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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 27

CLASS ACTION

**NOTICE OF ENTRY OF ORDER
GRANTING FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND
ENTERING JUDGMENT**

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

1 TO: THE LABOR AND WORKFORCE DEVELOPMENT AGENCY, AND TO ALL
2 PARTIES AND THEIR COUNSEL OF RECORD:

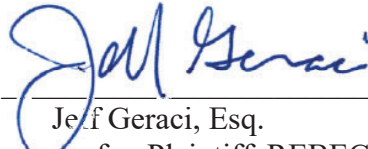
3 NOTICE IS GIVEN that on February 17, 2023, the Court issued an Order Granting Final
4 Approval of Class Action Settlement and Entering Judgment, ("Order"), in the above-captioned
5 matter. A true and correct copy of this Order is attached as Exhibit 1.

6 NOTICE IS FURTHER GIVEN that on February 10, 2023, the Court issued a Minute
7 Order after the completion of the hearing on Plaintiff's Motion for Final Approval of Class
8 Action Settlement, ("Minute Order"), in the above-captioned matter. A true and correct copy of
9 this Minute Order is attached as Exhibit 2.

10 Respectfully Submitted,

11 **COHELAN KHOURY & SINGER**
12 **LAW OFFICE OF SAHAG MAJARIAN II**

13
14 Dated: February 24, 2023

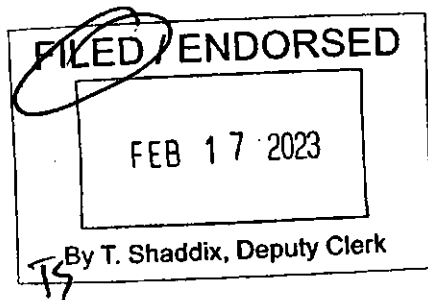
By: 

Jeff Geraci, Esq.

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

EXHIBIT 1

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SUPERIOR COURT OF CALIFORNIA
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REBECCA DE BENNING, on behalf of
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COSTCO WHOLESALE CORPORATION,
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Through 10, Inclusive,

Defendants.

Case No. 34-2021-00309030
ASSIGNED FOR ALL PURPOSES TO:
The Honorable Jill H. Talley
Department ~~3827~~

CLASS ACTION

[PROPOSED] ORDER
GRANTING FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND
ENTERING JUDGMENT

Hearing Set By Court (10/31/2022 Order)

Date: February 10, 2023
Time: 9:00 a.m.
Dept: ~~3827~~
Judge: Honorable Jill H. Talley

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

~~Proposed~~ Order Granting Final Approval of Class Action Settlement
Case No. 34-2021-00309030

COHELAN KHOURY & SINGER
605 C Street, Suite 200
San Diego, CA 92101

BY FAX



On February 10, 2023 in Department 25 of the Gordon D. Schaber Courthouse located at 720 9th Street, Sacramento, California, 95814, Plaintiff's Motion for Order Granting Final Approval of Class Action Settlement and Entering Judgment ("Motion") pursuant to California Rule of Court 3.769, the Order Granting Preliminary Approval of Class Action Settlement ("Preliminary Approval Order"), and the Class and PAGA Action Settlement Agreement, ("Agreement"), filed with this Court on August 18, 2022, came on for hearing.

Having received and considered the Agreement, the supporting papers, evidence and argument received by the Court with the Motion for Preliminary Approval of Class Action Settlement, and evidence and argument received by the Court with the Motion for Order Granting Final Approval of Class Action Settlement, the Court grants final approval of the Settlement and ORDERS AND MAKES THE FOLLOWING DETERMINATIONS:

1. Pursuant to the Court's Preliminary Approval Order, Notice of Class Action Settlement was sent to each Class Member by first-class United States mail, informing the Class of the Settlement terms, right to receive a Settlement Payment without taking any action, comment on or object to the Settlement, and appear in person or by counsel and be heard at the final approval hearing. Adequate periods of time were provided for each of these procedures.

2. No Settlement Class Member filed a written objection to the proposed Settlement or stated an intention to appear at the final approval hearing.

