

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

SCOTT PEARLSTONE, individually and on )  
behalf of similarly situated individuals, )

*Plaintiff,* )

v. )

COSTCO WHOLESALE CORPORATION, )

*Defendant.* )

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Case No. 4:18-cv-00630-SRC

Hon. Stephen R. Clark

**Preliminary Approval Order**

This matter having come before the Court for consideration of Plaintiff’s Unopposed Motion for Preliminary Approval of Class Action Settlement (the “Motion”), the Court having considered and reviewed Plaintiff’s Motion, the Parties’ class action Settlement Agreement, and all other papers that have been filed with the Court related to the Settlement Agreement, including all exhibits and attachments to the Motion and the Settlement Agreement, and having conducted a hearing on the record,

IT IS HEREBY ORDERED:

1. Unless stated otherwise, capitalized terms used in this Order are intended to have the meanings given to them in the Parties’ Settlement Agreement.
2. The Parties have applied to the Court for preliminary approval of the proposed Settlement, the terms of which are set forth in the Settlement Agreement, and have provided the Court with sufficient information to enable it to determine whether to certify the Settlement Class and order that notice be given to the Settlement Class Members.

3. Subject to further consideration by the Court at the time of final approval, the Court preliminarily approves the Parties' Settlement as falling within the range of possible final approval and as meriting notice to the Settlement Class Members for their consideration.

4. For settlement purposes only, the Court hereby certifies the Settlement Class defined as:

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.

5. 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 the Settlement Agreement.

6. For settlement purposes only, the Court preliminarily finds that the Parties' Settlement Agreement and the proposed Settlement Class satisfy all of the prerequisites to maintenance of a class action listed Federal Rule 23, including numerosity, commonality, typicality, and adequacy. Fed. R. Civ. P. 23(a). The Court further preliminarily finds that common issues of law and fact predominate over individualized issues, and that certification for settlement purposes is superior to alternative means of resolving the claims and disputes at issue in this Litigation. Fed. R. Civ. P. 23(b).

7. The Court further finds, preliminarily and for settlement purposes only, that the relief provided for the Settlement Class Members under the Settlement is fair, reasonable, and adequate, taking into account the considerations listed in Federal Rule 23(e)(2). In particular, Plaintiff and Class Counsel have adequately and capably represented the Settlement Class; the

Settlement Agreement was negotiated at arms-length between the Parties and only reached following a mediation with the assistance of the Hon. Stuart E. Palmer (Ret.) of JAMS Chicago; the monetary relief provided for the Class constitutes adequate compensation, taking into account the factors listed in Federal Rule 23(e)(2)(C); and the Settlement Agreement treats Settlement Class Members equitably relative to each other.

8. The Court appoints Plaintiff Scott Pearlstone as Class Representative of the Settlement Class, and the following counsel are appointed as Class Counsel for the Settlement Class:

Myles McGuire (only if pro hac admission is achieved)  
Paul T. Geske  
Brendan Duffner  
MCGUIRE LAW, P.C.  
55 W. Wacker Drive, 9th Fl.  
Chicago, IL 60601

9. The Court finds that Plaintiff and Class Counsel have and will continue to fairly and adequately represent and protect the interests of the members of the Settlement Class in accordance with Federal Rule 23(a)(4) and 23(e)(2)(A).

10. The Court approves, in form and content, the notice plan set forth in the Settlement Agreement, and finds that the notice plan provides the best notice that is practicable under the circumstances. The Court further finds that the Parties' notice plan satisfies Due Process, such that the Settlement Agreement and Final Approval Order will be binding on all Settlement Class Members.

11. The Court finds that the Short Form Notice and the Long Form Notice attached to the Settlement Agreement meet all of the requirements and contain all the required information listed in Federal Rule 23(c)(2) and 23(e)(1). No notice other than that specifically identified in the Settlement Agreement is necessary in this action. The Parties, by agreement, may revise the notices

and Claim Form in ways that are not material, or in ways that are appropriate to update the documents for purposes of accuracy, readability, or formatting.

