

The Honorable Robert S. Lasnik

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

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

Plaintiffs,

v.

Mulvadi Corporation,

Defendant.

No. 2:19-cv-290

**DECLARATION OF JASON L.
LICHTMAN IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

I, Jason L. Lichtman, declare as follows:

1. I am a partner in the law firm of Lief Cabraser Heimann & Bernstein, LLP ("LCHB"). I am Plaintiffs' counsel of record in this litigation, along with Karr Tuttle Campbell. I am a member in good standing of the bars of Illinois, New York, New Jersey, Utah, and the District of Columbia. I respectfully submit this declaration in support of Plaintiffs' Motion for Preliminary Approval of Plaintiffs' settlement with Mulvadi Corporation. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration and could testify competently to them if called upon to do so.

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

2 3. As part of the present motion, Plaintiffs respectfully ask that this Court appoint
3 Jason L. Lichtman, Daniel E. Seltz, and Andrew R. Kaufman of my law firm and Nathan Paine
4 of Karr Tuttle Campbell as Settlement Class Counsel on behalf of the Class. Mr. Seltz, Mr.
5 Kaufman, and I have extensive experience investigating, prosecuting, and resolving complex
6 class actions, and are well-qualified to serve as Settlement Class Counsel here. My firm has
7 committed and will continue to commit substantial resources to this case. I attached LCHB's
8 firm resumé to my declaration submitted with a previous round of settlements in this litigation
9 (*see* Dkt. 394-8), and incorporate it here. My co-counsel, Nathan Paine, also previously
10 submitted his qualifications to the Court. *See* Dkt. 395.

11 **I. Settlement Negotiations and Settlement Agreements**

12 4. These settlements, like the ones previously presented to the Court (Dkt. 393, 411,
13 602, 702, and 864), are the result of intensive litigation and arms-length negotiations.

14 5. After this Court ruled on the defendants' motions to dismiss, discovery
15 commenced in the fall of 2019.

16 6. Mulvadi, its insurer, and Plaintiffs participated in a mediation with Mark
17 LeHocky of ADR Services, on May 10, 2023, continuing on June 21, 2023. At the close of that
18 second all-day mediation, Mr. LeHocky made a mediator's proposal, which all three parties
19 accepted. The parties then set to work on memorializing the settlement. The fully executed
20 Settlement Agreement is attached hereto as Exhibit 1.

21 **II. Investigation and Discovery**

22 7. The Settlement Agreement was negotiated by counsel with knowledge of the
23 issues and litigation risks as a result of their thorough investigation and discovery efforts. Mr.
24 Paine, Mr. Seltz, Mr. Kaufman, and I performed many tasks that were vital to the investigation,
25 prosecution, and partial resolution, of the claims of the proposed Class. Mr. Paine and I
26 described these tasks in prior Declarations submitted with the previous sets of settlements (Dkt.

1 394, 395, 412, 413, 603, 702, 703, and 865), and I set them out again here for completeness of
2 the record. Among these tasks, we:

3 a. Authored or edited the briefs and motions that have been presented in the
4 litigation to date, including oppositions to motions to dismiss, discovery motions, class
5 certification, summary judgment, and *Daubert* motions;

6 b. propounded dozens of requests for production, interrogatories, and
7 requests for admissions;

8 c. oversaw the production of tens of thousands of documents;

9 d. assisted with the preparation of the depositions of five named plaintiffs;

10 e. identified and worked with numerous consulting experts in preparation for
11 mediation and litigation, on issues such as damages, marketing, consumer behavior, and
12 accounting;

13 f. identified and worked with these experts in connection with Plaintiffs'
14 motion for class certification and additional experts who served merits reports; and

15 g. developed numerous settlement proposals and negotiated extensively with
16 Defendants, including Mulvadi.

17 **III. The Settlement Agreement**

18 8. The Mulvadi settlement includes both monetary and injunctive terms.

19 9. First, Mulvadi's insurer will pay \$7,775,000.

20 10. Second, Mulvadi and its owner in his personal capacity have agreed to stop doing
21 business with certain questionable suppliers, to obtain proof that any coffee they purchase is
22 genuine Kona, to print what is called the lot number on every bag of coffee that they sell (this
23 will more easily allow buyers and competitors to confirm the coffees' authenticity), and to pay
24 all fees and costs for any future action to enforce the settlement.

25 11. Third, Mulvadi and its owner in his personal capacity has agreed that "any coffee
26 product that it sells labeled as 'Kona' or 'Kona Blend' will accurately and unambiguously state

1 on the front label of the product the minimum percentage of authentic Kona coffee beans the
2 supplier of the product states are contained in the product in compliance with the labeling
3 standards set forth in the “Hawaii grown roasted or instant coffee; labeling requirements” law
4 (Hawaii Revised Statute § 486- 120.6) as it currently exists today, or as it may be modified in the
5 future, and regardless of whether any such product is sold in Hawaii or elsewhere.” Ex. 1 ¶ 12(a).

6 12. These injunctive terms compound the benefits of the agreements of the previously
7 settling defendants that increase and improve the information found on Kona-labeled products in
8 the marketplace.

9 13. These injunctive terms compound the benefits of the agreements of the previously
10 settling defendants that increase and improve the information found on Kona-labeled products in
11 the marketplace.

12 14. Based on my experience and knowledge about the facts and issues in this case, I
13 firmly believe that the Settlement Agreement represents an excellent result that is in the best
14 interests of the Settlement Class Members.

15 **IV. Settlement Administration and Notice**

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

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

25 a. **Direct mail and email.** Proposed Class Counsel initially developed a
26 class list of 697 class members and located mailing addresses for nearly all of those members. In

1 connection with prior settlements, JND refined that list and collected additional class member
2 names who identified themselves during the claims process that it oversaw in connection with
3 each of the settlements that the Court has approved. JND will directly mail and email both the
4 long-form notice (attached as Exhibit 2) and the publication notice (attached as Exhibit 3) to
5 each known class member's mailing addresses, using the refined list.

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

9 c. **Settlement website.** JND has established a website, at
10 www.KonaCoffeeSettlement, which has hosted documents related to all settlements in this
11 litigation, and will host document related to this settlement, including settlement agreement,
12 notices, and future filings, including Plaintiffs' motion for final approval and any application for
13 attorneys' fees and reimbursement of expenses.

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

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

19 **V. Proposed Settlement Class Representatives**

20 18. As part of this motion, as in the previous motions for preliminary approval of the
21 prior settlements (e.g., Dkt. 393), Plaintiffs ask the court to appoint them as Settlement Class
22 Representatives to represent the Settlement Class. Based on my experience in complex class
23 actions and my observations during the course of this litigation, it is my opinion that each of the
24 Plaintiffs willingly, constructively, and effectively contributed to the prosecution of this
25 litigation.

1 19. As I stated in my previous declarations, Plaintiffs have provided information and
2 documents relevant to the prosecution of this case, responded to discovery, and maintained
3 communication with proposed class counsel. They have assisted with the claims process
4 associated with prior settlements, answering numerous questions from class members. Plaintiffs
5 have also prepared for and sat for all-day depositions. Plaintiffs have stayed abreast of the
6 developments in the litigation and fully participated in the mediations that led to prior
7 settlements. Each Plaintiff was consulted on the terms of the Settlement Agreement before they
8 signed, approve its terms, and support its approval by the Court. Plaintiffs have expressed their
9 continued willingness to protect the Class with the implementation of the Settlement Agreement.

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

17 I declare under penalty of perjury that the forgoing is true and correct. Executed this 5th
18 day of July 6, 2023, in Salt Lake City, UT.

19 
20 _____
Jason L. Lichtman

EXHIBIT 1

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”) dated the latest date among the signatories 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 (“Class Members”), on the one hand, and Defendant Mulvadi Corporation and its CEO Steven Mulgrew on the other hand (“Mulvadi”) in *Corker, et al. v. Costco Wholesale Corporation, et al.*, 2:19-00290-RSL (W.D. Wash.) (“Case”).¹ This Agreement contains all material terms of the settlement in this action, and Mulvadi and Plaintiffs (“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 class representatives of a class of all persons and entities who farmed Kona coffee in the Kona District and then sold their coffee.

2. The W.D. of Washington Court (the “District Court”) granted Plaintiffs’ motion for class certification on February 13, 2023 (Dkt. 839) as to all defendants except Mulvadi due to the automatic stay in place due to Mulvadi’s Chapter 11 bankruptcy case in the United States Bankruptcy Court for the District of Hawaii (the “Bankruptcy Court”, together with the district Court, the “Courts”), which remains pending. Plaintiffs have filed motions for relief from the stay and for dismissal of Mulvadi’s bankruptcy case.

3. Plaintiffs alleged that Mulvadi falsely advertised coffee as originating from the Kona region in violation of the Lanham Act, 15 U.S.C. § 1125(a). Mulvadi has denied Plaintiffs’ claims and has asserted affirmative defenses to Plaintiffs’ claims.

4. Plaintiffs alleged that Mulvadi violated the Lanham Act, 15 U.S.C. § 1125(b), with respect to the coffee products it sold containing Kona coffee or labeled as containing Kona coffee. Mulvadi has denied Plaintiffs’ claims and asserted affirmative defenses to Plaintiffs’ claims.

5. Plaintiffs and Mulvadi, with the assistance of their respective counsel, engaged in arm’s-length negotiations to resolve the Case without the need for further litigation. This includes three mediations before Mark LeHocky of ADR Services with the final mediation occurring on June 21, 2023.

6. Plaintiffs have concluded that it would be in the best interests of the Class Members to enter into this Agreement to avoid the uncertainties of litigation and trial and to provide to the Class Members immediate benefits.

7. Similarly, Mulvadi 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

¹ All capitalized terms are as defined herein.

kind, it is in its best interests to enter into this Agreement to avoid the time, expense, and uncertainty of litigation.

8. Although Mulvadi 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 Courts or is terminated according to its terms, Mulvadi expressly reserves the right to defend against the claims, including without limitation deny all liability and raise any and all defenses.

9. In light of the investigations undertaken and conclusions reached by the Parties and discussed above, Plaintiffs and Mulvadi have agreed, subject to approval by the Courts, 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 Mulvadi, or any admission by Mulvadi of any claim or allegation made in any action or proceeding against Mulvadi, or as a waiver of any applicable defense, including, without limitation, any applicable statute of limitations. Mulvadi 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 Mulvadi, specifically including the equitable defense of laches.

