

HONORABLE MARY E. ROBERTS

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

JULIUS TERRELL, as an individual and as a
representative of the class,

Plaintiff,

v.

COSTCO WHOLESALE CORP.,

Defendant.

NO. 16-2-19140-1 SEA

~~PROPOSED~~ ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

CLERK'S ACTION REQUIRED

Plaintiff Julius Terrell has moved for preliminary approval of a class action settlement with Costco Wholesale Corporation. The terms of the settlement are set forth in the Class Action Settlement Agreement and Release attached as Exhibit A to the Declaration of E. Michelle Drake in support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement.

The Court has read and considered the Settlement Agreement, the exhibits attached thereto, and the briefing submitted in support of preliminary approval of the settlement and is fully advised.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court preliminarily approves the Settlement Agreement between Plaintiff and Costco.

1 2. The settlement appears to be the product of serious, informed, non-collusive
2 negotiations, has no obvious deficiencies and does not improperly grant preferential treatment
3 to any class members, and falls within the range of possible judicial approval. *See* William B.
4 Rubenstein, *Newberg on Class Actions* § 13:10 (5th ed. 2016).

5 3. For purposes of settlement only, the Court finds that the Settlement Class
6 satisfies the requirements of CR 23(a) and (b)(3) and grants preliminary certification of the
7 following Settlement Class:

8 All individuals on whom Costco Wholesale Corp. obtained a
9 background report for employment purposes who were given a
10 disclosure form that was substantially similar to the disclosure
11 form attached to the Complaint as Exhibit A. Class membership
12 begins on August 10, 2014 and continues through April 17, 2017.

13 4. The numerosity requirement is satisfied because Costco estimates that the
14 Settlement Class consists of 113,839 individuals. *See Miller v. Farmer Bros. Co.*, 115 Wn.
15 App. 815, 821, 64 P.3d 49 (2003).

16 5. The commonality requirement is satisfied because there are overarching
17 questions of law and fact common to the class, including whether Costco's disclosure form
18 violated the FCRA's stand-alone disclosure requirement and whether Costco's conduct was
19 willful. *See Smith v. Behr Process Corp.*, 113 Wn. App. 306, 320, 54 P.3d 665 (2002).

20 6. The typicality requirement is satisfied because Plaintiff's claim arises from the
21 same course of conduct that gives rise to the claims of other Settlement Class Members and is
22 based on the same legal theory. *See Pellino v. Brink's Inc.*, 164 Wn. App. 668, 684, 267 P.3d
23 383 (2011).

24 7. The adequacy requirement is satisfied because Plaintiff has no interests
25 antagonistic to the other Class Members and is represented by qualified counsel. *See Hansen v.*
26 *Ticket Track, Inc.*, 213 F.R.D. 412, 415 (W.D. Wash. 2003).

1 8. The predominance requirement is satisfied because there is a “common nucleus
2 of operative facts” to each Settlement Class Member’s claim, and all Class Members were
3 subject to the same conduct by Costco. *See Behr*, 113 Wn. App. at 323.

4 9. The superiority requirement is satisfied because the resolution of approximately
5 113,839 claims in one action is far superior to individual lawsuits and promotes consistency
6 and efficiency of adjudication, particularly in a case like this one with modest statutory
7 damages. *See Singleton v. Domino’s Pizza, LLC*, 976 F. Supp. 2d 665, 678 (D. Md. 2013).

8 10. For the purposes of settlement, the Court appoints Julius Terrell as the Class
9 Representative.

10 11. The Court appoints E. Michelle Drake and Joe Hashmall of Berger & Montague,
11 P.C. and Beth Terrell of the Terrell Marshall Law Group PLLC as Class Counsel.

12 12. The Court appoints JND Legal Administration as the Settlement Administrator.
13 The Settlement Administrator shall disseminate notice to Class Members, by mail and email,
14 calculate settlement payments, mail settlement payments and tax forms, and create a settlement
15 website.

16 13. The Court approves, as to form and content, the notice documents that are
17 attached to the Settlement Agreement as Exhibits A, B, and C. The notices provide all of the
18 information Class Members need to evaluate and respond to the settlement, including the nature
19 of the litigation, the general terms of the proposed settlement, their rights under the settlement,
20 an explanation of how they can object to or exclude themselves from the settlement, the
21 identity of Class Counsel and that Class Counsel will request attorneys’ fees from the
22 settlement fund, and the date and time of the final approval hearing. The notices also direct
23 Class Members to a website that will provide additional information about the settlement, as
24 well as a toll-free number that Class Members can call with questions about the settlement.

25 14. The Court also approves the parties’ plan for disseminating notice, which will
26 ensure that Settlement Class Members receive “the best notice practicable under the
circumstances.” *See* CR 23(c)(2). Issuance of notice substantially in the manner set forth in this

1 paragraph satisfies the requirements of due process and applicable law and constitutes due and
2 sufficient notice to all members of the Settlement Class.

3 15. Within ten calendar days of this order, Costco will provide the Settlement
4 Administrator with a class list containing the names and contact information for the Settlement
5 Class Members, including social security numbers. The Settlement Administrator shall keep the
6 class data strictly confidential and use it only for the purposes of administering this settlement.

