

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement” or “Agreement”) is made and entered into by and between John Skrandel (“Plaintiff” or “Class Representative”), individually and as representative of the Settlement Class as defined below, and Defendant Costco Wholesale Corporation (“Costco”). Plaintiff and Costco collectively are referred to herein as the “Parties,” or, respectively, as a “Party.”

DEFINITIONS

As used herein, the following terms have the meanings set forth below:

- A. “Action” means the lawsuit captioned *Skrandel v. Costco Wholesale Corporation*, No. 9:21-cv-80826-BER, pending in the United States District Court for the Southern District of Florida (the “Court”).
- B. “Application for Approval of Attorneys’ Fee and Costs Payment” means the application to be submitted to the Court, as part of the Motion for Final Approval, seeking approval of the Attorneys’ Fees and Costs Payment.
- C. “Attorneys’ Fees and Costs Payment” means the amount, up to a maximum of \$750,000, of attorneys’ fees and reimbursement of costs and expenses approved by the Court and payable to Class Counsel by Costco separate and apart from the Settlement Class Member Payments.
- D. “Claim” means the submission of a Claim Form by a Claimant.
- E. “Claim Form” means the form for a Settlement Class Member to apply for an Unmatched Replacement Transaction Cash Payment, substantially in the form attached hereto as ***Exhibit 4***, which may be modified by the Settlement Administrator, subject to the approval of the Parties.
- F. “Claim Form Deadline” shall be 60 days after the Notice Date. The Claim Form Deadline shall be the last day by which a Claim Form may be submitted to the Settlement Administrator for a Settlement Class Member to be eligible for an Unmatched Replacement Transaction Cash Payment.
- G. “Claimant” means a Settlement Class member who submits a Claim Form seeking an Unmatched Replacement Transaction Cash Payment.
- H. “Class Counsel” means Jeff Ostrow and Jonathan Streisfeld from Kopelowitz Ostrow P.A. and Geoffrey Stahl and Steven Calamusa from Gordon & Partners, P.A.
- I. “Class Period” means May 7, 2016, through June 30, 2023.
- J. “Complaint” means the complaint filed in this Action on May 7, 2021.
- K. “Costco’s Counsel” means the law firm Morrison & Foerster LLP.
- L. “Final Approval Hearing” means the hearing at or after which the Court will determine whether to finally approve the Settlement.

- M. “Final Approval Order” means the order granting final approval of the Settlement at or after the Final Approval Hearing.
- N. “Interstate Battery” or “Interstate Batteries” means automotive and recreational Interstate-branded batteries sold by Costco in the United States with the words “free replacement” on the battery’s label.
- O. “Matched Replacement Transaction Cash Payment” means a Settlement Class Member Payment payable from the Matched Replacement Transaction Settlement Fund.
- P. “Matched Replacement Criteria” means a Settlement Class Member who meets the following criteria with respect to their Interstate Battery transactions: (a) the return transaction occurred at least 30 or more days after their original purchase transaction; (b) the replacement transaction occurred within 30 days of their return transaction; and (c) there are two or fewer Interstate Battery return transactions.
- Q. “Matched Replacement Transaction Settlement Class” means all current and former Costco members who returned and replaced an Interstate Battery under warranty during the Class Period at a Costco warehouse located in the United States, and who meet the Matched Replacement Criteria.
- R. “Matched Replacement Transaction Settlement Fund” means the \$1,143,728.15 that Costco agrees to pay Settlement Class Members in the Matched Replacement Transaction Settlement Class pursuant to the terms of this Agreement.
- S. “Motion for Final Approval” means the motion that Plaintiff and Class Counsel will file with the Court seeking Final Approval of the Settlement. The Motion for Final Approval will include: (i) the Application for Approval of Attorneys’ Fees and Costs Payment; and (ii) the proposed Final Approval Order and Final Judgment as an attachment. The Motion for Final Approval shall be filed with the Court by no later than 45 days before the Final Approval Hearing.
- T. “Motion for Preliminary Approval” means the motion that Plaintiff and Class Counsel will file with the court seeking Preliminary Approval of the Settlement, the substance of which shall be approved by the Parties before submission to the Court.
- U. “Notice” means the method of communication of this Settlement to the Settlement Class, as contemplated in Section 7 of this Agreement, and approved by the Court. The Notice shall be substantially in the forms attached to the Settlement as **Exhibits 1** (“Email Notice”), **Exhibit 2** (“Postcard Notice”), and **Exhibit 3** (“Long Form Notice”).
- V. “Notice Program” means the plan for disseminating notice of the Settlement to the Settlement Class, described in Section 7 of this Agreement.
- W. “Notice Date” means the first date on which notice is emailed or mailed to the Settlement Class, provided, however, that any re-emailing or re-mailing of such notice (including mailing the Postcard Notice to members of the Settlement Class for whom the Email Notice is returned as undeliverable) shall not affect or extend the Notice

