

## **SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

THIS SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS (“Agreement”) is made this 19th day of August, 2020, by and between Plaintiffs Bruce Corker d/b/a Rancho Aloha, Colehour Bondera and Melanie Bondera d/b/a Kanalani Ohana Farm, and Robert and Cecelia Smith d/b/a Smithfarms (“Plaintiffs”), on behalf of all others similarly situated (“Settlement Class Members”), and Defendant BCC Assets, LLC d/b/a Boyer’s Coffee. (“BCC”) (Plaintiffs, Settlement Class Members, and BCC are collectively the “Settling Parties”), who are all parties in the lawsuit captioned *Corker, et al. v. Costco Wholesale Corporation, et al.*, 2:19-00290 (W.D. Wash.) (“Corker case”).

This Agreement contains all material terms of the settlement in this action, and the Settling Parties intend for it to be binding to the fullest extent of the law, and it shall remain so unless superseded by a written agreement signed by all parties to this agreement. The Agreement shall be subject only to the terms set forth below, binding court approval, and class notice.

### **RECITALS**

1. Plaintiffs are coffee growers in the Kona region of Hawaii. Plaintiffs are proposed class representatives of a class of all persons and entities who commercially farmed Kona coffee in the Kona District and then sold their coffee.

2. Plaintiffs alleged that BCC falsely advertised coffee as originating from the Kona region in violation of the Lanham Act, 15 U.S.C. § 1125(a). BCC denied Plaintiffs’ claims and asserted affirmative defenses that it would pursue if this case were to proceed in litigation.

3. Plaintiffs alleged that BCC falsely designated coffee as originating from the Kona region in violation of the Lanham Act, 15 U.S.C. § 1125(b). BCC denied Plaintiffs’ claims and asserted affirmative defenses that it would pursue if this case were to proceed in litigation.

4. Plaintiffs’ Counsel and Counsel for BCC engaged in discovery, and BCC produced a substantial amount of sales and financial information and documents to Plaintiffs.

5. Counsel for Plaintiffs and BCC engaged in arm’s length negotiations - including, but not limited to, direct negotiations and mediation before Judge Edward A. Infante (Ret.) - to resolve the case without the need for further litigation. As part of the negotiation process, Plaintiffs’ Counsel requested and BCC provided data and other information, and Plaintiffs’ Counsel has investigated the information provided. Based on the information in Plaintiffs’ possession, Plaintiffs have concluded that it would be in the best interests of Plaintiffs and the Settlement Class Members to enter into this Agreement to avoid the uncertainties of litigation, and to provide to Plaintiffs and the Settlement Class Members a benefit that is fair and reasonable. Similarly, BCC 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 in order to avoid the time, expense and uncertainty of protracted litigation.

6. While BCC believes that the Agreement can and should be approved to avoid the time, expense and uncertainty of protracted litigation, in the event that the Agreement does not receive final and binding approval from the Court or is terminated according to its terms, BCC expressly reserves the right to challenge class certification and reserves all other defenses.

7. In light of the investigations undertaken and conclusions reached by the Settling Parties and discussed above, Plaintiffs and BCC have agreed, pursuant to the terms set forth below, and subject to approval by the Court, to fully and finally compromise, settle, extinguish and to dismiss with prejudice the claims asserted against BCC and its products in the *Corker* case, as well as any liability for any other person or entity that in any way relates to or arises from any conduct associated with BCC or any of its products, as further described below in this Agreement.

8. 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 BCC or any admission by BCC of any claim or allegation made in any action or proceeding against BCC or as a waiver of any applicable defense, including, without limitation, any applicable statute of limitations. This Agreement and its exhibits shall not be offered or be admissible in evidence in any action or proceeding in any forum for any purpose whatsoever, except any action or proceeding brought to enforce its terms.

9. This Agreement is specifically predicated on the accuracy of the documents that BCC produced to Plaintiffs containing BCC's sales of Kona-products: in particular, that BCC has provided a substantially complete accounting of all sales. Similarly, the Agreement is specifically predicated on BCC's representations that it currently is experiencing substantial financial hardship and likely could not withstand a judgment for the full damages sought by Plaintiffs in this matter. The accuracy of BCC's sales records for its Kona-products and its representations concerning its financial hardship are material representations upon which Plaintiffs have relied in agreeing to compromise their claims. BCC will provide a sworn declaration to the Court affirming those representations in support of preliminary approval.

