

CLASS SETTLEMENT AGREEMENT

This class settlement agreement (“Settlement Agreement”) is entered into by and between Costco Wholesale Corporation (“Costco”) and Scott Pearlstone (“Plaintiff”), both individually and on behalf of the Settlement Class Members.

I. RECITALS

WHEREAS, on April 19, 2018, Plaintiff filed a putative class action lawsuit against Costco in the United States District Court for the Eastern District of Missouri, captioned *Scott Pearlstone v. Costco Wholesale Corporation*, No. 4:18-cv-00630 (E.D. Mo.) (the “Litigation”).

WHEREAS, Plaintiff’s Complaint filed in the Litigation pleads three counts against Costco for: (I) breach of contract, (II) unjust enrichment, and (III) violation of the Missouri Merchandising Practices Act (“MMPA”), Mo. Ann. Stat. 407.010 *et seq.*

WHEREAS, Plaintiff’s Complaint alleges, among other things, that Costco enters into contracts with its customers which permit customers who enroll in a Costco executive membership to cancel their membership at any time and receive a full refund of their membership and upgrade fees. Plaintiff asserts that Costco breached the contracts by failing to provide certain cancelling executive members with a full cash refund and instead Costco partially refunded the membership fee by subtracting the amount of any outstanding rewards certificate from the refund.

WHEREAS, over the course of the proceedings in the Litigation, the Parties engaged in lengthy motion practice, including a Rule 12(b)(6) motion to dismiss and a contested motion for leave to file an amended answer filed by Costco, a motion to strike filed by Plaintiff, and discovery motions filed by both Parties.

WHEREAS, the Parties also engaged in extensive discovery, including exchange of written discovery requests, review and production of documents, a Federal Rule 30(b)(6) deposition of Costco, production of an expert report on behalf of Plaintiff, a motion to compel production filed by Plaintiff, and a motion to quash filed by Costco.

WHEREAS, as the Parties were nearing completion of class discovery, and while Plaintiff was preparing to move for class certification, the Parties decided to explore the possibility of settlement. Plaintiff and Costco engaged in arms’-length settlement negotiations, including a full-day mediation before retired Illinois Appellate Court Judge Stuart E. Palmer of JAMS Chicago, an experienced mediator.

WHEREAS, following the mediation, the Parties’ negotiations continued over the course of several weeks. With the assistance of Judge Palmer (ret.), Plaintiff and Costco eventually reached an agreement by which Plaintiff and Costco wish to resolve the claims against Costco in the Litigation on a class basis.

WHEREAS, the Parties now seek to enter into this Settlement Agreement. Plaintiff and Class Counsel have conducted an investigation into the facts and the law underlying Plaintiff’s

and the Settlement Class Members' claims and have concluded that a settlement according to the terms set forth below is fair, reasonable, adequate, and beneficial to and in the best interests of Plaintiff and the Settlement Class in light of (1) the existence of complex and contested issues of law and fact, (2) the risks inherent in litigation, (3) the likelihood that future proceedings will be unduly protracted and expensive if the proceeding is not settled by voluntary agreement, (4) the magnitude of the benefits derived from the contemplated settlement in light of both the maximum potential and likely range of recovery to be obtained through further litigation and the expense thereof, as well as the potential of no recovery whatsoever, and (5) the Plaintiff's determination that the settlement is fair, reasonable, and adequate, and will substantially benefit the Settlement Class Members.

WHEREAS, the Parties shall use their best efforts to effectuate this Agreement, including but not limited to cooperating in promptly seeking court approval of this Agreement, certification of the Settlement Class, and release of the Released Claims.

WHEREAS, in consideration of the covenants, agreements, and releases set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and among the undersigned that the Litigation be settled and compromised, and that the Releasers release the Releasees of the Released Claims, without costs as to Releasees, Plaintiffs, Class Counsel, or the Settlement Class, except as explicitly provided for in this Agreement, subject to the approval of the Court, on the following terms and conditions.

II. DEFINITIONS

The following terms, as used in this Agreement, have the following meanings:

1. "Administrative Expenses" shall mean expenses associated with the Settlement Administrator, including but not limited to costs of providing notice, communicating with Settlement Class Members, establishing the settlement website, and disbursing payments to the proposed Settlement Class Members.
2. "Approved Claims" shall mean complete and timely claims, submitted by Settlement Class Members, that have been approved for payment by the Settlement Administrator.
3. "Claim Form" shall mean the form that Settlement Class Members may submit to obtain compensation under this Settlement Agreement. The Claim Form shall be substantially in the form attached hereto as Exhibit 1.
4. "Claims Deadline" shall mean the date by which all Claim Forms must be postmarked to be considered timely and shall be set as a date approximately one hundred and twenty (120) days after entry of the Preliminary Approval Order, or such other date ordered by the Court. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order as well as in the class notices and the Claim Form.

