

1 **CLASS ACTION SETTLEMENT AGREEMENT**

2 *Benjamin Fernando Martinez v. Costco Wholesale Corp.*

3 **U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA**

4 **Case No. 3:19-cv-05624-EMC**

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8 This Class Action Settlement Agreement is between (1) Plaintiff Benjamin Fernando Martinez—  
9 individually and on behalf of the Class Members, and (2) Defendant Costco Wholesale Corporation.  
10 Plaintiff and Defendant collectively are referred to as the “Parties.” By this Agreement, the Parties  
11 intend, with judicial approval, to settle the Action. If this Agreement is not finally approved, or is  
12 otherwise nullified, then the Parties shall return to their positions preceding this Agreement, and  
13 Defendant shall retain all rights to challenge the Plaintiff’s claims and the certification of any class  
14 unless the Parties agree to seek reconsideration of the ruling or Court approval of a renegotiated  
15 agreement.

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Notice of Settlement .....A

1           **1. Definitions**

2           Each defined term appears throughout this Agreement in initial capital letters.

3                   **1.1. Action.** “Action” means the lawsuit entitled *Benjamin Fernando Martinez v.*  
4 *Costco Wholesale Corporation*, pending in the U.S. District Court for the Northern District of  
5 California, Case No. 3:19-cv-05624-EMC.

6                   **1.2. Administrative Costs.** “Administrative Costs” means all costs that the Settlement  
7 Administrator incurs in administering this Agreement.

8                   **1.3. Agreement.** “Agreement” means this Class Action Settlement Agreement, which  
9 includes all its Recitals and any attached Exhibit. **Class Counsel.** “Class Counsel” refers to James  
10 Hawkins APLC.

11                   **1.5. Class Counsel Award.** “Class Counsel Award” refers to the attorneys’ fees and  
12 costs that the Court awards in connection with resolving the Action in accordance with this Agreement.

13                   **1.6. Class Members.** “Class Members” refers to those individuals who—for purposes  
14 of this Agreement only—will be certified as members of the following class: all non-exempt employees  
15 employed by Defendant in California during the Class Period who have not sued Costco on any  
16 Released Claim and who received an Extra Check during the Class Period.

17                   **1.7. Class Period.** See “Settlement Period.”

18                   **1.8. Class Representative.** “Class Representative” refers to Plaintiff Benjamin  
19 Fernando Martinez.

20                   **1.9. Class Rep Enhancement Payment or Incentive Award or Service Award.** *See*  
21 “Service Award.”

22                   **1.10. Complaint.** “Complaint” refers to any and all complaints filed in the Action.

23                   **1.11. Confidential Data.** “Confidential Data” refers to personal information the  
24 Settlement Administrator needs to administer this Agreement, including Class Member names,  
25 employee ID numbers, last known address and telephone number(s), dates of employment, social  
26 security numbers, and the number of paid hours for the Class Member earning Extra Checks that were  
27 paid during the Settlement Period.  
28

1                   **1.12. Consideration Period.** “Consideration Period” refers to the 45 calendar days  
2 following initial mailing of the Notice of Settlement, during which an individual can submit an  
3 Objection or a Request for Exclusion.

4                   **1.13. Court.** “Court” refers to the judge presiding over this Action, in the United States  
5 District Court for the Northern District of California.

6                   **1.14. Defendant.** “Defendant” refers to Costco Wholesale Corporation.

7                   **1.15. Defense Counsel.** “Defense Counsel” refers to Seyfarth Shaw LLP.

8                   **1.16. Effective Date.** “Effective Date” is the date of final approval if no objections are  
9 filed to the settlement. If objections are filed and overruled, and no appeal is taken of the final approval  
10 order, then the effective date of final approval will be thirty (30) days after the Court enters final  
11 approval. If an appeal is taken from the Court’s overruling of objections to the settlement, then the  
12 effective date of final approval will be twenty (20) days after the appeal is withdrawn or after an  
13 appellate decision affirming the final approval decision becomes final. No money will be distributed  
14 unless and until the effective date of final approval occurs. Thirty (30) days after the “effective date” of  
15 final approval of the settlement, the Settlement Administrator will pay all Class Members’ settlement  
16 shares, and the Court-approved Class Counsel Award, Service Award, and Administrative Costs.

17                   **1.17. Extra Check.** “Extra Check” is the semi-annual bonus that Costco pays to long-  
18 term non-exempt employees pursuant to Costco’s Employee Agreement and collective bargaining  
19 agreement.

20                   **1.18. Fairness Hearing.** “Fairness Hearing” is the hearing at which the Court decides  
21 whether the terms of the Agreement are fair, reasonable, and adequate and meet all requirements for  
22 Final Approval.

23                   **1.19. Final Approval Order.** “Final Approval Order” is the order the Court issues, in  
24 connection with the Fairness Hearing, that approves the settlement contemplated by this Agreement.

25 **Gross Settlement Amount.** “Gross Settlement Amount” refers to the maximum payment Defendant  
26 may be obligated to make in connection with the Agreement: \$2,250,000. This sum includes all  
27 Individual Settlement Payments, any Service Award, Administrative Costs, and the Class Counsel  
28



1 Award. Provided, however, that Defendant must pay additional money to cover any legally required  
2 employer taxes.

3 **1.21. Individual Settlement Payment.** “Individual Settlement Payment” refers to the  
4 total amount paid to each individual as a Settlement Class Member.

