

EXHIBIT 2

SETTLEMENT AGREEMENT

THIS MEMORANDUM OF SETTLEMENT (“Agreement” or “Settlement Agreement”) is made this 4th 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 Costco Wholesale Corporation (“Costco”), parties in *Corker, et al. v. Costco Wholesale Corporation, et al.*, 2:19-00290-RSL (W.D. Wash.) (“Case”).¹ This Agreement contains all material terms of the settlement in this action, and Costco 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 Costco falsely advertised coffee as originating from the Kona region in violation of the Lanham Act, 15 U.S.C. § 1125(a). The Court dismissed these claims as to Costco.
3. Plaintiffs alleged that Costco 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. Costco has denied Plaintiffs’ claims and asserted affirmative defenses to Plaintiffs’ claims.
4. Plaintiffs and Costco, with the assistance of their respective counsel, engaged in arm’s-length negotiations to resolve the case without the need for further litigation. This included mediation before Judge Edward A. Infante (Ret.) on June 2, 2020 and multiple subsequent negotiations.
5. Discovery has been ongoing in this Case for over a year through which certain data and information was obtained from both Plaintiffs and Costco 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, Costco 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.

¹ All capitalized terms are as defined herein. The terms “final approval” and “preliminary approval” have the meanings provided for in Fed.R.Civ.P. 23.

8. Although Costco 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, Costco 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 Costco 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 Costco, or any admission by Costco of any claim or allegation made in any action or proceeding against Costco, or as a waiver of any applicable defense, including, without limitation, any applicable statute of limitations. Costco 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 Costco, 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, in which case it shall be filed under seal.

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, as well as any judge assigned to the action, and the judge's immediate family and staff.

13. **Product Requirements.**

a. Costco agrees 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.

b. The requirement in Paragraph 13(a) shall not apply to any products sold by Costco until after August 30, 2021 (“Sell Through Period.”).

c. The requirement in Paragraph 13(a) is subject to, and not binding unless, Plaintiffs provide Costco’s registered agent, as registered with the Washington Secretary of State, an annual notice in January of each year identifying the agreement and the terms in Paragraph 13(a).

d. Costco will provide its vendors who sell any coffee product labeled as “Kona coffee” or “Kona Blend” coffee a letter, substantially in the form attached as **Exhibit A** requesting return information. Assuming that (a) the requested information is received from the vendors and (b) the labeling complies with Paragraph 13(a), Costco will be deemed to have sufficiently complied with the agreement in section 13(a), and the Plaintiffs and Settlement Class would not have a cause of action, grievance, claim, or right to any damages or equitable relief regarding the labeling of Kona coffee products sold by Costco. Costco will retain any letters received from its vendors for four (4) years.

e. The requirement in section 13(a) is subject to a notice and cure period. Prior to instituting any legal proceedings or claims process regarding an alleged violation of section 13(a), notice must be given to Costco’s registered agent via certified mail or process service and such notice must reference this Case. Costco will have ninety (90) days to investigate and cure such allegation before any legal proceeding or claim may be brought (“Cure Period”). If Costco cures the alleged breach during this time by removing the product from its store shelves within ninety (90) days of receipt of the notice by its registered agent, there shall be no cause of action or damages (“Cure”). If the alleged breach is not cured within the time periods listed above, any potential damages are limited to Costco’s profit on such products for the time after the notice and cure period expires. Notwithstanding the foregoing, if Costco does not cure as described above, Plaintiffs shall be permitted to have an injunction issued by the United States District Court for the Western District of Washington consistent with the labeling requirements in Paragraph 13(a).

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. Costco 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. No Monetary Payment. Costco shall not make any monetary payment as part of this Settlement. It shall not contribute any funds to Class Notice, Attorneys’ Fees, Costs, Plaintiffs’ Service Awards, or otherwise.

16. Cooperation Settlement Approval. Costco 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.

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. Attorneys' Fees and Costs and Plaintiffs' Service Awards will be paid by others and not by Costco.

Settlement Procedures

18. **Timing of Notification to the Court.** Within five (5) court days of the execution of this Agreement by the Parties, Plaintiffs will file a notice with the Court informing the Court that the parties have reached an agreement in principle and requesting that the Court stay any and all deadlines pertaining to Costco. Additionally, Plaintiffs agree not to seek discovery from Costco other than their sales volume and price to use exclusively in their damages claims in this Case for claims in this Case. For clarity, no additional discovery shall be requested from Costco and the sole information requested from anyone else regarding Settled Products will be for sales volume and price information not already provided.

19. **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.

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. Costs of notice to the Settlement Class and settlement administration will not be paid by Costco. The parties shall ask the Court to set claims, 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. Attorneys' Fees and Costs and Plaintiffs' Service Awards will be paid by others and not by Costco.