Terms of the Settlement Agreement

11. **Class Definition.**

a. The Class is defined as: "All persons and entities who farmed Kona coffee in the Kona District and then sold their coffee from February 27, 2015 to the date of the Court's order granting preliminary approval to this settlement."

b. Excluded from the Class are any defendants to the action, as well as any judge assigned to the action, and the judge's immediate family and staff.

12. **Product Requirements and Procedures.**

a. Mulvadi agrees that any coffee product that it sells labeled as "Kona" or "Kona Blend," including any coffee sold in bulk, will accurately and unambiguously state on the front label of the product the minimum percentage of authentic Kona coffee beans the supplier of the product states are contained in the product in compliance with the labeling standards set forth in the "Hawaii-grown roasted or instant coffee; labeling requirements" law (Hawaii Revised Statute § 486-120.6) as it currently exists today, or as it may be modified in the future, and regardless of whether any such product is sold in Hawaii or elsewhere. The current requirements imposed by Hawaii Revised Statute § 486-120.6 pertaining to the "Kona" or "Kona Blend" portion of the label ("identity statement") provide:

Each word or character in the identity statement shall be of the same type size and shall be contiguous. The smallest letter or character of the identity statement on packages of sixteen ounces or less net weight shall be at least one and one-half times the type size required under federal law for the statement of net weight or three-sixteenths of an inch in height, whichever is smaller. The smallest letter or character of the identity statement on packages of greater than sixteen ounces net weight shall be at least one and one-half times the type size required under federal law for the statement of net weight. The identity statement shall be conspicuously displayed without any intervening material in a position above the statement of net weight. Upper and lower case letters may be used interchangeably in the identity statement.

Only Kona coffee beans satisfying the criteria of “Kona coffee,” as defined by Hawaii Administrative Rules § 4-143-3 in effect at the time such product is packaged for sale, shall be considered authentic Kona coffee beans. Notwithstanding the foregoing, Mulvadi shall only purchase and/or sell Kona coffee beans, including Kona coffee beans used to produce another product sold by Mulvadi (i.e. instant coffee) that have been officially certified by the Hawaii Department of Agriculture of a quality of Prime or better. Every Mulvadi product with Kona on the label must include on the label the lot number(s) for all certified Kona coffee beans contained in the product.

b. The labeling requirements in the foregoing section 12(a) shall not apply to any products sold by Mulvadi before the date that is thirty (30) days after Final Approval of this Agreement is entered by the Court.

c. Mulvadi shall only purchase and sell Kona coffee that has been officially certified by the Hawaii Department of Agriculture with a quality of Prime or better. Mulvadi shall require its suppliers to unequivocally state on the invoices for all Kona coffee purchased: (1) the certified quality of the Kona coffee (i.e. Prime, Extra Fancy, etc.); (2) the date the coffee was certified as authentic Kona coffee; and (3) the lot number for the certified Kona coffee. Mulvadi shall also require the supplier to provide with each invoice copies of the Hawaii Department of Agriculture certificates of origin for each lot number identified on the invoice. Mulvadi shall retain all such invoices with corresponding certificates of origin for a period of no less than four (4) years.

d. Mulvadi agrees not to purchase any coffee, whether directly or through an agent or intermediary, from Hawaii Coffee Connection LLC, Laurie Mattos, Dana Mattos, Pacifica Services Inc., Susan Decker, Trent Bateman, Tico Coffee, Sacred Grounds, Llanes Coffee Estates, Inc., Justin Llanes, General Coffee Process LLC, Optimistic Juice, Zealot Coffee LLC, Luxelife Coffee LLC, Javier Lobos, Francisco Lobos, Diego Campos, or any of the aforementioned person's or entity's respective agents, employees, officers, members, affiliates, or successors. Mulvadi shall discontinue the use of any seal, sticker, or image indicating the endorsement of the Independent Kona Coffee Growers on its packaging or marketing of its Kona coffee products.

e. Any notice or other communication required or permitted to be given under this Agreement to Mulvadi 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 Mulvadi' receipt.

MULVADI CORPORATION
Attn: Steven Mulgrew, CEO
96-1362 Waihona Street, Unit D-4
Pearl City, HI 96782
mulvadi@msn.com

With a copy to:
Chuck Choi
Choi & Ito
700 Bishop Street, Suite 1107
Honolulu, Hawaii 96813
cchoi@hibklaw.com

13. Settlement Notice. Plaintiffs shall be solely responsible for identifying the Class Members, providing notice pursuant to FRCP 23(e), and proposing the best practicable notice to Class Members. The Class will be an opt-out class under FRCP 23(b)(3) and will cover all persons and entities within the Class.

14. Settlement Payment. On Mulvadi's behalf, Mulvadi's insurer Allianz Global Corporate & Specialty and its affiliates ("Allianz") shall pay seven million seven hundred and seventy-five thousand dollars and 00/100 (\$7,775,000.00 USD) ("Settlement Amount") within 10 days after the final approval of the Settlement by the Courts. Such payment shall be made by wire transfer directly to an account maintained by the Settlement Administrator as instructed in writing by Plaintiffs. For clarity, Mulvadi itself shall not be liable for any additional payment beyond the Settlement Amount. The payments shall be made to the Settlement Administrator as defined below.

15. Cooperation in Settlement Approval. Parties will cooperate in good faith to secure court-approval of the Settlement Agreement. The parties understand that this Settlement Agreement is conditioned on the approvals of both Courts.

Settlement Procedures

16. 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 and payments to Class Members. Costs of notice to the Class and settlement administration will be paid from the Settlement Amount, and Mulvadi shall not be required to contribute financially beyond its obligations detailed in paragraph 14 of this Agreement.

17. Class Notice. Plaintiffs will provide a proposed class notice plan with their motion for preliminary approval of the Settlement. Mulvadi shall have no obligations, nor expectations, to provide any information to identify Class Members.

18. Distribution of Monies to the Class. The Settlement Administrator will distribute monies to the Class Members approximately pro rata, less any voluntary contributions for the benefit of the Kona region, based on the formula used in previous settlements approved by the Court in this Case. Any uncashed amounts shall be redistributed using the same formula.² Any remaining uncashed amounts after this second distribution shall be donated *cy pres* to the Legal Foundation of Washington.

19. Scope of Release: Plaintiffs and Class Members. As of final approval, and as part of the consideration for this Agreement, Plaintiffs and the Class Members hereby expressly agree that they fully and irrevocably release and discharge all Settled Claims, as defined below.

a. Plaintiffs and Class Members hereby release Mulvadi and its predecessors, successors, assigns, parents, subsidiaries, corporate affiliates, holding companies, investors, owners, divisions, 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 (including, without limitation, Mulvadi's insurer Allianz), 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 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 Mulvadi in the Case. This Release of Settled Claims also covers, without limitation, any and all claims for attorneys' fees, costs, or disbursements incurred by Class Counsel or any other counsel representing Plaintiffs or Class Members or by Plaintiffs or the Class Members regarding the Settled Claims.

b. Nothing in this Agreement shall be construed as an agreement from Class Members to waive, release, or dismiss any claims they have against Defendant Releasees that do not: (1) arise from their purchase or sale of coffee products labeled as originating from the Kona region of Hawaii; or (2) relate to Allianz's insurance coverage of Mulvadi for claims asserted in the Case.

20. 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,

² As used in this Agreement, Class Counsel refers to the attorneys of record in this matter Andrew Kaufman, Jason Lichtman, Nathan Paine, and Daniel Seltz, and their firms (Karr Tuttle Campbell and Lieff Cabraser Heiman and Bernstein LLP).

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, that might be attributable to Defendant Releasees. Nothing in this Agreement shall be construed as an agreement from Plaintiffs to waive, release, or dismiss any claims they have against the Mulvadi Defendants. This release does not extend to Class Members who are not Individual Plaintiffs.

21. 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. 381 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 coffee labeled as “Kona”, regardless of the statute, regulation, common law legal theory, or other legal basis on which the allegations may be asserted. “Settled Claims” shall also include any claims any Party has or could have asserted against Allianz for insurance coverage, breach of contract, common law or statutory bad faith, coverage by estoppel, or violations of any consumer protection laws, including specifically prohibiting an assignment of any rights under any or all policies issued by Allianz to Mulvadi. In connection with the release of the Settled Claims, Plaintiffs and 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. In addition to the foregoing, Plaintiffs and 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. Upon approval of the Agreement by both Courts, Plaintiffs shall withdraw the proof of claim as well as all motions and oppositions filed in Mulvadi’s bankruptcy case.

22. Scope of Release: Mulvadi. As of final approval, Mulvadi, 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, Class Counsel, and Class Members, expressly including (but not limited to) any claim under antitrust or other unfair competition laws. Mulvadi, 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 Class Members, provided in this paragraph covers, without limitation, any and all claims for attorneys’ fees, costs, or disbursements incurred by counsel for Mulvadi related to Mulvadi, its insurers, or any other counsel representing Mulvadi or its insurers in connection with or related in any manner to this Agreement, Mulvadi, 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 Class Members. Mulvadi, 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 Plaintiffs, Class Counsel, or the Class Members related in any

manner to this Case, whether or not concealed or hidden, without regard to any subsequent discovery or existence of different or additional facts.

23. Statement of Present Intent. Plaintiffs and Plaintiffs’ Counsel represent and warrant that (a) 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 (b) 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.

24. Facsimile/Email/Electronic and Counterparts. This Agreement may be executed by facsimile or 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.

25. Authority; Entire Agreement. Counsel signing below warrant they have full authority to bind their clients. This Agreement represents and embodies all the agreements and negotiations between the Parties hereto and no verbal or written representations or agreements prior to the date of execution of this Agreement shall be admissible to vary its provisions.

26. Construction. Plaintiffs and Mulvadi 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.

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

DATED: June ³⁰ __, 2023

DATED: June __, 2023

DocuSigned by:

2FA5606B76A8485...
Bruce Corker
d/b/a Rancho Aloha

Steven Mulgrew in both his individual capacity and as authorized representative for Mulvadi Corporation.

manner to this Case, whether or not concealed or hidden, without regard to any subsequent discovery or existence of different or additional facts.

23. Statement of Present Intent. Plaintiffs and Plaintiffs' Counsel represent and warrant that (a) 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 (b) 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.

24. Facsimile/Email/Electronic and Counterparts. This Agreement may be executed by facsimile or 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.

