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 EIGHT CLASS ACTION SETTLEMENTS

The Honorable Robert S. Lasnik

Noted for consideration: June 11, 2021

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10013-1413
Tel. 212.355.9500 • Fax 212.355.9592

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10013-1413
Tel. 212.355.9500 • Fax 212.355.9592

TABLE OF AUTHORITIES

Page

Cases

Rules

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10013-1413
Tel. 212.355.9500 • Fax 212.355.9592

TABLE OF AUTHORITIES
(continued)

Page

Treatises

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10013-1413
Tel. 212.355.9500 • Fax 212.355.9592

I. Introduction

This Court recently granted preliminary approval to two sets of settlements, involving eight defendants, and directed that notice issue to the Settlement Class.[1] *See* Dkts. 400, 414. The settlements collectively provided both for substantial monetary relief, totaling $13,105,750, and injunctive relief that will result in changes in the labeling of coffee described as containing coffee from the Kona region, thus preventing further economic harm to Settlement Class Members, the growers of legitimate Kona coffee. This Court found that it was likely to be able to approve the proposed settlements applying the criteria set out in Rule 23(e)(2), and to certify the class for purposes of settlement, and directed notice to issue to the class. *Id.*

The Settlement Administrator then effectuated the notice plan approved by this Court, including both direct notice and publication in the *West Hawaii Daily*, as well as the establishment of a settlement website, toll-free number, and post office box for Settlement Class Members. The postmark deadline for opt-outs and objections for the first set of settlements was May 5, and the deadline for the second set of settlements was May 25. To date, ***zero*** Settlement Class Members have opted-out or objected to the terms of the settlements. Not one.

It is clear that this Court's preliminary determination that these settlements should be approved was correct. Plaintiffs now seek final approval, so that the benefits promised in these settlements can begin to flow to class members. The settlements represent an excellent result for the Settlement Class and satisfy all criteria for final approval under Ninth Circuit law.

II. Procedural History

The Court is familiar with the procedural history of this litigation, and much of it was set

[1] The settlements are with the following defendants, collectively referred to here as "Settling Defendants": (1) BCC Assets, LLC d/b/a Boyer's Coffee ("BCC"), (2) Cameron's Coffee and Distribution Company ("Cameron's"), (3) Copper Moon Coffee, LLC ("Copper Moon"), (4) Cost Plus Inc. ("Cost Plus), (5) Pacific Coffee, Inc., d/b/a Maui Coffee Company ("MCC"), (6) Gold Coffee Roasters, Inc., Costa Rican Gold Coffee Company, Inc., and John Parry ("Gold"), (7) Costco Wholesale Corporation ("Costco"), and (8) The TJX Companies, Inc. and Marshalls of MA, Inc. (together, "TJX") (collectively, "Settling Defendants"). Capitalized terms have the meanings assigned to them in the Settlement Agreements, which were filed with Plaintiffs' motion for preliminary approval.

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10013-1413
Tel. 212.355.9500 • Fax 212.355.9592

out in Plaintiffs' preliminary approval motions. Plaintiffs will not repeat that history here, but, as detailed in the declarations of counsel accompanying those motions (Dkts. 394, 395, 412, 413), emphasize that this case presented unique challenges from the start, given the number of parties, the global health crisis, and a set of legal and factual hurdles that Plaintiffs were forced to clear. The case has been hard-fought and heavily litigated, including motions to dismiss, multiple discovery motions, and the exchange of huge volumes of documents and data concurrent with depositions. The negotiations that led to these settlements were extensive and adversarial, supervised by nationally known mediators. Plaintiffs otherwise incorporate their description of the procedural history of this case in their prior motions. *See* Dkts. 393 and 411.

III. Summary of the Settlements

Plaintiffs' motions for preliminary approval of these settlements also summarized the terms of each of the settlements that this Court preliminarily approved, *see* Dkts. 393, 411, and Plaintiffs provide a brief summary here for the sake of completeness.