5. “Settlement Class Member” shall mean each member of the Settlement Class, as defined in Section III of this Agreement, who does not timely elect to be excluded from the Settlement Class, and includes, but is not limited to, Plaintiff.
6. “Class Counsel” shall refer to Myles McGuire, Paul T. Geske, and Brendan Duffner of MCGUIRE LAW, P.C.
7. “Class Period” shall mean the period between the applicable limitations deadlines listed on the appendix attached hereto and the date of the Court’s Preliminary Approval Order.
8. “Class Release” shall have the meaning set forth in Section VII of this Agreement.
9. “Class Relief” means those benefits awarded to Settlement Class Members by the Settlement Agreement, including without limitation the right to submit a Claim Form.
10. “Complaint” means Plaintiff’s Class Action Complaint, filed in the Litigation on April 19, 2018.
11. “Costco” shall mean Costco Wholesale Corporation.
12. “Costco’s Counsel” shall refer to Todd W. Ruskamp and Russell J. Shankland of Shook, Hardy & Bacon L.L.P.
13. “Counsel” means both Class Counsel and Costco’s Counsel, as defined in Paragraphs 6 and 12.
14. “Court” shall mean the court presiding over approval of the Settlement.
15. “Effective Date” shall mean the date when the Settlement Agreement becomes Final. For purposes of this Agreement, the Settlement Agreement becomes “Final” when the Final Approval Order has been entered on the docket and (a) the time to appeal from such order has expired and no appeal has been timely filed; (b) if such an appeal has been filed, it has been finally resolved and has resulted in an affirmance of the Final Approval Order; or (c) the Court following the resolution of the appeal enters a further order or orders approving a settlement on the material terms set forth herein, and either no further appeal is taken from such order(s) or any such appeal has been finally resolved and has resulted in affirmance of such order(s).
16. “Final Approval Order” shall mean an order entered by the Court that:
 - i. Grants final approval to the terms of the Settlement Agreement;

- ii. Finds that the Settlement Agreement is fair, reasonable, and adequate, was entered into in good faith and without collusion, and approves and directs consummation of this Settlement Agreement;
 - iii. Approves the Release provided in Section VII and orders that, as of the Effective Date, the Released Claims will be released as to Releasees; and
 - iv. Finds that there is no just reason for delay of entry of final judgment with respect to the foregoing, and without awarding costs, except as explicitly provided for in this Settlement Agreement.
- 17. “Execution Date” shall mean the date on which this Settlement Agreement is fully executed by all Parties.
 - 18. “Fee Award” means the amount of attorneys’ fees and reimbursement of costs and expenses awarded to Class Counsel by the Court.
 - 19. “Incentive Award” shall have the meaning given to it in Section XV of this Agreement.
 - 20. “Opt-Out” shall mean a written request for exclusion from a Settlement Class as provided in Section X of this Settlement Agreement.
 - 21. “Parties” shall mean Plaintiff, Costco, and the Settlement Class.
 - 22. “Plaintiff” or “Class Representative” shall mean Scott Pearlstone.
 - 23. “Preliminary Approval Order” shall mean an order entered by the Court that certifies the Settlement Class, directs that notice be distributed, and preliminarily approves the Settlement Agreement.
 - 24. “Released Claims” shall mean any and all claims against Releasees whatsoever arising out of, related to, or connected with the refund of membership and upgrade fees upon cancellation of a Costco executive membership, including any and all claims asserted in the Litigation.
 - 25. “Releasees” shall refer, jointly and severally, and individually and collectively, to Costco and its past and present affiliates, divisions, subsidiaries, related companies, predecessors and successors, all present and former officers, directors, agents, attorneys, employees, assigns, board members, contractors, vendors and insurers, and anyone acting or purporting to act on behalf of any of them.
 - 26. “Releasers” shall refer, jointly and severally, and individually and collectively, to Plaintiff, the Settlement Class Members, and to each of their predecessors,

successors, heirs, executors, administrators, and assigns of each of the foregoing, and anyone claiming by, through, or on behalf of them.

27. “Settlement Administrator” means Kurtzman Carson Consultants LLC (“KCC”), the entity mutually selected and supervised by the Parties to administer the settlement.
28. “Settlement Fund” means or refers to the settlement fund in the amount of five hundred and twenty-five thousand dollars (\$525,000.00) as provided for below in Section V.
29. “Settlement Website” means a website established and administered by the Settlement Administrator, which shall contain information about the settlement, including electronic copies of the Long Form Notice, Short Form Notice, this Settlement Agreement, and all Court documents related to the settlement. The URL of the Settlement Website shall be www.cwcexcefeerefundclassaction.com or such other URL as Class Counsel and Defendant’s Counsel may subsequently agree to in writing. Settlement Class Members shall be able to submit Claims Forms via the Settlement Website.