Date. The Notice Date shall be no later than 30 days after the Court issues the Preliminary Approval Order.

- X. “Objection and Opt-Out Period” means the period from the Notice Date to 30 days before the Final Approval Hearing. The deadline to object (“Objection Deadline”) and to opt out (“Opt-Out Deadline”) shall be 30 days before the Final Approval Hearing.
- Y. “Preliminary Approval Order” means the order preliminarily approving the Settlement and proposed Notice Program and setting the date for the Final Approval Hearing, substantially in the form attached as *Exhibit 5*, attached hereto.
- Z. “Releases” means the releases and waivers set forth in Section 10 of this Agreement.
- AA. “Released Parties” means Costco, its past or present parent, sister, and subsidiary corporations, affiliated entities, predecessors, successors, assigns, and any of their present and former directors, officers, employees, shareholders, investors, agents, partners, licensors, privies, representatives, attorneys, accountants, and all persons acting by, through, under, or in concert with them.
- BB. “Releasing Parties” means (i) Plaintiff and all Settlement Class Members and (ii) each of their respective future affiliates, parents, subsidiaries, representatives, officers, agents, directors, partners, principals, employees, insurers, successors, and assigns, on behalf of themselves, their heirs, assigns, executors, administrators, predecessors, and successors, and any other person purporting to claim on their behalf.
- CC. “Settlement Administrator” means an independent settlement administrator to be agreed upon by the Parties and approved by the Court.
- DD. “Settlement Administration Costs” means all costs associated with the Notice Program and administration of the Settlement.
- EE. “Settlement Class Members” means all members of the Settlement Class other than those persons who validly request to opt out from the Settlement Class as set forth in Section 6 of this Agreement.
- FF. “Settlement Class Member Payment” means the cash payment that a Settlement Class Member will receive from either the Matched Replacement Transaction Settlement Fund or as a result of meeting the Unmatched Replacement Criteria and submitting a valid Claim Form.
- GG. “Settlement Website” means the publicly-accessible website the Settlement Administrator will establish as a means for the Settlement Class to obtain notice and information about the Settlement and submit Claim Forms, including hyperlinked access to the Complaint, the Agreement, Plaintiff’s Motion for Preliminary Approval, the Preliminary Approval Order, the Long Form Notice, Claim Form, Application for Approval of Attorneys’ Fee and Costs Payment, Motion for Final Approval, and Final Approval Order, as well as other documents that the Parties agree to post or the Court orders posted, including information on how to object or request to opt out, as well as contact information for Class Counsel and the Settlement Administrator. The

Settlement Website, along with its URL and all contents therein, must be approved by the Parties prior to its publication.