Each of the settlements with defendants who are suppliers of coffee provides for a substantial monetary payment to the class,[2] for a total of $13,105,750: BCC will pay $1,125,000; Cameron's will pay $4,900,000; Cost Plus will pay $200,000; Copper Moon will pay $360,000; Gold will pay $6.1 million, and MCC will pay $420,750.

The settlements with these defendants include injunctive relief provisions that achieve a key objective of this litigation: to change the labeling practices for the subject products. All of the settling defendants have agreed "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." *See* Dkt. 394-1 (Copper Moon Agreement), at § 8(a); Dkt. 394-2 (BCC

[2] The Settlement Class is defined uniformly across the eight settlements 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."

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10013-1413
Tel. 212.355.9500 • Fax 212.355.9592

Agreement), at § 12(a); Dkts. 394-3 and 4 (Cost Plus and MCC Agreements), at § 13(a); Dkt. 394-5 (Cameron's Agreement), at § 13(a); Dkt. 412-1 (Gold Agreement), at § 13(a). BCC, MCC, and Cost Plus agreed that for any current or future Kona-labeled products, they will comply with the more stringent labeling standards provided for under Hawaii law, even if that statute is modified, and whether or not the product is sold in Hawaii. *See* Dkt. 394-2, at § 12(b); Dkts. 394-3 and 4, at § 13(b). Similarly, Cameron's and Gold have agreed to use at least the percentage required by Hawaii law, unless Hawaiian law provides for a percentage greater or equal to 51 percent, in which case Cameron's agrees to use at least 51 percent. Dkt. 394-5 at § 13(b); Dkt. 412-1 § 13(b). The Copper Moon agreement also includes detailed labeling requirements that must be met to satisfy Section 8(a)'s accuracy provision, *see* Dkt. 394-1 at § 12, and provides that if at least three of certain of the supplier defendants in this litigation are subsequently obligated to comply with alternative labeling requirements, it will be similarly obligated. *Id.*

The injunctive terms in the settlements with the two retailer defendants – Costco and TJX – reinforce these labeling changes, but apply even more broadly to Costco's and TJX's vendors of Kona-labeled coffee. Costco and TJX have agreed that their vendors must include clear and conspicuous labeling of the contents of Kona-labeled coffee. Both defendants have agreed that "any coffee product labeled as 'Kona coffee' or 'Kona Blend coffee' will state on the front of the product's label the percentage of Kona coffee beans the supplier of the products states are contained in the product, using the same font type and same color as the word Kona or a similar color scheme and no smaller than one-half the size as the word "Kona" appears, on the front of the package." Dkts. 412-2 and 3 at § 13(a). The agreements also provide for a certification process in which vendors of coffee labeled as "Kona" or "Kona blend" are or will be requested to certify to Costco or TJX that that their labeling complies with Paragraph 13(a). Dkts. 412-2 and 3 at § 13(d).

In exchange for these benefits, Settlement Class Members release the Settling Defendants

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10013-1413
Tel. 212.355.9500 • Fax 212.355.9592

from claims asserted in this litigation, as described and set out in the Settlement Agreements.

IV. The Class Notice Plan Was Successfully Implemented.

This Court's Preliminary Approval Orders directed that the parties effectuate a multi-faceted notice plan, including direct notice to Settlement Class Members, and the establishment of a dedicated settlement website, post office box, and toll-free telephone number. The parties, in consultation with the Settlement Administrator, have carried out the notice plan. Consistent with the Court's orders, the Settlement Administrator will provide a declaration on June 4 (two weeks before the final approval hearing) confirming its implementation of the notice plan. That affidavit will also report on whether any of the more than 700 Settlement Class Members who were sent direct notice have elected to opt out of or object to the settlements. To date, not a single opt-out or objection has been received. Following final approval, the Settlement Administrator will effectuate the claims and payment process to class members, which is described in more detail below.

