

COHELAN KHOURY & SINGER

Isam C. Khoury (SBN 58759)
ikhoury@ckslaw.com
Michael D. Singer (SBN 115301)
msinger@ckslaw.com
Jeff Geraci (SBN 151519)
jgeraci@ckslaw.com
Rosemary C. Khoury (SBN 331307)
rkhoury@ckslaw.com
605 C Street, Suite 200
San Diego, CA 92101
Tel: (619) 595-3001/Fax: (619) 595-3000

LAW OFFICE OF SAHAG MAJARIAN II

Sahag Majarian (SBN 146621)
sahagii@aol.com
Garen Majarian (SBN 334104)
garen@majarianlawgroup.com
18250 Ventura Blvd.
Tarzana, CA 91356
Tel: (818) 609-0807/Fax: (818) 609-0892

Attorneys for Rebecca De Benning, on behalf of herself
and all others similarly situated

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

REBECCA DE BENNING, on behalf of
herself and all others similarly situated,

Plaintiff,

v.

COSTCO WHOLESALE CORPORATION,
a Washington Corporation; and Does 1
Through 10, Inclusive,

Defendants.

Case No. 34-2021-00309030
ASSIGNED FOR ALL PURPOSES TO:
The Honorable Jill H. Talley
Department 25

CLASS ACTION

**DECLARATION OF JEFF GERACI IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: October 28, 2022
Time: 9:00 a.m.
Dept: 25
Judge: Honorable Jill H. Talley
Reservation: #2667995

Complaint filed: September 30, 2021
Trial date: Not set

1 I, Jeff Geraci, declare as follows:

2 1. I am a Partner with the law firm of Cohelan Khoury & Singer, co-counsel of record
3 for Plaintiff Rebecca De Benning. I make this Declaration in support of Plaintiff's Motion for
4 Preliminary Approval of Class Action Settlement. This Declaration is based on my personal
5 knowledge and if called to testify I could and would competently testify to the matters contained
6 in this Declaration.

7 2. I am a 1990 University of San Diego School of Law graduate, admitted to the
8 California State Bar in 1990. I am admitted to all California state and federal courts. I have
9 provided counseling and representation in all areas of employment law, including wrongful
10 termination, discrimination, harassment, and wage and hour law since 1992. I founded Law Office
11 of Jeff Geraci in 1999 and managed that firm through 2009, when I joined Cohelan Khoury &
12 Singer. I have conducted six jury trials of employment law cases to verdict as sole trial counsel,
13 prevailing in four. My practice has focused solely on litigation of class and representative actions,
14 particularly wage and hour class actions, for the past 12 years. I have drafted amicus letters on a
15 range of issues, primarily for the California Employment Lawyers Association (CELA),
16 supporting publication or depublication of Court of Appeal decisions. I have been primarily
17 responsible for dozens of wage and hour class actions, from drafting the complaint, through
18 discovery, dispositive motions, settlement, and settlement approval.

19 3. I have acted as lead appellate counsel in a dozen matters, including the published
20 employment cases, *McAlindin v. County of San Diego* (1999) 192 F.3d 1226 (9th Cir. 1999)
21 [reversing summary judgment in a disability discrimination case]; *Vaquero v. Ashley Furniture*
22 *Indus.*, 824 F.3d 1150 (9th Cir. 2016) [affirming class certification for sales associates].

23 4. In 1981, Timothy D. Cohelan and Isam C. Khoury formed Cohelan & Khoury, a
24 Partnership of Professional Law Corporations, and within a few years began to focus on class
25 actions. In 2009, Cohelan & Khoury became Cohelan Khoury & Singer. Our firm represents
26 plaintiffs in complex, class and representative action litigation, including wage and hour, labor
27 and employment, antitrust, consumer protection, construction defect and other public interest type
28 class and representative actions.

1 5. Managing Partner Michael D. Singer was admitted as a fellow to the College of
2 Labor and Employment Attorneys in 2020, and named to the Daily Journal 2012, 2013, and 2018
3 list of Top California Labor and Employment Attorneys. He, along with Isam Khoury, a founding
4 Partner of the firm, and Partner Diana M. Khoury, have also been selected by their peers based
5 on ethics, experience and reputation as Super Lawyers in Civil Litigation by the Southern
6 California Super Lawyers Magazine for the years 2012 through the present.

7 6. Cohelan Khoury & Singer has been certified by the State Bar of California to
8 provide the Mandatory Continuing Legal Education activity entitled “Litigating California Class
9 Actions” and has conducted MCLE certified seminars on this topic. Senior Partner, Timothy D.
10 Cohelan, is the author of Cohelan on California Class Actions (1997-2022, updated annually),
11 part of Thomson Reuters Expert Series updated annually. Michael D. Singer is a contributing
12 author on the CEB publication California Wage and Hour Law: Compliance and Litigation (2010-
13 2022 updated annually), in which he wrote the opening chapter overview on California Wage and
14 Hour laws, including the public policy underpinnings for those laws, and the Private Attorneys
15 General Act (PAGA) Claim chapter. He is also a contributing author to the CEB Practitioner
16 (2020), including guidelines for oral argument and forms for PAGA litigation. Mr. Singer has
17 served as a columnist for the California State Bar, Litigation Section on wage and hour litigation
18 and has contributed articles on wage and hour and class action issues through the years to
19 numerous California publications. Prior to COVID, he typically lectured several times per year
20 for continuing education courses on wage and hour and class action issues at events in San Diego,
21 Orange County, Los Angeles, and San Francisco. For over twelve years, Mr. Singer has served
22 as wage and hour amicus co-chair and liaison for the California Employment Lawyers
23 Association, drafting, reviewing, and coordinating amicus filings on wage and hour issues in the
24 California Supreme Court and Courts of Appeal. He has been engaged in the practice of labor and
25 employment law since 2000, handling well over 300 wage and hour class and PAGA actions and
26 several individual labor cases. He has litigated several types of employment actions, including
27 complex ERISA employee welfare benefit plan cases, as well as wage and hour class actions
28 before Federal and State Courts in California. In 2014, Mr. Singer, along with Partner J. Jason

1 Hill, tried a wage and hour class action involving claims for illegally deducted wages and
2 unreimbursed expenses. *Dilts v Penske Logistics LLC, Inc.* Mr. Singer successfully appealed the
3 trial court ruling in *Dilts* finding state laws preempted by the FAAAA for truck drivers.

4 7. Mr. Singer has participated in over 50 appellate cases and argued writs and appeals
5 before several California District Courts of Appeal, arguing for plaintiffs on rehearing in *Brinker*
6 *International Inc. v. Superior Court* before the Fourth District Court of Appeal, as well as federal
7 appeals in the Second, Third, and Ninth Circuit Courts of Appeals. In addition, Mr. Singer has
8 drafted numerous appellate briefs as the appellant, respondent, or amicus curiae in employment
9 class and individual actions. As co-Class Counsel in *Brinker Restaurant Corp. v. Superior Court*
10 [formerly reported at (2008)165 Cal.App.4th 25], Mr. Singer argued before the Fourth District
11 Court of Appeal in May 2008 on transfer from the California Supreme Court, and co-authored
12 the successful Petition for Review. My firm has successfully tried class cases, obtained appellate
13 reversals of class certification denials (*Hicks v. Kaufman and Broad*, (2001) 89 Cal.App.4th 908),
14 and certified multiple wage and hour classes.

15 8. As a part of our overall firm philosophy lawyers perform community service and
16 pro bono work. Firm volunteer work includes service through the Legal Aid at Work, San Diego
17 Volunteer Lawyer Program, the San Diego County Bar Foundation and Consumer Attorneys of
18 San Diego. During law school, I interned for the ACLU and Equal Rights Assistance assisting on
19 impact litigation class action lawsuits. I am a past recipient of the Wiley W. Manuel Award for
20 Pro Bono Service. Mr. Singer has served on the Legal Aid at Work Board of Directors since 2011.
21 Mr. Cohelan served as the Chair of the San Diego Volunteer Lawyers Program from 2015-2018,
22 and currently sits on the Board as past Chair. He served 24 years as a Judge Pro Tem of the San
23 Diego Superior Court. Since admission to the California Bar, Partner Diana M. Khoury has been
24 a member of the San Diego County Bar Association, Consumer Attorneys of San Diego,
25 Consumer Attorneys of California, and American Association for Justice serving and chairing
26 various committees through the years for these organizations. From 2010 through 2015, Ms.
27 Khoury served on the Board of Directors for Consumer Attorneys of San Diego. Since 2013, Ms.
28 Khoury serves on the Board of Directors for the San Diego County Bar Foundation, the 501(c)(3)

1 charitable arm of the San Diego County Bar providing access to justice to the underserved and
2 impoverished in the San Diego County region. Our firm's pro bono victories include a settlement
3 which prohibits the City of San Diego from targeting homeless people for illegal lodging tickets
4 under Penal Code Section 467(j). (*Spencer v. City of San Diego*, USDC Case No 04CV-2314
5 BEN (WMC).) The *Spencer* settlement had the effect of increasing the number of available shelter
6 beds in San Diego.

7 9. Cohelan Khoury & Singer has been certified Class Counsel in the following
8 contested proceedings: *Aguilar v. Atlantic Richfield, et al.*, San Diego County Superior Court
9 Case No. 00700810; *Andino v. Kaiser Foundation Hospitals*, Alameda County Superior Court
10 Case No. RG11580548; *Arellano, et al. v. Container Connection of Southern California, Inc.*,
11 Los Angeles County Superior Court Case No. BC500675; *BANK OF AMERICA WAGE AND*
12 *HOURLY EMPLOYMENT PRACTICES LITIGATION*, United States District Court, District of
13 Kansas MDL Case No. 2138 (FLSA Condition Certification); *Czuchaj v. Conair Corporation*,
14 United States District Court, Southern District of California Case No. 13CV1901; *Dilts, et al. v.*
15 *Penske Logistics, L.L.C., et al.*, United States District Court, Southern District of California Case
16 No. 08CV0318; *Englert, et al. v. AT&T Wireless Services, Inc., et al.*, Circuit Court of the Second
17 Circuit, State of Hawaii Case No. 02-1-0074; *Evans v. Washington Mutual Bank*, Orange County
18 Superior Court Case No. 02CC15415; *Filion v. Ethan Allen Retail Inc.*, United States District
19 Court, Southern District of California Case No. 05CV2340; *Gerard v. Les Schwab Tire Centers*
20 *of California, Inc.*, Sacramento County Superior Court Case No. 2007-30000003; *Grana, et al. v.*
21 *PICO Enterprises, Inc. dba Phyle Inventory Control Specialist and PICS L.A.S.C.* Case No.
22 BC472891; *Gutierrez v. Save Mart Supermarkets* San Mateo Superior Case No. CIV530955;
23 *Wilcox v Albertsons*, San Diego County Superior Court Case No. GIC833922; *Gonzalez, et al. v.*
24 *Freedom Communications, Inc. d/b/a The Orange County Register*, Orange County Superior
25 Court Case No. 03CC08756; *Graham, et al. v. Overland Solutions, Inc.*, United States District
26 Court, Southern District of California Case No. 10CV0672 (FLSA Conditional Certification);
27 *Hicks v. Kaufman and Broad Home Corp.*, Los Angeles County Superior Court Case No.
28 B198414; *Hohnbaum, et al. v. Brinker Restaurant Corporation, et al.*, San Diego County Superior