- HH. “Unmatched Replacement Transaction Cash Payment” means a Settlement Class Member Payment payable to a Valid Claimant, which is to be paid separately from the Matched Replacement Transaction Settlement Fund.
- II. “Unmatched Replacement Criteria” means a Settlement Class Member who meets either of the following two sets of criteria with respect to their Interstate Battery transactions:
- i. (a) the return transaction occurred at least 30 days or more after their original purchase transaction; (b) the replacement transaction occurred within 30 days of their return transaction; and (c) there were three or more Interstate Battery return transactions; or
 - ii. (a) the return transaction occurred within 30 days of the original purchase transaction; or (b) the replacement transaction occurred more than 30 days after their return transactions.
- JJ. “Unmatched Replacement Transaction Settlement Class” means all current and former Costco members who returned and replaced an Interstate Battery under warranty during the Class Period at a Costco warehouse located in the United States, and who meet the Unmatched Replacement Criteria.
- KK. “Valid Claim” means a Claim Form submitted by a Settlement Class Member who meets the Unmatched Replacement Criteria that is: (a) submitted in accordance with the directions accompanying the Claim Form and the provisions of the Settlement; (b) accurately, fully, and truthfully completed and executed, with all of the information requested in the Claim Form; (c) signed physically or by e-signature by the Settlement Class Member personally, under the penalty of perjury; (d) returned via mail and postmarked by the Claim Form Deadline, or, if submitted online, submitted by 11:59 p.m. Eastern time on the Claim Form Deadline; and (e) determined to be valid by the Settlement Administrator.
- LL. “Valid Claimant” means any Settlement Class member who submits a Valid Claim.

RECITALS

This Agreement is made for the following purposes and with reference to the following facts:

WHEREAS, on May 7, 2021, Plaintiff, John Skrandel, filed this lawsuit against Costco in the U.S. District Court for the Southern District of Florida, individually and on behalf of a proposed nationwide class and Florida subclass, alleging a violation of Florida’s Deceptive and Unfair Trade Practices Act, breach of express warranty, breach of implied warranty of good faith and fair dealing, and unjust enrichment arising out of the purchase of the Interstate Batteries.

WHEREAS, the Parties attempted an early resolution of the case in a mediation before Robert A. Dulberg on December 10, 2021. Thereafter, the Parties continued to litigate,

wherein they engaged in substantial discovery, made class expert disclosures, and briefed Plaintiffs' motion for class certification;

WHEREAS, the Parties attended and argued Plaintiff's motion for class certification on December 12, 2022, that resulted in discovery being reopened due to open questions regarding the transactional data and Costco producing additional data, which the Parties' experts subsequently analyzed and incorporated into amended expert reports, and ultimately culminated with renewed briefing of Plaintiff's motion for class certification.

WHEREAS, the Parties attended a settlement conference before the Honorable Bruce E. Reinhart on June 30, 2023, and although they were unable to reach a settlement during the settlement conference, they continued settlement negotiations and were able to reach an agreement in principle to resolve all claims of the proposed Settlement Class, subject to Court approval;

WHEREAS, Class Representative and Class Counsel believe that the claims asserted in the Action have merit and have examined and considered the benefits to be obtained under this Settlement, the risks associated with the continued prosecution of this complex and time-consuming litigation, and the likelihood of ultimate success on the merits, and have concluded that the Settlement is fair, adequate, reasonable, and in the best interests of the Settlement Class;

WHEREAS, Costco denies all of the allegations made in the Action and denies that it did anything unlawful or improper, and its agreement to this Settlement is not an admission of guilt or wrongdoing of any kind and continues to deny that Plaintiff's claims and allegations would be suitable for class action status;

WHEREAS, the Parties have each looked at the uncertainties of trial and the benefits to be obtained under the Settlement, and have considered the costs, risks, and delays associated with the continuation of this Action and the likely appeals of any rulings in favor of either Plaintiff or Costco; and

WHEREAS, the Parties desire to settle the Action in its entirety as to Plaintiff, the Settlement Class Members, and Costco with respect to all claims arising out of the facts underlying the Action, and intend this Agreement to bind Plaintiff (both as the Class Representative and individually), Costco, and Settlement Class Members;

NOW THEREFORE, in light of the foregoing, for good and valuable consideration, the Parties, and each of them, hereby warrant, represent, acknowledge, covenant, and agree, subject to approval by the Court, as follows:

1. SETTLEMENT CLASS

- 1.1 Certification of the Settlement Classes.** For purposes of settlement and the proceedings contemplated by this Agreement only, the Parties stipulate and agree that a Settlement Class shall be provisionally certified pursuant to Federal Rule of Civil Procedure 23, that Plaintiff John Skrandel shall be appointed Class Representative and shall represent the Settlement Class for settlement purposes, and that Jeff Ostrow and Jonathan Streisfeld from Kopelowitz Ostrow P.A. and Geoffrey Stahl and Steven

Calamusa from Gordon & Partners, P.A. shall be appointed as Class Counsel for the Settlement Class.