V. Final Approval is Warranted.

A. Settlement Approval Process

Federal Rule of Civil Procedure 23(e) provides that class actions "may be settled … only with the court's approval." Rule 23(e) governs a district court's analysis of the fairness of a proposed class action settlement and creates a multistep process for approval. This Court has already taken the first two steps. First, it has determined that it is likely to (i) approve the proposed settlement as fair, reasonable, and adequate, after considering the factors outlined in Rule 23(e)(2), and (ii) certify the settlement class after the final approval hearing. *See* Fed. R. Civ. P. 23(e)(1)(B). Second, it has directed notice to the class, approving notice that describes the terms of the proposed settlement and the definition of the proposed class, and explains how class members can object to or opt out of the proposed settlement. *See* Fed. R. Civ. P. 23(c)(2)(B); Fed. R. Civ. P. 23(e)(1), (5). Plaintiffs now ask that this Court take the third and final step, which is to grant final approval of the proposed settlements. *See* Fed. R. Civ. P.

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10013-1413
Tel. 212.355.9500 • Fax 212.355.9592

23(e)(2).

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

All of the factors set forth in Fed. R. Civ. P. 23(e)(2) weigh strongly in favor of final approval. Indeed, in granting preliminary approval, the Court already observed that the proposed Settlement appeared "fair, reasonable, and adequate," so that notice was appropriate. Dkts. 400, 414 ¶ 4. These same conclusions counsel in favor of final approval here.

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

The Court's preliminary determination, under Rule 23(e)(2)(A), that Class Counsel and the Plaintiffs have zealously advanced the interests of the Plaintiffs and the proposed Settlement Class, was correct. As the motions for preliminary approval detailed, Class Counsel and Plaintiffs have worked tirelessly to advance this case to this point, from the extensive pre-filing investigation through challenges to the pleadings, intensive discovery against over twenty defendants and from numerous third parties, and through the negotiations of these settlements. The Plaintiffs, too, have devoted countless hours to representing the class, even as they have continued to operate their small coffee farms and navigate the challenges of the last year.

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

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

First, as Plaintiffs explained, the involvement of experienced mediators in the negotiations creates a presumption of fairness. *See* Joseph M. McLaughlin, *McLaughlin on Class Actions* (8th ed. 2011); *see also Sandoval v. Tharaldson Emp. Mgmt., Inc.*, No. 08-482, 2010 WL 2486346, at *6 (C.D. Cal. June 15, 2010) ("The assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive."); *Free Range Content, Inc. v. Google, LLC*, No. 14-02329, 2019 WL 1299504, at *6 (N.D. Cal. Mar. 21, 2019) (holding

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10013-1413
Tel. 212.355.9500 • Fax 212.355.9592

that a "presumption of correctness" attaches where, as here, a "class settlement [was] reached in arm's-length negotiations between experienced capable counsel after meaningful discovery").

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

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

The Court may also find for purposes of final approval that the relief provided for the class is "adequate." Fed. R. Civ. P. 23(e)(2)(C). This subsection asks the Court to take into account: "(i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)." The Court can readily adhere to and confirm its preliminary determination that the settlement is adequate upon review of these factors.

a. The Settlements deliver excellent monetary and injunctive relief.

The Settlements deliver immediate monetary relief and practice changes. Plaintiffs'

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10013-1413
Tel. 212.355.9500 • Fax 212.355.9592

damages experts calculate that the supplier Settling Defendant together caused approximately $36 million in market-price damages to the class. *See* Dkt. 428 (sealed Schreck Declaration) at Table 2, ¶ 28, & n.38. Against that number, the total cash value of the Settlements is $13,105,750—or 36% of the potential damages (not including profit disgorgement or corrective advertising).