25. Authority; Entire Agreement. Counsel signing below warrant they have full authority to bind their clients. This Agreement represents and embodies all the agreements and negotiations between the Parties hereto and no verbal or written representations or agreements prior to the date of execution of this Agreement shall be admissible to vary its provisions.

26. Construction. Plaintiffs and Mulvadi 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.

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

DATED: June __, 2023

Bruce Corker
d/b/a Rancho Aloha

DATED: June 29, 2023

Steven Mulgrew in both his individual
capacity and as authorized representative for
Mulvadi Corporation.

DATED: June 28, 2023

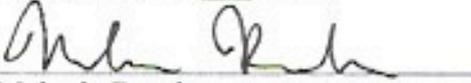


Colehour Bondera
d/b/a Kanalani Ohana Farm

DATED: June ___, 2023

By: _____
Its: _____
Allianz Global Corporate & Specialty and its
affiliates ("Allianz")

DATED: June 28, 2023



Melanie Bondera
d/b/a Kanalani Ohana Farm

DATED: June ___, 2023

Robert Smith, individually and on behalf of
Smithfarms LLC

DATED: June ___, 2023

Cecelia Smith, individually and on behalf of
Smithfarms LLC

DATED: June 28, 2023



By: Nathan T. Paine
Karr Tuttle Campbell
on behalf of the Class

DATED: June ___, 2023

By: Jason L. Lichtman
Lieff Cabraser Heimann & Bernstein, LLP
on behalf of the Class

DATED: June __, 2023

DATED: June __, 2023

Colehour Bondera
d/b/a Kanalani Ohana Farm

By: _____
Its: _____
Allianz Global Corporate & Specialty and its
affiliates (“Allianz”)

DATED: June __, 2023

Melanie Bondera
d/b/a Kanalani Ohana Farm

DATED: June 28, 2023

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

DATED: June 28, 2023

Cecelia S. Smith
Cecelia Smith, individually and on behalf of
Smithfarms LLC

DATED: June __, 2023

By: Nathan T. Paine
Karr Tuttle Campbell
on behalf of the Class

DATED: June __, 2023

By: Jason L. Lichtman
Lieff Cabraser Heimann & Bernstein, LLP
on behalf of the Class

DATED: June ____, 2023

DATED: June ____, 2023

Colehour Bondera
d/b/a Kanalani Ohana Farm

By: _____
Its: _____
Allianz Global Corporate & Specialty and its
affiliates (“Allianz”)

DATED: June ____, 2023

Melanie Bondera
d/b/a Kanalani Ohana Farm

DATED: June ____, 2023

Robert Smith, individually and on behalf of
Smithfarms LLC

DATED: June ____, 2023

Cecelia Smith, individually and on behalf of
Smithfarms LLC

DATED: June ____, 2023

By: Nathan T. Paine
Karr Tuttle Campbell
on behalf of the Class

DATED: June 29, 2023



By: Jason L. Lichtman
Lief Cabraser Heimann & Bernstein, LLP
on behalf of the Class

DATED: June ____, 2023

Colehour Bondera
d/b/a Kanalani Ohana Farm

DATED: June ____, 2023

Melanie Bondera
d/b/a Kanalani Ohana Farm

DATED: June ____, 2023

Robert Smith, individually and on behalf of
Smithfarms LLC

DATED: June ____, 2023

Cecelia Smith, individually and on behalf of
Smithfarms LLC

DATED: June ____, 2023

By: Nathan T. Paine
Karr Tuttle Campbell
on behalf of the Class

DATED: June ____, 2023

By: Jason L. Lichtman
Lieff Cabraser Heimann & Bernstein, LLP
on behalf of the Class

DATED: ~~June ____, 2023~~ July 5, 2023

Carolyn Jester

By: Carolyn Jester
Its: Claims Team Manager

Allianz Global Corporate & Specialty and its
affiliates (“Allianz”)

EXHIBIT 2

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON

If you farmed Kona coffee in the Kona District and then sold that coffee, you may be able to get benefits in a class action settlement

A federal court authorized this notice. This is NOT a solicitation from a lawyer.

- An additional Proposed Settlement has been reached in a class action lawsuit. The new settlement is with Mulvadi Corporation (“Mulvadi”). The lawsuit is about the alleged mislabeling of coffee as originating from the Kona region. Mulvadi denies the Plaintiffs’ allegations but has agreed to settle the class action to avoid the time and expense of continuing the lawsuit. **This settlement is in addition to the ones of which you previously received notice.** Information on the prior Proposed Settlements can be found on the website, www.KonaCoffeeSettlement.com.
- You are a member of the Settlement Class for the Proposed Settlement if you farmed Kona coffee in the Kona District and then sold that coffee between February 27, 2015, and [date]. The full class definition is described under Question 3, below.
- If approved by the Court, a gross settlement amount of \$7,775,000 will be distributed among the Settlement Class Members on a pro-rata basis, (as calculated by Settlement Class Members’ reported sales volumes), less Court-awarded attorneys’ fees and expenses and service awards to the Class Representatives, less any voluntary contributions for the benefit of the Kona region. Mulvadi will also modify its practices relating to its purchase, sales, and labeling of coffee products labeled as “Kona,” or “Kona Blend.” The settlement payment is in addition to the settlement amounts from prior settlements with certain other defendants in this case. Notice of those prior settlements was previously sent to you.

A SUMMARY OF YOUR RIGHTS AND CHOICES	
SUBMIT A CLAIM FORM	<ul style="list-style-type: none"> • Submit a valid claim to receive money from the Proposed Settlement as outlined in Question 5. • Be bound by the Proposed Settlement. • Give up your right to sue or continue to sue Mulvadi for the claims in this case. <p>Due Date: <u>TBD</u></p>
EXCLUDE YOURSELF FROM THE PROPOSED SETTLEMENT (“OPT OUT”)	<ul style="list-style-type: none"> • Remove yourself from the Settlement Class as outlined in Questions 7 and 8. • Receive no payment. • Keep your right to sue or continue to sue Mulvadi for the claims in this case. <p>Due Date: <u>Postmarked on or before [date]</u></p>
OBJECT OR COMMENT ON THE PROPOSED SETTLEMENT	<ul style="list-style-type: none"> • Write the Court about why you do not like the Proposed Settlement as outlined in Question 13. <p>Due Date: <u>Postmarked on or before [date]</u></p>
SPEAK AT THE FINAL HEARING	<ul style="list-style-type: none"> • If you submit a Notice of Appearance, you may speak to the Court about the Proposed Settlement at the Final Hearing set for [date]. <p>Due Date: <u>Postmarked on or before [date]</u></p>
DO NOTHING	<ul style="list-style-type: none"> • Receive no payment. • Be bound by the Proposed Settlement. • Give up your right to sue or continue to sue Mulvadi for the claims in this case.

WHAT THIS NOTICE CONTAINS

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1. Why did I receive this Notice?

Records show that you farmed Kona coffee in the Kona District and sold Kona coffee between February 27, 2015, and [date]. For more details, please refer to Question 3 below.

The Court sent you this Notice to inform you of another Proposed Settlement in the class action lawsuit *Corker, et al. v. Costco Wholesale Corp., et al.*, No. 1:19-cv-00290, United States District Court for the Western District of Washington. This Notice outlines the terms of the Proposed Settlement, who is a Settlement Class Member, your right to remain a member of the Settlement Class in the Proposed Settlement, how Settlement funds will be paid, how to comment on or object to the Proposed Settlement, and how to exclude yourself from the Settlement Class.

Judge Lasnik of the United States District Court for the Western District of Washington is overseeing this class action.

Those who brought the lawsuit are the “Plaintiffs,” and the parties being sued are the “Defendants.” As noted above, there were other Defendants in this lawsuit have previously reached settlements with the Plaintiffs. Those Defendants not included in this Proposed Settlement.

2. What is this lawsuit about?

Plaintiffs allege that Mulvadi advertised, falsely designated, and/or sold coffee as originating from the Kona region in violation of the federal Lanham Act. Plaintiffs seek monetary damages and other relief allowed under the Lanham Act.

Although Mulvadi denies Plaintiffs’ claims for liability and damages, it has agreed to settle the class action to avoid the time and expense of continuing the lawsuit.

A more complete description of the lawsuit is available at www.KonaCoffeeSettlement.com, or in the file for the lawsuit maintained by the United States District Court for the Western District of Washington. See Question 17, below. Additionally, should you have questions regarding the lawsuit, you can submit them in writing to Class Counsel at the addresses provided under Question 13 of this Notice.

The Court has not ruled in favor of Plaintiffs or Mulvadi. Instead, both sides agreed to the Proposed Settlement before the case proceeded to a trial. Plaintiffs and their counsel believe that the Proposed Settlement is best for all members of the proposed Settlement Class.

3. How do I know if I am part of the Settlement Class?

The Settlement Class includes all persons and entities who, between February 27, 2015, and [date], farmed Kona coffee in the Kona District and then sold their Kona coffee.

Excluded from the Settlement Class are Mulvadi, any Judges to whom the case is assigned, and their immediate families and staffs.

If you are a Settlement Class Member and the Judge approves the Proposed Settlement, you will be bound by all orders and judgments of the Court and by the Court’s final resolution of the Settlement Class claims in the lawsuit. See Question 13 for your right to comment on or object to the Proposed Settlement.

4. I am still not sure if I am included.

If you are still not sure if you are part of the Settlement Class, please visit www.KonaCoffeeSettlement.com, email info@KonaCoffeeSettlement.com or call (toll-free) 1-833-667-1227. You may also contact Class Counsel (See Question 9).

Please do not contact the Court.

5. What does the Proposed Settlement provide?

The Proposed Settlement provides money for Settlement Class Members and requires Mulvadi and its owner to modify their practices concerning the purchase, sale, and labeling of coffee products labeled as containing beans originating from the Kona region.

Under the Proposed Settlement, Mulvadi will make a total payment of \$7,775,000. The Settlement Amount will be distributed to Settlement Class Members on a pro-rata basis (as calculated by Settlement Class Members' reported sales volumes), less Court-awarded attorneys' fees and expenses and service awards to the Class Representatives, and less any voluntary contributions for the benefit of the Kona region.

You do not need to do anything at this time. If you previously submitted a claim for payment in connection with the prior settlements, you will not need to re-submit your information. **However, if you did not make a prior claim, you will need to submit a claim form to receive a payment in the Proposed Settlement at a later time.** You will be notified when the deadline to submit your claim form for payment is determined. You may also check the Settlement Website, www.KonaCoffeeSettlement.com, for updates.