III. SETTLEMENT CLASS CERTIFICATION

30. Subject to Court approval, the following Settlement Class shall be certified:

All individuals in the United States who, during the Class Period, purchased a Costco executive membership and subsequently cancelled their membership but were not refunded the full membership and upgrade fees they originally paid without any credit for a rewards certificate received prior to cancellation.

31. Excluded from the Settlement Class are Costco; any entity that is a subsidiary of or is controlled by Costco; any officer, director, or employee of Costco and any immediate family member of such officer, director, or employee; any members of the judiciary assigned to preside over the Litigation, his or her spouse, and members of his or her staff; and any persons who opt out pursuant to and in compliance with Section X of this Agreement.
32. If for any reason the Settlement is not granted preliminary and final approval, the Parties’ agreement to certification of the Settlement Class shall not be used for any purpose in the Litigation, including in any request for class certification in the Litigation or any other proceeding.

IV. SETTLEMENT OF LITIGATION AND ALL CLAIMS AGAINST RELEASEES

33. Final approval of this Settlement Agreement will settle and resolve with finality, on behalf of the Plaintiff and the Settlement Class, the Litigation and the Released Claims and any other claims that have been brought, could have been brought, or could be brought now or at any time in the future against Releasees by the Plaintiff, Settlement Class Members, and their predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing, in the Litigation or in any other proceeding arising out of, in any manner related to, or connected in any way with the Released Claims.

V. SETTLEMENT FUND

34. Establishment of the Settlement Fund

- a. In addition to the other benefits provided under this Settlement, Costco agrees to establish a Settlement Fund of up to \$525,000.00 in exchange for the mutual releases and covenants set forth in this Agreement, including, without limitation, a full, fair, and complete release of all Releasees from Released Claims and dismissal of the Litigation with prejudice.
- b. The Settlement Administrator shall open and maintain an account for the Settlement Fund.
- c. The funds provided to the Settlement Administrator will be maintained by an escrow agent as a Court-approved Qualified Settlement Fund pursuant to Section 1.468B-1 *et seq.* of the Treasury Regulations promulgated under Section 468B of the Internal Revenue Code of 1986, as amended, and shall be deposited in an interest-bearing account.
- d. The monies deposited in the Settlement Fund shall be used to pay (i) Approved Claims submitted by Settlement Class Members who elect receive a cash payment under Benefit Option B set forth below in Paragraph 35; (ii) an Incentive Award to the Plaintiff as set forth below in Paragraph 68; (iii) an award of attorneys' fees, costs, and expenses to Class Counsel as set forth below in Section XV; and (iv) Administrative Expenses.
- e. Within thirty (30) days of Preliminary Approval of the Settlement Agreement, Costco shall transfer Fifty Thousand Dollars (\$50,000.00) to the Settlement Administrator to be deposited into the Settlement Fund for Administrative Expenses.
- f. If Administrative Expenses incurred before the Effective Date exceed the amount in the Settlement Fund, Costco shall deposit additional funds as are necessary to cover such Administrative Expenses.

- g. If the Settlement Agreement is not finally approved, any remaining Administrative Expenses in the Settlement Fund belong to Costco, less any Administrative Expenses paid out of the Settlement Fund.
- h. Within thirty (30) days of the Effective Date, Costco shall deposit funds in the Settlement Fund in an amount such that the total amount disbursed by Costco for the Settlement Fund equals the sum of: all payments disbursed to Settlement Class Members who have elected to receive a cash payment under Benefit Option B; the Incentive Award for Plaintiff; the Court-approved award of attorneys' fees, costs, and expenses for Class Counsel; and any remaining Administrative Expenses.
- i. If the total amount to be disbursed to the Settlement Class following deductions would exhaust the Settlement Fund, the amount of each individual payment to the Settlement Class Members will be reduced *pro rata* so that all Approved Claims can be paid after payment of Administrative Expenses to the Settlement Administrator, a Fee Award to Class Counsel, and an Incentive Award to the Class Representative.
- j. Any award of attorneys' fees and expenses, administrative costs, or any other fees, costs, or benefits otherwise awarded in connection with the Settlement Agreement shall be payable solely out of the Settlement Fund.
- k. Costco shall have no obligation to make further payments into the Settlement Fund, and shall have no financial responsibility or obligation relating to the Settlement beyond the Settlement Fund. Any portion of the Settlement Fund that is not paid for Approved Claims, attorneys' fees and expenses, administrative costs, or any other fees, costs, or benefits otherwise awarded in connection with the Settlement Agreement shall remain with Costco.
- l. Settlement benefits shall be allocated to the Settlement Class Members via a claims process set forth in Paragraphs 35-36.

