

**CLASS AND PAGA ACTION SETTLEMENT AGREEMENT**

*Nevarez v. Costco Wholesale Corp.*

**LOS ANGELES COUNTY SUPERIOR COURT**

**Case No. 19STCV10017**

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8 This Class Action and PAGA Settlement Agreement is between (1) the Plaintiffs, Silverio  
9 Nevarez and Efren Correa—individually and on behalf of (a) the Class Members and (b) the LWDA and  
10 the Aggrieved Employees—and (2) Defendant, Costco Wholesale Corporation. Plaintiffs and Defendant  
11 collectively are referred to as the “Parties.” By this Agreement, the Parties intend, with judicial  
12 approval, to settle the Action. If this Agreement is not finally approved, or is otherwise nullified, then  
13 the Parties shall return to their positions preceding this Agreement, and Defendant shall retain all rights  
14 to challenge the Plaintiffs’ claims and the certification of any class and the manageability of any PAGA  
15 action, unless the Parties agree to seek reconsideration of the ruling or Court approval of a renegotiated  
16 agreement.  
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**EXHIBITS**

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 *Nevarez v. Costco Wholesale Corp.*,  
4 filed March 25, 2019, currently in the Superior Court of the State of California for the County of Los  
5 Angeles as Case No. 19STCV10017, having been remanded from United States District Court, Central  
6 District of California, Case No. 2:19-cv-03454-SVW-SKx.

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

9                   **1.3.     Aggrieved Employees.** An “Aggrieved Employee” is each individual who  
10 worked for Defendant in California as a non-exempt warehouse employee at any time during the PAGA  
11 Period.

12                   **1.4.     Agreement.** “Agreement” means this Class and PAGA Action Settlement  
13 Agreement, which includes all its Recitals and any attached Exhibit.

14                   **1.6.     Approval of the PAGA Settlement.** “Approval of the PAGA Settlement” means  
15 court approval of the settlement of the PAGA claims covered by this Agreement.

16                   **1.7.     Class Claims.** “Class Claims” means all claims of liability that were or could  
17 have been asserted in this Action based on the facts alleged in this Action, with respect to these pleaded  
18 claims: (1) failure to pay overtime wages (Cal. Lab. Code § 1194), (2) failure to provide adequate wage  
19 statements (Cal. Lab. Code § 226), (3) failure to pay earned wages upon termination (Cal. Lab. Code §§  
20 201, 202, 203), (4) failure to pay minimum wage (Cal. Lab. Code §§ 1197 and 204), and (5) unfair  
21 business practices (Cal. Bus. & Prof. Code § 17200 et seq.).

22                   **1.8.     Class Counsel.** “Class Counsel” refers to The Gould Law Firm (through attorneys  
23 Michael A. Gould and Aarin Zeif) and Gibbs Law Group LLP (through attorneys Steven M. Tindall and  
24 Jeffrey Kosbie). For purposes of providing any notice under this Agreement, Class Counsel are (1)  
25 Michael Gould c/o The Gould Law Firm, 161 Fashion Ln., # 207, Tustin, California 92780,  
26 Michael@wageandhourlaw.com, Aarin@wageandhourlaw.com; and (2) Steven Tindall c/o Gibbs Law  
27 Group LLP, 505 14th Street, Suite 1110, Oakland, California 94612, smt@classlawgroup.com,  
28 jbk@classlawgroup.com.

1                   **1.9. Class Counsel Award.** “Class Counsel Award” refers to the attorneys’ fees and  
2 costs that the Court awards in connection with resolving the Action in accordance with this Agreement.

3                   **1.10. Class Members.** “Class Members” refers to those individuals who—for purposes  
4 of this Agreement only—will be certified as members of the following class: all individuals whom  
5 Defendant employed in California as non-exempt warehouse employees who worked one or more  
6 closing shifts at any time during the Settlement Period, except any individual who has sued Defendant  
7 on any claim to be released or precluded as part of this Agreement.

8                   **1.11. Class Period.** *See* “Settlement Period.”

9                   **1.12. Class Representative.** “Class Representative” refers to each Plaintiff: Silverio  
10 Nevarez and Efren Correa.

11                   **1.13. Class Rep Enhancement Payment or Incentive Award or Service Award.** *See*  
12 “Service Award.”

13                   **1.14. Closing Shift.** “Closing Shift” refers to each Shift in which a Class Member  
14 clocked out at a California warehouse during the Settlement Period after the posted close of business.  
15 For purposes of calculating Individual Settlement Payments, Former Employees will be credited with  
16 additional Closing Shifts through the formula described in Section 7.

17                   **1.15. Complaint.** “Complaint” refers to any and all complaints filed in the Action.

18                   **1.16. Confidential Data.** “Confidential Data” refers to personal information the  
19 Settlement Administrator needs to administer this Agreement, including employee names, employee ID  
20 numbers, last known address and telephone number(s), dates of employment, social security numbers,  
21 the numbers of Closing Shifts worked by Class Members, and the numbers of pay periods worked by  
22 Aggrieved Employees.

23                   **1.17. Consideration Period.** “Consideration Period” refers to the 60 calendar days  
24 following initial mailing of the Notice of Settlement, during which an individual can submit an  
25 Objection or a Request for Exclusion.

26                   **1.18. Court.** “Court” refers to the judge presiding over this Action, in the California  
27 Superior Court for the County of Los Angeles.

28                   **1.19. Defendant.** “Defendant” refers to Costco.

1                   **1.20. Defense Counsel.** “Defense Counsel” refers to Seyfarth Shaw LLP. For purposes  
2 of providing any notice under this Agreement, Defense Counsel shall refer to David Jacobson, 2029  
3 Century Park East, Suite 3500, Los Angeles, CA 90067, djacobson@seyfarth.com.

4                   **1.21. Effective Date.** “Effective Date” is the date 14 days after the last of the following  
5 dates: (i) if no Objection has been submitted, or if all submitted Objections have been withdrawn, then  
6 the date of the Final Approval, (ii) if any Objection has been submitted and not withdrawn, then the date  
7 on which there is a Judgment subject to no further appeal.

8                   **1.22. Fairness Hearing.** “Fairness Hearing” is the hearing at which the Court decides  
9 whether the terms of the Agreement are fair, reasonable, and adequate and meet all requirements for  
10 Final Approval.

11                   **1.23. Final Approval Order.** “Final Approval Order” is the order the Court issues, in  
12 connection with the Fairness Hearing, that approves **the settlement** contemplated by this Agreement.