1 Court Case No. GIC834348; *KEMP, et al. v. CSEA, et al.*, Circuit Court of the First Circuit, State
2 of Hawaii Case No. 98-3815-08; *LIBERTY MUTUAL OVERTIME CASES*, Los Angeles County
3 Superior Court Case No. JCCP 4234; *Mitchell, et al. v. Acosta, Inc., dba Acosta Sales and*
4 *Marketing Company*, United States District Court, Central District of California Case
5 No.11CV07196 (FLSA Conditional Certification); *Santana v. Rady Children's Hospital-San*
6 *Diego*, San Diego County Superior Court Case No. 37-2014-00022411; *Schaffer v. Rady*
7 *Children's Hospital-San Diego*, San Diego County Superior Court Case No. 337-2015-00022978;
8 *Schneider, et al. v. Catholic Healthcare West*, San Francisco County Superior Court Case No.
9 CGC-10-506243; *Salucci v. Amada Senior Care, Inc.*, Orange County Superior Court Case No.
10 37-2015-00778081; *Smith v. California Pizza Kitchen*, San Diego County Superior Court Case
11 No. 37-2008-00083992; STEROID HORMONE PRODUCT CASES, Los Angeles County
12 Superior Court Case No. JCCP 4363; *Stevenson Aibangbee v. Victoria Apartments, et al.*, Los
13 Angeles County Superior Court Case No. BC299498; *Swift v. Liebert Corp.*, Orange County
14 Superior Court Case No. 00CC04588; *Sylvia, et al. v. Wells Fargo Home Mortgage, Inc.*, Orange
15 County Superior Court Case No. 03CC05747; *Vaquero v. Ashley Furniture Industries, Inc., et*
16 *al.*, United States District Court, Central District of California Case No. 12CV8590; *Vaquero v.*
17 *Stoneledge Furniture LLC*, Los Angeles County Superior Court Case No. BC522676; *Vazquez v.*
18 *Kraft Heinz Foods Company*, United States District Court, Southern District of California Case
19 No. 16-CV-02749; *Watson v. Raytheon Company*, United States District Court, Southern District
20 of California Case No.10CV0634; and *Weigle v. FedEx Ground Package System, Inc.*, United
21 States District Court, Southern District of California Case No. 06CV1330, among others, as well
22 as being appointed Class Counsel in connection with well over 200 class action settlements.

23 10. As Class and PAGA Representative Counsel, Cohelan Khoury & Singer has
24 commenced, prosecuted and concluded numerous state and federal class and representative
25 actions. Just since 2016, the firm has played a central role in the resolution of over 200 such cases,
26 including the following court approved settlements: (a) *Arellano, et al. v. Container Connection*
27 *of Southern California, Inc.*, Los Angeles County Superior Court, Case No. BC500675, Hon.
28 Anne I. Jones; (b) *Castro v. Home Depot U.S.A., Inc.*, Los Angeles County Superior Court, Case

No. BC577885, Hon. Elihu M. Berle; (c) *Czuchaj v. Conair Corporation*, United States District Court, Southern District of California, Case No. 13-CV-1901 BEN, Hon. Roger T. Benitez; (d) *Gardiner v. TSYS*, United States District Court, Central District of California, Case No. 18-cv-00415, Hon. David O. Carter; (e) *Grana v. PICO Enterprises, Inc.*, Los Angeles County Superior Court, Case No. BC472891, Hon. Stephanie M. Bowick; (f) *Gutierrez v. Save Mart Supermarkets*, San Mateo County Superior Court, Case No. CIV530955, Hon. Marie S. Weiner; (g) *Hernandez v. Workforce Enterprises WFE, Inc.*, Los Angeles County Superior Court Case No. BC590913, Hon. Elihu M. Berle; (h) *Hicks v. Poway Academy of Hair Design, Inc.*, San Diego County Superior Court, Case No. 2014-00026517, Hon. Ronald L. Styn; (i) *Hubbard v. Caliber Home Loans, Inc.*, Orange County Superior Court, Case No. 2018-01017838; (j) *Klein v. Loomis Armored US, LLC*, San Bernardino County Superior Court, Case No. CIVDS1704547, Hon. David Cohn; (k) *Laureano v. The Art of Shaving*, Los Angeles County Superior Court, Case No. BC550093, Hon. Amy D. Hogue; (l) *Lopez, et al. v. Management & Training Corporation, et al.*, United States District Court, Southern District of California, Case No. 17-CV-010624 JM, Hon. Jeffrey T. Miller; (m) *Magdaleno v. Shelly Automotive, LLC*, Orange County Superior Court Case No. 2013-0043958, Hon. Kim. G. Dunning; (n) *McGrath, et al. v. Wyndham Resort Development Corporation, et al.*, United States District Court, Southern District of California, Case. No. 15-CV-1631 JM, Hon. Jeffrey T. Miller; (o) *Mena v. Wolfgang Puck Catering*, Los Angeles County Superior Court Case No. BC582743, Hon. John Shepard Wiley, Jr.; (p) *Morales v. The Los Angeles Country Club*, Los Angeles County Superior Court, Case No. BC566493, Hon. William F. Highberger; (q) *Nijmeh v. Bon Appetit Management Company, Inc.*, Santa Clara County Superior Court, Case No. 16CV294127, Hon. Thomas E. Kuhnle; (r) *Plascencia v. Aramark Services, Inc.*, Santa Clara County Superior Court, Case No. 2015-1-CV-288310, Hon. Brian C. Walsh; (s) *Plimpton v. Gordon Trucking, Inc.*, San Bernardino County Superior Court, Case No. CIV-DS-1511918, Hon. Donald Alvarez; (t) *Raya v. Amazon*, USDC, Northern District of California, Case No. 15-CV-02005 MMC, Hon. Maxine M. Chesney; (u) *Rivas v. ESA Management*, USDC, Central District of California, Case No. 14-CV-5767, Hon. Dale S. Fischer; (v) *Rodriguez v Healthcare Partner Medical Group, Inc.*, Los Angeles County Superior Court,

Case No. BC541313, Hon. Kenneth Freeman; (w) *Ryan v. Dignity Health*, Sacramento County Superior Court Case No. 2013-00147371, Honorable Alan G. Perkins; (x) *Santana v. Rady Children's Hospital-San Diego*, San Diego County Superior Court Case No. 37-2014-00022411, Hon. Joel R. Wohlfeil; (y) *Schaffer v. Rady Children's Hospital-San Diego*, San Diego County Superior Court Case No. 337-2015-00022978; Hon. Joel R. Wohlfeil; (z) *Schneider v. Catholic Healthcare West*, San Francisco County Superior Court, Case No. CGC-10-506243, Hon. Angela Bradstreet; (aa) *Schwartz v Bank of the West*, San Francisco County Superior Court, Case No. CGC-14-538955, Hon. Harold E. Kahn; (bb) *Syed v. M.I. Swaco*, USDC, Eastern District of California, Case No. 12-CV-01718 DAD, Hon. Dale A. Drozd; (cc) *Vaquero, et al. v. Stoneledge Furniture, LLC*, Los Angeles County Superior Court Case No. BC522676, Hon. Elihu M. Berle; (dd) *Vazquez v. Kraft Heinz Foods Company*, USDC, Southern District of California Case No. 16-CV-02749, Hon. William Hayes; (ee) *Walsh v. Cedars-Sinai Medical Center*, LA County Superior Court Case No. BC487290, Hon. William Highberger; among others.

11. Plaintiff seeks preliminary approval of a \$9,000,000 non-reversionary wage and hour class and PAGA settlement for an estimated 50,000 non-exempt California employees, for whom it was alleged Defendant Costco Wholesale Corporation ("Costco"), underpaid sick pay wages by failing to correctly calculate the regular rate. The proposed Settlement is memorialized in the Class and PAGA Action Settlement Agreement, ("Agreement"), attached as Exhibit 1.

12. Rebecca De Benning worked as a cashier at Costco's Folsom, Roseville, and Citrus Heights, facilities from June 2013 to the present, with several periods off-work on disability. She worked in the Folsom facility from June 2013 to March 2021, went out on disability, returned to work in Roseville in August 2021, went out on disability again in November 2021, and returned to work at the Citrus Heights location in about March 2022. Costco is a multinational corporation operating member-only stores selling merchandise and services and is one of the world's largest retailers.

13. Class Members are all non-exempt Costco California employees who, during the period September 30, 2017, through July 6, 2022, (a) earned wages at more than one rate during a week they took paid sick leave, (b) took paid sick leave any time during the period March 2,

2020, through February 28, 2021, or (c) took sick leave any time during the six-month period before receiving an Extra Check. (Employees with seniority received an “Extra Check” every six months based on a formula which credited them for, among other things, sick pay hours.)

14. Those who would otherwise be Class Members are excluded if they sued Costco on any claim released or precluded by the Settlement, or for time worked at Costco’s distribution centers (“Depots”), in Tracy and Mira Loma, California.

15. Aggrieved Employees are members of the Class who took paid sick leave during the period September 30, 2020, to July 6, 2022 (“PAGA Period”).

16. On August 30, 2021, Plaintiff filed charges with the California Labor and Workforce Development Agency (LWDA), and on September 30, 2021, a class action complaint alleging failure to pay all sick pay and final wages, and unfair business practices.

17. Plaintiff filed a First Amended Complaint November 8, 2021, adding claims for PAGA civil penalties.

18. Plaintiff’s primary contention was that Costco failed to add all compensation to hourly wages, such as Extra Checks and Outstanding Service Bonuses, when calculating regular rate for sick pay; and, when employees earned two different rates during a workweek, Costco used the lower rate, rather than a blended rate, for sick pay.

19. The “Extra Check” is paid every six months based on the number of hours employees are “credited” with, including vacation, holiday, sick, regular, and hours worked on Sundays. Costco paid a monthly “Outstanding Service Bonus” to employees who worked during the start of the pandemic, February 28, 2020 to March 2, 2021.

20. Costco contended there was a high probability the sick pay claim under Labor Code § 246 might be dismissed. Plaintiff argued the claims would be allowed to proceed if not settled, at least under PAGA or as a predicate for a section 17200 claim.

21. Costco contended 90% of its unionized employees were exempt from sick leave laws because they satisfy the requirement of earning more than 130% of minimum wage. Plaintiff argued this exemption is triggered only when all covered employees are exempt.

22. Plaintiff contended, although sick hours were included when calculating the Extra

1 Check, (along with several other types of work and non-work hours), no part of the Extra Check
2 could substitute for, or offset, the obligation to provide sick pay at the correct regular rate. Costco
3 argued, because sick hours were included in the calculation, employees were already receiving
4 additional compensation in the Extra Check for the number of sick hours taken.

5 23. Plaintiff contended failure to pay all sick pay supported a claim for failure to pay
6 all final wages. Costco correctly countered there are no cases finding this, and also argued it
7 cannot be liable for waiting time penalties because, if found to have underpaid sick pay wages,
8 its failure was not willful.

9 24. Plaintiff conducted sufficient investigation and informal discovery to evaluate the
10 strengths and weaknesses of her claims and Costco's defenses.

11 25. For mediation, Defendant provided sick leave policies effective during the class
12 period, information regarding the method used to calculate sick leave, a random sample of
13 complete data for 100 employees, and aggregate data showing numbers of putative class
14 members, and total number of hours employees received sick pay, and pay periods in which sick
15 leave was received and two different rates were paid, an Outstanding Service Bonus was paid, or
16 to which an Extra Check could have applied. Counsel conferred extensively about the data, claims
17 and defenses, and issues for settlement.

18 26. With significant investigation, research, discovery, and analysis of data by
19 Plaintiff's damages consultant, the Parties mediated with Mark S. Rudy, Esq., perhaps the
20 preeminent mediator of wage and hour class actions, on April 7, 2022. After a full day of arms'-
21 length negotiations, the matter was settled in principle. The Parties negotiated all necessary terms
22 and entered the Settlement Agreement presented for preliminary approval.