This return standing alone would be comfortably within the range of settlement approval. *See, e.g.*, *Baker v. Seaworld Ent't, Inc.*, No. 14-2129, 2020 WL 4260712, at *6 (S.D. Cal. July 24, 2020) (approving settlement, describing "14% of the maximum recoverable amount" as "a significant recovery," and collecting cases). In this case, the results obtained are exceptional given that the class also benefits from injunctive relief valued at $37.9 million. Dkt. 428 at ¶ 36. This is all the more so because some of the Settlements reflect those Defendants' inability to pay more, meaning that, as to those Defendants, the recovery is closer to 100% of what could be obtained even after trial. *See* Dkt. 394-2 (BCC) at § 9; Dkt. 394-3 (MCC) at § 9; Dkt. 394-4 (Cost Plus) at § 9.

b. <u>The costs, risks, and delay of trial and appeal weigh in favor of final approval.</u>

The amount obtained is reasonable in light of the risks, delays, and costs attendant to class certification, potential interlocutory appeal under Rule 23(f), summary judgment motions, trial, and appeals. Plaintiffs explained some of those risks in the declarations in support of the fee motion. *See* Dkt. 416 at ¶¶ 10-16. To start, Defendants have advanced a legal theory that the Lanham Act does not authorize the central claim in this case: false designation of geographic origin. Although the Court denied the motions to dismiss on that basis, the issue would remain alive in this case through summary judgment, trial, and appeal. Defendants also had factual defense that consumers were not confused by false designations of Kona geographic origin and that Plaintiffs' claims were barred by laches. Although Plaintiffs are confident in the merits of their claims, each of those issue created risk at summary judgment and trial. In particular,

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10013-1413
Tel. 212.355.9500 • Fax 212.355.9592

whether consumers were confused or likely to be confused by Defendants' product labels would likely come down to a "battle of the experts" at trial, the result of which is always uncertain. Plaintiffs also faced risk at class certification, compounded by the potential lengthy delay of an appeal under Rule 23(f). *See* Dkt. 416 at ¶ 14.

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

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

The proposed method of distributing relief to the class, including claims processing, is straightforward, simple, and designed to maximize participation in the settlement. First, the Settlement Class is defined by a reference to a discrete geographic area (the Kona region), such that direct notice was feasible, with publication notice acting as informational reinforcement, making it easier to identify and reach the class. Settlement Class Members will be sent a straightforward, two-page claim form that asks for basic information about their farm and the acreage used to produce coffee over the relevant time period. *See* Ex. A (claim form). As Plaintiffs have explained, the information requested is that which coffee farmers typically maintain and keep accessible, and will allow for a fair and efficient distribution of the net settlement proceeds. *See, e.g.*, *Hefler v. Wells Fargo & Co.*, No. 16- 05479, 2018 WL 6619983, at *12 (N.D. Cal. Dec. 18, 2018) (approving pro rata settlement distribution based on the purchase and sales data provided by class members); *Thomas v. MagnaChip Semiconductor Corp.*, No. 14-01160, 2017 WL 4750628, at *8-9 (N.D. Cal. Oct. 20, 2017) (same).

Class Counsel developed the claim form in consultation with the Settlement Administrator, which has extensive experience designing plain-English forms and implementing claims processes, and solicited input from class members to ensure that the form will be intelligible and prompt claims. The form will also be available in Japanese. Class members will be able to make claims by returning hard copy forms by mail or through an online submission

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10013-1413
Tel. 212.355.9500 • Fax 212.355.9592

form on the settlement website. The Settlement Administrator will then calculate class members' pro rata share of the net settlement funds at the end of the claims period and promptly send checks to class members who made valid claims.

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

As explained in the separately-filed motion for attorneys' fees, Class Counsel have sought a percentage of the total economic value of the settlements, a request that is consistent with fee awards in other cases involving significant and valuable injunctive relief, and reasonable for all of the reasons described in that motion. *See* Dkt. 415. Class Counsel's request was consistent with what was described in the notice, and not a single class member has objected to the request. The application itself was made prior to the expiration of the opt-out and objection deadlines, consistent with *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 992 (9th Cir. 2010).

e. There are no agreements bearing on final approval.

Rule 23(e)(2)(C)(iv) requires that the proponents of the settlement identify any agreement (other than the settlement agreement) entered into in connection with the proposed settlement. There are no such agreements.

