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FILED
Superior Court of California
County of Los Angeles
05/03/2022

Sherri R. Carter, Executive Officer / Clerk of Court
By: M. Mata Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

15 SILVERIO NEVAREZ, EFREN)
CORREA individually and on behalf)
16 of other members of the general public)
similarly situated,)

18 Plaintiffs,)

19 v.)

22 COSTCO WHOLESALE)
CORPORATION, and DOES 1)
23 through 25,)

24 Defendants.)

CASE NO.: 19STCV10017

*Assigned to Honorable William F. Highberger
in Dept. 10 for all purposes*

~~AMENDED~~ ~~PROPOSED~~ **ORDER**
GRANTING PLAINTIFFS' MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT, PLAINTIFFS' REQUEST
FOR ATTORNEYS' FEES AND COSTS
AND REPRESENTATIVE SERVICE
PAYMENTS

Date: May 3, 2022
Time: 11:00 a.m.

Case Filed: March 25, 2019
Trial Date: None Set
Unlimited Civil

1 Before the Court is the unopposed Motion for Final Approval of Class Action Settlement
2 and for Attorneys' Fees, Costs, and Representative Service Payments filed by Plaintiffs Silverio
3 Nevarez and Efren Correa. The Parties have entered into a Class and PAGA Action Settlement
4 Agreement ("Agreement"), a copy of which was submitted with the Motion. The Court, having
5 reviewed and considered the Motion, its accompanying memorandum, the Agreement, and the
6 declarations in support thereof (and all exhibits thereto), finds that the Motion should be, and
7 hereby is, GRANTED. The Court finds and concludes as follows:

8 This Order incorporates the Agreement. Unless otherwise provided in this Order, all
9 capitalized terms shall have the same meaning as defined in the Agreement.

10 The Court has jurisdiction over the subject matter of this proceeding and over all Parties
11 to this proceeding. In addition, the Court has personal jurisdiction over all parties with respect to
12 the Action and the Agreement.

13 The Court hereby finds the Agreement involves the resolution of a bona fide dispute and
14 was entered into in good faith.

15 **CERTIFICATION OF SETTLEMENT CLASS**

16 Plaintiffs Silverio Nevarez and Efren Correa previously moved for entry of an order
17 conditionally certifying the following proposed class for settlement purposes: all individuals
18 whom Defendant employed in California as non-exempt warehouse employees who worked one
19 or more closing shifts at any time during the Settlement Period (March 25, 2015, through April
20 12, 2021), except any individual who has sued Defendant on any claim to be released or
21 precluded as part of this Agreement. By Order of November 15, 2021, the Court granted that
22 motion.

23 Class certification is appropriate when the class is ascertainable and there is "a well
24 defined community of interest in the questions of law and fact involved affecting the parties to
25 be represented." *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1806 (internal quotation
26 marks omitted); *see* Cal. Code Civ. Proc. § 382. Civil Procedure Code § 382's requirements
27 essentially mirror those of Federal Rule 23: numerosity, typicality of the class representatives'
28 claims, adequacy of representation, predominance of common issues, and superiority. *Linder v.*

1 *Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435 (“The community of interest requirement involves
2 three factors: (1) predominant common questions of law or fact; (2) class representatives with
3 claims or defenses typical of the class; and (3) class representatives who can adequately
4 represent the class.”) (internal quotations and citations omitted); *see also* Fed. R. Civ. P. 23(a);
5 *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1019, overruled on other grounds by
6 *Wal-Mart Stores, Inc. v. Dukes* (2011) 564 U.S. 338.

7 The Court, having considered the Parties’ arguments and the evidence submitted in
8 support of those arguments, finds that all requirements of certification for settlement purposes
9 continue to be met for the proposed Settlement Class. First, the class is so numerous that joinder
10 of all members is impracticable. Defendant’s records reflect that there are approximately 97,000
11 members of the Settlement Class.

