

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,

Plaintiffs,

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 FINAL APPROVAL
OF THREE CLASS ACTION
SETTLEMENTS**

The Honorable Robert S. Lasnik

Noted for consideration: June 3, 2022

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1 **I. Introduction**

2 This motion for final approval of three additional class settlements – with The Kroger Co.
3 (“Kroger”), with Safeway Inc. and Albertsons Companies Inc. (“Safeway/Albertsons”), and with
4 Hawaiian Isles Coffee Co. Ltd. (“HIKC”) – is the latest positive development in Plaintiffs’ and
5 Class Counsel’s efforts to bring meaningful and immediate relief to the class of Kona coffee
6 farmers and to bring this litigation to a just and efficient resolution. These latest settlements,
7 which bring the total amount recovered for the class to over \$15.2 million, like the first set of
8 settlements approved and implemented last year, elicited **no objections and no opt-outs**. This is
9 especially noteworthy because class members had, by the time they received notice of these
10 settlements, received their checks from the first set of settlements, such that class members had a
11 concrete awareness of this case and its progress.

12 This Court recently granted preliminary approval to these settlements, finding that it was
13 likely to be able to approve the proposed settlements applying the criteria set out in Rule
14 23(e)(2), and to certify the class for purposes of settlement, and directed notice to issue to the
15 class. *See* Dkt. 604. Following the same process that it carried out last year with respect to prior
16 settlements, the Settlement Administrator then effectuated the notice plan approved by this
17 Court, including both direct notice and publication in the *West Hawaii Daily*, and it updated the
18 settlement website and toll-free number for class members. The opt-out and objection deadline of
19 May 2, 2022 passed with *zero* opt-outs and objections.

20 Plaintiffs now seek final approval, so that the benefits promised in these settlements can
21 begin to flow to class members. As set out below, the settlements represent an excellent result for
22 the Settlement Class and satisfy all criteria for final approval under Ninth Circuit law.

23 **II. Procedural History**

24 Class Counsel detailed the procedural history of this litigation most recently in the
25 motion for preliminary approval of these settlements. *See* Dkt. 602. That motion, and the
26

1 declarations that accompanied it, recount this case’s specific challenges, the hurdles that
2 Plaintiffs have cleared at each stage of the case, and the hard-fought history of the litigation
3 through discovery and class certification. That work made possible and led to the arms-length
4 negotiations, including with the assistance of a mediator, that produced these settlements.
5 Plaintiffs reference and incorporate that motion and declarations herein.

6 **III. Summary of the Settlements**

7 Plaintiffs’ motion for preliminary approval also summarized the terms of each of the
8 settlements that this Court preliminarily approved. *See* Dkt. 602. Plaintiffs provide a brief
9 summary of each settlement again for the sake of completeness.¹

10 Like the previous settlements granted final approval by this Court, these settlements
11 deliver substantial monetary relief to the Settlement Class, and include injunctive terms that will
12 continue to change the marketplace: each of the settlements includes changes in the labeling of
13 coffee described as containing coffee from the Kona region, thus preventing further economic
14 harm to the growers of legitimate Kona coffee. The HIKC settlement goes further: the company
15 agreed to change its name to remove the word “Kona” altogether.

16 The Kroger settlement includes both monetary and injunctive terms. First, Kroger will
17 pay \$1,350,000. It will also now be subject to labeling obligations for the coffee that it sells
18 either under its own name or any brand name that it wholly owns and that is labeled as “Kona
19 coffee” or “Kona Blend.” Those products will state on the front of the product’s label the
20 minimum percentage (or the percentage) of Kona coffee beans contained in the product using the
21 same font type and same (or similar) color as the word Kona, and no smaller than one-half (1/2)
22 the size as the word “Kona” appears, on the front of the package. Dkt. 603-1 ¶ 13. The
23 injunctive terms of Kroger’s settlement compound the benefits of the agreements of the
24 previously settling defendants that increase and improve the information found on Kona-labeled
25

26 ¹ The settlement agreements themselves were attached to the preliminary approval motion at Docket 603-1, 603-2,
and 603-3.

1 products in the marketplace.