35. **Payment of Approved Claims**

- a. A Settlement Class Member who timely submits a valid Claim Form shall be eligible to receive one of two Benefit Options only, at their election:
 - i. **Benefit Option A** – a free non-refundable, one-year gift of membership card usable for either a regular one-year Costco membership or a one-year extension of their existing membership; or
 - ii. **Benefit Option B** – An individual cash payment from the Settlement Fund in the amount of up to \$15, subject to *pro rata*

reduction so that all Approved Claims can be paid after deductions for Administrative Expenses to the Settlement Administrator, a Fee Award to Class Counsel, and an Incentive Award to the Class Representative.

- b. Settlement Class Members who do not submit a valid and timely Claim Form will not receive a Benefit Option from the Settlement Fund, but will be bound by the terms of this Settlement Agreement, including the release of Released Claims. There are no other options or benefits available to members of the Settlement Class aside from Benefit Option A and Benefit Option B, as set forth above.
- c. The Settlement Class Members shall be solely responsible for paying all tax obligations, if any, arising from payments to them in accordance with applicable law. Costco, Costco's Counsel, Plaintiff and Class Counsel shall have no responsibility or liability to any Settlement Class Member or other party for determining, withholding, or paying any taxes, if any, incurred in connection with this Settlement Agreement.
- d. The Court may require changes to the method of allocation to Settlement Class Members without invalidating this Settlement Agreement, provided that the other material terms of the Settlement Agreement are not altered, including but not limited to the scope of the Release as set forth in Section VII, the Class Period as set forth in Paragraph 7, and the provisions regarding the Settlement Fund as set forth in Paragraph 34.

36. Submission and Evaluation of Claims

- a. All claims must be submitted through a completed Claim Form. The Claim Form will require the Settlement Class Member to provide his or her full name, mailing address, contact telephone number, and the Benefit Option they wish to receive as set forth in Paragraph 35. Any Claim Form that lacks the requisite information will be deemed to be incomplete and ineligible for payment.
- b. Claim Forms must be submitted on or before the claims deadline included in the Preliminary Approval Order.
- c. Completed Claim Forms may be submitted via U.S. mail or via the Settlement Website directly to the Settlement Administrator for processing, assessment, and payment.
- d. A Settlement Class Member is not entitled to settlement benefits if he or she submits a Claim Form after the claims deadline; if the Claim Form is incomplete; or if the Claim Form contains false information.

- e. The Settlement Administrator shall have authority for determining if Settlement Class Members' Claim Forms are complete and timely, in which case they will be accepted as Approved Claims.
- f. Within seven (7) days of completion of its review of the Claim Forms, the Settlement Administrator will submit to the Parties a report listing all Approved Claims.
- g. Prompt payment shall be made by the Settlement Administrator on Approved Claims after the Effective Date of the settlement. The Settlement Administrator shall use the addresses provided by the Settlement Class Members on the Claim Forms.
- h. The Settlement Administrator shall notify the Parties that all Approved Claims have been paid within ten (10) days of the last such payment.
- i. In the event that checks sent to Settlement Class Members are not cashed within ninety (90) days of their mailing date, whether because the checks were not received or otherwise, those checks will become null and void. The amount of the uncashed checks after the expiration date, less any funds necessary for settlement administration, will be paid through *cy pres* to one or more recipients approved by the Court. The Court may revise this *cy pres* provision as necessary without terminating or otherwise impacting this settlement, provided the Court's revision does not increase the amount that Costco would otherwise pay under this Settlement Agreement.

VII. RELEASE

- 37. As of the Effective Date, and with the approval of the Court, all Releasors shall automatically be deemed to and hereby do fully, finally, and forever release, waive, discharge, surrender, forego, give up, abandon, and cancel any and all Released Claims against Releasees (the "Class Release"). As of the Effective Date, all Releasors will be forever barred and enjoined from prosecuting any action against the Releasees asserting any and/or all Released Claims.
- 38. Any Settlement Class Member may hereafter discover facts other than or different from those that the party knows or believes to be true with respect to the subject matter of the claims released under this Settlement Agreement or the law applicable to such claims may change. Nonetheless, each Settlement Class Member agrees that, as of the Effective Date, the party shall have automatically and irrevocably waived and fully, finally, and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, contingent or non-contingent claims with respect to all of the matters described in or subsumed by this Settlement Agreement. Further, each Settlement Class Member agrees and acknowledges that they shall be bound by this Settlement Agreement, including by the releases contained herein, and that all of their claims

in the Litigation shall be dismissed with prejudice and released, whether or not such claims are concealed or hidden; without regard to subsequent discovery of different or additional facts and subsequent changes in the law; and even if the party never receives actual notice of the Settlement or never receives a distribution of funds or benefits from the Settlement.

