

1 SEYFARTH SHAW LLP
David D. Kadue (SBN 113578)
2 dkadue@seyfarth.com
David J. Jacobson (SBN 143369)
3 djacobson@seyfarth.com
2029 Century Park East, Suite 3500
4 Los Angeles, California 90067-3021
Telephone: (310) 277-7200
5 Facsimile: (310) 201-5219

6 Attorneys for Defendant
COSTCO WHOLESALE CORPORATION
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES
11

12 SILVERIO NEVAREZ, individually, EFREN
CORREA, and on behalf of other members of the
13 general public similarly situated,

14 Plaintiff,

15 v.

16 COSTCO WHOLESALE CORPORATION, and
DOES 1 through 25, inclusive,
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18 Defendants.
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Case No. 19STCV10017

Judge William F. Highberger, Dep't 10

**NOTICE OF RULING ON
(1) PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS AND PAGA
ACTION SETTLEMENT,
(2) MEAGAN ROUGH'S MOTION FOR
ATTORNEY FEES, COSTS, AND
SERVICE AWARD**

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on May 3, 2022, at 11:00 a.m., the Court held a hearing
3 regarding (1) Plaintiffs' motion for final approval of the class and PAGA action settlement and (2) the
4 motion for attorney fees filed by the plaintiff in an allegedly related case, Megan Rough. Appearing for
5 the Plaintiffs, Silverio Nevarez and Efren Correa, were Steve Tindall, Jeff Kosbie, Amy Zeman, Jon
6 Borderud, and Michael Gould. Appearing for Ms. Rough was Nathan Reese. Appearing for the
7 Defendant, Costco Wholesale Corporation, were David Jacobson and David Kadue.

8 The parties previously had submitted on the Court's tentative ruling to grant final approval of the
9 class and PAGA action settlement.. The Court adopted its tentative as the final ruling. The Court also,
10 after hearing argument, denied Ms. Rough's motion for attorney fees, costs, and service award. The
11 Court's rulings appear in **Exhibit 1** hereto.

12 In its ruling the Court set these further dates:

- 13 • **February 7, 2023 at 9:00 a.m.**, in Department 10, is the non-appearance date for case review of
14 final disbursement of settlement proceeds.
- 15 • **January 31, 2023** is the date by which the settlement administrator must file a declaration
16 regarding the details of that disbursement.
17

18 DATED: May 10, 2022

SEYFARTH SHAW LLP

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21 By: 

David D. Kadue
David J. Jacobson
Attorneys for Defendant
COSTCO WHOLESALE CORPORATION

EXHIBIT 1

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Spring Street Courthouse, Department 10

19STCV10017

SILVERIO NEVAREZ, et al. vs COSTCO WHOLESALE CORPORATION

May 3, 2022

11:00 AM

Judge: Honorable William F. Highberger

Judicial Assistant: A. Lim

Courtroom Assistant: R. Sanchez

CSR: Timothy McCoy #4745

ERM: None

Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): Michael A. Gould (Telephonic); Steven Marcus Tindall (Telephonic)

For Defendant(s): David Donald Kadue (Telephonic); Nathan Reese (Telephonic)

Other Appearance Notes: Jon Borderud (Telephonic) for Plaintiffs; Jeffrey Kosbie (Telephonic) and Amy M. Zeman (Telephonic) for Silverio Nevarez (Plaintiff); David Jacobson (Telephonic) for Costco Wholesale Corporation (Defendant)

NATURE OF PROCEEDINGS: Hearing on Motion for Final Approval of Settlement; Hearing on Motion for Attorney Fees by Movant and Plaintiff in related action Megan Rough, for attorneys' fees, costs and service award

Pursuant to Government Code sections 68086, 70044, and California Rules of Court, rule 2.956, Timothy J. McCoy, CSR # 4745, certified shorthand reporter is appointed as an official Court reporter pro tempore in these proceedings, and is ordered to comply with the terms of the Court Reporter Agreement. The Order is signed and filed this date.