2 The Safeway/Albertsons agreement includes injunctive terms that also reinforce the
3 labeling changes that numerous settling suppliers and retailers have already agreed to and have
4 already begun to implement. Safeway/Albertsons agrees to sell coffee labeled as “Kona” or
5 “Kona blend” only if certain labeling standards are met, and will require its vendors to certify
6 that its Kona-labeled products will meet such standards, ensuring that the labeling information is
7 clear and conspicuous. *See* Dkt. 603-2 ¶ 13. It agrees that “any coffee product labeled as ‘Kona
8 coffee’ or ‘Kona Blend coffee’ will state on the front of the product’s label the minimum
9 percentage (or percentage) of Kona coffee beans the supplier of the products states is contained
10 in the Kona Coffee Product using the same font type and same (or similar) color as the word
11 Kona and no smaller than one-half (1/2) the size as the word ‘Kona’ appears, on the front of the
12 package.” *Id.*

13 HIKC will pay \$800,000.² The non-monetary terms of the HIKC settlement are
14 extraordinary. First, it will change its company name to remove the word “Kona.” Exh. 3 ¶
15 12(c). Second, it will, like previously settling defendants, alter its labeling of Kona-labeled
16 coffee so that such products “will accurately and unambiguously state on the front label of the
17 product the minimum percentage of authentic Kona coffee beans contained in the product using
18 the same font type and same (or similar) color as the word Kona, and no smaller than one-half
19 (1/2) the size as the word “Kona” appears, on the front of the package.” Dkt. 603-3 ¶ 12(a). The
20 agreements clarifies, “Only Kona coffee certified and graded by the Hawaii Department of
21 Agriculture as 100% Kona shall be considered authentic Kona coffee.” *Id.* HIKC also agrees
22 “to use at least the percentage of Kona coffee required by Hawaiian law, or as may be required
23 by Hawaii law in the future, in any product labeled as “‘Kona’ or “‘Kona Blend.’” *Id.* ¶ 12(b).

24 _____
25 ² HIKC is required to pay this amount in three installments. After meeting its first deadline, HIKC did not make its
26 second payment deadline of May 2 (the deadline was April 30, a Saturday). Class Counsel will be pursuing the
company and its owners using every tool available to them to ensure that the class is paid what HIKC agreed it
would pay, beginning with forthcoming motion practice in this Court, which has jurisdiction to enforce the
settlement.

1 Finally, it will send a special communication to its subscriber list, explaining the difference
2 between 100 percent Kona coffee and Kona blend coffees, and that HIKC's current offerings are
3 Kona blends and not 100 percent Kona coffee. *Id.* ¶ 13.

4 **IV. The Class Notice Plan Was Successfully Implemented.**

5 This Court's Preliminary Approval Order directed that the parties effectuate a multi-
6 faceted notice plan, including direct notice to Settlement Class Members, and the establishment
7 of a dedicated settlement website, post office box, and toll-free telephone number. The parties, in
8 consultation with the Settlement Administrator, have carried out the notice plan. Consistent with
9 the Court's orders, the Settlement Administrator will provide a declaration on May 20, 2022 (two
10 weeks before the final approval hearing) confirming its implementation of the notice plan. That
11 affidavit will also report on whether any of the more than 700 Settlement Class Members who
12 were sent direct notice have elected to opt out of or object to the settlements. To date, not a
13 single opt-out or objection has been received. Following final approval, the Settlement
14 Administrator will effectuate the claims and payment process to class members, which is
15 described in more detail below, and which resembles and builds on the successful notice and
16 claims campaign carried out in connection with previous settlements in this case.

17 **V. Final Approval is Warranted.**

18 **A. Settlement Approval Process**

19 Federal Rule of Civil Procedure 23(e) provides that class actions "may be settled ... only
20 with the court's approval." Rule 23(e) governs a district court's analysis of the fairness of a
21 proposed class action settlement and creates a multistep process for approval. This Court has
22 already taken the first two steps. First, it has determined that it is likely to (i) approve the
23 proposed settlement as fair, reasonable, and adequate, after considering the factors outlined in
24 Rule 23(e)(2), and (ii) certify the settlement class after the final approval hearing. *See* Fed. R.
25 Civ. P. 23(e)(1)(B). Second, it has directed notice to the class, approving notice that describes the
26 terms of the proposed settlement and the definition of the proposed class, and explains how class

1 members can object to or opt out of the proposed settlement. *See* Fed. R. Civ. P. 23(c)(2)(B);
 2 Fed. R. Civ. P. 23(e)(1), (5). Plaintiffs now ask that this Court take the third and final step, which
 3 is to grant final approval of the proposed settlements. *See* Fed. R. Civ. P. 23(e)(2).

