

**NOTICE OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT**

*Silverio Nevarez & Efren Correa v. Costco Wholesale Corporation*

**PLEASE READ THIS NOTICE AS IT MAY AFFECT YOUR LEGAL RIGHTS.**

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**1. Why Did I Get This Notice?**

A proposed settlement has been reached in an action entitled *Silverio Nevarez & Efren Correa v. Costco Wholesale Corp.*, Los Angeles Superior Court Case No. 19STCV10017. This Notice is being sent to you by order of that court, which has preliminarily approved the settlement and conditionally certified a class. Because your rights may be affected by this Settlement, you should read this Notice carefully.

This Notice briefly describes the claims alleged, the key Settlement terms, and your rights and options. Unless you timely request to be excluded, the Settlement, if finally approved by the Court, will be binding on you. The Court has not determined whether Costco broke any law. Both sides agreed to settle the case without agreeing who is right or wrong in order to avoid the risks and cost of a trial. Costco expressly denies that it did anything wrong or that it violated the law and further denies any liability whatsoever to Plaintiffs or to the Class.

**2. What Is this Case About?**

The Plaintiffs, Silverio Nevarez and Efren Correa, sued Costco on March 25, 2019 in Los Angeles Superior Court (Case no. 19STCV10017) (the “Lawsuit”), seeking damages, restitution, penalties, interests, costs, attorneys’ fees, and other relief for unpaid exit delays experienced by nonexempt closing-shift California warehouse employees at various times from March 25, 2015 through April 12, 2021. They asserted the following causes of action, all alleging that Costco detained employees after they had clocked out during their closing shifts: (1) failure to pay overtime wages (Cal. Lab. Code § 1194), (2) failure to provide adequate wage statements (Cal. Lab. Code § 226), (3) failure to pay earned wages upon termination (Cal. Lab. Code §§ 201, 202, 203), (4) failure to pay minimum wage (Cal. Lab. Code §§ 1197), (5) failure to timely pay wages (Cal. Lab. Code § 204), and (6) unfair business practices (Cal. Bus. & Prof. Code § 17200 *et seq.*). This part of the case is called “the Class Action,” and the affected employees are the Class Members, who will receive a settlement payment unless they exclude themselves from (or “opt out” of) the class as described below.

The case also seeks civil penalties under the California Private Attorneys General Act of 2004 (“PAGA”) on behalf of all nonexempt California warehouse employees working at any time during the period January 19, 2018 through April 12, 2021, for alleged violations of California Labor Code sections 201-204, 226, 226.3, 226.7, 510, 512, 1197, 1197.1, 1198, and the California Wage Order. This part of the case is known as “the PAGA Action,”

and the affected employees (called the PAGA Group members), will receive a payment from this portion of the settlement regardless of whether they opt out of participating in the Class Action.

### **3. What is a “Class Action”?**

In a class action, one or more class representatives sue on behalf of people who are in a position to make similar claims. In this case, Silverio Nevarez and Efren Correa are the class representatives. Costco is the Defendant. A class action allows a court to resolve at one time all the issues for all the class members who do not exclude themselves from the class. A class member is bound by the judgment entered in the case, whether the class wins or loses, and may not sue over the same claims that were decided in the class action.

### **4. Am I a Class Member? Am I a PAGA Group member?**

You are a Class Member if, at any time during the period March 25, 2015, through April 12, 2021, you worked a closing shift as a nonexempt warehouse employee for Costco in California. As such, you will receive a payment from this settlement unless you opt out of the class in the manner described below. For purposes of the settlement, a “closing shift” is defined as a shift where you clocked out after the warehouse’s posted closing time.

You are a PAGA Group member if, at any time during the period January 19, 2018, through April 12, 2021, you worked as a nonexempt warehouse employee for Costco in California. As such, you will receive a payment for the PAGA portion of the settlement regardless of whether you opt out of the class.