7 16. Within 14 days of this order, the Settlement Administrator shall distribute notice
8 to all Settlement Class Members as provided in the Settlement Agreement.

9 17. Costco has identified 1,510 Class Members who, according to a reasonable
10 review of Costco's records, were denied employment or otherwise not hired based on
11 background reports Costco obtained through use of the disclosure form at issue in this case.
12 These "Class Members Entitled to Autopay" do not need to submit a claim form to participate
13 in the settlement. All other Settlement Class Members who wish to participate in the settlement
14 must submit a claim form no later than 60 days after distribution of notice.

15 18. Any Settlement Class Member may exclude himself or herself from the
16 settlement by submitting a written request to the Settlement Administrator no later than 60 days
17 after distribution of notice. The opt-out request must include the following information: (1) the
18 Class Member's full name and current mailing address, (2) the last four digits of the Class
19 Member's social security number, and (3) an express statement that the Class Member wishes
20 to be excluded from the terms of the Settlement Agreement. Any Class Member who opts out
21 may not submit an objection, shall participate in the settlement, and shall not be bound by the
22 releases in the Settlement Agreement. Each Class Member who does not submit a timely, valid
23 request for exclusion shall be bound by the releases in the Settlement Agreement.

24 19. Any Settlement Class Member may object to the settlement by submitting a
25 written statement to the Settlement Administrator by 60 days after the distribution of notice.
26 The statement must include (1) the objector's full name and current mailing address, (2) the last
four digits of the objector's social security number, (3) the specific reasons for the objection,

1 (4) all evidence and supporting papers (including, without limitation, all briefs, written
2 evidence, and declarations) for the Court to consider, and (5) identification of all counsel
3 representing or assisting the objector, if any. Objectors must be available for deposition if either
4 party wishes to take their deposition. Any objector who fails to appear for a duly noticed
5 deposition shall be deemed to have withdrawn the objection.

6 20. If a Class Member submits both a request for exclusion and an objection, the
7 request for exclusion will be valid and will invalidate the objection.

8 21. Class Counsel shall file their motion for attorneys' fees and reimbursement of
9 costs and for a service payment to the Class Representative no later than 44 days after the
10 distribution of notice. The motion shall be posted on the settlement website.

11 22. The Settlement Administrator shall provide the parties with a declaration of due
12 diligence and proof of distribution of notice, including information as to any inability to deliver
13 notice because of invalid addresses, the number of claims, the number of any requests for
14 exclusion, and the number of any objections, no later than 67 days after the distribution of
15 notice. The parties shall provide the declaration to the Court.

16 23. Class Counsel shall file their response to any objections no later than 74 days
17 after the distribution of notice and 7 days after the Settlement Administrator's report.

18 24. Class Counsel shall file their motion for final approval of the settlement no later
19 than June 4, 2018

20 25. A final approval hearing shall be held before this Court on June 15,
21 2018, at 1:30 ~~a.m.~~ ^{p.m.} in the courtroom of the Honorable Mary E. Roberts at King County
22 Superior Court, 516 3rd Avenue, Room C-203, Seattle, Washington 98104-2386. At the
23 hearing, the Court will consider whether the prerequisites for class certification and treatment
24 under CR 23(a) and (b)(3) are satisfied and whether the settlement is fair, reasonable, and
25 adequate, and should be approved by the Court. The Court will also consider Class Counsel's
26 motion for attorneys' fees and costs and for a service payment to the Class Representative, and
rule on any other matters that the Court deems appropriate.

1 26. Any interested person who has not opted out of the Settlement Class may appear
2 at the final approval hearing to address whether the proposed settlement should or should not
3 be approved as fair, reasonable, and adequate. No Class Member shall be heard or entitled to
4 contest the approval of the settlement unless he or she has filed with the Court a valid and
5 timely written objection. The Court will consider all properly submitted objections. Any Class
6 Member who does not submit a timely and valid objection shall be deemed to have waived any
7 objection to the settlement and shall forever be foreclosed from making any objection to
8 preliminary class certification, to the fairness, adequacy or reasonableness of the settlement,
9 and to any attorneys' fees, cost reimbursements, or service payment to the Class Representative
10 approved by the Court

11 27. The Court retains jurisdiction over the action and all matters arising out of or
12 connected with the proposed settlement. The Court reserves the right to adjourn or continue the
13 date of the final approval hearing without further notice to Class Members and retains
14 jurisdiction to consider all further applications arising out of or connected with the settlement.
15 The Court may approve or modify the settlement without further notice to Class Members.

16 28. If the Court does not enter judgment in accordance with the Settlement
17 Agreement, or if the Court's judgment is vacated or reversed, then the action shall proceed,
18 unless the parties jointly agree to seek reconsideration or a renegotiated settlement. Costco
19 retains the right to contest whether any aspect of the action should be maintained as a class,
20 collective action, or representative action, and to contest the merits of the claims asserted in the
21 action.

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23 IT IS HEREBY ORDERED.

24 DATED this 1st day of March, 2018.

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HONORABLE MARY E. ROBERTS
KING COUNTY SUPERIOR COURT JUDGE

1 *Presented by:*

2
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