

## **SETTLEMENT AGREEMENT**

THIS SETTLEMENT AGREEMENT (“Agreement”) is made this [redacted] day of January, 2022, by and between Plaintiffs Bruce Corker d/b/a Rancho Aloha, Colehour and Melanie Bondera d/b/a Kanalani Ohana Farm, Robert and Cecelia Smith d/b/a Smithfarms, and Smithfarms LLC (“Plaintiffs”), on behalf of all others similarly situated (“Settlement Class Members”), on the one hand, and Hawaiian Isles Kona Coffee Company, Ltd. (“HIKC”), parties in *Corker, et al. v. Costco Wholesale Corporation, et al.*, 2:19-00290-RSL (W.D. Wash.) (“Case”).<sup>1</sup> This Agreement contains all material terms of the settlement in this action, and HIKC 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 proposed class representatives of a class of all persons and entities who farmed Kona coffee in the Kona District and then sold their coffee.
2. Plaintiffs alleged that HIKC falsely advertised coffee as originating from the Kona region in violation of the Lanham Act, 15 U.S.C. § 1125(a). HIKC has denied Plaintiffs’ claims and has asserted affirmative defenses to Plaintiffs’ claims.
3. Plaintiffs alleged that HIKC violated the Lanham Act, 15 U.S.C. § 1125(b) with respect to its coffee products containing Kona coffee or labeled as containing Kona coffee. HIKC has denied Plaintiffs’ claims and asserted affirmative defenses to Plaintiffs’ claims.
4. Plaintiffs and HIKC, with the assistance of their respective counsel, engaged in arm’s-length negotiations to resolve the case without the need for further litigation. This included mediation before Judge Edward A. Infante (Ret.) on June 2, 2020 and multiple subsequent negotiations.
5. Discovery has been ongoing in this Case since September 2019, during which time certain data and information were obtained from both Plaintiffs and HIKC related to this Case.
6. Plaintiffs have concluded that it would be in the best interests of Plaintiffs and the proposed class to enter into this Agreement to avoid the uncertainties of litigation, and to provide to the Settlement Class Members a benefit that is fair and reasonable.
7. Similarly, HIKC has concluded that, despite its belief that it is not liable for the claims asserted and has good defenses thereto, and without admission of any wrongdoing of any kind, it will enter into this Agreement to avoid the time, expense, and uncertainty of litigation.

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<sup>1</sup> All capitalized terms are as defined herein.

8. Although HIKC believes that the Agreement can and should be approved to avoid the time, expense, and uncertainty of litigation, in the event that the Agreement does not receive final and binding approval from the Court or is terminated according to its terms, HIKC expressly reserves the right to defend against the claims, including without limitation deny all liability, challenge class certification, and raise any and all defenses.

9. In light of the investigations undertaken and conclusions reached by the Parties and discussed above, Plaintiffs and HIKC have agreed, subject to approval by the Court, to fully and finally compromise, settle, extinguish, and dismiss with prejudice the Settled Claims.

10. This Agreement is for settlement purposes only, and neither the fact of, nor any provision contained in, this Agreement, nor any negotiations or proceedings related thereto, nor any action taken hereunder, shall constitute or be construed as any admission of the validity of any claim or any fact alleged by Plaintiffs or of any wrongdoing, fault, violation of law, or liability of any kind on the part of HIKC, or any admission by HIKC of any claim or allegation made in any action or proceeding against HIKC, or as a waiver of any applicable defense, including, without limitation, any applicable statute of limitations. HIKC 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 HIKC, specifically including the equitable defense of laches.