5 **1.22. Judgment.** “Judgment” refers to the final judgment entered by the Court in this  
6 Action after approving the Agreement.

7 **1.23. Net Settlement Amount.** “Net Settlement Amount” refers to the portion of the  
8 Gross Settlement Amount for distribution to Settlement Class Members that remains after accounting for  
9 any Service Award, Administrative Costs, and Class Counsel Award.

10 **1.24. Notice of Settlement.** “Notice of Settlement” means a notice of the terms of the  
11 class settlement contained in this Agreement, substantially in the form attached as Exhibit A.

12 **1.25. Objection.** “Objection” refers to a written statement timely submitted by a  
13 Settlement Class Member to the Settlement Administrator that contains (1) the Objector’s full name and  
14 current mailing address, (2) the last four digits of the Objector’s social security number, (3) the specific  
15 reason(s) for the Objection, and (4) all evidence and supporting papers (including, without limitation, all  
16 briefs, written evidence, and declarations) for the Court to consider.

17 **1.26. Objector.** “Objector” refers to a Settlement Class Member who has submitted an  
18 Objection.

19 **1.27. Parties.** “Parties” refers collectively to (1) Plaintiff and (2) Defendant.

20 **1.28. Plaintiff.** “Plaintiff” refers to Class Representative Benjamin Fernando Martinez.

21 **1.29. Preliminary Approval.** “Preliminary Approval” refers to the court order granting  
22 Preliminary Approval of the class claims settled by this Agreement.

23 **1.30. Qualified Settlement Fund.** “Qualified Settlement Fund” means a qualified  
24 settlement fund established pursuant to U.S. Treasury Regulation section 468B-1, 29 C.F.R. § 468B-1.

25 **1.31. Released Class Claims.** “Released Class Claims” means all claims that  
26 Settlement Class Members will release through this Agreement.

27 **1.32. Released Parties.** “Released Parties” refers to Defendant and each and all of its  
28 affiliated companies, successors in interest, predecessor(s) in interest, parents, members, subsidiaries,

1 related companies and business concerns, past and present, and each of them, as well as each of their  
2 insurers, parties, trustees, directors, shareholders, officers, agents, attorneys, servants and employees,  
3 past and present, and each of them and all working with or in concert with them or connected with them.

4 **1.33. Request for Exclusion.** “Request for Exclusion” refers to a timely, written, opt-  
5 out request signed by a Class Member and submitted to the Settlement Administrator with the following  
6 information: (1) the Class Member’s full name and current mailing address, (2) the last four digits of the  
7 Class Member’s social security number, and (3) an express statement that the Class Member wishes to  
8 be excluded from the class settlement contained within this Agreement.

9 **1.34. Service Award.** “Service Award” refers to any payment that the Court awards for  
10 service as a Class Representative.

11 **1.35. Settlement Administrator.** “Settlement Administrator” refers to the third-party  
12 administrator, identified in Section 5 below, that the Parties select.

13 **1.36. Settlement Class.** “Settlement Class” refers to all Class Members who do not file  
14 a timely, valid Request for Exclusion.

15 **1.37. Settlement Period.** “Settlement Period” refers to the period beginning on June  
16 11, 2015 and extending through the date of Preliminary Approval.

## 17 **2. Recitals and Procedural History**

18 **2.1. Business of Defendant.** Costco is a member-only club retailer that is engaged in  
19 the business of selling merchandise and services to members, and in that connection has retained  
20 individuals as non-exempt employees working in California.

21 **2.2. Allegations in Complaint.** In the Complaint filed on June 11, 2019  
22 (“Complaint”), Plaintiff sued Costco for violations of Labor Code sections 201-203, 204, 226, 226.7,  
23 510, 1194, 1198, and 1199, and for violations of Business & Professions Code sections 17200 through  
24 17208, for unpaid wages, meal and rest premium pay, penalties, attorney fees, costs, and other relief.

25 **2.3. Defendant’s Denials.** Defendant denies (1) all the material allegations in this  
26 Action, (2) that Defendant violated any applicable laws, (3) that Defendant is liable for damages,  
27 penalties, interest, restitution, attorneys’ fees, or costs, or for any other remedy sought in the Action, and  
28 (4) that class certification is appropriate as to any claim in the Action. Defendant contends that its

1 policies, procedures, and practices comply with all laws asserted in the Action. Defendant has agreed to  
2 settle the Action solely to avoid the burden, expense, and uncertainty of litigation. Any statements in this  
3 Agreement are made for settlement purposes only.

4 **2.4. Class Counsel’s Investigation.** Class Counsel has investigated the facts relating  
5 to the claims alleged in the Action and the defenses asserted by Defendant. Class Counsel interviewed  
6 Class Members regarding the claims in the Action, and has examined Defendant’s compliance with its  
7 policies, procedures, and practices.

