

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LEONA MARINO on behalf of herself and all others
similarly situated,

Plaintiff,

vs.

CACAFE, INC., JANE ZHENG, TED CHAO,
COSTCO WHOLESALE CORPORATION, CLUB
DEMONSTRATION SERVICES, INC., and DOES
1 through 10 inclusive,

Defendants.

Case No. 4:16-cv-06291-YGR

ORDER GRANTING PLAINTIFF'S MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT AND MOTION FOR
ATTORNEYS' FEES AND COSTS

Dkt. Nos. 166, 169

On April 23, 2019 at 2:00 p.m. in the United States District Court for the Northern District of California, the Honorable Yvonne Gonzalez Rogers presiding, this action came on for hearing on Plaintiff's Motion for Final Approval of Class Action Settlement, and plaintiff's Motion for Attorneys' Fees and Costs.

The Court having considered the papers and oral argument submitted in support of the motions and the parties' class action settlement, hereby **ORDERS** that the motions are **GRANTED**.

The Court determines as follows:

1. Pursuant to the Preliminary Approval Order and the terms of the Class Action Settlement Agreement and Stipulation (the "Settlement Agreement," **Exhibit A** hereto), the class notice (**Exhibit B** hereto) was mailed to class members via first class mail. Class members were also sent notice by email and text message at their last available contacts provided, and skip traces were performed for returned correspondence. The Court finds and determines that this notice procedure afforded adequate protections

1 to class members and provides the basis for the Court to make an informed decision regarding approval
2 of the Settlement based on the responses of class members. The Court finds and determines that the
3 notice provided in this case was the best notice practicable, which satisfied the requirements of law and
4 due process.

5 2. The class as conditionally certified by the Preliminary Approval Order meets all of the
6 legal requirements for class certification for settlement purposes under Federal Rule of Civil Procedure
7 23 and the class is appropriate for final certification for settlement purposes.

8 3. Considering strength of the case and the risks of further litigation, the Court views the
9 \$640,000.00 settlement result as very favorable for the class.

10 4. Only one class member, Gayle Bradshaw, excluded herself from the settlement.

11 5. The 111 remaining class members each will be awarded \$63 per shift, more than some
12 earned working for CACafe. Class members are achieving an average net recovery of nearly \$2,000
13 each, which is significant for the low-wage workers in the case, and – according to Plaintiff’s counsel’s
14 estimations – amounts to more than 60% of the best-day potential recovery, before penalties.

15 6. The settlement was negotiated at arm’s length, after extensive, contentious litigation, with
16 multiple contested motions decided, numerous depositions and voluminous document exchanges, and
17 after two mediations and months of bilateral negotiations.

18 7. Experienced class counsel, Bryan Schwartz Law, have worked ably and actively to
19 vindicate the class members’ interests.

20 8. The parties exhausted required governmental reporting, under the federal Class Action
21 Fairness Act (CAFA), and the California Labor Code Private Attorneys General Act (PAGA), §2698, *et*
22 *seq.* The government declined to intervene. The Court finds that the \$4,800 (1%) PAGA allocation is
23 fair, since PAGA ultimately was not a driver of the settlement amount and since the overall settlement
24 provides meaningful relief to the class members.

25 9. The Court finds reasonable the service payments requested for plaintiff Leona Marino
26 (\$15,000), class member deponents Ralph Tracy and William Harris (\$2,500 each), and opt-ins and class
27 member declarants (listed on **Exhibit C** hereto) (\$1,000 each). Marino stepped forward to file this suit,
28

1 risked notoriety in doing so, and dedicated substantial efforts to benefiting the class, including
2 responding to extensive discovery and a lengthy deposition over two days. She executed a broader
3 release than the other class members, also warranting additional consideration. The deponents, opt-ins,
4 and declarants all furthered the litigation, benefiting the class and helping lead to this favorable outcome.

5 10. Plaintiff's request for \$320,000 in attorneys' fees and \$55,000 in costs is reasonable. The
6 Court has reviewed counsel's declaration and exhibits and finds the amounts are well-supported, and
7 below counsel's reasonable lodestar in this matter.

8 11. The amount of \$9,000.00 requested to be paid to the Settlement Administrator is
9 reasonable and fairly supported.

10 The Court therefore **ORDERS** that the settlement is **APPROVED** and the foregoing amounts shall be
11 paid from the settlement fund.

12 Without affecting the finality of this order in any way, the Court retains jurisdiction of all matters
13 relating to the interpretation, administration, implementation, effectuation, and enforcement of this order
14 and the Settlement.

15 Upon completion of administration of the Settlement, the Settlement Administrator will provide
16 written certification of such completion to the Court and counsel for the parties.

17 This document shall constitute a final judgment (and a separate document constituting the
18 judgment) for purposes of Rule 58, Federal Rules of Civil Procedure.

19 **IT IS SO ORDERED.**

20
21 Dated: April 26, 2019


22
23 
24 HON. YVONNE GONZALEZ ROGERS
25 UNITED STATES DISTRICT COURT
26
27
28

EXHIBIT A

1 Bryan Schwartz (SBN 209903)
bryan@bryanschwarzlaw.com
2 Eduard Meleshinsky (SBN 300547)
eduard@bryanschwarzlaw.com
3 BRYAN SCHWARTZ LAW
1330 Broadway, Suite 1630
4 Oakland, California 94612
Tel: (510) 444-9300
5 Fax: (510) 444-9301

6 Attorneys for Plaintiff LEONA MARINO
Individually and all others similarly situated

7 *(Additional counsel listed on following page)*
8

9 UNITED STATES DISTRICT COURT

10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
11

12 LEONA MARINO, on behalf of herself and
all other similarly situated,

13 Plaintiff,

14 vs.

15 CACAFE, INC., JANE ZHENG, TED
16 CHAO, COSTCO WHOLESALE
CORPORATION, CLUB
17 DEMONSTRATION SERVICES, INC., and
DOES 1 through 10 inclusive,

18 Defendants.
19

Case No. 4:16-cv-06291-YGR

ASSIGNED TO THE HON. YVONNE
GONZALEZ ROGERS

**CLASS ACTION SETTLEMENT
AGREEMENT AND STIPULATION**

Complaint Filed: October 31, 2016
First Amended Complaint Filed: January 9, 2017

1 Sam X.J. Wu (SBN 183098)
samwulaw@yahoo.com
2 Alexei Brenot (SBN 194693)
samwulaw@yahoo.com
3 LAW OFFICES OF SAM X.J. WU, APC
8600 Utica Avenue, Building 100
4 Rancho Cucamonga, California 91730
Tel.: (415) 985-7300
5 Fax: (415) 985-7301

6 Attorneys for Defendants CACAFE, INC.,
7 JANE ZHENG, and TED CHAO

8 Catherine M. Dacre (State Bar No. 141988)
cdacre@seyfarth.com
9 Justin Taylor Curley (State Bar No. 233287)
jcurley@seyfarth.com
10 Seyfarth Shaw LLP
560 Mission Street, Suite 3100
11 San Francisco, CA 94105
Tel.: (415) 397-2823
12 Fax: (415) 397-8549

13
14 David D. Kadue (State Bar No. 113578)
dkadue@seyfarth.com
15 Seyfarth Shaw LLP
2029 Century Park East, Suite 3500
16 Los Angeles, CA 90067
Tel: (310) 201-5211
17 Fax: (310) 201-5219

18 Attorneys for Defendant
19 COSTCO WHOLESALE CORPORATION

20 Fermin H. Llaguno (State Bar No. 185222)
fllaguno@littler.com
21 Oliver B. Dreger (State Bar No. 261351)
odreger@littler.com
22 Littler Mendelson, P.C.
23 2050 Main Street, Suite 900
Irvine, CA 92614
24 Tel: (949) 705-3000
25 Fax: (949) 724-1201

26 Attorneys for Defendant
CLUB DEMONSTRATION SERVICES, INC.
27
28

1 This Class Action Settlement Agreement and Stipulation is entered into between Plaintiff
2 LEONA MARINO, as an individual and on behalf of the Settlement Class (as defined below) on the
3 one hand, and Defendants CACAFE, INC. (“CACafe”), JANE ZHENG (“Zheng”), TED CHAO
4 (“Chao”), COSTCO WHOLESALE CORPORATION (“Costco”), and CLUB DEMONSTRATION
5 SERVICES, INC. (“CDS”), on the other hand, in the matter entitled *Leona Marino, et al. v. CACafe,*
6 *Inc., et al.*, pending in the U.S. District Court for the Northern District of California, Case No. 4:16-
7 cv-06291-YGR.

8 DEFINITIONS

9 1. Action. The “Action” means the class action claims filed in the U.S. District Court for
10 the Northern District of California, entitled LEONA MARINO, *on behalf of herself and all others*
11 *similarly situated, v. CACafe, Inc., et al.*, Case No. 4:16-cv-06291-YGR.

12 2. Agreement. “Agreement” shall refer to the instant Class Action Settlement Agreement
13 and Stipulation.

14 3. The Class. “The Class” means all 112 Class Members.

15 4. Class Counsel. “Class Counsel” means Bryan Schwartz and Eduard Meleshinsky of
16 Bryan Schwartz Law or any successor(s) thereof.

17 5. Class Members and Settlement Class Members. “Class Members” means all 112 in-store
18 demonstrators who Plaintiff Leona Marino alleges and claims in the Action to have been jointly
19 employed by Defendants from October 31, 2012 through the Preliminary Approval Date. “Settlement
20 Class Members” means all Class Members other than those who opt out (see ¶¶ 24, 58).

21 6. Class Notice. “Class Notice” means the document mutually agreed upon by the Parties
22 and approved by the Court to be sent to the Class following preliminary approval that notifies Class
23 Members of the Settlement which explains the Settlement and Class Members’ options.

24 7. Class Period. “Class Period” means the period of time beginning on October 31, 2012
25 and ending on the Preliminary Approval Date.

26 8. The Court. The “Court” refers to the U.S. District Court for the Northern District of
27 California.

1 9. Defendants and Paying Defendants. “Defendants” means Defendants CACAFE, INC.
2 (“CACafe”), JANE ZHENG (“Zheng”), TED CHAO (“Chao”), COSTCO WHOLESALE
3 CORPORATION (“Costco”), and CLUB DEMONSTRATION SERVICES, INC. (“CDS”). “Paying
4 Defendants” shall mean CACafe, Zheng, Chao and CDS.

5 10. Effective Date. “Effective Date” of this Agreement means the following date that is
6 applicable to the status of the case: (a) if no objections to the Settlement are submitted, or objections to
7 the Settlement are submitted but subsequently withdrawn prior to the Final Approval Date, the Effective
8 Date is the Final Approval Date (as defined below); (b) if one or more objections are submitted which
9 are not subsequently withdrawn prior to the Final Approval Date, the Effective Date is fifteen (15) court
10 days after the expiration of any appeals period, provided that no appeal is filed; (c) if one or more
11 objections are submitted which are not subsequently withdrawn prior to the Final Approval Date, and in
12 the event an appeal or appeals are filed, the Effective Date is fifteen (15) court days after: (i) the date the
13 Final Judgment is affirmed by an appellate court with no possibility of subsequent appeal or other judicial
14 review therefrom; or (ii) the date the appeal(s) or other judicial review therefrom are dismissed with no
15 possibility of subsequent appeal or other judicial review; or (iii) if remanded to the Court, the date the
16 Final Judgment is entered by the Court after remand and the time to appeal or seek permission to appeal
17 or seek other judicial review of the entry of that Final Judgment has expired with no further appeal or
18 other judicial review having been taken or sought. If further appeal is sought after remand, the time
19 periods in this subsection shall apply.

20 11. Exclusion Period. The “Exclusion Period” means the time period commencing on the
21 date the Class Notice is mailed to Class Members and ending forty-five (45) calendar days later, on the
22 deadline to submit an Opt Out Request or Objection. In the event the forty-fifth (45th) day is a holiday,
23 Saturday or Sunday, the Exclusion Period shall close/end on the next business day.

24 12. Final Approval Date. “Final Approval Date” means the date on which the Court enters
25 Final Judgment in this matter approving the fairness, reasonableness, and adequacy of the terms and
26 conditions of the Settlement, entering the final approval order and Final Judgment, and awarding and
27 ordering the payment of all required amounts pursuant to the terms of this Agreement (approved Class
28 Counsel’s attorneys’ fees and costs, Settlement Payments to Class Members, etc.).

1 13. Final Approval Hearing Date. “Final Approval Hearing Date” means the date on which
2 the Final Settlement Approval Hearing is held.

3 14. Final Judgment. “Final Judgment” means the Judgment entered and filed by the Court
4 that: (1) finally approves this Agreement and the Settlement and disposes of all issues raised in this
5 Action, bars Settlement Class Members from reasserting Settled Claims against Released Parties and
6 permanently enjoins all Class Members who have not timely opted out from this Settlement from
7 pursuing, or seeking to reopen, any of the Settled Claims; and (2) awards and orders the payment of all
8 required and undisputed amounts pursuant to the terms of this Agreement (approved Class Counsel’s
9 attorneys’ fees and costs, Settlement Payments to Class Members, etc.). In the event of an appeal of a
10 reduction of attorneys’ fees and costs, Final Judgment shall take place after the resolution of such an
11 appeal.

12 15. Final Settlement Approval Hearing. “Final Settlement Approval Hearing” means the
13 hearing on the Final Approval Hearing Date at which the Court shall consider the motion for final
14 approval of this Settlement and determine whether to fully and finally approve the fairness and
15 reasonableness of this Settlement and Agreement, and enter an order barring Settlement Class Members
16 from asserting Settled Claims against Released Parties and permanently enjoining all Settlement Class
17 Members who have not timely opted out from this Settlement from pursuing, or seeking to reopen, any
18 of the Settled Claims.

19 16. Gross Settlement Amount or GSA. “Gross Settlement Amount” or “GSA” means a
20 maximum total payment of Six Hundred Forty Thousand Dollars and Zero Cents (\$640,000.00), payable
21 by the Defendants under this Agreement, with said amount being apportioned among the Paying
22 Defendants as follows: CACafe, Zheng and Chao paying a total amount of \$530,000; and CDS paying
23 a total amount of \$110,000. Defendants shall not be obligated to pay more than the GSA under this
24 Agreement under any circumstances, except that any employer-side payroll taxes related to the
25 Settlement Payment(s) paid to the Settlement Class, if any were to be assessed, shall remain Defendant
26 CACafe’s sole and separate responsibility and shall not be paid out of the GSA. Other than the employer-
27 side payroll taxes, in no event shall Defendants be required to pay any amounts above the GSA under
28 this Settlement and this Agreement. No portion of the GSA shall revert to Defendants. In no event will

1 Defendant CDS be required to pay more than \$110,000 under this Settlement and this Agreement. In no
2 event will Defendant Costco be required to pay anything under this Settlement and this Agreement.

