

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

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

Plaintiff,

v.

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

Defendants.

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

**MOTION FOR PRELIMINARY
APPROVAL OF THREE CLASS
SETTLEMENTS AND
MEMORANDUM IN SUPPORT**

The Honorable Robert S. Lasnik

Noted for consideration: March 8, 2021

TABLE OF CONTENTS

Page

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

INTRODUCTION 1

BACKGROUND AND PROCEDURAL HISTORY 1

SUMMARY OF SETTLEMENT TERMS 3

LEGAL STANDARD 4

ARGUMENT 4

I. The Court will be able to approve the settlement as fair, reasonable, and adequate. 4

 A. Class Counsel and the Settlement Class Representatives Have Adequately
 Represented the Class. 5

 B. The Settlements Are the Result of Arm’s Length Negotiations. 6

 C. The Relief for the Class is Substantial. 7

 1. The settlement relief outweighs the costs, risks, and delay of trial
 and appeal. 7

 2. Settlement Class Members will obtain relief through a
 straightforward claims process. 8

 3. The terms of any proposed award of attorney’s fees, including
 timing of payment, will be reasonable. 9

 D. The Proposal Treats Class Members Equitably Relative to Each Other. 10

II. The Court will be able to certify the Class for settlement purposes upon final
approval. 10

 A. The Settlement Class Meets Rule 23(a)’s Requirements. 11

 B. The Settlement Class Meets Rule 23(b)(3)’s Requirements. 14

III. The proposed notice plan should be approved. 16

CONCLUSION 17

TABLE OF AUTHORITIES

Page(s)

Cases

Ali v. Menzies Aviation, Inc.,
 No. 2:16-CV-00262RSL, 2016 WL 4611542 (W.D. Wash. Sept. 6, 2016)..... 16

Amchem Prods., Inc. v. Windsor,
 521 U.S. 591 (1997) 10, 11

Amgen Inc. v. Conn. Ret. Plans and Tr. Funds,
 568 U.S. 455 (2014) 14

Bennett v. SimplexGrinnell LP,
 11-cv-01854, 2015 WL 12932332 (N.D. Cal. Sept. 3, 2015) 9

Carr v. United Health Care Serv., Inc.,
 No.2:15-CV-1105, 2017 WL 11458425 (W.D. Wash. June 2, 2017)..... 10

David v. Bankers Life and Cas. Co.,
 No. 14-CV-00766-RSL, 2019 WL 2339971 (W.D. Wash. June 3, 2019) 10

Durant v. State Farm Mut. Auto. Ins. Co.,
 No.2-15-01710-RAJ, 2019 WL 2422592 (W.D. Wash. June 10, 2019)..... 10

Eisen v. Carlisle & Jacquelin,
 417 U.S. 156 (1974) 16

Evon v. Law Offices of Sidney Mickell,
 688 F.3d 1015 (9th Cir. 2012)..... 13

Farrell v. Bank k of Am. Corp.,
 827 Fed. App’x 628 (9th Cir. 2020)..... 9

Free Range Content, Inc. v. Google, LLC,
 No. 14-CV-02329-BLF, 2019 WL 1299504 (N.D. Cal. Mar. 21, 2019) 6

Hardie v. Countrywide,
 2010 WL 3894377 (W.D. Wash. Sept. 30, 2010) 10

Hefler v. Wells Fargo & Company,
 No. 16-CV-05479-JST, 2018 WL 6619983 (N.D. Cal. Dec. 18, 2018)..... 9

In re Anthem, Inc. Data Breach Litig.,
 327 F.R.D. 299 (N.D. Cal. 2018) 6

In re Banc of California Sec. Litig.,
 326 F.R.D. 640 (C.D. Cal. 2018) 11

In re Chambers Dev. Sec. Litig.,
 912 F. Supp. 822 (W.D. Pa. 1995) 8

In re Mego Fin. Corp. Sec. Litig.,
 213 F.3d 454 (9th Cir. 2000)..... 6

In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.,
 No. 2672 CRB (JSC), 2016 WL 4010049 (N.D. Cal. July 26, 2016) 10, 11

In re Washington Public Power Supply Sys. Securs. Litig.,
 720 F. Supp. 2d. 1379 (D. Ariz. 1989)..... 8

Jama v. Golden Gate America, LLC,
 No. 2:16-CV-00611-RSL, 2017 WL 7053650 (W.D. Wash. June 27, 2017) 11

TABLE OF AUTHORITIES
(continued)

		<u>Page(s)</u>
1		
2		
3	<i>Just Film v. Buono</i> , 847 F.3d 1108 (9th Cir. 2017).....	15
4	<i>Lane v. Facebook, Inc.</i> , 696 F.3d 811 (9th Cir. 2012).....	8
5	<i>McCluskey v. Trustees of Red Dot Corp. Emp. Stock Ownership Plan and Trust</i> , 268 F.R.D. 670 (W.D. Wash. 2010).....	15
6	<i>Munday v. Navy Fed. Credit Union</i> , No. 15-1629, 2016 WL 7655807 (C.D. Cal. Sept. 15, 2016).....	7
7	<i>O’Connor v. Uber Techs., Inc.</i> , No. 13-03826, 2019 WL 1437101 (N.D. Cal. Mar. 29, 2019).....	4
8	<i>Parsons v. Ryan</i> , 754 F.3d 657 (9th Cir. 2014).....	12
9	<i>Powers v. Eichen</i> , 229 F.3d 1249 (9th Cir. 2000).....	9
10	<i>Sampson v. Knight Transportation, Inc.</i> , No. C17-0028-JCC, 2020 WL 3050217 (W.D. Wash. June 8, 2020).....	13
11	<i>Sandoval v. Tharaldson Emp. Mgmt., Inc.</i> , No. 08-482, 2010 WL 2486346 (C.D. Cal. June 15, 2010).....	6
12	<i>Staton v. Boeing Co.</i> , 327 F.3d 938 (9th Cir. 2003).....	9
13	<i>Stockwell v. City & Cty. of San Francisco</i> , 749 F.3d 1107 (9th Cir. 2014).....	11
14	<i>Thomas v. MagnaChip Semiconductor Corp.</i> , No. 14-CV-01160-JST, 2017 WL 4750628 (N.D. Cal. Oct. 20, 2017).....	9
15	<i>Torrisi v. Tucson Elec. Power Co.</i> , 8 F.3d 1370 (9th Cir. 1993).....	8
16	<i>Trosper v. Styker Corp.</i> , 13-CV-0607-LHK 2014 WL 4145448 (N.D. Cal. August 21, 2014).....	15
17	<i>Tyson Foods, Inc. v. Bouaphakeo</i> , 136 S. Ct. 1036 (2016).....	14
18	<i>Wilburv. City of Mount Vernon</i> , 298 F.R.D. 665 (W.D. Wash. 2012).....	13
19	<i>Wolin v. Jaguar Land Rover N. Am., LLC</i> , 617 F.3d 1168 (9th Cir. 2010).....	12
20	<i>Zamora Jordan v. Nationstar Mortg., LLC</i> , No. 2:14-CV-0175-TOR, 2019 WL 1966112 (E.D. Wash. May 2, 2019).....	5
21		
22	Statutes	
23	Lanham Act, 15 U.S.C. § 1125	1, 12
24		
25	Rules	
26	Fed. R. Civ. P. 23(a).....	10, 11
	Fed. R. Civ. P. 23(a)(2)	11