4 **B. The Settlements Are Fair, Reasonable, and Adequate.**

5 All of the factors set forth in Fed. R. Civ. P. 23(e)(2) weigh strongly in favor of final
 6 approval. In granting preliminary approval, the Court already observed that the proposed
 7 Settlement appeared “fair, reasonable, and adequate,” so that notice was appropriate. Dkt. 604 ¶

8 4. The Court can and should reach the same conclusion here at final approval.

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

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

22 **2. Rule 23(e)(2)(B): The Settlements Are the Result of Arms-Length,**
 23 **Informed Negotiations.**

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

26 First, as Plaintiffs explained, the involvement of experienced mediators in the
 negotiations creates a presumption of fairness. *See* Joseph M. McLaughlin, *McLaughlin on*

1 *Class Actions* (8th ed. 2011); *see also Sandoval v. Tharaldson Emp. Mgmt., Inc.*, No. 08-482,
 2 2010 WL 2486346, at *6 (C.D. Cal. June 15, 2010) (“The assistance of an experienced mediator
 3 in the settlement process confirms that the settlement is non-collusive.”); *Free Range Content,*
 4 *Inc. v. Google, LLC*, No. 14-02329, 2019 WL 1299504, at *6 (N.D. Cal. Mar. 21, 2019) (holding
 5 that a “presumption of correctness” attaches where, as here, a “class settlement [was] reached in
 6 arm’s-length negotiations between experienced capable counsel after meaningful discovery”).
 7 Judge Infante conducted an early mediation involving all three settling defendants, while Mr.
 8 LeHocky assisted in the resolution of the Kroger settlement through multiple sessions.

9 Second, Class Counsel negotiated the Settlements with a full understanding of the legal
 10 claims and their factual basis, negotiating only after conducting discovery and obtaining sales
 11 and other pertinent data as to the settling defendants’ businesses, and successfully litigating
 12 dispositive and non-dispositive motions. Where extensive information has been exchanged, “[a]
 13 court may assume that the parties have a good understanding of the strengths and weaknesses of
 14 their respective cases and hence that the settlement’s value is based upon such adequate
 15 information.” William B. Rubenstein, et al., *Newberg on Class Actions* § 13:49 (5th ed. 2012);
 16 *see also In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 320 (N.D. Cal. 2018)
 17 (concluding that the “extent of discovery” and factual investigation undertaken by the parties
 18 gave them “a good sense of the strength and weaknesses of their respective cases in order to
 19 ‘make an informed decision about settlement’”) (quoting *In re Mego Fin. Corp. Sec. Litig.*, 213
 20 F.3d 454, 459 (9th Cir. 2000)). This case is now quite advanced, and Class Counsel are well
 21 positioned to understand the risks and benefits of settlement.

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

24 The Court may also find for purposes of final approval that the relief provided for the
 25 class is “adequate.” Fed. R. Civ. P. 23(e)(2)(C). This subsection asks the Court to take into
 26 account: “(i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed

1 method of distributing relief to the class, including the method of processing class-member
2 claims; (iii) the terms of any proposed award of attorney’s fees, including timing of payment;
3 and (iv) any agreement required to be identified under Rule 23(e).” *Id.* The Court can readily
4 adhere to and confirm its preliminary determination that the settlement is adequate upon review
5 of these factors.

6 **a. The Settlements deliver excellent monetary and injunctive relief.**

7 The Settlements deliver immediate monetary relief and practice changes. The settlements
8 provide more for than \$2.15 million in monetary relief alone. Further, Plaintiffs previously
9 presented evidence that similar practice changes by defendants who settled earlier in the case
10 would mitigate millions of dollars in market-price damages. *See* Dkt. 428 (sealed Schreck
11 Declaration). These settlements, structured similarly to those previously approved, will build on
12 those positive effects.

