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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

ANTHONY KRISTY, as an individual and
on behalf of all others similarly situated,

Plaintiffs,

vs.

COSTCO WHOLESALE
CORPORATION; and DOES 1 through
50, inclusive,

Defendants.

Case No.: 20CV366341

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR DAMAGES FOR:**

- (1) VIOLATION OF CAL. LABOR CODE §§
201–203;**
**(2) VIOLATION OF CAL. LABOR CODE §§
2698, *ET SEQ.*;**

DEMAND OVER \$25,000.00

1 Plaintiff Anthony Kristy (“Plaintiff”) hereby submits this Class and Representative
2 Action Complaint (“Complaint”) against Defendant Costco Wholesale Corporation
3 (“Defendant”) and Does 1 through 50 (hereinafter collectively referred to as “Defendants”), on
4 behalf of himself and a class of all other similarly situated current and former employees of
5 Defendants for civil and statutory penalties under the California Labor Code as follows:

6 **INTRODUCTION**

7 1. This class and representative action is within the Court’s jurisdiction under
8 California Labor Code sections 201–203, 246, and 2698 *et seq.*

9 2. This Complaint challenges systemic illegal employment practices resulting in
10 violations of the California Labor Code against individuals who worked for Defendants.

11 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
12 jointly and severally, have acted intentionally and with deliberate indifference and conscious
13 disregard to the rights of all employees by Defendants’ failure to properly calculate the rate of
14 pay for employees paid sick time and failure to pay all wages due at the time of termination
15 and/or separation from employment.

16 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants
17 have engaged in, among other things a system of willful violations of the California Labor Code
18 by creating and maintaining policies, practices and customs that knowingly deny employees the
19 above stated rights and benefits.

20 **JURISDICTION AND VENUE**

21 5. The Court has jurisdiction over the violations of California Labor Code sections
22 201–203, 246, and 2698 *et seq.*

23 6. Venue is proper in Santa Clara County because Defendant operates stores in Santa
24 Clara County, and Plaintiff was employed by Defendant in Santa Clara County.

25 **PARTIES**

26 7. Plaintiff was employed by Defendant from approximately November 2017,
27 through April 2020. Throughout Plaintiff’s employment with Defendant, he has been a non-
28 exempt, hourly employee.

1 8. Plaintiff was and is the victim of the policies, practices, and customs of
2 Defendants complained of in this action in ways that have deprived her of the rights guaranteed
3 by California Labor Code sections 201–203, 246, and 2698 *et seq.*

4 9. Plaintiff is informed and believes, and based thereon alleges, that Costco
5 Wholesale Corporation is a Washington corporation that maintains operations in the State of
6 California, including stores in Santa Clara, California.

7 10. Plaintiff is informed and believes, and based thereon alleges, that at all times
8 herein mentioned Defendants are and were business entities, individuals, and partnerships,
9 licensed to do business and actually doing business in the State of California. As such, and based
10 upon all the facts and circumstances incident to Defendants’ business, Defendants are subject to
11 the California Labor Code.

12 11. Plaintiff does not know the true names or capacities, whether individual, partner
13 or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason,
14 said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
15 complaint when the true names and capacities are known. Plaintiff is informed and believes and
16 based thereon alleges that each of said fictitious defendants was responsible in some way for the
17 matters alleged herein and proximately caused Plaintiff and members of the general public and
18 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

19 12. At all times herein mentioned, each of said Defendants participated in the doing
20 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
21 Defendants, and each of them, were the agents, servants and employees of each of the other
22 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
23 acting within the course and scope of said agency and employment.

24 13. Plaintiff is informed and believes, and based thereon alleges, that at all times
25 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
26 joint venturer of, or working in concert with each of the other co-Defendants and was acting
27 within the course and scope of such agency, employment, joint venture, or concerted activity. To
28 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the

1 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
2 Defendants.

3 14. At all times herein mentioned, Defendants, and each of them, were members of,
4 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
5 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

6 15. At all times herein mentioned, the acts and omissions of various Defendants, and
7 each of them, concurred and contributed to the various acts and omissions of each and all of the
8 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
9 herein mentioned, Defendants, and each of them, ratified each and every act or omission
10 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
11 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
12 damages as herein alleged.