### **5. How Does the Class Action Settlement Work?**

In this Lawsuit, the Plaintiffs sued on behalf of themselves and all other similarly situated current and former employees. The Class Action Settlement will release all claims by Class Members who do not exclude themselves from the Class by opting out as described below. Class members who opt out will not receive any payment as a result of the Class Action Settlement. You will automatically receive your share of the settlement unless you opt out. Your share will automatically be mailed to you after the Court grants final approval of the settlement at a Final Fairness Hearing. You need to take action *only if* you do *not* want to participate in the settlement (opt out). The procedure for opting out is described in Section 8 below.

Plaintiffs and Class Counsel believe the settlement is fair and reasonable. The Court must also review the terms of the Settlement and determine if it is fair and reasonable.

On November 15, 2021, in the Los Angeles Superior Court, the judge in the case conditionally certified a class for settlement purposes only and directed that you receive this Notice. The attorneys for Plaintiffs and the Class have copies of all documents related to the settlement and can provide them to you free of charge upon your request. Documents are also available on the Settlement Administrator’s website, [www.cptgroupcaseinfo.com/CostcoNevarezSettlement](http://www.cptgroupcaseinfo.com/CostcoNevarezSettlement) Contact information for the Plaintiffs’ attorneys is provided below.

The Final Fairness Hearing concerning the proposed settlement will occur on May 3, 2022, at 11:00 a.m., located at 312 N. Spring St., Los Angeles, California 90012, Dept. 10, before Los Angeles Superior Court Judge William Highberger. Due to the pandemic, the hearing may occur remotely.

### **6. Who Are the Attorneys Representing the Plaintiffs and Other Employees?**

The Gould Law Firm Michael A. Gould, Aarin Zeif 161 Fashion Lane, Suite 207 Tustin, California 92780 Michael@wageandhourlaw.com	Gibbs Law Group LLP Steven M. Tindall, Jeffrey Kosbie, Amy M. Zeman 505 14th Street, Suite 1110 Oakland, California 94612 smt@classlawgroup.com
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The Court has decided that the attorneys for the Plaintiffs are qualified to represent you and all other Class Members in this Settlement. You do not need to hire your own attorney because Class Counsel are working on your behalf. But, if you want your own attorney, you may hire one at your own cost.

### **7. What Are My Options?**

**DO NOTHING:** If you do nothing, you *will* receive a settlement payment and you *will* be bound by the release of class action claims stated in this Notice and Settlement Agreement, as stated in Section No. 10 below.

**OPT OUT:** If you “opt out” or ask to be excluded in the manner described below, then you will remove yourself from the Class Action. If the Court grants final approval of the Class Action Settlement, then you will *not* receive any payment, except for your share of the Private Attorneys General Act award. This option will retain your right to sue Costco on your own behalf.

**OBJECT:** If you object to any aspect of the proposed settlement, you can write the Settlement Administrator. If you want to object, then you must not opt out.

The procedures for opting out or objecting are set forth below in the Sections 8 and 9 below, entitled “How Do I Opt Out or Exclude Myself From This Settlement” and “How Do I Object To The Settlement?”

**Note: Costco will not retaliate in any way against you—and is forbidden by law to retaliate in any way against you—for either participating or not participating in this Settlement.**

### **8. How Do I Opt Out or Exclude Myself from the Class Action Settlement?**

If you do not want to take part in the Class Action Settlement, then you must sign and mail a written exclusion request to the Settlement Administrator at: Nevarez, et al. v. Costco Wholesale Corporation, c/o CPT Group, Inc., 50 Corporate Park, Irvine, CA 92606. The request must (1) contain your name, address, telephone number, and the last four digits of the Social Security number, (2) clearly say you don’t want to be part of the proposed settlement, (3) be returned by mail to the Settlement Administrator at the specified address, and (4) be postmarked on or before March 4, 2022.

The entry of final judgment, following final approval, will bind all Class Members who do not opt out.

### **9. How Do I Object to the Class Action Settlement?**

If you are a Class Member who does not opt out, then you may object to any part of the settlement, personally or through an attorney, by writing an objection to the Settlement Administrator and serving it on all counsel listed in Section No. 5 on or before March 4, 2022. The objection must include (a) your full name, address, and telephone number, (b) a written statement of factual and legal grounds for the objection, (c) copies of any papers, briefs, or other documents on which the objection relies, (d) a list of all persons (if there are any) who will be called to testify in support of the objection, and (e) a list of all cases (if there are any) in which the objector or the objector’s counsel has filed objections to a Class Action settlement in the preceding five years. Class Members who fail to file and serve timely objections run the risk of having waived their right to object (whether through an appeal or otherwise), unless otherwise ordered by the Court.