TABLE OF AUTHORITIES
(continued)

		<u>Page(s)</u>
1		
2		
3	Fed. R. Civ. P. 23(a)(3)	12
4	Fed. R. Civ. P. 23(a)(4)	13, 14
5	Fed. R. Civ. P. 23(b)(3)(D).....	16
6	Fed. R. Civ. P. 23(c)(2)(B).....	4, 16, 17
7	Fed. R. Civ. P. 23(e).....	1, 5, 7, 10
8	Fed. R. Civ. P. 23(e)(1)	4, 16
9	Fed. R. Civ. P. 23(e)(1)(B).....	4
10	Fed. R. Civ. P. 23(e)(2)	4, 5
11	Fed. R. Civ. P. 23(e)(2)(A).....	5
12	Fed. R. Civ. P. 23(e)(2)(B).....	6
13	Fed. R. Civ. P. 23(e)(2)(C).....	7
14	Fed. R. Civ. P. 23(e)(2)(C)(ii)	8
15	Fed. R. Civ. P. 23(e)(2)(C)(iii).....	9
16	Fed. R. Civ. P. 23(e)(2)(D).....	10
17	Fed. R. Civ. P. 23(e)(3)	9
18	Fed. R. Civ. P. 23(e)(5)	4
19	Fed. R. Civ. P. 23(h).....	9
20	Treatises	
21	2 McLaughlin on Class Actions,	
22	§ 6:7 (8th ed. 2011)	6
23	5 <i>Moore’s Federal Practice—Civil</i>	
24	§ 23.22 (2016)	11
25	William B. Rubenstein, et al., 4 Newberg on Class Actions (5th ed. 2012)	6
26		

1 **INTRODUCTION**

2 On February 17, 2021, this Court granted preliminary approval to a set of settlements
3 between Plaintiffs and five defendants in this multi-defendant lawsuit. *See* Dkt. 400. Plaintiffs
4 now present to the Court their motion for preliminary approval of three additional class
5 settlements: one with Gold Coffee Roasters, Inc., Costa Rican Gold Coffee Company, Inc., and
6 John Parry (“Gold”), one with Costco Wholesale Corporation (“Costco”), and one with The TJX
7 Companies, Inc. and Marshalls of MA, Inc. (“TJX”), and for an order directing notice of these
8 proposed settlements to the proposed settlement class members. Like the set of settlements
9 previously presented to this Court, Plaintiffs respectfully submit that the Court is likely to certify
10 the proposed class for settlement purposes and approve these settlements after notice and a final
11 approval hearing. Also like the previously approved settlements, the Gold settlement provides
12 for a substantial monetary payment to class members, and all three settlements provide for
13 valuable injunctive relief that will benefit the members of the settlement class and prevent future
14 economic harm. The settlements satisfy Rule 23(e)’s standard for preliminary approval, and the
15 Court may approve the issuance of notice to the class and set a schedule for final approval.

16 **BACKGROUND AND PROCEDURAL HISTORY**

17 Plaintiffs are coffee farmers in the Kona region of Hawaii, and along with members of
18 the proposed Settlement Class, grow the entire worldwide supply of Kona coffee. Plaintiffs filed
19 their initial complaint on February 27, 2019, alleging that Defendants, who are both suppliers
20 and retailers of coffee, violated the Lanham Act, 15 U.S.C. § 1125, by misleadingly labeling and
21 selling coffee not from the Kona region as “Kona” coffee. The complaint included the results of
22 an extraordinary pre-filing investigation that included scientific testing to confirm that the coffee
23 marketed and sold by Defendants as “Kona” coffee in fact contained little or no such coffee.

24 A group of retailer defendants and a group of supplier defendants filed motions to
25 dismiss; Defendant BCC Assets, LLC (“BCC”) filed a separate motion to dismiss. *See* Dkt. Nos.
26 100, 106, & 107, respectively. On November 12, 2019, the Court denied the suppliers’ and

1 BCC's motions in full, and denied the retailers' motion in part, dismissing only false advertising
2 claims against the retailers. *See* Dkt. Nos. 154-56. Discovery then commenced, and continues at
3 present. Plaintiffs are due to file their class certification motion against non-settling defendants
4 on June 28, 2021, and fact discovery will close on December 10, 2021.

5 The parties have litigated the case intensively. The parties served dozens of document
6 requests, interrogatories, and requests for admission, and produced tens of thousands of
7 documents. This Court has already resolved numerous discovery disputes involving the scope of
8 document production and depositions. *See* Dkt. Nos. 144, 248, 255, 266, 274, 341, 350, 362,
9 382. Defendants took the depositions of the five named plaintiffs during the week of August 17,
10 2020. Plaintiffs have taken three depositions and have scheduled three additional depositions as
11 of the time of this filing.

12 As Plaintiffs described in their motion for preliminary approval of the first set of
13 settlements (Dkt. 393), there have been parallel efforts at resolution as the parties continued to
14 litigate intensively. Those efforts, which led to the separately negotiated settlements previously
15 presented to the Court, have also included Gold, Costco, and TJX. First, in the spring of 2020,
16 the parties agreed to a brief pause in most discovery activity to engage in a near-global mediation
17 with Hon. Edward Infante on June 2, 2020. *See* Declaration of Jason L. Lichtman ("Lichtman
18 Decl.") ¶ 6. While the settling parties and Plaintiffs did not reach a settlement at that mediation,
19 Gold and Plaintiffs participated in a second mediation with Mark LeHocky, of ADR Services,
20 Inc. on November 30, 2020, and with the ongoing assistance of Mr. LeHocky, were able to reach
21 an agreement in principle through that mediation, and worked intensively afterwards to reach a
22 formal settlement agreement. *Id.* ¶ 8. The parties negotiated and finalized the TJX and Costco
23 agreements over the course of numerous phone conferences and correspondence from December
24 2020 through February 2021. *Id.* ¶ 9.

SUMMARY OF SETTLEMENT TERMS

1 This settlements¹ deliver substantial monetary relief to the Settlement Class and include
 2 injunctive terms that will accomplish one of the primary objectives of this litigation: to bring
 3 about changes in the labeling of coffee described as containing coffee from the Kona region, thus
 4 preventing further economic harm to the growers of legitimate Kona coffee.
 5

6 The Gold settlement includes both monetary and injunctive terms. First, Gold will pay
 7 \$6,100,000 to the class. The injunctive provisions create detailed labeling obligations that will
 8 increase information available to consumers about Kona content and subject Gold to Hawaii’s
 9 more stringent labeling laws on a nationwide basis. Gold agrees “that any of its current or future
 10 products labeled as ‘Kona’ will accurately and unambiguously state on the front label of the
 11 product the minimum percentage of authentic Kona coffee beans contained in the product. Only
 12 Kona coffee certified and graded by the Hawaii Department of Agriculture as 100% Kona shall
 13 be considered authentic Kona coffee.” Ex. 1 at ¶ 13(a). It has agreed to use at least the
 14 percentage required by Hawaii law, unless Hawaiian law provides for a percentage greater or
 15 equal to 51 percent, in which case Cameron’s agrees to use at least 51 percent. *Id.* ¶ 13(b).
 16 Gold’s agreement to alter its labeling practices and comply with the stricter Hawaiian law on a
 17 national basis compounds the benefits of the agreements of the previously settling defendants to
 18 do the same.