39. Each Releasor waives California Civil Code Section 1542 and similar provisions in other states. Each Releasor hereby certifies that he, she, or it is aware of and has read and reviewed the following provision of California Civil Code Section 1542 (“Section 1542”):

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

40. The provisions of the Class Release shall apply according to its terms, regardless of the provisions of Section 1542 or any equivalent, similar, or comparable present or future law or principle of law of any jurisdiction.
41. Each Releasor waives any and all defenses, rights, and benefits that may be derived from the provisions of applicable law in any jurisdiction that, absent such waiver, may limit the extent or effect of the release contained in this Agreement.
42. The Parties and each member of the proposed Settlement Class agree that the Benefit Options authorized under this Settlement Agreement represent the full satisfaction of each Settlement Class Member’s claims for the Released Claims.

VIII. CERTIFICATION OF THE SETTLEMENT CLASS AND RELATED MOTIONS

43. Plaintiff shall submit to the Court a motion: (a) for certification of the Settlement Class; (b) for preliminary approval of the Settlement Agreement; and (c) authorization to disseminate notice of class certification, the Settlement Agreement, and the final judgment contemplated by this Settlement Agreement to all potential Settlement Class Members.
- a. The motion shall include: (i) the definition of the Settlement Class for settlement purposes as set forth in Section III of this Agreement; (ii) a proposed form of, method for, and date of dissemination of notice; (iii) a proposed Preliminary Approval Order substantially in the form attached hereto as Exhibit 4; (iv) a proposed Claim Form; and (v) a date for the final approval hearing.
- b. The text of the items referred to in clauses (i) through (v) above shall be agreed upon by the Parties before submission of the motion.

- c. Costco will not object to Plaintiff's reasonable statement of the value of the Class Settlement in the request for approval of the Settlement Agreement and approval of an award of attorney's fees, costs, and an incentive award as set forth in Section XV.

IX. NOTICE TO PROPOSED SETTLEMENT CLASS MEMBERS

44. Notice to the Settlement Class Members shall be supervised and certified by a third-party Settlement Administrator approved by the Parties.
45. Within thirty (30) days of Preliminary Approval of the Settlement Agreement, the Settlement Administrator shall establish the Settlement Website and effectuate notice to the Settlement Class Members as described in this Section IX. The Settlement Website shall be maintained until sixty (60) days after the Effective Date and then taken down.
46. **Direct Notice**
 - a. Dissemination of notice to the potential Settlement Class Members shall be the responsibility of the Settlement Administrator. The text of notices shall be agreed upon by the Parties, and shall be substantially in the forms attached as Exhibits 2 (the Short Form Notice) and 3 (the Long Form Notice) hereto.
 - b. Costco, with the assistance of the Settlement Administrator as appropriate, shall create a list of contact information for potential Settlement Class Members, based on readily available information.
 - c. Direct notice shall consist of the form attached hereto as Exhibit 2 and be sent to all potential Settlement Class Members by electronic mail for those Settlement Class Members where email addresses are available and otherwise via U.S. Mail.
47. **Online Publication Notice**
 - a. Settlement Class Members shall also be notified of the Settlement via online publication notice via the establishment of a Settlement Website. The Settlement Website shall be established by the Settlement Administrator and shall contain information about the Settlement, including electronic copies of this Agreement as well as the Exhibits, including a long form notice of the Settlement substantially in the form attached hereto. The URL of the Settlement Website shall be www.cwcexecfeerefundclassaction.com or such other URL as Class Counsel and Costco may subsequently agree on in writing.

48. The Parties agree that distribution of notice in the manners described above constitutes the best notice practicable under the circumstances to members of the Settlement Class, and complies fully with any and all substantive and procedural due process rights guaranteed by the United States Constitution and any other applicable law. The Parties further agree that the notice sufficiently notifies the Settlement Class of the terms of the proposed Settlement, their right to object to the Settlement or to opt-out of the Settlement, and the deadlines and procedures to object, opt-out or submit a Claim Form in connection with this Settlement.

X. OPT-OUTS

49. Opt-Out Period

- a. Settlement Class Members will have up to and including one hundred and twenty (120) days following entry of the Preliminary Approval Order to opt out of the settlement in accordance with this Section (the “Opt-Out Period”). If the Settlement is finally approved by the Court, all Settlement Class Members who have not opted out by the end of the Opt-Out Period will be bound by the Settlement and the Release (without regard to whether they submit a Claim Form), and the relief provided by the Settlement will be their sole and exclusive remedy for the Released Claims.