In exchange for the benefits received by the Class, Mulvadi will be released from claims the Settlement Class Members may have against it relating to the claims asserted in the lawsuit, including claims relating to its labeling of coffee products that use the word "Kona."

6. What do I need to do to remain a Settlement Class Member?

If you want to remain a Settlement Class Member, you do not need to take any action. However, if you want to receive your payment from the Proposed Settlement **and did not submit a claim in connection with the prior settlements**, you will need to submit a claim form at a later time to be determined (See Question 5 above). Class Counsel will represent your interests as a member of the Settlement Class. You have the right to retain your own counsel, but do not have to do so.

7. Can I get out of the Settlement Class?

If you don't want to be in the Settlement Class and you want to keep the right to sue Mulvadi about the same claims on your own, you must take steps to get out of the Settlement Class. This is called excluding yourself from or "opting out of" the Settlement Class. By excluding yourself, you keep the right to file your own lawsuit. If you exclude yourself from the Settlement Class, you will not receive any benefits from the Proposed Settlement.

8. How do I get out of the Proposed Settlement?

To exclude yourself from ("opt out of") the Settlement Class, you must send a letter personally signed by you that includes all of the following:

Questions? Call 1-833-667-1227 or visit www.KonaCoffeeSettlement.com

- a) Your name, address, and telephone number;
- b) The following Civil Action Number: 2:19-cv-000290; and
- c) A statement that you want to be excluded from the Settlement Class.

Your request for exclusion letter must be mailed first class, postage pre-paid, **postmarked on or before [date]**, to:

Kona Coffee Farmers Settlement Administrator
c/o JND Legal Administration
P.O. Box 91232
Seattle, WA 98111

You cannot exclude yourself from only part of a Settlement or Settlement Class. If you previously excluded yourself from the prior set of settlements and wish to exclude yourself from this settlement, you need to send a new, signed exclusion request. Also, please remember that you can't exclude yourself by phone or by sending an email.

9. Do I have lawyers representing my interests in the case?

The Court has appointed the following law firms to represent the Settlement Class:

Nathan T. Paine Karr Tuttle Campbell 701 5th Ave, Suite 3300 Seattle, WA 98104	Jason L. Lichtman Daniel E. Seltz Lieff, Cabraser, Heimann & Bernstein, LLP 250 Hudson St., 8 th Floor New York, NY 10013	Andrew R. Kaufman Lieff, Cabraser, Heimann & Bernstein LLP 222 2 nd Ave South, Suite 1640 Nashville, TN 37201
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These lawyers are called "Class Counsel." You do not have to directly pay Class Counsel. If you want your own lawyer, and to have that lawyer appear in court, you may hire one at your own expense.

10. How will the lawyers be paid?

Class Counsel will request that the Court award Class Counsel reimbursement of litigation expenses, as well as fees calculated not to exceed 25 percent of the total economic value of all settlements reached to date. Class Counsel will also request service awards of \$2,500 to each of the farms serving as class representatives. The Court, at its own discretion, may award less than these requested amounts without further notice to the Settlement Class Members. Any attorneys' fees, expenses, and service awards awarded by the Court will be paid from the Settlement Funds. Again, if you choose to hire your own attorney, you will be responsible for that attorney's fees and expenses.

11. Should I get my own lawyer?

You don't need to hire your own lawyer, but you may elect to do so. If you want your own lawyer to speak for you or to appear in Court, you or your lawyer must file a Notice of Appearance. Question 16 explains how to submit a Notice of Appearance. If you hire a lawyer to appear for you in the lawsuit, you will have to pay that lawyer on your own.

You should also consult your own tax advisor regarding the tax consequences to you of the proposed settlement, including, without limitation, any tax reporting obligations you may have with respect to the proposed settlement.

12. Who are the Class Representatives and how will they be compensated?

If the Proposed Settlement is approved, the Court will appoint Plaintiffs Bruce Corker d/b/a Rancho Aloha, Colehour Bondera and Melanie Bondera d/b/a Kanalani Ohana Farm, Robert Smith and Cecelia Smith d/b/a Smithfarms, and Smithfarms LLC as Class Representatives. The Class Representatives work with Class Counsel on behalf of all Settlement Class Members to present the views of Settlement Class Members to Class Counsel and the Court. The Class Representatives may each be entitled to a Service Award, not to exceed \$2,500 per farm, if approved by the Court.

13. Can I object or comment on the Proposed Settlement?

If you have comments about, or disagree with, any aspect of the Proposed Settlement, including the requested attorneys' fees, you may express your views to the Court through a written response to the Proposed Settlement. Only Settlement Class Members who have not opted out can object or comment. The written comment or objection should include your name, address, and telephone number. In addition, any objection must include (a) a written statement of your objection, (b) a written statement of the grounds or reasons for your objection, (c) copies of any papers, briefs, or other documents supporting your objection, and (d) a statement that that it relates to Civil Action Number: 2:19-cv-000290. The document must be signed to ensure the Court's review. In order to be considered by the Court, your comment or objection must be postmarked on or before [date], and mailed to:

Clerk of the Court
United States District Court, Western District of Washington
700 Stewart Street, Suite 2310
Seattle, WA 98101

Your comment or objection must also be mailed to the following attorneys:

Class Counsel
Jason L. Lichtman
Daniel E. Seltz
Lieff, Cabraser, Heimann & Bernstein, LLP
250 Hudson St., 8th Floor
New York, NY 10013

14. Will there be a Hearing on the Proposed Settlement?

The Court will hold a Final Approval Hearing to consider whether the Proposed Settlement are fair, reasonable, and adequate. The Hearing will be on [date], at [time] (Pacific Time). Information about accessing the proceedings will be posted on the Settlement Website as soon as it is available. At the Hearing, the Court will decide whether to approve the Proposed Settlement and the motion for attorneys' fees and expenses. If comments or objections have been received, the Court will consider them at this time.

Note: The Hearing may be postponed to a different date without additional notice. Settlement Class Members should check the Settlement Website, www.KonaCoffeeSettlement.com to confirm that the date has not been changed.

15. Must I attend the Hearing?

Attendance is not required, even if you properly mailed a written objection or comment. Class Counsel is prepared to answer the Court's questions, including concerning objections or comments. If you or your lawyer still want to attend the Hearing, you are welcome to come at your own expense. However, it is not necessary that you attend. If you filed an objection to or comment about the Proposed Settlement as long as the objection or comment was postmarked before the deadline, the Court will consider it, regardless of whether you or your privately retained attorney appear at the Hearing.

16. May I speak at the Hearing?

If you want to speak or have your own lawyer speak at the Final Approval Hearing, you must give the Court a paper that is called a "Notice of Appearance." The Notice of Appearance must refer to *Corker, et al. v. Costco Wholesale Corp., et al.*, No. 2:19-cv-00290, United States District Court for the Western District of Washington, and state that you or your lawyer wish to enter an appearance at the Final Approval Hearing. It must also include your name, address, telephone number, and signature. Your "Notice of Appearance" must be postmarked no later than [date]. You cannot speak at the Hearing if you asked to be excluded (i.e., "opt out") from the Proposed Settlement Class.

The Notice of Appearance must be filed with the Court at the address provided under Section 13 above and also mailed to the attorneys listed in Section 13 above.

17. How do I get more information about the Proposed Settlement?

This notice summarizes the Proposed Settlement and your rights and options as a Settlement Class Member. To find out more information, visit www.KonaCoffeeSettlement.com, call 1-833-667-1227, or write to:

Kona Coffee Farmers Settlement Administrator
c/o JND Legal Administration
P.O. Box 91232
Seattle, WA 98111

If you have a question about whether or not you are in the Settlement Class, or about your rights and options as a Settlement Class Member, you may contact Class Counsel (see Question 9).

All court records, including the Settlement Agreement and other documents for the Lawsuit, may be examined in person and copied at the United States District Court, Western District of Washington, United States Courthouse, 700 Stewart Street, Suite 2310, Seattle, WA 98101.

**PLEASE DO NOT TELEPHONE THE COURT, THE CLERK OF THE COURT,
OR COUNSEL FOR MULVADI.**

EXHIBIT 3

LEGAL NOTICE

If you farmed Kona coffee in the Kona District and then sold that coffee, you may be able to get benefits in a settlement.

An additional Proposed Settlement has been reached in the class action lawsuit *Corker, et al. v. Costco Wholesale Corp., et al.*, No. 1:19-cv-00290, United States District Court for the Western District of Washington. The new Proposed Settlement is with Mulvadi Corporation (“Mulvadi”). Information on the prior Settlements and this new Proposed Settlement can be found on the website, www.KonaCoffeeSettlement.com.

What is the lawsuit about?

The lawsuit is about the alleged mislabeling of coffee as originating from the Kona region. Mulvadi denies the Plaintiffs’ allegations, but has agreed to settle the class action to avoid the time and expense of continuing the lawsuit. There were other defendants involved in the lawsuit, but they are not involved in the new Proposed Settlement.

Who is affected?

The Settlement Class includes all persons and entities who, between February 27, 2015, and [date of Order], farmed Kona coffee in the Kona District and then sold their Kona coffee. For more details about who is affected, visit www.KonaCoffeeSettlement.com.

What does the new Proposed Settlement provide?

The new Proposed Settlement provides money for Settlement Class Members and requires Mulvadi and its owner to modify and enhance its labeling of products that it sells that use the name “Kona” or “Kona Blend” and cease buying from certain suppliers. Mulvadi’s insurer will pay a gross settlement amount of \$7.775 million. The settlement amount will be distributed among Settlement Class Members on a pro-rata basis, (as calculated by Settlement Class Members’ reported sales volumes), less Court-awarded attorneys’ fees (calculated so that fees do not exceed 25 percent of the total economic value of all settlements reached to date) and any awarded Litigation Expenses, and additional monetary awards, not to exceed \$2,500 per Class Representative farm, for the Plaintiffs who initiated this case. Settlement Class Members who previously submitted a claim in prior settlements will not need to re-submit a claim to receive payment. Those who did not previously submit a claim but wish to for this settlement will need to submit a claim at a later time, and will be notified when the deadline to submit a claim for payment is determined. You may also check the Settlement Website, www.KonaCoffeeSettlement.com, for updates.

What are your other options?

If you do not want to be legally bound by the new Proposed Settlement, you may “opt out” by sending a request for exclusion. You will receive no payment, but you will keep your right to sue Mulvadi for the claims in this case. If you do not exclude yourself, you may object to the new Proposed Settlement. You will still be bound by the new Proposed Settlement if your objection is rejected. For details on how to opt out or object, go to www.KonaCoffeeSettlement.com. Opt-outs and objections to the new Proposed Settlement must be postmarked by [date].