8 **2.5. Negotiation of Settlement.** Class Counsel have engaged in arms-length  
9 negotiations with Defendant with a view toward achieving substantial benefits while avoiding the cost,  
10 delay, and uncertainty of further litigation. Plaintiff will urge that the Court approve this Agreement  
11 after considering (1) the factual and legal defenses to the claims asserted, which render uncertain the  
12 ultimate outcome of the Action, (2) the potential difficulties Plaintiff would encounter in establishing his  
13 claims and achieving class treatment, (3) the benefits produced by this Agreement, (4) that this  
14 Agreement provides relief in an expeditious, efficient manner, compared to recoveries possible after  
15 litigation and potential appeals, and (5) that this Agreement allows Class Members to opt out of the  
16 Action and individually pursue the claims alleged in the Action.

17 **2.6. Certification for Settlement Purposes.** This Agreement is contingent upon  
18 approval of class certification under Federal Rule of Civil Procedure 23 for settlement purposes only.  
19 Defendant expressly reserves the right to challenge the propriety of class certification for any other  
20 purpose should the Court not approve the Agreement.

21 **3. The Gross Settlement Amount**

22 **3.1. Establishment of Amount.** The Gross Settlement Amount is \$2,250,000. In no  
23 event shall Defendant, absent its further agreement, be obligated to pay more than that amount, except to  
24 the extent of legally required employer taxes. The Gross Settlement Amount includes all Individual  
25 Settlement Payments, any Service Award, the Class Counsel Award, and Administrative Costs.  
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1           **4.     The Net Settlement Amount**

2           **4.1.     Calculation of the Amount.** The Net Settlement Amount is the portion of the  
3 Gross Settlement Amount that remains for distribution to Class Members after deductions for any  
4 Service Award, Administrative Costs, and the Class Counsel Award.

5           **4.2.     Calculation of Estimated Settlement Class Member Payments.** For purposes  
6 of Class Notice, amounts will be calculated provisionally on the basis of the number of paid hours for  
7 the Class Member earning Extra Checks that were paid during the Settlement Period, in accordance with  
8 Section 7 of this Agreement.

9           **5.     Selection of Settlement Administrator and Notice of Settlement**

10          **5.1.     Selection of Settlement Administrator.** The Parties will mutually agree in  
11 writing to select a Settlement Administrator after receiving bids from potential Settlement  
12 Administrators.

13          **5.2.     Settlement Administration.** The Settlement Administrator will, as necessary,  
14 print, copy, format, and translate materials, mail and email notices to Class Members, perform a skip  
15 trace for undeliverable addresses, establish and maintain a Qualified Settlement Fund, obtain appropriate  
16 tax identification numbers, calculate Individual Settlement Payments, calculate payroll withholdings and  
17 payroll taxes, prepare and file all required IRS Forms, mail Individual Settlement Payments and tax  
18 forms, establish a hotline telephone number for class member communications, post notices regarding  
19 settlement on the Settlement Administrator’s website, remit all tax payments and required  
20 documentation to taxing authorities, implement the process for any uncashed settlement checks, and  
21 perform all other duties associated with settlement administration, including, but not limited to, all those  
22 specified in this Agreement. Any dispute relating to settlement administration shall, after good-faith  
23 efforts by the Parties to resolve the dispute, be referred to the Court.

24          **5.3.     Confidential Data for the Settlement Administrator.** Within 30 calendar days  
25 of Preliminary Approval, Defendant will give the Settlement Administrator a listing, for Class Members,  
26 of names, employee ID numbers, last known street and email addresses and telephone numbers.  
27 Defendant will also report to the Settlement Administrator the number of paid hours for the Class  
28 Member earning Extra Checks that were paid during the Settlement Period. Defendant shall also

1 provide, when needed, Social Security numbers to facilitate the administration of this Agreement. The  
2 Settlement Administrator shall use these Confidential Data only for the purposes described in this  
3 Agreement, and shall return the Confidential Data to Defendant or confirm the destruction of same upon  
4 completing the work called for by this Agreement.

5 **5.4. Communicating Materials to Class Members.** Communications need be in  
6 English only, absent a request for a translation, as English is the exclusive language used in Costco's  
7 agreements with its California employees. Preemptively preparing foreign-language translations would  
8 create unnecessary administrative expenses.

9 **5.4.1. Mailing and Emailing Class Notice.** Within 14 calendar days of  
10 receiving the Confidential Data from Defendant, and after checking Class Member information against  
11 the National Change of Address Database, the Settlement Administrator shall send the Notice of  
12 Settlement to Class Members via First Class U.S. mail and email, using the last-known mailing address  
13 and email address for each Class Member.

14 **5.4.2. Re-mailing Class Notice.** Any mailing returned as undeliverable shall be  
15 sent within five calendar days via First Class U.S. Mail to any available forwarding address. If no  
16 forwarding address is available, then the Settlement Administrator shall attempt to determine the correct  
17 address by using a computer-based skip-trace search, and shall then perform, if feasible, a re-mailing via  
18 First Class U.S. Mail within five calendar days. If no current address is available for a Class Member,  
19 then the Notice of Settlement for that Class Member will be deemed undeliverable. Only one re-mailing  
20 is required. If a Class Member cannot be located within two attempts at mailing, then the Notice of  
21 Settlement for that Class Member will be deemed undeliverable. No extra time will be provided for  
22 responding to a re-mailing, because the total Consideration Period is sufficiently ample—45 days.

