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**FILED**  
Superior Court of California  
County of Los Angeles  
11/15/2021

Sherri R. Carter, Executive Officer / Clerk of Court  
By:                     P. Martinez                     Deputy

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **COUNTY OF LOS ANGELES**

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

17 Plaintiffs,

18 v.  
19

20  
21 COSTCO WHOLESALE  
CORPORATION, and DOES 1  
22 through 25,

23 Defendants.  
24

) **CASE NO.: 19STCV10017**  
) *Assigned to Honorable William F. Highberger*  
) *in Dept. 10 for all purposes*

) ~~**PROPOSED**~~ **ORDER GRANTING**  
) **PLAINTIFFS' MOTION FOR**  
) **CONDITIONAL CLASS**  
) **CERTIFICATION AND PRELIMINARY**  
) **APPROVAL OF CLASS ACTION**  
) **SETTLEMENT**

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

1 Before the Court is an unopposed Motion for Conditional Class Certification and  
2 Preliminary Approval of Class Action Settlement filed by Plaintiffs Silverio Nevarez and Efren  
3 Correa. The Parties have entered into a Class and PAGA Action Settlement Agreement  
4 (“Agreement”), a copy of which was submitted with the Motion. The Court, having reviewed  
5 and considered the Motion, its accompanying memorandum, the Agreement, and the declarations  
6 in support thereof (and all exhibits thereto), finds that the Motion should be, and hereby is,  
7 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 **CONDITIONAL CERTIFICATION OF SETTLEMENT CLASS**

16 Plaintiffs Silverio Nevarez and Efren Correa have 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.

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

1 superiority. *Linder v. Thrifty Oil Co.*(2000) 23 Cal. 4th 429, 435 (“The community of interest  
2 requirement involves three factors: (1) predominant common questions of law or fact; (2) class  
3 representatives with claims or defenses typical of the class; and (3) class representatives who can  
4 adequately represent the class”) (internal quotations and citations omitted); see also Fed. R. Civ.  
5 P. 23(a); *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1019, overruled on other  
6 grounds by *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 are met for the proposed Settlement Class. First, the class is so numerous that joinder of all  
10 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, 46-47. The claims of Plaintiffs Nevarez  
26 and Correa are typical of the Settlement Class because they arise from the same factual bases and  
27 are based on the same legal theories as the Settlement Class claims. *See J.P. Morgan & Co.*

1 *Inc. v. Superior Court* (2003) 113 Cal. App. 4th 195, 212; *Caro v. Procter & Gamble Co.* (1993)  
2 18 Cal. App. 4th 644, 663-64 (typicality equates to membership in the proposed class). Plaintiffs  
3 worked in California as non-exempt warehouse employees for Costco. They also worked  
4 multiple closing shifts during the Settlement Period and were subjected to the closing procedures  
5 that underlie the Settlement Class claims.

6 The adequacy requirement is met if the named plaintiffs and their counsel have no  
7 interests adverse to the proposed class and are committed to vigorously prosecuting the case on  
8 behalf of the class. *McGhee v. Bank of Am.* (1976) 60 Cal. App. 3d 442, 450-51. Those  
9 standards are met here. Plaintiffs' interests in obtaining the best recovery possible for the Class  
10 fully comport with the Class's interests, given that they possess the same claims as the Class. In  
11 addition, Plaintiffs' Counsel, who are experienced employment and class action attorneys, have  
12 demonstrated their commitment to litigating the case vigorously on behalf of the Class.

13 Certification is appropriate when common questions of law and fact predominate over  
14 individual questions and when the use of the class device is superior to individual litigation.  
15 *Richmond v. Dart Indus., Inc.* (1981) 29 Cal. 3d 462, 470. When assessing predominance and  
16 superiority, courts may consider whether the class will be certified for settlement purposes only,  
17 rendering trial manageability irrelevant. *Amchem Prods., Inc. v. Windsor* (1997) 521 U.S. 591,  
18 620. The test for determining predominance of common issues is whether the proposed class is  
19 sufficiently cohesive to warrant adjudication on a class-wide basis. *Hanlon*, 150 F.3d at 1022.  
20 The proposed Class here is sufficiently cohesive because Class Members, in the words of  
21 *Hanlon*, share a "common nucleus of facts and potential legal remedies." *Id.* Plaintiffs allege  
22 that Costco had a policy of requiring its employees to clock out, then engage in security  
23 procedures that required them to stay in the store for several minutes while they waited for a  
24 manager to perform a bag check and then let them out and of not providing accurate itemized  
25 wage statements. Common legal and factual questions about Costco's pay practices and wage  
26 statements accordingly predominate over individual questions.

27 Particularly in the settlement context, class resolution is superior to other available  
28

1 methods of adjudication. *See Hanlon*, 150 F.3d at 1023; *Dunk*, 48 Cal. App. 4th at 1807 n.19.  
2 Here, the alternative methods of adjudication are repetitive individual cases relying on the same  
3 facts and legal argument, which would waste judicial resources. *See Sav-On Drug Stores, Inc. v.*  
4 *Super. Ct.* (2004) 34 Cal. 4th 319, 340; *Bell v. Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715,  
5 745. Use of the class device in this case will provide redress for many employees who are  
6 unwilling or unable to file individual suits, including those whose claims may be too small  
7 (because of their short tenure with Costco) to warrant an individual suit. For these reasons, a  
8 class action settlement is the preferred method of resolution of the Class Members' claims.

9 The court therefore CERTIFIES the class for settlement purposes. The Court  
10 APPOINTS the law firms of Gibbs Law Group LLP and The Gould Law Firm to serve as Class  
11 Counsel.