When will the Court determine whether to approve the new Proposed Settlements?

The Court will hold a Final Approval Hearing on [date], at [time] (Pacific Time) to consider whether the new Proposed Settlement is fair, reasonable, and adequate. Information about accessing the proceedings will be posted on the Settlement Website as soon as it is available. The Court will also decide whether to approve attorneys’ fees and reimbursement of litigation expenses, and service awards, which will be deducted from the gross settlement amount. You may ask to appear at the Final Approval Hearing, but you don’t have to.

Questions?

Visit www.KonaCoffeeSettlement.com, call 1-833-667-1227, or write Kona Coffee Farmers Settlement Administrator, c/o JND Legal Administration, P.O. Box 91232, Seattle, WA 98111.

EXHIBIT 4

CHOI & ITO
Attorneys at Law

CHUCK C. CHOI
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aito@hibklaw.com

Attorneys for Debtor
and Debtor-in-Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII

In re:

MULVADI CORPORATION,

Debtor and Debtor-in-
Possession.

86825

Bk. No. 22-00855
(Chapter 11)

Hearing:

Date: [To be set]

Time: [To be set]

Judge: Hon. Robert J. Faris

MOTION FOR ORDER APPROVING SETTLEMENT AGREEMENTS;
EXHIBITS A - B

MULVADI CORPORATION, the debtor and debtor-in-possession herein (the “Debtor”), hereby moves this Court, for an order approving a (i) settlement among the Debtor (and its owner Steven Mulgrew), the Debtor’s carrier Allianz Global Corporate & Specialty (“Allianz“), and 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, on behalf of all others similarly situated (collectively, the “Plaintiffs”), pursuant to a Settlement Agreement (the “Settlement Agreement”) in the form attached hereto as Exhibit A¹ and incorporated herein by reference; and (ii) Comprehensive Settlement and Release Agreement (the “Allianz Release”) between the Debtor (and Mulgrew) and Allianz in the form attached hereto as Exhibit B.

In support of this Motion, the Debtor respectfully represents as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter, pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding, pursuant to 28 U.S.C. § 157(b)(2).
2. Venue is proper before the Court, pursuant to 28 U.S.C. §§ 1408 and 1409.

II. BACKGROUND

3. On November 30, 2023 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Subchapter V of Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Hawaii (the “Bankruptcy Court”).
4. The Debtor is wholesaler of various products, including 100% Kona

¹ Capitalized terms not herein defined shall have the meaning set forth in the Settlement Agreement.

coffee. The Mulvadi coffee brand is well known and popular with locals and mainland consumers. The Debtor employs approximately nine (9) full time and three (3) part time employees.

5. In the spring of 2019, the Debtor was sued in a “class action” lawsuit filed by the Plaintiffs in the United States District Court for the Western District of Washington (the “District Court”), alleging violations of the Lanham Act (the “Mainland Lawsuit”) which the Debtor strenuously disputes.

6. As of the Petition Date, all defendants except Mulvadi and MNS Ltd. dba ABC Stores had settled with the Plaintiffs. MNS Ltd. recently reached a settlement with the Plaintiffs.

7. On December 19, 2022, Plaintiffs filed proof of claim no. 1 (“POC”), asserting a general unsecured claim in the amount of \$26,339,257.50 for alleged damages. POC 1 is based upon the causes of action asserted in a Third Amended Complaint (the “Complaint”) that is pending in the Mainland Lawsuit.

8. On January 20, 2023, Plaintiffs filed a motion for relief from the automatic stay (the “Stay Motion”) and a motion to dismiss the chapter 11 proceeding or appoint a chapter 11 trustee (the “Motion to Dismiss”). *See* dkt. # 58 and 62.

9. The Debtor filed oppositions to the Stay Motion and the Motion to Dismiss, and Plaintiffs filed replies in support of the Stay Motion and the Motion

to Dismiss. *See* dkt. # 77, 78, 82, 84.

10. On February 28, 2023, the Debtor filed its Small Business Debtor's Plan of Reorganization. *See* dkt. #90.

11. On March 10, 2023, the Debtor filed its Objection to POC 1 (the "Claim Objection"). *See* dkt. #91.

12. At a hearing held on April 3, 2023, the Court continued the hearing on the Stay Motion, the Motion to Dismiss and the Claim Objection to May 22, 2023 so that the Debtor and Plaintiffs could participate in a mediation.

13. On May 5, 2023, Plaintiffs filed their response to the Claim Objection. *See* dkt. #104.

14. On May 10, 2023, the parties participated in a 3.5-hour mediation session. The Debtor's insurance carrier, Allianz also participated in the mediation.

15. At the conclusion of the May 10, 2023 mediation session, the mediator scheduled a further mediation session for May 30, 2023.

16. On May 30, 2023, a six-hour mediation session was conducted by Mark LeHocky. The Debtor, Plaintiffs and Allianz participated in the mediation.

17. At the conclusion of the May 30, 2023 mediation session, the mediator scheduled a further mediation session for June 21, 2023.

18. On June 21, 2023, parties were able to reach a settlement.

III. MATERIAL TERMS OF THE SETTLEMENTS

- a. The material terms of the Settlement Agreement and the Allianz Release are summarized as follows:

13. Settlement Payment. On the Debtor's behalf, Allianz will pay \$7,775,00.00 to an account maintained by the Settlement Administrator as instructed by the Plaintiffs.

14. Product Requirements and Procedures. The Debtor will comply with certain labelling requirements (as more fully set forth in Sections 12.a and 12.b the Settlement Agreement) and implement certain purchasing procedures as more fully set forth in Section 12.c of the Settlement Agreement. The Debtor will not purchase coffee (directly or through an agent or intermediary) from the entities and individuals identified in Section 12.d of the Settlement Agreement.

15. Releases and Waivers by the Debtor. The Debtor will release and waive any and all claims it may have, or may have had against Plaintiffs, Class Counsel and Class Members, including without limitation any claims which are the subject of Mainland Lawsuit and Objection to POC 1, and any other claims asserted, or that could have been asserted, in the Mainland Lawsuit and Objection to POC 1 against Plaintiffs. Under the Allianz Release, the Debtor will release and waive any and all claims it may have, or may have had against Allianz "with respect to, pertaining to, or arising from the Class Action, the Denial, the Coverage

Challenge, the Underlying Settlement, and Allianz' response to all of the same, including any bad faith, unfair claims practices, unfair trade practices and/or conduct of any kind that is purportedly in violation of any law, statute, regulation, rule, or insurance code provision.”

16. Releases and Waivers by Plaintiffs. Plaintiffs will release and waive any and all claims the Plaintiffs may have or may have had against the Debtor, including, without limitation, any claims asserted, or that could have been asserted, in the Mainland Lawsuit and Objection to POC 1 against Plaintiffs.

17. Withdrawal of Pleadings and POC 1 in Debtor's Bankruptcy Proceeding. Upon the approval of the Bankruptcy Court and the District Court, the Plaintiffs will withdraw POC 1, and all motions and oppositions filed in the Debtor's Bankruptcy Case.

IV. RELIEF REQUESTED AND BASIS

A. THE SETTLEMENT AGREEMENT IS FAIR AND EQUITABLE

18. The Debtor requests the Court's approval of the Settlement Agreement and Allianz Release pursuant to Fed. R. Bankr. Pro. Rule 9019.

19. Federal Rule of Bankruptcy Procedure 9019(a) authorizes this Court to approve a compromise or settlement. This section provides that “on motion by the trustee and after hearing on notice to creditors ... the court may approve a compromise or settlement.” Fed.R.Bankr.P. 9019(a).

20. Under the standards established by the Ninth Circuit, the Court should approve a compromise or settle if it is “fair and equitable.” *Woodson v. Fireman’s Fund Ins. Co. (In re Woodson)*, 839 F.2d 610, 620 (9thCir. 1988); *In re A&C Properties*, 784 F.2d 1377, cert. denied, sub nom., *Martin v. Robinson*, 479 U.S. 854 (1986). In evaluating the fairness of a compromise or settlement, “a trial or ‘mini-trial’ on the merits is not required.” *Official Committee of Unsecured Creditors v. James Talcott, Inc. (In re International Distrib. Centers, Inc.)*, 103 B.R. 420 423 (S.D.N.Y. 1989). Rather, the Court must simply consider the various factors that determine the reasonableness of the compromise. *In re A&C*, 784 F.2d at 1381. This Court should approve the settlement as long as it is above the “lowest point of reasonableness.” See *In re International Distrib. Centers, Inc.*, at 423 (citations omitted).

21. Specific factors to be considered in determining whether a compromise or settlement is fair and equitable include: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and (4) the proper deference to the reasonable views of parties having a paramount interest. *In re Woodson*, 838 F.2d at 620 (citation omitted).

22. The proposed Settlement Agreement and the Allianz Release are fair and equitable and satisfies the foregoing standards.

23. With respect to the first and third factors, each party believes they have factual and legal arguments in support of their claims or defenses and the outcome of any trial on the merits is uncertain.

- a. The Mainland Lawsuit (upon which POC 1 is based) alleges Lanham Act violations by the Debtor with respect to advertisement of the Debtor's coffee (Lanham Act, 15 USC 1125(a)), and the labelling of the Debtor's coffee (Lanham Act, 15 USC 1125(b)). These issues are fact-intensive, and involve complex legal issues. The parties expect that litigation would require considerable resources and time, and appreciate the uncertain nature of litigation.
- b. A trial would be inconvenient and expensive for all parties involved. Prepetition, the Debtor incurred at least \$800,000 in legal fees. Continued litigation would have been expensive, and all parties would continue to incur substantial legal fees. Settlement reduces litigation expenses to the Debtor's estate and provides a greater return to unsecured creditors. Similarly, a claim against Allianz would likely cost the estate (at a minimum) significant expenses and will be time-consuming.