23 **5.5. Proof of Mailing.** At least ten calendar days before the Fairness Hearing, the  
24 Settlement Administrator shall provide a declaration of due diligence and proof of mailing and emailing  
25 with regard to the mailing and emailing of the Notice of Settlement to Class Counsel and Defense  
26 Counsel, which Class Counsel shall in turn file with the Court.

1           **6. Responses to Notice of Settlement**

2           **6.1. Consideration Period.** Within the Consideration Period, Class Members may opt  
3 out of the proposed settlement by submitting a Request for Exclusion (as provided below) or may submit  
4 an Objection (as provided below). Except as specifically provided herein, no response postmarked after  
5 the Consideration Period shall be considered.

6           **6.2. Requests for Exclusion and Opt Out Rights.** Class Members may opt out by  
7 submitting a Request for Exclusion.

8           **6.2.1. Opt Out Procedure.** Class Members may opt out of this Agreement by  
9 mailing, emailing, or faxing the Settlement Administrator a Request for Exclusion. A Request for  
10 Exclusion must be signed and dated by the Class Member, must provide the Class Member's full name,  
11 current address, current telephone number, and the last four digits of the Class Member's Social Security  
12 number, and must expressly state an intention to be excluded from the terms of the Agreement. Any  
13 purported Request for Exclusion will be deemed ineffective if it is untimely or if it omits required  
14 information. Upon receiving timely but deficient Requests for Exclusion, the Settlement Administrator  
15 will notify the Class Member (by mail or email) to provide two weeks to correct the deficiency. If the  
16 Class Member timely provides information to the Settlement Administrator's satisfaction, then the  
17 Request for Exclusion will be permitted.

18           **6.2.2. Effect of Opting Out.** Any Class Member who opts out of this Agreement  
19 may not submit an Objection and shall not receive any payment as a Settlement Class Member, and shall  
20 not be bound by the Class Release in this Agreement. Each Class Member who does not submit a timely,  
21 valid Request for Exclusion (as described above in Section 6.2.1) shall be bound by the releases that this  
22 Agreement entails.

23           **6.2.3. Tolerance of Opt-Outs—Defendant's Right to Withdraw.** Defendant's  
24 willingness to enter into this Agreement materially depends on ensuring that substantial individual  
25 claims do not arise. Accordingly, if the number of Class Members who opt out by submitting Requests  
26 for Exclusion exceeds 5% of the Settlement Class Members, then Defendant may, in the exercise of its  
27 sole discretion, withdraw from this Agreement. Defendant's right to withdraw expires 10 calendar days  
28

1 after the Consideration Period. If Defendant exercises its right to withdraw, it shall be solely responsible  
2 for Settlement Administration costs incurred to that point.

3 **6.3. Objections.** Only Settlement Class Members—Class Members who have not  
4 opted out—are entitled to object to the terms of the class settlement called for by this Agreement.

5 **6.3.1. Objection Procedure.** Any Objection must be made in a communication  
6 to the Settlement Administrator using the procedures set forth in the Notice of Settlement, and must  
7 contain (1) the Objector’s full name and current mailing address, (2) the last four digits of the Objector’s  
8 Social Security number, (3) the specific reason(s) for the Objection, and (4) all evidence and supporting  
9 papers (including, without limitation, all briefs, written evidence, and declarations) for the Court to  
10 consider.

11 **6.3.2. Presenting Objections.** Settlement Class Members who fail to submit  
12 Objections in the manner specified in the Notice of Settlement presumptively have waived any objection  
13 but may appear at the final approval hearing to object to the class settlement and to argue why they  
14 should be excused from any presumptive waiver.

15 **6.4. Proof of Responses.** At least ten calendar days prior to the Fairness Hearing, the  
16 Settlement Administrator will submit a declaration to the Court regarding responses to the Notice of  
17 Settlement, including such information as any inability to deliver mailings because of invalid addresses,  
18 the number of any Requests for Exclusion, and the number of any Objections. Class Counsel shall be  
19 responsible for filing the declaration.

20 **6.5. Binding Effect of Settlement.** Although a Class Member might not timely submit  
21 an Objection or a Request for Exclusion because of inability of the Settlement Administrator to locate  
22 the Class Member’s current address, or for other reasons beyond the Class Member’s control, that Class  
23 Member shall nonetheless become a Settlement Class Member and be bound by this Agreement.

24 **6.6. No Interference with Class Member Responses.** Each Party agrees not to  
25 encourage any Class Member to submit an Objection or a Request for Exclusion and agrees not to  
26 retaliate against any Class Member for participating (or not participating) in this Settlement. Defendant  
27 is forbidden by law to engage in any such retaliation.  
28

1           **7. Administration of Settlement Proceeds**

2           **7.1. Final Funding of Gross Settlement Amount.** The Parties recognize that  
3 Defendant is a large organization whose internal financial controls require multiple levels of approval to  
4 authorize large wire transfers of money. Accordingly, Defendant will have 21 calendar days after the  
5 Effective Date to deposit the Gross Settlement Amount into the Qualified Settlement Fund.

6           **7.2. Administrative Costs.** The Parties agree to obtain a reasonable estimate of  
7 Administrative Costs and a “not-to-exceed” price from the Settlement Administrator and seek approval  
8 of same to be drawn from the Gross Settlement Amount. Fees will be capped at 105% of the not-to-  
9 exceed price and excess reasonable fees paid to the Settlement Administrator will decrease the value of  
10 the Net Settlement Amount.