1.2 **Decertification of the Settlement Class if Settlement Not Approved.** Costco does not consent to certification of the Settlement Class for any purpose other than to effectuate the Settlement. If the Court does not enter an order granting final approval of the Settlement, or if for any other reason the Effective Date does not occur, any certification of any Settlement Class will be vacated and the Parties will be returned to their positions with respect to the Action as if the Agreement had not been entered into. Specifically: (a) any Court orders preliminarily or finally approving the certification of any settlement class, for settlement purposes only, as contemplated by this Agreement, shall be null, void, and vacated, and shall not be used or cited thereafter by any person or entity; and (b) the fact of the Settlement reflected in this Agreement, that Costco did not oppose the certification of a Settlement Class under this Agreement, or that the Court preliminarily or finally approved the certification of a Settlement Class, shall not be used or cited thereafter by any person in any manner whatsoever, including without limitation any contested proceeding relating to the certification of any class. In the event the terms and conditions of this Agreement are substantially modified by the Court, the Parties reserve the right to declare this Agreement null and void, in their sole discretion, within 14 days after such modification. Notwithstanding, in the event the Settlement is not approved, the Parties will meet and confer in good faith, to the extent possible, to address the Court's concerns.

1.3 **Definition of Settlement Classes.** The "Settlement Class" or "Settlement Classes" shall consist of both the "Matched Replacement Transaction Settlement Class" and the "Unmatched Replacement Transaction Settlement Class."

1.3.1 The "Matched Replacement Transaction Settlement Class" consists of all current and former Costco members who returned and replaced an Interstate Battery under warranty during the Class Period at a Costco warehouse located in the United States, and who meet the Matched Replacement Criteria.

1.3.2 The "Unmatched Replacement Transaction Settlement Class" consists of all current and former Costco members who returned and replaced an Interstate Battery under warranty during the Class Period at a Costco warehouse located in the United States, and who meet the Unmatched Replacement Criteria.

1.3.3 Excluded from the Settlement Class are all persons who are employees, directors, officers, agents of Costco or its subsidiaries and affiliated companies, the Court, the Court's immediate family, and the Court's staff.

2. **CONFIDENTIALITY AND COMMUNICATIONS REGARDING THE SETTLEMENT**

2.1 The Parties, Class Counsel, and Costco's Counsel agree that until publication of this Agreement by submission to the Court, the terms of this Agreement and all associated documents and communications, including the negotiations leading to the execution of the Agreement and all submissions and arguments related to the mediation, shall not be disclosed by the Parties, Class Counsel, and Costco's Counsel other than as

necessary to finalize the Settlement and Notice Program. Upon publication of the Agreement by submission to the Court, the nondisclosure obligations set forth here will no longer apply to the as-filed Agreement or the terms thereof, but such obligations will continue to apply to all other materials and information covered by this Section, including but not limited to any negotiations leading to the execution of the Agreement.

3. SETTLEMENT RELIEF

3.1 Settlement Class Member Payments.

3.1.1 Each member of the Matched Replacement Transaction Settlement Class shall automatically receive a Matched Replacement Transaction Cash Payment based on their Interstate Battery transaction records.

3.1.2 Each member of the Unmatched Replacement Transaction Settlement Class who timely submits a Valid Claim shall receive an Unmatched Replacement Transaction Cash Payment. The Claim Form will be pre-populated with purchase, return, and replacement transaction records and will require Claimants to (1) match original, return, and replacement transactions resulting in an out-of-pocket payment for a replacement battery, and (2) attest that they purchased and returned the listed Interstate Batteries. Costco agrees to pay a maximum of \$1,259,276.33 for all timely and valid claims made by the Unmatched Replacement Transaction Settlement Class. If Valid Claims exceed \$1,259,276.33, payments to Valid Claimants will be reduced pro rata.

3.2 Dissemination of Settlement Class Member Payments. The Settlement Administrator will distribute the Settlement Class Member Payments within 21 days after the Effective Date.