23 27. Costco will pay the Gross Settlement Amount ("GSA") of \$9,000,000, which
24 includes all the following: (a) settlement administration costs to Atticus Administration, LLC,
25 ("Atticus") estimated at \$128,682; (b) attorneys' fees (up to \$3,000,000, one-third of the GSA);
26 (c) litigation costs, estimated at \$20,000; (d) Class Representative service payment (up to
27 \$10,000); and (e) PAGA payment of \$300,000 (\$225,000 to the LWDA (75%), and \$75,000
28 (25%) to Aggrieved Employees). Costco will pay the employer's share of payroll taxes in addition

1 to the GSA.

2 28. Plaintiff consented to apportion fees: 50% to Cohelan Khoury & Singer, and 50%
3 to Law Offices of Sahag Majarian II.

4 29. After approved deductions, the estimated \$5,541,318 Net Settlement Amount
5 (“NSA”) will be distributed pro rata to Settlement Class Members based on number of sick leave
6 hours taken by each Class Member in relation to the total number of sick leave hours taken by all
7 Class Members. Aggrieved Employees will receive payments based on the number of pay periods
8 worked during the PAGA Period in relation to the total number of pay periods worked by all
9 Aggrieved Employees during that Period.

10 30. Settlement payments are characterized as 60% penalties and interest (Form 1099),
11 and 40% wages (W-2); PAGA Payments are characterized as penalties (Form 1099).

12 31. The Settlement distribution is fair and reasonable, does not give preferential
13 treatment to any Class Member, can be made from data readily available from Costco, and the
14 Administrator can apply the formula fairly and transparently.

15 32. Settlement Class Members will release Costco, and its present and former
16 subsidiaries, affiliates, and joint ventures, and all of Defendant’s shareholders, officers, directors,
17 employees, agents, servants, registered representatives, attorneys, insurers, successors and
18 assigns, and any other persons acting by through, under or in concert with any of them
19 (“Releases”) from any and all claims, debts liabilities, demands, obligations, penalties,
20 guarantees, costs, expenses, attorney’s fees, damages, action or causes of action of whatever kind
21 or nature, whether known or unknown, contingent or accrued, that were alleged or that reasonably
22 could have been alleged based on the facts alleged in this Action, as amended, including, but not
23 limited to, any claims for unpaid sick pay, “waiting time” penalties, and claims under the
24 applicable Wage Order and Labor Code sections 201-203, 245-246, as well as claims under
25 Business and Professions Code section 17200 et seq., and Labor Code section 2698 et seq. based
26 on alleged violations of these Labor Code provisions.

27 33. Atticus Administration, LLC will search the National Change of Address database,
28 update Class Members’ addresses, and mail the Notice of Settlement to each Class Member.

1 34. The Notice of Settlement explains how to dispute the basis of an Individual
2 Settlement Payment; object or opt-out; the release to be given; date of Final Approval hearing;
3 how to get further information; and that no claim form is necessary.

4 35. The Settlement was reached through arm's-length negotiations facilitated by
5 Mark Rudy, an experienced and respected mediator. Though cordial and professional,
6 negotiations were at all times adversarial and non-collusive.

7 36. Plaintiff's Counsel investigated all claims and defenses before filing. When the
8 Parties agreed to mediation, Plaintiff requested, and Defendant produced, all data and documents
9 needed, to assess liability and calculate Class-wide damages.

10 37. Proof of wage and hour class claims is based, at any stage, almost entirely on
11 written policies and pay records. Plaintiff's counsel obtained those records, and an expert
12 analyzed them and prepared a damage model before a settlement was negotiated.

13 38. Plaintiff's Counsel have significant experience in wage and hour class actions.
14 This allowed comparison of settlement with risks of further litigation, including trial and appeals.

15 39. Defense counsel, David D. Jacobson, David D. Kadue, and their colleagues at
16 Seyfarth Shaw, are experienced wage and hour class action litigators who defended vigorously,
17 including through mediation and negotiation of all settlement terms.

18 40. Experienced counsel believes the Settlement is fair, reasonable, and in the Class'
19 best interest in light of the monetary recovery, risks of certification, summary adjudication, the
20 lengthy process of establishing damages, and uncertainty of appeals.

21 41. Class Counsel relied on documents and data, including time and pay records.
22 Plaintiff's economist analyzed voluminous data and documents, and calculated Class-wide
23 damages through the date of mediation.

24 42. California employers may calculate sick pay wages in the same manner as
25 overtime wages, using the "regular rate," or "look back" 90 days, dividing the employee's "total
26 wages, not including overtime premium pay, by total hours worked in full pay periods of the prior
27 90 days." Costco used the "regular rate" option.

28 43. Plaintiff determined Costco could have underpaid sick pay by a maximum of

1 \$9,525,379, including interest, by not adding the Outstanding Service Bonus and Extra Check to
2 calculate the regular sick pay rate, and by not using a blended rate, when two rates were earned.
3 [\$5,405,072 (OSB) + \$3,759,131 (Extra) + \$361,176 (Blended) = \$9,525,379]. This figure
4 overstates potential recovery as it is extrapolated to the entire class, although a significant number
5 of class members would not have worked long enough (accumulated 12,400 paid hours) to have
6 been eligible for an Extra Check.

7 44. Plaintiff found realistic exposure was 50% of maximum exposure, or **\$4,762,690**.

8 45. To determine Defendant's final wages exposure, Plaintiff multiplied the number
9 of former employees during the statutory period produces maximum exposure of \$49,077,171.
10 [10,868 x 6.75 hr. avg shift x \$22.30 avg hr pay x 30 days].

11 46. Based on the risk an underlying violation would not be proven, and if found, the
12 likelihood Costco would be found to have a good faith belief it was providing sick pay wages
13 properly, Plaintiff believed realistic exposure was less than 10% of maximum exposure, or no
14 more than **\$4,907,717**.

15 47. Based on Costco's data, there were an estimated 117,171 pay periods from the
16 start of the PAGA period, September 30, 2020, through mediation.

17 48. Using initial violation rates, maximum PAGA penalties were estimated at
18 \$12,029,500 for two violations: Section 246 (sick) – \$11,717,100; Section 203 (waiting time) –
19 \$312,400 (estimated 3,124 former employees, penalties at \$100 per pay period).

20 49. Maximum realistic exposure was discounted to 10%, or **\$1,202,950**. Even if the
21 PAGA claim is viable, there were risks Plaintiff would not prove the underlying violations; and,
22 if proven, the Court has authority to reduce penalties, as long as not to "zero."

23 50. Plaintiff gave serious consideration to all facts and arguments and concluded the
24 Settlement is fair and reasonable. The Gross Settlement Amount represents over 82% of the
25 maximum reasonable value of the Class claims (\$4,762,690 + \$4,907,717 + \$1,202,950 =
26 \$10,873,357) (\$9,000,000/\$10,873,357 = 82.77%). The proposed settlement is well within the
27 "ballpark" of reasonableness.

28 51. Plaintiff can and will continue to adequately protect the interests of the Class.

1 Plaintiff accepted the risks of serving as a class representative, including a possible judgment for
2 Defendant's costs, spent significant time assisting in the prosecution of the action, and placed the
3 interest of the class above her own at all times.

4 52. Plaintiff's attorneys are qualified to conduct the litigation and Plaintiff's interests
5 are not antagonistic to the interest of the Class.

6 53. On the same date this motion and its exhibits are filed with the Court, they will be
7 served upon Defendant and provided to the Labor and Workforce Development Agency
8 ("LWDA") via the LWDA's website, [www.dir.ca.gov/Private-Attorneys-General-Act/Private-](http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act)
9 [Attorneys-General-Act](http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act), using the appropriate intake form. Attached as Exhibit 2 is a true and
10 correct copy of the LWDA confirmation of Receipt.

11 I declare under the penalty of perjury under the laws of the State of California the
12 foregoing is true and correct and this declaration is executed August 16, 2022, in San Diego,
13 California.

14 
15 Jeff Geraci

EXHIBIT 1

1 **CLASS AND PAGA ACTION SETTLEMENT AGREEMENT**

2 *De Benning v. Costco Wholesale Corp.*

3
4 *Sacramento Superior Court Case No. 34-2021-00309030*

5
6
7
8 This Class and PAGA Action Settlement Agreement is between (1) the Plaintiff, Rebecca De
9 Benning—individually and on behalf of (a) the Class Members and (b) the LWDA and the Aggrieved
10 Employees—and (2) Defendant, Costco Wholesale Corporation. Plaintiff and Defendant collectively are
11 the “Parties.” By this Agreement, the Parties intend, with judicial approval, to settle the Action. If this
12 Agreement is not finally approved, or is otherwise nullified, then the Parties shall return to their
13 positions preceding this Agreement, and Defendant shall retain all rights to challenge the Plaintiff’s
14 claims and the certification of any class and the manageability of any PAGA action, unless the Parties
15 agree to seek reconsideration of the ruling or Court approval of a renegotiated agreement.
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

	Page
1. Definitions.....	1
1.1. Action.....	1
1.2. Administrative Costs.....	1
1.3. Aggrieved Employees.....	1
1.4. Agreement.....	1
1.5. Approval of the PAGA Settlement	1
1.6. Class Claims.....	1
1.7. Class Counsel.....	1
1.8. Class Counsel Award.....	1
1.9. Class Members.....	1
1.10. Class Period	2
1.11. Class Representative	2
1.12. Class Rep Enhancement Payment or Incentive Award or Service Award	2
1.13. Complaint.....	2
1.14. Confidential Data	2
1.15. Consideration Period.....	2
1.16. Court	2
1.17. Defendant.....	2
1.18. Defense Counsel	2
1.19. Effective Date	2
1.20. Fairness Hearing	3
1.21. Final Approval Order.....	3
1.22. Former Employee.....	3
1.23. Gross Settlement Amount.....	3
1.24. Individual Settlement Payment.....	3

1	1.25. Judgment.....	3
2	1.26. LWDA.....	3
3	1.27. LWDA Payment.....	4
4	1.28. Net Settlement Amount.....	4
5	1.29. Notice of Settlement	4
6	1.30. Objection.....	4
7	1.31. Objector.....	4
8	1.32. PAGA Claims	4
9	1.33. PAGA Payment.....	4
10	1.34. PAGA Period	4
11	1.35. Parties.....	4
12	1.36. Plaintiff	4
13	1.37. Preliminary Approval.....	4
14	1.38. Precluded PAGA Claims	5
15	1.39. Qualified Settlement Fund	5
16	1.40. Released Class Claims	5
17	1.41. Released Parties	5
18	1.42. Request for Exclusion.....	5
19	1.43. Service Award.....	5
20	1.44. Settlement Administrator.....	5
21	1.45. Settlement Class.....	5
22	1.46. Settlement Period.....	5
23	2. Recitals and Procedural History.....	6
24	2.1. Business of Defendant	6
25	2.2. Allegations in Complaint	6
26	2.3. Defendant’s Denials.....	6
27	2.4. Class Counsel’s Investigation.....	6
28	2.5. Negotiation of Settlement	6

1	2.6.	Certification for Settlement Purposes	7
2	3.	The Gross and Net Settlement Amounts.....	7
3	3.1.	Establishment of Gross Settlement Amount	7
4	3.2.	Calculation of Net Settlement Amount.....	7
5	4.	Selection of Settlement Administrator and Notice of Settlement.....	7
6	4.1.	Selection of Settlement Administrator.....	7
7	4.2.	Settlement Administration	7
8	4.3.	Confidential Data for the Settlement Administrator.....	8
9	4.4.	Communicating Materials to Class Members.....	8
10	4.4.1.	Mailing and Emailing Class Notice	8
11	4.4.2.	Re-mailing Class Notice	8
12	4.5.	Proof of Mailing.....	9
13	5.	Responses to Notice of Settlement	9
14	5.1.	Consideration Period.....	9
15	5.2.	Requests for Exclusion and Opt Out Rights	9
16	5.2.1.	Opt Out Procedure	9
17	5.2.2.	Effect of Opting Out	10
18	5.2.3.	Tolerance of Opt-Outs—Defendant’s Right to Withdraw.....	10
19	5.3.	Objections	10
20	5.3.1.	Objection Procedure.....	10
21	5.3.2.	Obligations of Individuals Who Object	10
22	5.3.3.	Presenting Objections	11
23	5.4.	Proof of Responses	11
24	5.5.	Binding Effect of Settlement	11
25	5.6.	No Interference with Class Member Responses	11
26	6.	Administration of Settlement Proceeds	11
27	6.1.	Final Funding of Gross Settlement Amount	11
28	6.2.	Administrative Costs.....	12