3. Twenty-six (26) Class Members have submitted Requests for Exclusion as follows: Rhonda Wallace, Debra Jo Ruth, Eliseo Elizarraraz, Connie Alvarado, Nicolas Ramirez, Samantha Hudson, Gloria Capangan, Charlotte Rebecca Brooks, Francisco Buendia, Linda Lockman, Deborah Lynn Soto, Minh-Ngoc Nguyen, Sharon Valdez, Cosimo Cricchio, Bradley Little, Ester Salas, Michael Williams, Jackie Thao Nguyen, Gail Gutierrez, Lydia Torres, Sharman Grant, Denisse Naylonnavarette, Emmanuel Nkuyata Kantirro, Gillian Mangiapane, Andrew Ong, and Jennifer Heydon.

4. The Court finds and determines this notice procedure afforded adequate protections to the Class and provides the basis for the Court to make an informed decision regarding approval of the Settlement based on the responses of the Class. The Court finds and

1 determines the notice provided in this case was the best notice practicable, which satisfies the
2 requirements of law and due process.

3 5. For purposes of Settlement approval only, the Court finds: (a) the proposed Class
4 is ascertainable and so numerous joinder of all Class Members is impracticable; (b) there are
5 questions of law or fact common to the proposed Class, and a well-defined community of interest
6 among Class Members with respect to the subject matter of the class action; (c) the claims of the
7 Class Representative are typical of Class Members' claims; (d) the Class Representative has and
8 will fairly and adequately protect Class Members' interests; (e) a class action is superior to other
9 available methods for efficient adjudication of this controversy in the context of settlement; and
10 (f) counsel of record for the Class Representative are qualified to serve as Counsel for the Class.

11 6. The Court confirms certification, for settlement purposes only, of a Class defined
12 as: individuals who, as non-exempt Costco Wholesale Corporation employees in California
13 during the Settlement Period of September 30, 2017 through July 6, 2022, (a) earned wages at
14 more than one rate during a week when they took paid sick leave, (b) took paid sick leave at any
15 time during the period March 2, 2020 through February 28, 2021, or (c) took sick leave at any
16 time during the six-month measuring period prior to receiving an Extra Check. Provided,
17 however, that an individual who would otherwise be a Class Member is not a Class Member if
18 that individual has sued Defendant Costco Wholesale Corporation on any claim to be released or
19 precluded as part of this Agreement, or to the extent that the individual worked at any of Costco's
20 distribution centers, known as Depots, in Tracy and Mira Loma, California.

21 7. For settlement purposes, Aggrieved Employees are defined as: all Class Members
22 who took paid sick leave during the period September 30, 2020 to July 6, 2022 ("PAGA Period").

23 8. The Court finds and determines the terms set forth in the Agreement are fair,
24 reasonable, and adequate and, having found the Settlement was reached as a result of informed
25 and non-collusive arms'-length negotiations facilitated by a neutral and experienced mediator,
26 directs the Parties to effectuate the Settlement according to the Agreement's terms. The Court
27 finds the Parties conducted extensive investigation, research, and informal discovery, and that
28 their attorneys were able to reasonably evaluate their respective positions. The Court also finds

1 that settlement will enable the Parties to avoid additional and potentially substantial litigation
2 costs, as well as delay and risks if litigation continued.

3 9. The Court finds and determines the terms of the Settlement are fair, reasonable and
4 adequate to the Class and each Class Member, the Settlement is ordered finally approved, and all
5 terms of the Agreement should be and are ordered to be consummated.

6 10. The Court finds and determines that the Settlement Payments to be paid to
7 Participating Settlement Class Members and Aggrieved Employees as provided for by the
8 Settlement are fair and reasonable. The Court grants final approval to and orders the payment of
9 those amounts be made to the Participating Settlement Class Members and Aggrieved Employees
10 in accordance with the Agreement.

11 11. The Court finds and determines fees and expenses to administer the Settlement
12 incurred by Atticus Administration, LLC, of \$128,682.00 are fair and reasonable. The Court
13 grants final approval to and orders payment of that amount in accordance with the Agreement.

14 12. The Court finds and determines the Class Representative Service Payment of
15 \$10,000.00 to Plaintiff Rebecca De Benning is fair and reasonable, and orders the Administrator
16 to make this payment in accordance with the terms of the Agreement.

17 13. The Court finds and determines payment to the California Labor and Workforce
18 Development Agency of \$225,000.00 as its share of the Settlement of civil penalties under the
19 Private Attorneys General Act is fair, reasonable, and appropriate. The Court grants final approval
20 to and orders that amount be paid in accordance with the Agreement.