11           **7.2.1. Approval of Administrative Costs Not Material.** The amount of Administrative  
12 Costs is not a material term: if the Court approves a lesser amount, then the other terms of this  
13 Agreement shall remain in effect.

14           **7.3. Class Counsel Award.** Class Counsel intend to request—and Defendant agrees  
15 not to oppose—a payment from the Gross Settlement Amount for (a) attorneys’ fees in an amount up to  
16 one third (33.33%) of the Gross Settlement Amount and (b) litigation costs incurred in litigating this  
17 Action not to exceed \$20,000.

18           **7.3.1. Approval of Class Counsel Award Not Material.** Approval of the Class  
19 Counsel Award is not a material term. If the Court approves only a lesser amount, then the other terms  
20 of this Agreement shall remain in effect.

21           **7.3.2. Timing of Class Counsel Award.** The Settlement Administrator shall  
22 issue the Class Counsel Award within 30 calendar days after the Effective Date. Within 10 calendar  
23 days after the Effective Date, Class Counsel shall instruct the Settlement Administrator as to how the  
24 Class Counsel Award may be paid. The Settlement Administrator shall issue an appropriate Internal  
25 Revenue Service Form 1099 to Class Counsel. Class Counsel shall be solely responsible for paying all  
26 applicable taxes on any Class Counsel Award and shall indemnify and hold harmless Defendant from  
27 any claim or liability for taxes, penalties, or interest arising as a result of the Class Counsel Award.  
28



1           **7.4. Service Award.** Class Counsel intends to request—and Defendant agrees not to  
2 oppose—that the Court award the Class Representative a Service Award of up to \$6,000, to be drawn  
3 from the Gross Settlement Amount. Any Service Award would be in addition to the Class  
4 Representative’s Individual Settlement Payment.

5           **7.4.1. Approval of Service Award Not Material.** Approval of a Service Award  
6 is not a material term. If the Court does not approve a Service Award or approves only a lesser amount  
7 than that requested, then the other terms of this Agreement shall remain in effect.

8           **7.4.2. Timing of Service Award.** The Settlement Administrator shall pay any  
9 Service Award within 30 calendar days of the Effective Date and shall issue an IRS Form 1099 to the  
10 Class Representative. The Class Representative shall be solely responsible for paying all applicable  
11 taxes on any Service Award and shall indemnify and hold harmless Defendant from any claim or  
12 liability for taxes, penalties, or interest arising as a result of the Service Award.

13           **7.5. Settlement Class Payments.** Each Settlement Class Member shall be  
14 provisionally entitled to payment as described below. Defendant’s records regarding the number of paid  
15 hours for Class Members earning Extra Checks that were paid during the Settlement Period shall control  
16 for purposes of calculation unless a Class Member submits contrary evidence to the Settlement  
17 Administrator that the Settlement Administrator finds to be persuasive.

18           **7.5.1. Number of Paid Hours.** Defendant will provide to the Settlement  
19 Administrator the number of paid hours for each Settlement Class Member earning Extra Checks that  
20 were paid during the Settlement Period and the total number of paid hours for all Settlement Class  
21 Members that earned Extra Checks that were paid during the Settlement Period (“Total Extra Check  
22 Paid Hours”).

23           **7.5.2. Determination of Settlement Class Payments.** Each Settlement Class  
24 Member’s share of the Net Settlement Amount will reflect the number of paid hours for the Settlement  
25 Member earning Extra Checks that were paid during the Settlement Period, in relation to the Total Extra  
26 Check Paid Hours.

27           **7.5.3. Timing of Settlement Class Payments.** The Settlement Administrator  
28 shall issue Settlement Class Payments within 30 calendar days of the Effective Date.

1                   **7.6. Tax Allocations.** These allocations will be as follows.

2                   **7.6.1. Net Settlement Amount.** The overall tax allocation for the Net Settlement  
3 Amount will be allocated for tax purposes as follows: 75% to statutory and civil penalties and interest,  
4 and 25% to wages, subject to the other provisions of this Section.

5                   **7.6.2. Individual Cash Payments.** The overall amount of the Net Settlement  
6 Amount allocated to wages will be distributed pro rata among the cash payments.

7                   **7.6.3. Tax Withholdings.** The Settlement Administrator will make required tax  
8 withholdings from each Individual Settlement Payment made to a Settlement Class Member for the  
9 portion allocated to Form W-2 income and will remit the withholding to the appropriate taxing  
10 authorities.

11                   **7.6.4. Employer Taxes.** The Settlement Administrator will account for the  
12 amount of the Net Settlement Amount attributed to wages and submit an invoice to Defendant for the  
13 required employer share of withholding taxes, which Costco shall pay in addition to the Gross  
14 Settlement Amount.

15                   **7.6.5. Tax Reporting.** The Settlement Administrator shall issue any necessary  
16 IRS forms to Class Members for their respective Individual Settlement Payments.

17                   **7.6.6. Responsibility for Taxes.** Settlement Class Members shall be solely  
18 responsible for paying all taxes due on their respective Individual Settlement Payments and shall  
19 indemnify and hold harmless Defendant and the Released Parties from any claim or liability for taxes,  
20 penalties, or interest arising as a result of Individual Settlement Payments.