13 CLASS ACTION ALLEGATIONS

14 16. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
15 California Code of Civil Procedure section 382. Plaintiff proposes the following class and
16 subclasses:

- 17 a. All non-exempt employees of Defendant in the State of California who were
18 paid sick pay wages during their employment and whose employment ended
19 at any time between April 6, 2017, through the present (the “Class”);
- 20 b. All non-exempt employees of Defendant in the State of California who were
21 paid sick pay wages and non-discretionary incentive wages, including, but not
22 limited to, shift differential wages, in the same workweek during their
23 employment and whose employment ended at any time between April 6,
24 2017, through the present (“Subclass 1”); and
- 25 c. All non-exempt employees of Defendant in the State of California who were
26 paid non-discretionary incentive wages, including, but not limited to, shift
27 differential wages, within 90 days prior to the payment of sick pay wages
28 during their employment and whose employment ended at any time between

1 April 6, 2017, through the present (“Subclass 2”).

2 17. **Numerosity:** The members of the Class are so numerous that joinder of all
3 members would be impractical, if not impossible. The identity of the members of the Class is
4 readily ascertainable by review of Defendant’s records, including payroll records. Plaintiff is
5 informed and believes, and based thereon alleges, that Defendant failed to properly calculate the
6 proper rate of pay for sick pay for employees in violation of Labor Code section 246, and, as a
7 result, failed to pay all wages due upon separation from employment pursuant to Labor Code
8 sections 201–203.

9 18. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
10 necessary steps to represent fairly and adequately the interests of the Class defined above.
11 Plaintiff’s attorneys are ready, willing, and able to fully and adequately represent the Class and
12 the individual Plaintiff. Plaintiff’s attorneys have prosecuted and settled wage-and-hour class
13 actions in the past and currently have a number of wage-and-hour class actions pending in
14 California state and federal courts.

15 19. **Common Question of Law and Fact:** There are predominant common questions
16 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
17 concerning Defendants’ policy and practice of failing to pay sick pay wages at the proper regular
18 rate of pay.

19 20. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
20 Class in that Plaintiff suffered the harm alleged in this Complaint in a similar and typical manner
21 as the Class Members. As with other California employees, Plaintiff was not paid his sick pay at
22 the proper regular rate of pay. As a result of this, he and other employees who no longer work
23 for Defendants did not receive all of their wages due and owing at the conclusion of their
24 employment with Defendants. Accordingly, Plaintiff is a victim of Defendants’ violation of
25 California Labor Code sections 201–03, as are the putative class members.

26 21. The California Labor Code section upon which Plaintiff bases these claims is
27 broadly remedial in nature. These laws and labor standards serve an important public interest in
28 establishing minimum working conditions and standards in California. These laws and labor

standards protect the average working employee from exploitation by employers who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment.

22. The nature of this action and the format of laws available to Plaintiff and members of the Class identified herein make the class action format a particularly efficient and appropriate procedure to redress the wrongs alleged herein. If each employee were required to file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable advantage since it would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Requiring each Class Member to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damage to their careers at subsequent employment.

23. The prosecution of separate actions by the individual Class Members, even if possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect to individual Class Members against the Defendants and which would establish potentially incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to individual Class Members which would, as a practical matter, be dispositive of the interest of the other Class Members not parties to the adjudications or which would substantially impair or impede the ability of the Class Members to protect their interests. Further, the claims of the individual members of the Class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses.

24. Such a pattern, practice and uniform administration of corporate policy regarding illegal payroll practices described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class identified herein, in a civil action, for applicable penalties, reasonable attorneys' fees, and costs of suit according to Code of Civil Procedure sections 218.5 and 1021.5.

25. Proof of a common business practice or factual pattern, which the named Plaintiff experienced and is representative of, will establish the right of each of the members of the

1 Plaintiff Class to recovery on the causes of action alleged herein.

2 **FIRST CAUSE OF ACTION**

3 **VIOLATION OF LABOR CODE §§ 201–203**

4 **(BY PLAINTIFF AND THE CLASS AND SUBCLASSES AGAINST ALL**
5 **DEFENDANTS)**

6 26. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 25 as
7 though fully set forth herein.

8 27. Labor Code § 203 provides that if an employer willfully fails to pay wages owed
9 in accordance with Labor Code §§ 201 and 202, then the wages of the employee shall continue
10 as a penalty from the due date, and at the same rate until paid, but the wages shall not continue
11 for more than thirty (30) days.

12 28. Labor Code § 201 provides if an employer discharges an employee, the wages
13 earned and unpaid at the time of discharge are due and payable immediately.