13 **Former Employee.** A “Former Employee” is a Class Member whose employment with Defendant  
14 ended during the Settlement Period on or after March 25, 2016.

15                   **1.25. Gross Settlement Amount.** “Gross Settlement Amount” refers to the maximum  
16 payment Defendant may be obligated to make in connection with the Agreement: \$8,750,000. This sum  
17 includes all Individual Settlement Payments, any Service Award, the PAGA Payment, Administrative  
18 Costs, and the Class Counsel Award. Provided, however, that Defendant must deposit additional money  
19 to cover any legally required employer taxes.

20                   **1.26. Individual Settlement Payment.** “Individual Settlement Payment” refers to the  
21 total amount paid to each individual either as an Aggrieved Employee or as a Settlement Class Member,  
22 or as both. Settlement Class Members who are not Aggrieved Employees (because they terminated  
23 employment before the PAGA Period) will be paid only as Settlement Class Members. Individuals who  
24 are Class Members and Aggrieved Employees and who submit a Request for Exclusion will be paid only  
25 as Aggrieved Employees. Settlement Class Members who are also Aggrieved Employees will be paid  
26 both as Settlement Class Members and as Aggrieved Employees.

27                   **1.27. Judgment.** “Judgment” refers to the final judgment entered by the Court in this  
28 Action after approving the Agreement.

1                   **1.28. LWDA.** “LWDA” refers to the California Labor & Workforce Development  
2 Agency, which enforces the Private Attorneys General Act of 2004 (“PAGA”), and which receives the  
3 LWDA portion of the PAGA Payment.

4                   **1.29. LWDA Payment.** “LWDA Payment” refers to the 75% portion of the PAGA  
5 Payment that goes to the LWDA.

6                   **1.30. Net Settlement Amount.** “Net Settlement Amount” refers to the portion of the  
7 Gross Settlement Amount for distribution to Settlement Class Members and Aggrieved Employees that  
8 remains after accounting for Service Awards, the PAGA Payment, Administrative Costs, and the Class  
9 Counsel Award.

10                   **1.31. 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                   **1.32. 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                   **1.33. Objector.** “Objector” refers to a Settlement Class Member who has submitted an  
18 Objection.

19                   **1.34. PAGA Claims.** “PAGA Claims” means all claims for civil penalties sought under  
20 PAGA for violations of California Labor Code sections 201-204, 226, 226.3, 226.7, 510, 512, 1197,  
21 1197.1, 1198, and the California Wage Order.

22                   **1.35. PAGA Payment.** “PAGA Payment” refers to the part of the Gross Settlement  
23 Sum (\$750,000) apportioned for settlement of claims for civil penalties under the Private Attorney  
24 General Act of 2004, with 75% payable to the LWDA and 25% payable to Aggrieved Employees.

25                   **1.36. PAGA Period.** “PAGA Period” refers to the period from January 19, 2018,  
26 through April 12, 2021.

27                   **1.37. Parties.** “Parties” refers collectively to (1) Plaintiffs and (2) Defendant.  
28

1                   **1.38. Plaintiffs.** “Plaintiffs” refers collectively to Class Representatives Nevarez and  
2 Correa.

3                   **1.39. Preliminary Approval.** “Preliminary Approval” refers to the court order granting  
4 Preliminary Approval of the class claims settled by this Agreement.

5                   **1.40. Precluded PAGA Claims.** “Precluded PAGA Claims” means all PAGA Claims  
6 that this Agreement will extinguish, through claim preclusion or issue preclusion, as a result of the  
7 Approval of the PAGA Settlement.

8                   **1.41. Qualified Settlement Fund.** “Qualified Settlement Fund” means a qualified  
9 settlement fund established pursuant to U.S. Treasury Regulation section 468B-1, 29 C.F.R. § 468B-1.

10                   **1.42. Released Class Claims.** “Released Class Claims” means all claims that  
11 Settlement Class Members will release through this Agreement.

12                   **1.43. Released Parties.** “Released Parties” refers to Defendant and each and all of its  
13 current or former subsidiaries, parents, affiliates, predecessors, insurers, agents, employees, successors,  
14 assigns, officers, officials, directors, attorneys, personal representatives, executors, and shareholders,  
15 including their respective pension, profit sharing, savings, health, and other employee benefits plans of  
16 any nature, the successors of such plans, and those plans’ respective current or former trustees and  
17 administrators, agents, employees, and fiduciaries.

18                   **1.44. Request for Exclusion.** “Request for Exclusion” refers to a timely, written, opt-  
19 out request signed by a Class Member and submitted to the Settlement Administrator with the following  
20 information: (1) the Class Member’s full name and current mailing address, (2) the last four digits of the  
21 Class Member’s social security number, and (3) an express statement that the Class Member wishes to  
22 be excluded from the class settlement contained within this Agreement.

23                   **1.45. Service Award.** “Service Award” refers to any payment that the Court awards for  
24 service as a Class Representative.

25                   **1.46. Settlement Administrator.** “Settlement Administrator” refers to the third-party  
26 administrator, identified in Section 5 below, that the Parties select.

27                   **1.47. Settlement Class.** “Settlement Class” refers to all Class Members who do not file  
28 a timely, valid Request for Exclusion.

1           **1.48. Settlement Period.** “Settlement Period” refers to the period beginning on March  
2 25, 2015, and extending through April 12, 2021.

3           **1.49. Shop Card.** “Shop Card” refers to a card issued by Costco that the cardholder can  
4 use in place of cash in buying a Costco membership or Costco merchandise and services. Shop cards do  
5 not expire and can be used by nonmembers as well as Costco members at any U.S. Costco warehouse or  
6 Gas Station or Food Court or online at Costco.com. There is no fee for using a Shop Card.

7           **2. Recitals and Procedural History**

8           **2.1. Business of Defendant.** Costco is a member-only club retailer that is engaged in  
9 the business of selling merchandise and services to members, and in that connection has retained  
10 individuals as non-exempt warehouse employees working in California.