3.2.1 Settlement Class Member Payments will be distributed digitally or by paper check, depending on (i) whether Costco has valid email or U.S. mail addresses; and/or (ii) elections made by members of the Matched Replacement Settlement Class or Valid Claimants. For members of the Matched Replacement Settlement Class, payment will be disseminated consistent with the manner of notice (digitally for those receiving Email Notice or via check for those receiving Postcard Notice), unless a contrary election is made. The Claim Form for the Unmatched Replacement Transaction Settlement Class shall have the option for Claimants to choose their preferred form of payment (digital or check).

3.2.2 Following distribution of the Matched Replacement Transaction Fund, if digital payments are not completed or fail or checks remain uncashed after 120 days, the Parties agree to pay the unclaimed Matched Replacement Transaction Fund amounts to a *cy pres* recipient of the Parties' collective choosing and related to the subject matter of the litigation, subject to Court approval.

3.3 Matched Replacement Transaction Fund and Unmatched Replacement Transaction Cash Payment.

3.3.1 The Settlement Administrator shall establish and maintain the Matched Replacement Transaction Fund. The Matched Replacement Transaction Fund shall be a non-reversionary common fund, no part of which shall revert to Costco. The Settlement Administrator will hold the Matched Replacement Transaction Fund in escrow until such time as the Settlement Administrator is authorized to disseminate the funds pursuant to this Agreement, the Final Approval Order, or other order of the Court.

3.3.2 Within 14 days after the Effective Date, Costco shall pay \$1,143,728.15 into the Matched Replacement Transaction Fund and deposit with the Settlement Administrator funds sufficient to cover Valid Claims for Unmatched Replacement Transaction Cash Payments.

3.4 **Claim Form.** To be entitled to receive the Unmatched Replacement Cash Payment, Settlement Class Members must accurately and timely submit the Claim Form no later than 60 days after the Notice Date.

3.5 **Determination and Processing of Claims.** The Settlement Administrator will review all Claim Forms to determine their validity. The Settlement Administrator will reject any Claim that does not materially comply with the instructions on the Claim Form, is not submitted by a member of the Unmatched Replacement Transaction Settlement Class, is duplicative, or fraudulent.

3.6 Within 15 days of the Claim Form Deadline or receiving an insufficient Claim Form, whichever is later, the Settlement Administrator will send the Claimant an email, if available, or first-class United States mail if email is not available, a written notice of deficiency identifying the reason(s) that the Claim was deemed insufficient, including steps the Claimant can take to cure the deficiency, if possible. The Claimant receiving such notice will be allowed 15 days from the date of emailing or mailing to cure the deficiency, if possible. If the Claimant does not or cannot cure the deficiency, the Settlement Administrator will, after consultation with Class Counsel and Costco's Counsel, deny the Claim.

4. OBTAINING COURT APPROVAL OF THE AGREEMENT

4.1 **Preliminary Approval.** Class Counsel will draft the Motion for Preliminary approval and will provide that draft to Costco's Counsel. The motion shall be written in a neutral manner that plainly states Plaintiff's allegations and claims while making clear that Costco denies every allegation of wrongdoing and admits no liability. The motion will request that the Court certify the Settlement Class. Costco will not oppose the motion. Costco may, however, provide feedback concerning the motion, and Class Counsel will meet and confer with Costco's Counsel in good faith regarding Costco's feedback.

4.2 **CAFA Notice.** Once Plaintiff files the Motion for Preliminary Approval, the Settlement Administrator will provide timely notice of the motion as required by the Class Action Fairness Act, 28 U.S.C. § 1711 *et seq.*

- 4.3 **Final Approval and Final Judgment.** In accordance with the schedule set in the Preliminary Approval Order, Class Counsel will draft the Motion for Final Approval of the Settlement and will provide a draft to Costco's Counsel at least 2 days prior to the deadline to file the motion, unless otherwise agreed to by the Parties. The motion shall be written in a neutral manner that plainly states Plaintiff's allegations and claims while making clear that Costco denies every allegation of wrongdoing and admits no liability. Costco may provide feedback concerning the motion, and Class Counsel will meet and confer with Costco in good faith regarding Costco's feedback.