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

14
15 The amount obtained is reasonable in light of the risks, delays, and costs attendant to
16 class certification, potential interlocutory appeal under Rule 23(f), summary judgment motions,
17 trial, and appeals. Plaintiffs have previously explained some of those risks in connection with the
18 prior set of settlements. *See* Dkt. 416 ¶¶ 10-16. To start, Defendants have advanced a legal
19 theory that the Lanham Act does not authorize the central claim in this case: false designation of
20 geographic origin. Although the Court denied the motions to dismiss on that basis, the issue
21 would remain alive in this case through summary judgment, trial, and appeal. Defendants also
22 had a factual defense that consumers were not confused by false designations of Kona
23 geographic origin and that Plaintiffs’ claims were barred by laches. Although Plaintiffs are
24 confident in the merits of their claims, each of those issue created risk (as to these defendants) at
25 summary judgment and trial. In particular, whether consumers were confused or likely to be
26 confused by Defendants’ product labels would likely come down to a “battle of the experts” at

1 trial, the result of which is always uncertain. Plaintiffs also faced risk at class certification,
2 compounded by the potential lengthy delay of an appeal under Rule 23(f). *See* Dkt. 416 at ¶ 14.

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

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

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

15 As the experience with the first set of settlements showed, notice and claims here are
16 straightforward and easily implemented. First, the Settlement Class is defined by a reference to a
17 discrete geographic area (the Kona region), such that direct notice was feasible, with publication
18 notice acting as informational reinforcement, making it easier to identify and reach the class.
19 Settlement Class Members will again be sent a straightforward, two-page claim form that asks
20 for basic information about their farm and the acreage used to produce coffee over the relevant
21 time period. Those who previously filled this out will not have to do so again; the Settlement
22 Administrator has their information. As Plaintiffs have explained, the information requested is
23 that which coffee farmers typically maintain and keep accessible, and will allow for a fair and
24 efficient distribution of the net settlement proceeds. *See, e.g., Hefler v. Wells Fargo & Co.*, No.
25 16- 05479, 2018 WL 6619983, at *12 (N.D. Cal. Dec. 18, 2018) (approving pro rata settlement
26 distribution based on the purchase and sales data provided by class members); *Thomas v.*

1 *MagnaChip Semiconductor Corp.*, No. 14-01160, 2017 WL 4750628, at *8-9 (N.D. Cal. Oct. 20,
2 2017) (same).

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

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

12 As explained in the separately-filed motion for attorneys' fees, Class Counsel have
13 sought a percentage settlement fund, a request that is consistent with fee awards in other cases
14 involving significant and valuable injunctive relief, and reasonable for all of the reasons
15 described in that motion. *See* Dkt. 654. Class Counsel's request was consistent with what was
16 described in the notice, and no class member has objected to the request. The application itself
17 was made prior to the expiration of the opt-out and objection deadlines, consistent with *In re*
18 *Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 992 (9th Cir. 2010).

19 **e. There are no agreements bearing on final approval.**

20 Rule 23(e)(2)(C)(iv) requires that the proponents of the settlement identify any agreement
21 (other than the settlement agreement) entered into in connection with the proposed settlement.

22 There are no such agreements.

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

25 Finally, Rule 23(e)(2)(D) directs the Court to consider whether the settlements treat class
26 members equitably. This subsection of Rule 23(e) determines "whether the apportionment of

1 relief among class members takes appropriate account of differences among their claims, and
2 whether the scope of the release may affect class members in different ways that bear on the
3 apportionment of relief.” Fed. R. Civ. P. 23(e)(2)(D), Advisory Committee’s Note to 2018
4 amendments. As previously explained in the preliminary approval motions, each member of the
5 proposed Class will receive a pro rata share of the settlement based on their coffee production
6 during the claims period, such that class members will receive meaningful compensation directly
7 proportional to the harm they suffered based on their actual sales. Additionally, Plaintiffs have
8 requested service awards for each plaintiff farm (three in total), as are commonly awarded in
9 class actions, and are justified here by Plaintiffs’ efforts in prosecuting the litigation, as
10 explained in Plaintiffs’ motion for approval of those awards and in the supporting declarations
11 filed with the motion. *See* Dkt. 654.