1	6.2.1.	Approval of Administrative Costs Not Material.....	12
2	6.3.	Class Counsel Award.....	12
3	6.3.1.	Approval of Class Counsel Award Not Material.....	12
4	6.3.2.	Timing of Class Counsel Award.....	12
5	6.4.	Service Award.....	12
6	6.4.1.	Approval of Service Award Not Material.....	12
7	6.4.2.	Timing of Service Award.....	12
8	6.5.	PAGA Payment.....	13
9	6.5.1.	Reduction of PAGA Payment Not Material	13
10	6.5.2.	Timing of PAGA Payment.....	13
11	6.5.3.	Individual PAGA Payments.....	13
12	6.6.	Individual Settlement Class Member Payments	13
13	6.6.1.	Number of Paid Sick Leave Hours Taken	13
14	6.6.2.	Enhancements to Number of P	13
15	6.6.3.	Determination of Individual Settlement Class Payments	14
16	6.6.4.	Timing of Settlement Class Payments	14
17	6.7.	Distribution Formula.....	14
18	6.8.	Tax Allocations.....	14
19	6.8.1.	PAGA Payment.....	14
20	6.8.2.	Net Settlement Amount.....	14
21	6.8.3.	Tax Withholdings.....	14
22	6.8.4.	Employer Taxes	14
23	6.8.5.	Tax Reporting	14
24	6.8.6.	Responsibility for Taxes	15
25	6.8.7.	Approval of Tax Allocations Not Material.....	15
26	6.9.	Undeliverable or Uncashed Checks	15
27	6.10.	Certification of Completion	15
28			

1	7.	Releases and Resolution of Claims.....	15
2	7.1.	Release of the Class Claims.....	15
3	7.2.	Resolution of the PAGA Claims.....	16
4		Additional General Release by the Class Representative	16
5	8.	Settlement Approval Procedure	17
6	8.1.	Motion for Approval of PAGA Settlement.....	17
7	8.2.	Motion for Preliminary Approval	17
8	8.2.1.	Contents of Motion	17
9	8.2.2.	Notice to LWDA.....	17
10	8.3.	Motion for Final Approval.....	17
11	8.4.	Motion for Class Counsel Award	17
12	8.5.	Motion for Service Award	18
13	8.6.	Entry of Judgment.....	18
14	8.6.1.	Notice of Final Judgment.....	18
15	8.6.2.	Effect of Failure to Obtain Final Judgment	18
16	8.7.	Appeal Rights.....	18
17	8.8.	Schedule of contemplated events after Preliminary Approval	18
18	9.	Miscellaneous	19
19	9.1.	Execution of this Agreement	19
20	9.1.1.	Parties' Authority.....	19
21	9.1.2.	Counterparts.....	20
22	9.1.3.	Facsimile or Scanned Signatures	20
23	9.2.	Construction.....	20
24	9.2.1.	Materiality of Terms	20
25	9.2.2.	No Construction Against the Author	20
26	9.2.3.	Exhibits Incorporated by Reference.....	20
27	9.2.4.	Headings	20
28	9.2.5.	Invalidity of Any Provision	20

1	9.2.6.	Parties' Entire Agreement.....	20
2	9.2.7.	Waivers and Modifications to Be in Writing.....	21
3	9.2.8.	Governing Law	21
4	9.3.	Inadmissibility of Settlement Documents.....	21
5	9.4.	No Tax Advice.....	21
6	9.5.	No Impact on Employee Benefits.....	21
7	9.6.	No Prior Assignments or Undisclosed Liens	21
8	9.7.	Cooperation of the Parties.....	22
9	9.7.1.	Affirmative Duty to Cooperate	22
10	9.7.2.	Language of Settlement Documents	22
11	9.7.3.	Refraining from New Proceedings.....	22
12	9.7.4.	No Solicitation of Objections or Opt Outs.....	22
13	9.7.5.	Waiver of Right to Object by Class Representative	22
14	9.8.	Confidential Information	22
15	9.9.	No Media Announcements or Other Undue Publicity.....	23
16	9.10.	Disputes.....	23

EXHIBITS

Notice of SettlementA

1 **1. Definitions**

2 Each defined term appears throughout this Agreement in initial capital letters.

3 **1.1. Action.** “Action” means the lawsuit entitled *De Benning v. Costco Wholesale*
4 *Corp.*, filed September 30, 2021, currently in the Superior Court of the State of California for the
5 County of Sacramento as Case No. 34-2021-00309030.

6 **1.2. Administrative Costs.** “Administrative Costs” means all costs that the Settlement
7 Administrator incurs in administering this Agreement.

8 **1.3. Aggrieved Employees.** “Aggrieved Employees” are all Class Members who took
9 paid sick leave during the PAGA Period.

10 **1.4. Agreement.** “Agreement” means this Class and PAGA Action Settlement
11 Agreement, which includes all its Recitals and any attached Exhibit.

12 **1.5. Approval of the PAGA Settlement.** “Approval of the PAGA Settlement” means
13 judicial approval of the settlement of the PAGA claims covered by this Agreement.

14 **1.6. Class Claims.** “Class Claims” means all claims of liability that were or could
15 have been asserted in this Action based on the facts alleged in this Action, with respect to the pleaded
16 claims for (1) failure to pay sick pay (Cal. Lab. Code §§ 245, 246), (2) failure to pay earned wages upon
17 termination (Cal. Lab. Code §§ 201, 202, 203), (3) unfair business practices (Cal. Bus. & Prof. Code §
18 17200 et seq.), and (4) civil penalties under Labor Code §§ 248.5 and 2698 et seq. for violations of the
19 aforementioned Labor Code provisions.

20 **1.7. Class Counsel.** “Class Counsel” refers to the law firm of Cohelan Khoury &
21 Singer, 605 C Street, Suite 200, San Diego, California 92101. Any notice to Class Counsel shall go to
22 the foregoing address and to Jeff Geraci, JGeraci@ckslaw.com.

23 **1.8. Class Counsel Award.** “Class Counsel Award” refers to the attorneys’ fees and
24 costs that the Court awards in connection with resolving the Action in accordance with this Agreement.

25 **1.9. Class Members.** “Class Members” are those individuals who—for purposes of
26 this Agreement only—will be certified as members of the following class: individuals who, as non-
27 exempt Costco employees in California during the Settlement Period, (a) earned wages at more than one
28 rate during a week when they took paid sick leave, (b) took paid sick leave at any time during the period

March 2, 2020 through February 28, 2021, or (c) took sick leave at any time during the six month measuring period prior to receiving an Extra Check. Provided, however, that an individual who would otherwise be a Class Member is *not* a Class Member if that individual has sued Defendant on any claim to be released or precluded as part of this Agreement, or to the extent that the individual worked at any of Costco's distribution centers, known as Depots, in Tracy and Mira Loma, California.

1.10. Class Period. See "Settlement Period."

1.11. Class Representative. "Class Representative" refers to the Plaintiff, Rebecca De Benning.

1.12. Class Rep Enhancement Payment or Incentive Award or Service Award. See "Service Award."

1.13. Complaint. "Complaint" refers to any and all complaints filed in the Action.

1.14. Confidential Data. "Confidential Data" refers to personal information the Settlement Administrator needs to administer this Agreement, including employee names, employee ID numbers, last known address and telephone number(s), dates of employment, social security numbers, the numbers of paid sick leave hours taken by Class Members, and the numbers of pay periods worked by Aggrieved Employees.

1.15. Consideration Period. "Consideration Period" refers to the 60 calendar days following initial mailing of the Notice of Settlement, during which an individual can submit an Objection or a Request for Exclusion.

1.16. Court. "Court" refers to the judge presiding over this Action, in the California Superior Court for the County of Sacramento.

1.17. Defendant. "Defendant" refers to Costco.

1.18. Defense Counsel. "Defense Counsel" refers to Seyfarth Shaw LLP. For purposes of providing any notice under this Agreement, Defense Counsel shall refer to David Jacobson and Lauren Schwartz, 2029 Century Park East, Suite 3500, Los Angeles, CA 90067. Any notice to Class Counsel shall go to the foregoing address and to djacobson@seyfarth.com and lschwartz@seyfarth.com.

1.19. Effective Date. "Effective Date" is the date 14 days after the last of the following dates: (i) if no Objection has been submitted, or if all submitted Objections have been withdrawn, then

the date of the Final Approval, (ii) if any Objection has been submitted and not withdrawn, then the date on which there is a Judgment subject to no further appeal.

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

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

1.22. Former Employee. A “Former Employee” is a Class Member whose employment with Defendant ended on or after September 30, 2018.

1.23. Gross Settlement Amount. “Gross Settlement Amount” refers to the maximum payment Defendant may be obligated to make in connection with the Agreement: \$9,000,000. This sum includes all Individual Settlement Payments, any Service Award, the PAGA Payment, Administrative Costs, and the Class Counsel Award. Provided, however, that Defendant must deposit additional money to cover any legally required employer-side taxes.

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

1.25. Judgment. “Judgment” refers to the final judgment entered by the Court in this Action after approving the Agreement.

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

1 **1.27. LWDA Payment.** “LWDA Payment” refers to the 75% portion of the PAGA
2 Payment that goes to the LWDA.

3 **1.28. Net Settlement Amount.** “Net Settlement Amount” refers to the portion of the
4 Gross Settlement Amount for distribution to Settlement Class Members and Aggrieved Employees that
5 remains after accounting for Service Awards, the PAGA Payment, Administrative Costs, and the Class
6 Counsel Award.

7 **1.29. Notice of Settlement.** “Notice of Settlement” means a notice of the terms of the
8 class settlement contained in this Agreement, substantially in the form attached as Exhibit A.

9 **1.30. Objection.** “Objection” refers to a written statement timely submitted by a
10 Settlement Class Member to the Settlement Administrator that contains (1) the Objector’s full name and
11 current mailing address, (2) the last four digits of the Objector’s social security number, (3) the specific
12 reason(s) for the Objection, and (4) all evidence and supporting papers (including, without limitation, all
13 briefs, written evidence, and declarations) for the Court to consider.

14 **1.31. Objector.** “Objector” refers to a Settlement Class Member who has submitted an
15 Objection.

16 **1.32. PAGA Claims.** “PAGA Claims” means all claims for civil penalties sought under
17 PAGA for violations of California Labor Code sections 201-204, 245, 246, and the California Wage
18 Order.

19 **1.33. PAGA Payment.** “PAGA Payment” refers to the part of the Gross Settlement
20 Sum (\$300,000) apportioned for settlement of claims for civil penalties under the Private Attorney
21 General Act of 2004, with 75% payable to the LWDA and 25% payable to Aggrieved Employees.

22 **1.34. PAGA Period.** “PAGA Period” refers to the period from September 30, 2020,
23 through the end of the Settlement Period.

24 **1.35. Parties.** “Parties” refers collectively to (1) Plaintiff and (2) Defendant.

25 **1.36. Plaintiff.** “Plaintiff” refers to Class Representative De Benning.

26 **1.37. Preliminary Approval.** “Preliminary Approval” refers to the court order granting
27 Preliminary Approval of the class claims settled by this Agreement.
28

1 **1.38. Precluded PAGA Claims.** “Precluded PAGA Claims” means all PAGA Claims
2 that this Agreement will extinguish, through claim preclusion or issue preclusion, as a result of the
3 Approval of the PAGA Settlement.