50. Opt-Out Process

- a. Any potential Settlement Class Member who wishes to be excluded from the settlement must provide a request for exclusion to the Settlement Administrator, known as an “Opt-Out.”
- b. In order to be valid, the Opt-Out must be mailed to the Settlement Administrator and state the following in writing: (a) the Settlement Class Member’s name, mailing address, email, and telephone number; and (b) that the Settlement Class Member wishes to be excluded from the Settlement Class. An Opt-Out must be personally signed by the Settlement Class Member and must be mailed to the address provided in the Notice. The Opt-Out request must be postmarked within the Opt-Out Period and received within five (5) business days after the Opt-Out Period.
- c. Within seven (7) business days after conclusion of the Opt-Out Period, the Settlement Administrator shall provide Counsel a written list reflecting all timely and valid Opt-Outs from the Settlement Class.

XI. OBJECTIONS

51. Settlement Class Members may object to approval of this Agreement up to and including the date ordered by the Court in the Preliminary Approval Order.

52. The Parties will request that the Court order that any Settlement Class Member who has any objection to certification of the Settlement Class, approval of this Settlement Agreement or any of its terms, or the approval process, must send his or her objection to the Settlement Administrator, Class Counsel, and Costco's Counsel providing:
- a. the case name and case number(s) of the Litigation;
 - b. the objector's full name, current address, email, and phone number;
 - c. the reasons why the objector objects to the Settlement along with any supporting materials;
 - d. information about other objections the objector or his or her lawyer(s) have made in other class action cases in the last five (5) years; and
 - e. the objector's signature.
53. The Parties will request that the Court set the Objection Deadline at least one hundred and twenty (120) days after entry of the Preliminary Approval Order. The Parties will request that the Court order that failure to comply timely and fully with these procedures shall result in the invalidity and rejection of an objection. The Parties will request that the Court order that no Settlement Class Member shall be entitled to be heard at the Final Approval Hearing (whether individually or through the objector's counsel), or to object to certification of the Settlement Class or to the Settlement Agreement, and no written objections or briefs submitted by any Settlement Class Member shall be received or considered by the Court at the Final Approval Hearing, unless written notice of the Settlement Class Member's objection and any brief in support of the objection have been served upon all Counsel not later than 14 days before the date of the Final Approval Hearing.
54. In the event the Parties determine that an objection is frivolous or otherwise without merit, the Parties shall request that the Court, within its discretion, overrule the objection and award appropriate costs and fees to the Parties in opposing such objection(s).
55. The Parties will request that the Court order that Settlement Class Members who fail to file and serve timely written objections in accordance with this Section shall be deemed to have waived any objections and shall be foreclosed from making any objection to the certification of the Settlement Class or to the Settlement Agreement.

XII. FINAL APPROVAL

56. The Parties will jointly request that the Court hold a Final Approval Hearing.

57. At the Final Approval Hearing, the Parties will request that the Court: (1) consider any properly filed objections to the Settlement Agreement; (2) determine whether the Settlement Agreement is fair, reasonable, and adequate, was entered into in good faith and without collusion, and should be approved; (3) provide findings in connection therewith; and (4) enter the Final Approval Order, including final approval of certification of the Settlement Class and the Settlement Agreement and an award of attorneys' fees and expenses.
58. Final Approval Order
- a. The Parties shall jointly seek entry of a Final Approval Order, the text of shall be substantially in the form of Exhibit 5, attached hereto.
 - b. The Parties shall jointly submit to the Court a proposed order, substantially in the form attached hereto as Exhibit 5 that, without limitation:
 - i. Approves finally this Agreement and its terms as being a fair, reasonable, and adequate settlement as to the Settlement Class Members and directing its consummation according to its terms;
 - ii. Dismisses, with prejudice, all claims of the Settlement Class in the Litigation, without costs and fees except as explicitly provided for in this Agreement; and
 - iii. Reserves continuing and exclusive jurisdiction over the settlement and this Agreement, including but not limited to the Litigation, the Settlement Class, the Settlement Class Members, Costco and the settlement for the purposes of administering, consummating, supervising, construing and enforcing the Settlement Agreement and the Settlement Fund.
59. Class Counsel shall use their best efforts to assist in obtaining dismissal with prejudice of the Litigation and take all steps necessary and appropriate to otherwise effectuate all aspects of this Agreement.

XIII. BAR ORDER

60. As part of the Final Approval Order, the Court shall issue a bar order and permanent injunction against any and all pending or future claims by Settlement Class Members against Releasees raising or arising out of a Released Claim.
61. The bar order and permanent injunction shall enjoin and forever bar any and all Settlement Class Members from commencing and/or maintaining any action, legal or otherwise, against Releasees raising or arising out of a Released Claim.

62. This provision is not intended to prevent or impede the enforcement of claims or entitlement to benefits under this Settlement Agreement.