12 **5. The Settlement Satisfies the Ninth Circuit’s Additional Factors for**
13 **Final Approval.**

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

25 Most significant is the “reaction of the class to the proposed settlement.” The class has
26 again voted with its feet: Not a single class member has objected to the settlements, or the

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

11 Other factors weigh in favor of approval as well. First, there is a risk of “maintaining
 12 class action status through trial.” As explained in prior counsel declarations, any class action
 13 carries risks of denial of certification or de-certification. Dkt. 416 ¶ 14. This case is no exception.
 14 Second, the “experience and views of counsel” support approval. Counsel are experienced in
 15 both complex class actions and Lanham Act litigation, and well-versed in particular with the
 16 issues in this case, having investigated it thoroughly and litigated it extensively. *See* Dkt. 416 ¶¶
 17 4-9; Dkt. 417 ¶¶ 4-13; Dkt. 603, Dkt. 655, Dkt. 656. Counsel unreservedly support the
 18 settlement.

19 **C. The Settlement Class Should be Finally Certified.**

20 As the Court concluded in granting preliminary approval and directing notice to the
 21 Class, the Settlement Class “likely meets the requirements under Fed. R. Civ. P. 23(a) and
 22 23(b)(3).” Dkt. 604 ¶ 3. This remains true, and the Settlement Class should be certified.

23 **VI. Conclusion**

24 For the foregoing reasons, Plaintiffs respectfully request that the Court grant final
 25 approval to these settlements.
 26

1 Dated: May 17, 2022

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10 *Attorneys for the Plaintiffs*
11 *and the Proposed Settlement Class*

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CERTIFICATE OF SERVICE

I, Daniel E. Seltz, certify that on May 17, 2022, 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

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1 UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF WASHINGTON
3 AT SEATTLE

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

6 Plaintiff,

7 v.

8 COSTCO WHOLESALE CORP., et al.,

9 Defendants.

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

**FINAL JUDGMENT AND
ORDER OF DISMISSAL**

The Honorable Robert S. Lasnik

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

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

19 2. Plaintiffs have negotiated class action settlements with three defendants: The
20 Kroger Co. (“Kroger”), one with Safeway Inc. and Albertsons Companies Inc.
21 (“Safeway/Albertsons”), and one with Hawaiian Isles Coffee Co. Ltd. (“HIKC”) (“Settling
22 Defendants”) (collectively, “Settling Defendants”). The Settlement Agreements were attached as
23 Exhibits 1-3 to the declaration of counsel accompanying the Motion for Preliminary Approval of
24 Class Action Settlements, filed on February 11, 2022 (Dkt. 603).

1 3. Through the Settlement Agreements, Settling Defendants will fully and
2 completely satisfy the claims of Class Members relating to the claims alleged by Plaintiffs in the
3 Third Amended Complaint by paying Class Members a total payment of \$2,150,000 (\$1.35
4 million from Kroger and \$800,000 from HIKC), and provide injunctive relief relating to the
5 labeling of the Kona coffee products at issue. Attorneys’ fees and costs of Class Counsel and
6 administrative costs will be paid from the Settlement Fund. By entering into the Settlement
7 Agreements, the Settling Defendants made no admissions relating to the claims raised in this
8 lawsuit, nor did Plaintiffs make admissions relating to the Settling Defendants’ Defenses.
9

10 4. The Settlement Class, as defined in each of the Settlement Agreements, includes
11 the following: All persons and entities who, between February 27, 2015, and the date of Court’s
12 order granting preliminary approval to the settlement, farmed Kona coffee in the Kona District
13 and then sold their Kona coffee. Excluded from the Settlement Class are any defendants to the
14 action, as well as any judge assigned to the action, and the judge’s immediate family and staff.
15

16 5. The Settlement Agreements describe the claims that are being settled on behalf of
17 the Class (defined as the “Settled Claims”). The Settlement Agreements and their terms,
18 including the definitions, are incorporated into this Final Judgment And Order of Dismissal (the
19 “Final Judgment”) as if fully set forth herein. The Settlement Agreements and Final Judgment
20 shall be referred to collectively herein as the “Settlements.”
21

22 6. This Court entered an Order dated February 14, 2022, directing that notice of the
23 proposed Settlements be effectuated as to the Settlement Class (Dkt. 604) (“Preliminary
24 Approval Order”). The Preliminary Approval Order set a hearing for June 3, 2022 to determine
25 whether the proposed Settlements should be approved as fair, reasonable and adequate.
26