11           **2.2. Allegations in Complaint.** On March 25, 2019, the Class Representatives  
12 brought this Action in the Superior Court of the State of California for the County of Los Angeles, as  
13 individuals and on behalf of similarly situated employees. The Action asserts claims for (1) failure to  
14 pay overtime wages (Cal. Lab. Code § 1194), (2) failure to provided adequate wage statements (Cal.  
15 Lab. Code § 226), (3) failure to pay upon termination of employment (Cal. Lab. Code §§ 201, 202, 203),  
16 (4) failure to pay minimum wage (Cal. Lab. Code §§ 1197 and 204), (5) failure to provide meal periods  
17 and rest breaks (Cal. Lab. Code §§ 226.7, 512, 1198), (6) unfair business practices (Cal. Bus. & Prof.  
18 Code § 17200 et seq.), and (7) civil penalties under PAGA for violations of California Labor Code  
19 sections 201-202, 204, 226.7, 510, 512, 1174, 1174.5, 1197, 1197.1, and the California Wage Order.  
20 After this case was removed to federal court, Plaintiffs filed a First Amended Complaint, adopting  
21 federal pleading conventions, on or about June 10, 2019. Under this Agreement, Plaintiffs will seek  
22 leave to file and, if granted leave, will file a Second Amended Complaint, asserting the same claims  
23 asserted in the First Amended Complaint and as set forth above. Defendant need not file an answer to  
24 the Second Amended Complaint, if at all, until 30 days after being notified that the Court will not grant  
25 approval of this Agreement. Should the Court not approve this Agreement, the Second Amended  
26 Complaint is automatically withdrawn and will no longer be the operative pleading.

27           **2.3. Defendant’s Denials.** Defendant denies (1) all the material allegations in this  
28 Action, (2) that Defendant violated any applicable laws, (3) that Defendant is liable for damages,

1 penalties, interest, restitution, attorneys' fees, or costs, or for any other remedy sought in the Action, and  
2 (4) that class certification or representative treatment is appropriate as any claim in the Action.

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

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

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

19 **2.6. Certification for Settlement Purposes.** This Agreement is contingent upon  
20 approval of class certification under California Code of Civil Procedure Section 382 for settlement  
21 purposes only. Defendant expressly reserves the right to challenge the propriety of class certification or  
22 representative treatment for any other purpose should the Court not approve the Agreement.

### 23 **3. The Gross Settlement Amount**

24 **3.1. Establishment of Amount.** The Gross Settlement Amount is \$8,750,000,  
25 \$7,500,000 of which will be paid in cash and \$1,250,000 of which will be paid in the form of Shop  
26 Cards. In no event shall Defendant, absent its further agreement, be obligated to pay more than that  
27 amount, except to the extent of legally required employer taxes. The Gross Settlement Amount includes  
28

1 all Individual Settlement Payments, any Service Award, the Class Counsel Award, the PAGA Payment,  
2 and Administrative Costs.

3 **4. The Net Settlement Amount**

4 **4.1. Calculation of the Amount.** The Net Settlement Amount is the portion of the  
5 Gross Settlement Amount that remains for distribution to Class Members and Aggrieved Employees,  
6 after deductions for any Service Award, the PAGA Payment, Administrative Costs, and the Class  
7 Counsel Award.

8 **4.2. Calculation of Estimated Settlement Class Member Payments.** For purposes  
9 of Class Notice, amounts will be calculated provisionally on the basis of the number of Closing Shifts  
10 attributed to each Class Member, in accordance with Section 7 of this Agreement. Those individuals  
11 with the smallest entitlements to settlement proceeds will receive payment exclusively in the form of a  
12 Shop Card, and those individuals with greater entitlements will receive payment in the form of a check  
13 together with a Shop Card.

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

15 **5.1. Selection of Settlement Administrator.** The Parties will mutually agree in  
16 writing to select a Settlement Administrator after receiving bids from several potential Settlement  
17 Administrators, including Rust, CPT Group, and Atticus.

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



1                   **5.3. Confidential Data for the Settlement Administrator.** Within 30 calendar days  
2 of Preliminary Approval of the class settlement, Defendant will give the Settlement Administrator a  
3 listing, for Class Members and Aggrieved Employees, of names, employee ID numbers, last known  
4 street and email addresses and telephone numbers. Defendant will also report to the Settlement  
5 Administrator the number of Closing Shifts worked by each Class Member and the number of pay  
6 periods worked by each Aggrieved Employee. Defendant shall also provide, when needed, social  
7 security numbers to facilitate the administration of this Agreement. The Settlement Administrator shall  
8 use these Confidential Data only for the purposes described in this Agreement, and shall return the  
9 Confidential Data to Defendant or confirm the destruction of same upon completing the work called for  
10 by this Agreement.

11                   **5.4. Communicating Materials to Class Members.** Communications need be in  
12 English only, absent a request for a translation, as English is the exclusive language used in Costco's  
13 agreements with its California employees. Preemptively preparing translations would create unnecessary  
14 administrative expenses.

15                   **5.4.1. Mailing and Emailing Class Notice.** Within 14 calendar days of  
16 receiving the Confidential Data from Defendant, and after checking Class Member information against  
17 the National Change of Address Database, the Settlement Administrator shall send the Notice of  
18 Settlement to Class Members via First Class U.S. mail and email, using the last-known mailing address  
19 and email address for each Class Member.

20                   **5.4.2. Re-mailing Class Notice.** Any mailing returned as undeliverable shall be  
21 sent within five calendar days via First Class U.S. Mail to any available forwarding address. If no  
22 forwarding address is available, then the Settlement Administrator shall attempt to determine the correct  
23 address by using a computer-based skip-trace search, and shall then perform, if feasible, a re-mailing via  
24 First Class U.S. Mail within five calendar days. If no current address is available for a Class Member,  
25 then the Notice of Settlement for that Class Member will be deemed undeliverable. Only one re-mailing  
26 is required. If a Class Member cannot be located within two attempts at mailing, then the Notice of  
27 Settlement for that Class Member will be deemed undeliverable. No extra time will be provided for  
28 responding to a re-mailing, because the total Consideration Period is sufficiently ample—60 days.

1                   **5.5. Proof of Mailing.** At least ten calendar days before the Fairness Hearing, the  
2 Settlement Administrator shall provide a declaration of due diligence and proof of mailing and emailing  
3 with regard to the mailing and emailing of the Notice of Settlement to Class Counsel and Defense  
4 Counsel, which Class Counsel shall in turn file with the Court.

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

6                   **6.1. Consideration Period.** Within the Consideration Period, Class Members may opt  
7 out of the proposed settlement of the class claims by submitting a Request for Exclusion (as provided  
8 below) or may submit an Objection (as provided below). Except as specifically provided herein, no  
9 response postmarked after the Consideration Period shall be considered.

10                   **6.2. Requests for Exclusion and Opt Out Rights.** Class Members may opt out by  
11 submitting a Request for Exclusion. Class Members who are also Aggrieved Employees and who submit  
12 a Request for Exclusion will nonetheless be bound by the Approval of the PAGA Settlement and shall  
13 receive their portion of the PAGA Payment.

