

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is made this 11th day of December 2020, by and between Plaintiffs Bruce Corker d/b/a Rancho Aloha, Colehour Bondera and Melanie Bondera d/b/a Kanalani Ohana Farm, and Robert Smith and Cecelia Smith d/b/a Smithfarms, on behalf of themselves and all others similarly situated ("Settlement Class Members"), and Copper Moon Coffee, LLC ("Copper Moon") (collectively, the "Parties"), parties in *Corker, et al. v. Costco Wholesale Corporation, et al.*, 2:19-00290 (W.D. Wash.) ("*Corker* case"). This Agreement contains all material terms of the settlement in this action, and the 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, to binding court approval, and class notice.

Recitals

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

2. Plaintiffs alleged that Copper Moon sold coffee misleadingly labeled as originating from the Kona region in violation of the Lanham Act, 15 U.S.C. § 1125. Copper Moon has denied Plaintiffs' claims and asserts that it has affirmative defenses it would assert if this case proceeded in litigation.

3. In connection with the case, Karr Tuttle Campbell and Lieff Cabraser Hiemann & Bernstein, LLP (collectively, "Plaintiffs' Counsel") and counsel for Copper Moon engaged in arm's length negotiations to resolve the case without the need for further litigation, including a mediation supervised by the Honorable David A. Garcia of JAMS. As part of the negotiation process, Plaintiffs' Counsel requested and Copper Moon provided data and other information, and Plaintiffs' Counsel will compare that data and information to evidence obtained through confirmatory discovery to ensure that it is accurate. 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. Similarly, Copper Moon has concluded that, despite its belief that it is not liable for the claims asserted and has good defenses thereto, and without admission of any wrongdoing of any kind, it will enter into this Agreement in order to avoid the time, expense, and uncertainty of protracted litigation.

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

5. In light of the investigations undertaken and conclusions reached by the Parties and discussed above, Plaintiffs and Copper Moon have agreed, subject to approval by the Court, to fully and finally compromise, settle, extinguish, and to dismiss with prejudice the claims

asserted against Copper Moon and its products in the *Corker* case, pursuant to the terms set forth below.

6. 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 Copper Moon or any admission by Copper Moon of any claim or allegation made in any action or proceeding against Copper Moon or as a waiver of any applicable defense, including, without limitation, any applicable statute of limitations. 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

7. Class Definition.

a. The Settlement Class will include all persons and entities who, between February 27, 2015, and the date of the Court's Order granting preliminary approval of this settlement, commercially farmed Kona coffee in the Kona District and then sold their Kona coffee.

b. Excluded from the Settlement Class are any Defendants to this action, any judges assigned to this action, and their immediate families and staffs.

8. Product Requirements.

a. Copper Moon agrees that any of its current or future products labeled as "Kona" will accurately and unambiguously state on the front label of the product the minimum percentage of authentic Kona coffee beans contained in the product. Only Kona coffee certified and graded by the Hawaii Department of Agriculture as 100% Kona shall be considered authentic Kona coffee. This requirement shall not apply to any products produced by or on behalf of Copper Moon before the date that is 60 days following the execution of this Agreement.

b. In the event that at least three of the following defendants in the *Corker* case are obligated to comply under the terms of a settlement agreement or court order with Kona coffee product or labeling requirements that differ from the requirements of Section 8.a., then upon 60 days' written notice from Plaintiffs to Copper Moon, Copper Moon shall be obligated to comply with such alternate requirements. For purposes of this provision, the following are the six relevant defendants: (A) Hawaiian Isles Kona Coffee Company, Ltd.; (B) L&K Coffee Co. LLC; (C) Mulvadi Corporation; (D) Gold Coffee Roasters, Inc.; (E) Cameron's Coffee and Distribution Company; and (F) Pacific Coffee, Inc. Plaintiffs may invoke this provision only one time without Copper Moon's consent.

9. Cooperation. Copper Moon will provide Plaintiffs with documents or information that is readily available to Copper Moon (i.e., without requiring Copper Moon to proactively seek information from other sources) that will assist in the prosecution of the above-captioned litigation. The scope of any such cooperation shall be limited by attorney-client privilege and work product, including the joint defense privilege. In particular, Copper Moon will provide Plaintiffs with (1) any market studies, research, or analysis discussing Kona coffee; (2) any document demonstrating or suggesting that any other market participant mislabels a product as containing coffee from Kona; and (3) a list of all products manufactured, sold, or supplied by Copper Moon labeled with the term “Kona” on the packaging.