10. Should the Court determine that any additional settlement memorandum is required, Plaintiffs and BCC agree to take steps to finalize such an agreement within 30 days or as otherwise ordered by the Court.

11. In consideration of the above Recitals, all of which shall be considered fully incorporated into this Settlement Agreement, and the mutual promises and covenants set forth herein, the Parties agree as follows:

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

12. Product Requirements.

a. BCC agrees that any of its current or future products labeled as "Kona, will accurately and unambiguously state on the front label of the product the minimum percentage of authentic Kona coffee beans contained in the product. Only Kona coffee certified

and graded by the Hawaii Department of Agriculture as 100% Kona shall be considered authentic Kona coffee. This requirement shall not apply to any products produced by or on behalf of BCC before the date that is 60 days following the execution of this Agreement.

b. BCC agrees that any of its current or future products labeled as “Kona” will comply with the labeling standards set forth in the “Hawaii-Grown Coffee Law” (Hawaii Revised Statute §486-120.6). Should the statute be modified in the future or superseded by another statute, BCC agrees to comply with the most recent statutory language. All BCC packages shall comply with the Hawaii state labeling standards, whether or not a particular package is intended for use in Hawaii.

c. As of the execution of this Agreement, BCC has ceased production of any product labeled as “Kona,” that does not contain coffee from the Kona region of Hawaii. However, BCC does not have possession or control over any such coffee that may have been previously provided to other entities. No violation of this agreement or continuing liability of any kind will be established against BCC or its customers based on any Kona-labeled product that was packaged prior to execution of this agreement.

13. Settlement Payment. Plaintiffs and BCC have agreed on a settlement amount of one million one hundred twenty-five thousand dollars (\$1,125,000.00) (“Settlement Amount”). The timing of payment is set forth in Paragraph 17, below. BCC shall not be liable for any payment of any kind beyond the Settlement Amount.

14. Settlement Approval. The Settling Parties recognize that BCC’s office, warehouse, and coffee shop have recently been devastated by a large fire, and many documents are no longer available. However, through discovery and otherwise, BCC has cooperated, and intends to continue to cooperate in good faith to secure approval of the Agreement by providing supporting documentation. BCC has already produced in discovery admissible proof of the volume of coffee it manufactured, sold, or distributed with a “Kona” label, the price for which it sold that coffee, the profit that it made from the sale of that coffee; and copies of all Hawaii Department of Agriculture 100% Kona Certifications for all Kona coffee purchased by BCC. To the extent that BCC identifies such information as a trade secret or commercial business information, Plaintiffs will maintain such information in confidence and cooperate with BCC’s efforts to ensure that any disclosure of such information to the Court will not result in its disclosure to the public or to competitors of BCC, some of whom will remain defendants in the *Corker* case.

### **Effectuation of the Settlement Agreement**

15. Timing of Notification to the Court. Within seven days of the execution of this Agreement, Plaintiffs will file a notice with the Court informing the Court that the Settling Parties have reached an agreement in principle and requesting that any and all deadlines related to BCC or associated with the products BCC supplied that are the subject of this litigation be stayed, including but not limited to, discovery as to such products, provided that nothing in this settlement shall prevent plaintiffs from obtaining sales volume, revenue, and profit information about those products from third parties or from a defendant who is producing sales volume, revenue, and profit information about any other product.

16. Timing of Motion for Settlement Approval. Because this litigation involves numerous other defendants, Plaintiffs will move the Court to preliminarily approve this settlement within three months of execution of this Agreement, unless otherwise provided in any subsequent agreement. This will reduce notice and administrative costs to the class.

17. Escrow. BCC or its insurance carriers shall pay the Settlement Amount in two installments. Within 21 days of preliminary approval of the settlement by the Court, BCC or its insurance carriers shall pay a sum sufficient to cover BCC's proportional pro rata share of the costs of notice and administration for notice of the preliminary settlement approval to the settlement class. The cost of notification of the preliminary settlement approval will be determined by the class action administrator, and BCC's pro rata share will be based on the number of defendants for which notice and administration is being undertaken. The components of administration will be consistent with the preliminary bids obtained prior to the signing of this Settlement Agreement. Following final approval of the settlement by the Court, BCC or its insurance carriers shall pay the remaining balance of the Settlement Amount on the schedule set out in the final approval order.

18. Class Settlement Administration: Plaintiffs' Counsel has the right to choose the class Settlement Administrator, which shall be a professional firm with experience in this field. BCC shall have the right to approve Plaintiffs' choice of Settlement Administrator unless another defendant in this action has already approved that choice. Such approval shall not be withheld unreasonably.

