

# **EXHIBIT 1**

## **SETTLEMENT AGREEMENT**

THIS MEMORANDUM OF SETTLEMENT (“Agreement”) is made this 11th day of February, 2021, 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 Costa Rican Gold Coffee Company, Inc., Gold Coffee Roasters, Inc., and John Parry, individually and his marital community (cumulatively, “Gold”), on the other hand, 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 Gold 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 Gold falsely advertised coffee as originating from the Kona region in violation of the Lanham Act, 15 U.S.C. § 1125(a). Gold has denied Plaintiffs’ claims and has asserted affirmative defenses to Plaintiffs’ claims.
3. Plaintiffs alleged that Gold 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. Gold has denied Plaintiffs’ claims and asserted affirmative defenses to Plaintiffs’ claims.
4. Plaintiffs and Gold, 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, and a second mediation with mediator Mark LeHocky on November 30, 2020.
5. Discovery has been ongoing in this Case for over a year through which certain data and information was obtained from both Plaintiffs and Gold 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, Gold 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. The terms “final approval” and “preliminary approval” refer to the settlement approval process provided for in Fed.R.Civ.P. 23.

8. Although Gold 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, Gold 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 Gold 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 Gold, or any admission by Gold of any claim or allegation made in any action or proceeding against Gold, or as a waiver of any applicable defense, including, without limitation, any applicable statute of limitations. Gold 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 Gold, specifically including the equitable defense of laches.

11. This Agreement 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.

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

12. 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, or any entities owned by any defendants to this action, as well as any judge assigned to the action, and the judge's immediate family and staff.

13. Product Requirements.

a. Gold 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. Only Kona coffee certified and graded by the Hawaii Department of Agriculture as 100% Kona shall be considered authentic Kona coffee.

b. Gold agrees to use at least the percentage of Kona coffee required by Hawaiian law in any product labeled as "Kona" or "Kona Blend" unless Hawaiian law provides

for a percentage equal to or greater than 51%, in which case Gold agrees to use at least 51% Kona coffee. Gold 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.

c. The requirements in Paragraphs 13(a) and 13 (b) shall not apply to any products produced by or on behalf of Gold before the date that is 60 days following expiration of the appeal period after Final Approval.

14. Settlement Class and Notice. Plaintiffs shall be solely responsible for identifying the proposed Settlement Class Members, notifying them, and proposing the best practicable notice to Settlement Class Members. Gold shall have the right to approve the notice plan, and such approval shall not be unreasonably withheld. 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. Gold shall pay six million one hundred thousand and 00/100 dollars (\$6,100,000 USD) in accordance with Paragraph 19 to divest its profits, and pay for corrective advertising and market share damages claimed by Plaintiffs in this Case. Upon final approval of the settlement, the Settlement Administrator shall pay to the class this amount, together with any additional funds recovered for the benefit of the Settlement Class pursuant to rights assigned to the Settlement Class in the Supplemental Agreement, which Gold represents will be zero dollars (in total, the “Settlement Amount”), less Plaintiffs’ attorneys’ fees, costs (including costs of providing notice to the Settlement Class Members and for settlement administration), and service awards. For clarity, Gold shall not be liable for any payment beyond the Settlement Amount. The amounts listed elsewhere in this Agreement do not add to, and are included in, the Settlement Amount.

16. Cooperation Settlement Approval. Gold will cooperate in good faith to secure Court approval of the Settlement Agreement. Plaintiffs will provide ten (10) court days’ notice of their proposed Motion for Preliminary Approval and Motion for Final Approval. Plaintiffs agree not to seek discovery about the Settled Products other than their sales volume and price to use exclusively in their damages claims in this Case. For clarity, no additional discovery shall be requested from Gold and the sole information requested from anyone else regarding Settled Products will be for sales volume and price information not already provided.

17. Attorneys’ Fees, Costs, and Plaintiffs’ Service Awards. Plaintiffs shall ask the Court to schedule their Motion for Attorneys’ Fees and Costs and Plaintiffs’ Service Awards no later than one-hundred twenty (120) days after Preliminary Approval.

### **Settlement Procedures**

18. Timing of Motion for Settlement Approval. Plaintiffs will move the Court to preliminarily approve this settlement by March 1, 2021. Plaintiffs shall ask the Court to set a deadline for a hearing on final approval no later than one-hundred eighty (180) calendar days from preliminary approval.

19. Escrow. Within twenty (20) court days after Preliminary Approval, Gold shall pay the Settlement Amount into an escrow account set up by the Settlement Administrator. If no

escrow account has been established, it shall pay the Settlement Amount within five (5) court days after such account is established.

20. 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. The parties shall ask the Court to set opt-out, and exclusion deadlines for Settlement Class Members at thirty (30) calendar days, or the next court day if the deadline lands on a non-court day, after the deadline for Plaintiffs to file their Motion to Approve Attorneys’ Fees and Costs and Plaintiffs’ Service Award.

21. Class Notice. Plaintiffs will provide a proposed class notice plan to the Settlement Administrator no later than ten (10) calendar days after preliminary approval of the Settlement. Gold shall have the right to approve the notice plan and such approval shall not be withheld unreasonably. Plaintiffs will be solely responsible for providing the Settlement Administrator with a list of potential Settlement Class Members, including their identifying information, no later than ten (10) calendar days after preliminary approval. Gold shall have no obligations, nor expectations, to provide any information to identify Settlement Class Members. The Parties will ask the Court to order class notice shall occur thirty (30) calendar days after preliminary approval.

22. 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 a reasonable and fair formula to be proposed by Class Counsel and approved by the Court. 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. Distribution of monies to Settlement Class Members shall occur within thirty (30) calendar days of final approval.