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

Finally, Rule 23(e)(2)(D) directs the Court to consider whether the settlements treat class members equitably. This subsection of Rule 23(e) determines "whether the apportionment of relief among class members takes appropriate account of differences among their claims, and whether the scope of the release may affect class members in different ways that bear on the apportionment of relief." Fed. R. Civ. P. 23(e)(2)(D), Advisory Committee's Note to 2018 amendments. As previously explained in the preliminary approval motions, each member of the proposed Class will receive a pro rata share of the settlement based on their coffee production during the claims period, such that class members will receive meaningful compensation directly

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10013-1413
Tel. 212.355.9500 • Fax 212.355.9592

proportional to the harm they suffered based on their actual sales. Additionally, Plaintiffs have requested service awards for each plaintiff farm (three in total), as are commonly awarded in class actions, and are justified here by Plaintiffs' efforts in prosecuting the litigation, as explained in Plaintiffs' motion for approval of those awards and in the supporting declarations filed with the motion. *See* Dkt. 415.

5. The Settlement Satisfies the Ninth Circuit's Additional Factors for Final Approval.

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

Most significant is the "reaction of the class to the proposed settlement." The verdict of the class has been unanimous: "We approve." Not a single class member has objected to the settlements, or the requests for fees, costs, and service awards. Not a single class member has opted out. This universal support strongly favors approval. *See, e.g.*, *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998) ("[T]he fact that the overwhelming majority of the class willingly approved the offer and stayed in the class presents at least some objective positive commentary as to its fairness."); *Gaudin v. Saxon Mort. Servs., Inc.*, No. 11-1663, 2015 WL 7454183, at *7 (N.D. Cal. Nov. 23, 2015) ("[T]he absence of a large number of objections to a

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10013-1413
Tel. 212.355.9500 • Fax 212.355.9592

proposed class settlement raises a strong presumption that the terms of a proposed class settlement are favorable to the class members.") (citation and alteration omitted); *id.* (finding that "opt-out rate [] less than 1% … favors approval of settlement"); *Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 852 (N.D. Cal. 2010) (finding that 4.86% opt-out rate strongly supported approval).

Other factors weigh in favor of approval as well. First, there is a real risk of "maintaining class action status through trial." As explained in the counsel declarations, any class action carries risks of denial of certification or de-certification. Dkt. 416 ¶ 14. Here, case-specific risks included the need to prove that damages could be measured on a class-wide basis. *Id.* No individual farmer can prove their market-price damages without such a model, and so Defendants' inevitable *Daubert* and summary judgment challenges to the analysis posed risk not just to the merits of the case, but to class certification as well. *Id.* Second, the "experience and views of counsel" support approval. Counsel are experienced in both complex class actions and Lanham Act litigation, and well-versed in particular with the issues in this case, having investigated it thoroughly and litigated it extensively. *See* Dkt. 416 ¶¶ 4-9; Dkt. 417 ¶¶ 4-13. Counsel unreservedly support the settlement.

C. The Settlement Class Should be Finally Certified.

As the Court concluded in granting preliminary approval and directing notice to the Class, the Settlement Class "likely meets the requirements under Fed. R. Civ. P. 23(a) and 23(b)(3)." Dkt. 400, 414 ¶ 3. This remains true, and the Settlement Class should be certified.

VI. Conclusion

For the foregoing reasons, Plaintiffs respectfully submit that the Court should grant final approval to these settlements.

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10013-1413
Tel. 212.355.9500 • Fax 212.355.9592

Dated: May 27, 2021

KARR TUTTLE CAMPBELL

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

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

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

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

Attorneys for the Plaintiffs and the Proposed Settlement Class

CERTIFICATE OF SERVICE

I, Andrew R. Kaufman, certify that on May 27, 2021, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to those attorneys of record registered on the CM/ECF system.

/s *Andrew R, Kaufman*
Andrew R. Kaufman

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10013-1413
Tel. 212.355.9500 • Fax 212.355.9592