24. With respect to the second factor (difficulties in collection), Plaintiffs asserted pre-petition damages of approximately \$26,339,257.50. Even if Plaintiffs prevailed on their claims, they cannot hope to ever collect the entire amount from the Debtor. The amount being paid is substantially less than the total amount being asserted by Plaintiffs. Allianz (the Debtor's insurance carrier) is funding the settlement payment to Plaintiffs. The funds paid by Allianz are not property of the Debtor's bankruptcy estate. It is well-settled that:

The overriding question when determining whether insurance proceeds are property of the estate is whether the debtor would have a right to receive and keep those proceeds when the insurer paid on a claim. When a payment by the insurer cannot inure to the debtor's pecuniary benefit, then that payment should neither enhance nor decrease the bankruptcy estate. In other words, when the debtor has no legally cognizable claim to the insurance proceeds, those proceeds are not property of the estate.

- a. *See In re Edgworth*, 993 F.2d 51, 55-56 (5th Cir. 1993) (footnotes omitted). “[U]nder the typical liability policy, the debtor will not have a cognizable interest in the proceeds of the policy. Those proceeds will normally be payable only for the benefit of those harmed by the debtor under the terms of the insurance contract.” *In re Edgworth*, 993 F.2d at 56.

25. Most importantly, the Debtor is not liable for any additional payment beyond the Settlement Amount being paid by Allianz.

26. For all of these reasons, the parties have determined that it is preferable to settle the matter. The views of the Debtor are reasonable and should be afforded deference by the Court in evaluating the fourth prong.

27. In evaluating the fairness of a compromise or settlement, “a trial or ‘mini-trial’ on the merits is not required.” *Official Committee of Unsecured Creditors v. James Talcott, Inc. (In re International Distrib. Centers, Inc.)*, 103 B.R. 420, 423 (S.D.N.Y. 1989). Rather, the Court must simply consider the various factors that determine the reasonableness of the compromise. *In re A&C*, 784 F.2d at 1381. This Court should approve the settlement as long as it is above the “lowest point of reasonableness.” *See In re International Distrib. Centers, Inc.*, at 423 (citations omitted). The Debtor submits that the Settlement Agreement which settles the Plaintiffs’ claim in the amount of \$7,750,000.00 is well within the lowest point of reasonableness.

28. The Settlement Agreement and the Allianz Release were made in good faith under the totality of circumstances.

V. CONCLUSION

WHEREFORE, the Debtor respectfully requests that the Court:

1. Approve the agreements on the terms set forth in the exhibits hereto;
- and
2. Grant such other and further relief as may be appropriate.

DATED: Honolulu, Hawaii, June 29, 2023

Respectfully submitted,

/s/ Chuck C. Choi

Chuck C. Choi

Allison A. Ito

Attorneys for Debtor and

Debtor-in-Possession

EXHIBIT A

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”) dated the latest date among the signatories 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 (“Class Members”), on the one hand, and Defendant Mulvadi Corporation and its CEO Steven Mulgrew on the other hand (“Mulvadi”) in *Corker, et al. v. Costco Wholesale Corporation, et al.*, 2:19-00290-RSL (W.D. Wash.) (“Case”).¹ This Agreement contains all material terms of the settlement in this action, and Mulvadi and Plaintiffs (“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 class representatives of a class of all persons and entities who farmed Kona coffee in the Kona District and then sold their coffee.

2. The W.D. of Washington Court (the “District Court”) granted Plaintiffs’ motion for class certification on February 13, 2023 (Dkt. 839) as to all defendants except Mulvadi due to the automatic stay in place due to Mulvadi’s Chapter 11 bankruptcy case in the United States Bankruptcy Court for the District of Hawaii (the “Bankruptcy Court”, together with the district Court, the “Courts”), which remains pending. Plaintiffs have filed motions for relief from the stay and for dismissal of Mulvadi’s bankruptcy case.

3. Plaintiffs alleged that Mulvadi falsely advertised coffee as originating from the Kona region in violation of the Lanham Act, 15 U.S.C. § 1125(a). Mulvadi has denied Plaintiffs’ claims and has asserted affirmative defenses to Plaintiffs’ claims.

4. Plaintiffs alleged that Mulvadi violated the Lanham Act, 15 U.S.C. § 1125(b), with respect to the coffee products it sold containing Kona coffee or labeled as containing Kona coffee. Mulvadi has denied Plaintiffs’ claims and asserted affirmative defenses to Plaintiffs’ claims.

5. Plaintiffs and Mulvadi, with the assistance of their respective counsel, engaged in arm’s-length negotiations to resolve the Case without the need for further litigation. This includes three mediations before Mark LeHocky of ADR Services with the final mediation occurring on June 21, 2023.

6. Plaintiffs have concluded that it would be in the best interests of the Class Members to enter into this Agreement to avoid the uncertainties of litigation and trial and to provide to the Class Members immediate benefits.

7. Similarly, Mulvadi 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

¹ All capitalized terms are as defined herein.

kind, it is in its best interests to enter into this Agreement to avoid the time, expense, and uncertainty of litigation.

8. Although Mulvadi 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 Courts or is terminated according to its terms, Mulvadi expressly reserves the right to defend against the claims, including without limitation deny all liability and raise any and all defenses.

9. In light of the investigations undertaken and conclusions reached by the Parties and discussed above, Plaintiffs and Mulvadi have agreed, subject to approval by the Courts, 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 Mulvadi, or any admission by Mulvadi of any claim or allegation made in any action or proceeding against Mulvadi, or as a waiver of any applicable defense, including, without limitation, any applicable statute of limitations. Mulvadi 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 Mulvadi, specifically including the equitable defense of laches.

Terms of the Settlement Agreement

11. **Class Definition.**

a. The Class is defined as: "All persons and entities who farmed Kona coffee in the Kona District and then sold their coffee from February 27, 2015 to the date of the Court's order granting preliminary approval to this settlement."

b. Excluded from the Class are any defendants to the action, as well as any judge assigned to the action, and the judge's immediate family and staff.

12. **Product Requirements and Procedures.**

a. Mulvadi agrees that any coffee product that it sells labeled as "Kona" or "Kona Blend," including any coffee sold in bulk, will accurately and unambiguously state on the front label of the product the minimum percentage of authentic Kona coffee beans the supplier of the product states are contained in the product in compliance with the labeling standards set forth in the "Hawaii-grown roasted or instant coffee; labeling requirements" law (Hawaii Revised Statute § 486-120.6) as it currently exists today, or as it may be modified in the future, and regardless of whether any such product is sold in Hawaii or elsewhere. The current requirements imposed by Hawaii Revised Statute § 486-120.6 pertaining to the "Kona" or "Kona Blend" portion of the label ("identity statement") provide:

Each word or character in the identity statement shall be of the same type size and shall be contiguous. The smallest letter or character of the identity statement on packages of sixteen ounces or less net weight shall be at least one and one-half times the type size required under federal law for the statement of net weight or three-sixteenths of an inch in height, whichever is smaller. The smallest letter or character of the identity statement on packages of greater than sixteen ounces net weight shall be at least one and one-half times the type size required under federal law for the statement of net weight. The identity statement shall be conspicuously displayed without any intervening material in a position above the statement of net weight. Upper and lower case letters may be used interchangeably in the identity statement.

Only Kona coffee beans satisfying the criteria of “Kona coffee,” as defined by Hawaii Administrative Rules § 4-143-3 in effect at the time such product is packaged for sale, shall be considered authentic Kona coffee beans. Notwithstanding the foregoing, Mulvadi shall only purchase and/or sell Kona coffee beans, including Kona coffee beans used to produce another product sold by Mulvadi (i.e. instant coffee) that have been officially certified by the Hawaii Department of Agriculture of a quality of Prime or better. Every Mulvadi product with Kona on the label must include on the label the lot number(s) for all certified Kona coffee beans contained in the product.

b. The labeling requirements in the foregoing section 12(a) shall not apply to any products sold by Mulvadi before the date that is thirty (30) days after Final Approval of this Agreement is entered by the Court.

c. Mulvadi shall only purchase and sell Kona coffee that has been officially certified by the Hawaii Department of Agriculture with a quality of Prime or better. Mulvadi shall require its suppliers to unequivocally state on the invoices for all Kona coffee purchased: (1) the certified quality of the Kona coffee (i.e. Prime, Extra Fancy, etc.); (2) the date the coffee was certified as authentic Kona coffee; and (3) the lot number for the certified Kona coffee. Mulvadi shall also require the supplier to provide with each invoice copies of the Hawaii Department of Agriculture certificates of origin for each lot number identified on the invoice. Mulvadi shall retain all such invoices with corresponding certificates of origin for a period of no less than four (4) years.

d. Mulvadi agrees not to purchase any coffee, whether directly or through an agent or intermediary, from Hawaii Coffee Connection LLC, Laurie Mattos, Dana Mattos, Pacifica Services Inc., Susan Decker, Trent Bateman, Tico Coffee, Sacred Grounds, Llanes Coffee Estates, Inc., Justin Llanes, General Coffee Process LLC, Optimistic Juice, Zealot Coffee LLC, Luxelife Coffee LLC, Javier Lobos, Francisco Lobos, Diego Campos, or any of the aforementioned person’s or entity’s respective agents, employees, officers, members, affiliates, or successors. Mulvadi shall discontinue the use of any seal, sticker, or image indicating the endorsement of the Independent Kona Coffee Growers on its packaging or marketing of its Kona coffee products.

e. Any notice or other communication required or permitted to be given under this Agreement to Mulvadi 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 Mulvadi' receipt.

MULVADI CORPORATION
Attn: Steven Mulgrew, CEO
96-1362 Waihona Street, Unit D-4
Pearl City, HI 96782
mulvadi@msn.com

With a copy to:
Chuck Choi
Choi & Ito
700 Bishop Street, Suite 1107
Honolulu, Hawaii 96813
cchoi@hibklaw.com

13. Settlement Notice. Plaintiffs shall be solely responsible for identifying the Class Members, providing notice pursuant to FRCP 23(e), and proposing the best practicable notice to Class Members. The Class will be an opt-out class under FRCP 23(b)(3) and will cover all persons and entities within the Class.

14. Settlement Payment. On Mulvadi's behalf, Mulvadi's insurer Allianz Global Corporate & Specialty and its affiliates ("Allianz") shall pay seven million seven hundred and seventy-five thousand dollars and 00/100 (\$7,775,000.00 USD) ("Settlement Amount") within 10 days after the final approval of the Settlement by the Courts. Such payment shall be made by wire transfer directly to an account maintained by the Settlement Administrator as instructed in writing by Plaintiffs. For clarity, Mulvadi itself shall not be liable for any additional payment beyond the Settlement Amount. The payments shall be made to the Settlement Administrator as defined below.

15. Cooperation in Settlement Approval. Parties will cooperate in good faith to secure court-approval of the Settlement Agreement. The parties understand that this Settlement Agreement is conditioned on the approvals of both Courts.