12 Second, there are questions of law or fact common to the class. The common questions
13 presented here include, but are not limited to, the following:

- 14 • Did Costco’s store-closing policies and procedures require Class Members to wait
15 before they were permitted to leave the store premises?
- 16 • Were Settlement Class Members paid for the time they spent waiting to be
17 allowed to leave the store premises at the end of their shifts?
- 18 • Should Settlement Class Members have been paid at an overtime rate for time
19 spent waiting to leave the store premises?
- 20 • Did Costco’s pay statements reflect all hours that Class Members were suffered or
21 permitted to work?

22 Under these circumstances, the proposed Class satisfies the commonality requirement.

23 The typicality requirement is met if the claims of the named representatives are similar to
24 those of the Class, though “they need not be substantially identical.” *Hanlon*, 150 F.3d at 1020;
25 *see also Classen v. Weller* (1983) 145 Cal.App.3d 27, 46 (“it has never been the law in
26 California that the class representative must have *identical* interests with the class members”)
27 (emphasis in original). The claims of Plaintiffs Nevarez and Correa are typical of the Settlement
28 Class because they arise from the same factual bases and are based on the same legal theories as
the Settlement Class claims. *See J.P. Morgan & Co. Inc. v. Super. Ct.* (2003) 113 Cal.App.4th
195, 212 (“A class representative must be part of the class and possess the same interest and

1 suffer the same injury as the class members.” (citation omitted)). Plaintiffs worked in California
2 as non-exempt warehouse employees for Costco. They also worked multiple closing shifts
3 during the Settlement Period and were subjected to the closing procedures that underlie the
4 Settlement Class claims.

5 The adequacy requirement is met if the named plaintiffs and their counsel have no
6 interests adverse to the proposed class and are committed to vigorously prosecuting the case on
7 behalf of the class. *See McGhee v. Bank of Am.* (1976) 60 Cal.App.3d 442, 450. Those
8 standards are met here. Plaintiffs’ interests in obtaining the best recovery possible for the Class
9 fully comport with the Class’s interests, given that they possess the same claims as the Class. In
10 addition, Plaintiffs’ Counsel, who are experienced employment and class action attorneys, have
11 demonstrated their commitment to litigating the case vigorously on behalf of the Class.

12 Certification is appropriate when common questions of law and fact predominate over
13 individual questions and when the use of the class device is superior to individual litigation.
14 *Hanlon*, 150 F.3d at 1023. When assessing predominance and superiority, courts may consider
15 whether the class will be certified for settlement purposes only, rendering trial manageability
16 irrelevant. *Amchem Prods., Inc. v. Windsor* (1997) 521 U.S. 591, 620. The test for determining
17 predominance of common issues is whether the proposed class is sufficiently cohesive to warrant
18 adjudication on a class-wide basis. *Hanlon*, 150 F.3d at 1022. The proposed Class here is
19 sufficiently cohesive because Class Members, in the words of *Hanlon*, share a “common nucleus
20 of facts and potential legal remedies.” *Id.* Plaintiffs allege that Costco had a policy of requiring
21 its employees to clock out, then engage in security procedures that required them to stay in the
22 store for several minutes while they waited for a manager to perform a bag check and then let
23 them out and of not providing accurate itemized wage statements. Common legal and factual
24 questions about Costco’s pay practices and wage statements accordingly predominate over
25 individual questions.

26 Particularly in the settlement context, class resolution is superior to other available
27 methods of adjudication. *See Hanlon*, 150 F.3d at 1023; *Dunk*, 48 Cal.App.4th at 1807 n.19.
28 Here, the alternative methods of adjudication are repetitive individual cases relying on the same
facts and legal argument, which would waste judicial resources. *See Sav-On Drug Stores, Inc. v.*

1 *Super. Ct.* (2004) 34 Cal.4th 319, 340; *Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715,
2 745. Use of the class device in this case will provide redress for many employees who are
3 unwilling or unable to file individual suits, including those whose claims may be too small
4 (because of their short tenure with Costco) to warrant an individual suit. For these reasons, a
5 class action settlement is the preferred method of resolution of the Class Members' claims.

6 The Court therefore confirms its previous conditional certification of the Settlement
7 Class for settlement purposes and confirms its previous Order appointing the law firms of Gibbs
8 Law Group LLP and The Gould Law Firm to serve as Class Counsel.