4 **1.39. Qualified Settlement Fund.** “Qualified Settlement Fund” means a qualified
5 settlement fund established pursuant to U.S. Treasury Regulation section 468B-1, 29 C.F.R. § 468B-1.

6 **1.40. Released Class Claims.** “Released Class Claims” means all claims that
7 Settlement Class Members will release through this Agreement.

8 **1.41. Released Parties.** “Released Parties” refers to Defendant and each and all of its
9 current or former subsidiaries, parents, affiliates, predecessors, insurers, agents, employees, successors,
10 assigns, officers, officials, directors, attorneys, personal representatives, executors, and shareholders,
11 including their respective pension, profit sharing, savings, health, and other employee benefits plans of
12 any nature, the successors of such plans, and those plans’ respective current or former trustees and
13 administrators, agents, employees, and fiduciaries.

14 **1.42. Request for Exclusion.** “Request for Exclusion” refers to a timely, written, opt-
15 out request signed by a Class Member and submitted to the Settlement Administrator with the following
16 information: (1) the Class Member’s full name and current mailing address, (2) the last four digits of the
17 Class Member’s social security number, and (3) an express statement that the Class Member wishes to
18 be excluded from the class settlement contained within this Agreement.

19 **1.43. Service Award.** “Service Award” refers to any payment that the Court awards for
20 service as a Class Representative.

21 **1.44. Settlement Administrator.** “Settlement Administrator” refers to the third-party
22 administrator that the Parties select.

23 **1.45. Settlement Class.** “Settlement Class” refers to all Class Members who do not file
24 a timely, valid Request for Exclusion.

25 **1.46. Settlement Period.** “Settlement Period” refers to the period beginning on
26 September 30, 2017, and extending through the earlier of (a) the date of Preliminary Approval or (b)
27 July 6, 2022.
28

1 **2. Recitals and Procedural History**

2 **2.1. Business of Defendant.** Costco is a member-only club retailer that is engaged in
3 the business of selling merchandise and services to members, and in that connection has retained
4 individuals as non-exempt employees working in California.

5 **2.2. Allegations in Complaint.** On September 30, 2021, the Class Representative
6 initially brought this Action in the Superior Court of the State of California for the County of
7 Sacramento, as an individual and on behalf of similarly situated employees. The Action asserts claims
8 for (1) failure to pay sick pay (Cal. Lab. Code §§ 245, 246), (2) failure to pay wages earned upon
9 termination of employment (Cal. Lab. Code §§ 201, 202, 203) and (3) unfair business practices (Cal.
10 Bus. & Prof. Code § 17200 et seq.). On November 8, 2021, the Class Representative filed an amended
11 complaint adding a claim for (4) civil penalties under PAGA for violations of California Labor Code
12 sections 201-203, 245, and the California Wage Order.

13 **2.3. Defendant's Denials.** Defendant denies (1) all the material allegations in this
14 Action, (2) that Defendant violated any applicable laws, (3) that Defendant is liable for damages,
15 penalties, interest, restitution, attorneys' fees, or costs, or for any other remedy sought in the Action, and
16 (4) that class certification or representative treatment is appropriate as any claim in the Action.
17 Defendant contends that its policies, procedures, and practices comply with all laws asserted in the
18 Action. Defendant has agreed to settle the Action solely to avoid the burden, expense, and uncertainty of
19 litigation. Any statements in this Agreement are made for settlement purposes only.

20 **2.4. Class Counsel's Investigation.** Class Counsel has investigated the facts relating
21 to the claims alleged in the Action and the defenses asserted by Defendant. Class Counsel interviewed
22 Class Members and Aggrieved Employees regarding the claims in the Action, and has examined
23 Defendant's compliance with its policies, procedures, and practices.

24 **2.5. Negotiation of Settlement.** Class Counsel have engaged in arms-length
25 negotiations with Defendant with a view toward achieving substantial benefits while avoiding the cost,
26 delay, and uncertainty of further litigation. Plaintiff will urge that the Court approve this Agreement
27 after considering (1) the factual and legal defenses to the claims asserted, which render uncertain the
28 ultimate outcome of the Action, (2) the potential difficulties Plaintiff would encounter in establishing

1 their claims and achieving class treatment, (3) the benefits produced by this Agreement, (4) that this
2 Agreement provides relief in an expeditious, efficient manner, compared to recoveries possible after
3 litigation and potential appeals, and (5) that this Agreement allows Class Members to opt out of the
4 Action and individually pursue the claims alleged in the Action.

5 **2.6. Certification for Settlement Purposes.** This Agreement is contingent upon
6 approval of class certification under California Code of Civil Procedure Section 382 for settlement
7 purposes only. Defendant expressly reserves the right to challenge the propriety of class certification or
8 representative treatment for any other purpose should the Court not approve the Agreement.

9 **3. The Gross and Net Settlement Amounts**

10 **3.1. Establishment of Gross Settlement Amount.** The Gross Settlement Amount is
11 \$9,000,000. In no event shall Defendant, absent its further agreement, be obligated to pay more than that
12 amount, except to the extent of legally required employer-side payroll taxes. All applicable employer
13 payroll tax payments (including but necessarily limited to FICA, FUTA, etc.) shall be paid in addition to
14 the Gross Settlement Value. The Gross Settlement Amount includes all Individual Settlement Payments,
15 any Service Award, the Class Counsel Award, the PAGA Payment, and Administrative Costs.

16 **3.2. Calculation of Net Settlement Amount.** The Net Settlement Amount is the
17 portion of the Gross Settlement Amount that remains for distribution to Class Members and Aggrieved
18 Employees, after deductions for any Service Award, the PAGA Payment, Administrative Costs, and the
19 Class Counsel Award.

20 **4. Selection of Settlement Administrator and Notice of Settlement**

21 **4.1. Selection of Settlement Administrator.** The Parties will mutually agree in
22 writing to select a Settlement Administrator after receiving bids.

23 **4.2. Settlement Administration.** The Settlement Administrator will, as necessary,
24 print, copy, format, and translate materials, mail and email notices to Class Members, perform a skip
25 trace for undeliverable addresses, establish and maintain a Qualified Settlement Fund, obtain appropriate
26 tax identification numbers, calculate Individual Settlement Payments, calculate payroll withholdings and
27 payroll taxes, prepare and file all required IRS Forms, mail Individual Settlement Payments and tax
28 forms, establish a hotline telephone number for class member communications, post notices regarding

1 settlement on the Settlement Administrator's website, remit all tax payments and required
2 documentation to taxing authorities, implement the process for any uncashed settlement checks, and
3 perform all other duties associated with settlement administration, including, but not limited to, all those
4 specified in this Agreement. Any dispute relating to settlement administration shall, after good-faith
5 efforts by the Parties to resolve the dispute, be referred to the Court.

6 **4.3. Confidential Data for the Settlement Administrator.** Within 30 calendar days
7 of Preliminary Approval of the class settlement, Defendant will give the Settlement Administrator a
8 listing, for Class Members and Aggrieved Employees, of names, employee ID numbers, last known
9 street and email addresses and telephone numbers. Defendant will also report to the Settlement
10 Administrator the number of paid sick leave hours taken by each Class Member and the number of pay
11 periods worked by each Aggrieved Employee. Defendant shall also provide, when needed, social
12 security numbers to facilitate the administration of this Agreement. The Settlement Administrator shall
13 use these Confidential Data only for the purposes described in this Agreement, and shall return the
14 Confidential Data to Defendant or confirm the destruction of same upon completing the work called for
15 by this Agreement.

16 **4.4. Communicating Materials to Class Members.** Communications need be in
17 English only, absent a request for a translation, as English is the exclusive language used in Costco's
18 agreements with its California employees. Preemptively preparing translations would create unnecessary
19 administrative expenses.

20 **4.4.1. Mailing and Emailing Class Notice.** Within 21 calendar days of
21 receiving the Confidential Data from Defendant, and after checking Class Member information against
22 the National Change of Address Database, the Settlement Administrator shall send the Notice of
23 Settlement to Class Members via First Class U.S. mail and email, using the last-known mailing address
24 and email address for each Class Member.

25 **4.4.2. Re-mailing Class Notice.** Any mailing returned as undeliverable shall be
26 sent within five calendar days via First Class U.S. Mail to any available forwarding address. If no
27 forwarding address is available, then the Settlement Administrator shall attempt to determine the correct
28 address by using a computer-based skip-trace search, and shall then perform, if feasible, a re-mailing via

1 First Class U.S. Mail within five calendar days. If no current address is available for a Class Member,
2 then the Notice of Settlement for that Class Member will be deemed undeliverable. Only one re-mailing
3 is required. If a Class Member cannot be located within two attempts at mailing, then the Notice of
4 Settlement for that Class Member will be deemed undeliverable. No extra time will be provided for
5 responding to a re-mailing, because the total Consideration Period is sufficiently ample—60 days.

6 **4.5. Proof of Mailing.** At least ten calendar days before the Fairness Hearing, the
7 Settlement Administrator shall provide a declaration of due diligence and proof of mailing and emailing
8 with regard to the mailing and emailing of the Notice of Settlement to Class Counsel and Defense
9 Counsel, which Class Counsel shall in turn file with the Court.

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

11 **5.1. Consideration Period.** Within the Consideration Period, Class Members may opt
12 out of the proposed settlement of the class claims by submitting a Request for Exclusion (as provided
13 below) or may submit an Objection (as provided below). Except as specifically provided herein, no
14 response postmarked after the Consideration Period shall be considered.

15 **5.2. Requests for Exclusion and Opt Out Rights.** Class Members may opt out by
16 submitting a Request for Exclusion. Class Members who are also Aggrieved Employees and who submit
17 a Request for Exclusion will nonetheless be bound by the Approval of the PAGA Settlement and shall
18 receive their pro rata portion of the PAGA Payment.

19 **5.2.1. Opt Out Procedure.** Class Members may opt out of this Agreement by
20 mailing, emailing, or faxing the Settlement Administrator a Request for Exclusion. A Request for
21 Exclusion must be signed and dated by the Class Member, must provide the Class Member's full name,
22 current address, current telephone number, and the last four digits of the Class Member's social security
23 number, and must expressly state an intention to be excluded from the terms of the Agreement. Any
24 purported Request for Exclusion will be deemed ineffective if it is untimely or if it omits required
25 information. Upon receiving timely but deficient Requests for Exclusion, the Settlement Administrator
26 will notify the Class Member (by mail or email) to provide two weeks to correct the deficiency. If the
27 Class Member timely provides information to the Settlement Administrator's satisfaction, then the
28 Request for Exclusion will be permitted.

1 **5.2.2. Effect of Opting Out.** Any Class Member who opts out of this Agreement
2 may not submit an Objection and shall not receive any payment as a Settlement Class Member, and shall
3 not be bound by the Class Release in this Agreement. Each Class Member who does not submit a timely,
4 valid Request for Exclusion (as described above in Section 6.2.1) shall be bound by the releases that this
5 Agreement entails. All Aggrieved Employees shall be bound by the Approval of the PAGA Settlement
6 and shall receive their portion of the PAGA Payment.

7 **5.2.3. Tolerance of Opt-Outs—Defendant’s Right to Withdraw.** Defendant’s
8 willingness to enter into this Agreement materially depends on ensuring that substantial individual
9 claims do not arise. Accordingly, if 200 or more Class Members opt out by submitting Requests for
10 Exclusion, then Defendant may, in the exercise of its sole discretion, withdraw from this Agreement.
11 Defendant’s right to withdraw expires 21 calendar days after the Consideration Period. If Defendant
12 exercises its right to withdraw, it shall be solely responsible for Settlement Administration costs incurred
13 to that point.