21 14. The Court awards Class Counsel attorneys' fees of \$3,000,000.00 and litigation
22 costs of \$18,335.00. The Court finds such amounts to be fair and reasonable. The Court orders
23 the Administrator to make these payments in accordance with the Agreement.

24 15. Without affecting the finality of this Order or the entry of judgment in any way,
25 the Court retains jurisdiction of all matters relating to the interpretation, administration,
26 implementation, effectuation, and enforcement of this Order and the Agreement.

27 16. The Settlement is not an admission of liability by Defendant Costco Wholesale
28 Corporation or any Released Party, nor is this Order or the entry of judgment a finding any claim

1 in the Actions against Defendant is valid. Neither this Order or the entry of judgment, nor the
2 Settlement, may be construed as, or used as an admission of any fault, wrongdoing or liability by
3 Defendant or any Released Party. Entering or carrying out the Settlement, and related
4 negotiations, shall not be offered in evidence against Defendant or Released Parties in any action
5 or proceeding in any court, administrative agency or other tribunal for any purpose other than to
6 enforce this Order or Judgment of Settlement. Notwithstanding these restrictions, any Released
7 Party may file in the Action or any proceeding, this Order or Judgment, the Settlement, or any
8 papers on file in the Action, to support a defense of res judicata, collateral estoppel, release, or
9 other theory of claim or issue preclusion or similar defense.

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

22 18. Plaintiff, on behalf of herself, the State of California, and all Aggrieved
23 Employees, relinquishes all rights to PAGA claims with respect to any alleged failure during the
24 PAGA Period to comply with the Labor Code, and covenants not to participate in any actions,
25 lawsuits, proceedings, complaints, or charges in any court or before any administrative body
26 against any Released Party related to any claims that Plaintiff brought or could have brought under
27 the facts she has alleged in this Action.

28 ///

1 19. Nothing in this Order shall preclude any action to enforce the Parties' obligations
2 under the Agreement or this Order, including Defendant's obligation to make payments to
3 Participating Settlement Class Members and Aggrieved Employees set forth in the Agreement.

4 20. The Court enters final judgment in accordance with the terms of the Agreement,
5 the Court's Preliminary Approval Order, and this Order.

6 21. The Judgment once entered shall constitute a judgment for purposes of California
7 Rules of Court, Rule 3.769(h). In accordance with, and for the reasons stated in, this Order,
8 judgment shall be entered within the meaning and for purposes of Code of Civil Procedure §§ 577
9 and 904.1(a), and the Plaintiff/Class Representative and Participating Settlement Class Members
10 shall take nothing from Defendant Costco Wholesale Corporation except as expressly set forth in
11 the Agreement.

12 22. The Parties will comply with Cal. Rules of Court Rule 3.771(b), by giving notice
13 to the Class Members with the posting of the Final Approval Order and this Judgment on the
14 Settlement Administrator's website, www.CostcoWageAndHourSettlement.com.

15 23. Pursuant to Labor Code section 2699(1)(3), Plaintiff shall submit a copy of this
16 Order and Judgment to the California Labor and Workforce Development Agency within 10 days
17 after entry of the Judgment.

18 24. The Parties will bear their own costs and attorneys' fees except as otherwise
19 provided by this Court's Order awarding Class Counsels' attorneys' fees and litigation costs.

20 25. The Court sets a Compliance Hearing for October 12, 2023;
21 @ 1:30 p.m.
22 the Administrator's declaration regarding its work and final disbursements will be filed with the
23 Court five (5) court days before the hearing.

24 IT IS SO ORDERED.

25 Date: 2/17/23



26 The Honorable Jill H. Talley
27 Judge of the Superior Court
28

EXHIBIT 2

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO
GORDON D SCHABER COURTHOUSE**

MINUTE ORDER

DATE: 02/10/2023

TIME: 09:00:00 AM

DEPT: 27

JUDICIAL OFFICER PRESIDING: Jill H. Talley

CLERK: T. Shaddix

REPORTER/ERM: none

BAILIFF/COURT ATTENDANT: C. Carrillo

CASE NO: **34-2021-00309030-CU-OE-GDS** CASE INIT.DATE: 09/30/2021

CASE TITLE: **De Benning vs. Costco Wholesale Corporation, a Washington Corporation**

CASE CATEGORY: Civil - Unlimited

EVENT TYPE: Motion - Other - Civil Law and Motion

APPEARANCES

Jeff Geraci, self represented Attorney, appeared remotely via video.