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

24                   **6.2.2. Effect of Opting Out.** Any Class Member who opts out of this Agreement  
25 may not submit an Objection and shall not receive any payment as a Settlement Class Member, and shall  
26 not be bound by the Class Release in this Agreement. Each Class Member who does not submit a timely,  
27 valid Request for Exclusion (as described above in Section 6.2.1) shall be bound by the releases that this  
28

1 Agreement entails. All Aggrieved Employees shall be bound by the Approval of the PAGA Settlement  
2 and shall receive their portion of the PAGA Payment.

3 **6.2.3. Tolerance of Opt-Outs—Defendant’s Right to Withdraw.** Defendant’s  
4 willingness to enter into this Agreement materially depends on ensuring that substantial individual  
5 claims do not arise. Accordingly, if the number of Class Members who opt out by submitting Requests  
6 for Exclusion exceeds 500 Class Members, then Defendant may, in the exercise of its sole discretion,  
7 withdraw from this Agreement. Defendant’s right to withdraw expires 21 calendar days after the  
8 Consideration Period. If Defendant exercises its right to withdraw, it shall be solely responsible for  
9 Settlement Administration costs incurred to that point.

10 **6.3. Objections.** Rule 3.769(f) of the California Rules of Court provides that class  
11 members may file written objections to a proposed class settlement and appear at the final approval  
12 hearing to state any objections. Accordingly, only Settlement Class Members—Class Members who  
13 have not opted out—are entitled to object to the terms of the class settlement called for by this  
14 Agreement. PAGA entitles only the LWDA, not aggrieved employees, to object to a PAGA settlement.  
15 Accordingly, aggrieved employees are not entitled to object to the PAGA settlement called for by this  
16 Agreement.

17 **6.3.1. Objection Procedure.** Any Objection must be made in a communication  
18 to the Settlement Administrator using the procedures set forth in the Notice of Settlement, and must  
19 contain (1) the Objector’s full name and current mailing address, (2) the last four digits of the Objector’s  
20 social security number, (3) the specific reason(s) for the Objection, and (4) all evidence and supporting  
21 papers (including, without limitation, all briefs, written evidence, and declarations) for the Court to  
22 consider.

23 **6.3.2. Obligations of Individuals Who Object.** Objectors must be available for  
24 deposition within 75 miles of their home address if a Party chooses to take their deposition. Any  
25 Objector who fails to appear for a duly noticed deposition shall be deemed to have withdrawn the  
26 Objection. Objectors can appear at the Fairness Hearing either in person or through counsel but must  
27 state their intent to do so when they submit their Objection. An Objection may be withdrawn at any  
28 time.

1                           **6.3.3. Presenting Objections.** Settlement Class Members who fail to submit  
2 Objections in the manner specified in the Notice of Settlement presumptively have waived any objection  
3 but may appear at the final approval hearing to object to the class settlement and to argue why they  
4 should be excused from any presumptive waiver.

5                           **6.4. Proof of Responses.** At least ten calendar days prior to the Fairness Hearing, the  
6 Settlement Administrator will prepare a declaration to submit to the Court regarding responses to the  
7 Notice of Settlement, including such information as any inability to deliver mailings because of invalid  
8 addresses, the number of any Requests for Exclusion, and the number of any Objections. Class Counsel  
9 shall be responsible for filing the declaration.

10                          **6.5. Binding Effect of Settlement.** Although a Class Member might not timely submit  
11 an Objection or a Request for Exclusion because of inability of the Settlement Administrator to locate  
12 the Class Member's current address, or for other reasons beyond the Class Member's control, that Class  
13 Member shall nonetheless become a Settlement Class Member and be bound by this Agreement.

14                          **6.6. No Interference with Class Member Responses.** Each Party agrees not to  
15 encourage any Class Member to submit an Objection or a Request for Exclusion and agrees not to  
16 retaliate against any Class Member for participating (or not participating) in this Settlement. Defendant  
17 is forbidden by law to engage in any such retaliation.

## 18                   7. Administration of Settlement Proceeds

19                          **7.1. Final Funding of Gross Settlement Amount.** The Parties recognize that  
20 Defendant is a large organization whose internal financial controls require multiple levels of approval to  
21 authorize large wire transfers of money. Accordingly, Defendant will have 21 calendar days after the  
22 Effective Date to deposit the Gross Settlement Amount into the Qualified Settlement Fund.

23                          **7.2. Administrative Costs.** The Parties agree to obtain a reasonable estimate of  
24 Administrative Costs and a "not-to-exceed" price from the Settlement Administrator and seek approval  
25 of same to be drawn from the Gross Settlement Amount. Fees will be capped at 105% of the not-to-  
26 exceed price and excess reasonable fees paid to the Settlement Administrator will decrease the value of  
27 the Net Settlement Amount.

1                   **7.2.1. Approval of Administrative Costs Not Material.** The amount of Administrative  
2 Costs is not a material term: if the Court approves a lesser amount, then the other terms of this  
3 Agreement shall remain in effect.

4                   **7.3. Class Counsel Award.** Class Counsel intend to request—and Defendant agrees  
5 not to oppose—a payment from the Gross Settlement Amount for (a) attorneys’ fees in an amount up to  
6 one third of the Gross Settlement Amount and (b) litigation costs actually incurred in litigating this  
7 Action, supported by adequate documentation.

8                   **7.3.1. Approval of Class Counsel Award Not Material.** Approval of the Class  
9 Counsel Award is not a material term. If the Court approves only a lesser amount, then the other terms  
10 of this Agreement shall remain in effect.

11                   **7.3.2. Timing of Class Counsel Award.** The Settlement Administrator shall  
12 issue the Class Counsel Award within 35 calendar days after the Effective Date. Within 10 calendar  
13 days after the Effective Date, Class Counsel shall instruct the Settlement Administrator as to how the  
14 Class Counsel Award may be paid. The Settlement Administrator shall issue an appropriate Internal  
15 Revenue Service Form 1099 to Class Counsel. Class Counsel shall be solely responsible for paying all  
16 applicable taxes on any Class Counsel Award and shall indemnify and hold harmless Defendant from  
17 any claim or liability for taxes, penalties, or interest arising as a result of the Class Counsel Award.

18                   **7.4. Service Award.** Class Counsel intends to request—and Defendant agrees not to  
19 oppose—that the Court award each Class Representative a Service Award of up to \$7,500 (or a total of  
20 \$15,000), to be drawn from the Gross Settlement Amount. Any Service Award would be in addition to  
21 the Class Representative’s Individual Settlement Payment.