Nonetheless, Class Members may appear at the Final Approval Hearing to object orally even if they haven’t objected in writing. During the Covid-19 pandemic, hearings before the judge overseeing this case have been conducted remotely with the assistance of a third-party service provider, L.A. Court Connect (Tel: (213) 830-0400). If that remains the case at the time of the Final Approval hearing, class members who wish to appear to object should contact class counsel to arrange a telephonic appearance through L.A. Court Connect, at least three days before the hearing if possible.

If the Court rejects the objection and approves the Settlement, then the objector will receive a Class Action Settlement payment and will be bound by the terms of the Class Action Settlement and Release of Claims by Settlement Class Members as defined in this Notice and in the Settlement Agreement.

## 10. *How Does This Settlement Affect My Rights? What are the Released Claims?*

If the proposed Settlement is approved by the Court, then a Final Judgment will be entered by the Court. All Class Members who do not opt out of the Settlement will release Costco and the other Released Parties from all claims that were or could have been asserted in this Action or that were based on or arose out of the facts alleged in this Action, including, without limitation, claims for (1) failure to pay overtime wages (Cal. Lab. Code § 1194), (2) failure to provide adequate wage statements (Cal. Lab. Code § 226), (3) failure to pay all wages due upon termination (Cal. Lab. Code §§ 201, 202, 203), (4) failure to pay minimum wage (Cal. Lab. Code §§ 1197 and 204), and (5) unfair business practices (Cal. Bus. & Prof. Code §§ 17200 *et seq.*).

Specifically excluded from the Release of Class Claims is any claim for unpaid overtime alleging that any compensation paid on account of Costco's three-minute rounding practice should have increased the regular rate of pay for purposes of calculating overtime pay, as that claim is alleged in *Rough v. Costco Wholesale Corporation*, Case No. 2-19-cv-01340-MCD-DB (E.D. Cal.), and derivative Labor Code claims (Labor Code §§ 201-203, 226, and 2699)—but only to the extent that those derivative claims are based on the same overtime theory alleged in *Rough* that any compensation paid on account of Costco's three-minute rounding practice should have increased the regular rate of pay for purposes of calculating overtime pay.

"Released Parties" means Costco and all subsidiaries, parents, affiliates, predecessors, insurers, agents, employees, successors, assigns, officers, officials, directors, attorneys, personal representatives, executors, and shareholders, including their employee benefit plans and their trustees and administrators, agents, employees, and fiduciaries. Entry of judgment will preclude actions by you or those acting on your behalf with respect to any of the causes of action identified above as to any liability of Costco or the Released Parties through April 12, 2021. Entry of judgment will also preclude further PAGA civil-penalty actions for alleged violations of California Labor Code sections 201-204 (timely payment of wages), 226 (wage statements), 226.3 (wage statements), 226.7 (premium pay for failure to provide breaks), 510 (overtime), 512 (meal periods), 1197 (minimum wage), 1197.1 (minimum wage), 1198 (maximum hours), and California Wage Order No. 7 during the period January 19, 2018, through April 12, 2021.

## 11. *What are the Main Terms of the Settlement?*

Costco will pay **\$8,750,000** in a Gross Settlement Amount. Of that amount, \$750,000 will be allocated to PAGA, and 75% of that payment will go to the California Labor and Workforce Development Agency and 25% will go to PAGA Group members in accordance with their number of attributed pay periods during the PAGA period. From the \$8,000,000 remaining, the following shall be deducted: (1) Class Representative Payments to Silverio Nevarez and Efren Correa in an amount up to \$7,500 each (for a total of \$15,000), (2) settlement administration costs for the Settlement Administrator, CPT Group, Inc., in an amount estimated not to exceed \$133,000.00 and (3) payment of attorneys' fees to Class Counsel in an amount not to exceed \$2,916,666.67 (one-third of the Gross Settlement Amount), plus litigation costs actually incurred and documented, not to exceed \$65,000. All these deductions are subject to court approval. What then remains of the Gross Settlement Amount will be the Net Settlement Amount for distribution to Settlement Class Members. The Settlement Administrator will determine the payments in accordance with the number of attributed closing shifts each Settlement Class Member worked.