19 The injunctive terms in the Costco and TJX settlements reinforce the labeling changes
 20 that numerous suppliers have already agreed to, but apply even more broadly to Costco’s and
 21 TJX’s vendors of Kona-labeled coffee. Costco and TJX have agreed that their vendors must
 22 include clear and conspicuous labeling of the contents of Kona-labeled coffee. Both defendants
 23 have agreed that “any coffee product labeled as ‘Kona coffee’ or ‘Kona Blend coffee’ will state
 24 on the front of the product’s label the percentage of Kona coffee beans the supplier of the
 25 products states are contained in the product, using the same font type and same color as the word

26 ¹ The proposed settlement agreements are attached as Exhibits 1-3 to the accompanying Lichtman Declaration.

1 Kona or a similar color scheme and no smaller than one-half the size as the word “Kona”
2 appears, on the front of the package.” Exs. 2 and 3 ¶ 13(a). Further, the agreements provide for
3 a certification process in which vendors of coffee labeled as “Kona” or “Kona blend” are or will
4 be requested to certify to Costco or TJX that that their labeling complies with Paragraph 13(a).
5 Ex. 2 ¶ 13(d) (Costco); Ex. 3 ¶ 13(c) (TJX).

6 LEGAL STANDARD

7 Federal Rule of Civil Procedure 23(e) provides that class actions “may be settled ... only
8 with the court’s approval.” Rule 23(e) governs a district court’s analysis of the fairness of a
9 proposed class action settlement and creates a multistep process for approval. First, a court must
10 determine that it is likely to (i) approve the proposed settlement as fair, reasonable, and adequate,
11 after considering the factors outlined in Rule 23(e)(2), and (ii) certify the settlement class after
12 the final approval hearing. *See* Fed. R. Civ. P. 23(e)(1)(B). Second, a court must direct notice to
13 the proposed settlement class, describing the terms of the proposed settlement and the definition
14 of the proposed class, to give them an opportunity to object to or to opt out of the proposed
15 settlement. *See* Fed. R. Civ. P. 23(c)(2)(B); Fed. R. Civ. P. 23(e)(1), (5). Third, after a hearing,
16 the court may grant final approval of the proposed settlement on a finding that the settlement is
17 fair, reasonable, and adequate, and certify the settlement class. Fed. R. Civ. P. 23(e)(2).

18 Through this motion, Plaintiffs respectfully request that the Court set in motion the first
19 two steps of this three-part process: provide preliminary approval of the settlements, and
20 approval of the issuance of notice to the class.

21 ARGUMENT

22 **I. The Court will be able to approve the settlement as fair, reasonable, and adequate.**

23 Recent amendments to Rule 23, which took effect on December 1, 2018, “provide new
24 guidance on the ‘fair, adequate, and reasonable’ standard at the preliminary approval stage.”
25 *O’Connor v. Uber Techs., Inc.*, No. 13-03826, 2019 WL 1437101, at *4 (N.D. Cal. Mar. 29,
26 2019). While the amendments provided new guidance, fairness, reasonableness, and adequacy

1 remain the “touchstones” for approval of a class action settlement. *Zamora Jordan v. Nationstar*
2 *Mortg., LLC*, No. 2:14-CV-0175-TOR, 2019 WL 1966112, at *2 (E.D. Wash. May 2, 2019).

3 The amendments served to “to focus the court and the lawyers on the core concerns of procedure
4 and substance that should guide the decision whether to approve the proposal.” *Id.* (quoting Fed.
5 R. Civ. P. 23 advisory committee’s note to 2018 amendments).

6 Under the amended rule, a court is to preliminarily approve the settlement and direct
7 notice to the class if it finds that the court “is likely to approve the proposal under Rule
8 23(e)(2).” Rule 23(e)(2) contains the “core concerns of procedure and substance” that guide this
9 inquiry. The settlements readily satisfy the criteria for preliminary approval.

10 **A. Class Counsel and the Settlement Class Representatives Have Adequately**
11 **Represented the Class.**

12 Under Rule 23(e)(2), the Court first considers whether counsel for the class, as well as
13 the class representatives, adequately represent the class. Fed. R. Civ. P. 23(e)(2)(A). This
14 requirement is met. Class Counsel have zealously advanced the interests of the Plaintiffs and the
15 proposed Settlement Class. Following an extensive pre-filing investigation, they defeated
16 motions to dismiss by the retailer defendants and the supplier defendants, and have taken on the
17 daunting logistical task of pursuing discovery against over twenty defendants and from numerous
18 third parties. These efforts put Plaintiffs and the Class in a position to negotiate the prior set of
19 settlements with the help of experienced mediators, leading to these Settlements.

20 As explained in the previous motion for preliminary approval, the Plaintiffs have worked
21 tirelessly on behalf of the Settlement Class members they seek to represent, and more than meet
22 this standard. They have worked closely with proposed Class Counsel at every stage of this
23 litigation, answered dozens of written discovery requests, produced thousands of documents, sat
24 for day-long depositions, and personally participated in each of the mediations that led to these
25 Settlements. Each Plaintiff runs a small coffee farm, and amidst the challenges of the global
26 pandemic, have unflinchingly devoted their time, along with expertise and experience as Kona

1 farmers, to help Class Counsel move this litigation in a positive direction for the Settlement
2 Class.

3 **B. The Settlements Are the Result of Arm’s Length Negotiations.**

4 To grant final approval, this Court will determine if the proposed settlements were
5 negotiated at arm’s length. Fed. R. Civ. P. 23(e)(2)(B). This Court is likely to so find here.
6 Settlements reached after a supervised mediation are entitled to a presumption of reasonableness
7 and the absence of collusion. 2 *McLaughlin on Class Actions*, § 6:7 (8th ed. 2011); *see also*
8 *Sandoval v. Tharaldson Emp. Mgmt., Inc.*, No. 08-482, 2010 WL 2486346, at *6 (C.D. Cal. June
9 15, 2010) (“The assistance of an experienced mediator in the settlement process confirms that the
10 settlement is non-collusive”); *Free Range Content, Inc. v. Google, LLC*, No. 14-CV-02329-BLF,
11 2019 WL 1299504, at *6 (N.D. Cal. Mar. 21, 2019) (holding that a “presumption of correctness”
12 attaches where, as here, a “class settlement [was] reached in arm’s-length negotiations between
13 experienced capable counsel after meaningful discovery”).