3 17. LWDA. “LWDA” means the California Labor & Workforce Development Agency.

4 18. Last Known Address. “Last Known Address” means the most recently recorded mailing
5 address for a Class Member contained in Defendant CACafe’s payroll records.

6 19. Named Plaintiff. “Named Plaintiff” means Leona Marino.

7 20. Net Settlement Amount or “NSA”. “Net Settlement Amount” or “NSA” means the Gross
8 Settlement Amount less the amounts deducted pursuant to Paragraph 51.a through 51.f of this Agreement,
9 including deductions of the amounts awarded to Class Counsel, the enhancement awards to the Named
10 Plaintiff, as well as other opt-in Plaintiffs and putative class member declarants, the payment to the
11 LWDA to resolve claims under the PAGA, and the costs awarded for settlement administration owed
12 pursuant to this Agreement.

13 21. Notice Plan. “Notice Plan” shall mean the plan for the provision of notice to all Class
14 Members under this Agreement in Paragraphs 55 to 59.

15 22. Notice Mailing Deadline. “Notice Mailing Deadline” means the date fifteen (15)
16 calendar days after the Preliminary Approval Date, as set forth in Paragraph 56.b.

17 23. Objection. “Objection” means a written request a Class Member may submit no later
18 than the last day of the Exclusion Period and in the form specified in Paragraph 59 in order to object to
19 the Settlement.

20 24. Opt Out Request. “Opt Out Request” means the written request drafted jointly by the
21 Parties and approved by the Court (see Paragraph 58 hereof) and submitted no later than the last day of
22 the Exclusion Period to request exclusion from the Settlement.

23 25. Order of Final Approval or Order Granting Final Approval of Settlement. “Order of
24 Final Approval” or “Order Granting Final Approval of Settlement” means a proposed order issued in
25 conjunction with the entry of the Final Judgment to be submitted by the Named Plaintiff together with
26 the Motion for Final Approval of the Settlement for entry and filing by the Court as specified in this
27 Settlement.

1 26. Parties. “Parties” shall mean Named Plaintiff, individually and on behalf of all Class
2 Members, and Defendants.

3 27. Preliminary Approval Date. “Preliminary Approval Date” means the date on which the
4 Court enters the Preliminary Approval Order.

5 28. Preliminary Approval Order. “Preliminary Approval Order” is the order entered and
6 filed by the Court that preliminarily approves the terms and conditions of this Agreement, including
7 approval of the Parties’ Agreement that specifies the content of notice and manner in which notice will
8 be provided to the Class and responded to by the Class.

9 29. Released Parties. “Released Parties” means Defendants, and their past, present, and
10 future parents, affiliates, subsidiaries, divisions, predecessors, successors, owners, partners, joint
11 venturers, affiliated organizations, related companies and business concerns, shareholders, members,
12 insurers, reinsurers and assigns, and each of their past, present and future officers, directors, trustees,
13 agents, employees, attorneys, contractors, representatives, benefits plans sponsored or administered by
14 Defendants, divisions, units, and branches, and any other persons or entities acting on behalf of or in
15 concert or connected with any of the foregoing.

16 30. Settlement. “Settlement” shall refer to the agreement of the Parties to settle the claims
17 as set forth and embodied in this Agreement.

18 31. Settlement Administrator. “Settlement Administrator” or “SA” shall mean Rust
19 Consulting, Inc. (“Rust”) or such other neutral administrator as chosen by the Parties and approved by
20 the Court (see Paragraph 55.a).

21 32. Settled Claims. “Settled Claims” means any and all claims contained in the operative
22 First Amended Complaint filed in the Action on January 9, 2017 (“Complaint”), and any additional wage
23 and hour claims that could have been brought by the Named Plaintiff and the Class Members based on
24 the facts alleged in said Complaint, for the time period of October 31, 2012 through the Preliminary
25 Settlement Approval Date. “Settled Claims” includes any and all claims for relief, whether suspected or
26 unsuspected, which settlement class members have had, now have, or may discover in the future against
27 the Released Parties or any of them for any or all claims alleged in the Complaint or which could have
28 been alleged in the Complaint based on the allegations, facts, matters, transactions or occurrences alleged

1 therein, and shall specifically include without limiting the generality thereof: claims for missed and/or
 2 unpaid meal periods and/or rest periods; failure to reimburse business expenses; failure to pay all wages
 3 owed (including without limitation, regular wages, the regular rate of pay, minimum wage, overtime pay,
 4 double time pay, premium pay or otherwise properly calculate overtime or the regular rate of pay, failure
 5 to pay employees for all hours worked, and/or off-the-clock claims); failure to properly pay all wages
 6 upon termination; any claim for failure to keep and/or maintain accurate records; unlawful deductions;
 7 failure to timely pay wages owed; claims for failure to provide accurate, itemized wage statements;
 8 waiting time penalties; and claims for PAGA penalties and/or unfair competition claims based on the
 9 foregoing. The Release of the foregoing claims extends to all theories of relief regardless of whether the
 10 claim is, was, or could have been alleged as separate claims, causes of action, lawsuits or based on other
 11 theories of relief, whether under California law, federal law, state law or common law (including, without
 12 limitation, as violations of the California Labor Code, the California Wage Orders, applicable
 13 regulations, California's Business and Professions Code section 17200 or under California's Private
 14 Attorneys General Act, and the Fair Labor Standards Act). "Settled Claims" includes all types of relief
 15 available for the above-referenced claims, including, without limitation, any claims for damages,
 16 restitution, losses, penalties, fines, liens, attorneys' fees, costs, expenses, debts, interest, injunctive relief,
 17 declaratory relief, or liquidated damages. "Settled Claims" also includes an express waiver of all benefits
 18 under section 1542 of the California Civil Code as to the Settled Claims only, as well as under any other
 19 federal or state statutes or common law principles of similar effect. Section 1542 provides as follows:

20 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
 21 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**
 22 **FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN**
 23 **BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER**
 24 **SETTLEMENT WITH THE DEBTOR.**

25 The Final Judgment shall expressly provide that it covers and bars each and every Settlement Class
 26 Member from asserting any Settled Claims in the future.

27 33. Settlement Class/Settlement Class Member(s). "Settlement Class Member" means all
 28 Class Members other than those who have timely and validly submitted Opt Out Requests and thereby
 excluded themselves from the Settlement.

1 34. Settlement Formula. “Settlement Formula” means the method agreed upon by the Parties
2 to calculate Settlement Payments (see Paragraph 51.)

3 35. Settlement Payment. “Settlement Payment” means a payment pursuant to a Settlement
4 Class Member’s *pro rata* allocation of the NSA as specified in Paragraph 51.

5 36. Settlement Proceeds Distribution Deadline. “Settlement Proceeds Distribution
6 Deadline” means a date that is ten (10) calendar days after the Effective Date. In the event Class Counsel
7 appeals a reduction of their requested fees and/or costs, the Settlement Proceeds Distribution Deadline
8 remains unmodified as to the amounts provided by this Agreement and approved by the Court. The
9 remaining funds shall be distributed pursuant to the terms of Paragraph 51(b) regarding a possible appeal
10 of a reduction of Class Counsel’s award of fees and/or costs.

11 37. Shift Rate. “Shift Rate” shall mean the amount yielded from dividing the Net Settlement
12 Amount by the total of all Shifts Worked credited to all Settlement Class Members. Each Settlement
13 Class Member’s Settlement Payment is equal to the Shift Rate multiplied by his or her individual Shifts
14 Worked. Therefore, the amount of each Settlement Class Member’s Settlement Payment is tied to the
15 number of Shifts Worked that each Settlement Class Member worked in comparison to all Shifts Worked
16 by all Class Members during the Class Period.

17 38. Shifts Worked. “Shifts Worked” means the number of full or partial compensable shifts
18 the Settlement Class Member worked as an in-store demonstrator during the Class Period, as determined
19 by Defendant CACafe’s records and as only subject to revision pursuant to the challenge provisions set
20 forth in Paragraph 57.c.

21 39. The Named Plaintiff and each Settlement Class Member may hereafter discover facts in
22 addition to or different from those which they now know or believe to be true with respect to the subject
23 matter of the Settled Claims, but the Named Plaintiff and each Settlement Class Member, upon the
24 Effective Date, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally,
25 and forever settled and released any and all Settled Claims, known or unknown, suspected or
26 unsuspected, contingent or non-contingent, whether or not concealed or hidden, which then exist, or
27 heretofore have existed upon any theory of law or equity now existing or coming into existence in the
28 future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a

1 breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different
2 or additional facts relating to the claims as alleged in the Action. The Named Plaintiff acknowledges,
3 and shall be deemed by operation of the Final Judgment to have acknowledged, that the foregoing waiver
4 was separately bargained for and a key element of the Settlement of which this release is a part.

5 40. Updated Address. “Updated Address” means a mailing address that was updated by a
6 reasonable address verification measure of the SA or by an updated mailing address provided by the
7 United States Postal Service or a Class Member.

8 **RECITALS**

9 41. On or about October 31, 2016, the Action was filed against Defendants.

10 42. Under the operative First Amended Complaint filed in the Action on January 9, 2017,
11 Named Plaintiff alleges ten (10) causes of action, including (1) Failure to Pay Minimum Wage
12 Compensation for All Time Worked in Violation of FLSA, 29 U.S.C. § 206; (2) Failure to Pay Overtime
13 Wages for All Time Worked in Violation of FLSA, 29 U.S.C. § 207; (3) Failure to Pay Minimum Wage
14 Compensation, in Violation of Cal. Labor Code §§ 1194, 1197, 1197.1, and Industrial Welfare
15 Commission Wage Orders; (4) Failure to Pay Overtime Wages for Daily Overtime and All Time Worked,
16 in Violation of California Labor Code §§ 510, 1194, and 1198, and IWC Wage Orders; (5) Failure to
17 Reimburse Business Expenses in Violation of California Labor Code § 2802; (6) Failure to Provide
18 and/or Authorize Meal and Rest Periods or Pay Meal or Rest Period Premium Wages in Violation of Cal.
19 Labor Code §§ 558, 512, 226.7, and IWC Wage Orders; (7) Failure to Provide Itemized Wage Statements
20 in Violation of Cal. Labor Code §§ 226, 226.3, 1174 and IWC Wage Orders; (8) Failure to Pay Earned
21 Wages Upon Discharge and Waiting Time Penalties in violation of Labor Code §§ 201-203; (9) Violation
22 of Cal. Business and Professions Code § 17200, *et seq.*; and (10) Civil Penalties Pursuant to the PAGA,
23 Cal. Labor Code § 2698, *et seq.*

24 43. Defendants filed Answers that denied the claims as being without merit and asserted
25 various affirmative defenses. Defendants denied and continue to deny that they engaged in any
26 misconduct in connection with their retention of the Class Members, the classification of the Class
27 Members, their wage and hour practices and that they have any liability or have engaged in wrongdoing
28 of any kind associated with the claims alleged in the Action, including any Settled Claims. Defendants

1 further contend that they have complied at all times with both federal and state classification and wage
2 and hour laws, and all other laws regulating the hiring relationship that relate to the hiring of Named
3 Plaintiff and the Class. Defendants further contend that at no time did they employ or jointly employ the
4 Class Members.

5 44. Defendants and Class Counsel, on behalf of the Named Plaintiff and the Class, attended
6 a full-day mediation with Jeffrey A. Ross, Esq. on March 28, 2018. The Parties did not reach a settlement
7 at mediation but engaged in further settlement discussions with Mr. Ross' assistance following
8 mediation. Ultimately, the Parties reached a settlement through the mediator. The Parties embodied the
9 agreement in a Memorandum of Understanding. The Parties hereto agree that the terms and conditions
10 of this Agreement are the result of lengthy, intensive arms-length negotiations between the Parties
11 supervised by an experienced employment law mediator. The Parties agree that the Agreement is entered
12 into in good faith as to each Class Member.

13 45. Class Counsel is of the opinion that this Settlement is fair, reasonable, and adequate, and
14 in the best interest of the Class in light of all known facts and circumstances, including the benefits
15 conferred by the Settlement, the risk of significant delay, the uncertainty and risk of the outcome of
16 further litigation, the burdens of proof necessary to establish liability, defenses asserted to the merits, the
17 risks of proceeding on any class claims, including class certification, the difficulties in establishing
18 damages, and the numerous potential appellate issues, as well as the limited financial ability of CACafe
19 to satisfy and pay any monetary award entered in favor of the Class. Based on the foregoing, Named
20 Plaintiff and Class Counsel have determined that the Settlement set forth in this Agreement is a fair,
21 adequate, and reasonable settlement, and is in the best interests of the Settlement Class Members. While
22 Defendants specifically deny any liability or wrongdoing in the Action, Defendants have agreed to enter
23 into this Settlement to avoid the cost and business disruption associated with defending the Action.
24 Defendants have claimed and continue to claim that the Settled Claims have no merit and do not give
25 rise to liability. This Agreement is a compromise of disputed claims. This Agreement, made and entered
26 into by and between the Named Plaintiff (on behalf of herself and on behalf of the Class Members) and
27 Defendants, each with the assistance of their respective counsel or attorneys of record, is intended to
28 fully, finally, and forever settle, compromise and discharge the Settled Claims against the Released

1 Parties, subject to the terms and conditions set forth herein. This Agreement supersedes all prior
2 agreements of the Parties concerning settlement of the Action, including the Memorandum of
3 Understanding signed by the Parties.

4 46. Because this Action is pled as a class action, this Settlement must receive preliminary
5 and final approval by the Court. Accordingly, the Parties enter into this Agreement on a conditional
6 basis.

7 47. This Agreement is a settlement document and shall not be disclosed in any manner unless
8 and until it is filed as a public record document with the Court, and neither its acceptance by the Parties
9 nor its filing with the Court shall, in themselves, render this Agreement admissible in evidence in any
10 other proceeding, subject to the limited exception that it shall be admissible in an action or proceeding
11 to approve, interpret or enforce this Agreement.

12 **TERMS AND CONDITIONS OF SETTLEMENT**

13 NOW THEREFORE, in consideration of the recitals listed above and the promises and
14 warranties set forth below, and intending to be legally bound and acknowledging the sufficiency of the
15 consideration and undertakings set forth herein, the Named Plaintiff, individually and on behalf of the
16 Class Members, on the one hand, and Defendants, on the other hand, agree that the Action shall be, and
17 is finally and fully compromised and settled on the following terms and conditions.