21                   **7.6.7. Approval of Tax Allocations Not Material.** Approval of the allocations  
22 of Individual Settlement Payments set forth above is not a material term. If the Court approves a  
23 different tax allocation of the Individual Settlement Payments, then the other terms of this Agreement  
24 shall remain in effect.

25                   **7.7. Undeliverable or Uncashed Checks.** All Individual Settlement Payment checks  
26 will remain negotiable for 180 days from the date of their mailing. The Settlement Administrator shall  
27 notify Class Counsel and Defense Counsel of any undeliverable and uncashed checks. The Settlement  
28 Administrator will use reasonable search methods for any returned checks, and will, within one week of

1 a check's return, re-mail checks to any new ascertainable address. Approximately 30 days before the end  
2 of the check-cashing period, the Settlement Administrator will send a postcard or email notification to  
3 Class Members who have not cashed their checks to remind them of the deadline. Any checks that  
4 remain uncashed after 180 days will be voided and their amounts shall be delivered to the State of  
5 California Controller's Office Unclaimed Property Division.

6 **7.8. Certification of Completion.** Upon fully administering this Agreement, the  
7 Settlement Administrator will certify that completion to the Court and counsel for all Parties in a  
8 declaration, summarizing the total money paid and the status of any uncashed checks.

9 **8. Releases**

10 **8.1. Release of the Class Claims.** In the Complaint filed on June 11, 2019  
11 ("Complaint"), Plaintiff sued Costco for violations of Labor Code sections 201-203, 204, 226, 226.7,  
12 510, 1194, 1198, and 1199, and for violations of Business & Professions Code sections 17200 through  
13 17208, for unpaid wages, meal and rest premium pay, penalties, attorney fees, costs, and other relief.  
14 Settlement class members will release Costco from all these claims insofar as they relate to and arise  
15 from Costco's payment of Extra Checks. The Release of these claims extends to all theories of relief  
16 pertaining to payment of the Extra Check, regardless of whether the claim is, was or could have been  
17 alleged as separate claims, causes of action, lawsuits, or based on other theories of relief whether under  
18 California law, federal law, state law or common law (including, without limitation, as violations of the  
19 California Labor Code, the California Wage Orders, applicable regulations, and the California Business  
20 and Professions Code). This Release includes all types of relief available for the above-referenced  
21 claims, including, without limitation, any claims for damages, restitution, losses, penalties, liens,  
22 attorneys' fees, costs, expenses, debts, interest, injunctive relief, declaratory relief, or liquidated  
23 damages. The Final Judgment shall expressly provide that it covers and bars each and every  
24 participating class member from asserting any released claims in the future.

25 **8.2. Additional Release by The Class Representative.** In addition to the release  
26 given by each Settlement Class Member, the Class Representative also gives each Released Party a  
27 general release of all claims arising out of the Class Representative's relationship with the Defendant.  
28 This general release includes, without limitation, claims for unpaid wages and liquidated damages,

1 claims for discrimination, harassment, or retaliation pursuant to Title VII of the Civil Rights Act of  
2 1964, 42 U.S.C. section 2000 *et seq.*, the California Fair Employment and Housing Act, California  
3 Gov't Code section 12900 *et seq.*, and claims for violation of public policy. This general release by the  
4 Class Representative also includes a waiver of rights under California Civil Code Section 1542, which  
5 states:

6 A general release does not extend to claims that the creditor or releasing party does not  
7 know or suspect to exist in his or her favor at the time of executing the release and that, if  
8 known by him or her, would have materially affected his or her settlement with the debtor  
or released party.

9 **9. Settlement Approval Procedure**

10 **9.1. Motion for Preliminary Approval.** Plaintiff will obtain a hearing to request  
11 preliminary approval of this Agreement, to obtain entry of an order that would (i) conditionally certify a  
12 Settlement Class for settlement purposes only, (ii) grant Preliminary Approval, (iii) approve a Notice of  
13 Settlement, and (iv) set a date for a Final Approval hearing.

14 **9.1.1. Contents of Motion.** Class Counsel will prepare the preliminary  
15 settlement approval papers, which will be subject to a five-court-day period for Defendant's review and  
16 comment before filing.

17 **9.2. Motion for Final Approval.** Class Counsel will obtain a hearing for a Motion for  
18 Final Approval, to obtain an order to (a) approve this Agreement, (b) adjudge its terms to be fair,  
19 reasonable, and adequate, (c) recite the Released Claims, (d) direct that the terms of the Agreement be  
20 carried out, and (e) retain jurisdiction to oversee enforcement of this Agreement. Class Counsel will  
21 prepare the final settlement approval papers, which will also be subject to a five-court-day period for  
22 Defendant's review and comment before filing.

23 **9.3. Motion for Class Counsel Award.** In connection with a Motion for Final  
24 Approval, Class Counsel may move for approval of an attorneys' fees and costs award in the amount of  
25 one third (33.33%) of the Gross Settlement Amount plus litigation costs incurred in litigating this  
26 Action.  
27  
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1           **9.4. Motion for Service Award.** In connection with a Motion for Final Approval,  
2 Class Counsel may move for approval of a Service Award for the Class Representative in an amount of  
3 up to \$6,000.