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. Costco 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. Costco 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. **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 Costco and its predecessors, successors, assigns, parents, subsidiaries, corporate affiliates, holding companies, investors, owners, divisions, corporate affiliates, employees, agents, representatives, consultants, independent contractors, service providers, vendors, directors, managing directors, officers, partners, principals, members, attorneys, accountants, fiduciaries, financial and other advisors,

investment bankers, insurers, reinsurers, employee benefit plans, underwriters, shareholders, lenders, auditors, and investment advisors, customers, distributors, co-packers, manufacturers, and roasters of each (“Defendant Releasees”) from any and all of the Settled Claims, except for the rights and obligations created by this Agreement, and Plaintiffs and the Settlement Class Members covenant and agree that they will not commence, participate in, prosecute, or cause to be commenced or prosecuted any action or other proceeding based upon any of the Settled Claims released pursuant to the Settlement Agreement and shall dismiss with prejudice the claims alleged against Costco in the Case that arise from the sale of the Settled Products. This Release of Settled Claims also covers, without limitation, any and all claims for attorneys’ fees, costs, or disbursements incurred by Class Counsel² or any other counsel representing Plaintiffs or Settlement Class Members or by Plaintiffs or the Settlement Class Members regarding the Settled Products or Settled Claims. Nothing in this Agreement shall be construed as an agreement from Settlement Class Members to waive, release, or dismiss any claims they have against Defendant Releasees that do not arise from their purchase or sale of the Settled Products. Notwithstanding the foregoing, Plaintiffs do not release L&K Coffee Co. d/b/a Magnum, its predecessors, successors, assigns, parents, subsidiaries, corporate affiliates, holding companies, investors, owners, divisions, employees, agents, representatives, consultants, independent contractors, service providers, vendors (not including Costco), 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 for the claims and damages sought in the Case, but notwithstanding the foregoing, do explicitly dismiss Costco from the Case and may not bring any claims to recover directly from Costco for any of the claims at issue in this Case in consideration for Costco’s agreement in Paragraph 13.

23. 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.

24. 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,

² 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, and their firms Karr Tuttle Campbell and Loeff Cabraser Heiman and Bernstein LLP.

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.

25. Scope of Release: Costco. As of final approval, Costco, 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 against Plaintiffs and Settlement Class Members, expressly including (but not limited to) any claim under antitrust or other unfair competition laws. Costco, 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 Costco related to Costco or the Settled Products, its insurers, or any other counsel representing Costco or its insurers in connection with or related in any manner to this Agreement, Costco 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. Costco, 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.

26. 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.

27. Public Statements Regarding the Case: Plaintiffs and Costco are permitted to make only the following statements regarding the Case: The plaintiffs filed a lawsuit about the mislabeling of Kona coffee; Costco has denied all liability or fault; and the parties amicably resolved this matter with no monetary payment by Costco. The settlement includes an agreement that, after a sell-through period, Costco will not sell Kona coffee products that are not labeled by

the supplier with the percentage of Kona coffee in the product. If any statement is made prior to preliminary or final approval, it must state that the settlement is subject to those events occurring.

28. Settlement Agreement for Filing. The Settlement Agreement when filed shall contain the terms of the settlement, 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 will be no admission of wrongdoing or liability by Defendant Releasees. There will be no obligation imposed on Defendant Releasees to pay any monetary amount.

29. Settled Products. The “Settled Products” are any products sold by Costco labeled as Kona coffee products, including blended and 100% labeled Kona coffee products.

30. 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. 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.

31. 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.

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

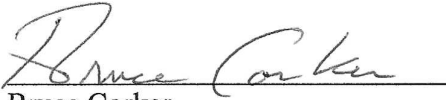
33. Construction. Plaintiffs and Costco have been represented in the negotiation and preparation of this Agreement, and each party has had an opportunity to participate in the drafting to the extent that she or it desires. Accordingly, this Agreement shall be construed according to its plain meaning and not strictly for or against any party.