14 Here, proposed Settlement Class Counsel negotiated these settlements only after
15 conducting discovery, and obtaining sales and other pertinent data as to Gold’s, Costco’s, and
16 TJX’s sales and businesses, as well as Gold’s and its owner’s overall financial condition. Where
17 extensive information has been exchanged, “[a] court may assume that the parties have a good
18 understanding of the strengths and weaknesses of their respective cases and hence that the
19 settlement’s value is based upon such adequate information.” William B. Rubenstein, et al., 4
20 *Newberg on Class Actions* § 13:49 (5th ed. 2012) (“*Newberg*”); *see also In re Anthem, Inc. Data*
21 *Breach Litig.*, 327 F.R.D. 299, 320 (N.D. Cal. 2018) (concluding that the “extent of discovery”
22 and factual investigation undertaken by the parties gave them “a good sense of the strength and
23 weaknesses of their respective cases in order to ‘make an informed decision about settlement’”
24 (citing *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000)).

25 Further, there is no evidence of fraud or collusion in arriving at resolution. Only after
26 pertinent discovery and the meaningful exchange of information did the parties participate in

1 mediation. Plaintiffs continued to litigate against these settling defendants after the first set of
 2 settlements was negotiated, and have shown their willingness to continue with highly contested
 3 litigation with all remaining defendants.

4 **C. The Relief for the Class is Substantial.**

5 Next Rule 23(e)(2)(C) asks whether the relief provided for the class is “adequate,” taking
 6 into account: “(i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any
 7 proposed method of distributing relief to the class, including the method of processing class-
 8 member claims; (iii) the terms of any proposed award of attorney’s fees, including timing of
 9 payment; and (iv) any agreement required to be identified under Rule 23(e).” Fed. R. Civ. P.
 10 23(e)(2)(C). Here, the proposed settlements provide significant monetary relief and important
 11 injunctive relief to the Class.

12 **1. The settlement relief outweighs the costs, risks, and delay of trial and**
 13 **appeal.**

14 The settlements provide significant monetary and injunctive relief to the proposed
 15 Settlement Class, and avoid the hurdles and delays associated with litigating class certification
 16 and potential interlocutory appeals, dispositive motions, trial, and appeals. *See Munday v. Navy*
 17 *Fed. Credit Union*, No. 15-1629, 2016 WL 7655807, at *8 (C.D. Cal. Sept. 15, 2016) (granting
 18 preliminary approval of class action settlement). The Settlements account for these risks, costs,
 19 and delays, and accordingly compensate Settlement Class Members for their past harm, and
 20 prevents future harm by requiring Gold to join the other settling defendants in change their
 21 practices going forward if they choose to sell such products, and as to Costco and TJX, binding
 22 current *and* future suppliers to labeling and certification obligations for any Kona-labeled coffee
 23 products. While Plaintiffs believe in the merits of their case, success at class certification,
 24 summary judgment, and trial is not guaranteed. And any trial victory would come only after the
 25 COVID-related backlog is cleared, and would be subject to years of appeals.

26 The immediate relief provided by the Settlements outweighs these risks, and the prospect

1 of immediate relief weighs more heavily here, given the involvement of financially distressed
2 defendants. *See Lane v. Facebook, Inc.*, 696 F.3d 811, 823–24 (9th Cir. 2012) (affirming trial
3 court did not abuse its discretion in concluding that class settlement was substantial in light of
4 the fact that a defendant was on the verge of bankruptcy when evaluating the risks of continued
5 litigation of meritorious claims); *Torrison v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir.
6 1993) (holding trial court acted within its discretion when considering the precarious financial
7 status of the defendant to determine the adequacy of the settlement); *In re Washington Public*
8 *Power Supply Sys. Securs. Litig.*, 720 F. Supp. 2d. 1379, 1395–6 (D. Ariz. 1989) (finding the
9 terms of a class agreement with the smallest defendants in a multiparty MDL were fair,
10 reasonable, and adequate where the defendants did not have assets Plaintiffs could obtain
11 “without precipitating virtually certain bankruptcy proceedings” for the defendants). In other
12 words, as one court has put it in approving a class settlement, “[a] very large bird in the hand in
13 this litigation is surely worth more than whatever birds are lurking in the bushes.” *In re*
14 *Chambers Dev. Sec. Litig.*, 912 F. Supp. 822, 838 (W.D. Pa. 1995).

15
16 **2. Settlement Class Members will obtain relief through a
straightforward claims process.**

17 “[T]he effectiveness of any proposed method of distributing relief to the class, including
18 the method of processing class-member claims,” is also a relevant factor in determining the
19 adequacy of relief. Fed. R. Civ. P. 23(e)(2)(C)(ii). This factor is intended to encourage courts to
20 evaluate a proposed claims process “to ensure that it facilitates filing legitimate claims. A claims
21 processing method should deter or defeat unjustified claims, but the court should be alert to
22 whether the claims process is unduly demanding.” *Id.* Advisory Committee’s note to 2018
23 amendments. The claims process to be administered by the experienced settlement administrator
24 will be straightforward and manageable, involving a discrete community of farmers who are
25 highly aware of this case, and will be asked only to provide information about their aggregate
26 sales during the relevant time period. This is information that all coffee farmers undoubtedly

1 maintain and keep accessible, and will allow for a fair and efficient distribution of the net
 2 settlement proceeds. *See, e.g., Hefler v. Wells Fargo & Company*, No. 16-CV-05479-JST, 2018
 3 WL 6619983, at *12 (N.D. Cal. Dec. 18, 2018) (approving pro rata settlement distribution based
 4 on the purchase and sales data provided by class members); *Thomas v. MagnaChip*
 5 *Semiconductor Corp.*, No. 14-CV-01160-JST, 2017 WL 4750628, at *8-9 (N.D. Cal. Oct. 20,
 6 2017) (same).

7 **3. The terms of any proposed award of attorney's fees, including timing**
 8 **of payment, will be reasonable.**

9 Proposed Class Counsel will move the Court for an award of reasonable attorneys' fees
 10 and reimbursement of their litigation expenses that is squarely in line with Ninth Circuit
 11 precedent. Fed. R. Civ. P. 23(e)(2)(C)(iii). The total amount requested will not exceed \$2.6
 12 million, or 25 percent of the total economic value of the settlement, whichever is less.² Class
 13 Counsel will also seek reimbursement of only a portion of the expenses they have incurred in this
 14 litigation to date. Class Counsel will file their fee application, which will provide the supporting
 15 basis for their request, sufficiently in advance of the Exclusion/Objection deadline, and it will be
 16 available on the Settlement website after it is filed. Settlement Class Members will thus have the
 17 opportunity to comment on or object under Fed. R. Civ. P. 23(h) prior to the Final Approval
 18 Hearing.³

19 _____
 20 ² The Court does not need to approve any specific fee amount before granting preliminary approval, only determine
 21 whether the request raises any obvious red flags that would preclude settlement approval. But it bears emphasis that
 22 counsel's request is well within the norm for class settlements. When awarding attorney's fees on the percentage of
 23 the fund method in common fund cases, twenty-five percent (25%) is the benchmark, but a court may adjust that
 24 benchmark up or down when warranted. *See Powers v. Eichen*, 229 F.3d 1249, 1256-57 (9th Cir. 2000). And, the
 25 Court may consider the value of injunctive relief in awarding fees in a class action settlement. *See, e.g., Staton v.*
 26 *Boeing Co.*, 327 F.3d 938, 974 (9th Cir. 2003) (holding that in appropriate circumstances, the value of injunctive
 relief can be added to the common fund in applying the percentage method of awarding fees); *Farrell v. Bank k of*
Am. Corp., 827 Fed. App'x 628, 630 (9th Cir. 2020) (affirming fee award based in part on consideration of value of
 injunctive relief); *Bennett v. SimplexGrinnell LP*, 11-cv-01854, 2015 WL 12932332, at *6 (N.D. Cal. Sept. 3, 2015).
 Class Counsel's fee request will be properly supported and reflect Ninth Circuit guidance on such requests.