Most of the \$8.75 million Gross Settlement Amount (that is, \$7,500,000 of it) is in the form of cash. Some settlement payments, wholly (for smaller payments) or partially (for larger payments), will be in the form of a Costco Shop Card. A total of \$1,250,000 in settlement proceeds will be in the form of Shop Cards. Payments for individuals attributed with fewer than approximately 59 closing shifts will be paid in the form of Shop Cards only. Payments for individuals attributed with more than approximately 59 closing shifts will be paid in a combination of cash and Shop Cards. Shop Cards can be used like cash to buy a Costco membership or Costco merchandise and services. Shop cards do not expire and can be used by nonmembers as well as Costco members at any U.S. Costco warehouse or Gas Station or Food Court or online at Costco.com. There is no fee for using a Shop Card.

**Tax consequences.** The overall Net Settlement Amount will be allocated 80% to non-wage payments and 20% for wages. You will receive tax documents from the Settlement Administrator. Payments in the form of Shop Cards will be allocated entirely to non-wage payments.

**12. *How Much Can I Expect to Receive from this Settlement?***

Your payment as a Class Member will reflect the number of closing shifts attributed to you during the period March 25, 2015, through April 12, 2021. Your payment as a PAGA Group member will reflect the number of pay periods attributed to you during the period January 19, 2018, through April 12, 2021. You are attributed 25 additional closing shifts if you are a former employee, to reflect the additional claim available under California law for untimely termination pay to a former employee.

Based on your attributed number of closing shifts: your preliminary estimated payment with respect to the Class Action Settlement will be approximate, whether in the form of a check or a Shop Card or a combination thereof. If you are a PAGA Group member, then you will receive a payment for your portion of the PAGA settlement regardless of whether you opt out of the class.

**13. *What if I Worked More Closing Shifts Than Reported in This Notice?***

You can dispute the number of closing shifts attributed to you by mailing the Settlement Administrator at *Nevarez, et al. v. Costco Wholesale Corporation, c/o CPT Group, Inc., 50 Corporate Park, Irvine, CA 92606* by February 17, 2022, and providing credible evidence. The Settlement Administrator will use Defendant's records and the information you provide to resolve any disputes about the data appearing on this Notice. The Settlement Administrator's determination will be final and binding.

**14. *How Will the Class Representatives and Class Counsel be Paid?***

The attorneys who represent the Plaintiffs and the rest of the Class will be paid from the Gross Settlement Fund. Subject to Court approval, Class Counsel may be paid an amount not to exceed one-third of the Gross Settlement Fund (\$2,916,666.67) in fees plus up to \$65,000 in litigation costs actually incurred, supported by adequate documentation. Costco has separately paid all of its own attorneys' fees and costs. The Plaintiffs acting as Class Representatives may also be awarded, subject to Court approval, an amount not to exceed \$7,500 each (\$15,000 total), as an enhancement for the time and effort they spent in prosecuting this case, undertaking risks for the payment of costs in the event this case had been lost, and a general release of all their claims.

**IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS**, you may contact Class Counsel listed above, or the Settlement Administrator at the telephone number listed below, toll free. Please refer to the *Nevarez v. Costco* Class Action Settlement.

This Notice does not contain all the proposed terms of settlement or all details of court proceedings. If this Notice differs in any way from the Settlement Agreement, the Settlement Agreement prevails. For more detailed information, you may refer to the underlying documents and papers on file with the Los Angeles Superior Court at the address given above, or you may ask for a free copy from Class Counsel. Materials also appear on the Settlement Administrator's website: [www.cptgroupcaseinfo.com/CostcoNevarezSettlement](http://www.cptgroupcaseinfo.com/CostcoNevarezSettlement).

**PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION ABOUT THIS SETTLEMENT.**