4           **9.5. Entry of Judgment.** Upon Final Approval, the Parties shall request that the Court  
5 (a) enter Judgment in accordance with this Agreement, without further fees or costs, (b) enter an order as  
6 to the Class Counsel Award, and (c) enter an order as to any Service Award.

7                   **9.5.1. Notice of Final Judgment.** Notice of Judgment will be posted on the  
8 Settlement Administrator’s website.

9                   **9.5.2. Effect of Failure to Obtain Final Judgment.** If the Court fails to enter  
10 Judgment in accordance with this Agreement, or if the Judgment is vacated or reversed, then the Action  
11 shall proceed, unless the Parties jointly agree to seek reconsideration or a renegotiated settlement.  
12 Defendant retains the right to contest whether any aspect of the Action should be maintained as a class  
13 action, and to contest the merits of the claims asserted in the Action.

14           **9.6. Appeal Rights.** Only an Objector who has not withdrawn his or her objection  
15 may appeal a judgment that is in accord with this Agreement. The Class Representative and Class  
16 Counsel hereby waive any right to appeal any judgment, ruling, or order in this Action, including any  
17 Final Approval Order and any dismissal of the Action with prejudice. This waiver includes all rights to  
18 any post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment, a motion  
19 for new trial, and any extraordinary writ, and the Judgment therefore will become non-appealable at the  
20 time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal or  
21 post-judgment proceeding. If an appeal is taken from the Judgment, then the time to consummate this  
22 Agreement (including making payments under the Agreement) will be suspended until the appeal is  
23 finally resolved.

24           **9.7. Schedule of contemplated events.** These are the events this Agreement  
25 contemplates. The Parties may agree to adjust these deadlines, after Preliminary Approval, if the  
26 adjustments do not materially affect filing and hearing dates set by the Court.

Deadline for Defendant to provide Settlement Administrator with list of Class Members	30 calendar days after Preliminary Approval
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1 2 3 4	Deadline for Settlement Administrator to mail and email Notice of Settlement to Class Members	14 calendar days after provision of class list to Settlement Administrator
5 6 7	Last day to submit Requests for Exclusion or Objections	45 calendar days from mailing of Notice of Settlement
8 9 10	Settlement Administrator to provide declaration reporting on Requests for Exclusion, Objections, and other results of class notice	At least ten calendar days prior to the Fairness Hearing
11 12 13	Deadline to move for Final Approval	To be set by the Court
14 15 16	Fairness hearing on Final Approval and on Class Counsel Award and Service Award	To be set by the Court
17 18 19 20 21 22	Effective Date	The effective date will be the date of final approval if no objections are filed to the settlement. If objections are filed and overruled, and no appeal is taken of the final approval order, then the effective date of final approval will be thirty (30) days after the trial court enters final approval. If an appeal is taken from the Court's overruling of objections to the settlement, then the effective date of final approval will be twenty (20) days after the appeal is withdrawn or after an appellate decision affirming the final approval decision becomes final.
23 24	Class Counsel instructions to Settlement Administrator re Class Counsel Award	10 calendar days after Effective Date
25 26	Funding of Gross Settlement Amount plus employer share of taxes on wages	21 calendar days after Effective Date
27 28	Settlement Administrator to pay Class Counsel Award, Service Award, and Individual Payments	30 calendar days after Effective Date

**10. Miscellaneous**

**10.1. Execution of this Agreement.**

**10.1.1. Parties' Authority.** The signatories hereto represent that they are fully authorized to bind the Parties to all the terms of this Agreement. The Parties agree that Class Members are so numerous that it is impossible or impractical to have each Class Member execute this Agreement. This Agreement may be executed on behalf of Class Members by the Class Representative.

1                   **10.1.2. Counterparts.** This Agreement may be executed in counterparts, and all  
2 signed and delivered counterparts together may constitute one Agreement binding upon the Parties.

3                   **10.1.3. Facsimile or Scanned Signatures.** A Party may sign and deliver this  
4 Agreement by signing on the designated signature block and transmitting that signature page via  
5 facsimile or as an attachment to an email to counsel for the other Party. Any such signature shall be  
6 deemed an original for purposes of this Agreement and shall be binding upon the Party who transmits  
7 the signature page.

8                   **10.2. Construction.**

9                   **10.2.1. Materiality of Terms.** Except as otherwise stated herein, each substantive  
10 term of this Agreement is a material term that the Parties have relied upon in making this Agreement. If  
11 the Court does not approve any substantive term, or if the Court effects a material change to the  
12 Agreement—such as increasing any amount that Defendant must pay—then the entire Agreement will  
13 be, at Defendant’s sole discretion, void and unenforceable. Where this Agreement states that a term is  
14 not material, then the Court’s refusal to approve that term leaves all the other terms of the Agreement in  
15 effect, and does not give Class Counsel or any Class Member any basis to abrogate this Agreement.

16                   **10.2.2. No Construction Against the Author.** Each Party participated in drafting  
17 this Agreement, and its terms shall not be construed against any Party by virtue of draftsmanship.

18                   **10.2.3. Exhibits Incorporated by Reference.** This Agreement includes the terms  
19 set forth in any attached exhibit. Any exhibit to this Agreement is an integral part of it.

20                   **10.2.4. Headings.** The headings within this Agreement appear for convenience of  
21 reference only and shall not affect the construction or interpretation of any part of this Agreement.