### **Terms of the Settlement Agreement**

#### 11. Class Definition.

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

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

#### 12. Product Requirements.

a. HIKC agrees that any product that it manufactures or sells labeled as "Kona" or "Kona Blend" will accurately and unambiguously state on the front label of the product the minimum percentage of authentic Kona coffee beans contained in the product using the same font type and same (or similar) color as the word Kona, and no smaller than one-half (1/2) the size as the word "Kona" appears, on the front of the package. Only Kona coffee certified and graded by the Hawaii Department of Agriculture as 100% Kona shall be considered authentic Kona coffee.

b. HIKC agrees to use at least the percentage of Kona coffee required by Hawaiian law, or as may be required by Hawaii law in the future, in any product labeled as "Kona" or "Kona Blend." HIKC further agrees that any product that it manufactures or sells labeled as "Kona" or "Kona Blend" will comply with the labeling standards set forth in the "Hawaii-Grown

Coffee 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.

c. By 60 days following Final Approval of this Settlement, or by March 31, 2022, whichever is later, HIKC shall formally change the name of the company to remove “Kona” from its name and shall not include on the label of any coffee product the name of any entity, DBA, or tradename with “Kona.”

d. The requirements in the foregoing sections 12(a) and 12(b) shall not apply to any products produced by or on behalf of HIKC before the date that is 60 days following Final Approval.

13. Communication to HIKC subscribers. HIKC will send an email communication to its subscribers, with language to be agreed upon by the parties, explaining the difference between 100 percent Kona coffee and Kona blend coffees, and that HIKC’s current offerings are Kona blends and not 100 percent Kona coffee. HIKC will send such communication within 60 days following Final Approval.

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

15. Settlement Payment. HIKC shall pay eight hundred thousand dollars (\$800,000.00 USD) (“Settlement Amount”) in three installments: \$375,000 (already provided by HIKC as of the execution of this Agreement), \$275,000 by April 30, 2022, and \$150,000 by October 31, 2022. In the event that the Court denies final approval of the Settlement Agreement, any payments made by HIKC as of the date of such denial shall be refunded to HIKC.

16. Cooperation in Settlement Approval. HIKC will cooperate in good faith to secure Court approval of the Settlement Agreement.

17. Affidavit Concerning Financial Condition. HIKC (as defined in the introductory paragraph to this Agreement) has provided a sworn affidavit, designated as Highly Confidential and Attorneys’ Eyes Only per the operative Protective Order (Dkt. 148), stating: (1) neither HIKC nor its owners would have any liquid assets remaining if they paid the Settlement Amount plus reasonable attorneys’ fees and costs to litigate the case through trial, with reference to specific amounts of assets available at the time of the execution of the affidavit; and (2) since February 27, 2019, neither HIKC nor its owners or affiliates has transferred, conveyed or assigned any assets to third parties to prevent Plaintiffs from recovering those assets or to hide or conceal those assets from the financial information provided to Plaintiffs. This Agreement is specifically predicated on representations of HIKC and its owners that they are currently experiencing substantial financial hardship. The accuracy and truth of these representations concerning financial hardship are material representations upon which Plaintiffs have relied in agreeing to compromise their claims.

### **Settlement Procedures**

18. **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 Settlement Class Members. Costs of notice to the Settlement Class and settlement administration will be paid from the Settlement Amount, and HIKC shall not be required to contribute financially beyond its obligations detailed in paragraph 15 of this Agreement.

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

20. **Distribution of Monies to the Settlement Class.** The Settlement Administrator will distribute monies to the Settlement 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.<sup>2</sup> Any remaining uncashed amounts after this second distribution shall be donated *cy pres* to the Legal Foundation of Washington.

21. **Scope of Release: Plaintiffs and Settlement Class Members.** As of final approval, and as part of the consideration for this Agreement, Plaintiffs and the Settlement Class Members hereby expressly agree that they fully and irrevocably release and discharge all Settled Claims, as defined below. Plaintiffs and Settlement Class Members hereby release HIKC and its predecessors, successors, assigns, parents, subsidiaries, corporate affiliates, holding companies, investors, owners, divisions, corporate affiliates, employees, agents, representatives, consultants, independent contractors, service providers, vendors, directors, managing directors, officers, partners, principals, members, attorneys, accountants, fiduciaries, financial and other advisors, investment bankers, insurers, reinsurers, employee benefit plans, underwriters, shareholders, lenders, auditors, and investment advisors, customers, distributors, co-packers, manufacturers, and roasters of each (“Defendant Releasees”) from any and all of the Settled Claims, except for the rights and obligations created by this Agreement, and Plaintiffs and the Settlement Class Members covenant and agree that they will not commence, participate in, prosecute, or cause to be commenced or prosecuted any action or other proceeding based upon any of the Settled Claims released pursuant to the Settlement Agreement and shall dismiss with prejudice the claims alleged against HIKC in the Case as well as claims against other defendants in the Case that arise from the sale of the Settled Products. This Release and the dismissal of Settled Claims specifically includes but is not limited to each of the Defendants that sold the Settled Products: including Cost Plus/World Market, Albertsons Companies Inc. and Safeway Inc., and each of their respective present or former administrators, predecessors, successors, assigns, parents, subsidiaries, corporate affiliates, holding companies, investors, divisions, corporate affiliates, employees, agents, representatives, consultants, independent contractors, service providers,