10. Settlement Payment. Copper Moon shall also pay \$360,000 (“Settlement Amount”). Upon final approval of the settlement, the settlement administrator shall pay to the class the Settlement Amount less attorneys’ fees, costs (including costs of providing notice to the class members), and service awards. Copper Moon shall not be liable for any payment beyond the Settlement Amount.

11. Settlement Approval. Copper Moon will cooperate in good faith to secure approval of the Agreement. This specifically includes the provision of admissible evidence to support the assumptions on which this settlement is based. In particular, this means that it will provide admissible proof of the volume of coffee it manufactured, sold, or distributed with a “Kona” label, the price for which it sold that coffee, and the profit that it made from the sale of that coffee and readily available copies of the Hawaii Department of Agriculture 100% Kona Certifications for Kona coffee purchased by Copper Moon. To the extent that Copper Moon identifies such information as trade secret or commercial business information, Plaintiffs will maintain such information in confidence and cooperate with Copper Moon’s efforts to ensure that any disclosure of such information to the Court will not result in its disclosure to the public or to competitors of Copper Moon.

Product Labeling Under the Settlement

12. Labeling Requirements. Unless and until additional product labeling requirements are defined pursuant to Section 8.b., the Parties agree that Copper Moon can satisfy the labeling obligations of Section 8.a. as follows:

- (1) For roasted or instant coffee that contains one hundred percent by weight of coffee grown in the Kona region of Hawaii, the identity statement shall consist of the word “Kona” followed by the word “Coffee,” provided that the word “Kona” may be immediately preceded by the term “100%”;
- (2) For roasted or instant coffee consisting of a blend of coffee grown in the Kona region of Hawaii and coffee not grown in the Kona region of Hawaii, the identity statement shall consist of the percent coffee by weight of Kona-grown coffees used in the blend, followed by the word “Kona” and the term “Coffee Blend”; and
- (3) Each word or character in the identity statement shall be of the same type size and shall be contiguous. The smallest letter or character of the identity statement on

packages of sixteen ounces or less net weight shall be at least one and one-half times the type size required under federal law for the statement of net weight or three-sixteenths of an inch in height, whichever is smaller. The smallest letter or character of the identity statement on packages of greater than sixteen ounces net weight shall be at least one and one-half times the type size required under federal law for the statement of net weight. The identity statement shall be conspicuously displayed without any intervening material in a position above the statement of net weight. Upper and lowercase letters may be used interchangeably in the identity statement.

- (4) If Copper Moon chooses, in its sole discretion, to list the geographic origin of all of the coffee on its “Kona” labeled product, this list shall consist of the term “Contains:”, followed by, in descending order of percent by weight and separated by commas, the respective geographic origin or regional origin of the various coffees in the blend that Copper Moon chooses to list. Each geographic origin or regional origin may be preceded by the percent of coffee by weight represented by that geographic origin or regional origin, expressed as a number followed by the percent sign. The type size used for this list shall not exceed half that of the identity statement. This list shall appear below the identity statement, if included on the front panel of the label.

Effectuation of the Settlement Agreement

13. Escrow. Copper Moon shall make its payment in two installments. Following preliminary approval of the settlement by the Court, Copper Moon shall promptly pay a sum sufficient to cover costs of notice and administration, as determined by the class action administrator. Following final approval of the settlement by the Court, Copper Moon shall pay the remaining balance on the schedule set out in the final approval order.

14. Class Settlement Administration. The Settlement Administrator shall be JND Legal Administration.

15. Distribution of Monies to Plaintiffs. The Settlement Administrator will distribute monies to the Settlement Class Members approximately pro rata based on a reasonable and fair formula, less any voluntary contributions for the benefit of the Kona region, to be proposed by Class Counsel and approved by the Court. Any uncashed amounts shall be redistributed using the same formula.¹ 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.

16. Scope of Release. As of the Effective Date, Plaintiffs and the Settlement Class Members hereby expressly agree that they shall fully and irrevocably release and discharge all

¹ As used in this Agreement, Class Counsel refers to the attorneys of record in this matter from Karr Tuttle Campbell and Lief Cabraser Heiman and Bernstein LLP.