³ Per Fed. R. Civ. P. 23(e)(3), the parties have negotiated Supplemental Agreements described at paragraph 31 of the
 Gold settlement agreement, paragraph 30 of the Costco settlement agreement, and paragraph 30 of the TJX
 settlement agreement.

1 **D. The Proposal Treats Class Members Equitably Relative to Each Other.**

2 The Settlement funds from the Gold settlement will be distributed fairly and equitably.
 3 *See* Fed. R. Civ. P. 23(e)(2)(D). This subsection of Rule 23(e) determines “whether the
 4 apportionment of relief among class members takes appropriate account of differences among
 5 their claims, and whether the scope of the release may affect class members in different ways
 6 that bear on the apportionment of relief.” *Id.* advisory committee’s note to 2018 amendments.
 7 Each member of the proposed Class will receive a pro rata share of the settlement based on the
 8 volume of Kona coffee they sold during the limitations period. This allocation plan ensures
 9 members of the proposed Class will receive meaningful compensation directly proportional to
 10 the harm they suffered based on their actual sales. Additionally, Plaintiffs will request service
 11 awards for each plaintiff farm (three in total), as are commonly awarded in class actions, and are
 12 justified here by Plaintiffs’ efforts in prosecuting the litigation. *See, e.g., Durant v. State Farm*
 13 *Mut. Auto. Ins. Co.*, No.2-15-01710-RAJ, 2019 WL 2422592 at *2 (W.D. Wash. June 10, 2019)
 14 (approving \$10,000 incentive award to plaintiff as part of final approval of class action); *Carr v.*
 15 *United Health Care Serv., Inc.*, No.2:15-CV-1105, 2017 WL 11458425 at *3 (W.D. Wash. June
 16 2, 2017) (approving incentive award); *Hardie v. Countrywide*, 2010 WL 3894377, at *2 (W.D.
 17 Wash. Sept. 30, 2010) (approving incentive award).

18 **II. The Court will be able to certify the Class for settlement purposes upon final**
 19 **approval.**

20 Since December 2018, the court must determine if it will be likely to certify the class
 21 prior to granting preliminary approval of the proposed class settlement. Fed. R. Civ. P.
 22 23(e)(1)(B)(ii); *David v. Bankers Life and Cas. Co.*, No. 14-CV-00766-RSL, 2019 WL 2339971,
 23 at *1 (W.D. Wash. June 3, 2019) (Lasnik, J.). Certification of a settlement class is “a two-step
 24 process.” *In re Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prods. Liab. Litig.*, No.
 25 2672 CRB (JSC), 2016 WL 4010049, at *10 (N.D. Cal. July 26, 2016) (Breyer, J.) (citing
 26 *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613 (1997)). First, the Court must find that the
 proposed settlement class satisfies Rule 23(a)’s four requirements. *Id.* (citing Fed. R. Civ. P.

23(a)). Second, the Court must find that “a class action may be maintained under either

1 Rule 23(b)(1), (2), or (3).” *Id.* (citing *Amchem*, 521 U.S. at 613). The proposed Settlement Class
 2 here readily satisfies all requirements of Rule 23(a), as well as those of Rule 23(b)(3). The
 3 Settlement Class is identical to the one that the Court recently found meets the requirements of
 4 Rule 23. *See* Dkt. 400 ¶ 3.

5 **A. The Settlement Class Meets Rule 23(a)’s Requirements.**

6 **Rule 23(a)(1): The Class is sufficiently numerous.** Rule 23(a)(1) is satisfied where, as
 7 here, “the class is so numerous that joinder of all class members is impracticable.” Fed. R. Civ.
 8 P. 23(a)(1). A “class of 41 or more is usually sufficiently numerous.” *5 Moore’s Federal*
 9 *Practice—Civil* § 23.22 (2016); *see also In re Banc of California Sec. Litig.*, 326 F.R.D. 640, 646
 10 (C.D. Cal. 2018). Plaintiffs alleged that there are more than 600 members of the Settlement
 11 Class, Third Am. Compl. ¶¶ 33, 43, Dkt. No. 381, and through discovery from third parties that
 12 provide milling and processing services to a large proportion of the class, have confirmed the
 13 size of the class. *See* accompanying Declaration of Nathan Paine ¶ 9. Numerosity is satisfied.

14 **Rule 23(a)(2): Common questions of law and fact are present.** “Federal Rule of Civil
 15 Procedure 23(a)(2) conditions class certification on demonstrating that members of the proposed
 16 class share common ‘questions of law or fact.’” *Stockwell v. City & Cnty. of San Francisco*, 749
 17 F.3d 1107, 1111 (9th Cir. 2014). Courts routinely find commonality where, as here, the class
 18 claims arise from a defendant’s uniform course of conduct. *Jama v. Golden Gate America, LLC*,
 19 No. 2:16-CV-00611-RSL, 2017 WL 7053650, at *1 (W.D. Wash. June 27, 2017) (Lasnik, J.).

20 Here, the Settlement Class’ claims are rooted in common questions of fact relating to
 21 Defendants’ use of the “Kona” name. This Court has recognized that Plaintiffs alleged that
 22 Defendants “falsely designated the geographic origin of their coffee as Kona,” that they misled
 23 “consumers into believing their products contain an appreciable amount of Kona coffee beans in
 24 order to use the reputation and goodwill of the Kona name to justify higher prices for what is
 25 actually ordinary commodity coffee,” and that the alleged false designation “damages the
 26 geographic designation itself and the designation’s value to the farmers of authentic Kona coffee

1 from the Kona District.” *See* Dkt. No. 155 at 2–3 (Order Denying Mot. to Dismiss). The answer
2 to the question of whether a defendant’s label does or does not contain a false designation of
3 origin will not vary among class members. This case thus presents common questions of fact
4 that would yield, if litigated, common answers “apt to drive the resolution of the litigation” for
5 the Settlement Class as a whole. *Wal-Mart Stores v. Dukes*, 564 U.S. 338, 350 (2011). This
6 common course of conduct satisfies commonality.

7 **Rule 23(a)(3): Settlement Class Representatives’ claims are typical of those of the**
8 **Class members’.** Under Rule 23(a)(3), “the claims or defenses of the representative parties”
9 must be “typical of the claims or defenses of the class.” *Parsons v. Ryan*, 754 F.3d 657, 685
10 (9th Cir. 2014) (quoting Fed. R. Civ. P. 23(a)(3)). “Typicality ‘assure[s] that the interest of the
11 named representative aligns with the interests of the class.’” *Id.* (quoting *Wolin v. Jaguar Land*
12 *Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010) (citation and quotations omitted)).
13 Specifically, “representative claims are ‘typical’ if they are reasonably coextensive with those of
14 absent class members; they need not be substantially identical.” *Id.* (quoting *Hanlon v. Chrysler*
15 *Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)).