12. KCC is hereby appointed Settlement Administrator to supervise and administer the notice process, as well as to oversee the claims submission process and administration of the Settlement, as more fully described in the Settlement Agreement. Pursuant to Section IX of the Settlement Agreement, Defendant shall provide the Settlement Administrator with a list of contact information for potential Settlement Class Members who are to receive direct notice. The Settlement Administrator shall proceed with the distribution of class notice, as set forth in the Settlement Agreement.

13. Settlement Class Members who wish to receive benefits under the Settlement Agreement must timely submit a valid and completed Claim Form in accordance with the instructions provided in the notices on or before November 24, 2020 (120 days from entry of this Order). Any Settlement Class Member who does not timely submit a Claim Form deemed to be valid in accordance with the Settlement Agreement shall not be entitled to receive any monetary benefit under the Settlement. The Court hereby approves as to form and content the Claim Form attached to the Settlement Agreement as Exhibit 1.

14. Any person who would otherwise be a Settlement Class Member may request to be excluded from the Settlement Class. In order to exercise the right to be excluded, a person within the Settlement Class must timely send a written request for exclusion to the Settlement Administrator, providing his or her name and address, email address, the name and number of this case, a signature, and a statement that he or she wishes to be excluded from the Settlement Class. Any request for exclusion submitted via U.S. mail must be personally signed by the person requesting exclusion. Such exclusion requests must be received by the Settlement Administrator

at the address specified in the Class Notice in written form, by first class mail, postage prepaid, and postmarked no later than November 24, 2020 (120 days from entry of this Order).

15. No person within the Settlement Class, or any person acting on behalf of, in concert with, or in participation with that person within the Settlement Class, may request exclusion from the Settlement Class on behalf of another.

16. Settlement Class Members shall be bound by all determinations and orders pertaining to the Settlement, including the release of all claims to the extent set forth in the Settlement Agreement, whether favorable or unfavorable, unless such persons request exclusion from the Settlement Class in a timely and proper manner, as provided herein and in the Settlement Agreement. Settlement Class Members who do not timely and validly request exclusion shall be so bound even if they have previously initiated or subsequently initiate litigation or other proceedings against the Defendant or the Releasees relating to the claims released under the terms of the Settlement Agreement.

17. Any person in the Settlement Class who elects to be excluded shall not: (i) be bound the Final Approval Order; (ii) be entitled to relief under the Settlement Agreement; (iii) gain any rights by virtue of the Settlement Agreement; or (iv) be entitled to object to any aspect of the Settlement Agreement.

18. Class Counsel may file a motion seeking an award of attorneys' fees not to exceed thirty-three percent (33%) of the Settlement Fund, or one hundred seventy-five thousand dollars (\$175,000), inclusive of their reasonable costs and expenses, as well as an Incentive Award of five thousand dollars (\$5,000) for the Class Representative, no later than November 10, 2020.

19. Any Settlement Class Member who has not requested exclusion from the Settlement Class and who wishes to object to any aspect of the Settlement Agreement, including

to the payment of an Incentive Award for the Class Representative or to the amount of the attorneys' fees, costs, and expenses that Class Counsel intends to seek, may do so, either personally or through an attorney, by filing a written objection with the Court, together with the supporting documentation set forth below in paragraph 20 of this Order, and serving such objection upon Class Counsel, Defendant's Counsel, and the Settlement Administrator no later than November 24, 2020 (120 days from entry of this Order). Addresses for Class Counsel, Defendant's Counsel, and the Settlement Administrator are as follows:

**Class Counsel**

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

**Defendants' Counsel**

Todd Ruskamp  
Russell Shankland  
SHOOK, HARDY & BACON L.L.P.  
2555 Grand Blvd.  
Kansas City, Missouri 64108

**Settlement Administrator**

KCC  
P.O. Box to be provided in notices  
Providence, RI, 02940

20. Any Settlement Class Member who has not requested exclusion and who intends to object to the Settlement must state, with specificity and in writing, all objections and the basis for any such objection(s), and must also state in writing: (i) his or her full name, address, email address, and telephone number; (ii) the case name and number of this Litigation; (iii) all grounds for the objection, with factual and legal support for the stated objection, including any supporting materials; (iv) the identification of any other objections he or she has filed, or has had filed on his or her behalf, in any other class action cases in the last four years; and (v) the objector's signature. Objections not filed and served in accordance with this Order shall not be received or considered by the Court. Any Settlement Class Member who fails to timely file and serve a written objection

in accordance with this Order shall be deemed to have waived, and shall be forever foreclosed from raising, any objection to the Settlement, to the fairness, reasonableness, or adequacy of the Settlement, to the payment of attorneys' fees, costs, and expenses, to the payment of any Incentive Award, and to the Final Approval Order and the right to appeal the same.