18 48. Non-Admission of Liability. The Parties enter into this Agreement to resolve the
19 disputes that have arisen between them and to avoid the burden, expense and risk of continued litigation.
20 In entering into this Agreement, Defendants do not admit, and specifically deny, that they have: violated
21 any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute
22 or any other applicable laws, regulations or legal requirements; breached any contract; violated or
23 breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful
24 conduct with respect to their employees or any other person or entity. Neither this Agreement, nor any
25 of its terms or provisions, nor any of the negotiations connected with it or proceedings, payouts or other
26 events associated with it, shall be construed as an admission or concession by Defendants of any such
27 violation(s) or failure(s) to comply with any applicable law by Defendants or any Released Parties.
28 Except as necessary in a proceeding to approve, interpret or enforce the terms of this Agreement, this

1 Agreement and its terms and provisions shall not be offered or received as evidence in any action or
2 proceeding to establish any liability or admission on the part of Defendants or to establish the existence
3 of any condition constituting a violation of, or noncompliance with, federal, state, local or other
4 applicable law. In addition, as set forth in paragraph 70, the Parties intend this Settlement to be
5 contingent upon the preliminary and final approval of this Agreement; and in the event final approval of
6 this Agreement is not obtained the Parties do not waive, and instead expressly reserve, their respective
7 rights to prosecute and defend this Action as if this Agreement never existed in the event the Settlement
8 is not fully and finally approved as set forth herein. In the event that this Agreement is not approved by
9 the Court, fails to become effective, or is reversed, withdrawn or modified by the Court or any other
10 court with jurisdiction over the Action, the Agreement shall become null and void *ab initio* and shall
11 have no bearing on, and shall not be admissible in connection with, further proceedings in the Action.

12 49. Stipulation for Class Certification. The Parties stipulate to the certification of the
13 Settlement Class for purposes of this Settlement only. If, however, the Settlement does not become final
14 for any reason, the Parties' Agreement shall become null and void *ab initio* and shall have no bearing on,
15 and shall not be admissible in connection with, whether class certification would be appropriate in any
16 other context in the Action.

17 50. As of the Effective Date, Named Plaintiff and all Settlement Class Members hereby do
18 and shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished and
19 discharged any and all of the Released Parties of and from any and all Settled Claims. The Settlement
20 includes a release of all Settled Claims by Settlement Class Members. As of the entry and filing of the
21 Final Judgment, Named Plaintiff, and the Settlement Class Members, and all successors in interest, shall
22 be permanently enjoined and forever barred from prosecuting any and all Settled Claims released
23 pursuant to this Agreement against the Released Parties.

24 a. The Parties agree for settlement purposes only that, because the Class Members
25 are so numerous, it is impossible or impracticable to have each Class Member execute this Agreement.
26 Accordingly, the Class Notice advises all Class Members of the binding nature of the release and such
27 notice shall have the same force and effect as if the Agreement were executed by each Class Member.

28

1 b. Named Plaintiff and Class Counsel represent, covenant, and warrant that they
2 have not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer, or
3 encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or
4 rights herein released and discharged, except as set forth herein.

5 51. Settlement Payments and Calculation of Claims. Subject to final Court approval and the
6 conditions specified in this Agreement, and in consideration of the mutual covenants and promises set
7 forth herein, the GSA shall fully satisfy Defendants' obligations for any and all payments, fees and costs
8 identified in the Agreement, including, but not limited to, any payments to be made to the Named
9 Plaintiff, Settlement Class Members, the LWDA, Class Counsel's attorneys' fees and out-of-pocket
10 litigation expenses and costs, and settlement administration costs. In no event shall Defendants be
11 required to pay any amounts above the GSA under this Settlement and this Agreement, except that any
12 employer-side payroll taxes, if any were to be assessed, for the Settlement Payment(s) paid to the
13 Settlement Class shall remain Defendant CACafe's sole and separate responsibility and shall not be paid
14 out of the GSA. The Parties agree, subject to Court approval, that the GSA shall be apportioned as
15 follows:

16 a. Attorneys' Fees. Class Counsel will apply to the Court for an award of attorneys'
17 fees of no more than Three Hundred Twenty Thousand Dollars and No Cents (\$320,000.00), which
18 equals one-half of the GSA. The attorneys' fees shall come from and be deducted from the GSA and
19 paid out as set forth herein. Defendants will not oppose such application.

20 b. Attorneys' Costs. Named Plaintiff and Class Counsel shall request approval of
21 payment of up to but not to exceed \$55,000 in attorneys' costs, which will be deducted from the GSA
22 and paid out as set forth herein. Actual costs will be paid out of the Gross Settlement Amount, separate
23 from the fees requested, and separate from settlement administrator costs, which will also be paid from
24 the GSA. Defendants will not oppose such application. Attorneys' fees as specified in the preceding
25 paragraph and costs as specified in this paragraph shall cover all claimed and unclaimed attorneys' fees,
26 attorneys' costs and other amounts payable or awardable against Defendants for Class Counsel's work,
27 effort or involvement in the Action and in carrying out the Agreement and includes any and all work,
28 effort or involvement to carry out the terms of the Agreement and as may be necessary or advisable to

1 defend the Agreement and/or Settlement through appeal, or collateral attack or in any other forum or
2 proceeding.

3 The Parties expressly agree that the Court's approval or denial of any request for
4 attorneys' fees and costs are not material conditions to this Agreement, and are to be considered by the
5 Court separately from the fairness, reasonableness, adequacy, and good faith of the Parties' settlement.
6 Any order or proceeding relating to the application by Class Counsel of an award for fees and costs shall
7 not operate to terminate or cancel this Agreement. Notwithstanding any other provision of this
8 Agreement, to the extent the Court awards less than the amount of attorneys' fees and costs requested
9 by Class Counsel, the Parties agree that Class Counsel may appeal the Court's reduction in fees and
10 costs requested by Class Counsel. In the event Class Counsel appeals a reduction of Class Counsel's
11 requested fees and costs, the settlement shall proceed as otherwise provided for under this Agreement,
12 except that the differential between the fees and costs award sought by Class Counsel and the amount
13 awarded by the Court (the "Reduced Amount") shall remain in a qualified settlement fund until
14 resolution of Class Counsel's appeal. If Class Counsel appeals a reduction in the attorneys' fees and
15 costs award sought and is awarded the full Reduced Amount, then the funds remaining in the qualified
16 settlement fund shall be distributed to Class Counsel at the earliest opportunity without delay. If Class
17 Counsel's appeal is not fully successful, then the remaining amount – less any additional fees or costs
18 awarded by an appellate court resulting from Class Counsel's appeal – will be distributed amongst
19 Settlement Class Members on a *pro rata* basis by the Settlement Administrator if the remaining amount
20 is greater than or equal to \$10,000. If the remaining amount is less than \$10,000, then the funds will be
21 delivered to a mutually-agreed upon *cy pres* recipient. Defendants shall not be required to contribute
22 any additional funds to the GSA on account of any appeal by Class Counsel regarding a reduction in the
23 award of the fees and costs sought by Class Counsel, including but not limited to contributing any
24 additional settlement administration costs.

25 c. Administration Fees and Costs. Class Counsel will also apply to the Court for
26 approval of Settlement Administration costs currently estimated to be in an amount of up to Nine
27 Thousand Dollars and No Cents (\$9,000.00), which will be deducted from the GSA. Defendants will
28

1 not oppose such application. Class Counsel will specify the amount sought for such costs, up to the
2 foregoing maximum, in Named Plaintiff's motions for preliminary and final approval of the Settlement.

3 d. Named Plaintiff and Active Participant Enhancements. Class Counsel will apply
4 to the Court for approval of an enhancement award in an amount not to exceed Fifteen Thousand Dollars
5 and Zero Cents (\$15,000.00) to be paid to Named Plaintiff, for assuming the risks associated with this
6 litigation and for providing a full, general release for any and all of Named Plaintiff's individual claims,
7 known and unknown, against Defendants and Released Parties (including a 1542 waiver under Code of
8 Civil Procedure section 1542, which provides, "[a] general release does not extend to claims which the
9 creditor does not know or suspect to exist in his or her favor at the time of executing the release, which
10 if known by him or her must have materially affected his or her settlement with the debtor."). Defendants
11 will not oppose such application. The enhancement award is included in, and shall be deducted from,
12 the GSA.

13 Class Counsel will also apply to the Court for approval of enhancements to the opt-in Plaintiffs
14 participating in depositions (other than Marino) of \$2,500/each, and to the other opt-in Plaintiffs and
15 declarants of \$1,000/each, to compensate for their efforts contributing to this litigation.

16 The Parties expressly agree that the Court's approval or denial of any request for an enhancement
17 is not a material condition to this Agreement, and is to be considered by the Court separately from the
18 fairness, reasonableness, adequacy, and good faith of the Settlement. Any order or proceeding relating
19 to the application by Class Counsel of an enhancement shall not operate to terminate or cancel this
20 Agreement. To the extent the Court awards less than the amount of the requested enhancement amounts,
21 the remaining amount will be redistributed amongst Settlement Class Members on a *pro rata* basis.

22 e. Payment to the LWDA. Pursuant to California Labor Code Section 2698, *et seq.*,
23 the Parties designate Six Thousand Four Hundred Dollars and Zero Cents (\$6,400.00) of the GSA as
24 payment for Named Plaintiff's claims on her own behalf and on behalf of all Class Members for penalties
25 under the PAGA. Seventy five percent (75%) of that amount, or Four Thousand Eight Hundred Dollars
26 and Zero Cents (\$4,800.00), shall be paid to the LWDA. The remainder, or One Thousand Six Hundred
27 Dollars and Zero Cents (\$1,600.00) shall be paid to Settlement Class Members as part of the NSA.
28 Named Plaintiff represents that she has properly exhausted the necessary administrative remedies for

1 these claims. Defendants shall have the option of voiding this Agreement and Settlement in the event
2 the LWDA refuses to accept the above amount in full for all civil penalties to aggrieved employees in
3 connection with the civil penalty claims alleged in this Action, or in the event the LWDA or anyone on
4 its behalf otherwise challenges the above allocation or the Settlement.

5 f. Employer Payroll Taxes. Any employer's share of payroll taxes due as a result
6 of Settlement Payments to Settlement Class Members, if any were to be assessed, shall not be paid from
7 the GSA and shall be Defendant CACafe's sole and separate responsibility.

8 g. NSA. The NSA will be the amount remaining after deducting the amounts
9 specified in Paragraphs 51.a to 51.e (except for the \$1,600 portion of the payment for PAGA penalties
10 described in Paragraph 51.e which is not being paid to the LWDA), above.

11 h. Settlement Payments to Settlement Class Members. Only the following
12 individuals will receive Settlement Payments under the Settlement Agreement: (1) Named Plaintiff and
13 other Active Participants in the Action, as described above in Paragraph 51.d; and (2) Settlement Class
14 Members. Settlement Payments will be calculated as follows:

15 i. The NSA will be divided by the total Shifts Worked by all Settlement
16 Class Members during the Class Period as reflected in Defendant CACafe's records. All Settlement
17 Class Members shall be paid an amount equal to their individual Shifts Worked during the Class Period,
18 multiplied by the Shift Rate. Shifts worked shall be determined by the SA based on data to be provided
19 by Defendant CACafe, as may be modified by the SA's resolution of any challenges.

20 ii. The Parties agree that under no circumstances shall Defendants be
21 obligated to pay any amount under this Agreement to any Class Member other than Settlement Class
22 Members. In addition, the Parties agree that in no event shall Defendants be obligated to pay more than
23 the GSA. The Parties further agree that in no event (i) will Defendant CDS be required to pay more than
24 \$110,000 under this Settlement and this Agreement, and (ii) will Defendant Costco be required to pay
25 anything under this Settlement and this Agreement.

26 iii. The Parties acknowledge and agree that the formula used to calculate
27 Shifts Worked and individual Settlement Payments does not imply that all of the elements of damages
28

1 covered by the release are not being taken into account. The above formula was devised as a practical
2 and logistical tool to simplify the claims process.

3 52. No Credit Toward Benefit Plans. The Settlement Payments made to Settlement Class
4 Members under this Agreement shall not be utilized to calculate any additional benefits under any benefit
5 plans to which any Settlement Class Members or Class Members may be eligible, including, but not
6 limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick
7 leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Agreement
8 and the Settlement Payments made to Settlement Class Members under this Agreement includes any and
9 all rights, contributions, or amounts, if any, to which any Settlement Class Members or Class Members
10 may be entitled under any benefit plans.

11 53. Taxation of Settlement Proceeds. All Settlement Payments shall be allocated as follows.

12 a. The Parties agree that fifty percent (50%) of the amount distributed to each
13 Settlement Class Member will be considered interest, and will be reported as such to each Settlement
14 Class Member on an IRS Form 1099. The Parties agree that fifty percent (50%) of the amount distributed
15 to each Settlement Class Member will be considered penalties and any other non-wage related amount,
16 if any, and will be reported as such to each Settlement Class Member on an IRS Form 1099. There is no
17 allocation to wages because Defendants dispute that Class Members were ever anything other than
18 independent contractors and the Class Members were never compensated previously as employees.
19 CACafe acknowledges and agrees that neither Costco nor CDS have made any representations regarding
20 the tax consequences of any amounts paid or received pursuant to this Agreement, and CACafe will pay
21 the employer's share of all federal, state and local payroll taxes and any other legal obligations, if any,
22 required by law to be paid by an employer as a result of any amount paid under this Agreement being
23 determined by any taxing authority to be wages. CACafe expressly agrees to also indemnify and hold
24 Costco and CDS harmless from any amounts owed for any federal, state or local taxes, including, but not
25 limited to, the payment of FICA, FUTA, Social Security taxes, or any other local, state or federal payroll
26 tax liability. Settlement Class Members will be responsible for paying any personal income taxes owed
27 on the Settlement Payments they receive.

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1 b. The SA will issue appropriate tax forms, if required, to each such Settlement
2 Class Member consistent with the foregoing breakdown.

3 c. All Parties represent that they have not received, and shall not rely on, advice or
4 representations from other parties or their agents, including Class Members, regarding the tax treatment
5 of payments under federal, state, or local law. In this regard, Defendants make no representations
6 regarding the taxability of the Settlement Payments.