14 **5.3. Objections.** Rule 3.769(f) of the California Rules of Court provides that class
15 members may file written objections to a proposed class settlement and appear at the final approval
16 hearing to state any objections. Accordingly, only Settlement Class Members—Class Members who
17 have not opted out—are entitled to object to the terms of the class settlement called for by this
18 Agreement. PAGA entitles only the LWDA, not aggrieved employees, to object to a PAGA settlement.
19 Accordingly, aggrieved employees are not entitled to object to the PAGA settlement called for by this
20 Agreement.

21 **5.3.1. Objection Procedure.** Any written objection must be made in a
22 communication to the Settlement Administrator using the procedures set forth in the Notice of
23 Settlement, and must contain (1) the Objector’s full name and current mailing address, (2) the last four
24 digits of the Objector’s social security number, (3) the specific reason(s) for the Objection, and (4) all
25 evidence and supporting papers (including, without limitation, all briefs, written evidence, and
26 declarations) for the Court to consider.

27 **5.3.2. Obligations of Individuals Who Object.** Objectors must be available for
28 deposition within 75 miles of their home address if a Party chooses to take their deposition. Any

1 Objector who fails to appear for a duly noticed deposition shall be deemed to have withdrawn the
2 Objection. Objectors can appear at the Fairness Hearing either in person or through counsel but must
3 state their intent to do so when they submit their Objection. An Objection may be withdrawn at any
4 time.

5 **5.3.3. Presenting Objections.** Settlement Class Members who fail to submit
6 Objections in the manner specified in the Notice of Settlement presumptively have waived any objection
7 but may appear at the final approval hearing to object to the class settlement and to argue why they
8 should be excused from any presumptive waiver.

9 **5.4. Proof of Responses.** At least ten calendar days prior to the Fairness Hearing, the
10 Settlement Administrator will prepare a declaration to submit to the Court regarding responses to the
11 Notice of Settlement, including such information as any inability to deliver mailings because of invalid
12 addresses, the number of any Requests for Exclusion, and the number of any Objections. Class Counsel
13 shall be responsible for filing the declaration.

14 **5.5. Binding Effect of Settlement.** Although a Class Member might not timely submit
15 an Objection or a Request for Exclusion because of inability of the Settlement Administrator to locate
16 the Class Member's current address, or for other reasons beyond the Class Member's control, that Class
17 Member shall nonetheless become a Settlement Class Member and be bound by this Agreement.

18 **5.6. No Interference with Class Member Responses.** Each Party agrees not to
19 encourage any Class Member to submit an Objection or a Request for Exclusion and agrees not to
20 retaliate against any Class Member for participating (or not participating) in this Settlement. Defendant
21 is forbidden by law to engage in any such retaliation.

22 **6. Administration of Settlement Proceeds**

23 **6.1. Final Funding of Gross Settlement Amount.** The Parties recognize that
24 Defendant is a large organization whose internal financial controls require multiple levels of approval to
25 authorize large wire transfers of money. Accordingly, Defendant will have 28 calendar days after the
26 Effective Date to deposit the Gross Settlement Amount into the Qualified Settlement Fund.

1 **6.2. Administrative Costs.** The Parties agree to obtain a reasonable estimate of
2 Administrative Costs from the Settlement Administrator and seek approval of same to be drawn from
3 the Gross Settlement Amount.

4 **6.2.1. Approval of Administrative Costs Not Material.** The amount of Administrative
5 Costs is not a material term: if the Court approves a lesser or greater amount, then the other terms of this
6 Agreement shall remain in effect.

7 **6.3. Class Counsel Award.** Class Counsel may request a payment from the Gross
8 Settlement Amount for (a) attorneys' fees in an amount up to one third of the Gross Settlement Amount
9 and (b) costs incurred in litigating this Action.

10 **6.3.1. Approval of Class Counsel Award Not Material.** Approval of the Class
11 Counsel Award is not a material term. If the Court approves only a lesser amount, then the other terms
12 of this Agreement shall remain in effect.

13 **6.3.2. Timing of Class Counsel Award.** The Settlement Administrator shall
14 issue the Class Counsel Award within 35 calendar days after the Effective Date. Within 10 calendar
15 days after the Effective Date, Class Counsel shall instruct the Settlement Administrator as to how the
16 Class Counsel Award may be paid. The Settlement Administrator shall issue an appropriate Internal
17 Revenue Service Form 1099 to Class Counsel. Class Counsel shall be solely responsible for paying all
18 applicable taxes on any Class Counsel Award and shall indemnify and hold harmless Defendant from
19 any claim or liability for taxes, penalties, or interest arising as a result of the Class Counsel Award.

20 **6.4. Service Award.** Class Counsel may request that the Court award the Class
21 Representative a Service Award in an amount of up to \$10,000, to be drawn from the Gross Settlement
22 Amount. Any Service Award would be in addition to the Class Representative's Individual Settlement
23 Payment.

24 **6.4.1. Approval of Service Award Not Material.** Approval of a Service Award
25 is not a material term. If the Court does not approve a Service Award or approves only a lesser amount
26 than that requested, then the other terms of this Agreement shall remain in effect.

27 **6.4.2. Timing of Service Award.** The Settlement Administrator shall pay any
28 Service Award within 35 calendar days of the Effective Date and shall issue an IRS Form 1099 to the

1 Class Representative. The Class Representative shall be solely responsible for paying all applicable
2 taxes on any Service Award and shall indemnify and hold harmless Defendant from any claim or
3 liability for taxes, penalties, or interest arising as a result of the Service Award.

4 **6.5. PAGA Payment.** The Parties will seek approval for a PAGA Payment in the
5 amount of \$300,000, 75% of which will go to the LWDA and 25% of which will go to Aggrieved
6 Employees.

7 **6.5.1. Reduction of PAGA Payment Not Material.** Any reduction in the
8 requested PAGA Payment is not a material term. If the Court approves only a lesser amount than that
9 requested, then the other terms of this Agreement shall remain in effect. But approval of some PAGA
10 Payment is a material term. If the Court does not approve any PAGA Payment, then the entire
11 Agreement will be, at Defendant's sole discretion, void and unenforceable.

12 **6.5.2. Timing of PAGA Payment.** The Settlement Administrator shall pay the
13 LWDA Payment to the LWDA within 35 calendar days after the Effective Date.

14 **6.5.3. Individual PAGA Payments.** Each Aggrieved Employee will be entitled
15 to payments calculated in accordance with the number of pay periods in which they worked during the
16 PAGA Period, in relation to the total number of pay periods worked by all Aggrieved Employees during
17 the PAGA Period.

18 **6.6. Individual Settlement Class Member Payments.** Each Settlement Class
19 Member shall be provisionally entitled to payment as described below. Defendant's time records
20 regarding the number of paid sick leave hours taken shall control for purposes of calculation unless the
21 Class Member submits contrary evidence to the Settlement Administrator that the Settlement
22 Administrator finds to be persuasive.

23 **6.6.1. Number of Paid Sick Leave Hours Taken.** Defendant will provide to the
24 Settlement Administrator the total number of paid sick leave hours taken by each Settlement Class
25 Member during the Settlement Period and the total number of paid sick leave hours taken by all
26 Settlement Class Members during that period ("Total Paid Sick Leave Hours Taken").

27 **6.6.2. Enhancements to Number of Paid Sick Leave Hours Taken for**
28 **Former Employees.** With respect to calculating Settlement Class Payments, each Former Employee

will be credited with 10 additional paid sick leave hours taken, to account for the additional Section 203 claim available to Former Employees.

6.6.3. Determination of Individual Settlement Class Payments. Each Settlement Class Member's share of the Net Settlement Amount will reflect the number of paid sick leave hours taken that are credited to the Settlement Class Member, in relation to the credited number of Total Paid Sick Leave Hours Taken by all Settlement Class Members.

6.6.4. Timing of Settlement Class Payments. The Settlement Administrator shall issue Individual Settlement Class Payments within 35 calendar days of the Effective Date.

6.7. Distribution Formula. Depending on the circumstances, individuals entitled to payment under this Agreement will receive payment (a) only as an Aggrieved Employee, (b) only as a Settlement Class Member, or (c) as both an Aggrieved Employee and a Settlement Class Member.

6.8. Tax Allocations. These allocations will be as follows.

6.8.1. PAGA Payment. The overall tax allocation for the PAGA Payment will be 100% to civil penalties.

6.8.1. Net Settlement Amount. The overall tax allocation for the Net Settlement Amount to be paid to Class Members will be allocated for tax purposes as follows: 60% to statutory and civil penalties and interest, and 40% to wages, subject to the other provisions of this Section.

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

6.8.3. Employer Taxes. The Settlement Administrator will account for the amount of the Net Settlement Amount attributed to wages and submit an invoice to Defendant for the required employer share of withholding taxes, which Costco shall convey to the Settlement Administrator in addition to the Gross Settlement Amount.

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

1 **6.8.5. Responsibility for Taxes. Settlement** Class Members and PAGA

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

5 **6.8.6. Approval of Tax Allocations Not Material.** Approval of the tax

6 allocations of Individual Settlement Payments set forth above is not a material term. If the Court
7 approves a different tax allocation of the Individual Settlement Payments, then the other terms of this
8 Agreement shall remain in effect.

9 **6.9. Undeliverable or Uncashed Checks.** All Individual Settlement Payment checks

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

21 **6.10. Certification of Completion.** Upon fully administering this Agreement, the

22 Settlement Administrator will certify the completion to the Court and counsel for all Parties in a
23 declaration, summarizing the total money paid and the status of any uncashed checks.

24 **7. Releases and Resolution of Claims**

25 **7.1. Release of the Class Claims.** Upon the Final Approval Order, and except as to

26 the right to enforce the terms and conditions of the Settlement, all Settlement Class Members hereby
27 fully release Defendant, and all of Defendant's present and former subsidiaries, affiliates, and joint
28 ventures, and all of Defendant's shareholders, officers, directors, employees, agents, servants, registered

1 representatives, attorneys, insurers, successors and assigns, and any other persons acting by through,
2 under or in concert with any of them (“Releasees”) from any and all claims, debts, liabilities, demands,
3 obligations, penalties, guarantees, costs, expenses, attorney’s fees, damages, action or causes of action of
4 whatever kind or nature, whether known or unknown, contingent or accrued, that were alleged or that
5 reasonably could have been alleged based on the facts alleged in the Action, as amended, including, but
6 not limited to, any claims for unpaid sick pay, “waiting time” penalties, and claims under the applicable
7 Wage Order and Labor Code sections 201-203, 245-246, as well as claims under Business and
8 Professions Code section 17200 et seq., and Labor Code section 2698 et seq. based on alleged violations
9 of these Labor Code provisions. This Agreement is conditioned upon the release as to the LWDA and all
10 Aggrieved Employees any claim under Labor Code section 2699, as to the released claims set forth
11 above, and upon covenants by all members that they will not participate in any proceeding seeking
12 penalties as to the released claims set forth above. The Parties stipulate that beyond the Gross Settlement
13 Value, and employer’s share of payroll taxes, Defendant shall not owe any further monies to the
14 Settlement Class or to the State of California based upon any claim made in the Action or in any
15 complaint filed therein.

16 **7.2. Resolution of the PAGA Claims.** Upon approval of this Agreement and funding
17 of the Gross Settlement Amount, and except as to the right to enforce the terms and conditions of this
18 Agreement, the Plaintiff, on behalf of herself, the State of California, and all Aggrieved Employees,
19 relinquishes all rights to PAGA claims with respect to any alleged failure during the PAGA Period to
20 comply with the Labor Code, and covenants not to participate in any actions, lawsuits, proceedings,
21 complaints, or charges in any court or before any administrative body against any Released Party related
22 to any claims that Plaintiff brought or could have brought under the facts she has alleged in this Action.