21. A Settlement Class Member who has not requested exclusion from the Settlement Class and who has properly submitted a written objection in compliance with this Order may appear at the Final Approval Hearing in person or through counsel to show cause why the proposed Settlement should not be approved as fair, reasonable, and adequate. Attendance at the hearing is not necessary; however, persons wishing to be heard orally in opposition to the approval of the Settlement and/or Class Counsel's requested attorneys' fee award and/or the request for an Incentive Award to the Class Representative are required to indicate in their written objection their intention to appear at the Final Approval Hearing on their own behalf or through counsel. For any Settlement Class Member who files a timely written objection and who indicates his or her intention to appear at the Final Approval Hearing on their own behalf or through counsel, such Settlement Class Member must also include in his or her written objection the identity of any witnesses he or she may call to testify, and all exhibits he or she intends to introduce into evidence at the Final Approval Hearing, which shall be attached.

22. No Settlement Class Member shall be entitled to be heard, and no objection shall be considered, unless the requirements set forth in this Order and in the Settlement Agreement are fully satisfied. Any Settlement Class Member who does not make his or her objection to the Settlement in the manner provided herein, or who does not also timely provide copies to the designated counsel of record for the Parties at the addresses set forth herein, shall be deemed to have waived any such objection and any right to challenge the Settlement by appeal, collateral

attack, or otherwise, and shall be bound by the Settlement Agreement, the releases contained therein, and all aspects of the Final Approval Order.

23. All papers in support of final approval of the Settlement shall be filed no later than fourteen (14) days before the Final Approval Hearing.

24. Pending final approval of the proposed Settlement, no Settlement Class Member may prosecute, initiate, commence, or continue any lawsuit (individual or class action) with respect to the Released Claims against any of the Releasees.

25. The Final Approval Hearing shall be held before the Court on December 15, 2020 at 9:00 a.m. in Courtroom 14N of the Thomas F. Eagleton U.S. Courthouse, 111 S. 10th Street, St. Louis, MO 63102 (or at such other time or location as the Court may order) for the following purposes:

- a) to finally determine whether the applicable prerequisites for settlement class action treatment under Federal Rule 23 have been met;
- b) to finally determine whether the Settlement is fair, reasonable, and adequate, and should be approved by the Court;
- c) to determine whether the judgment as provided under the Settlement Agreement should be entered, including an order prohibiting Settlement Class Members from further pursuing claims released in the Settlement Agreement;
- d) to consider any application for an award of attorneys' fees, costs, and expenses by Class Counsel;
- e) to consider the application for an Incentive Award to the Class Representative;

f) to consider the distribution of the Settlement Fund pursuant to the Settlement Agreement; and

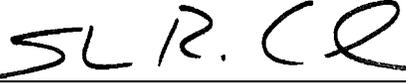
g) to rule upon such other matters as the Court may deem appropriate.

26. The Final Approval Hearing may be postponed, adjourned, transferred, or continued by order of the Court without further notice to the Settlement Class. At or following the final approval hearing, the Court may enter a judgment approving the Settlement Agreement and a final approval order in accordance with the Settlement Agreement that adjudicates the rights of all Settlement Class Members.

27. Settlement Class Members do not need to appear at the Final Approval Hearing or take any other action to indicate their approval.

28. All discovery and other proceedings in the Litigation as between Plaintiff and Defendant are stayed and suspended until further order of Court except such actions as may be necessary to implement the Settlement Agreement and this Order.

So Ordered this 27th day of July.

  
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**STEPHEN R. CLARK**  
**UNITED STATES DISTRICT JUDGE**