23. 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 John Parry, individually and his marital community, spouses, and children (“Parry Parties”), Gold and the Parry Parties’ and Gold’s present or former administrators, entities in which they have any ownership interest (including but not limited to Kona Gold Coffee Plantation, LLC, Great Southern Pacific Holdings, LLC, and Java Holdings, LLC), and each of the foregoing’s present or former administrators, 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,

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<sup>2</sup> As used in this Agreement, Class Counsel refers to the attorneys of record in this matter Paul Richard Brown, Andrew Kaufman, Jason Lichtman, Nathan Paine, and Daniel Seltz, of Karr Tuttle Campbell and Lieff Cabraser Heiman and Bernstein LLP.

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 Gold 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: The Kroger Co.; Amazon.com, Inc.; Walmart, Inc.; The TJX Companies; Marshalls of MA, Inc.; Costco Wholesale Corporation; 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, 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 Defendant Releasees’ purchase or sale of the Settled Products or their own Kona coffee products.

24. 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.

25. 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. 271 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.

26. Scope of Release: Gold. As of final approval, Gold, 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 Gold by third parties related thereto. Gold, 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 Gold related to Gold or the Settled Products, its insurers, or any other counsel representing Gold or its insurers in connection with or related in any manner to this Agreement, Gold 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. Gold, 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.

27. 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.

28. Public Statements Regarding the Case: Plaintiffs and Gold are permitted to make only the following statements regarding the Case: The plaintiffs filed a lawsuit about the mislabeling of Kona coffee; Gold has denied all liability or fault; and the parties amicably resolved this matter through settlement on terms acceptable to both parties. The settlement includes an agreement to comply with Hawaiian law as to the labeling of Kona or Kona blend products. The parties are glad to have the matter behind them. You may find the complaint(s) and Settlement Agreement at [insert location]. If any statement is made prior to preliminary or final approval, it must state that the settlement is subject to those events occurring.

29. Settlement Agreement. This Settlement Agreement includes the terms of the settlement set forth herein, a proposed order preliminarily approving the settlement, a proposed short-form and long-form class notice, and a proposed final approval order dismissing with

prejudice the Case as to Plaintiffs and all Settlement Class Members who do not validly opt out. There is no admission of wrongdoing or liability by Defendant Releasees. There is no obligation imposed on Defendant Releasees to pay any monetary amount in excess of the Settlement Amount.

30. Settled Products. The “Settled Products” are any products manufactured or sold by Gold labeled as Kona coffee products, including blended and 100% labeled Kona coffee products.

31. Supplemental Agreement. Simultaneously herewith, the parties, by and through counsel, are executing a “Supplemental Agreement” setting forth certain conditions under which the parties may terminate the Settlement Agreement if Settlement Class Members who meet certain criteria exclude themselves from the Settlement Class and concerning and containing certain bank account information. The Parties shall maintain the confidentiality of the Supplemental Agreement as stated therein, and the Supplemental Agreement shall not be filed with the Court, unless requested by the Court, and in that event, shall be submitted to the Court under seal.

32. 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.

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

34. Construction. Plaintiffs and Gold 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.

35. 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.

**[Remainder of page left intentionally blank. Signature page to follow]**



**PLAINTIFFS**

DATED: February 12, 2021



Bruce Corker  
d/b/a Rancho Aloha

DATED: February \_\_, 2021

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Colehour Bondera  
d/b/a Kanalani Ohana Farm

DATED: February \_\_, 2021

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Melanie Bondera  
d/b/a Kanalani Ohana Farm

DATED: February \_\_, 2021

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

DATED: February \_\_, 2021

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Cecelia Smith, individually and on behalf of  
Smithfarms LLC

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**DEFENDANT**

DATED: February \_\_, 2021

\_\_\_\_\_  
John Parry, individually and for his marital  
community; and as President and authorized  
representative of Costa Rican Gold Coffee Co.,  
Inc. and Gold Coffee Roasters, Inc.


**PLAINTIFFS**

DATED: February \_\_, 2021

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Bruce Corker  
d/b/a Rancho Aloha

DATED: February 12, 2021



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Colehour Bondera  
d/b/a Kanalani Ohana Farm

DATED: February 12, 2021



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Melanie Bondera  
d/b/a Kanalani Ohana Farm

DATED: February \_\_, 2021

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Robert Smith, individually and on behalf of  
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DATED: February \_\_, 2021

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d/b/a Kanalani Ohana Farm

DATED: February 12, 2021

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

DATED: February 12, 2021

Cecelia B. Smith  
\_\_\_\_\_  
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Smithfarms LLC

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d/b/a Kanalani Ohana Farm

DATED: February \_\_, 2021

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d/b/a Kanalani Ohana Farm

DATED: February \_\_, 2021

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Robert Smith, individually and on behalf of  
Smithfarms LLC

DATED: February \_\_, 2021

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Cecelia Smith, individually and on behalf of  
Smithfarms LLC


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**DEFENDANT**

DATED: February 11, 2021

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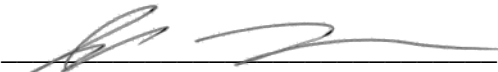
  
John Parry, individually and for his marital  
community; and as President and authorized  
representative of Costa Rican Gold Coffee  
Co., Inc. and Gold Coffee Roasters, Inc.

DATED: February 12, 2021



By: Paul Richard Brown  
Karr Tuttle Campbell  
on behalf of the proposed Settlement Class

DATED: February 12, 2021



By: Jason Lichtman  
Lieff Cabraser Heiman & Bernstein LLP  
on behalf of the proposed Settlement Class