23 **Additional General Release by the Class Representative.** In addition to the release given by each
24 Settlement Class Member, the Class Representative also gives each Released Party a general release of
25 all claims arising out of the Class Representative’s relationship with the Defendant. This general release
26 includes, without limitation, claims for unpaid wages and liquidated damages, claims for discrimination,
27 harassment, or retaliation pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. section 2000
28 et seq., the California Fair Employment and Housing Act, California Gov’t Code section 12900 et seq.,

1 and claims for violation of public policy. This general release by the Class Representative also includes
2 a waiver of rights under California Civil Code Section 1542, which states: “A general release does not
3 extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of
4 executing the release, which if known by him or her must have materially affected his or her Settlement
5 with the debtor.”

6 **8. Settlement Approval Procedure**

7 **8.1. Motion for Approval of PAGA Settlement.** The Class Representative, in
8 moving for Preliminary Approval, will also move, for hearing at the same time, for Approval of the
9 PAGA Settlement.

10 **8.2. Motion for Preliminary Approval.** Plaintiff will obtain a hearing to request
11 preliminary approval of this Agreement, to obtain entry of an order that would (i) conditionally certify a
12 Settlement Class for settlement purposes only, (ii) grant Preliminary Approval, (iii) approve a Notice of
13 Settlement, and (iv) set a date for a Final Approval hearing.

14 **8.2.1. Contents of Motion.** The motion for preliminary approval shall justify
15 conditional certification of a Settlement Class and explain how the settlement amounts are reasonable in
16 light of the facts and law pertaining to the claims alleged. The motion shall be accompanied by a
17 declaration by Class Counsel discussing the risks of continued litigation and the decision that this
18 Agreement serves the best interests of class members. Before filing any motion, Class Counsel will give
19 Defendant’s counsel adequate notice and opportunity to comment on the motion papers.

20 **8.2.2. Notice to LWDA.** Upon moving for preliminary approval, Plaintiff will
21 submit the proposed settlement agreement to the LWDA, pursuant to Labor Code section 2699(l)(2).

22 **8.3. Motion for Final Approval.** Class Counsel will obtain a hearing for a Motion for
23 Final Approval, to obtain an order to (a) approve this Agreement, (b) adjudge its terms to be fair,
24 reasonable, and adequate, (c) recite the Released Claims, (d) direct that the terms of the Agreement be
25 carried out, and (e) retain jurisdiction to oversee enforcement of this Agreement.

26 **8.4. Motion for Class Counsel Award.** In connection with a Motion for Final
27 Approval, Class Counsel may move for approval of an attorneys’ fees and costs award in the amount of
28

one third of the Gross Settlement Amount plus litigation costs actually incurred in litigating this Action, supported by adequate documentation.

8.5. Motion for Service Award. In connection with a Motion for Final Approval, Class Counsel may move for approval of a Service Award for the Class Representative in an amount of up to \$10,000.

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

8.6.1. Notice of Final Judgment. Notice of Judgment will be posted on the Settlement Administrator's website.

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

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

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

Deadline for Defendant to provide Settlement Administrator with lists of Class Members and PAGA Participants and contact information	30 calendar days after Preliminary Approval
Deadline for Settlement Administrator to mail and email Notice of Settlement to Class Members	21 calendar days after provision of class list to Settlement Administrator
Last day to submit Requests for Exclusion or Objections	45 calendar days from mailing of Notice of Settlement
Settlement Administrator to report on Requests for Exclusion, Objections, and other results of class notice	60 calendar days from mailing of Notice of Settlement
Deadline to move for Final Approval	To be set by the Court
Fairness hearing on Final Approval and on Class Counsel Award and Service Award	To be set by Court
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
Class Counsel instructions to Settlement Administrator re Class Counsel Award	10 calendar days after Effective Date
Funding of Gross Settlement Amount plus employer share of taxes on wages	28 calendar days after Effective Date
Settlement Administrator to pay Class Counsel Award, Service Award, LWDA Payment, and Individual Payments	35 calendar days after Effective Date

9. Miscellaneous

9.1. Execution of this Agreement.

9.1.1. 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.

1 **9.1.2. Counterparts.** This Agreement may be executed in counterparts, and all
2 signed and delivered counterparts together may constitute one Agreement binding upon the Parties.

3 **9.1.3. Facsimile or Scanned Signatures.** A Party may sign and deliver this
4 Agreement via DocuSign or by signing on the designated signature block and transmitting that signature
5 page via facsimile or as an attachment to an email to counsel for the other Party. Any such signature
6 shall be deemed an original for purposes of this Agreement and shall be binding upon the Party who
7 transmits the signature page.

8 **9.2. Construction.**

9 **9.2.1. Materiality of Terms.** Except as otherwise stated herein, each substantive
10 term of this Agreement is a material term that the Parties have relied upon in making this Agreement. If
11 the Court does not approve any substantive term, or if the Court effects a material change to the
12 Agreement—such as increasing any amount that Defendant must pay—then the entire Agreement will
13 be, at Defendant’s sole discretion, void and unenforceable. Where this Agreement states that a term is
14 not material, then the Court’s refusal to approve that term leaves all the other terms of the Agreement in
15 effect, and does not give Class Counsel or any Class Member any basis to abrogate this Agreement.

16 **9.2.2. No Construction Against the Author.** Each Party participated in drafting
17 this Agreement, and its terms shall not be construed against any Party by virtue of draftsmanship.

18 **9.2.3. Exhibits Incorporated by Reference.** This Agreement include the terms
19 set forth in any attached exhibit. Any exhibit to this Agreement is an integral part of it.

20 **9.2.4. Headings.** The headings within this Agreement appear for convenience of
21 reference only and shall not affect the construction or interpretation of any part of this Agreement.

22 **9.2.5. Invalidity of Any Provision.** Before declaring any provision of this
23 Agreement invalid, the Court shall first attempt to construe the provision valid to the fullest extent
24 possible so as to render all provisions of this Agreement enforceable.

25 **9.2.6. Parties’ Entire Agreement.** This Agreement, with its Definitions,
26 Recitals, and Exhibits, constitutes the entire agreement on its subject matter, and supersedes all prior and
27 contemporaneous negotiations and understandings between the Parties.
28

1 **9.2.7. Waivers and Modifications to Be in Writing.** No waiver, modification,
2 or amendment of this Agreement shall be valid unless it appears in a writing signed by or on behalf of
3 all Parties, and then shall be valid subject to any required Court approval. Any failure to insist upon the
4 strict performance of any provision shall not be deemed a waiver of future performance of that provision
5 or of any other provision of this Agreement.

6 **9.2.8. Governing Law.** All terms of this Agreement shall be governed by and
7 interpreted according to California law.

8 **9.3. Inadmissibility of Settlement Documents.** The Parties agree that this Agreement
9 and all exhibits thereto shall be inadmissible in any proceeding, except a proceeding to approve or
10 enforce this Agreement. This Agreement will operate as a complete defense to—and may be used as the
11 basis for an injunction against—any proceeding attempted in breach of this Agreement.

12 **9.4. No Tax Advice.** Nothing in this Agreement is advice by Class Counsel or
13 Defense Counsel regarding taxes or taxability, and no Party is relying upon Class Counsel or Defense
14 Counsel for such advice. Each Party instead is relying exclusively on the Party’s own independent tax
15 counsel in connection with this Agreement.

16 **9.5. No Impact on Employee Benefits.** This Agreement does not affect any right or
17 obligation under any benefits plan. No payment made under this Agreement shall be considered as
18 compensation or hours worked or hours paid for purposes of determining eligibility, vesting,
19 participation, or contributions with respect to any employee benefit plan. For purposes of this
20 Agreement, the term “employee benefit plan” means every “employee benefit plan,” as defined in the
21 Employee Retirement and Income Security Act of 1974, 29 U.S.C. section 1002(3). The term also
22 includes any 401(k) plan, bonus, pension, stock option, stock purchase, stock appreciation, welfare,
23 profit sharing, retirement, disability, vacation, severance, hospitalization, insurance, incentive, deferred
24 compensation, or any other similar benefit plan, practice, program, or policy, regardless of whether any
25 such plan is considered an employee benefit plan.

26 **9.6. No Prior Assignments or Undisclosed Liens.** Each Class Representative and the
27 Class Counsel represent that they have not assigned, transferred, conveyed, or otherwise disposed of any
28 Released Claim or claim to attorneys’ fees and costs award to be paid under this Agreement. Each Class

1 Representative and the Class Counsel further represent and warrant that there are not any liens or claims
2 against any amount that Defendant is to pay under this Agreement. Each Class Representative and Class
3 Counsel agree to defend, to indemnify, and to hold Defendant harmless from any liability, losses,
4 claims, damages, costs, or expenses, including reasonable attorneys' fees, resulting from a breach of
5 these representations or from any lien or assignment.

6 **9.7. Cooperation of the Parties.** The Parties will comply with the covenants of good
7 faith and fair dealing and otherwise cooperate to carry out the terms of this Agreement. Plaintiff will be
8 responsible for preparing any proposed judgment, subject to prior comment by Defendant.

9 **9.7.1. Affirmative Duty to Cooperate.** Each Party, upon the request of another,
10 agrees to perform such acts and to execute and to deliver such documents as are reasonably necessary to
11 carry out this Agreement. In the same spirit, the Parties agree to make all reasonable efforts to avoid
12 unnecessary Administrative Costs.

13 **9.7.2. Language of Settlement Documents.** All documents filed with the Court
14 or sent to Class Members in connection with this Agreement must be approved by all Parties before
15 being filed or sent.

16 **9.7.3. Refraining from New Proceedings.** The Parties agree to refrain from
17 further litigation with respect to the Action, except any proceeding needed to obtain Preliminary
18 Approval, Final Approval, or Judgment.

19 **9.7.4. No Solicitation of Objections or Opt Outs.** The Parties represent that
20 they have not solicited, encouraged, or assisted—and will not solicit, encourage, or assist—Objections
21 or Requests for Exclusion.

22 **9.7.5. Waiver of Right to Object by Class Representative.** Each Class
23 Representative, by signing this Agreement, agrees not to object to any term of this Agreement.

24 **9.8. Confidential Information.** Class Counsel will destroy all confidential documents
25 and information provided by Defendant within 120 calendar days of this Agreement's completion. Class
26 Counsel further agree that no information provided by Defendant shall be used for any purpose other
27 than prosecution of this Action.
28

9.9. No Media Announcements or Other Undue Publicity. Neither Plaintiff nor Class Counsel shall cause to be publicized, directly or indirectly, any discussion resulting in or the existence of this Agreement or its terms in any type of mass media, including, but not limited to, speeches, press conferences, press releases, interviews, television or radio broadcasts, newspapers, website postings, messages on the Internet, Facebook, Twitter or any other social media. And the Parties shall decline to respond to media inquiries concerning this Agreement. After the Effective Date, Class Counsel may state on their website that the case has been settled and provide a short and plain description of the claims that were settled, subject to Defendant's approval. This provision does not apply to any publications ordered or authorized by the Court.

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

SO AGREED, AS OF MAY , 2022:

5/22/2022

 a Corporation
By _____
Its Corporate Counsel

SEYFARTH SHAW LLP.

By Tanya P.
Attorneys for Defendant Costco

Rebecca De Benning

9.9. No Media Announcements or Other Undue Publicity. Neither Plaintiff nor Class Counsel shall cause to be publicized, directly or indirectly, any discussion resulting in or the existence of this Agreement or its terms in any type of mass media, including, but not limited to, speeches, press conferences, press releases, interviews, television or radio broadcasts, newspapers, website postings, messages on the Internet, Facebook, Twitter or any other social media. And the Parties shall decline to respond to media inquiries concerning this Agreement. After the Effective Date, Class Counsel may state on their website that the case has been settled and provide a short and plain description of the claims that were settled, subject to Defendant's approval. This provision does not apply to any publications ordered or authorized by the Court.