14 29. Labor Code § 202 provides that an employee is entitled to receive all unpaid
15 wages no later than 72 hours after an employee quits his or her employment, unless the employee
16 has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the
17 employee is entitled to his or her wages at the time of quitting.

18 30. Labor Code § 246 provides that an employee is entitled to receive sick time pay.
19 The employer shall calculate paid sick leave by using one of two calculations: 1) “Paid sick time
20 for nonexempt employees shall be calculated in the same manner as the regular rate of pay for
21 the workweek in which the employee uses paid sick time, whether or not the employee actually
22 works overtime in that workweek;” or 2) “Paid sick time for nonexempt employees shall be
23 calculated by dividing the employee’s total wages, not including overtime premium pay, by the
24 employee’s total hours worked in the full pay periods of the prior 90 days of employment.”

25 31. Whenever Defendants paid Plaintiff and the Class Members sick time pursuant to
26 California Labor Code § 246, Defendants did so at the incorrect rate of pay. Defendants paid
27 Plaintiff and the Class Members at the base hourly rate of pay, as opposed to the regular rate of
28 pay, which would take into account all non-discretionary bonuses, or by dividing the employees’

1 total wages, not including overtime premium pay, by the employees' total hours worked in the
2 full pay periods of the prior 90 days of employment, as required by Labor Code § 246. This
3 resulted in the employees being underpaid for sick time, and resulted in violations of California
4 Labor Code §§ 201, 202, and 203, and other derivative Labor Code violations, because
5 Defendants did not pay, or timely pay, Plaintiff and the Class Members all owing and unpaid
6 wages for work performed by them during their employment and at the end of their employment.

7 32. Defendants willfully failed to pay Plaintiff and the Class Members all their wages
8 due, as alleged hereinabove and hereinafter, upon the termination of their employment within the
9 times prescribed by Labor Code §§201 and 202 and are therefore subject to a waiting time
10 penalty. Plaintiff and the Class Members are entitled to recover from Defendants the statutory
11 penalty for each day they were not paid at their regular hourly rate of pay, up to a thirty (30) day
12 maximum pursuant to California Labor Code § 203.

13 **SECOND CAUSE OF ACTION**

14 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

15 **(BY PLAINTIFF, ON BEHALF OF THE STATE AND AGGRIEVED EMPLOYEES,**
16 **AGAINST ALL DEFENDANTS)**

17 33. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 32 as
18 though fully set forth herein.

19 34. Plaintiff brings this cause of action as a proxy for the State of California and in
20 this capacity, seeks penalties on behalf of all Aggrieved Employees from April 20, 2019, through
21 the present, for Defendant's policy and practice of failing to properly compensate employees for
22 sick pay wages at the regular rate of pay as defined in Labor Code § 246.

23 35. On or about April 20, 2020, Plaintiff sent written notice to the California Labor &
24 Workforce Development Agency ("LWDA") of Defendants' violations of Labor Code sections
25 201, 202, 203, and 246, pursuant to Labor Code section 2698, *et seq.*, the Private Attorney
26 General Act ("PAGA"). To date, the LWDA has not responded to Plaintiff's written notice.

27 36. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any
28 and all applicable civil penalties for Defendants' violation of Labor Code sections 201, 202, 203,

1 and 246 for the time period described above, on behalf of himself and other Aggrieved
2 Employees.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for judgment for himself and all others on whose behalf
5 this suit is brought against Defendants, jointly and severally, as follows:

- 6 1. For an order certifying the proposed Class;
- 7 2. For an order appointing Plaintiff as the representative of the Class as described
8 herein;
- 9 3. For an order appointing Counsel for Plaintiff as Class counsel;
- 10 4. Upon the First Cause of Action, for penalties pursuant to California Labor Code
11 sections 201, 202, and 203, and for costs and attorneys' fees;
- 12 5. Upon the Second Cause of Action, for civil penalties according to proof pursuant
13 to Labor Code section 2698, *et seq.*, and for costs and attorneys' fees;
- 14 6. On all causes of action for attorneys' fees and costs as provided by Code of Civil
15 Procedure sections 218.5 and 1021.5; and
- 16 7. For such other and further relief the Court may deem just and proper.

17
18 DATED: April 28, 2020

DIVERSITY LAW GROUP, P.C.

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20 By: 

21 Larry W. Lee
22 Max W. Gavron
23 Attorneys for Plaintiff and the Class
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