16 The Settlement Class Representatives’ claims are typical of other Settlement Class
17 Members’ claims; they assert the same claims under the Lanham Act. The Settlement Class
18 Representatives have alleged that a common course of conduct injured the Settlement Class
19 Representatives and the proposed Settlement Class in the same way. The Settlement Class
20 Representatives, like the members of the proposed Settlement Class, grew and sold authentic
21 Kona coffee, but they competed against suppliers and sellers of coffee labeled as “Kona” or
22 “Kona Blend” that in fact contained little or no appreciable amount of authentic Kona coffee.
23 *See* Sec. Am. Compl. ¶ 33(c). Further, Plaintiffs alleged that the false designation of ordinary
24 commodity coffee as “Kona” coffee depressed the market price of authentic Kona coffee, which
25 negatively affected the price both the Settlement Class Representatives and Settlement Class
26 Members could receive for their Kona coffee. *See Id.* ¶ 3. Typicality is satisfied.

1 **Rule 23(a)(4): The Settlement Class Representatives have and will protect the**
 2 **interests of the Class.** Rule 23(a)(4)'s adequacy requirement is met where, as here, "the
 3 representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P.
 4 23(a)(4). Adequacy entails a two-prong inquiry: "(1) do the named plaintiffs and their counsel
 5 have any conflicts of interest with other class members and (2) will the named plaintiffs and their
 6 counsel prosecute the action vigorously on behalf of the class?" *Evon v. Law Offices of Sidney*
 7 *Mickell*, 688 F.3d 1015, 1031 (9th Cir. 2012) (quoting *Hanlon*, 150 F.3d at 1020). Both prongs
 8 are readily satisfied here.

9 First, the Settlement Class Representatives have no interests antagonistic to Settlement
 10 Class Members and will continue to protect the Class' interests in the implementation of the
 11 settlement and in continuing litigation against the non-settling defendants, and there are no
 12 conflicts of interest between the class representatives and members of the Settlement Class. *See*
 13 *Sampson v. Knight Transportation, Inc.*, No. C17-0028-JCC, 2020 WL 3050217, at *5 (W.D.
 14 Wash. June 8, 2020) ("Plaintiffs' claims . . . are uniform across the class members, thus the
 15 Plaintiffs adequately represent the injuries of the putative class."). The Class Representatives
 16 "suffered the same injuries as other members" of the Class in the form of reduced market prices
 17 and damage to goodwill and reputation. *Id.* The Class Representatives also understand their
 18 duties, have agreed to consider the interests of absent Settlement Class Members, and have
 19 reviewed and uniformly endorsed the Settlement terms. *See* Lichtman Decl. ¶ 18.

20 Second, proposed Class Counsel have and will continue to vigorously and ethically
 21 pursue this litigation. *See Wilburv. City of Mount Vernon*, 298 F.R.D. 665, 669 (W.D. Wash.
 22 2012) (Lasnik, J.) (finding adequacy requirement satisfied and granting class certification). The
 23 two firms serving as proposed Class Counsel bring a wealth of experience in complex civil
 24 litigation and class actions, along with relevant expertise in intellectual property litigation. They
 25 have and will continue to commit substantial resources to this case. *See* Lichtman Decl. ¶ 3.

26 Proposed Class Counsel have undertaken an enormous amount of work, including a pre-filing

1 scientific investigation, litigating dispositive motions, and extensive discovery to advocate for
 2 the Class. *Id.* ¶ 10. They satisfy Rule 23(a)(4)'s adequacy requirement, as well as the standard
 3 for appointment of class counsel under Rule 23(g).

4 **B. The Settlement Class Meets Rule 23(b)(3)'s Requirements.**

5 Rule 23(b)(3)'s requirements are also satisfied because (i) "questions of law or fact
 6 common to class members predominate over any questions affecting only individual members";
 7 and (ii) a class action is "superior to other available methods for fairly and efficiently
 8 adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

9 **Predominance.** "The predominance inquiry 'asks whether the common, aggregation-
 10 enabling, issues in the case are more prevalent or important than the non-common, aggregation-
 11 defeating, individual issues.'" *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016).
 12 The rule requires "a showing that *questions* common to the class predominate, not that those
 13 questions will be answered, on the merits, in favor of the class." *Amgen Inc. v. Conn. Ret. Plans*
 14 *and Tr. Funds*, 568 U.S. 455, 459 (2014). Thus, "[w]hen common questions present a significant
 15 aspect of the case and they can be resolved for all members of the class in a single adjudication,
 16 there is clear justification for handling the dispute on a representative rather than on an
 17 individual basis." *Hanlon*, 150 F.3d at 1022.

18 Here, common questions predominate because there are few, if any, individualized
 19 factual issues, and because the core factual and legal questions involve the defendants' conduct:
 20 (1) whether their labels were false or misleading; (2) whether those labels created or were likely
 21 to create confusion among consumers; and (3) whether the conduct was willful. Questions of
 22 damages are also common: these will turn on how much money defendants made by selling their
 23 products and the extent to which conduct at issue negatively impacted the market price of
 24 authentic Kona Coffee and/or damaged the goodwill and reputation of the Kona name. Common
 25 questions predominate.

26 **Superiority.** Rule 23(b)(3)'s superiority requirement asks "whether the objectives of the

1 particular class action procedure will be achieved in the particular case.” *Hanlon*, 150 F.3d at
2 1023. In other words, the court must “determine whether maintenance of this litigation as a class
3 action is efficient and whether it is fair.” *Wolin*, 617 F.3d at 1175-76. Under Rule 23(b)(3), “the
4 Court evaluates whether a class action is a superior method of adjudicating plaintiff’s claims by
5 evaluating four factors: ‘(1) the interest of each class member in individually controlling the
6 prosecution or defense of separate actions; (2) the extent and nature of any litigation concerning
7 the controversy already commenced by or against the class; (3) the desirability of concentrating
8 the litigation of the claims in the particular forum; and (4) the difficulties likely to be
9 encountered in the management of a class action.’” *Trosper v. Styker Corp.*, 13-CV-0607-LHK
10 2014 WL 4145448, at *17 (N.D. Cal. August 21, 2014).

11 A class action is the superior method of adjudication of these claims. First, the
12 Settlement Class Members have little incentive to individually prosecute this action: the risks
13 and expense of proceeding individually are prohibitive in a case like this one, in which individual
14 damages are comparatively small in relation to the costs an individual plaintiff would have to
15 incur to prove liability and damages, which requires expert analysis from multiple fields. *See*
16 *Just Film v. Buono*, 847 F.3d 1108, 1123 (9th Cir. 2017) (affirming finding of superiority in case
17 where individual damages are too small “to make litigation cost effective in a case against
18 funded defenses and with a likely need for expert testimony”). Second, it is more efficient for
19 the parties and the Court to have a single resolution rather than individual cases about the same
20 issue. Without a class, the hundreds of individuals and entities that grow authentic Kona coffee
21 would have no recourse, or a multiplicity of suits would follow resulting in an inefficient and
22 possibly disparate administration of justice. By resolving these issues in one action, the Court
23 “will avoid the risk of duplicative efforts by multiple judges, as well as potentially inconsistent
24 rulings.” *McCluskey v. Trustees of Red Dot Corp. Emp. Stock Ownership Plan and Trust*, 268
25 F.R.D. 670, 674 (W.D. Wash. 2010).