The above-entitled motions are heard and argued. The Court's tentative is adopted as the final ruling of the Court. It reads as follows:

"Plaintiff Nevarez's Motion for Final Approval of Class Action Settlement: Grant

Notice was given as previously directed. Out of a class of approximately 96,680 members there were no objections and only 9 opt-outs. Notice was presumptively successful as to approximately 96,410 of the approximately 96,680 class members, which is exemplary. The terms are fair and reasonable, especially considering that class certification had been denied by District Judge Stephen V. Wilson when this case was pending in federal court. It is also notable that class certification was likewise denied to Meghan Rough by District Judge Morrison C. England, Jr. (sitting in the Eastern District of California after her case was removed from state court) when she advanced substantially similar theories (albeit with a three-minute rounding claim unique to that docket and not pled in this case). The legal fees and costs for appointed class counsel are reasonable given the excellent results obtained when plaintiffs had limited leverage. The administration costs are reasonable, particularly given the added costs of mailing

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Deputy Sheriff: None

certain Shop Cards as part of the settlement consideration. The incentive award of \$7,500.00 each to the two court-appointed class representatives are likewise reasonable.

“Movant and Plaintiff in Related Action Megan Rough’s Notice of Motion and Motion for Attorneys’ Fees, Costs, and Service Award”: Denied

As a preliminary comment, Ms. Rough was a plaintiff in a class action against the same defendant first filed in Solano County Superior Court on May 28, 2019, two months after this action was filed. As noted above, that case was removed to federal court. No petition for coordination was ever filed to bring the two cases together (the only tool which would have allowed an inter-county transfer of a case deemed complex) while they were still both pending in state court. No other steps were taken to formally relate the Solano action to this case per California Rules of Court 3.300 et seq., Los Angeles County Superior Court Local Rule 3.3(f), or otherwise, and there is no process to bring together a case pending in state court with a case pending in federal court (absent remand of the federal case), so Ms. Rough’s characterization of her Solano/Eastern District of California case as being “related” is not technically correct.

Ms. Rough and her counsel made a major strategic error by ignoring a peace offering from court-appointed class counsel in this case to consider mutually agreeable terms for cooperation and fee sharing. This does not, in this Court’s view, tend to prove that the pendency of the Rough case up north contributed to the creation of the common fund which this settlement represents. Rather, the offer reflects a practical plaintiff lawyer’s desire to reduce points of conflict, potential objection, delay, and appeal issues by bringing everyone who feels they have some ownership of the claims under the same tent. It is too late now for Ms. Rough and her counsel to undo their misjudgment.

The Court is firmly persuaded of two things. Ms. Rough has no standing to be heard. Even if she did, she has not demonstrated that she or her counsel were a cause in fact in bringing this settlement about.

Ms. Rough has no standing because the Settlement Agreement in this case excludes from the class any persons with pending wage-and-hour litigation, and Ms. Rough fits into that exclusion. Not being a class member, she has no standing to object to the settlement and no standing to make the pending fee/incentive award request. That is grounds enough to deny the motion.

But even if one posits that interloper attorneys who are not appointed class counsel can claim to a piece of the action if they were a cause-in-fact of creation of a common fund,¹ that theory fails

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ERM: None

Deputy Sheriff: None

on the facts here. Court-appointed class counsel in this case have persuasively demonstrated that they had set forth in the operative amended pleading all of their theories based on their own case development before they saw Ms. Rough's quite similar pleading. Insofar as Ms. Rough and her counsel were proud of their addition of a rounding claim to their case, a theory which was never part of this case, that theory was excluded from the claims released herein and it was thereafter rejected by Judge England when he granted defendant summary adjudication on this theory. So, the rounding theory was never of any significance or else defendant would not have so readily excluded it from the list of released claims in this case.

The pendency of Ms. Rough's class certification motion before Judge England has not been shown to be a driving force in defendant's willingness to settle with two other plaintiffs. As noted above, Judge England denied Rough's motion.