Settlement Procedures

16. 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 and payments to Class Members. Costs of notice to the Class and settlement administration will be paid from the Settlement Amount, and Mulvadi shall not be required to contribute financially beyond its obligations detailed in paragraph 14 of this Agreement.

17. Class Notice. Plaintiffs will provide a proposed class notice plan with their motion for preliminary approval of the Settlement. Mulvadi shall have no obligations, nor expectations, to provide any information to identify Class Members.

18. Distribution of Monies to the Class. The Settlement Administrator will distribute monies to the Class Members approximately pro rata, less any voluntary contributions for the benefit of the Kona region, based on the formula used in previous settlements approved by the Court in this Case. Any uncashed amounts shall be redistributed using the same formula.² Any remaining uncashed amounts after this second distribution shall be donated *cy pres* to the Legal Foundation of Washington.

19. Scope of Release: Plaintiffs and Class Members. As of final approval, and as part of the consideration for this Agreement, Plaintiffs and the Class Members hereby expressly agree that they fully and irrevocably release and discharge all Settled Claims, as defined below.

a. Plaintiffs and Class Members hereby release Mulvadi and its predecessors, successors, assigns, parents, subsidiaries, corporate affiliates, holding companies, investors, owners, divisions, 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 (including, without limitation, Mulvadi's insurer Allianz), 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 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 Mulvadi in the Case. This Release of Settled Claims also covers, without limitation, any and all claims for attorneys' fees, costs, or disbursements incurred by Class Counsel or any other counsel representing Plaintiffs or Class Members or by Plaintiffs or the Class Members regarding the Settled Claims.

b. Nothing in this Agreement shall be construed as an agreement from Class Members to waive, release, or dismiss any claims they have against Defendant Releasees that do not: (1) arise from their purchase or sale of coffee products labeled as originating from the Kona region of Hawaii; or (2) relate to Allianz's insurance coverage of Mulvadi for claims asserted in the Case.

20. 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,

² As used in this Agreement, Class Counsel refers to the attorneys of record in this matter Andrew Kaufman, Jason Lichtman, Nathan Paine, and Daniel Seltz, and their firms (Karr Tuttle Campbell and Lieff Cabraser Heiman and Bernstein LLP).

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, that might be attributable to Defendant Releasees. Nothing in this Agreement shall be construed as an agreement from Plaintiffs to waive, release, or dismiss any claims they have against the Mulvadi Defendants. This release does not extend to Class Members who are not Individual Plaintiffs.

21. 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. 381 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 coffee labeled as “Kona”, regardless of the statute, regulation, common law legal theory, or other legal basis on which the allegations may be asserted. “Settled Claims” shall also include any claims any Party has or could have asserted against Allianz for insurance coverage, breach of contract, common law or statutory bad faith, coverage by estoppel, or violations of any consumer protection laws, including specifically prohibiting an assignment of any rights under any or all policies issued by Allianz to Mulvadi. In connection with the release of the Settled Claims, Plaintiffs and 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. In addition to the foregoing, Plaintiffs and 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. Upon approval of the Agreement by both Courts, Plaintiffs shall withdraw the proof of claim as well as all motions and oppositions filed in Mulvadi’s bankruptcy case.

22. Scope of Release: Mulvadi. As of final approval, Mulvadi, 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, Class Counsel, and Class Members, expressly including (but not limited to) any claim under antitrust or other unfair competition laws. Mulvadi, 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 Class Members, provided in this paragraph covers, without limitation, any and all claims for attorneys’ fees, costs, or disbursements incurred by counsel for Mulvadi related to Mulvadi, its insurers, or any other counsel representing Mulvadi or its insurers in connection with or related in any manner to this Agreement, Mulvadi, 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 Class Members. Mulvadi, 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 Plaintiffs, Class Counsel, or the Class Members related in any

manner to this Case, whether or not concealed or hidden, without regard to any subsequent discovery or existence of different or additional facts.

23. Statement of Present Intent. Plaintiffs and Plaintiffs' Counsel represent and warrant that (a) 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 (b) 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.

24. Facsimile/Email/Electronic and Counterparts. This Agreement may be executed by facsimile or 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.

25. Authority; Entire Agreement. Counsel signing below warrant they have full authority to bind their clients. This Agreement represents and embodies all the agreements and negotiations between the Parties hereto and no verbal or written representations or agreements prior to the date of execution of this Agreement shall be admissible to vary its provisions.

26. Construction. Plaintiffs and Mulvadi 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.

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

DATED: June ___, 2023

DATED: June ___, 2023

Bruce Corker
d/b/a Rancho Aloha

Steven Mulgrew in both his individual
capacity and as authorized representative for
Mulvadi Corporation.

DATED: June ____, 2023

Colehour Bondera
d/b/a Kanalani Ohana Farm

DATED: June ____, 2023

Melanie Bondera
d/b/a Kanalani Ohana Farm

DATED: June ____, 2023

Robert Smith, individually and on behalf of
Smithfarms LLC

DATED: June ____, 2023

Cecelia Smith, individually and on behalf of
Smithfarms LLC

DATED: June ____, 2023

By: Nathan T. Paine
Karr Tuttle Campbell
on behalf of the Class

DATED: June ____, 2023

By: Jason L. Lichtman
Lieff Cabraser Heimann & Bernstein, LLP
on behalf of the Class

DATED: June ____, 2023

By: _____
Its: _____
Allianz Global Corporate & Specialty and its
affiliates (“Allianz”)

EXHIBIT B

COMPREHENSIVE SETTLEMENT AND RELEASE AGREEMENT

This Comprehensive Settlement and Release Agreement (the “Settlement Agreement”) is made by and between Mulvadi Corporation (“Mulvadi”) and its CEO Steven Mulgrew (collectively “Insureds”) on the one hand, and Allianz Global Corporate & Specialty (“Allianz”) on the other. The Insureds and Allianz are hereinafter collectively referred to as a “Party” or the “Parties.” This Settlement Agreement shall be effective upon its execution by all Parties.

RECITALS

- A.** Mulvadi packages, markets and sells coffee products and is a debtor and debtor in possession in a Subchapter V reorganization case pending as Case No. 22-00855 in the United States Bankruptcy Court for the District of Hawaii ;
- B.** Mulvadi was named as a defendant in *Corker, et al. v. Costco Wholesale Corporation, et al.*, 2:19-00290-RSL, a putative class action brought by farmers growing coffee in the Kona District of Hawaii against various distributors and retailers of coffee alleging that the defendants were falsely advertising the origin of their coffee products and/or violating the Lanham Act (the “Class Action”);
- C.** Allianz and/or its affiliates, issued the following primary policies to Mulvadi:
- Policy No. AZC 80634362, which inceptioned on January 25, 2000 and was renewed annually through January 25, 2011;
 - Policy No. MZX 80927582, effective January 25, 2011 to January 25, 2012;
 - Policy No. MZX 80937684, effective January 25, 2012 to January 25, 2013;
 - Policy No. MZX 80946101, effective January 25, 2013 to January 25, 2014;
 - Policy No. MZX 80953943, effective January 25, 2014 to January 25, 2015;
 - Policy No. MZX 80960974, effective January 25, 2015 to January 25, 2016;
 - Policy No. MZX 80968071, effective January 25, 2016 to January 25, 2017;
 - Policy No. MZX 80975765, effective January 25, 2017 to January 25, 2018;
 - Policy No. MZX 80984328, effective January 25, 2018 to January 25, 2019;
 - Policy No. MZX 80993805, effective January 25, 2019 to January 25, 2020;
 - Policy No. USC012924200, effective January 25, 2020 to January 25, 2021.

which Policies provide certain primary layer liability insurance coverages for the Insureds (hereinafter, the “Primary Policies”);

- D.** Allianz and/or its affiliates, issued the following excess/umbrella liability policies to Mulvadi:
- Policy No. XEK-000-7582-0167, effective September 25, 2002 to January 25, 203;
 - Policy No. XAU-000-5757-3651, effective January 25, 2011 to January 25, 2012;

- Policy No. XAU-000-2417-1340, effective January 25, 2012 to January 25, 2013;
- Policy No. XAU-000-3200-6348, effective January 25, 2013 to January 25, 2014;
- Policy No. XAU-000-4875-2612, effective January 25, 2014 to January 25, 2015;
- Policy No. XAU-000-2445-3334, effective January 25, 2015 to January 25, 2016;
- Policy No. XAU-000-2451-9183, effective January 25, 2016 to January 25, 2017;
- Policy No. XAU-000-1527-6645, effective January 25, 2017 to January 25, 2018;
- Policy No. XAU-000-5815-8726, effective January 25, 2018 to January 25, 2019;
- Policy No. XAU-000-3237-7012, effective January 25, 2019 to January 25, 2020;
- Policy No. USC00836520U, effective January 25, 2019 to January 25, 2020,

which Policies provide certain excess layer liability insurance coverages for the Insureds (hereinafter, the “Excess Policies”)(hereinafter the Primary Policies and the Excess Policies are collectively referred to as the “Policies”);

E. The Insureds tendered the Class Action to Allianz under the Policies;

F. After investigating the facts and circumstances surrounding the Class Action, Allianz concluded that coverage was not available for the Class Action and, accordingly, it denied coverage under the Policies for the Class Action (the “Denial”);

G. The Insureds disputed the validity of the Denial and alleged that Allianz’s conduct constituted bad faith (the “Coverage Challenge”);

H. The Insureds and Allianz participated in a mediation with plaintiffs in the Class Action that resulted in resolution of the Claim (the “Underlying Settlement”)(the Settlement Agreement in the Underlying Settlement is attached hereto and incorporated herein); and

I. The Parties hereto desire to resolve all claims and disputes between them that arise from or relate to the Class Action, the Denial, the Coverage Challenge, the Underlying Settlement, and Allianz’ response to all of the same.

AGREEMENT

WHEREFORE, for valuable consideration, including the promises as set forth below, the Parties agree as follows (hereinafter referred to as the “Settlement”):

1. Payment Amount. Consistent with the terms of the Underlying Settlement, upon final approval of the Underlying Settlement by the relevant courts, Allianz shall fund the

Underlying Settlement by paying the Settlement Administrator the sum of seven million, seven hundred and seventy-five thousand dollars and 0/100 (\$7,775,000.00 USD).