26 Finally, because this Court is considering the likelihood of class certification in the

1 settlement context, this Court need not consider any possible management-related problems as it
 2 otherwise would. *See Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997) (“Confronted
 3 with a request for settlement-only class certification, a district court need not inquire whether the
 4 case, if tried, would present intractable management problems, see Fed. R. Civ. P. 23(b)(3)(D),
 5 for the proposal is that there be no trial.”). Superiority is met here, and Rule 23(e)(1)(B)(ii) is
 6 satisfied.

7 **III. The proposed notice plan should be approved.**

8 Before a proposed class settlement may be finally approved, the Court “must direct notice
 9 in a reasonable manner to all class members who would be bound by the proposal.” Fed. R. Civ.
 10 P. 23(e)(1). Where certification of a Rule 23(b)(3) settlement class is sought, the notice must
 11 also comply with Rule 23(c)(2)(B), which requires:

12 the best notice that is practicable under the circumstances,
 13 including individual notice to all members who can be identified
 14 through reasonable effort. The notice may be by one or more of the
 15 following: United States mail, electronic means, or other
 16 appropriate means. The notice must clearly and concisely state in
 17 plain, easily understood language: (i) the nature of the action; (ii)
 18 the definition of the class certified; (iii) the class claims, issues, or
 defenses; (iv) that a class member may enter an appearance
 through an attorney if the member so desires; (v) that the court will
 exclude from the class any member who requests exclusion; (vi)
 the time and manner for requesting exclusion; and (vii) the binding
 effect of a class judgment on members under Rule 23(c)(3).

19 Fed. R. Civ. P. 23(c)(2)(B); *see also Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 176 (1974).

20 The proposed Notice program here is identical to the one that the Court recently approved
 21 (Dkt. 400) and that Plaintiffs, with the Settlement Administrator, are on track to effectuate. Like
 22 the recently approved program, it was designed in consultation with the proposed Settlement
 23 Administrator and meets all applicable standards. *See Ali v. Menzies Aviation, Inc.*, No. 2:16-
 24 CV-00262RSL, 2016 WL 4611542, at *4 (W.D. Wash. Sept. 6, 2016) (Lasnik, J.) (approving
 25 form and plan of notice). The proposed Notice program includes direct notice to Settlement
 26 Class Members sent via first class U.S. Mail for all members for whom address information is

1 available (which is nearly the entire class), publication notice in the newspaper widely read and
 2 circulated in the Kona region (the *West Hawaii Today*), the establishment of a settlement
 3 website—where Settlement Class Members can view the full Settlement Agreements, the Notice,
 4 and other key case documents—and the establishment of a toll-free telephone number where
 5 Settlement Class Members can get additional information. Moreover, the proposed forms of
 6 notice (Ex. 4 and Ex. 5) inform Settlement Class Members, in clear and concise terms, about the
 7 nature of this case, the Settlements, and their rights, including all of the information required by
 8 Rule 23(c)(2)(B).⁴ The Court should approve the proposed Notice program.

9 **CONCLUSION**

10 For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary
 11 approval of the proposed settlements, direct notice to the class, and set a schedule for the
 12 remaining steps towards final approval, as set out in the accompanying proposed order or as the
 13 Court deems fit.

14 Dated: March 8, 2021

15 KARR TUTTLE CAMPBELL

LIEFF CABRASER HEIMANN &
 BERNSTEIN, LLP

17 /s Nathan T. Paine
 18 Paul Richard Brown, WSBA #19357
 19 Nathan T. Paine, WSBA #34487
 20 Daniel T. Hagen, WSBA #54015
 701 Fifth Avenue, Suite 3300
 Seattle, Washington 98104
 206.223.1313

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

21 Andrew Kaufman (*pro hac vice*)
 22 222 2nd Avenue South, Suite 1640
 23 Nashville, TN 37201
 615.313.9000

24 *Attorneys for the Plaintiffs
 and the Proposed Settlement Class*

25 ⁴ Certain dates in the notices are tied to the date that this Court grants preliminary approval of the proposed
 26 settlement and issuance of notice, as reflected in the accompanying proposed order. When those dates are known,
 the Settlement Administrator will fill in dates in the notices consistent with this Court’s order.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

I, Daniel E. Seltz, certify that on March 8, 2021, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to those attorneys of record registered on the CM/ECF system.

/s Daniel E. Seltz
Daniel E. Seltz

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

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

Plaintiff,

v.

COSTCO WHOLESALE
CORPORATION, *et al.*,

Defendants.

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

**[PROPOSED] ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS SETTLEMENTS
AND DIRECTING ISSUANCE OF NOTICE**

The Honorable Robert S. Lasnik

1. Upon review and consideration of Plaintiffs’ Motion for Preliminary Approval of Three Class Action Settlements (“Motion”), and briefing, declarations, exhibits, and other evidence submitted in support thereof, including the Settlement Agreements¹ executed by Bruce Corker d/b/a Rancho Aloha, Melanie Bondera and Melanie Bondera, husband and wife, d/b/a Kanalani Ohana Farm, and Robert Smith and Cecilia Smith, husband and wife, d/b/a Smithfarms, and Smithfarms LLC (“Plaintiffs”), Gold Coffee Roasters, Inc., Costa Rican Gold Coffee Company, Inc., and John Parry (“Gold”), Costco Wholesale Corporation (“Costco”), and The TJX Companies, Inc. and Marshalls of MA, Inc. (together, “TJX”) (collectively “Parties”), for the purposes of the subject settlements, this Court finds that it has subject matter jurisdiction over this matter pursuant to 15 U.S.C. § 1125(a) and federal question jurisdiction under 28 U.S.C. § 1331.
2. The Court grants preliminarily approval of the Settlement Agreements based on the terms set forth in the Settlement Agreements.

¹ Capitalized terms not otherwise defined herein shall have the same meaning as set for in the Settlement Agreements.

- 1 3. Pursuant to Fed. R. Civ. P. 23(e), the Court finds that the proposed Settlement Class,
2 composed of all persons and entities who farmed Kona coffee in the Kona District and then
3 sold their coffee from February 27, 2015 to the present, likely meets the requirements for
4 class certification under Fed. R. Civ. P. 23(a) and 23(b)(3) as follows:
- 5 a. The Settlement Class is so numerous that joinder of all members in a single
6 proceeding would be impracticable;
 - 7 b. Resolution of the claims will involve common questions of law and fact;
 - 8 c. The named Plaintiffs' claims are typical of those of the Settlement Class Members;
 - 9 d. The named Plaintiffs and Settlement Class Counsel have fairly and adequately
10 represented the interests of the Settlement Class and will continue to do so; and
 - 11 e. Questions of law and fact common to the Settlement Class predominate over the
12 questions affecting only individual Settlement Class Members, and certification of the
13 Settlement Class is superior to other available methods to the fair and efficient
14 adjudication of this controversy.
- 15 4. The Court finds, pursuant to Fed. R. Civ. P. 23(e)(1)(B)(i), that the proposed Settlement
16 Agreements are likely fair, reasonable, and adequate, entered into in good faith, and free
17 from collusion; that Class Counsel have ably represented the Class; and, that the relief,
18 monetary and injunctive, provided for in the Settlement Agreements outweighs the
19 substantial costs, the delay, and risks presented by further prosecution of issues during pre-
20 trial, trial, and possible appeal. Additionally, the proposed allocation plan treats the class
21 members equitably in proportion to their sales to provide Class Members with adequate
22 relief. Based on these factors, the Court concludes that, pursuant to Fed. R. Civ. P. 23(e), the
23 Settlement Agreements meet the criteria for preliminary settlement approval and are deemed
24 fair, reasonable, and adequate, such that notice to the Settlement Class is appropriate.
- 25 5. The Court appoints Paul Richard Brown and Nathan Paine, of Karr Tuttle Campbell, and
26 Jason Lichtman, Daniel Seltz, and Andrew Kaufman, of Lief Cabraser Heimann &