34. 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 3, 2021



Bruce Corker
d/b/a Rancho Aloha

DATED: February ___, 2021

Colehour Bondera
d/b/a Kanalani Ohana Farm

DATED: February ___, 2021

Melanie Bondera
d/b/a Kanalani Ohana Farm

DATED: February ___, 2021

Robert Smith, individually and on behalf of
Smithfarms LLC

DATED: February ___, 2021

Cecelia Smith, individually and on behalf of
Smithfarms LLC

DATED: February ___, 2021

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

DATED: February ___, 2021

DEFENDANT

DATED: February ___, 2021

Costco Wholesale Corporation

By: _____

Its: _____

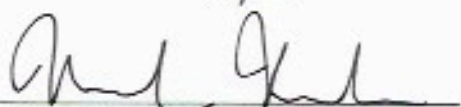
PLAINTIFFS

DATED: February __, 2021

Bruce Corker
d/b/a Rancho Aloha
DATED: February __, 2021



Colehour Bondera
d/b/a Kanalani Ohana Farm

DATED: February 4, 2021


Melanie Bondera
d/b/a Kanalani Ohana Farm

DATED: February 4, 2021

Robert Smith, individually and on behalf of
Smithfarms LLC

DATED: February __, 2021

Cecelia Smith, individually and on behalf of
Smithfarms LLC

DATED: February __, 2021

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

DATED: February __, 2021

DEFENDANT

DATED: February __, 2021

Costco Wholesale Corporation

By: _____
Its: _____

PLAINTIFFS

DATED: February ___, 2021

Bruce Corker
d/b/a Rancho Aloha
DATED: February ___, 2021

Colehour Bondera
d/b/a Kanalani Ohana Farm

DATED: February ___, 2021

Melanie Bondera
d/b/a Kanalani Ohana Farm

DATED: February 4, 2021

Robert Smith

Robert Smith, individually and on behalf of
Smithfarms LLC

DATED: February 4, 2021
Cecelia S. Smith

Cecelia Smith, individually and on behalf of
Smithfarms LLC

DATED: February 4, 2021

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

DATED: February ___, 2021

DEFENDANT

DATED: February ___, 2021

Costco Wholesale Corporation

By: _____
Its: _____

PLAINTIFFS

DATED: February __, 2021

Bruce Corker
d/b/a Rancho Aloha
DATED: February __, 2021

Colehour Bondera
d/b/a Kanalani Ohana Farm

DATED: February __, 2021

Melanie Bondera
d/b/a Kanalani Ohana Farm

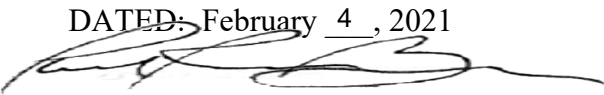
DATED: February __, 2021

Robert Smith, individually and on behalf of
Smithfarms LLC

DATED: February __, 2021

Cecelia Smith, individually and on behalf of
Smithfarms LLC

DATED: February 4, 2021



By: Paul Richard Brown

Karr Tuttle Campbell
on behalf of the proposed Settlement Class

DATED: February __, 2021

DEFENDANT

DATED: February __, 2021

Costco Wholesale Corporation

By: _____
Its: _____

PLAINTIFFS

DATED: February ___, 2021

Bruce Corker
d/b/a Rancho Aloha
DATED: February ___, 2021

Colehour Bondera
d/b/a Kanalani Ohana Farm

DATED: February ___, 2021

Melanie Bondera
d/b/a Kanalani Ohana Farm

DATED: February ___, 2021

Robert Smith, individually and on behalf of
Smithfarms LLC

DATED: February ___, 2021

Cecelia Smith, individually and on behalf of
Smithfarms LLC

DATED: February ___, 2021

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

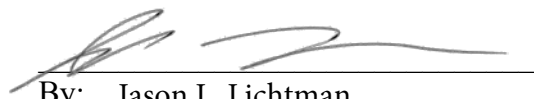
DATED: February ___, 2021

DEFENDANT

DATED: February ^{5th} ___, 2021

Kenneth P. Kimble
Costco Wholesale Corporation

By: *Kenneth P. Kimble*
Its: *UP Corp Foods*

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

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

Exhibit A to Settlement Agreement

[Date]

[Insert Vendor Address]

Re: *[Insert Product Name(s) and Number(s)]*

Dear *[Insert Vendor Name]*:

Costco Wholesale Corporation (“Costco”) requires all of the products it sells that are labeled as “Kona coffee” or “Kona Blend coffee” (“Kona coffee product(s)”) to comply with certain labelling standards. This letter is to confirm that the Kona coffee product(s) you supply to Costco conform to those requirements. Specifically, in order for Costco to sell your Kona coffee product(s), your Kona Coffee product(s) must state on the front of the product’s label the percentage of Kona coffee beans 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.

Additionally, in order for Costco to sell your Kona coffee product(s), you must certify that the Kona coffee product(s) you sell to Costco contains the percentage of Kona coffee beans stated on the label by completing and executing the certification below and returning it no later than fourteen (14) days after receipt of this letter *[insert date]* to:

[Insert Return Address]

Thank you for being a valued Costco vendor.

Sincerely,

[Insert Name]

Enclosure

cc:

CERTIFICATION

I, _____ [*name*], by signing below, hereby certify that the Kona coffee products sold by _____ [*vendor name*] to Costco Wholesale Corporation contain the following percentages of Kona coffee beans:

Product Name	Product Number	% of Kona Coffee Beans

By signing below, I further certify that the Kona coffee products sold by _____ [*vendor name*] to Costco Wholesale Corporation contain the percentage of Kona coffee beans stated on the label and use 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.

By: _____
Title: _____
Date: _____