22                   **7.4.1. Approval of Service Award Not Material.** Approval of a Service Award  
23 is not a material term. If the Court does not approve a Service Award or approves only a lesser amount  
24 than that requested, then the other terms of this Agreement shall remain in effect.

25                   **7.4.2. Timing of Service Award.** The Settlement Administrator shall pay any  
26 Service Award within 35 calendar days of the Effective Date and shall issue an IRS Form 1099 to the  
27 Class Representative. The Class Representative shall be solely responsible for paying all applicable  
28

1 taxes on any Service Award and shall indemnify and hold harmless Defendant from any claim or  
2 liability for taxes, penalties, or interest arising as a result of the Service Award.

3 **7.5. PAGA Payment.** The Parties will seek approval for a PAGA Payment in the  
4 amount of \$750,000, 75% of which will go to the LWDA and 25% of which will go to Aggrieved  
5 Employees.

6 **7.5.1. Reduction of PAGA Payment Not Material.** Any reduction in the  
7 requested PAGA Payment is not a material term. If the Court approves only a lesser amount than that  
8 requested, then the other terms of this Agreement shall remain in effect. But approval of some PAGA  
9 Payment is a material term. If the Court does not approve any PAGA Payment, then the entire  
10 Agreement will be, at Defendant's sole discretion, void and unenforceable.

11 **7.5.2. Timing of PAGA Payment.** The Settlement Administrator shall pay the  
12 LWDA Payment to the LWDA within 35 calendar days after the Effective Date.

13 **7.5.3. Individual PAGA Payments.** Aggrieved Employees will be entitled to  
14 payments calculated in accordance with the number of pay periods in which they worked during the  
15 PAGA Period, in relation to the total number of pay periods worked by all Aggrieved Employees during  
16 the PAGA Period.

17 **7.6. Settlement Class Payments.** Each Settlement Class Member shall be  
18 provisionally entitled to payment as described below. Defendant's time records regarding the number of  
19 Closing Shifts shall control for purposes of calculation unless the Class Member submits contrary  
20 evidence to the Settlement Administrator that the Settlement Administrator finds to be persuasive.

21 **7.6.1. Number of Closing Shifts.** Defendant will provide to the Settlement  
22 Administrator the total number of Closing Shifts that each Settlement Class Member worked during the  
23 Settlement Period and the total number of Closing Shifts that all Settlement Class Members worked  
24 during that period ("Total Settlement Closing Shifts").

25 **7.6.2. Enhancements to Number of Closing Shifts Credited for Former**  
26 **Employees.** With respect to calculating Settlement Class Payments, each Former Employee will be  
27 credited with 25 additional Closing Shifts, to account for the additional Section 203 claim available to  
28 Former Employees.

1                                   **7.6.3. Determination of Settlement Class Payments.** Each Settlement Class  
2 Member's share of the Net Settlement Amount will reflect the number of Closing Shifts credited to the  
3 Settlement Class Member, in relation to the total number of Closing Shifts worked by all Settlement  
4 Class Members during the Settlement Period.

5                                   **7.6.4. Timing of Settlement Class Payments.** The Settlement Administrator  
6 shall issue Settlement Class Payments within 35 calendar days of the Effective Date.

7                                   **7.7. Distribution Formula.** Depending on the circumstances, individuals entitled to  
8 payment under this Agreement will receive payment (a) only as an Aggrieved Employee, (b) only as a  
9 Settlement Class Member, or (c) as both an Aggrieved Employee and a Settlement Class Member. Each  
10 individual's status and decisions will determine whether that individual will receive payment (i) solely  
11 in the form of Shop Cards or (ii) in a combination of Shop Cards and cash (via check). Those individuals  
12 entitled to the smallest payments will be paid entirely in the form of Shop Cards. Those individuals  
13 entitled to larger payments will be paid in a combination of Shop Cards and cash. Shop Cards will be  
14 used in place of cash to the extent of \$1,250,000. The table below provisionally describes the  
15 distribution of settlement proceeds. Final figures may vary depending on such factors as the number of  
16 class members who opt out of the Agreement. In the table below, "X" is the dollar amount an individual  
17 will receive by virtue of being a Settlement Class Member and "Y" is the dollar amount an individual  
18 will receive by virtue of being an Aggrieved Employee. Generally speaking, X is a Settlement Class  
19 Member entitlement calculated in accordance with Section 7.6.3 above and Y is an Aggrieved  
20 Employee's entitlement calculated in accordance with Section 7.5. 3 above.

Closing Shifts Worked	Settlement Award	Estimated Employees In Group	Avg. Est. Value
0–19 Shifts	\$5 Shop Card	8,966	\$5
20–38 Shifts	\$10 Shop Card	19,298	\$10
39–58 Shifts	\$15 Shop Card	14,066	\$15
59–96 Shifts	\$10 Shop Card + \$X + \$Y	12,884	\$18.95
97+ Shifts	\$16.21 Shop Card + \$X + \$Y	41,460	\$102.82

1                   **7.7.1. Preliminary Determination Only.** The Parties acknowledge that the table  
2 above is their best current estimate of the distribution and that these numbers may change somewhat  
3 when the final calculations are approved by the Settlement Administrator.

4                   **7.7.2. Distribution of Shop Cards.** Defendant will provide the Settlement  
5 Administrator with Shop Cards in denominations starting at \$5 and increasing in successively larger  
6 amounts in five dollar increments, in an aggregate amount of \$1.25 million.

7                   **7.7.3. Shop Card Recipients Who Are Aggrieved Employees Only.**  
8 Aggrieved Employees who are not Settlement Class Members will receive only a Shop Card.

9                   **7.8. Tax Allocations.** These allocations will be as follows.

10                   **7.8.1. PAGA Payment.** The overall tax allocation for the PAGA Payment will  
11 be 100% to civil penalties.

12                   **7.8.2. Shop Card payments.** These payments will be allocated entirely to  
13 penalty payments, to obviate any income tax withholding or payroll tax or Form W-2 reporting with  
14 respect to Shop Card payments.

15                   **7.8.3. Net Settlement Amount.** The overall tax allocation for the Net Settlement  
16 Amount will be allocated for tax purposes as follows: 80% to statutory and civil penalties and interest,  
17 and 20% to wages, subject to the other provisions of this Section.

18                   **7.8.4. Individual Cash Payments.** The overall amount of the Net Settlement  
19 Amount allocated to wages will be distributed pro rata among the cash payments.

20                   **7.8.5. Tax Withholdings.** The Settlement Administrator will make required tax  
21 withholdings from each Individual Settlement Payment made to a Settlement Class Member for the  
22 portion allocated to Form W-2 income and will remit the withholding to the appropriate taxing  
23 authorities.