#### 12 **LIKELY APPROVAL OF THE PROPOSED SETTLEMENT**

13 For the reasons stated in greater detail below, the Court finds on a preliminary basis that  
14 it will likely be able to approve the proposed Settlement—including the settlement payments and  
15 the process by which Settlement Class Members may object to or request exclusion from the  
16 settlement—as fair, reasonable, and adequate. *See* Cal. Rules of Ct. 3.769(a); Fed. R. Civ. P.  
17 23(e)(1)(B)(i).

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

1 In making this preliminary finding, the Court considered the nature of the claims, the  
2 amounts of benefits paid and received in the Settlement, and the allocation of settlement  
3 payments among Settlement Class Members, and the fact that Defendant does not admit any  
4 liability and does not characterize this Settlement as an admission of liability, and that the  
5 Settlement represents a compromise of the Parties' respective positions rather than the result of a  
6 finding of liability at trial. The Court further preliminarily finds that the terms of the Agreement  
7 have no obvious deficiencies and do not improperly grant preferential treatment to any  
8 individual Class Member.

### 9 **NOTICE AND ADMINISTRATION**

10 The Parties have designated CPT Group as the Settlement Administrator. The Settlement  
11 Administrator shall perform all the duties of the Settlement Administrator set forth in the  
12 Agreement. Settlement Administrator CPT Group will calculate individual settlement awards to  
13 Class Members. Defendant will provide CPT Group with the information necessary to make  
14 these calculations.

15 The Court finds that the provisions for Notice to the Settlement Class set forth in the  
16 Agreement satisfy the requirements of due process and California law and provide the best  
17 notice practicable under the circumstances, including individual notice to all members who can  
18 be identified through reasonable effort. The Notice is reasonably calculated to apprise  
19 Settlement Class Members of the nature of this litigation; the scope of the Settlement Class, the  
20 Class claims, issues, or defenses; the terms of the Settlement Agreement; the right of Settlement  
21 Class Members to appear, object to the Settlement Agreement, and exclude themselves from the  
22 Settlement Class and the process for doing so; of the Final Approval Hearing; and of the binding  
23 effect of a class judgment on the Settlement Class. The Court therefore approves the proposed  
24 methods of providing Notice and directs CPT Group to proceed with providing Notice to Class  
25 Members, pursuant to the terms of the Settlement Agreement and this Order.

26 No later than 44 days after the entry of this Order, CPT Group shall substantially  
27 complete its notice obligations consistent with the specifications of the Agreement.

1 Prior to the Final Fairness Hearing, Plaintiffs' Counsel shall file a declaration by CPT  
2 Group attesting that notice was disseminated as ordered.

3 **OBJECTIONS AND EXCLUSIONS**

4 Settlement Class Members who wish to exclude themselves from the Settlement Class  
5 may do so by submitting such request in writing to the Settlement Administrator consistent with  
6 the specifications listed in Notice no later than 60 days from the mailing date of the Notice.

7 All Settlement Class Members who do not opt out and exclude themselves shall be bound  
8 by the terms of the Agreement upon entry of the Final Approval Order and Judgment.

9 Settlement Class Members who wish to object to the Court's approval of the Agreement  
10 must do so in a communication to the Settlement Administrator consistent with the specifications  
11 listed in the Notice no later than no later than 60 days from the mailing date of the Notice.

12 The Notice makes clear that Settlement Class Members are permitted to appear at the  
13 Final Fairness Hearing and speak to the Court if they wish to do so, regardless of whether they  
14 file an objection or a Notice of Intent to Appear at the hearing. The Notice includes instructions  
15 on how the Settlement Class Members may do so.

16 **FINAL APPROVAL HEARING AND SCHEDULE**

17 The Court will hold a hearing on entry of final approval of the settlement, an award of  
18 fees and expenses to Class Counsel, and an award of service awards to the Class Representatives  
19 on T æ ÁÉGGÁÁ FFÁÈ È in Department 10 of the Los Angeles County  
20 Superior Court located at 312 North Spring Street in Los Angeles, California.

21 At the final approval hearing, the Court will consider: (a) whether the settlement should  
22 be approved as fair, reasonable, and adequate for the Settlement Class, and judgment entered on  
23 the terms stated in the settlement; and (b) whether Plaintiffs' application for an award of attorney  
24 fees and expenses to Class Counsel and service awards to Plaintiffs should be granted.

25 Plaintiffs shall move for final settlement approval and approval of attorney's fees,  
26 litigation expense reimbursements, and class representative service awards no later than 80 days  
27 after the mailing of Class Notice. To the extent Plaintiffs' Counsel file an omnibus motion  
28

1 seeking both final approval and attorney's fees, they shall have leave to exceed the page limit set  
2 by local rule, but their motion shall not exceed 35 pages in length. No later than 10 days prior to  
3 the Final Approval Hearing, Plaintiffs and Costco may file any response to objections, if any.

4 The Court may adjust the date of the final approval hearing and related deadlines. In that  
5 event, the revised hearing date or deadlines shall be posted on the settlement website referred to  
6 in the Class notice, and the parties shall not be required to re-send or republish notice to the  
7 Class.

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9 ///

10 **IT IS SO ORDERED.**

11  
12 11/15/2021

13 Dated: \_\_\_\_\_



A handwritten signature in black ink that reads "W.F. Highberger".

14 William F. Highberger / Judge  
HON. WILLIAM F. HIGHBERGER

15 SUPERIOR COURT JUDGE