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<sup>2</sup> 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 Lief Cabraser Heiman and Bernstein LLP).

vendors, directors, managing directors, officers, partners, principals, members, attorneys, accountants, fiduciaries, financial and other advisors, investment bankers, insurers, reinsurers, employee benefit plans, underwriters, shareholders, lenders, auditors, and investment advisors, customers, distributors, co-packers, manufacturers, and roasters (also included as “Defendant Releasees”). 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 Settlement Class Members or by Plaintiffs or the Settlement Class Members regarding the Settled Products or Settled Claims. Nothing in this Agreement shall be construed as an agreement from Settlement Class Members to waive, release, or dismiss any claims they have against Defendant Releasees that do not arise from their purchase or sale of the Settled Products.

22. Plaintiffs’ Release. Notwithstanding, and in addition to, the above release, as of final approval, each of the named Plaintiffs, Bruce Corker d/b/a Rancho Aloha, Colehour and Melanie Bondera d/b/a Kanalani Ohana Farm, Robert and Cecelia Smith d/b/a Smithfarms, and Smithfarms LLC (“Individual Plaintiffs”), for themselves and on behalf of their respective agents, successors, heirs, assigns, and any other person who can claim by or through them in any manner, fully, finally and forever irrevocably release, relinquish and forever discharge with prejudice all Settled Claims against the Defendant Releasees. The Plaintiffs also release any claims each of them may have arising out of any conduct or omissions occurring as of the date of signing, other than the Lanham Act claims asserted in this Case regarding non-Settled Products, that might be attributable to Defendant Releasees. This release does not extend to the Settlement Class Members.

23. 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 the Settled Products, regardless of the statute, regulation, common law legal theory, or other legal basis on which the allegations may be asserted. In connection with the release of the Settled Claims, Plaintiffs and Settlement Class Members shall be deemed to have waived any and all provisions, rights, and benefits conferred by § 1542 of the California Civil Code and any statute, rule, and legal doctrine similar, comparable, or equivalent to California Civil Code § 1542. In addition to the foregoing, Plaintiffs and Settlement Class Members hereby expressly waive and fully, finally, and forever settle and release any known or unknown, suspected or unsuspected, contingent or non-contingent claims with respect to the Settled Claims, whether or not concealed or hidden, without regard to any subsequent discovery or existence of different or additional facts.

24. Scope of Release: HIKC. As of final approval, HIKC, 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, expressly including (but not limited to) any claim under antitrust or other unfair competition laws, but excluding any claims that are asserted against HIKC by third parties related thereto. HIKC, its officers, directors, managers, owners, and related entities settle and forever release all actions, claims, demands, rights, suits, or causes of action, including without

limitation all claims that this Case was brought with an improper purpose. The release to Plaintiffs and Settlement Class Members, provided in this paragraph covers, without limitation, any and all claims for attorneys' fees, costs, or disbursements incurred by counsel for HIKC related to HIKC or the Settled Products, its insurers, or any other counsel representing HIKC or its insurers in connection with or related in any manner to this Agreement, HIKC or the Settled Products, the administration of this Agreement and the settlement contemplated thereunder, and the Settlement. For clarity, the release does not include any claims for attorneys' fees or costs other than precluding such claims against Plaintiffs, Class Counsel, any other Plaintiffs' attorneys, or the Settlement Class Members. HIKC, its officers, directors, managers, owners, and related entities expressly waive and fully, finally, and forever settle and release any known or unknown, suspected or unsuspected, contingent or non-contingent claims with respect to litigation, whether or not concealed or hidden, without regard to any subsequent discovery or existence of different or additional facts.