2. Release of All Claims by Insureds. In consideration of the payments and promises herein, the Insureds on behalf of themselves and their present and former parent and subsidiary companies, present and former agents, associates, officers, directors, partners, employees, joint venturers, representatives, administrators, parents, children, heirs, spouses, estates, attorneys, insurers, predecessors, successors, and assigns, and each of them (collectively referred to herein as the “Insured Releasers”), hereby absolutely, forever and fully, generally and specifically release and discharge Allianz and its affiliates, present and former parent and subsidiary companies, present and former agents, employees, associates, officers, directors, partners, joint venturers, representatives, administrators, adjusters, attorneys, insurers, predecessors, successors, and assigns, and each of them (collectively referred to herein as the “Allianz Releasees”), from any and all claims, contentions, rights, debts, liabilities, demands, obligations, duties, costs, expenses (including, but not limited to, attorneys’ fees), liens, subrogation rights, indemnification rights, damages, losses, and causes of action, of any kind whatsoever, whether due or owing in the past, present or future and whether based upon contract, tort, statute or any other legal or equitable theory of recovery, and whether known or unknown, suspected or unsuspected, fixed or contingent, matured or unmatured, with respect to, pertaining to, or arising from the Class Action, the Denial, the Coverage Challenge, the Underlying Settlement, and Allianz’ response to all of the same, including any bad faith, unfair claims practices, unfair trade practices and/or conduct of any kind that is purportedly in violation of any law, statute, regulation, rule, or insurance code provision. Nothing in this Section 2 shall 1) preclude the Insureds from pursuing legal action to enforce the terms of this Settlement Agreement or 2) preclude the Insureds from seeking coverage for any newly-filed or discovered claims that are unrelated to the Class Action, the Denial, the Coverage Challenge, or the Underlying Settlement.

3. Release of Unknown Claims. Insured Releasers acknowledge that they may hereafter discover claims and/or facts now unknown or unsuspected, or in addition to, or different from, those which the Insured Releasers now know or believe to be true with respect to this Settlement Agreement. Nevertheless, Insured Releasers intend by this Settlement Agreement to release fully, finally, and forever all claims with respect to, pertaining to, or arising from the Class Action, the Denial, the Coverage Challenge, the Underlying Settlement, and Allianz’ response to all of the same, including any bad faith, unfair claims practices, unfair trade practices and/or conduct of any kind that is purportedly in violation of any law, statute, regulation, rule, or insurance code provision. Accordingly, this Settlement Agreement shall remain in full force as a complete release of all claims in any way related to the availability of insurance coverage, as set forth in Section 2 above, for the Class Action, the Denial, the Coverage Challenge, the Underlying Settlement, and Allianz’ response to all of the same, notwithstanding the discovery or existence of any such additional or different claims and/or facts before or after the date of this Settlement Agreement. Nothing in this Section 3 shall preclude the Insureds from pursuing legal action to enforce the terms of this Settlement Agreement.

4. Representation and Warranty by Insureds. The Insureds represent and warrant to Allianz that (a) they are the lawful owners of everything released hereunder; (b) they have all necessary power and authority to make such release, including any necessary consent or approval from any person and including the absence of any duty or obligation that would prevent, or be put

in breach or default by, such release; and (c) they have not and will not assign any rights under the Policies. The Insureds shall indemnify and hold harmless Allianz with respect to any liability, cost, expense, or claim with respect to or pertaining to the representations and warranties made in this Section 4 including, but not limited to, reasonable attorneys' fees and costs.

5. Additional Representations and Warranties. The Parties further represent and warrant that:

a. Final Integrated Agreement. This Settlement Agreement and the documents referred to herein constitute the entire, final and binding understanding among the Parties hereto. No other statement or representation, written or oral, express or implied, has been received or relied upon in the Settlement, and all prior discussions, statements, and negotiations made or which have occurred prior to the date of this Settlement Agreement shall be deemed merged into this Settlement Agreement and the documents referred to herein, and shall not be used for any other purpose whatsoever;

b. Understanding of Settlement Agreement. All Parties understand and agree to the Settlement, this Settlement Agreement and the terms and conditions contained herein, and in the documents referred to herein, and have relied upon their own judgment, beliefs, knowledge, understanding and expertise after consulting with legal counsel concerning the legal effect of the Settlement and all of the terms of this Settlement Agreement; and

c. Voluntary Settlement. All Parties enter into the Settlement, this Settlement Agreement and the documents referred to herein, knowingly and voluntarily, in the total absence of any fraud, mistake, duress, coercion, or undue influence, and after careful thought and reflection upon the Settlement, this Settlement Agreement and the documents referred to herein; and accordingly, by signing this Settlement Agreement, they signify full understanding, agreement and acceptance.

6. Compromise of Disputed Claims; No Admissions. This Settlement Agreement constitutes a compromise and settlement of claims, which are denied and contested, and nothing in the Settlement Agreement, or any document referred to herein, nor any act (including, but not limited to, the execution of this Settlement Agreement and/or the payment of the consideration for this Settlement Agreement), nor any transaction occurring prior to the date hereof, is or shall be treated, construed or deemed as an admission by any Party hereto of any liability, fault, responsibility, or guilt of any kind to any other Party hereto or to any person, as to any allegation or claim or otherwise, for any purpose whatsoever, all such liability, fault, responsibility and guilt of any kind being expressly denied.

7. No Further Proceedings. The Parties represent and warrant that they will not commence or prosecute any action or proceeding for recovery of damages or for any form of equitable relief, declaratory relief or any other form of action or proceeding or arbitration against any other Party based upon the claims released in this Settlement Agreement. This Settlement Agreement shall constitute a judicial bar to the Parties' institution of any such action or proceeding or attempts to make any further assignment thereof. Nothing in this Section 8 shall preclude the Parties from pursuing legal action to enforce the terms of this Settlement Agreement.

8. Bankruptcy Court Approval. This Settlement Agreement is subject to Bankruptcy Court approval. Allianz consents to Mulvadi requesting the Bankruptcy Court to shorten time on any motion to consider approval of this Settlement Agreement and the Underlying Agreement.

9. Ambiguities or Uncertainties. The Settlement, this Settlement Agreement and the documents referred to herein, and any ambiguities or uncertainties herein or therein, shall be equally and fairly interpreted and construed without reference to the identity of the Party or Parties preparing this document or the documents referred to herein, on the express understanding and agreement that the Parties participated equally in the negotiation and preparation of the Settlement Agreement and the documents referred to herein, or have had equal opportunity to do so.

10. Attorneys' Fees/Prevailing Party. In any action or proceeding pertaining to, or arising from the Settlement, including this Settlement Agreement or any document referred to herein, whether for enforcement, or for damages by reason of any alleged breach, or for a declaration of rights or obligations, or otherwise, and including any appeal, contempt proceeding, bankruptcy proceeding, and any action or proceeding to enforce and/or collect any judgment or other relief granted, (collectively "Litigation"), the unsuccessful party to the Litigation shall pay to the prevailing party, in addition to any other relief that may be granted, all costs and expenses of the Litigation, including without limitation, the prevailing party's reasonable attorneys' fees and expenses. "Attorneys' fees and expenses" include, without limitation, paralegals' fees and expenses, attorneys' consultants' fees and expenses, expert witnesses' fees and expenses, and all other expenses incurred by the prevailing party's attorneys in the course of their representation of the prevailing party in anticipation of and/or during the course of the Litigation, whether or not otherwise recoverable as "attorneys' fees" or as "costs" under Montana law.

11. Hawaii Law. The Settlement, this Settlement Agreement, and the documents referred to herein, shall be governed by and construed and interpreted in accordance with the laws of the State of Hawaii. In the language of this document and the documents referred to herein, the singular and plural, and the masculine, feminine and neuter genders, shall each be deemed to include all others, and the word "person" shall be deemed to include corporations and every other entity, as the context may require.

12. Severability. In the event that any provision of this Settlement Agreement should be held to be void, voidable or unenforceable, the remaining portions hereof shall remain in full force and effect.

13. Waiver, Modification and Amendment. No breach of this Settlement Agreement or of any provision herein can be waived except by an express written waiver executed by the Party waiving such breach. Waiver of any one breach shall not be deemed a waiver of any other breach of the same or other provisions of this Settlement Agreement. This Settlement Agreement may be amended, altered, modified or otherwise changed in any respect or particular only by a writing duly executed by the Parties hereto or their authorized representatives.

Dated this _____ day of June, 2023 _____

Steven Mulgrew

Dated this _____ day of June, 2023

Mulvadi Corporation

By Steven Mulgrew

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII**

In re:

MULVADI CORPORATION,

Debtor and Debtor-in-
Possession.

Bk. No. 22-00855
(Chapter 11)

DECLARATION OF STEVEN MULGREW

I, STEVEN MULGREW, hereby declare that, if called as a witness in this action, I could and would testify competently of my own personal knowledge as follows:

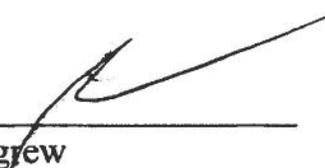
1. I am the President for MULVADI CORPORATION (the “Debtor”). I am over the age of 18 years and I am competent to make this declaration and do so based on personal knowledge, except as otherwise indicated.
2. I make this declaration in support of *Motion For Order Approving Settlement Agreements* (the “Motion”).
3. Terms used herein and not otherwise defined shall have the meanings given them in the Motion.
4. Attached to the Motion as Exhibit A is a true and correct copy of the Settlement Agreement.

5. Attached to the Motion as Exhibit B is a true and correct copy of the Allianz Release.

6. In the exercise of my business judgment, I believe it is in the best interest of the Debtor's estate to enter into the attached settlements. The disputes between the Debtor and Plaintiffs go back approximately four years. Prepetition, the Debtor incurred hundreds of thousands of dollars in legal fees in litigation against Plaintiffs. Additionally, the Debtor incurred legal fees in attempting to obtain insurance coverage under its policies for the Mainland Lawsuit. If the litigation were to continue, the Debtor will incur substantial legal fees in litigation against Plaintiffs. The settlements will permit the estate to make a meaningful distribution to general, unsecured creditors holding allowed claims because the Debtor's insurance carrier is funding the entire settlement payment to the Plaintiffs. I believe the proposed Settlement Agreement and the Allianz Release are fair and equitable and well within the lowest point of reasonableness from the point of view of the estate's unsecured creditors.

I declare under penalty of perjury, that the foregoing is true and correct.

Dated: Honolulu, Hawaii, June 29, 2023.



Steven Mulgrew