

NOTICE OF CLASS ACTION SETTLEMENT

Benjamin Fernando Martinez v. Costco Wholesale Corporation

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

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1. Why Did I Get This Notice?

A proposed settlement has been reached in an action entitled *Benjamin Fernando Martinez v. Costco Wholesale Corporation*, pending in the U.S. District Court for the Northern District of California, Case No. 3:19-cv-05624-EMC (the “Lawsuit”). This Notice is being sent to you by order of that Court, which has preliminarily approved the settlement and conditionally certified a class for settlement purposes only. 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 made no determination as to Costco’s liability in this matter. Both sides agreed to settle the case without agreeing as to 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 violated the law and further denies any liability whatsoever to Plaintiff or to the Class.

2. What Is this Case About?

The Plaintiff, Benjamin Fernando Martinez, filed the Lawsuit on June 11, 2019. He alleges that Costco did not properly include the “Extra Check Bonus” (defined in Section 4 below) in the regular rate of pay for purposes of calculating overtime wages for himself and other nonexempt California employees working for Costco between June 11, 2015 and July 25, 2022.

3. What is a “Class Action”?

In a class action, one or more class representatives sue on behalf of people who are in a position to make similar claims. In this case, Benjamin Fernando Martinez 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?*

You are a Class Member if, at any time during the period June 11, 2015, through July 25, 2022, you worked as a nonexempt employee for Costco in California and received an Extra Check Bonus and have not sued Costco on any Released Claim (as that term is defined in Section 10, below). As such, you will receive a payment from this Settlement unless you opt out of the class in the manner described below. For purposes of the settlement, an “Extra Check Bonus” is defined as a semi-annual bonus that Costco pays to long-term non-exempt employees pursuant to Costco’s Employee Agreement and/or collective bargaining agreement.

5. *How Does the Class Action Settlement Work?*

In this Lawsuit, the Plaintiff sued on behalf of himself 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 Section 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 July 25, 2022, in the United States District Court for the Northern District of California, the judge in the case 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 www.MartinezvCostco.com. Contact information for the Plaintiff’s attorneys is provided below.

The Final Fairness Hearing concerning the proposed settlement will occur on January 19, 2023 at 1:30 p.m., located at Phillip Burton Federal Building in Courtroom 5, 450 Golden Gate Avenue, San Francisco, CA 94102, before District Court Judge Edward Chen. Due to the pandemic, the hearing may occur remotely.

6. *Who Are the Attorneys Representing the Plaintiff and Other Employees?*

The attorneys representing Plaintiff are:

JAMES HAWKINS, APLC
James R. Hawkins (SBN 192925)
Isandra Fernandez (SBN 220482)
9880 Research Drive, Suite 200
Irvine, California 92618
Telephone: (949) 387-7200
Facsimile: (949) 387-6676

The Court has decided that the attorneys for the Plaintiff are qualified to represent you and all other Class Members 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 a settlement payment and you *will* be bound by the release of class action claims stated in this Notice and Settlement Agreement, as stated in Section No. 10 below.

OPT OUT: If you “opt out” or ask to be excluded 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. This option will retain your right to sue Costco on your own behalf.

OBJECT: If you 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 8 and 9 below, entitled “How Do I Opt Out or Exclude Myself From This Settlement” and “How Do I Object To The 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 at PO Box 64053, Saint Paul, MN 55164. The request must (1) contain your name, address, telephone number, and the last four digits of the Social Security number, (2) clearly say you don’t 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 November 21, 2022.

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 to any part of the Settlement, personally or through an attorney, by writing an objection to the Settlement Administrator and serving it on all counsel listed in Section No. 5 on or before November 21, 2022. The objection must include (a) your full name and mailing address, (b) the last four digits of your Social Security number, (c) a written statement of factual and legal grounds for the objection, and (d) any evidence and supporting papers (including, without limitation, all briefs, written evidence, and declarations) for the Court to consider. Class Members who fail to submit a timely objection run 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 haven’t objected in writing. During the Covid-19 pandemic, hearings before the judge overseeing this case have been conducted remotely. If that remains the case at the time of the Final Approval hearing, Class Members who wish to appear to object should contact Class Counsel to arrange a remote appearance, at least three days before the hearing if possible.