22                   **10.2.5. Invalidity of Any Provision.** Before declaring any provision of this  
23 Agreement invalid, the Court shall first attempt to construe the provision valid to the fullest extent  
24 possible so as to render all provisions of this Agreement enforceable.

25                   **10.2.6. Parties’ Entire Agreement.** This Agreement, with its Definitions,  
26 Recitals, and Exhibits, constitutes the entire agreement on its subject matter, and supersedes all prior and  
27 contemporaneous negotiations and understandings between the Parties.  
28

1                   **10.2.7. Waivers and Modifications to Be in Writing.** No waiver, modification,  
2 or amendment of this Agreement shall be valid unless it appears in a writing signed by or on behalf of  
3 all Parties, and then shall be valid subject to any required Court approval. Any failure to insist upon the  
4 strict performance of any provision shall not be deemed a waiver of future performance of that provision  
5 or of any other provision of this Agreement.

6                   **10.2.8. Governing Law.** All terms of this Agreement shall be governed by and  
7 interpreted according to California law.

8                   **10.3. Inadmissibility of Settlement Documents.** The Parties agree that this Agreement  
9 and all exhibits thereto shall be inadmissible in any proceeding, except a proceeding to approve or  
10 enforce this Agreement. This Agreement will operate as a complete defense to—and may be used as the  
11 basis for an injunction against—any proceeding attempted in breach of this Agreement.

12                   **10.4. No Tax Advice.** Nothing in this Agreement is advice by Class Counsel or  
13 Defense Counsel regarding taxes or taxability, and no Party is relying upon Class Counsel or Defense  
14 Counsel for such advice. Each Party instead is relying exclusively on the Party’s own independent tax  
15 counsel in connection with this Agreement.

16                   **10.5. No Impact on Employee Benefits.** This Agreement does not affect any right or  
17 obligation under any benefits plan. No payment made under this Agreement shall be considered as  
18 compensation or hours worked or hours paid for purposes of determining eligibility, vesting,  
19 participation, or contributions with respect to any employee benefit plan. For purposes of this  
20 Agreement, the term “employee benefit plan” means every “employee benefit plan,” as defined in the  
21 Employee Retirement and Income Security Act of 1974, 29 U.S.C. section 1002(3). The term also  
22 includes any 401(k) plan, bonus, pension, stock option, stock purchase, stock appreciation, welfare,  
23 profit sharing, retirement, disability, vacation, severance, hospitalization, insurance, incentive, deferred  
24 compensation, or any other similar benefit plan, practice, program, or policy, regardless of whether any  
25 such plan is considered an employee benefit plan.

26                   **10.6. No Prior Assignments or Undisclosed Liens.** The Class Representative and the  
27 Class Counsel represent that they have not assigned, transferred, conveyed, or otherwise disposed of any  
28 Released Claim or claim to attorneys’ fees and costs award to be paid under this Agreement. The Class



1 Representative and the Class Counsel further represent and warrant that there are not any liens or claims  
2 against any amount that Defendant is to pay under this Agreement. The Class Representative and Class  
3 Counsel agree to defend, to indemnify, and to hold Defendant harmless from any liability, losses,  
4 claims, damages, costs, or expenses, including reasonable attorneys' fees, resulting from a breach of  
5 these representations or from any lien or assignment.

6 **10.7. Cooperation of the Parties.** The Parties will comply with the covenants of good  
7 faith and fair dealing and otherwise cooperate as follows. Defendant will be responsible for preparing  
8 any proposed judgment, subject to prior comment by Plaintiffs.

9 **10.7.1. Affirmative Duty to Cooperate.** Each Party, upon the request of another,  
10 agrees to perform such acts and to execute and to deliver such documents as are reasonably necessary to  
11 carry out this Agreement. In the same spirit, the Parties agree to make all reasonable efforts to avoid  
12 unnecessary Administrative Costs.

13 **10.7.2. Language of Settlement Documents.** All documents filed with the Court  
14 or sent to Class Members in connection with this Agreement must be approved by all Parties before  
15 being filed or sent.

16 **10.7.3. Refraining from New Proceedings.** The Parties agree to refrain from  
17 further litigation with respect to the Action, except any proceeding needed to obtain Preliminary  
18 Approval, Final Approval, or Judgment.

19 **10.7.4. No Solicitation of Objections or Opt Outs.** The Parties represent that  
20 they have not solicited, encouraged, or assisted—and will not solicit, encourage, or assist—Objection or  
21 Request for Exclusion.

22 **10.7.5. Waiver of Right to Object by Class Representative.** The Class  
23 Representative, by signing this Agreement, agrees not to object to any term of this Agreement.

24 **10.8. Confidential Information.** Class Counsel will destroy all confidential documents  
25 and information provided by Defendant within 120 calendar days of this Agreement's completion. Class  
26 Counsel further agree that no information provided by Defendant shall be used for any purpose other  
27 than prosecution of this Action.  
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DATED:

SEYFARTH SHAW LLP

By \_\_\_\_\_  
Attorneys for Defendant Costco Wholesale Corporation (as to form only)

DATED:

Benjamin Fernando Martinez

\_\_\_\_\_

DATED:

JAMES HAWKINS APLC

By \_\_\_\_\_  
Attorneys for Plaintiff