7 d. Class Counsel will be issued an IRS Form 1099 for any fees and costs awarded
8 by the Court pursuant to Paragraph 51.a-51.b. Except as provided in this Agreement, each Party shall
9 bear his, her or its own attorneys' fees, costs, and expenses incurred in the prosecution, defense, or
10 settlement of the Action. Class Counsel agrees that any allocation of fees between or among each of the
11 Class Counsel or among the Class Counsel and any other attorney that may be representing Named
12 Plaintiff or the Class shall be the sole responsibility of Class Counsel. Each Party to this Agreement
13 acknowledges and agrees that no provision of this Agreement, and no written or oral communication or
14 disclosure or other representation by Defendants and/or Released Parties is or was intended to be, nor
15 shall be construed or be relied upon as, tax advice, and Named Plaintiff and Class Members shall not rely
16 on Defendants and/or Released Parties for any tax advice with respect to the Settlement of this Action.

17 e. The Named Plaintiff and other Active Participants in the Action, as described
18 above in Paragraph 51.51.d, will be issued an IRS Form 1099 for any enhancement award approved by
19 the Court pursuant to Paragraph 51.d. The enhancement awards payable to them shall be in addition to
20 the Settlement Payments that they will receive.

21 54. Provisional Approval of Settlement. Upon execution of this Agreement, Named Plaintiff
22 shall file a motion in the Action requesting that the Court enter the Preliminary Approval Order based on
23 an agreed-upon Settlement schedule, subject to Court approval:

24 a. Seeking class certification on the terms set forth in this Agreement solely for
25 purposes of class settlement;

26 b. Preliminarily approving the proposed Settlement and this Agreement, including
27 the payments to the Settlement Class Members, Class Counsel, the Named Plaintiff, the SA, and the
28 LWDA;

1 c. Preliminarily approving the appointment of the Named Plaintiff as representative
2 of the Class for settlement purposes;

3 d. Preliminarily approving the appointment of counsel for Named Plaintiff as Class
4 Counsel;

5 e. Appointing and approving a SA as chosen by the Parties and approved by the
6 Court, to administer the notice, opt-out requests, objections and Settlement Payment procedures required
7 by this Agreement;

8 f. Approving the form of the Class Notice;

9 g. Scheduling the Final Settlement Approval Hearing for consideration of final
10 approval of this Agreement;

11 h. Requiring that any Class Members who object to the Settlement Agreement
12 submit to the SA any objection by the end of the Exclusion Period and that the Parties be given an
13 opportunity to file written responses to any objection(s) with the Court;

14 i. Approving the procedure for Class Members to submit Opt Out Requests, and
15 setting a date after which no Class Members shall be allowed to submit Opt Out Requests; and

16 j. Approving the procedure for Settlement Class Members to object to the
17 Settlement.

18 Defendants shall not oppose Class Counsel's motions for preliminary approval and final
19 approval of the Settlement so long as the motions and supporting papers are consistent with the terms
20 of this Agreement. Class Counsel shall provide Defendants with an opportunity of five (5) court days
21 to review, and provide comments on the motions for preliminary and final approval of the Settlement
22 before the motion and supporting papers are filed with the Court. The Parties will meet and confer and
23 agree upon the wording of the settlement packages to be sent to Class Members, as well as the proposed
24 orders for preliminary and final approval before filing. Failure of the Court to grant the Preliminary
25 Approval Order will be grounds for the Parties to terminate the Settlement and the terms of the
26 Agreement.

27 55. Notice Procedure.
28

1 a. *Settlement Administrator.* The Parties select Rust Consulting, Inc. (“Rust”) as
2 the third-party SA to distribute the Class Notice and the Settlement Payments and handle the tax reporting
3 and field questions with a hotline. Rust (along with any of its agents) shall represent and warrant that it
4 will: (a) provide reasonable and appropriate administrative, physical and technical safeguards for any
5 personally identifiable information (“PII”), which it receives from Defendant CACafe; (b) not disclose
6 the PII any party or third parties, including agents or subcontractors, without Defendant CACafe’s
7 consent; (c) not disclose or otherwise use the PII other than to carry out its duties as set forth herein; (d)
8 promptly provide Defendant CACafe with notice if PII is subject to unauthorized access, use, disclosure,
9 modification, or destruction; and (e) return or destroy the PII upon termination of its services.

10 b. *Class Member Data.* Within fifteen (15) calendar days after filing of the
11 Preliminary Approval Order, Defendant CACafe shall provide to the SA and Class Counsel a list of Class
12 Members that identifies for each Class Member, last-known address, last-known cellular phone number,
13 last-known email address, and the number of shifts(s) that the Class Member worked for Defendant
14 CACafe as an in-store demonstrator. In addition, Defendant CACafe shall provide to the SA, but not to
15 Class Counsel, each class member’s Social Security number. From this information, the SA will
16 determine qualifying Shifts Worked. Defendant CACafe agrees to consult with the SA as required to
17 provide the list in a format reasonably acceptable for the duties of the SA. The SA and Class Counsel
18 will keep the list confidential, use it only for the purposes described herein, take adequate safeguards to
19 protect confidential or private information and return or certify the destruction of the information upon
20 completion of the Settlement Administration process. The SA shall not provide or otherwise make
21 accessible to Class Counsel class members’ Social Security numbers unless Defendant CACafe provides
22 express, written authorization to the SA to do so.

23 56. *Class Notice.* Rust will send the Class Notice to each Class Member by First-Class U.S.
24 Mail, text, and email (where email addresses and phone numbers are available from CACafe’s electronic
25 employment records or Class Counsel’s records for class members), which includes information on how
26 he/she may Opt Out of or Object to the Settlement, a procedure by which a Class Member may challenge
27 the number of Shifts Worked identified on his/her Class Notice, and a weblink to a website set up by
28 Class Counsel described in paragraph 90. The Notice sent to the Class Members shall state a minimum

1 amount each would receive if there are no individuals who opt out of the settlement, and state that this
2 amount may increase. The Named Plaintiff will seek approval of the Parties' agreed-upon language in
3 the Class Notice in the motion for preliminary approval and will seek permission for the Parties in
4 conjunction with the SA to be able to correct immaterial errors on these forms or other mailed materials
5 without approval from the Court, provided the changes do not alter the preliminary approval by the Court.
6 Enclosed with all Class Notices shall be a postage-prepaid envelope, pre-printed with the following
7 address:

8 *Marino v. CACafe, et al.* Class Action Administrator
9 c/o Rust Consulting, Inc.
[Address of Settlement Administrator]

10 a. *Settlement Administrator Duties.* Prior to mailing the Class Notice, Rust will
11 update the addresses for the Class Members using the National Change of Address database and other
12 available resources deemed suitable by Rust. To the extent this process yields a different address from
13 the one supplied by Defendant CACafe ("Updated Address"), that Updated Address shall replace the
14 address supplied by Defendant CACafe ("Last Known Address") and be treated as the new Last Known
15 Address for purposes of this Agreement and for subsequent mailings in particular.

16 b. *Notice Procedure.* Within ten (10) days after receipt of the above information
17 from Defendant CACafe, Rust shall send the Class Notice to each Class Member's Last Known Address
18 or Updated Address (if applicable) via First-Class U.S. mail text, and email (where email addresses and
19 phone numbers are available from CACafe's electronic records and/or Class Counsel's records for Class
20 Members).

21 c. *Exclusion Period.* Class Members will have forty-five (45) days from the
22 postmark of the initial mailing of the Class Notice by Rust to submit by First-Class U.S. mail their Opt
23 Out Requests, with proof of date of submission to be the postmark date of the completed Opt Out
24 Request. Class Members will also have forty-five (45) days to object to the Settlement by submitting a
25 written objection to Rust that sets forth the basis of the objection pursuant to Paragraph 59, which the
26 SA shall file or otherwise submit to the Court and serve on the Parties within 10 days after the end of the
27 Exclusion Period.

28 d. *SA Follow-up efforts.*

1 i. Rust shall re-mail by First-Class U.S. mail the Class Notice returned by
2 the Post Office with a forwarding address, and shall re-mail by First-Class U.S. mail the Class Notice to
3 any Class Member who personally provides an updated address to the SA.

4 ii. In the event that the first mailing of the Class Notice to any Class Member
5 is returned without a forwarding address, Rust will immediately perform skip trace(s) if necessary using
6 social security numbers provided by Defendant CACafe and National Change of Address searches, as
7 needed, to verify the accuracy of the addresses provided and will conduct a second round of mailings of
8 the Class Notice by First-Class U.S. mail within an agreed number of days for those forms returned to
9 sender. If no new information is ascertained by means of a skip trace, or if the Class Notice is returned
10 to Rust after using an address obtained from a standard skip trace, Rust will immediately perform a
11 manual “in-depth skip trace” to locate a more recent or accurate address. If an Updated Address is
12 identified by this method, Rust will resend the Class Notice to the Updated Address within three (3)
13 calendar days of identifying the Updated Address.

14 e. *Documenting Communications.* Rust shall date stamp documents it receives,
15 including Opt Out Requests, Objections and any correspondences and documents from Class Members.

16 f. *Settlement Administrator Declaration.* At least ten (10) days prior to the filing
17 of the motion for final approval, Rust shall prepare, subject to Class Counsel’s and Defendants’ input
18 and approval, a declaration setting forth the due diligence and proof of mailing of the Class Notices, the
19 results of Rust’s mailings, including tracing and re-mailing efforts, and the Class Members’ responses to
20 those mailing and provide additional information deemed necessary to approve the settlement.

21 g. *SA Written Reports.* Each week during the Exclusion Period, Rust shall provide
22 the Parties with a report listing the number of Class Members that submitted Opt Out Requests and
23 Objections and challenges (*see infra* Paragraph 57(c)). Within seven (7) days of the close of the
24 Exclusion Period, Rust will provide a final report listing the number of Class Members who submitted
25 Opt Out Requests or Objections.

26 h. *SA Calculations of Settlement Payments.* Within seven (7) days after resolving
27 all challenges made by Settlement Class Members, and following the Final Approval Order, Rust shall
28 provide to the Parties a report showing its calculation of all Settlement Payments to be made to Settlement

1 Class Members. After receiving Rust's report, Class Counsel and Defendants' counsel shall review the
2 same to determine if the calculation of payments to Settlement Class Members is consistent with this
3 Agreement, and shall notify Rust if either counsel does not believe the calculation is consistent with the
4 Agreement. After receipt of comments from counsel, Rust shall finalize its calculation of Settlement
5 Payments, at least five (5) days prior to the distribution of such payments, and shall provide Class
6 Counsel and Defendants' Counsel with a final report listing the amount of all payments to be made to
7 each Settlement Class Member from the NSA. Rust will also provide information that is requested and
8 approved by both Parties regarding its duties and other aspects of the Settlement and that is necessary to
9 carry out the terms of the Settlement.

10 57. Requirements for Recovery of Settlement Payments.

11 a. *Class Members.* No claim form is necessary to participate in the Settlement.
12 Unless a Class Member submits a valid and timely Opt Out Request (as described in Paragraph 58), a
13 Class Member who takes no action will be a Settlement Class Member, bound by the Final Judgment,
14 and will receive a payment from the NSA. All Class Members except for those who timely and validly
15 opt out of the Settlement shall be bound by the release in this Agreement. However, only those Settlement
16 Class Members who cash a check received under this Settlement will be deemed to have waived their
17 claims under the Fair Labor Standards Act. Each settlement check sent to the Settlement Class Members
18 will contain language advising them that by cashing the check, they are releasing any claims they may
19 have under the Fair Labor Standards Act.

20 b. *Late Submissions.* Rust shall not accept as valid any Opt-Out Request
21 postmarked after the end of the Exclusion Period, absent agreement from all Parties. It shall be presumed
22 that, if an Opt-Out Request or Objection is not postmarked on or before the last day of the Exclusion
23 Period, the Class Member did not return the Opt-Out Request or Objection in a timely manner.

24 c. *Challenges.* Class Members will have the right to challenge the number of Shifts
25 Worked allocated to them. The following challenge procedure will be established for the Class Member
26 to dispute information on which his/her payment amount is based: Challenges to the number of Shifts
27 Worked shall be sent directly to Rust at the address indicated on the Class Notice. A Class Member
28 challenging the number of Shifts Worked identified may also submit documentary evidence in order to

1 prove the number of Shifts Worked during the Class Period. Defendants shall have the right to respond
2 to the challenge by any Settlement Class Member. No challenge to the number of Shifts Worked will be
3 accepted unless sent by email to the Settlement Administrator's email address provided in the Notice, or
4 by First-Class U.S. mail within forty-five (45) days from the initial mailing of the Class Notice by Rust,
5 with proof of date of submission to be the postmark date. Additional time may be provided to a Class
6 Member only upon a showing of good cause and within an amount of time determined by Rust that will
7 not delay the distribution of Settlement Payments to other Class Members and in no event beyond the
8 date of filing of the motion for final approval. Rust will inform Class Counsel and Defendants' Counsel
9 in writing of any timely filed challenges and will determine all such disputes after consulting with the
10 Parties regarding the number of Shifts Worked. Challenges will be resolved without hearing by Rust,
11 who will make a decision based on Defendant CACafe's records and any documents or other information
12 presented by the Class Member making the challenge, Class Counsel or Defendants. The SA's
13 determination is final and binding without a right of appeal. Rust will inform the Parties of its final
14 dispositions of all such challenges.

15 58. Opt-Out Procedure. Unless a Class Member timely opts out of the Settlement described
16 in this Agreement, he/she shall be bound by the terms and conditions of this Agreement, and shall also
17 be bound by the Final Judgment enjoining all Settlement Class Members from pursuing, or seeking to
18 reopen, any of the Settled Claims against the Released Parties. A Class Member will not be entitled to
19 opt out of the Settlement established by this Agreement unless he or she submits to the SA a request or
20 notice of opting out via First-Class U.S. mail postmarked on or before the expiration of the Exclusion
21 Period. The request must be in writing and include the Class Member's name, address, date, signature,
22 and a request that he or she "opts out" of the Settlement.

23 a. Upon receipt of any Opt-Out Request within the Exclusion Period, Rust shall
24 review the request to verify the information contained therein, and confirm that the request complies with
25 the requirements of this Agreement.

26 b. Any Class Member who fails to submit via First-Class U.S. mail a timely,
27 complete and valid Opt-Out Request shall be barred from opting out of this Agreement or the Settlement.

28

1 Rust shall not have the authority to extend the deadline for Class Members to file a request to opt out of
2 the Settlement absent agreement by all Parties.

3 c. Class Members shall be permitted to rescind in writing their request to opt out by
4 submitting a written rescission statement to Rust no later than the Effective Date.