David Jacobson, counsel, present for Defendant(s) remotely via video.

The above-entitled matter came before this Court for a motion for final approval of class action settlement with the above-named counsel present and appearing remotely via Zoom.

There being no objections from any parties the court affirms the tentative ruling.

TENTATIVE AFFIRMED

Plaintiff Rebecca De Benning's motion for final approval of class action settlement is UNOPPOSED and TENTATIVELY GRANTED pending the final fairness hearing. (Code Civ. Proc., § 382, Rules of Court, Rule 3.769.)

Overview

On September 30, 2021, Plaintiff filed her wage and hour class action complaint against Defendant Costco Wholesale Corporation. On November 8, 2021, Plaintiff filed the operative first amended complaint to add claims for civil penalties pursuant to the California Private Attorneys General Act of 2004. The operative complaint alleges the following causes of action: (1) failure to provide sick pay; (2) failure to timely pay wages due at separation from employment; (3) violations of the unfair competition law; (4) PAGA penalties for failure to provide sick pay; and (5) PAGA penalties for failure to timely pay final wages.

In advance of mediation, Defendant provided sick leave policies effective during the class period, information regarding the method used to calculate sick leave, a random sample of complete data for 100 employees, and aggregate data showing numbers of putative class members, and total number of hours employees received sick pay, and pay periods in which sick leave was received and two different rates were paid, an Outstanding Service Bonus was paid, or to which an Extra Check could have applied. (Geraci Decl. ¶ 25.) On April 7, 2022, the Parties mediated with Mark S. Rudy, Esq. and reached a settlement in principle after a full day mediation. (*Id.* at ¶ 26.) The Parties thereafter negotiated all necessary terms and entered into a written Settlement Agreement. (Geraci Decl. ¶ 26; Geraci Decl. in Support of Preliminary Approval at Ex. 1.)

On October 31, 2022, the Court granted preliminary settlement approval. Plaintiff now seeks final approval of this class and representative action settlement. This ruling incorporates by reference the definitions in the Settlement Agreement and all capitalized terms defined therein shall have the same meaning in this ruling as set forth in the Settlement Agreement.

Settlement Class Certification

The Court preliminarily certified the following class for settlement purposes: individuals who, as non-exempt Costco employees in California during the Settlement Period, (a) earned wages at more than one 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. (Settlement Agreement at ¶ 1.09.) The Settlement Period is defined as the period beginning on September 30, 2017 and July 6, 2022. (*Id.* at ¶ 1.46.)

On December 12, 2022, the Class Notice was sent to 52,871 Class Members. (Bridley Decl. ¶ 6.) Ultimately 272 notices were undeliverable despite the settlement administrator's use of a skip trace to locate updated addresses. (*Id.* at ¶ 7.) The deadline to respond to the Class Notice is January 26, 2023. (*Id.* at ¶ 11.) As of February 3, 2023, there have been 26 requests for exclusion and no objections to the settlement. (Supplemental Bridley Decl. ¶¶ 5-6.) The Court finds that there has been no material change of events and intends to grant final certification of the Settlement Class pending the final approval hearing.

Aggrieved Employees

Aggrieved Employees are all Class Members who took paid sick leave from September 30, 2020 through July 6, 2022. (Settlement Agreement at ¶¶ 1.3, 1.34.) Individuals who opted out from the class settlement will still receive PAGA Payments if they are Aggrieved Employees. Notice of this settlement and motion was provided to the LWDA. (Declaration of Service Upon Interested Parties and the Labor and Workforce Development Agency.)

Class Representative

The Court intends to appoint Plaintiff Rebecca De Benning as class representative for settlement purposes ("Class Representative").

Class Counsel

The Court intends to appoint Cohelan Khoury & Singer, LLC and Law Office of Sahag Majarian II as Class Counsel for settlement purposes ("Class Counsel").