This is not a close question in this Court's view given the procedural history of these two cases and the way in which a settlement was reached in this case via repeated mediations with Mark S. Rudy, culminating with a settlement based on a mediator's proposal after all prior efforts had been unavailing."

The Notice of Motion and Motion for Final Approval of Class Action Settlement and Request for Attorneys' Fees and Costs and Class Representative Service Payments filed by Silverio Nevarez, Efrén Correa on 03/24/2022 is Granted.

The Notice of Motion and Motion to Strike Movant Rough's Motion for Attorney's Fees, Costs, and Service Award; Memorandum of Points and Authorities in Support Thereof filed by Efrén Correa, Silverio Nevarez on 03/24/2022 is Denied. The Movant and Plaintiff in Related Action Megan Rough's Notice of Motion and Motion for Attorneys' Fees, Costs, and Service Award; Memorandum of Points and Authorities in Support filed by Megan Rough on 02/17/2022 is Denied.

Order Granting Plaintiffs' Motion for Final Approval of Class Action Settlement, Plaintiffs' Request For Attorneys' Fees and Costs and Representative Service Payments is signed and filed on this date.

Non-Appearance Case Review Re Disbursement of Funds is scheduled for 02/07/23 at 09:00 AM in Department 10 at Spring Street Courthouse. Declaration from claims administrator is due on 01/31/23.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Spring Street Courthouse, Department 10

19STCV10017

**SILVERIO NEVAREZ, et al. vs COSTCO WHOLESALE
CORPORATION**

May 3, 2022

11:00 AM

Judge: Honorable William F. Highberger

Judicial Assistant: A. Lim

Courtroom Assistant: R. Sanchez

CSR: Timothy McCoy #4745

ERM: None

Deputy Sheriff: None

Mr. Kadue is ordered to give notice.

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and
4 not a party to the within action; my business address is: 2029 Century Park East, Suite 3500,
Los Angeles, California 90067. On **May 10, 2022**, I served the within document(s):

5 NOTICE OF RULING ON (1) PLAINTIFFS’ MOTION FOR FINAL APPROVAL OF CLASS
6 AND PAGA ACTION SETTLEMENT,
7 (2) MEAGAN ROUGH’S MOTION FOR ATTORNEY FEES, COSTS, AND SERVICE AWARD

8 **(BY CASE ANYWHERE)** by transmitting the document(s) listed above, electronically, via
CASE ANYWHERE.

9 Michael A. Gould
Aarin Zeif
10 THE GOULD LAW FIRM
161 Fashion Lane, Suite 207
11 Tustin, CA 92780

michael@wageandhourlaw.com
aarin@wageandhourlaw.com
Telephone: 714-669-2850

[Attorneys for Plaintiffs
SILVERIO NEVAREZ and EFREN CORREA]

13 Steven Tindall
14 Jeff Kosbie
GIBBS LAW GROUP
15 505 14th Street, Suite 1110
16 Oakland, CA 94612

smt@classlawgroup.com
jbk@classlawgroup.com
Telephone: 510-350-9700

[Attorneys for Plaintiffs
SILVERIO NEVAREZ and EFREN CORREA]

17 **(BY EMAIL)** by transmitting the document(s) listed above, electronically, via the e-mail
18 addresses set forth below.

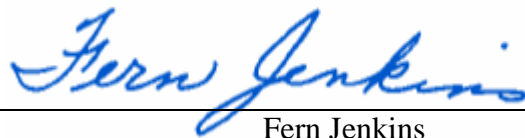
19 Graham S.P. Hollis
Nathan Reese
GRAHAM HOLLIS APC
20 3555 Fifth Avenue, Suite 200
21 San Diego, CA 92103

Attorneys for Proposed Intervenor
MEGAN ROUGH

22 Email: ghollis@grahamhollis.com;
nreese@grahamhollis.com

23 I declare under penalty of perjury under the laws of the State of California that the above is true
24 and correct.

25 Executed on May 10, 2022, at Los Angeles, California.

26 
27 _____
Fern Jenkins