19. Distribution of Monies to Plaintiffs. The Settlement Administrator will distribute monies to the Plaintiffs and the Settlement Class Members approximately pro rata based on a reasonable and fair formula.

20. Scope of Release:

a. As of the Effective Date of this Agreement, Plaintiffs and the Settlement Class Members hereby expressly agree that they shall fully and irrevocably release and discharge all Settled Claims, as defined in this paragraph. Plaintiffs and the Settlement Class Members settle and forever release all actions, claims, demands, rights, suits, or causes of action, including without limitation all claims that arise from, involve, or in any way relate to any BCC product that used the word "Kona" on its packages, labels, advertisements, coupons, website, or other medium of communication, or that arise from or relate to the allegations made or conduct described in the First Amended Complaint (Dkt. No. 81 in the Corker case) including but not limited to allegations related to the labeling, packaging, advertising, promotion, branding, marketing, manufacturing, design, formulation, and distribution or sale of any and all BCC products that used the word "Kona," regardless of the statute, regulation, common law legal theory, or other legal basis on which the allegations may be asserted (the "Settled Claims"). This release does not, however, extend to any of the rights or obligations created by this Agreement. Plaintiffs and the Settlement Class Members release BCC Assets, all of BCC's customers, distributors, insurers, agents, co-packers, manufacturers, retailers, and roasters, and the respective parents, subsidiaries, affiliated entities, predecessors, and successors of each (collectively "Defendant Releasees") from all claims related to or arising from the use of the term "Kona" in connection with BCC's products. Plaintiffs and the Settlement Class Members



shall dismiss with prejudice the class action claims filed against BCC in the *Corker* case as well as any and all claims against any other defendants in the *Corker* case that relate to or arise from the use of the term “Kona” in connection with BCC’s products, packaging, labels, product descriptions, or advertisements of BCC products. The release provided in this paragraph covers, without limitation, any and all claims for attorneys’ fees, costs, or disbursements incurred by Counsel for Plaintiff and the Settlement Class Members or any other counsel representing Plaintiffs or Settlement Class Members in connection with or related in any manner to this Agreement or the *Corker* case, the settlement of the *Corker* case, the administration of this Agreement and the settlement contemplated thereunder, Settlement and/or the Settled Claims. Plaintiffs and the Settlement Class Members 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. For the sake of clarity, the provisions in this paragraph do not relieve any of BCC customers, distributors, co-packers, manufacturers, roasters, or the respective parents, subsidiaries, affiliated entities, predecessors, and successors of each, from any liability related to products that were not produced or manufactured by BCC.

b. As of the Effective Date of this Agreement, BCC, 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. BCC, 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 that this lawsuit (Dkt. No. 81 in the *Corker* case) was brought with an improper purpose. The release provided in this paragraph covers, without limitation, any and all claims for attorneys’ fees, costs, or disbursements incurred by Counsel for BCC, its insurers, or any other counsel representing BCC or its insurers in connection with or related in any manner to this Agreement or the *Corker* case, the settlement of the *Corker* case, the administration of this Agreement and the settlement contemplated thereunder, and the Settlement. BCC 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.

21. Public Statements. The Settling Parties agree to coordinate any statement to the public or press related to the settlement and to make no public statements concerning the settlement without the approval of the other, which shall not be unreasonably withheld.

22. Entire Agreement. This Agreement constitutes the entire agreement between the Settling Parties hereto with respect to settlement of the *Corker* case and release of the Defendant Releasees, and supersedes all prior agreements, understandings, negotiations, and/or discussions, whether oral or written, of the Settling Parties with respect to settlement of the *Corker* case and release of the Defendant Releasees. There are no representations or agreements between the Settling Parties in connection with settlement of the *Corker* case and release of the Defendant Releasees except as specifically set forth herein. No supplement, modification, waiver, or termination of this Agreement shall be binding unless executed in

writing by the party to be bound thereby. No delay or omission on the part of either party in exercising any right in this Agreement shall operate as a waiver of such right or any other right. A waiver on one occasion shall not be construed as a bar to or waiver of any right on any further occasion.

23. Governing Law. The Settling Parties hereby agree that the validity, construction, and interpretation of this Agreement shall be governed by the laws of the State of Washington.