5. OBJECTIONS

- 5.1 Settlement Class Members may file objections to the Settlement and/or Class Counsel's request for Attorneys' Fees and Costs Payment.
- 5.2 Any Settlement Class Member who intends to object to the Settlement must submit the written objection to the Court either by filing it in person at any location of the United States District Court for the Southern District of Florida or by mailing it to the Clerk of the Court for filing, to the Settlement Administrator, to Class Counsel, and Costco's Counsel.

To be valid, the objection must include the following: (a) the name of the Action; (b) the objector's full name, address, and telephone number; (c) an explanation of the basis upon which the objector claims to be a Settlement Class Member; (d) all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector's counsel; (e) the number of times the objector has objected to a class action settlement within the 5 years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior objections that were issued by the trial and appellate courts in each listed case; (f) the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or fee application; (g) a copy of orders related to or ruling upon counsel's or the counsel's law firm's prior objections that were issued by the trial and appellate courts in each listed case in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding 5 years; (h) any and all agreements that relate to the objection or the process of objecting—whether written or oral—between objector or objector's counsel and any other person or entity; (i) the identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing; (j) a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection; (k) a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and (l) the objector's signature (an attorney's signature is not sufficient).

To be timely, the objection must (1) be submitted to the Court either by filing it in person at any location of the United States District Court for the Southern District of Florida or by mailing it to the Clerk of the Court for filing, and (2) be filed or postmarked by the Objection Deadline.

- 5.3 Any Settlement Class Member who fails to timely file with the Court a written objection in accordance with the terms of Section 5.2 of this Agreement and as detailed in the Notice shall waive and forfeit any and all rights the Settlement Class Member may have to object, appear, present witness testimony, and/or submit evidence; shall be barred from appearing, speaking, or introducing any testimony or evidence at the Final Approval Hearing; shall be precluded from seeking review of this Agreement by appeal or other means; and shall be bound by all the terms of this Agreement and by all proceedings, orders, and judgments in the Action.
- 5.4 Class Counsel shall file their Application for Approval of Attorneys' Fee and Costs Payment 45 days before the Final Approval Hearing. Once it is filed, the Application for Approval of Attorneys' Fee and Costs Payment shall be posted on the Settlement Website.
- 5.5 Plaintiff and Costco shall have the right, but not the obligation, to respond to any objection no later than 15 days prior to the Final Approval Hearing. The party responding shall file a copy of the response with the Court and shall serve a copy on the objector (or counsel for the objector).

6. OPT-OUTS

- 6.1 **Requests to opt out.** The Notice will advise all members of the Settlement Class of their right to exclude themselves from the Settlement. The Settlement will not bind any individuals who timely exclude themselves from the Settlement.
- 6.2 **Requesting process.** To request to opt out of the Settlement, members of the Settlement Class must timely submit a written request to opt out either via the Settlement Website or by U.S. mail to the Settlement Administrator, which will be responsible for receiving and processing requests to opt out.
- 6.3 **Opt-Out Deadline.** To be excluded from the Settlement, the request to opt out must be submitted via the Settlement Website or postmarked no later than 30 days before the Final Approval Hearing.
- 6.4 **Effect of opt-out.** Any person who is a member of the Settlement Class and who validly and timely requests to opt out of the Settlement shall not be (i) a Settlement Class Member; (ii) bound by the Settlement; (iii) eligible to apply for or receive any benefit under the terms of the Settlement; and (iv) entitled to submit an objection to the Settlement.
- 6.5 **Opt-Out list.** No later than 15 days after the Opt-Out Deadline, the Settlement Administrator will provide Class Counsel and Costco's Counsel with the list of persons who have timely and validly excluded themselves from the Settlement.
- 6.6 **Effect of opt-outs.** If 5% or more of the members of the Settlement Class validly and timely opt out of the Settlement, then Costco shall have the option to rescind this Agreement, in which case all of Costco's obligations under this Agreement shall cease to be of any force and effect, and this Agreement shall be rescinded, cancelled, and annulled. If Costco exercises this option, it shall provide Plaintiff with written notice

of its election within 15 days of receiving the opt-out list from the Settlement Administrator, at which point the Parties shall return to their respective positions that existed prior to the execution of this Agreement. No term of this Agreement or any draft thereof, or the negotiation, documentation, or other part or aspect of the Parties' settlement discussions, or any filings or orders respecting the Settlement or any aspect of the Settlement, shall have any effect or be admissible as evidence for any purpose in the Action, or in any other proceeding.