24                   **7.8.6. Employer Taxes.** The Settlement Administrator will account for the  
25 amount of the Net Settlement Amount attributed to wages and submit an invoice to Defendant for the  
26 required employer share of withholding taxes, which Costco shall pay in addition to the Gross  
27 Settlement Amount.

28



1                   **7.8.7. Tax Reporting.** The Settlement Administrator shall issue any necessary  
2 IRS forms to Class Members for their respective Individual Settlement Payments.

3                   **7.8.8. Responsibility for Taxes. Settlement** Class Members and PAGA  
4 Participants shall be solely responsible for paying all taxes due on their respective Individual Settlement  
5 Payments and shall indemnify and hold harmless Defendant and the Released Parties from any claim or  
6 liability for taxes, penalties, or interest arising as a result of Individual Settlement Payments.

7                   **7.8.9. Approval of Tax Allocations Not Material.** Approval of the allocations  
8 of Individual Settlement Payments set forth above is not a material term. If the Court approves a  
9 different tax allocation of the Individual Settlement Payments, then the other terms of this Agreement  
10 shall remain in effect.

11                   **7.9. Undeliverable or Uncashed Checks.** All Individual Settlement Payment checks  
12 will remain negotiable for 180 days from the date of their mailing. The Settlement Administrator shall  
13 notify Class Counsel and Defense Counsel of any undeliverable and uncashed checks. The Settlement  
14 Administrator will use reasonable search methods for any returned checks, and will, within one week of  
15 a check's return, re-mail checks to any new ascertainable address. Approximately 30 days before the end  
16 of the check-cashing period, the Settlement Administrator will send a postcard or email notification to  
17 Class Members who have not cashed their checks to remind them of the deadline. If, after 180 days from  
18 the mailing, there remains any unpaid residue, then, consistent with Code of Civil Procedure section  
19 384, the uncashed checks shall be voided and the principal for those uncashed checks shall be  
20 transmitted, without 45 days of the close of the 180-day period, 50% to the Los Angeles Center for Law  
21 and Justice and 50% to Legal Aid at Work, two non-profit legal entities, to further the objectives of the  
22 underlying class action, or promote the law consistent with the objectives of the underlying class action.

23                   **7.10. Certification of Completion.** Upon fully administering this Agreement, the  
24 Settlement Administrator will certify the completion to the Court and counsel for all Parties in a  
25 declaration, summarizing the total money paid and the status of any uncashed checks.

## 26                   **8. Releases**

27                   **8.1. Release of the Class Claims.** By operation of the Final Approval and Judgment,  
28 and except as to rights that this Agreement creates, each Settlement Class Member—and each

1 Settlement Class Member's executors, administrators, representatives, agents, heirs, successors, assigns,  
2 trustees, spouses, or guardians—will release each Released Party from any claim of liability that was or  
3 could have been asserted in this Action or that is based on or arises out of the facts alleged in this  
4 Action, including, without limitation, claims for claims for (1) failure to pay overtime wages (Cal. Lab.  
5 Code § 1194) (2) failure to provided adequate wage statements (Cal. Lab. Code § 226), (3) failure to pay  
6 upon termination (Cal. Lab. Code §§ 201, 202, 203), (4) failure to pay minimum wage (Cal. Lab. Code  
7 §§ 1197 and 204), and (5) unfair business practices (Cal. Bus. & Prof. Code §§ 17200 et seq.).

8 Specifically excluded from the Release of Class Claims is any claim for unpaid overtime alleging that  
9 any compensation paid on account of Costco's three-minute rounding practice should have increased the  
10 regular rate of pay for purposes of calculating overtime pay, as that claim is alleged in *Rough v. Costco*  
11 *Wholesale Corporation*, Case No. 2-19-cv-01340-MCD-DB (E.D. Cal.).

12 **8.2. Settlement of the PAGA Claims.** This Agreement is contingent upon Approval  
13 of the PAGA Settlement.

14 **8.3. Additional Release by Each Class Representative.** In addition to the release  
15 given by each Settlement Class Member, each Class Representative also gives each Released Party a  
16 general release of all claims arising out of the Class Representative's relationship with the Defendant.  
17 This general release includes, without limitation, claims for unpaid wages and liquidated damages,  
18 claims for discrimination, harassment, or retaliation pursuant to Title VII of the Civil Rights Act of  
19 1964, 42 U.S.C. section 2000 et seq., the California Fair Employment and Housing Act, California  
20 Gov't Code section 12900 et seq., and claims for violation of public policy. This general release by each  
21 Class Representative also includes a waiver of rights under California Civil Code Section 1542, which  
22 states:

23 A general release does not extend to claims which the creditor does not know or suspect  
24 to exist in his or her favor at the time of executing the release, which if known by him or  
her must have materially affected his or her Settlement with the debtor.

25 **9. Settlement Approval Procedure**

26 **9.1. Motion for Approval of PAGA Settlement.** The Class Representative, in  
27 moving for Preliminary Approval, will also move, for hearing at the same time, for Approval of the  
28 PAGA Settlement.

1                   **9.2. Motion for Preliminary Approval.** Plaintiffs will obtain a hearing to request  
2 preliminary approval of this Agreement, to obtain entry of an order that would (i) conditionally certify a  
3 Settlement Class for settlement purposes only, (ii) grant Preliminary Approval, (iii) approve a Notice of  
4 Settlement, (iv) enjoin Class Members from initiating or prosecuting any claim to be released under the  
5 Settlement Agreement, unless they first submit a Request for Exclusion, and (v) set a date for a Final  
6 Approval hearing.

7                   **9.2.1. Contents of Motion.** The motion for preliminary approval shall justify  
8 conditional certification of a Settlement Class and explain how the settlement amounts are reasonable in  
9 light of the facts and law pertaining to the claims alleged. The motion shall be accompanied by a  
10 declaration by Class Counsel discussing the risks of continued litigation and the decision that this  
11 Agreement serves the best interests of class members. Before filing any motion, Class Counsel will give  
12 Defendant's counsel adequate notice and opportunity to comment on the motion papers.

13                   **9.2.2. Notice to LWDA.** Upon moving for preliminary approval, Plaintiffs will  
14 submit the proposed settlement agreement to the LWDA, pursuant to Labor Code section 2699(l)(2).