24. Binding Agreement. This Agreement shall be binding upon and shall inure to the benefit of the Settling Parties and the Defendant Releasees and their representatives, parents, affiliates, subsidiaries, servants, attorneys, agents, insurers, experts, consultants, heirs, successors, officers, directors, partners, administrators, trustees, receivers, employees, executors, and assigns, and any legal or personal representative, whether past, present or future.

25. Warranty of Authorization. The undersigned persons warrant and represent that they have read, understood, and voluntarily accepted the terms in this agreement, that the agreement is fairly made, and that they have authority to enter into this Agreement and to bind the party who is represented by the signing person.

26. Benefit of Counsel. The Settling Parties acknowledge that they have consulted with their respective attorneys of record herein concerning the terms of this Agreement, and have been fully advised by their respective attorneys with respect to the rights and obligations contained herein. The settlement which forms the basis of the Agreement has been arrived at after thorough bargaining and negotiation and represents a final agreement.

27. Construction. All Settling Parties 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.

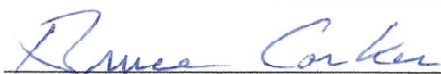
28. Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile or photocopy signatures shall be binding as though original.

29. Attorneys' Fees for Breach. In any action that is brought upon to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable costs, including attorney fees, incurred to enforce the Agreement.

**SO AGREED:**

I declare under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct to the best of my knowledge. IN WITNESS WHEREOF, I have caused this Settlement Agreement and Mutual Release to be executed at Holualoa, HI.

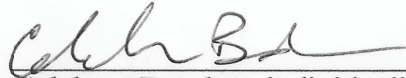
Dated: 8/10/20

  
Bruce Corker, individually  
and on behalf of Rancho Aloha



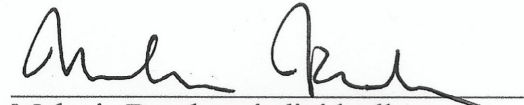
I declare under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct to the best of my knowledge. IN WITNESS WHEREOF, I have caused this Settlement Agreement and Mutual Release to be executed at Honolulu, HI.

Dated: Aug. 19, 2020

  
Colehour Bondera, individually  
and on behalf of Kanalani Ohana Farm

I declare under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct to the best of my knowledge. IN WITNESS WHEREOF, I have caused this Settlement Agreement and Mutual Release to be executed at Honolulu, HI.

Dated: 8/19/20

  
Melanie Bondera, individually  
and on behalf of Kanalani Ohana Farm

I declare under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct to the best of my knowledge. IN WITNESS WHEREOF, I have caused this Settlement Agreement and Mutual Release to be executed at \_\_\_\_\_, HI.

Dated: \_\_\_\_\_

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

I declare under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct to the best of my knowledge. IN WITNESS WHEREOF, I have caused this Settlement Agreement and Mutual Release to be executed at \_\_\_\_\_, HI.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Cecelia Smith, individually  
And on behalf of Smithfarms,

I declare under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct to the best of my knowledge. IN WITNESS WHEREOF, I have caused this Settlement Agreement and Mutual Release to be executed at \_\_\_\_\_, HI.

Dated: \_\_\_\_\_

Colchour Bondera, individually  
and on behalf of Kanalani Ohana Farm

I declare under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct to the best of my knowledge. IN WITNESS WHEREOF, I have caused this Settlement Agreement and Mutual Release to be executed at \_\_\_\_\_, HI.

Dated: \_\_\_\_\_

Melanie Bondera, individually  
and on behalf of Kanalani Ohana Farm

I declare under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct to the best of my knowledge. IN WITNESS WHEREOF, I have caused this Settlement Agreement and Mutual Release to be executed at HONOLULU, HI.

Dated: 8-10-2020

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

I declare under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct to the best of my knowledge. IN WITNESS WHEREOF, I have caused this Settlement Agreement and Mutual Release to be executed at HONOLULU, HI.

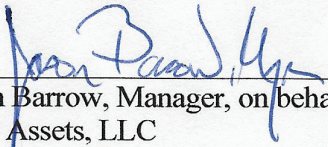
Dated: 8-10-2020

Cecelia B. Smith  
Cecelia Smith, individually  
And on behalf of Smithfarms,



I declare under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct to the best of my knowledge. IN WITNESS WHEREOF, I have caused this Settlement Agreement and Mutual Release to be executed at 5945 Broadway, Unit A, Denver CO.

Dated: August 12, 2020 \_\_\_\_\_

  
\_\_\_\_\_  
Jason Barrow, Manager, on behalf of  
BCC Assets, LLC