5 d. If five percent (5%) or more of the Class Members (6 or more) timely opt out of
6 the Settlement, any one of the Defendants shall have the sole and absolute discretion to withdraw from
7 this Agreement within ten (10) days after expiration of the Exclusion Period. Defendants shall provide
8 written notice of such withdrawal to Class Counsel. In the event that any of the Defendants elects to so
9 withdraw, the withdrawal shall have the same effect as a termination of this Agreement for failure to
10 satisfy a condition of Settlement, the Agreement shall become null and void and have no further force or
11 effect, and all Settlement Payments deposited into the Qualified Settlement Fund by the Paying
12 Defendants shall be returned in full to the Paying Defendants.

13 59. Objections to Settlement. Any Settlement Class Member may object to the Settlement.
14 Any such objection must be submitted to Rust in writing on or before the close of the Exclusion Period.
15 Any such written Objection shall include the Class Member's name, address, and last four digits of
16 his/her Social Security number, and state, in writing, the reason for the objection. The Parties shall be
17 permitted to file responses to the Objection in addition to any motion for final approval documents. At
18 no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Settlement Class
19 Members to file or serve written objections to the Settlement or appeal from the Order granting final
20 approval and/or Final Judgment. Class Counsel shall not represent any Settlement Class Members with
21 respect to any such objections.

22 60. Final Fairness Hearing, Final Approval and Final Judgment.

23 a. *Entry of Final Judgment.* At the Final Approval Hearing, Named Plaintiff will
24 request, and Defendants will concur in said request, that the Court enter a Final Judgment consistent with
25 this Agreement.

26 b. *Motion.* Named Plaintiff will draft and file a motion for final approval in
27 conformity with any requirements from the Court and will take other action to request the entry of Final
28 Judgment in accordance with this Agreement. The motion for final approval and corresponding

1 paperwork will be subject to input and approval from Defendants and the proposed Judgment finally
2 approving the Settlement shall be subject to the input from and approval by Defendants, provided that
3 Defendants shall have five (5) court days from receipt to provide such input. Defendants will concur in
4 or not object to said request that the Court enter Final Judgment finally approving this Agreement. In
5 conjunction with the motion for final approval, Class Counsel shall file a declaration from Rust
6 confirming that the Class Notice and related forms were mailed to all Class Members as required by this
7 Agreement, as well as any additional information Class Counsel, with the input and approval of
8 Defendants, deems appropriate to provide to the Court. Named Plaintiff will draft and file a separate
9 motion requesting any attorneys' fees and costs and enhancement awards pursuant to the Agreement to
10 be heard on the same day as the motion for final approval.

11 c. *Objections.* Before and/or at the Final Fairness Hearing, Named Plaintiff and
12 Defendants, through their counsel of record, may address any written objections from Class Members or
13 any concerns from Class Members who attend the hearing as well as any concerns of the Court.

14 d. *Order.* Named Plaintiff will also draft and submit a proposed Order of Final
15 Approval and Final Judgment in the form that is consistent with this Agreement and subject to prior
16 review, revision and approval by Defendants. The Parties shall take all reasonable efforts to secure entry
17 of the Order of Final Approval and Final Judgment. If the Court rejects the Agreement, fails to enter the
18 Order of Final Approval, and fails to enter the Final Judgment, this Agreement shall be void *ab initio*,
19 and all Settlement Payments deposited into the Qualified Settlement Fund by the Paying Defendants shall
20 be returned in full to the Paying Defendants, and Defendants shall have no obligation to make any
21 payments under the Agreement, except for their agreed upon proportional share of any payments owed
22 to Rust for services performed up to that time. The Named Plaintiff will submit a proposed Order of
23 Final Approval subject to the review and approval of Defendants that will contain provisions:

24 i. Wherein the Court enters Final Judgment, finding that this Agreement and
25 Settlement is fair, just, equitable, reasonable, adequate and in the best interests of the Class and was
26 reached as a result of intensive, serious, and non-collusive arms-length negotiations and was achieved
27 with the aid of an experienced mediator and in good faith as to each Class Member;

28

1 ii. Affirming that each side will bear its own costs and fees (including
2 attorneys' fees), except as provided by the Agreement, and that Defendants shall not be required to pay
3 any amounts other than as set forth in the Agreement and the Order of Final Approval, and in no event
4 any amount above the GSA;

5 iii. That confirms the certification of the Class for purposes of Settlement;

6 iv. That finds that the Settlement Administration process as carried out
7 afforded adequate protections to Class Members, provided the best notice practicable, and satisfied the
8 requirements of law and due process;

9 v. That rejects any Objections to the Settlement;

10 vi. That retains Court jurisdiction after entry of judgment to oversee
11 administration and enforcement of the terms of the Agreement and the Court's Order that the Settlement
12 Class Members be barred from pursuing, or seeking to reopen, Settled Claims against the Released
13 Parties; and

14 vii. That requires the Parties to carry out the provisions of this Agreement.

15 61. Post Final Approval Requirements and Procedures. Following entry of the Court's Order
16 Granting Final Approval of Settlement and Final Judgment, the Parties will act to assure the timely
17 execution and fulfillment of all its provisions, including, but not limited to, the following:

18 a. Should an appeal be taken from the Final Approval of the Settlement, all Parties
19 will support the Order of Final Approval and Final Judgment on appeal except that Class Counsel shall
20 retain, and Defendants agree not to oppose, the right to appeal any reduction by the Court of Class
21 Counsel's requested attorneys' fees and/or costs;

22 b. The Parties will assist Rust as needed or requested in the process of identifying
23 and locating Settlement Class Members entitled to Settlement Payments from the NSA and assuring
24 delivery of such payments;

25 c. Class Counsel will assist Rust as needed or requested in completing the
26 distribution of any uncashed checks to a *cy pres* recipient mutually agreed-upon by all the Parties; and

27 d. Class Counsel will certify to the Court completion of all payments required to be
28 made by this Settlement Agreement.

1 62. Payment of Settlement. The remittance of the GSA to Rust shall constitute full and
2 complete discharge of the entire monetary obligation of Defendants under this Agreement. No Released
3 Party shall have any further monetary obligation or liability to Class Counsel, Named Plaintiff, or
4 Settlement Class Members under this Agreement after receipt by the SA of the GSA.

5 a. The Parties agree that the GSA will qualify as a settlement fund pursuant to the
6 requirements of Section 468(B)(g) of the Internal Revenue Code of 1986, as amended, and Section
7 1.468B-1 *et seq.* of the income tax regulations. Furthermore, the SA is hereby designated as the
8 “Administrator” of the qualified Settlement funds for purposes of Section 1.468B-2(k) of the income tax
9 regulations.

10 b. The distribution of Settlement Payments to Settlement Class Members shall occur
11 no later than the Settlement Proceeds Distribution Deadline. Rust shall be deemed to have timely
12 distributed Settlement Payments if it places said payment in the mail (First-Class U.S.). When Rust
13 receives notice from Settlement Class Members that they have not received such Settlement Payments
14 due to changes of address or other circumstances, Rust shall be deemed to have timely distributed those
15 Settlement Payments if (after satisfying itself that the amounts have not been received or negotiated) it
16 re-mails the payments to the updated addresses or provides for delivery by other reasonable methods
17 requested by such Settlement Class Members, provided that any and all requests for re-mailing shall be
18 actually received and acknowledged by the SA at least two (2) weeks before the 150-day deadline
19 referenced in Paragraphs 63 and 64 or will be deemed ineffective, ignored and have no effect and the
20 original mailed amount shall be deemed timely distribution of the Settlement Payment. Rust shall mail
21 all Settlement Payments by the Settlement Proceeds Distribution Deadline. No person shall have any
22 claim against Rust, Defendants, Class Counsel, Defendants’ counsel, or any other agent designated by
23 Named Plaintiff or Defendants based upon the distribution of Settlement Payments made substantially
24 in accordance with this Agreement or further orders of the Court. At Defendants’ option, checks in
25 payment of amounts due to Settlement Class Members under the Settlement may contain a brief statement
26 of waiver of such claims as part of the endorsement language.

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1 c. The distribution of attorneys' fees, costs, and any enhancement awards to the
2 Named Plaintiff or other Active Participants shall occur no later than the payment date of the payment
3 under the Settlement Proceeds Distribution Deadline.

4 d. Upon transfer of the GSA to Rust, Defendants, the Released Parties, and
5 Defendants' counsel shall have no further monetary liability or financial responsibility to Class Counsel
6 or to any vendors or third parties employed by the Named Plaintiff or Class Counsel in connection with
7 the Action.

8 e. Paying Defendants will be refunded all funds deposited into the Qualified
9 Settlement Fund, respectively, in the event that any of the terms or conditions of the settlement, including
10 those set forth in this Agreement, are not fully and completely approved by the Court and satisfied, as
11 provided for by this Agreement, or in the event that the Agreement is canceled, terminated or otherwise
12 no longer effective, except in the event of a challenge to a denial of Class Counsel's fees and costs, or
13 part of them, in which case the funds not awarded will remain in the Qualified Settlement Fund, pending
14 any appeal, and the balance of the funds will be distributed in accordance with this Agreement.

15 63. Settlement Class Members who are sent Settlement Payments shall have one hundred
16 and fifty (150) calendar days after mailing by Rust to cash their settlement checks.

17 64. If such Settlement Class Members do not cash their checks within that period, those
18 checks will become void and a stop payment will be placed on the uncashed checks. Settlement checks
19 that are not cashed within one hundred and fifty (150) days of mailing shall be delivered to a *cy pres*
20 recipient mutually agreed-upon by all the Parties. In such event, those Settlement Class Members will
21 be deemed to have waived irrevocably any right in or claim to a Settlement Payment. Settlement Class
22 Members who fail to negotiate their check(s) in a timely fashion shall, like all Settlement Class Members
23 who did not validly opt out of the Settlement, remain subject to the terms of the Settlement and the Final
24 Judgment.

25 65. No Future Employment or Performance of Demos in Costco Warehouses. Named
26 Plaintiff hereby waives any rights to future employment with the Released Parties. Named Plaintiff
27 agrees that Defendants are not obligated to offer employment to her, regardless of the circumstances, at
28 any time in the future. In addition, Named Plaintiff agrees to never knowingly accept an assignment from

1 a vendor or staffing agency to perform a demonstration or road show in a Costco warehouse again.
2 Named Plaintiff agrees that this is a negotiated clause of this Agreement and not evidence of any claimed
3 retaliation or discrimination.

4 66. Mutual Releases By and Between Defendants. It is understood and agreed by the Parties,
5 and each of them, that a material term of the Parties' settlement and this Agreement is each Defendant's
6 express agreement to release and waive any and all, in contract and in equity, claims each may have against
7 the other Defendants, including but not limited to, claims for indemnity and reimbursement of their litigation
8 expenses (including attorneys' fees, expert fees, and costs), incurred while defending themselves against the
9 claims in the Action. This release as pertains to any indemnity and reimbursement rights against CACafe
10 shall be null and void in the event of any bankruptcy filing by CACafe, Zheng, or Chao, or any of them (that
11 is, any indemnity and reimbursement rights against CACafe shall be restored upon any bankruptcy filing),
12 if said bankruptcy results in the Parties' settlement not being effectuated and Costco and/or CDS do not
13 obtain a release of claims as provided herein.

14 67. Binding Effect of Agreement on Settlement Class Members. Subject to final Court
15 approval, all Settlement Class Members shall be bound by this Agreement, and Final Judgment shall be
16 entered in the Action barring relitigation of any Settled Claims against Defendants and/or the Released
17 Parties. In addition, unless the Class Member opts out of the Settlement described in this Agreement,
18 he/she shall be bound by the Court's Order of Final Approval and Final Judgment enjoining all Class
19 Members from pursuing, or seeking to reopen, Settled Claims against the Released Parties. As set forth
20 more fully in Paragraph 70, if the Court does not enter an Order of Final Approval and Final Judgment
21 granting final approval of the Settlement, which becomes final, the Settlement shall become null and
22 void, and its terms and all documents setting out its terms shall be inadmissible in further litigation of
23 this Action or any other case.

24 68. Non-Interference with Opt-Out Procedure. The Parties and their counsel agree that they
25 shall not seek to solicit or otherwise encourage Class Members to submit requests for exclusion (Opt-
26 Out Requests) or objections to the Settlement or to appeal from the Final Judgment.

27 69. Waiver of Appeal. Subject to preliminary and final approval of this Settlement, Named
28 Plaintiff and all Class Members, except those Class Members who make timely and valid objections

1 pursuant to the terms of this Agreement, expressly waive the right to appeal. Notwithstanding this
2 paragraph or any other provision of this Agreement, Class Counsel retain their right to appeal a reduction
3 of attorneys' fees and/or costs, consistent with this Agreement, and Defendants agree not to oppose such
4 an appeal relating to any reduction of Class Counsel's fees and costs. Such appeal shall not delay
5 administration of the Settlement and all payments approved by the Court and shall only impact the
6 disbursement of any non-approved fees and costs.

7 70. Automatic Voiding of Agreement if Settlement Not Finalized. If for any reason the
8 Effective Date does not occur, the Settlement shall be null and void and the orders, judgment, and
9 dismissal to be entered pursuant to this Agreement shall be vacated; and the Parties will be returned to
10 the status quo prior to entering this Agreement with respect to the Action, as if the Parties had never
11 entered into this Agreement. In addition, in such event, the Agreement and all negotiations, court orders
12 and proceedings relating thereto shall be without prejudice to the rights of any and all Parties hereto, and
13 evidence relating to the Agreement and all negotiations shall not be admissible or discoverable in the
14 Action or otherwise.

15 71. No Injunctive Relief. The Parties agree that the Settlement does not include injunctive
16 relief against Defendants or the Released Parties.

17 72. Confidentiality and Non-Disparagement.

18 a. The terms of the Settlement shall remain confidential, except as to the Parties,
19 until the filing of the Motion for Preliminary Approval, but the Parties will be able to disclose to the
20 Court, when and as necessary before preliminary approval, that they have reached an agreement in
21 principle, subject to completion of a final Agreement and Court approval; and after such disclosure is
22 made to the Court, all Parties may disclose the same information to others, subject to the further
23 provisions and restrictions in this Agreement.

24 b. The Parties and their counsel will not initiate public relations or media inquiries
25 about the Settlement. This shall not restrict Class Counsel in any way from responding to inquiries posed
26 by Class Members.