15                   **9.3. Motion for Final Approval.** Class Counsel will obtain a hearing for a Motion for  
16 Final Approval, to obtain an order to (a) approve this Agreement, (b) adjudge its terms to be fair,  
17 reasonable, and adequate, (c) recite the Released Claims, (d) direct that the terms of the Agreement be  
18 carried out, and (e) retain jurisdiction to oversee enforcement of this Agreement.

19                   **9.4. Motion for Class Counsel Award.** In connection with a Motion for Final  
20 Approval, Class Counsel may move for approval of an attorneys' fees and costs award in the amount of  
21 one third of the Gross Settlement Amount plus litigation costs actually incurred in litigating this Action,  
22 supported by adequate documentation.

23                   **9.5. Motion for Service Award.** In connection with a Motion for Final Approval,  
24 Class Counsel may move for approval of a Service Award for each Class Representative in an amount of  
25 up to \$7,500 each (or a total of \$15,000).

26                   **9.6. Entry of Judgment.** Upon Final Approval, the Parties shall request that the Court  
27 (a) enter Judgment in accordance with this Agreement, without further fees or costs, (b) enter an order as  
28 to the Class Counsel Award, and (c) enter an order as to any Service Award.

1                   **9.6.1. Notice of Final Judgment.** Notice of Judgment will be posted on the  
2 Settlement Administrator's website.

3                   **9.6.2. Effect of Failure to Obtain Final Judgment.** If the Court fails to enter  
4 Judgment in accordance with this Agreement, or if the Judgment is vacated or reversed, then the Action  
5 shall proceed, unless the Parties jointly agree to seek reconsideration or a renegotiated settlement.  
6 Defendant retains the right to contest whether any aspect of the Action should be maintained as a class  
7 or representative action, and to contest the merits of the claims asserted in the Action.

8                   **9.7. Appeal Rights.** Only an Objector who has not withdrawn his or her objection  
9 may appeal a judgment that is in accord with this Agreement. Each Class Representative and Class  
10 Counsel hereby waives any right to appeal any judgment, ruling, or order in this Action, including any  
11 Final Approval Order and any dismissal of the Action with prejudice. This waiver includes all rights to  
12 any post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment, a motion  
13 for new trial, and any extraordinary writ, and the Judgment therefore will become non-appealable at the  
14 time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal or  
15 post-judgment proceeding. If an appeal is taken from the Judgment, then the time to consummate this  
16 Agreement (including making payments under the Agreement) will be suspended until the appeal is  
17 finally resolved.

18                   **9.8. Schedule of contemplated events.** These are the events this Agreement  
19 contemplates. The Parties may agree to adjust these deadlines, after Preliminary Approval, if the  
20 adjustments do not materially affect filing and hearing dates set by the Court.

21 22 23	Deadline for Defendant to provide Settlement Administrator with lists of Class Members and PAGA Participants and contact information	30 calendar days after Preliminary Approval
24 25	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
26 27	Last day to submit Requests for Exclusion or Objections	45 calendar days from mailing of Notice of Settlement
28	Settlement Administrator to report on Requests for Exclusion, Objections, and other results of class notice	60 calendar days from mailing of Notice of Settlement

1 2 3	Deadline to move for Final Approval	To be set by the Court
4 5 6 7	Fairness hearing on Final Approval and on Class Counsel Award and Service Award	To be set by Court
8 9 10 11	Effective Date	14 days after the last of the following dates: (i) if no Objection has been submitted or if all Objections have been withdrawn, then the date of Final Approval; (ii) if an Objection has been submitted and not withdrawn, then the date on which there is a Judgment subject to no further appeal
12 13	Class Counsel instructions to Settlement Administrator re Class Counsel Award	10 calendar days after Effective Date
14 15	Funding of Gross Settlement Amount plus employer share of taxes on wages	15 business days after Effective Date
16 17 18	Settlement Administrator to pay Class Counsel Award, Service Award, LWDA Payment, 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 a Class Representative.

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

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

1                   **10.2. Construction.**

2                   **10.2.1. Materiality of Terms.** Except as otherwise stated herein, each substantive  
3 term of this Agreement is a material term that the Parties have relied upon in making this Agreement. If  
4 the Court does not approve any substantive term, or if the Court effects a material change to the  
5 Agreement—such as increasing any amount that Defendant must pay—then the entire Agreement will  
6 be, at Defendant’s sole discretion, void and unenforceable. Where this Agreement states that a term is  
7 not material, then the Court’s refusal to approve that term leaves all the other terms of the Agreement in  
8 effect, and does not give Class Counsel or any Class Member any basis to abrogate this Agreement.

9                   **10.2.2. No Construction Against the Author.** Each Party participated in drafting  
10 this Agreement, and its terms shall not be construed against any Party by virtue of draftsmanship.

11                   **10.2.3. Exhibits Incorporated by Reference.** This Agreement include the terms  
12 set forth in any attached exhibit. Any exhibit to this Agreement is an integral part of it.

13                   **10.2.4. Headings.** The headings within this Agreement appear for convenience of  
14 reference only and shall not affect the construction or interpretation of any part of this Agreement.

15                   **10.2.5. Invalidity of Any Provision.** Before declaring any provision of this  
16 Agreement invalid, the Court shall first attempt to construe the provision valid to the fullest extent  
17 possible so as to render all provisions of this Agreement enforceable.

18                   **10.2.6. Parties’ Entire Agreement.** This Agreement, with its Definitions,  
19 Recitals, and Exhibits, constitutes the entire agreement on its subject matter, and supersedes all prior and  
20 contemporaneous negotiations and understandings between the Parties.

21                   **10.2.7. Waivers and Modifications to Be in Writing.** No waiver, modification,  
22 or amendment of this Agreement shall be valid unless it appears in a writing signed by or on behalf of  
23 all Parties, and then shall be valid subject to any required Court approval. Any failure to insist upon the  
24 strict performance of any provision shall not be deemed a waiver of future performance of that provision  
25 or of any other provision of this Agreement.

26                   **10.2.8. Governing Law.** All terms of this Agreement shall be governed by and  
27 interpreted according to California law.  
28

1                   **10.3. Inadmissibility of Settlement Documents.** The Parties agree that this Agreement  
2 and all exhibits thereto shall be inadmissible in any proceeding, except a proceeding to approve or  
3 enforce this Agreement. This Agreement will operate as a complete defense to—and may be used as the  
4 basis for an injunction against—any proceeding attempted in breach of this Agreement.

5                   **10.4. No Tax Advice.** Nothing in this Agreement is advice by Class Counsel or  
6 Defense Counsel regarding taxes or taxability, and no Party is relying upon Class Counsel or Defense  
7 Counsel for such advice. Each Party instead is relying exclusively on the Party’s own independent tax  
8 counsel in connection with this Agreement.