7. In accordance with the Court’s Preliminary Approval Order, the Settlement

1 Administrator caused to be mailed and emailed to potential members of the Settlement Class for
2 whom addresses could be located, a notice (the “Settlement Notice”) in the form approved by the
3 Court in the Preliminary Approval Orders. Also in accordance with the Court’s Preliminary
4 Approval Orders, the Settlement Administrator also caused the publication notice to be placed in
5 the *West Hawaii Today*. The Court finds that the Settlement Notice, along with the publication
6 notice, provided to potential members of the Settlement Class constituted the best and most
7 practicable notice under the circumstances, thereby complying fully with due process and Rule
8 23 of the Federal Rules of Civil Procedure. The Court did not receive any objections to the
9 Settlement from class members.
10

11 8. The Settling Defendants caused to be mailed to the appropriate federal and state
12 officials the materials required to be submitted by the Class Action Fairness Act, 28 U.S.C. §
13 1711, *et seq.* (“CAFA”). The Court finds that CAFA’s notice requirements have been satisfied.
14

15 9. On June 3, 2022, the Court held a hearing on the proposed Settlements, at which
16 time all interested persons were given an opportunity to be heard. Furthermore, the Court has
17 read and considered all submissions in connection with the Settlements. As explained below, the
18 Court grants the motion for final approval of the Settlements.
19

20 **Class Certification**

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

1 interests of the Settlement Class and will continue to do so; (5) Questions of law and fact
2 common to the Settlement Class predominate over the questions affecting only individual
3 Settlement Class Members, and (6) certification of the Settlement Class is superior to other
4 available methods to the fair and efficient adjudication of this controversy. *Id.*

5
6 11. In its Preliminary Approval Order, the Court concluded that Plaintiffs showed that
7 they were likely to satisfy these requirements. *See* Dkt. 604. The Court now finds no reason to
8 disturb those conclusions. As such, the Court certifies the proposed Class.

9 **Settlement Approval**

10 12. The Court must also determine whether the Settlements are “fair, reasonable, and
11 adequate.” Fed. R. Civ. P. 23(e)(2). The Court’s Preliminary Approval Order applied these
12 standards and concluded that the Settlement appeared to be “fair, reasonable, and adequate.”
13 Dkt. 604 ¶ 4. Plaintiffs explained, and the Court determined, that approval of the Settlements
14 will bestow a substantial economic benefit on the Settlement Class, result in substantial savings
15 in time and money to the litigants and the Court and will further the interests of justice, and that
16 the Settlements are the product of good-faith arm’s length negotiations between the Settling
17 Parties. The record is even more supportive of approval now that no Settlement Class Member
18 has objected to the Settlements. The Court thus finds the Settlements to be fair, reasonable, and
19 adequate. *See* Fed. R. Civ. P. 23(e).

20
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22 13. The Settlement Agreements, including all of the terms defined therein including
23 but not limited to the definitions of “Settled Claims,” are incorporated herein. Any terms used in
24 this Final Judgment are governed by their definitions in the Settlement Agreements. The Court
25 has jurisdiction over the subject matter of this litigation and all parties to this litigation, including
26 all members of the Settlement Class.

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

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

5 16. All Settled Claims are hereby dismissed with prejudice.

6 17. This Final Judgment may not be used as an admission by or against Settling
7 Defendants of any fact, claim, assertion, matter, contention, fault, culpability, obligation,
8 wrongdoing or liability whatsoever.

9 18. The Court has, by separate order, granted Class Counsel’s “Motion for Attorneys’
10 Fees and Reimbursement of Litigation Expenses.” The amount of Attorneys’ Fees and Litigation
11 Expenses awarded to Class Counsel shall be distributed to Class Counsel by the Settlement
12 Administrator from the Settlement Funds.

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

18 20. Pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Court finds
19 that there is no reason for delay in the entry of this Final Order and Judgment as a final order and
20 final judgment, and the Court further expressly directs the Clerk of the Court to file this Final
21 Order and Judgment as a final order and final judgment.
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Enter: _____, 2022.

BY THE COURT:

Robert S. Lasnik
United States District Court Judge