1 Bernstein, LLP as Settlement Class Counsel upon consideration of the factors set forth in
2 Fed. Riv. Civ. P. 23(g).

3 6. Pursuant to Fed. R. Civ. P. 23(e)(1)² and 23(c)(2)(B), the Court approves, as to form and
4 content:

5 a. The proposed Notice (“Notice”), in substantially the form attached as Exhibit [] with
6 Plaintiffs’ Motion. The Court finds that Notice is a reasonable method calculated to
7 reach members of the Settlement Class who would be bound by the Settlement
8 Agreements. The Notice will be sent via First Class U.S. Mail and email to all
9 members for whom address information is available, and posted on the Settlement
10 Website, www.KonaCoffeeSettlement.com.

11 b. The Publication Notice, in substantially the form attached as Exhibit [] with
12 Plaintiffs’ Motion, which will be published in the West Hawaii Daily. The Court
13 approves, as to form and content, the proposed Notice and Publication Notice because
14 they concisely state in plain, easily understood language, *inter alia*: (1) the nature of
15 the *Corker* case and the Settlement Agreements, including the terms thereof; (2) the
16 definition of the Settlement Class; (3) the Plaintiffs’ applications for service awards;
17 (4) that a Settlement Class Member may enter an appearance on their own behalf or
18 through an attorney and the procedures for filing an objection to the Settlement
19 Agreements; (5) contact information for Settlement Class Counsel, and a toll-free
20 number to ask questions about the Settlement Agreements; (6) the address of the
21 case-specific website (the “Settlement Website”) maintained by the Settlement
22 Administrator that links to important case documents, including motion for
23

24 ² Specifically, pursuant to 23(e)(1)(B), the Court finds that notice can be directed “in a reasonable manner to all
25 class members who would be bound by the proposal if giving notice is justified by the parties’ showing that the court
26 will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of
judgment on the proposal.”

1 preliminary approval papers, and instructions on how to access the case docket via
2 PACER or in person; (7) important dates in the settlement approval process,
3 including the date of the Final Approval Hearing (as described below); (8) the
4 binding effect of a class judgment on Settlement Class Members; and (9) Settlement
5 Class Counsel's forthcoming Attorneys' Fees Motion.

6 7. The Court appoints JND Legal Administration as Settlement Administrator.

7 8. The Court finds that the Notice meets the requirements of due process under the U.S.
8 Constitution and Fed. R. Civ. P. 23.

9 9. The Court directs:

10 a. The mailing and emailing of the Settlement Class notice by First Class U.S. Mail and
11 publication in the *West Hawaii Today*, shall begin within 21 days of the entry of this
12 Order.

13 b. No later than 21 days after entry of this Order, the Settlement Administrator shall
14 create and maintain a Settlement Website until at least 30 days after the effective date
15 of the Settlement Agreements. The Settlement Website shall (1) post the Second
16 Amended Complaint, the Settlement Agreements, and Notice; (2) notify Settlement
17 Class Members of their rights to object or opt-out; (3) inform Settlement Class
18 Members that they should monitor the Settlement Website for developments; and (4)
19 notify Settlement Class Members that no further notice will be provided to them once
20 the Court enters the Final Order and Judgment, other than updates on the Settlement
21 Website.

22 c. The Settlement Administrator shall establish an email account and P.O. Box to which
23 Settlement Class Members may submit questions regarding the Settlement
24 Agreements. The Settlement Administrator will monitor the email account and P.O.
25 Box and respond promptly to administrative inquiries from Settlement Class
26 Members and direct new substantive inquiries to Settlement Class Counsel.

d. No later than 21 days after entry of this Order, the Settlement Administrator shall establish a toll-free telephone number that Settlement Class Members can call to receive additional information about the Settlement Agreements. The toll-free number shall be operational until at least the effective date of the Settlement Agreements.

10. All costs associated with implementing Notice, including fees and costs of the Settlement Administrator, shall be paid out of the Settlement Funds.

11. No later than 63 days after entry of this Order, Settlement Class Counsel shall file its application for attorneys' fees and Plaintiffs' request for service awards. The motions shall be noted on the Court's calendar for the Friday before the Final Approval Hearing.

12. No later than 14 days before the Final Approval Hearing, the Settlement Administrator shall file an affidavit with the Court confirming its implementation of Notice in accordance with this Order.

13. Any Settlement Class Member may comment on, or object to, the Settlement Agreements, Settlement Class Counsel's application for attorneys' fees and costs, and/or the request for Plaintiffs' service awards.

14. The following chart summarizes the dates and deadlines set by this Order:

Event	Date
Notice of Settlement to be Mailed and emailed to Settlement Class Members, and published in the <i>West Hawaii Today</i> .	21 days after entry of the Court's Preliminary Approval Order
Creation and Maintenance of Settlement Website	21 days after the entry of the Court's Preliminary Approval Order
Creation and Maintenance of Toll-Free Number	21 days after the entry of the Court's Preliminary Approval Order
Deadline for Settlement Class Counsel's application for attorneys' fees and Plaintiffs' requests for service awards	63 days after entry of this Order
Settlement Administrator affidavit of compliance with notice requirements	14 days before Final Approval Hearing

Event	Date
Deadline to have postmarked and/or filed a written objection to the Settlements or request for an exclusion.	77 days after entry of this Order
Final Approval Hearing	Not less than 105 calendar days after entry of the Preliminary Approval Order, or as soon thereafter as is convenient for the Court

DATED this _____ day of _____, 2021.

 The Honorable Judge Robert S. Lasnik
 United States District Court Judge

Presented by:

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

/s/ Daniel E. Seltz

Daniel E. Seltz (pro hac vice)
 250 Hudson Street, 8th Floor
 New York, NY 10013
 Telephone: 212-355-9500
 Email: dseltz@lchb.com

KARR TUTTLE CAMPBELL

Paul Richard Brown, WSBA #19357
 Nathan T. Paine, WSBA #34487
 Daniel T. Hagen, WSBA #54015
 Andrew W. Durland, WSBA #49747
 Joshua M. Howard, WSBA #52189
 701 Fifth Avenue, Suite 3300
 Seattle, Washington 98104
 206.223.1313
 npaine@karrtuttle.com