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

SO AGREED, AS OF MAY³¹, 2022:

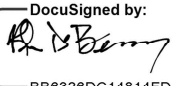
Costco Wholesale Corporation

By _____
Its Corporate Counsel

SEYFARTH SHAW LLP

By _____
Attorneys for Defendant Costco

Rebecca De Benning

DocuSigned by:

BB6326DC14814FD...

Cohelan Khoury & Singer

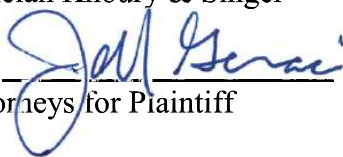
By 
Attorneys for Plaintiff

EXHIBIT A

NOTICE OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT

Rebecca De Benning v. Costco Wholesale Corporation

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

THE FOLLOWING INFORMATION IS IN THIS NOTICE

1. Why Did I Get This Notice?	Page 1
2. What is this Case About?	Page 1
3. What is a “Class Action”?	Page 2
4. Am I a Class Member or PAGA Group Member?	Page 2
5. How Does the Class Action Settlement Work?	Page 2
6. Who Are the Attorneys Representing the Parties?	Page 3
7. What Are My Options?	Page 3
8. How Do I Opt Out or Exclude Myself from the Class Action Settlement?	Page 3
9. How Do I Object to the Class Action Settlement?	Page 3
10. How Does this Settlement Affect My Rights? What are the Released Claims?	Page 4
11. What Are the Main Terms of the Settlement?	Page 4
12. How Much Can I Expect to Receive from this Settlement?	Page 4
13. What If I Took More Sick Leave Hours Than Reported in this Notice?	Page 5
14. How Will the Class Representative and Class Counsel be Paid?	Page 5

1. Why Did I Get This Notice?

A proposed Settlement has been reached in an action entitled *Rebecca De Benning v. Costco Wholesale Corp.*, Sacramento Superior Court Case No. 34-2021-00309030. This Notice is being sent to you by order of that Court, which has preliminarily approved the Settlement and conditionally certified a class. Because your rights may be affected by this Settlement, you should read this Notice carefully.

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

2. What is this Case About?

The Plaintiff, Rebecca De Benning, sued Costco on September 30, 2021 in Sacramento Superior Court (case no. No. 34-2021-00309030) (the “Lawsuit”), seeking restitution, penalties, interest, costs, attorneys’ fees, and other relief for (1) failure to pay sick pay (Cal. Lab. Code §§ 245, 246), (2) failure to pay earned wages upon termination (Cal. Lab. Code §§ 201, 202, 203), and (3) unfair business practices (Cal. Bus. & Prof. Code § 17200 et seq.). This part of the case is called the Class Action and the affected employees are the Class Members, who will receive a settlement payment unless they opt out of the class as described below.

The case also seeks civil penalties under the California Private Attorneys General Act of 2004 (“PAGA”) for alleged violations of the California Labor Code sections mentioned above. This part of the case is known as the PAGA Action and the affected employees (called the PAGA Group members) will receive a payment from this portion of the Settlement regardless of whether they opt out of participating in the Class Action.

--

Questions? Call the Settlement Administrator, XXXXXXXXXXXX at 1-xxx-yyy-zzzz

3. What is a “Class Action”?

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

4. Am I a Class Member or PAGA Group Member?

You are a Class Member if you have not sued Costco on a claim released by this Settlement and if—at any time since September 30, 2017—you have worked for Costco in California as a non-exempt employee, other than as a Depot employee, and have (a) earned wages at more than one rate during a week when you took paid sick leave, (b) taken paid sick leave at any time during the period March 2, 2020 through February 28, 2021, or (c) taken sick leave at any time during the six month measuring period prior to receiving an Extra Check. As a Class Member, you will receive a payment because of this Settlement unless you opt out of the class in the manner described below.

You are a PAGA Group member if you—at any time since September 30, 2020—worked as a non-exempt employee for Costco in California other than as a Depot employee, and have (a) earned wages at more than one rate during a week when you took paid sick leave, (b) taken paid sick leave at any time during the period September 30, 2020 through February 28, 2021, or (c) taken sick leave at any time during the six month measuring period prior to receiving an Extra Check. As a PAGA Group member, you will receive a payment for the PAGA portion of the Settlement regardless of whether you opt out of the class.

5. How Does the Class Action Settlement Work?

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

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

On xx, xx, 2022, in the Sacramento Superior Court, the presiding judge conditionally certified a class for settlement purposes only and directed that you receive this Notice. The attorneys for Plaintiff and the Class have copies of all documents related to the Settlement and can provide them to you free of charge upon your request. Documents are also available on the Settlement Administrator’s website, xxx.com. Contact information for the Plaintiff’s attorneys is provided below.

The Final Fairness Hearing concerning the proposed Settlement will occur on [date of final approval hearing], 2023 at __ [a.m./p.m.], located at xxx, Sacramento, CA xxxxx, before Sacramento Superior Court Judge xxxx.

--

Questions? Call the Settlement Administrator, XXXXXXXXXXXX at 1-xxx-yyy-zzzz

6. Who Are the Attorneys Representing the Parties?

Attorneys for Plaintiffs and the Class:

COHELAN KHOURY & SINGER

605 C Street, Suite 200,

San Diego, California 92101

Telephone: (619) 595-3001

JGeraci@ckslaw.com

Attorneys for Costco Wholesale Corp.:

SEYFARTH SHAW LLP

David Jacobson

Lauren Schwartz

2029 Century Park East, Suite 3500

Los Angeles, CA 90067

Telephone: (310) 277-7200

djacobson@seyfarth.com

The Court has decided that the attorneys for the Plaintiff are qualified to represent you and all other Class Members simultaneously in this Settlement. You do not need to hire your own attorney because Class Counsel are working on your behalf. But, if you want your own attorney, you may hire one at your own cost.

7. What Are My Options?

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

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

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

The procedures for opting out or objecting are set forth below in the sections entitled “How Do I Opt Out or Exclude Myself from the Class Action Settlement” and “How Do I Object to the Class Action Settlement?”

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

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

If you do not want to take part in the Class Action Settlement, then you must sign and mail a written exclusion request to the Settlement Administrator, **XXXXXXXXXXXXXX**. The request must (1) contain your name, address, telephone number, and the last four digits of your Social Security number, (2) clearly say you do not want to be part of the proposed Settlement, (3) be returned by mail to the Settlement Administrator at the specified address, and (4) be postmarked on or before **[date that is 60 days after notice packet is mailed]**.

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

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

If you are a Class Member who does not opt out, then you may object, personally or through an attorney, by writing an objection to the Settlement Administrator and serving it on all counsel listed in Section No. 6 on or before **[date that is 60 days after notice packet is mailed]**. The objection must include (a) your full name, address, and telephone number, (b) a written statement of the factual and legal grounds for the objection, (c) copies of any papers, briefs, or other documents on which the objection relies, (d) a list of all persons who will be called to testify in support of the objection, and (e) a list of all cases in which the objector or the objector’s counsel has filed objections to a class action settlement in the preceding five years. Class Members who fail to file and serve timely objections run

--

Questions? Call the Settlement Administrator, XXXXXXXXXXXX at 1-xxx-yyy-zzzz

the risk of having waived their right to object (whether through an appeal or otherwise), unless otherwise ordered by the Court.

Nonetheless, Class Members may appear at the Final Approval Hearing to object orally even if they have not objected in writing.

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

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

If the proposed Settlement is approved by the Court, then a Final Judgment will be entered by the Court. All Class Members who do not opt out of the Settlement will release Costco and the other Released Parties from all claims that were or could have been asserted in this Lawsuit or that were based on or arose out of the facts alleged in this Lawsuit, including, without limitation, claims for (1) failure to pay sick pay (Cal. Lab. Code §§ 245, 246), (2) failure to pay earned wages upon termination (Cal. Lab. Code §§ 201, 202, 203), (3) unfair business practices (Cal. Bus. & Prof. Code § 17200 et seq.), and (4) civil penalties under Labor Code §§ 248.5 and 2698 et seq. for violations of the aforementioned Labor Code provisions. “Released Parties” means Costco and all subsidiaries, parents, affiliates, predecessors, insurers, agents, employees, successors, assigns, officers, officials, directors, attorneys, personal representatives, executors, and shareholders, including their employee benefit plans and their trustees and administrators, agents, employees, and fiduciaries. Entry of judgment after the Court grants final approval of the Settlement will preclude actions by you or those acting on your behalf with respect to any of the causes of action identified above as to any liability of Costco or the Released Parties from September 30, 2017 through July 6, 2022. Entry of judgment will also preclude PAGA civil-penalty actions for alleged violations of any Labor Code section mentioned above from September 30, 2020 through July 6, 2022.

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

Costco will pay \$9,000,000 in a Gross Settlement Amount. Of that amount, \$300,000 will be allocated to PAGA, and 75% of that payment will go to the California Labor and Workforce Development Agency and 25% will go to PAGA Group members in accordance with their number of attributed pay periods during the PAGA period. From the \$8,700,000 remaining, the following shall be deducted: (1) Class Representative Payment to Rebecca De Benning in an amount up to \$10,000, (2) settlement administration costs for the Settlement Administrator, Atticus Administration, in an amount estimated not to exceed \$128,682, (3) payment of attorneys’ fees to Class Counsel in an amount not to exceed \$3,000,000 (one-third of the Gross Settlement Amount), plus litigation costs actually incurred and documented, estimated to be \$20,000. All these deductions are subject to court approval. What then remains of the Gross Settlement Amount will be the Net Settlement Amount that will be distributed to Settlement Class Members. The Settlement Administrator will determine their payments in accordance with their number of attributed closing shifts.

Tax consequences. The overall Net Settlement Amount will be allocated 60% to non-wage payments and 40% for wage statements. You will receive tax documents from the Settlement Administrator.

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

Your payment as a Class Member, which you will receive if you do not opt out, will reflect the number of paid sick leave hours credited to you during the period September 30, 2017 through July 6, 2022. You are credited with 10 additional sick leave hours taken if you are a former employee, to reflect the additional claim available (for untimely termination pay) for a former employee. Based on your credited number of paid sick leave hours

taken—[REDACTED]—your preliminary estimated payment with respect to the Class Action Settlement will be approximately \$[REDACTED].

If you are a PAGA Group member, then you will receive a payment for your portion of the PAGA settlement regardless of whether you opt out of the class. Your payment as a PAGA Group member will reflect the number of pay periods attributed to you during the period September 30, 2020 through July 6, 2022.

13. What if I Took More Sick Leave Hours Than Reported in This Notice?

You can dispute the number of sick leave hours taken by mailing the Settlement Administrator at [INSERT ADDRESS] by [INSERT DATE] and providing credible evidence. The Settlement Administrator will use Costco's records and the information you provide to resolve any disputes about the data appearing in this Notice. The Settlement Administrator's determination will be final and binding, subject to Court review and approval.

14. How Will the Class Representative and Class Counsel be Paid?

The attorneys who represent the Class Representative and the rest of the Class will be paid from the Gross Settlement Fund. Subject to Court approval, Class Counsel may be paid an amount not to exceed one-third of the Gross Settlement Fund (\$3,000,000) in fees plus litigation costs actually incurred, supported by adequate documentation. Costco has paid all of its own attorneys' fees and costs. The Class Representative may also be paid, subject to Court approval, an amount not to exceed \$10,000, as an enhancement for prosecuting this case, undertaking risks for the payment of costs in the event this case had been lost, and a general release of all her claims.

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

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

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

83766095v.1

--

Questions? Call the Settlement Administrator, XXXXXXXXXXXX at 1-xxx-yyy-zzzz

EXHIBIT 2