9 **FINAL APPROVAL OF THE PROPOSED SETTLEMENT**

10 For the reasons stated in greater detail below, the Court grants final approval to the
11 proposed Settlement as fair, reasonable, and adequate. *See* Cal. Rules of Ct. 3.769(a); Fed. R.
12 Civ. P. 23(e)(1)(B)(i). The Court finds that the individual Settlement Payments provided for by
13 the terms of the Agreement are fair and reasonable. The Court orders the payment of those
14 individual Settlement awards to Settlement Class Members in accordance with the terms of the
15 Agreement.

16 Based on a review of the papers submitted by Plaintiffs, the Court finds that the
17 Settlement: (a) resulted from efforts by Plaintiffs and Class Counsel who adequately represented
18 the Class; (b) was negotiated at arm's length with the assistance of an experienced class action
19 mediator; (c) provides relief for the Class that the Court finds to be adequate, taking into account
20 (i) the costs, risks, and delay of trial and appeal; (ii) the proposed method of distributing relief to
21 the class, including the method of processing payments to Settlement Class Members; and (iii)
22 the terms of the proposed award of attorney's fees, including timing of payment; and (d) treats
23 Settlement Class Members equitably relative to one another.

24 In making this final approval finding, the Court considered the nature of the claims, the
25 amounts of benefits paid and received in the Settlement, the allocation of settlement payments
26 among Settlement Class Members, the fact that Defendant does not admit any liability and does
27 not characterize this Settlement as an admission of liability, and the fact that the Settlement
28 represents a compromise of the Parties' respective positions rather than the result of a finding of

1 liability at trial. The Court further finds that the terms of the Agreement have no obvious
2 deficiencies and do not improperly grant preferential treatment to any individual Class Member.

3 **NOTICE AND ADMINISTRATION**

4 The Parties have designated CPT Group as the Settlement Administrator. Carole
5 Thompson (the Settlement Administrator) submitted a declaration, which this Court has
6 reviewed, which confirmed that Notice was provided to the Settlement Class pursuant to the
7 Preliminary Approval Order of November 15, 2021, and the procedures set forth in the
8 Agreement. The Settlement Administrator shall continue to perform all the duties of the
9 Settlement Administrator set forth in the Agreement. Settlement Administrator CPT Group will
10 calculate individual settlement awards to Class Members and distribute those awards.

11 The Court finds that the Notice provided to the Settlement Class, as described in the
12 Declaration of Carole Thompson, satisfied the requirements of due process and California law
13 and provide the best notice practicable under the circumstances, including individual notice to all
14 Settlement Class Members who could be identified through reasonable effort. The Notice was
15 reasonably calculated to apprise Settlement Class Members of the nature of this litigation; the
16 scope of the Settlement Class, the Class claims, issues, or defenses; the terms of the Settlement
17 Agreement; the right of Settlement Class Members to appear, object to the Settlement
18 Agreement, and exclude themselves from the Settlement Class and the process for doing so; of
19 the Final Approval Hearing; and of the binding effect of a class judgment on the Settlement
20 Class.

21 **OBJECTIONS AND EXCLUSIONS**

22 The Court notes that zero Class Members filed objections to the settlement and only 9
23 Class Members (or less than 1 Class Member in 1,000) requested to opt out of the Settlement.
24 The Court finds that the nine individuals listed in Exhibit B to the Supplemental Declaration of
25 Carole Thompson on Behalf of CPT Group, Inc., filed with this Court, have submitted valid
26 requests for exclusion from the Settlement Class and are therefore not bound by this Final
27 Approval Order and Judgment. A copy of this Exhibit is attached hereto as Exhibit A. Other
28 than the 9 Opt Outs identified by the Settlement Administrator and included on Exhibit A, all

1 other Settlement Class Members shall be bound by the terms of the Agreement upon entry of this
2 Final Approval Order.

3 Class Members are permitted to appear at the Final Fairness Hearing and speak to the
4 Court if they wish to do so, regardless of whether they filed an objection or a Notice of Intent to
5 Appear at the hearing. The Notice included instructions on how Settlement Class Members
6 could do so.