If the Court rejects the objection and approves the Settlement, 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 Agreement.

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. In the Complaint filed on June 11, 2019 (“Complaint”), Plaintiff sued Costco for violations of Labor Code sections 201-203, 204, 226, 226.7, 510, 1194, 1198, and 1199, and for violations of Business & Professions Code sections 17200 through 17208, for unpaid wages, meal and rest premium pay, penalties, attorney fees, costs, and other relief. All Class Members who do not opt out of the Settlement will release Costco from all these claims insofar as they relate to and arise from Costco’s payment of Extra Checks. The Release of these claims extends to all theories of relief pertaining to payment of the Extra Check, regardless of whether the claim is, was or could have been alleged as separate claims, causes of action, lawsuits, or based on other theories of relief whether under

California law, federal law, state law or common law (including, without limitation, as violations of the California Labor Code, the California Wage Orders, applicable regulations, and the California Business and Professions Code). This Release includes all types of relief available for the above-referenced claims, including, without limitation, any claims for damages, restitution, losses, penalties, liens, attorneys' fees, costs, expenses, debts, interest, injunctive relief, declaratory relief, or liquidated damages.

"Released Parties" means Costco and each and all of its affiliated companies, successors in interest, predecessor(s) in interest, parents, members, subsidiaries, related companies and business concerns, past and present, and each of them, as well as each of their insurers, parties, trustees, directors, shareholders, officers, agents, attorneys, servants and employees, past and present, and each of them and all working with or in concert with them or connected with them. Entry of judgment 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 through July 25, 2022.

11. What are the Main Terms of the Settlement?

Costco will pay **\$2,250,000** in a Gross Settlement Amount. From that amount, the following shall be deducted: (1) Class Representative Payment to Benjamin Fernando Martinez in an amount up to \$6,000, (2) settlement administration costs for the Settlement Administrator, Atticus Administration, in an amount estimated not to exceed \$90,000 and (3) payment of attorneys' fees to Class Counsel in an amount not to exceed \$750,000 (one-third of the Gross Settlement Amount), plus litigation costs actually incurred and documented, not to exceed \$20,000. All these deductions are subject to court approval. What then remains of the Gross Settlement Amount will be the Net Settlement Amount for distribution to Settlement Class Members. The Settlement Administrator will determine the payments in accordance with the number of paid hours for each Settlement Class Member.

Tax consequences. The overall Net Settlement Amount will be allocated 75% to non-wage payments and 25% for wages. 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 will be based on your number of paid hours for the time period between June 11, 2015 and July 25, 2022.

Based on your attributed number of hours paid: <<total hours>>, your preliminary estimated payment with respect to the Class Action Settlement will be approximately <<estimated payment>>.

13. What if I Worked More Paid Hours Than Reported in This Notice?

You can dispute the number of paid hours attributed to you by mailing the Settlement Administrator at PO Box 64053, Saint Paul, MN 55164, and providing credible evidence. The Settlement Administrator will use Defendant's records and the information you provide to resolve any disputes about the data appearing on this Notice. The Settlement Administrator's determination will be final and binding.

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

The attorneys who represent the Plaintiff 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 (\$750,000) in fees, plus up to \$20,000 in litigation costs actually incurred, supported by adequate documentation. Costco has separately paid all of its own attorneys' fees and costs. The Plaintiff acting as a Class Representative may also be awarded, subject to court approval, an amount not to exceed \$6,000 as an enhancement for the time and effort he spent in prosecuting this case, undertaking risks for the payment of costs in the event this case had been lost, and a general release of all his 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 *Martinez 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 Agreement, the Settlement Agreement prevails. For more detailed information, you may refer to the underlying documents and papers on file with the Court at the address listed above, or you may ask for a free copy from Class Counsel. Materials also appear on the Settlement Administrator's website: www.MartinezvCostco.com.

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