9                   **10.5. No Impact on Employee Benefits.** This Agreement does not affect any right or  
10 obligation under any benefits plan. No payment made under this Agreement shall be considered as  
11 compensation or hours worked or hours paid for purposes of determining eligibility, vesting,  
12 participation, or contributions with respect to any employee benefit plan. For purposes of this  
13 Agreement, the term “employee benefit plan” means every “employee benefit plan,” as defined in the  
14 Employee Retirement and Income Security Act of 1974, 29 U.S.C. section 1002(3). The term also  
15 includes any 401(k) plan, bonus, pension, stock option, stock purchase, stock appreciation, welfare,  
16 profit sharing, retirement, disability, vacation, severance, hospitalization, insurance, incentive, deferred  
17 compensation, or any other similar benefit plan, practice, program, or policy, regardless of whether any  
18 such plan is considered an employee benefit plan.

19                   **10.6. No Prior Assignments or Undisclosed Liens.** Each Class Representative and the  
20 Class Counsel represent that they have not assigned, transferred, conveyed, or otherwise disposed of any  
21 Released Claim or claim to attorneys’ fees and costs award to be paid under this Agreement. Each Class  
22 Representative and the Class Counsel further represent and warrant that there are not any liens or claims  
23 against any amount that Defendant is to pay under this Agreement. Each Class Representative and Class  
24 Counsel agree to defend, to indemnify, and to hold Defendant harmless from any liability, losses,  
25 claims, damages, costs, or expenses, including reasonable attorneys’ fees, resulting from a breach of  
26 these representations or from any lien or assignment.

1                   **10.7. Cooperation of the Parties.** The Parties will comply with the covenants of good  
2 faith and fair dealing and otherwise cooperate as follows. Defendant will be responsible for preparing  
3 any proposed judgment, subject to prior comment by Plaintiffs.

4                   **10.7.1. Affirmative Duty to Cooperate.** Each Party, upon the request of another,  
5 agrees to perform such acts and to execute and to deliver such documents as are reasonably necessary to  
6 carry out this Agreement. In the same spirit, the Parties agree to make all reasonable efforts to avoid  
7 unnecessary Administrative Costs.

8                   **10.7.2. Language of Settlement Documents.** All documents filed with the Court  
9 or sent to Class Members in connection with this Agreement must be approved by all Parties before  
10 being filed or sent.

11                   **10.7.3. Refraining from New Proceedings.** The Parties agree to refrain from  
12 further litigation with respect to the Action, except any proceeding needed to obtain Preliminary  
13 Approval, Final Approval, or Judgment.

14                   **10.7.4. No Solicitation of Objections or Opt Outs.** The Parties represent that  
15 they have not solicited, encouraged, or assisted—and will not solicit, encourage, or assist—Objection or  
16 Request for Exclusion.

17                   **10.7.5. Waiver of Right to Object by Class Representative.** Each Class  
18 Representative, by signing this Agreement, agrees not to object to any term of this Agreement.

19                   **10.8. Confidential Information.** Class Counsel will destroy all confidential documents  
20 and information provided by Defendant within 120 calendar days of this Agreement’s completion. Class  
21 Counsel further agree that no information provided by Defendant shall be used for any purpose other  
22 than prosecution of this Action.

23                   **10.9. No Media Announcements or Other Undue Publicity.** No Party shall make any  
24 public statement to the news, print, electronic, or Internet media concerning this Agreement, and the  
25 Parties shall decline to media inquiries concerning this Agreement. Class Counsel shall not  
26 publicize the settlement in their marketing materials, website, or other advertising media. Nothing in this  
27 Agreement prevents Class Counsel from placing in their marketing materials, website, or other  
28 advertising media a comment that Class Counsel secured payment for their clients in this Action, so long




1 as any such comment does not mention the name of this case, the name of any Party or Class Member,  
2 or the identity of Defense Counsel. For example, Class Counsel may place a comment in their marketing  
3 materials, website, or other advertising media a comment that they “secured a settlement worth \$8.75  
4 million on behalf of a class of retail employees in a wage and hour action brought under California law.”  
5 Should Plaintiffs or Class Counsel breach this provision, Plaintiffs shall forfeit to Defendant the full  
6 amount of their Service Awards. Costco may also enforce this provision through an action for injunctive  
7 relief. Plaintiffs waive any obligation to post a bond in connection with any such action.

8 **10.10. Disputes.** If the Parties dispute the interpretation of this Agreement, then they will  
9 attempt to resolve the dispute informally. If those efforts fail, they will mediate the dispute. The Parties  
10 will split the costs of the mediator, and the Parties will bear their own fees and costs. The Court shall  
11 retain jurisdiction over enforcement and implementation of this Agreement, and can require specific  
12 performance, although the Court lacks jurisdiction to modify the terms of this Agreement. If a Party  
13 institutes legal action to enforce this Agreement, then the prevailing Party will be entitled to recover  
14 attorneys’ fees and costs incurred in vindicating that Party’s position.

15 **SO AGREED:**

16 DATED: May 12, 2021

Costco Wholesale Corporation

DocuSigned by:  
By   
Its [Title] corporate counsel

19 DATED: May 18, 2021

SEYFARTH SHAW LLP

By   
Attorneys for Defendant Costco

22 DATED: May \_\_, 2021

Silverio Nevarez

26 DATED: May \_\_, 2021

\_\_\_\_\_  
Efren Correa  
\_\_\_\_\_

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15 **SO AGREED:**

16 DATED: May \_\_, 2021

Costco Wholesale Corporation

17 By \_\_\_\_\_  
18 Its [Title]


19 DATED: May \_\_, 2021

SEYFARTH SHAW LLP

20 By \_\_\_\_\_  
21 Attorneys for Defendant Costco

22 DATED: May 12, 2021

Silverio Nevarez

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26 Efren Correa

27 DATED: May \_\_, 2021

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16 DATED: May \_\_, 2021

Costco Wholesale Corporation

17 By \_\_\_\_\_  
18 Its [Title]

19 DATED: May \_\_, 2021

SEYFARTH SHAW LLP

20 By \_\_\_\_\_  
21 Attorneys for Defendant Costco

22 DATED: May \_\_, 2021

Silverio Nevarez

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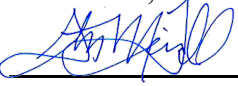
Efren Correa

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DATED: May 18, 2021

Michael Gould, Aarin Zeif, Steve Tindall

By   
Attorneys for Plaintiffs

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