7 **ATTORNEYS' FEES, COSTS, AND CLASS REPRESENTATIVE SERVICE**

8 **PAYMENTS**

9 The Court has reviewed the declarations regarding Plaintiffs' efforts in this case and
10 hereby determines that the requested service payments to class representatives (and Plaintiffs)
11 Silverio Nevarez and Efren Correa of \$7,500 each are appropriate under the circumstances of the
12 case and the time and effort spent by Plaintiffs in litigating the case on behalf of the Class.

13 The Court finds and determines that the attorneys' fees request of \$2,916,666, or one-
14 third of the total Settlement, is reasonable under both methods used in California courts for
15 determining fee awards in class action cases: the lodestar method and the percentage-of-the-
16 recovery method. The percentage requested is within the range of percentage awards approved
17 in California. *See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 ("Empirical studies
18 show that, regardless whether the percentage method or the lodestar method is used, fee awards
19 in class actions average around one-third of the recovery." (citation omitted)). In addition, Class
20 Counsel have submitted declarations indicating that the lodestar in the case is \$1,697,105, which
21 means that they are requesting a multiplier of 1.72. In light of the risks in the case and the
22 results achieved by Plaintiffs' Counsel, the Court finds the multiplier appropriate. The Court
23 further finds and determines that the litigation costs request of \$63,443.47 is relevant to the
24 litigation and reasonable in amount. Class Counsel have submitted declarations showing that
25 these costs were necessary to secure the resolution of this litigation.

26 Pursuant to the terms of the settlement, and the authorities, evidence and argument
27 submitted by Class Counsel, the Court hereby awards Class Counsel attorneys' fees in the
28 amount of \$2,916,666, and litigation costs in the amount of \$63,443.47 to be paid to Class

1 Counsel from the settlement fund as final payment for and complete satisfaction of any and all
2 attorneys' fees and costs incurred by and/or owed to Class Counsel.

3 The Court finds and determines that the payment to CPT Group in the amount of
4 \$168,000 is fair and reasonable for settlement administration in a class of this size. The Court
5 hereby awards CPT Group the amount of \$168,000 in administrative costs for its work on the
6 settlement administration in this case.

7 Defendant or any related persons or entities shall not have any further liability in this
8 action for costs, expenses, interest, attorneys' fees, or for any other charge, expense, or liability,
9 except as provided for by the Settlement Agreement or in any action to enforce the terms of the
10 Agreement.

11 The Court finds and determines that the release contained in the Settlement Agreement is
12 appropriate and shall bind all Class Members who did not timely opt out of the Settlement.

13 **JUDGMENT**

14 The Court hereby enters FINAL JUDGMENT in this case in accordance with the terms
15 of the Agreement, Preliminary Approval Order, and this Order. Nothing in this Order or
16 Judgment shall preclude any action to enforce the Parties' obligations pursuant to the Agreement
17 or pursuant to this Order, including the requirement that Defendant make payments in
18 accordance with the terms of the Agreement.

19 In accordance with, and for the reasons stated in this Order, judgment shall be entered
20 within the meaning and for purposes of Code of Civil Procedure §§ 577, 904.1(a) and Rules
21 3.769, and 8.104 of the California Rules of Court, whereby Class Representatives and all Class
22 Members shall take nothing from Defendant except as expressly set forth in the Agreement and
23 this Order. Pursuant to California Rule of Court 3.769(h), this Court shall retain jurisdiction
24 over the Parties to enforce the terms of the Judgment.

25 **IT IS SO ORDERED.**

26 05/03/2022

27 Dated: _____



William F. Highberger

28 **William F. Highberger / Judge**
HON. WILLIAM F. HIGHBERGER

SUPERIOR COURT JUDGE

EXHIBIT A

Nevarez et al. v. Costco Wholesale Corporation
Opt Out List 4/20/2022

ClaimNo	MailingListID	EmployeeName
1	26563	CISNEROS, JUAN JOSE
2	18750	DELGADO, JOSEPH D.
3	18715	DELGADO, ANDREA M.
4	23592	JONES, SHELBY TERISSA
5	26312	CHAN, WAI YEE
6	18952	RAMIREZ, NICOLAS
7	3352	PRADO JR, SAMUEL
8	30971	LUONG, LIEM
9	12708	WIECZORKIEWICZ, HARVEY