motions to dismiss Plaintiffs' original complaint (Dkt. 155), and discovery began.

2. Plaintiffs have negotiated a class action settlement with defendant L&K Coffee Company, LLC ("L&K"). The Settlement Agreement was attached as Exhibit 1 to the declaration of counsel accompanying the Motion for Preliminary Approval of Class Action Settlement, filed on September 29, 2022 (Dkt. 701).

3. Through the Settlement Agreement, L&K will fully and completely satisfy the claims of Class Members relating to the claims alleged by Plaintiffs in the Third Amended

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10013-1413
Tel. 212.355.9500 • Fax 212.355.9592

Complaint by paying Class Members a total payment of $6,150,000, and provide injunctive relief relating to the labeling of the Kona coffee products at issue. Attorneys' fees and costs of Class Counsel and administrative costs will be paid from the Settlement Fund. By entering into the Settlement Agreement, L&K made no admissions relating to the claims raised in this lawsuit, nor did Plaintiffs make admissions relating to L&K's Defenses.

4. The Settlement Class, as defined in each of the Settlement Agreements, includes the following: All persons and entities who, between February 27, 2015, and the date of Court's order granting preliminary approval to the settlement (October 4, 2022), farmed Kona coffee in the Kona District and then sold their Kona coffee. 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.

5. The Settlement Agreement describes the claims that are being settled on behalf of the Class (defined as the "Settled Claims"). The Settlement Agreement and its terms, including the definitions, are incorporated into this Final Judgment And Order of Dismissal (the "Final Judgment") as if fully set forth herein. The Settlement Agreement and Final Judgment shall be referred to collectively herein as the "Settlement."

6. This Court entered an Order dated October 4, 2022, directing that notice of the proposed Settlement be effectuated as to the Settlement Class (Dkt. 707) ("Preliminary Approval Order"). The Preliminary Approval Order set a hearing for February 16, 2023 to determine whether the proposed Settlement should be approved as fair, reasonable and adequate.

7. In accordance with the Court's Preliminary Approval Order, the Settlement Administrator caused to be mailed and emailed to potential members of the Settlement Class for whom addresses could be located, a notice (the "Settlement Notice") in the form approved by the

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10013-1413
Tel. 212.355.9500 • Fax 212.355.9592

Court in the Preliminary Approval Order. Also in accordance with the Court's Preliminary Approval Order, the Settlement Administrator caused the publication notice to be placed in the *West Hawaii Today*. The Court finds that the Settlement Notice, along with the publication notice, provided to potential members of the Settlement Class constituted the best and most practicable notice under the circumstances, thereby complying fully with due process and Rule 23 of the Federal Rules of Civil Procedure. The Court did not receive any objections to the Settlement from class members.

8. L&K caused to be mailed to the appropriate federal and state officials the materials required to be submitted by the Class Action Fairness Act, 28 U.S.C. § 1711, *et seq.* ("CAFA"). *See* Dkt. 794. The Court finds that CAFA's notice requirements have been satisfied.

9. On February 16, 2023, the Court held a hearing on the proposed Settlement, at which time all interested persons were given an opportunity to be heard. Furthermore, the Court has read and considered all submissions in connection with the Settlement. As explained below, the Court grants the motion for final approval of the Settlement.

Class Certification

10. The first question before the Court is whether to certify the Settlement Class. *See* Fed. R. Civ. P. 23(a) & (b). Class certification is proper if Plaintiffs demonstrate: (1) The Settlement Class is so numerous that joinder of all members in a single proceeding would be impracticable; (2) Resolution of the claims will involve common questions of law and fact; (3) The named Plaintiffs' claims are typical of those of the Settlement Class Members; (4) The named Plaintiffs and Settlement Class Counsel have fairly and adequately represented the interests of the Settlement Class and will continue to do so; (5) Questions of law and fact common to the Settlement Class predominate over the questions affecting only individual

Settlement Class Members, and (6) certification of the Settlement Class is superior to other available methods to the fair and efficient adjudication of this controversy. *Id.*

11. In its Preliminary Approval Order, the Court concluded that Plaintiffs showed that they were likely to satisfy these requirements. *See* Dkt. 707. The Court now finds no reason to disturb those conclusions. As such, the Court certifies the proposed Class.

Settlement Approval

12. The Court must also determine whether the Settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). The Court's Preliminary Approval Order applied these standards and concluded that the Settlement appeared to be "fair, reasonable, and adequate." Dkt. 707 ¶ 4. Plaintiffs explained, and the Court determined, that approval of the Settlement will bestow a substantial economic benefit on the Settlement Class, result in substantial savings in time and money to the litigants and the Court and will further the interests of justice, and that the Settlement is the product of good-faith arm's length negotiations between the Settling Parties. The record is even more supportive of approval now that no Settlement Class Member has objected to the Settlement. The Court thus finds the Settlement to be fair, reasonable, and adequate. *See* Fed. R. Civ. P. 23(e).

13. The Settlement Agreement, including all of the terms defined therein including but not limited to the definitions of "Settled Claims," is incorporated herein. Any terms used in this Final Judgment are governed by their definitions in the Settlement Agreement. The Court has jurisdiction over the subject matter of this litigation and all parties to this litigation, including all members of the Settlement Class.

14. The certified Settlement Class is defined for purposes of the Settlement Agreements and this Final Judgment as set forth in Paragraph 4 above.

15. Therefore, the Settlement is approved in all respects, and shall be binding upon, and inure to the benefit of, all members of the Settlement Class.

16. All Settled Claims are hereby dismissed with prejudice.

17. This Final Judgment may not be used as an admission by or against L&K of any fact, claim, assertion, matter, contention, fault, culpability, obligation, wrongdoing or liability whatsoever.

18. The Court has, by separate order, granted Class Counsel's "Motion for Attorneys' Fees and Reimbursement of Litigation Expenses." The amount of Attorneys' Fees and Litigation Expenses awarded to Class Counsel shall be distributed to Class Counsel by the Settlement Administrator from the Settlement Funds.

19. The Court reserves jurisdiction over this matter, the Settling Parties, and all counsel herein, without affecting the finality of this Final Judgment, including over (a) the implementation, administration, and enforcement of this Settlement and any award or distribution from the Settlement Funds; (b) disposition of the Settlement Funds; and (c) other matters related or ancillary to the foregoing.

20. Pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Court finds that there is no reason for delay in the entry of this Final Order and Judgment as a final order and final judgment, and the Court further expressly directs the Clerk of the Court to file this Final Order and Judgment as a final order and final judgment.

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10013-1413
Tel. 212.355.9500 • Fax 212.355.9592

Enter: _____, 2023.

BY THE COURT:

_____
Robert S. Lasnik
United States District Court Judge

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10013-1413
Tel. 212.355.9500 • Fax 212.355.9592