27 c. Named Plaintiff and Class Counsel agree to maintain the confidentiality of any
28 documents produced, formally or informally, during the course of the Action. Named Plaintiff and Class

1 Counsel agree to return to Defendants' counsel or destroy any information designated as confidential
2 during the course of the Action, including but not limited to any information and/or documents provided
3 to Class Counsel for purposes of mediation. In addition, Class Counsel agrees that any information they
4 receive or have received in connection with this settlement may be used for this Action only, and may
5 not be used for any purpose or in any other action or proceeding. Class Counsel agrees that, other than
6 as to general descriptions of litigation risk associated with solvency-related concerns, CACafe's
7 solvency-related documents produced for mediation and the facts therein will only be described to the
8 Court in redacted submissions accompanying the preliminary approval motion, concerning which Class
9 Counsel will also file a motion to file under seal. CACafe agrees to cooperate in providing information
10 to the Court, as necessary, relating to its solvency-related issues including providing an affidavit in
11 support of the anticipated motion(s) to seal information and/or documents related to CACafe's solvency.
12 The parties agree that such information will be filed under seal because of its sensitive, commercial
13 nature.

14 d. Named Plaintiff and her counsel agree that they will not make any disparaging
15 remarks about any of the Defendants and/or Released Parties. Defendants Jane Zeng and Ted Chao,
16 and the Office of the General Counsel for Costco (which will handle all media inquiries about the
17 action on behalf of Defendant Costco), agree that they will not make any disparaging remarks about
18 Named Plaintiff. Defendant CDS agrees that in response to any media inquiry about the action directed
19 to CDS, CDS will not provide any comment and/or will only state something to this effect: "No
20 comment."

21 e. Defendants shall direct all inquiries by the Class to Class Counsel and/or Rust
22 who shall provide general information about the lawsuit, including responding to questions about the
23 lawsuit, by providing neutral information about the agreement consistent with the Agreement.

24 73. Invalidation of Agreement for Failure to Satisfy Conditions. The terms and provisions
25 in Paragraphs 1 through 90 of this Agreement are not mere recitals, but are deemed to constitute
26 contractual terms. The Court may allocate less to the Named Plaintiff, Class Counsel, and/or the LWDA
27 than indicated in Paragraphs 51.a, 51.b, 51.d and 51.e without impacting the validity and enforceability
28 of the Agreement. The Court may allocate less to Rust than indicated in Paragraph 51.c provided the

1 actual amount spent by Rust is less than the maximum set forth in that Paragraph. Except for the
2 provisions set forth in the preceding two sentences, or the event of a disapproval or partial disapproval
3 and any associated appeal regarding unapproved attorneys' fees and costs, which shall not operate to
4 delay or terminate this Agreement, in the event that any of the terms or conditions set forth in Paragraphs
5 1 through 90 of this Agreement are not fully and completely approved by the Court and satisfied, this
6 Agreement shall terminate at the option of any of the Defendants or Plaintiff, or both, and all terms of
7 the Agreement, including any payments by Defendants, shall be null and void. Without limiting the
8 generality of the foregoing, if this Agreement is terminated for failure to satisfy any of the terms or
9 conditions of Paragraphs 1 through 90 of this Agreement:

10 a. Defendants shall not be obligated to create or maintain any type of settlement
11 fund, and shall not be obligated to make any Settlement Payment to any Class Member, and/or any
12 payment to Class Counsel and/or to the Named Plaintiff.

13 b. The Agreement and all negotiations, Court orders and proceedings relating
14 thereto shall be without prejudice to the rights of the Named Plaintiff, Class Members, and Defendants,
15 each of whom shall be restored to their respective positions existing prior to the execution of this
16 Agreement, and evidence relating to the Agreement and all negotiations shall not be discoverable or
17 admissible in the Action or any other litigation;

18 c. Defendants will not have waived, and instead expressly reserve, their rights to
19 challenge the propriety of class certification for any purpose; and

20 d. To the extent one exists, the Preliminary Approval Order shall be vacated in its
21 entirety and neither this Agreement, the Preliminary Approval Order, nor any other document in any way
22 relating to any of the foregoing, shall be relied upon, referred to or used in any way for any purpose in
23 connection with any further proceedings in this Action or any related action, including class certification
24 proceedings.

25 74. Notices. All notices, requests, demands and other communications required or permitted
26 to be given pursuant to this Agreement shall be in writing, and shall be delivered by First-Class U.S. mail
27 to the attorneys listed in the caption above and to Rust, with additional copies to be sent via electronic
28 mail.

1 75. Modification in Writing. This Agreement may be altered, amended, modified or waived,
2 in whole or in part, only in a writing signed by all signatories to this Agreement. This Agreement may
3 not be amended, altered, modified or waived, in whole or in part, orally. Any waiver of any provision
4 of this Agreement shall not constitute a waiver of any other provision of this Agreement unless expressly
5 so indicated.

6 76. Ongoing Cooperation. Named Plaintiff and Defendants, and each of their respective
7 counsel, shall cooperate in good faith to execute all documents and perform all acts necessary and proper
8 to effectuate and implement the terms of this Agreement, including but not limited to drafting and
9 submitting the Motions for Preliminary and Final Approval, and defending the Agreement and Final
10 Judgment against objections and appeals. The Parties to this Agreement shall use their best efforts,
11 including all efforts contemplated by this Agreement and any other efforts that may become necessary
12 by order of the Court or otherwise, to effectuate this Agreement and the terms set forth herein.

13 77. No Prior Assignments. The Parties hereto represent, covenant, and warrant that they
14 have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or
15 encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or
16 rights herein released and discharged except as set forth herein.

17 78. Binding on Successors. This Agreement shall be binding and shall inure to the benefit
18 of the Parties and their respective successors, assigns, executors, administrators, heirs and legal
19 representatives, including the Released Parties.

20 79. Entire Agreement. This Agreement constitutes the full, complete and entire
21 understanding, agreement and arrangement between Named Plaintiff and the Class Members on the one
22 hand, and Defendants and Released Parties on the other hand, with respect to the Settlement of the Action
23 and the Settled Claims against the Released Parties, including Defendants. This Agreement supersedes
24 any and all prior oral or written understandings, agreements and arrangements between the Parties with
25 respect to the Settlement of the Action and the Settled Claims against the Released Parties. Except those
26 set forth and included expressly in this Agreement, there are no other agreements, covenants, promises,
27 representations or arrangements between the Parties with respect to the Settlement of the Action and the
28 Settled Claims against the Released Parties. The Parties explicitly recognize California Civil Code

1 Section 1625 and California Code of Civil Procedure Section 1856(a), which provide that a written
2 agreement is to be construed according to its terms, and may not be varied or contradicted by extrinsic
3 evidence, and agree that no such extrinsic oral or written representations or terms shall modify, vary, or
4 contradict the terms of this Agreement.

5 80. Execution in Counterparts. This Agreement may be signed in one or more counterparts.
6 All executed copies of this Agreement, and photocopies thereof (including facsimile or email copies of
7 the signature pages), shall have the same force and effect and shall be as legally binding and enforceable
8 as the original.

9 81. Captions. The captions and section numbers in this Agreement are inserted for the
10 reader's convenience, and in no way define, limit, construe, or describe the scope or intent of the
11 provisions of this Agreement.

12 82. Governing Law. This Agreement shall be interpreted, construed, enforced, and
13 administered in accordance with the laws of the State of California, without regard to conflict of law
14 rules.

15 83. Reservation of Jurisdiction. Notwithstanding the entry and filing of Final Judgment, the
16 Court shall retain jurisdiction under the Court's applicable rules and Federal Rules of Civil Procedure,
17 for purposes of interpreting and enforcing the terms of this Agreement.

18 84. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and
19 conditions of this Agreement. Accordingly, this Agreement shall not be construed more strictly against
20 one Party than another merely by virtue of the fact that it may have been prepared by counsel for one of
21 the Parties, it being recognized that, because of the arms-length negotiations between the Parties, all
22 Parties have contributed to the preparation of this Agreement.

23 85. Warranties and Representations. With respect to themselves, each of the Parties to this
24 Agreement and/or their agents or counsel represent, covenant and warrant that (a) they have full power
25 and authority to enter into and consummate all transactions contemplated by this Agreement and have
26 duly authorized the execution, delivery and performance of this Agreement, and (b) the person executing
27 this Agreement has the full right, power and authority to enter into this Agreement on behalf of the Party
28 for whom he/she has executed this Agreement, and the full right, power and authority to execute any and

1 all necessary instruments in connection herewith, and to fully bind such Party to the terms and obligations
2 of this Agreement, except that the Parties understand that the Named Plaintiff and Class Counsel only
3 have the power to bind Class Members to the extent this Agreement is approved by the Court.

4 86. Representation by Counsel. The Parties acknowledge that they have been represented
5 by counsel throughout all negotiations that preceded the execution of this Agreement, and that this
6 Agreement has been executed with the consent and advice of counsel. Further, the Named Plaintiff and
7 Class Counsel warrant and represent that there are no liens on the Agreement, and that after entry by the
8 Court of the Final Judgment, Defendants, through the SA, may distribute funds to Settlement Class
9 Members, Class Counsel, and the Named Plaintiff as provided by this Agreement.

10 87. Authorization by Named Plaintiff. Named Plaintiff authorizes Class Counsel to sign this
11 Agreement and further agrees not to request to be excluded from the Class and not to object to any terms
12 of this Agreement. Any such request for exclusion (Opt Out Request) or objection shall therefore be
13 void and of no force or effect.

14 88. Stipulated Judgment Against CACafe, Zheng, and Chao: At the time of the execution of the
15 Memorandum Of Understanding (MOU) in this case, Defendants CACafe, Zheng, and Chao signed a
16 Stipulated Judgment (a copy of which is attached hereto as Exhibit A), by which Plaintiffs, including the
17 settlement class members, will be entitled to have Judgment entered in their favor in the amount of \$1,000,000
18 in the event of any bankruptcy filing by CACafe, Zheng, or Chao, or any of them, if said bankruptcy results
19 in the Parties' settlement of the Action not being concluded and completed according to the remaining terms
20 of the settlement. Said Stipulated Judgment shall be held by Plaintiffs' counsel and not filed unless CACafe,
21 Zheng or Chao, or any of them fail to pay their \$530,000 portion of the total settlement amount, and/or file
22 for bankruptcy protection.

23 89. Qualified Settlement Fund: The Paying Defendants deposited \$640,000 into a Qualified
24 Settlement Fund (QSF) maintained by the SA, after the signing of the MOU. Paying Defendants will be
25 refunded all funds deposited into the QSF in the event that any of the terms or conditions of the settlement
26 are not fully and completely approved by the Court and satisfied, or in the event that the Agreement is
27 canceled, terminated or otherwise no longer effective, except as otherwise provided in this Agreement,
28

1 e.g., concerning unapproved fees and costs, which shall remain in the QSF pending any appeal and be
2 disbursed at the conclusion of any such appeal.

3 90. Website. Class Counsel shall set up a website on
4 the www.bryanschwarzlaw.com domain which will be used to provide settlement documents and other
5 case-related documents online for Class Members' review. The website's content will be neutral and for
6 informational and settlement administration purposes only, and will not state anything derogatory or
7 disparaging about Defendants and/or the Released Parties. Specifically, the website shall only contain a
8 bare bones neutral statement about the claims alleged, the names of the parties, that Defendants deny any
9 liability, that the Court hasn't made any determinations about the merits of Plaintiff's claims, and will
10 provide information about any future approval hearings, along with any changes to the hearing schedule,
11 if any. Documents to be included on the website will include the operative First Amended Complaint,
12 the long form Settlement Agreement, the Motion for Preliminary Approval, the Motion for Final
13 Approval, and the Orders issued by the court re same. Any disputes between the parties related to the
14 content of the website shall be attempted to be resolved by the parties, in good faith, and if a resolution
15 cannot be reached, the unresolved issues shall be briefed to the court, who shall make a final
16 determination about the website's content.

17 IT IS SO AGREED:

18
19 Dated: September 18, 2018

By: Leona Marino
Leona Marino, Plaintiff

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22
23 Dated: September __, 2018

By: _____
CACafe, Inc. Representative

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25
26 Dated: September __, 2018

By: _____
Jane Zheng

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28

1 e.g., concerning unapproved fees and costs, which shall remain in the QSF pending any appeal and be
2 disbursed at the conclusion of any such appeal.

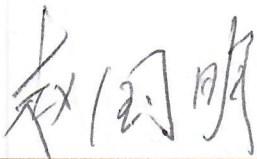
3 90. Website. Class Counsel shall set up a website on
4 the www.bryanschwarzlaw.com domain which will be used to provide settlement documents and other
5 case-related documents online for Class Members' review. The website's content will be neutral and for
6 informational and settlement administration purposes only, and will not state anything derogatory or
7 disparaging about Defendants and/or the Released Parties. Specifically, the website shall only contain a
8 bare bones neutral statement about the claims alleged, the names of the parties, that Defendants deny any
9 liability, that the Court hasn't made any determinations about the merits of Plaintiff's claims, and will
10 provide information about any future approval hearings, along with any changes to the hearing schedule,
11 if any. Documents to be included on the website will include the operative First Amended Complaint,
12 the long form Settlement Agreement, the Motion for Preliminary Approval, the Motion for Final
13 Approval, and the Orders issued by the court re same. Any disputes between the parties related to the
14 content of the website shall be attempted to be resolved by the parties, in good faith, and if a resolution
15 cannot be reached, the unresolved issues shall be briefed to the court, who shall make a final
16 determination about the website's content.