25. Statement of Present Intent. Plaintiffs and Plaintiffs' Counsel represent and warrant that (1) they have no present intention to seek or solicit any plaintiffs or potential plaintiffs for the purpose of initiating any new or separate claim or lawsuit against the Defendant Releasees for the claims at issue in this Case; and (2) they have no present intention of communicating any information concerning the Case to third parties for the purpose of assisting or encouraging the filing or prosecuting of any action or proceeding against Defendant Releasees. Nothing in this paragraph shall be construed as a restriction of any attorney's right to practice in contravention of any applicable rules governing professional conduct.

26. Settled Products. "Settled Products" are any products manufactured or sold by HIKC labeled as Kona coffee products as described in the Third Amended Complaint (Dkt. 381). For clarity, the Third Amended Complaint did not describe HIKC products labeled as containing 10 percent Kona coffee, such as those sold by Walmart Inc. or MNS, Ltd., and such products are not among the Settled Products.

27. 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.

28. Authority. Counsel signing below warrant they have full authority to bind their clients.

29. Construction. Plaintiffs and HIKC 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.

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



release does not include any claims for attorneys' fees or costs other than precluding such claims against Plaintiffs, Class Counsel, any other Plaintiffs' attorneys, or the Settlement Class Members. HIKC, its officers, directors, managers, owners, and related entities expressly waive and fully, finally, and forever settle and release any known or unknown, suspected or unsuspected, contingent or non-contingent claims with respect to litigation, whether or not concealed or hidden, without regard to any subsequent discovery or existence of different or additional facts.

8. Statement of Present Intent. Plaintiffs and Plaintiffs' Counsel represent and warrant that (1) they have no present intention to seek or solicit any plaintiffs or potential plaintiffs for the purpose of initiating any new or separate claim or lawsuit against the Defendant Releasees for the claims at issue in this Case; and (2) they have no present intention of communicating any information concerning the Case to third parties for the purpose of assisting or encouraging the filing or prosecuting of any action or proceeding against Defendant Releasees. Nothing in this paragraph shall be construed as a restriction of any attorney's right to practice in contravention of any applicable rules governing professional conduct.

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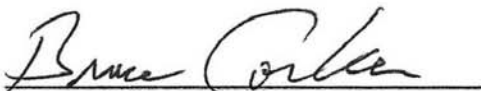
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**PLAINTIFFS**

DATED: January 16, 2022

  
Bruce Corker


**DEFENDANT**

DATED: January \_\_, 2022


\_\_\_\_\_  
Michael Boulware, for Hawaiian Isles Coffee

d/b/a Rancho Aloha  
DATED: January 14, 2022

Company, Ltd.

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

DATED: January 14, 2022

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

DATED: January \_\_, 2022

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

DATED: January \_\_, 2022

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

DATED: January \_\_, 2022

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

DATED: January \_\_, 2022

By: \_\_\_\_\_  
Lief Cabraser Heimann & Bernstein LLP  
on behalf of the proposed Settlement Class



**PLAINTIFFS**

DATED: January \_\_, 2022

\_\_\_\_\_  
Bruce Corker  
d/b/a Rancho Aloha  
DATED: January \_\_, 2022

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

DATED: January \_\_, 2022

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

DATED: January 13, 2022

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

DATED: January 13, 2022

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

DATED: January 13, 2022

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

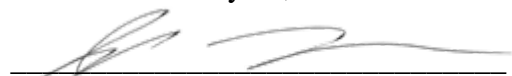
DATED: January \_\_, 2022

**DEFENDANT**

DATED: January \_\_, 2022

Michael Boulware  
Michael Boulware, for Hawaiian Isles Coffee  
Company, Ltd.

DATED: January 18, 2022

A handwritten signature in black ink, appearing to read "Jason L. Lichtman", is written over a horizontal line.

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