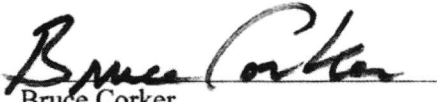
Settled Claims, as defined below. They hereby release Copper Moon and its retail customers, distributors, co-packers, manufacturers, and roasters, and the respective parents, subsidiaries, affiliated entities, predecessors, and successors of each (“Defendant Releasees”) from any and all of the Settled Claims, except for the rights and obligations created by this Agreement, and covenant and agree that they will not commence, participate in, prosecute or cause to be commenced or prosecuted against the Defendant Releasees any action or other proceeding based upon any of the Settled Claims released pursuant to the Settlement Agreement in consideration of the consideration set forth above and shall dismiss with prejudice the class action claims filed against Copper Moon in the *Corker* case as well as claims against other defendants in the *Corker* case that arise solely from the sale of products manufactured by or manufactured for Copper Moon. This Release also covers, without limitation, any and all claims for attorneys’ fees, costs, or disbursements incurred by Plaintiffs’ Counsel or any other counsel representing Plaintiffs or Settlement Class Members or by Plaintiffs or the Settlement Class Members, or any of them, in connection with or related in any manner to the *Corker* case, the settlement of the *Corker* case, the administration of this settlement and/or the Settled Claims except to the extent otherwise specified in the Settlement Agreement. “Settled Claims” means any and all actions, claims, demands, rights, suits, or causes of action that arise from or relate to the allegations made or conduct described in the First Amended Complaint (Dkt. No. 81 in the *Corker* case) including but not limited to allegations related to the labeling, packaging, advertising, promotion, branding, marketing, manufacturing, design, formulation, distribution, or sale of the Copper Moon products identified in the First Amended Complaint and any other coffee products that are or were manufactured or sold with the Copper Moon brand that used the word “Kona,” regardless of the statute, regulation, common law legal theory, or other legal basis on which the allegations may be asserted. In connection with the release of the Settled Claims, Plaintiffs 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 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, provided that Plaintiffs may elect to void this settlement if Copper Moon has not provided full and accurate information about its sales, revenue, and profit from products labeled as “Kona” manufactured by or manufactured for Copper Moon. For the sake of clarity, this release does **not** relieve any of Copper Moon’s retail customers, distributors, co-packers, manufacturers, roasters, or the respective parents, subsidiaries, affiliated entities, predecessors, and successors of each, from any liability related to products that were not produced, manufactured by, or manufactured for Copper Moon.

17. Opt-out threshold. The Settlement Agreement shall be contingent on at least 85% of the putative class members, as measured by volume of Kona coffee grown, participating in and not opting out of the Settlement Agreement. If more than 15% of the putative class opts out of the Settlement Agreement, Copper Moon shall have the right to elect to cancel the Agreement.

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

PLAINTIFFS

DATED: December 11, 2020


Bruce Corker
d/b/a Rancho Aloha

DATED: December __, 2020

Colehour Bondera
d/b/a Kanalani Ohana Farm

DATED: December __, 2020

Melanie Bondera
d/b/a Kanalani Ohana Farm

DATED: December __, 2020

Robert Smith, individually and on behalf of
Smithfarms LLC

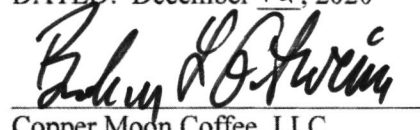
DATED: December __, 2020

Celia Smith, individually and on behalf of
Smithfarms LLC

DATED: December __, 2020

DEFENDANT

DATED: December 16, 2020


Copper Moon Coffee, LLC
By:
Its: Chief Executive Officer

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Melanie Bondera
d/b/a Kanalani Ohana Farm

DATED: December ___, 2020

Robert Smith, individually and on behalf of
Smithfarms LLC

DATED: December ___, 2020

Cecelia Smith, individually and on behalf of
Smithfarms LLC

DEFENDANT

DATED: December 16, 2020

Brian R. Gorman
Copper Moon Coffee, LLC
By:
Its: Chief Executive Officer

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DATED: December ___, 2020

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d/b/a Kanalani Ohana Farm

DATED: December ___, 2020

Melanie Bondera
d/b/a Kanalani Ohana Farm

DATED: December 11, 2020

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

DATED: December 11, 2020

Cecelia B. Smith
Cecelia Smith, individually and on behalf of
Smithfarms LLC

DEFENDANT


DATED: December 16, 2020

Edwin L. Grover
Copper Moon Coffee, LLC
By:
Its: Chief Executive Officer

DATED: December __, 2020

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

DATED: December 14, 2020



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