17 IT IS SO AGREED:

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19 Dated: September __, 2018

By: _____
Leona Marino, Plaintiff


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23 Dated: September 20, 2018

By:  _____
CACafe, Inc. Representative

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25
26 Dated: September 20, 2018

By:  _____
Jane Zheng

1 Dated: September 20, 2018

By: 
Ted Chao

2
3
4 Dated: September __, 2018

By: _____
Costco Wholesale Corporation
Representative

5
6
7 Dated: September __, 2018

By: _____
Club Demonstration Services, Inc.
Representative

8
9
10 APPROVED AS TO FORM:

11 Dated: September __, 2018

BRYAN SCHWARTZ LAW

12
13 By: _____
Bryan Schwartz
Eduard Meleshinsky
Attorneys for Plaintiff LEONA MARINO

14
15
16 Dated: September __, 2018

LAW OFFICES OF SAM X.J. WU, APC

17
18
19 By: _____
Alexei Brenot
Attorneys for Defendants
CACAFE, INC., JANE ZHENG,
and TED CHAO

20
21
22 Dated: September __, 2018

SEYFARTH SHAW LLP

23
24
25 By: _____
Catherine M. Dacre
Justin T. Curley
Attorneys for Defendant COSTCO
WHOLESALE CORPORATION

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Dated: September __, 2018

By: _____
Ted Chao

Dated: September ¹⁷ __, 2018

By: 
Costco Wholesale Corporation
Representative

Dated: September __, 2018

By: _____
Club Demonstration Services, Inc.
Representative

APPROVED AS TO FORM:

Dated: September __, 2018

BRYAN SCHWARTZ LAW

By: _____
Bryan Schwartz
Eduard Meleshinsky
Attorneys for Plaintiff LEONA MARINO

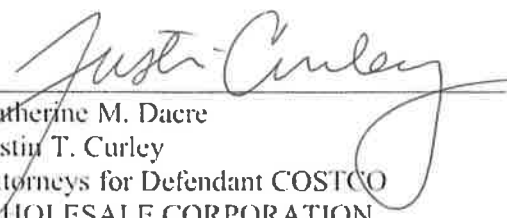
Dated: September __, 2018

LAW OFFICES OF SAM X.J. WU. APC

By: _____
Alexei Brenot
Attorneys for Defendants
CACAFE, INC., JANE ZHENG,
and TED CHAO

Dated: September ²⁹ __, 2018

SEYFARTH SHAW LLP

By: 
Catherine M. Dacre
Justin T. Curley
Attorneys for Defendant COSTCO
WHOLESALE CORPORATION

1 Dated: September __, 2018

By: _____
Ted Chao

4 Dated: September __, 2018

By: _____
Costco Wholesale Corporation
Representative

7 Dated: September 20, 2018

By:  _____
Club Demonstration Services, Inc.
Representative

10 APPROVED AS TO FORM:


11 Dated: September __, 2018

BRYAN SCHWARTZ LAW

By: _____
Bryan Schwartz
Eduard Meleshinsky
Attorneys for Plaintiff LEONA MARINO

16 Dated: September 20, 2018

LAW OFFICES OF SAM X.J. WU, APC

By:  _____
Alexei Brenot
Attorneys for Defendants
CACAFE, INC., JANE ZHENG,
and TED CHAO

23 Dated: September __, 2018

SEYFARTH SHAW LLP

By: _____
Catherine M. Dacre
Justin T. Curley
Attorneys for Defendant COSTCO
WHOLESALE CORPORATION

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Dated: September __, 2018

By: _____
Ted Chao

Dated: September __, 2018

By: _____
Costco Wholesale Corporation
Representative

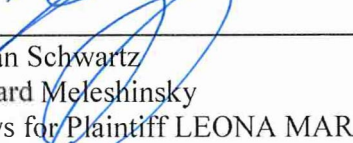
Dated: September __, 2018

By: _____
Club Demonstration Services, Inc.
Representative

APPROVED AS TO FORM:

Dated: September 18, 2018

BRYAN SCHWARTZ LAW

By: 
Bryan Schwartz
Eduard Meleshinsky
Attorneys for Plaintiff LEONA MARINO

Dated: September __, 2018

LAW OFFICES OF SAM X.J. WU, APC

By: _____
Alexei Brenot
Attorneys for Defendants
CACAFE, INC., JANE ZHENG,
and TED CHAO

Dated: September __, 2018

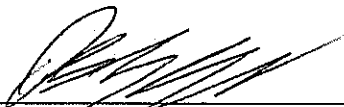
SEYFARTH SHAW LLP

By: _____
Catherine M. Dacre
Justin T. Curley
Attorneys for Defendant COSTCO
WHOLESALE CORPORATION

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Dated: ^{October} ~~September~~ 2, 2018

LITTLER MENDELSON, P.C.

By: 

Fermin H. Llaguno
Oliver B. Dreger
Attorneys for Defendant CLUB
DEMONSTRATION SERVICES, INC.

EXHIBIT A

1 Bryan Schwartz (SBN 209903)
bryan@bryanschwarzlaw.com
2 Eduard Meleshinsky (SBN 300547)
eduard@bryanschwarzlaw.com
3 BRYAN SCHWARTZ LAW
1330 Broadway, Suite 1630
4 Oakland, California 94612
Tel: (510) 444-9300
5 Fax: (510) 444-9301

6 Attorneys for Plaintiff LEONA MARINO
Individually and all others similarly situated
7

8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10

11 LEONA MARINO, on behalf of herself and
all other similarly situated,

12 Plaintiff,

13 vs.
14

15 CACAFE, INC., JANE ZHENG, TED
CHAO, COSTCO WHOLESALE
CORPORATION, CLUB
16 DEMONSTRATION SERVICES, INC., and
DOES 1 through 10 inclusive,
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18 Defendants.
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Case No. 4:16-cv-06291-YGR

ASSIGNED TO THE HON. YVONNE
GONZALEZ ROGERS

STIPULATED JUDGMENT

1 Upon consideration of the Settlement Agreement and General Release (the “Agreement”)
2 entered into by Plaintiff Leona Marino, individually and on behalf of all members of the class similarly
3 situated (collectively “Plaintiffs”), on the one hand, and Defendants CACafe, Inc., Jane Zheng, Ted
4 Chao, Costco Wholesale Corporation and Club Demonstration Services, Inc. (together, “Defendants”),
5 and the Declaration in Support of Entry of Stipulated Judgment submitted by Plaintiffs, **JUDGMENT**
6 **IS HEREBY ENTERED IN FAVOR OF PLAINTIFFS AND AGAINST DEFENDANTS**
7 **CACAFE, INC., JANE ZHENG, AND TED CHAO (“CACAFE DEFENDANTS”), AS**
8 **FOLLOWS:**

9 (1) CACafe Defendants are liable to Plaintiffs and shall pay Plaintiffs the total amount of
10 \$1,000,000, less any amounts previously paid by the CACafe Defendants towards the amounts
11 owed under the Agreement reached in the above-entitled matter, and which includes the
12 following amounts:

13 a. The remaining sum of \$_____ in damages, reasonable attorneys’ fees and
14 costs incurred by Plaintiff.

15 (2) CACafe Defendants are liable to Plaintiff and shall pay \$_____ in reasonable
16 attorneys’ fees and costs incurred by Plaintiff from the date of default through the date hereof in
17 seeking to enforce the Agreement.

18 (3) The Stipulated Judgment amount of \$_____ from paragraph 1(a) shall accrue
19 interest at the legal rate of 10% per annum from the date hereof until paid in full. No interest
20 shall accrue as to the stipulated judgment amount from paragraph 2.

21 The amount referenced in paragraph 2, set forth above, includes only those attorneys’ fees and costs
22 incurred by Plaintiff after any default by CACafe Defendants of the fully executed Memorandum of
23 Understanding (“MOU”), to which this Stipulated Judgment is attached as Exhibit A. The amount
24 referenced in paragraph 2 does not and may not include any attorneys’ fees and costs incurred prior to
25 the date of any default of the fully executed MOU – all pre-MOU attorney’ fees and costs are provided
26 for under paragraph 1, set forth above.

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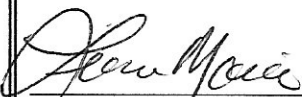
IT IS SO ORDERED.

Date: _____

U.S. District Court Judge

STIPULATED AND AGREED AS TO FORM AND CONTENT:

Plaintiff:



Leona Marino

Dated: May 29, 2018

CACafe Defendants:

CACafe, Inc. Representative:

Jane Zheng

Dated: May _____, 2018

Dated: May _____, 2018

Ted Chao

Dated: May _____, 2018

1 **IT IS SO ORDERED.**

2 Date: _____

3
4 _____
U.S. District Court Judge

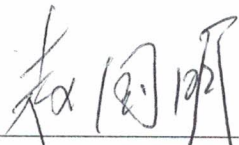
5
6 **STIPULATED AND AGREED AS TO FORM AND CONTENT:**

7 **Plaintiff:**

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11 Leona Marino

Dated: May _____, 2018

12 **CACafe Defendants:**

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14 
15 _____
16 CACafe, Inc. Representative:

17 *June*
Dated: ~~May~~ *2*, 2018

18
19
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Jane Zheng

Dated: May _____, 2018

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23 _____
Ted Chao

Dated: May _____, 2018

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IT IS SO ORDERED.

Date: _____

U.S. District Court Judge

STIPULATED AND AGREED AS TO FORM AND CONTENT:

Plaintiff:

Leona Marino

Dated: May _____, 2018

CACafe Defendants:


CACafe, Inc. Representative:

Dated: May _____, 2018



Jane Zheng

June 2
Dated: ~~May~~ _____, 2018



Ted Chao

June 2
Dated: ~~May~~ _____, 2018

EXHIBIT B

IMPORTANT LEGAL MATERIALS



<<Name 1>>
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<<Name 3>>
<<Name 4>>
<<Address 1>>
<<Address 2>>
<<City>> <<State>> <<Zip 10>>
<<CountryName>>

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

LEONA MARINO, individually, on behalf of all others
similarly situated, and on behalf of the general public,

Plaintiff,

v.

CACAFE, INC., JANE ZHENG, TED CHAO,
COSTCO WHOLESALE CORPORATION, AND
CLUB DEMONSTRATION SERVICES, INC.

Defendants.

Case No. 4:16-cv-06291-YGR
**NOTICE OF CLASS AND COLLECTIVE ACTION
SETTLEMENT**
Honorable Yvonne Gonzalez Rogers

IMPORTANT NOTIFICATION TO POTENTIAL CLASS MEMBERS

TO: ALL INDIVIDUALS WHO WORKED AS CACAFE IN-STORE DEMONSTRATORS IN COSTCO WAREHOUSES FROM OCTOBER 31, 2012 THROUGH DECEMBER 13, 2018:

Please read this notice carefully and in its entirety. A federal court authorized this notice. This is not a solicitation from a lawyer.

A \$640,000 settlement fund has been created to pay claims of CACafe In-store Demonstrators who worked in Costco warehouses in order to settle a wage and hour lawsuit.

According to CACafe records, you performed <<WorkWeeks>> demonstrations as a CACafe In-store Demonstrator in Costco warehouses between October 31, 2012 and December 13, 2018.

Your estimated share of the settlement is \$<<EstimatedAward>>. This is the estimated gross amount you will receive if you do not exclude yourself from the settlement and the court grants final approval of the settlement.

- The settlement will provide \$640,000 to pay claims of CACafe In-store Demonstrators who worked in Costco warehouses between October 31, 2012 and December 13, 2018.
- The settlement resolves claims of CACafe In-store Demonstrators in a lawsuit that alleged that Defendants improperly treated them as independent contractors. The lawsuit asserted causes of action against Defendants for: (1) failure to pay overtime wages; (2) failure to pay minimum wage compensation; (3) failure to pay earned wages upon discharge; (4) failure to provide timely, accurate, itemized wage statements; (5) failure to provide and/or authorize meal and rest periods; (6) failure to reimburse business expenses; (7) unlawful and/or unfair business practices in violation of California Business and Professions Code; and (8) penalties under the California Labor Code Private Attorneys General Act of 2004.
- Defendants deny that they are liable for any of the claims. Defendants Costco and CDS further deny that that they jointly employed CACafe In-store Demonstrators. However, in light of the risk and expense of proceeding to trial, Defendants, Class Counsel and Plaintiff believe that this is a fair settlement of the class and collective claims.

YOUR OPTIONS AND LEGAL RIGHTS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE A SETTLEMENT PAYMENT	If you do nothing, you will receive a settlement payment which is likely equal to or greater than your “estimated allocation” stated above, assuming that the Court approves the settlement. The estimated allocation is based on the number of demonstrations you performed as a CACafe In-store Demonstrator at Costco warehouses within the legally relevant period. If you do nothing, a check will arrive in the mail. The back of the check will explain that by cashing the check, you are agreeing to release all claims covered by this Settlement, and will be opting also to exercise and release your claims under the federal Fair Labor Standards Act.
EXCLUDE YOURSELF	If you affirmatively write to exclude yourself (<i>i.e.</i> , “opt out” of the case), you will receive no payment from this settlement. However, you would be free to pursue any claims separately against Defendants. The steps to exclude yourself are explained below.
OBJECT	If you wish to challenge the terms of the settlement, you may file an objection with the Court, setting forth the reasons why you oppose the settlement. However, in order to object to the settlement you cannot exclude yourself from the settlement. You may also appear in Court and explain why you do not like the settlement or use an attorney to appear for you, at your own expense.

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION	PAGE 3
<ul style="list-style-type: none"> 1. Why did I get this notice package? 2. What is this lawsuit about? 3. What is a class action? 4. Why is there a settlement? 	
WHO IS IN THE SETTLEMENT	PAGE 3
<ul style="list-style-type: none"> 5. How do I know if I am part of the settlement? 6. Are there exceptions to being included? 7. I am still not sure if I am included. 8. For former employees: will this affect my severance? 	
THE SETTLEMENT BENEFITS – WHAT YOU GET	PAGE 4
<ul style="list-style-type: none"> 9. What does the settlement provide? 10. How much will my payment be? 	
YOU WILL RECEIVE A PAYMENT UNLESS YOU AFFIRMATIVELY OPT OUT	PAGE 4
<ul style="list-style-type: none"> 11. How can I get a payment? 12. When would I get my payment? 13. What am I giving up to get a payment? 14. What if I believe I am not being credited for the right number of demonstrations? 	
EXCLUDING YOURSELF FROM THE SETTLEMENT	PAGE 5
<ul style="list-style-type: none"> 15. How do I get out of the settlement? 16. What happens if I do nothing? 17. What are claims under the Fair Labor Standards Act? 	
THE LAWYERS REPRESENTING THE CLASS	PAGE 6
<ul style="list-style-type: none"> 18. Do I have a lawyer in the case? 19. How will the lawyers and Class Representative Plaintiff be paid? 	
OBJECTING TO THE SETTLEMENT	PAGE 6
<ul style="list-style-type: none"> 20. How do I tell the Court that I challenge all or some of the settlement terms? 21. What’s the difference between objecting, on the one hand, and excluding myself (<i>i.e.</i>, “opting out”) from the settlement, on the other? 	

THE COURT'S FINAL FAIRNESS HEARING**PAGE 6**

- 22. When and where will the Court decide whether to approve the settlement?
- 23. Do I have to come to the hearing?
- 24. May I speak at the hearing?

GETTING MORE INFORMATION**PAGE 7**

- 25. Are there more details about the settlement?
- 26. How do I get more information?

BASIC INFORMATION**1. Why did I get this notice package?**

CACafe's records indicate that you worked as a CACafe In-store Demonstrator at Costco warehouses between October 31, 2012 and December 13, 2018 (the "Class Period").

You received this notice because you have a right to know about a proposed settlement of a class action lawsuit, and about your options, before the Court decides whether to finally approve the settlement. If the Court approves it, and after any objections and appeals are resolved, an administrator appointed by the Court will make the payments that the settlement requires.