XIV. TERMINATION OF THE AGREEMENT

63. The Settlement is conditioned upon preliminary and final approval of the Parties' written Settlement Agreement, and all terms and conditions thereof without material change, amendments, or modifications by the Court (except to the extent such changes, amendments or modifications are agreed to in writing between the Parties). All Exhibits attached hereto are incorporated into this Settlement Agreement. Accordingly, this Settlement Agreement shall be terminated and cancelled, at the option of any Party, upon any of the following events:
- a. This Settlement Agreement is changed in any material respect to which the Parties have not agreed in writing;
 - b. The Court declines to enter the Preliminary Approval Order;
 - c. The Final Approval Order approving the Settlement and certifying the Settlement Class for the Class Period as provided in this Agreement is not entered by the Court or is reversed by a higher court; or
 - d. A Party to this Settlement Agreement materially breaches the Settlement Agreement and such breach materially frustrates the purposes of this Agreement.
64. In the event the Settlement Agreement is not approved or does not become final, or is terminated consistent with this Settlement Agreement, the Parties, pleadings, and proceedings will return to the *status quo ante* as if no settlement approval had been sought, and the Parties will negotiate in good faith to establish a new schedule for the Litigation.

XV. ATTORNEY'S FEES AND INCENTIVE AWARD

65. Class Counsel may petition the Court for an award of attorneys' fees up to 33% of the total Settlement Fund, or \$175,000, inclusive of their reasonable costs and expenses.
66. Costco agrees not to oppose an application for attorney's fees by Class Counsel in an amount not more than 33% of the Settlement Fund, or \$175,000, inclusive of their reasonable costs and expenses.
67. In no event will Costco's liability for attorney's fees, expenses, and costs exceed its funding obligations set out in this Agreement. Costco shall have no financial responsibility for this Settlement Agreement outside of the Settlement Fund. Costco shall have no further obligation for attorney's fees and costs to any counsel

representing or working on behalf of either one or more individual Settlement Class Members or the Settlement Class.

68. Prior to or at the same time as Plaintiff seeks final approval of the Settlement Agreement, Plaintiff may petition the Court for an Incentive Award in an amount not to exceed five thousand dollars (\$5,000.00), and Costco agrees that it will not oppose such a request. The Incentive Award shall be paid solely from the Settlement Fund.
69. The Settlement Administrator shall cause Plaintiff's incentive award and attorney's fees payments to be paid by check or wire transfer to the account designated by Plaintiff's counsel within fourteen days following the Effective Date.

XVI. REPRESENTATIONS

70. The Parties agree that the Settlement Agreement provides fair, equitable and just compensation, and a fair, equitable, and just process for determining eligibility for compensation for any given Settlement Class Member related to the Released Claims.
71. The Parties represent that they have obtained the requisite authority to enter this Settlement Agreement in a manner that binds each party to its terms.
72. The Parties shall use their best efforts to conclude the settlement and obtain the Final Approval Order, including affirmatively supporting the settlement in the event of an appeal.
73. Should the Parties be required to submit any information or documentation to the Court to obtain preliminary approval, such information shall be, to the fullest extent permitted, for review by the Court in camera only, to the extent that Plaintiff and/or Costco request that information to remain confidential and the Court grants any such request.
74. The Parties specifically acknowledge, agree and admit that this Settlement Agreement and its Exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, correspondence, orders or other documents shall be considered a compromise within the meaning of Federal Rule of Evidence 408, and any other equivalent or similar rule of evidence of any state, and shall not (1) constitute, be construed as, be offered as, or received into evidence as an admission of the validity of any claim or defense, or the truth of any fact alleged or other allegation in the Litigation or in any other pending or subsequently filed action, or of any wrongdoing, fault, violation of law, or liability of any kind on the part of any Party, or (2) be used to establish a waiver of any defense or right, or to establish or contest jurisdiction or venue. Costco expressly denies any and all liability asserted in the Litigation.

75. The Parties also agree that this Settlement Agreement and its exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, correspondence, orders or other documents entered in furtherance of this Settlement Agreement, and any acts in the performance of this Settlement Agreement are not intended to establish grounds for certification of any class involving any Settlement Class Member other than for certification of the Settlement Class for settlement purposes.
76. The provisions of this Settlement Agreement, and any orders, pleadings or other documents entered in furtherance of this Settlement Agreement, may be offered or received in evidence solely (1) to enforce the terms and provisions hereof or thereof, (2) as may be specifically authorized by a court of competent jurisdiction after an adversary hearing upon application of a Party hereto, (3) in order to establish payment, or an affirmative defense of preclusion or bar in a subsequent case, (4) in connection with any motion to enjoin, stay or dismiss any other action, or (5) to obtain Court approval of the Settlement Agreement.
77. No Party may release any information relating to the Litigation that is not already publicly available. Parties (including their attorneys or agents) may, however, respond to media inquiries regarding the terms of the Settlement Agreement by simply referring any media to the publicly filed documents. If preliminary Court approval for the settlement is denied, the Parties and their attorneys and agents shall not make any negative or disparaging comments to the media or other third parties regarding the proposed settlement. Nothing in this provision shall be interpreted to limit representations that the Parties or their attorneys may make to the Court to assist it in its evaluation of the proposed Settlement; nor shall this provision prohibit Class Counsel from having attorney-client communications directly with Settlement Class Members. If a party is required by a valid, enforceable subpoena or government information request to disclose information about the settlement, such party shall provide reasonable prior notice (to the extent permitted by applicable law) to the other party to allow the other party to seek to prevent such disclosure. A party may also provide necessary and accurate information about the settlement to its shareholders and other persons or entities as required by securities laws or other applicable laws or regulations.
78. This Agreement shall be deemed executed as of the date that the last Party signatory signs the Agreement. This Agreement shall fully supersede any previous agreement entered into by the Parties.