Fair, Adequate and Reasonable Settlement

The Court must find a settlement is "fair, adequate, and reasonable" before approving a class action settlement. (*Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 244-245.) The trial court has broad discretion to determine whether a proposed settlement in a class action is fair, adequate, and reasonable. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) "[A] presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and

discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." (*Id.* at 1802.) In making its fairness determination, the Court considers the strength of the Plaintiff's case, the risk, expenses, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the state of the proceedings, and the experience and views of counsel. (*Id.* 1801.) In approving a class action settlement, the Court must "satisfy itself that the class settlement is within the 'ballpark' of reasonableness." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.)

Here, the Settlement Agreement provides that Defendant will pay the Gross Settlement Amount ("GSA") of \$9,000,000.00, which includes the following: (1) settlement administration costs to Atticus Administration, LLC in the amount of \$128,682; (2) attorneys' fees of \$3,000,000 (one-third of the GSA); (3) litigation costs of \$18,335; (4) a service payment to the Class Representative in the amount of \$10,000; and (5) a PAGA payment of \$300,000 (\$225,000 to the LWDA (75%) and \$75,000 (25%) to Aggrieved Employees). (Settlement Agreement at ¶¶ 3, 6.2, 6.3, 6.4, 6.5; Geraci Decl. ¶ 37 & Exs. 1-2; Majarian Decl. ¶¶ 10-11.) Defendant will pay the employer's share of payroll taxes in addition to the GSA. (Settlement Agreement at ¶ 6.8.3.) Plaintiff consented to apportion fees as follows: 50% to Cohelan Khoury & Singer, and 50% to Law Offices of Sahag Majarian II. (Geraci Decl. ¶ 28.) Class Members have 180 days to cash their settlement checks from the date of mailing. Any uncashed checks shall be voided and the principal of for those uncashed checks shall be transmitted 50% to the Los Angeles Center for Law and Justice and 50% to Legal Aid at Work. (Settlement Agreement at ¶ 6.9.)

Disposition

The Court tentatively finds that the settlement is fair, reasonable and adequate in light of all of the circumstances presented. Provided that no objection is asserted by any class member at the hearing on this matter, the Court anticipates signing the proposed order. The Court also intends to grant the request for attorney's fees, litigation costs, and a service payment Plaintiff.

The Court will set a post-judgment hearing pursuant to Code of Civil Procedure section 384 for October 12, 2023 at 1:30 p.m. in this department. No later than September 28, 2023, Plaintiffs shall file a status report informing the Court of the status of payments to Class Members and the payment of any uncashed checks to the *cy pres* recipient.

Please take Notice, effective January 23, 2023, department 25 is moved to department 27. The Hon. Jill Talley remains presiding over complex civil cases currently assigned. All hearings currently set shall remain in place and will be heard in Department 27 via Zoom.

The Court orders the parties to appear via zoom.

The matter shall be held via Zoom with the links below:

To join by Zoom link – <https://saccourt-ca-gov.zoomgov.com/my/sscdept27>

To join by Room: Dept27a

To join by phone dial (833) 568-8864 / ID: 16120204632

Parties requesting services of a court reporter will need to arrange for private court reporter services at their own expense, pursuant to Government code §68086 and California Rules of Court, Rule 2.956. Requirements for requesting a court reporter are listed in the Policy for Official Reporter Pro Tempore available on the Sacramento Superior Court website at

<https://www.saccourt.ca.gov/court-reporters/docs/crtrp-6a.pdf>. Parties may contact Court-Approved Official Reporters Pro Tempore by utilizing the list of Court Approved Official Reporters Pro Tempore available at <https://www.saccourt.ca.gov/court-reporters/docs/crtrp-13.Pdf>

A Stipulation and Appointment of Official Reporter Pro Tempore (CV/E-206) is required to be signed by each party, the private court reporter, and the Judge prior to the hearing, if not using a reporter from the Court's Approved Official Reporter Pro Tempore list, Once the form is signed it must be filed with the clerk.

If a litigant has been granted a fee waiver and requests a court reporter, the party must submit a Request for Court Reporter by a Party with a Fee Waiver (CV/E-211) and it must be filed with the clerk at least 10 days prior to the hearing or at the time the proceeding is scheduled if less than 10 days away. Once approved, the clerk will be forward the form to the Court Reporter's Office and an official reporter will be provided.

Counsel for Plaintiff is directed to notice all parties of this order.

The Status Conference - Civil Special Sets post judgment hearing is scheduled for 10/12/2023 at 01:30 PM in Department 27.