This package explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the case is the United States District Court for the Northern District of California, and the case is known as *Marino v. CACafe, Inc. et al.*, Case No. 4:16-cv-06291-YGR. The individual who brought the suit is called the Plaintiff, and CACafe, Inc., Jane Zheng, Ted Chao, Costco Wholesale Corporation, and Club Demonstration Services, Inc. are the Defendants.

2. What is this lawsuit about?

The lawsuit claims that Defendants misclassified CACafe In-store Demonstrators as independent contractors under state and federal overtime laws and thereby: (1) failed to pay overtime when they worked more than eight hours in a day or forty hours in a week; (2) failed to pay at least minimum wage compensation for all hours worked; (3) failed to provide rest and meal breaks; (4) failed to provide complete and accurate wage statements; (5) failed to pay all wages due at the time of discharge or resignation; (6) failed to reimburse for necessary business expenses; (7) as a result of the foregoing, engaged in unfair or unlawful business practices in violation of the California Business and Professions Code; and (8) as a result of the foregoing, also owe penalties under the California Private Attorneys General Act.

The Court has not issued any ruling on the merits of Plaintiff's claims, and Defendants deny that they are liable for any of the claims. Defendants Costco and CDS further deny that that they jointly employed CACafe In-store Demonstrators.

3. What is a class action?

In a class action, a Class Representative (in this case Plaintiff Leona Marino, representing the Class and Collective), sues on behalf of people who allegedly have similar claims ("Class Members"). The Court can make rulings affecting all Class Members (e.g. approving the parties' settlement), except for those who exclude themselves from the Class.

4. Why is there a settlement?

The Court did not issue a judgment, or any rulings on the merits, in favor of Plaintiff or Defendants. Instead, the parties reached a negotiated settlement, which avoids the uncertainties, costs, and delays associated with further litigation and which compensates the Class Members sooner, rather than later, if at all. The Class Representative and the attorneys believe that this settlement is in the best interests of all Class Members.

WHO IS IN THE SETTLEMENT**5. How do I know if I am part of the settlement?**

Everyone who fits the following description is a Class Member provided they do not "opt out" of the settlement: *All individuals who worked as CACafe In-store Demonstrators in Costco warehouses from October 31, 2012 and December 13, 2018.*

6. Are there exceptions to being included?

You are not a Class Member if you did not perform CACafe product demonstrations at Costco warehouses as a CACafe In-store Demonstrator. As noted below, even if you signed a severance agreement, or if you are subsequently offered a severance agreement, you may still participate in this settlement.

7. I am still not sure if I am included.

If you are receiving this notice, it is most likely that you do qualify to participate, and unless you opt out, you will receive a settlement payment, assuming that the Court approves the settlement. If you have questions about whether you qualify, you may contact Class Counsel at the contact information provided below.

8. What if I have signed a severance agreement, or sign one in the future?

If you are a former CACafe In-store Demonstrator who signed a severance agreement containing various releases of claims, you are not required to opt out of this settlement and you may still participate in this settlement. Remaining a part of the class will not jeopardize any severance payments you received after stopping work as a CACafe In-store Demonstrator.

THE SETTLEMENT BENEFITS – WHAT YOU GET**9. What does the settlement provide?**

The settlement creates a fund of \$640,000 to be divided among all California and non-California CACafe In-store Demonstrators who participate in the settlement, and also to be used to pay for Plaintiff's attorney's fees and costs, service payments to the Class Representative, service payments to Class Member deponents and Opt-in Plaintiffs, administrative expenses, and other payments made pursuant to this Settlement.

CACafe In-store Demonstrators who participate in the settlement will receive a *pro rata* payment based on the number of demonstrations performed at Costco warehouses during the Class Period.

10. How much will my payment be?

Your estimated share of the fund is listed on the first (1st) page of this Notice. The amount will depend on the number of CACafe product demonstrations you performed at Costco warehouses during the Class Period. If other Class Members do not participate in the settlement, your share of the fund may increase proportionately.

One-half of the settlement amount you receive will be considered interest and the other half will be considered penalties. Your recovery will be accompanied by an IRS Form 1099. You alone are responsible to pay any appropriate taxes on your recovery.

YOU WILL RECEIVE A PAYMENT UNLESS YOU AFFIRMATIVELY OPT OUT**11. How can I get a payment?**

If you are receiving this notice, you qualify for a settlement payment, and unless you affirmatively opt out of the settlement by **February 21, 2019**, you will automatically receive a payment, provided the Court grants final approval to the settlement.

12. When would I get my payment?

The Court will hold a hearing on April 23, 2019 at 2:00 p.m. to decide whether to finally approve the settlement. If the Court approves the settlement, there may be appeals. Resolving any appeals can take time, perhaps more than a year. Please be patient.

However, if the Court approves the settlement at the hearing and there are no appeals, payments will be made within several months after the hearing.

13. What am I giving up to get a payment?

Unless you affirmatively exclude yourself from the settlement, you are part of the Class. You cannot sue, continue to sue, or be part of any other lawsuit against Defendants concerning the wage and hour claims covered by this settlement. It also means that all of the Court's orders will apply to you and legally bind you.

Unless you affirmatively exclude yourself from the settlement, you will be releasing all wage and hour claims under California law covered by this settlement, whether you cash your check or not. If you have previously submitted a "consent to join" form, unless you withdraw your consent, you will also release all wage and hour claims under the federal Fair Labor Standards Act covered by this settlement, whether you cash your check or not. If you have not previously submitted a "consent to join" form, you will only release federal Fair Labor Standards Act claims if you cash your check.

You can review the exact language of the release by reviewing the Settlement Agreement online, at the web address listed in the “Getting More Information” section of this Notice, below. The relevant portion begins in Pages 7-8 of the Settlement Agreement.

14. What if I believe I am not being credited for the right number of demonstrations?

Any Class Member who disputes the information shown on his or her Notice of Settlement regarding the total number of CACafe product demonstrations that he or she performed at Costco warehouses as a CACafe In-store Demonstrator may indicate and explain such disagreement under penalty of perjury within forty-five (45) days of the mailing of the Notice of Settlement by notifying the Claims Administrator pursuant to the following procedures: a) Any such Class Member must submit documentation timely relating to his or her dispute; b) The Claims Administrator shall notify Defendants’ respective Counsel and Class Counsel of any such dispute after receiving notice of the dispute; c) In the case of a dispute, CACafe Inc.’s records shall control and will have a rebuttable presumption of correctness, which means that it is your burden to prove, with records in support, that the number of relevant demonstrations listed in your Notice are wrong; d) The Claims Administrator will notify you whether or not your dispute has been successful.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want a payment from this settlement, but you want to keep the right to pursue claims (or continue to pursue claims) against Defendants on your own regarding the legal issues in this case, then you must exclude yourself from the settlement. This is called “opting out” of the settlement Class. If you exclude yourself from the Settlement, you will not receive any money at all from this Settlement.

15. How do I opt out of the settlement?

To exclude yourself from the settlement, you must send a letter by mail or email stating that you want to be excluded from *Leona Marino v. CACafe, Inc. et al.* to the settlement administrator. Be sure to include your name, address, telephone number, and your signature. You must mail your exclusion request postmarked no later than **February 21, 2019** to:

Marino v CACafe Claims Administrator
c/o Rust Consulting Inc - 6182
P.O. Box 54
Minneapolis, MN 55440-0054
Email: Info@CACafeSettlement.com
Phone: (866) 680-3219

If you ask to be excluded, you will not get any settlement payments of any kind in this case and you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit. You will be able to pursue claims (or continue to pursue claims) against Defendants for the wage claims at issue in this case in the future, but all deadlines for your claims would become your responsibility. If you have a pending claim or lawsuit, speak to your lawyer in that case immediately. You may need to exclude yourself from this Class to continue your own claim or lawsuit.

16. What happens if I do nothing?

If you do nothing regarding this notice, you will be sent a check for your allocated amount, provided the Court grants final approval of the settlement. If you do not cash the check, your rights will still be affected, in that you will give up your right to sue Defendants for claims that this settlement resolves, other than federal claims under the FLSA.

Note, if you previously opted into the collective action by submitting a consent-to-join form, then your federal claims under the FLSA will be released regardless of whether you cash your check.

17. What are claims under the Fair Labor Standards Act?

The FLSA is a federal law governing the payment of overtime for hours worked past 40 in a week. In contrast, California law requires overtime to be paid for hours worked past 8 in a day or 40 hours in a week. California also has laws relating to meal breaks and rest breaks.

If you do nothing in this lawsuit, you will give up your right to sue based on any California wage law. If you cash your check, you will release your state and federal wage claims. If you previously filed a consent to join the FLSA collective action in this lawsuit and do not timely withdraw your consent as described in section 15 above, you will release your claims under the FLSA, regardless of whether you cash your check. If you have not previously filed a consent to join the FLSA collective action and you do not cash your check, you will retain your right to sue under the FLSA (but not under California law unless you opt out).

THE LAWYERS REPRESENTING THE CLASS

18. Do I have a lawyer in this case?

Bryan Schwartz Law represents the Class with respect to class claims. These lawyers are called Class Counsel. These lawyers will be paid from the settlement amount, so you will not be charged personally for these lawyers' work on this case and in negotiating this settlement. If you want to be represented by your own lawyer, you may hire one at your own expense.

19. How will the lawyers, Class Representative Plaintiffs, and the State of California be paid?

Class Counsel will ask the Court to approve the payment of \$320,000 in attorneys' fees, as well as actual litigation costs, associated with investigating the facts, litigating the case, and negotiating the settlement. The Claims Administrator administering the settlement will be compensated at the fair market rate of those services from the settlement, currently estimated at \$9,000. A service payment of up to \$15,000 will be made to Class Representative Leona Marino, for her work in bringing this lawsuit as the only Class Representative, sitting for two days of depositions, attending mediation in person, completing written discovery, and in exchange for waiving a much broader array of claims than you are waiving.

Service payments of up to \$2,500 will be made to each class member who was deposed by Defendants' counsel, and service payments of \$1,000 will be made to each Opt-in Plaintiff and class members who provided declarations.

Class Counsel will also ask the Court to approve a payment of \$4,800 to the State of California's Labor and Workforce Development Agency ("LWDA") to satisfy alleged Labor Code violations pursuant to the California Labor Code Private Attorneys General Act of 2004 ("PAGA"). This payment to the LWDA is required by statute.

The Court may award less than these amounts. Defendants have agreed not to oppose Class Counsel's request for fees, expenses, and service payments as described in this section. If the Court awards less than the amounts described in this section, that money will be redistributed to Class Members or distributed to an appropriate charity, depending upon the amount of the money. None of this money will return to Defendants.

OBJECTING TO THE SETTLEMENT

20. How do I tell the Court that I challenge all or some of the settlement terms?

You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you will need to file an objection.

You may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney. All written objections and supporting papers must (a) clearly identify the case name and number (*Leona Marino v. CACafe, Inc. et al.*, Case No. 4:16-cv-06291-YGR); (b) be submitted to the Court either by mailing them to the Office of the Clerk of Court, United States District Court for the Northern District of California, 450 Golden Gate Avenue, Box 36060, San Francisco, CA 94102-3489, or by filing them in person at any location of the United States District Court for the Northern District of California; and (c) be filed or postmarked on or before **February 21, 2019**.

21. What's the difference between objecting, on the one hand, and excluding myself (*i.e.*, "opting out") from the settlement, on the other?

Objecting is simply telling the Court that you wish to challenge all or part of the settlement. You can object only if you stay in the Class. Excluding yourself from the settlement or "opting out" is telling the Court that you do not want to be part of the Class or receive any payment at all from the settlement. If you exclude yourself (*i.e.*, opt out from the case), you have no basis to object because the case no longer affects you.

THE COURT'S FINAL FAIRNESS HEARING

22. When and where will the Court decide whether to approve the settlement?

The Court will hold a Final Approval Fairness Hearing, which is currently scheduled for April 23, 2019 at 2:00 p.m., at the United States District Court for the Northern District of California, at 1301 Clay Street, 4th Floor, Courtroom 1, Oakland, CA 94612, before the Honorable Yvonne Gonzalez Rogers. At this hearing the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. After the hearing, the Court will decide whether to approve the settlement. Please note that the hearing may be postponed without further notice to the Class. Thus, if you plan to attend the hearing, you should check the website identified in Question 25, below, or access the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>.

23. Do I have to come to the hearing?

No. But, you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as the Court received your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

24. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Fairness Hearing. To do so, you must send a letter to the Clerk of the Court saying that it is your “Notice of Intention to Appear in *Leona Marino v. CACafe, Inc. et al.*, Case No. 4:16-cv-06291-YGR.” Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be postmarked no later than **February 21, 2019**, and be sent to the Clerk of the Court, Class Counsel, and Counsel for Defendants at the addresses listed below. You cannot speak at the hearing if you excluded yourself (“opted out”) from the settlement.

Court	Class Counsel
Office of the Clerk of Court United States District Court for the Northern District of California 450 Golden Gate Avenue, Box 36060 San Francisco, CA 94102-3489	Bryan Schwartz Eduard Meleshinsky Bryan Schwartz Law 180 Grand Ave., Suite 1380 Oakland, CA 94612
Counsel for CACafe Defendants	Counsel for Defendant CDS
Alexei Brenot Law Offices of Sam X.J. Wu 8600 Utica Avenue, Building 100 Rancho Cucamonga, CA 91730	Fermin H. Llaguno Oliver Dreger Littler Mendelson 2050 Main St Ste 900 Irvine, CA 92614-7284
Counsel for Defendant Costco	
Catherine M. Dacre Justin T. Curley Seyfarth Shaw LLP 560 Mission Street, Suite 3100 San Francisco, CA 94105	

GETTING MORE INFORMATION**25. Are there more details about the settlement?**

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the settlement agreement available at <http://www.bryanschwartzlaw.com/isds>, by contacting Class Counsel as set forth in Section 26, below, by accessing the Court docket in this case through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the Office of the Clerk of Court for the United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA 94102, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays. If there is any conflict between this Notice and the Settlement Agreement, the Settlement Agreement will control.

26. How do I get more information?

You can call 1-866-680-3219 toll free, write to Marino v CACafe Claims Administrator, c/o Rust Consulting Inc – 6182, P.O. Box 54, Minneapolis, MN 55440-0054, or go to <http://www.bryanschwartzlaw.com/isds>.

You may also call Class Counsel:

Eduard Meleshinsky, at Bryan Schwartz Law, (510) 444-9300

DO NOT CALL THE COURT

CONCLUSION

THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, THE HONORABLE YVONNE GONZALEZ ROGERS, UNITED STATES DISTRICT COURT JUDGE.

The Honorable Yvonne Gonzalez Rogers
United States District Judge