XVII. MISCELLANEOUS

79. The Parties agree to hold all proceedings in the Litigation, except such proceedings necessary to implement and complete the Settlement, in abeyance pending the Final Approval Hearing to be conducted by the Court.
80. Whether or not this Settlement Agreement and the Settlement contemplated under the Settlement Agreement are consummated and effectuated, this Settlement

Agreement and the proceedings had in connection with the Settlement Agreement shall in no event be construed as, or be deemed to be, evidence of an admission or concession on the part of Costco of any liability or wrongdoing whatsoever. This Settlement Agreement, and each of its provisions, shall not be offered or received in evidence in the Litigation or any other action or proceeding as an admission or concession of liability or wrongdoing of any nature on the part of Costco.

81. No Party shall be deemed the drafter of this Agreement or any provision thereof. No presumption shall be deemed to exist in favor of or against any Party as a result of the preparation or negotiation of this Agreement. Plaintiff, on behalf of himself and the Settlement Class Members, and Costco, by its duly-appointed representative, acknowledge that: (i) they have read and understand the legal effect of this Settlement Agreement; (ii) they have had the benefit of the advice of counsel in connection with the review, execution and delivery of this Settlement Agreement; (iii) they have voluntarily executed and delivered this Settlement Agreement intending to be fully bound thereby in accordance with its terms; and (iv) that this Settlement Agreement is the result of arms-length negotiations involving experienced counsel.
82. This Agreement may not be modified or amended unless such modification or amendment is in writing executed by the Parties, except as specifically permitted by this Agreement. An electronic signature will be considered an original signature for purposes of execution of this Agreement. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties.
83. All terms of this Settlement Agreement and the Exhibits hereto shall be governed by and interpreted according to the laws of the State of Missouri. Any adjudicated dispute regarding the interpretation or validity of or otherwise arising out of this Settlement Agreement, or relating to the Litigation or the Released Claims, shall be subject to the exclusive jurisdiction of the United States District Court for the Eastern District of Missouri, and Plaintiff, Settlement Class Members, and Costco agree to submit to the personal and exclusive jurisdiction and venue of that Court for purposes of resolving such disputes.
84. Where this Agreement requires any Party to provide notice or any other communication or document to any other Party, such notice, communication, or document shall be provided by email or letter by overnight delivery to their counsel in the Litigation.
85. Nothing express or implied in this Agreement is intended or shall be construed to confer upon or give any person or entity other than the Parties, Releasees, and Settlement Class Members any right or remedy under or by reason of this Agreement. Each of the Releasees is an intended third-party beneficiary of this Agreement with respect to the Released Claims and shall have the right and power to enforce the release of the Released Claims in his, her or its favor against all Releasers.

86. This Agreement may be executed in multiple counterparts, all of which taken together shall constitute one and the same Settlement Agreement.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement by their duly authorized representatives on the dates stated below.

For Plaintiff and the Proposed Settlement Class:

By: Scott Pearlstone
DA38BBA0C8B4430...

Print Name: Scott Pearlstone

Date: 5/10/2020

By: Paul Geske

Print Name:

Paul Geske

Date: May 10, 2020

Myles McGuire
Paul T. Geske
MCGUIRE LAW, P.C.
55 W. Wacker Drive, 9th Floor
Chicago, IL 60601

Counsel for Plaintiff

For Costco Wholesale Corporation:

By: _____

Print Name:

Date: _____

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement by their duly authorized representatives on the dates stated below.

For Plaintiff and the Proposed Settlement Class:

By: _____

Print Name: Scott Pearlstone

Date: _____

By: _____

Print Name:

Date: _____

Myles McGuire
Paul T. Geske
MCGUIRE LAW, P.C.
55 W. Wacker Drive, 9th Floor
Chicago, IL 60601

Counsel for Plaintiff

For Costco Wholesale Corporation:

By: Paul Latham

Print Name: Paul Latham

SVP

Date: 5/11/20