7. NOTICE AND SETTLEMENT ADMINISTRATION

7.1 Costco will provide to the Settlement Administrator (but not to Class Counsel) the names, addresses, and email addresses for all members of the Settlement Class for whom it has available records within 15 days of the date of entry of the Preliminary Approval Order. Class Counsel shall be permitted access to individual Settlement Class member information on an as-needed basis.

7.2 The Settlement Administrator will administer the Notice in accordance with the Preliminary Approval Order. The Settlement Administrator will keep identities and contact information of members of the Settlement Class confidential, using them only for purposes of administering this Settlement.

7.3 **Notice Program.** The Parties agree upon and will seek Court approval of the following forms and methods of notice to the members of the Settlement Class:

7.3.1 **Settlement Website.** The Settlement Administrator will establish and maintain a Settlement Website with a mutually acceptable domain name. The Settlement Website will be optimized for viewing on both mobile devices and personal computers. The Settlement Website will include a readily accessible means for members of the Settlement Class to electronically submit a Claim Form or request to opt out, as well as an address to which Claim Forms or requests to opt out may be mailed. The Settlement Website will be live on the Notice Date and shall remain online and operable for 60 days after Final Approval.

7.3.2 **Toll-Free Number.** The Settlement Administrator will establish a toll-free telephone number where members of the Settlement Class may call and listen to pre-recorded answers to frequently asked questions and can request a copy of the Long Form Notice, the Claim Form, and other case documents.

7.3.3 **Email Notice.** The Settlement Administrator will email to each member of the Settlement Class for whom Costco has an available email address a copy of the Email Notice. The Email Notice shall contain a link to the Settlement Website.

7.3.4 **Postcard Notice.** For members of the Settlement Class (a) who do not have valid and available email addresses in Costco's records, or (b) for whom the Email Notice is returned as undeliverable, the Settlement Administrator will mail to each such member of the Settlement Class for whom a mailing address can be located a Postcard Notice. All Postcard Notices returned by the U.S. Postal Service with a forwarding address will be re-mailed to that address.

- 7.4 The Settlement Administrator has agreed to perform all Notice and administration duties required by the Settlement (“Settlement Administration”). The Parties agree that the Settlement Administrator may make non-material modifications to the Notice and Claim Form without further order of the Court, so long as they are approved by the Parties and consistent in all material respects with the Settlement and Preliminary Approval Order.
- 7.5 Costco shall pay the Settlement Administrator for Settlement Administration, separate and apart from Settlement Class Member Payments and the Attorneys’ Fees and Costs Payment. Within 14 days after Preliminary Approval, Costco shall deposit funds with the Settlement Administrator sufficient to cover the costs of Notice and settlement administration associated with Notice and claims processing, as estimated by the Settlement Administrator.

8. CLASS COUNSEL ATTORNEYS’ FEES AND COSTS

- 8.1 Class Counsel agrees to seek, and Costco agrees not to oppose, total attorneys’ fees and costs not to exceed \$750,000. In no event shall Costco be liable for any attorneys’ fees and costs in excess of this amount. The amount of attorneys’ fees and costs, which is subject to Court approval, was negotiated at arm’s length, and only after agreement was reached on all substantive terms of the settlement.
- 8.2 Costco shall pay the Court-approved Attorneys’ Fees and Costs separate and apart from the Settlement Class Member Payments and payments to the Settlement Administrator for Settlement Administration.
- 8.3 The Court’s award of any Attorneys’ Fees and Costs Payment shall be separate from the determination of whether to approve the Settlement. In the event the Court approves the Settlement but declines to award Class Counsel attorneys’ fees or costs in the amount requested by Class Counsel, the Settlement will nevertheless be binding on the Parties to the extent consistent with the Court’s instructions.

9. DENIAL OF LIABILITY; PROHIBITION OF USE

- 9.1 Costco vigorously denies all of the allegations in the Action. Costco enters into this Agreement without in any way acknowledging any fault, liability, or wrongdoing of any kind. Costco further denies the truth of any of the claims asserted in the Action, including any allegations that Plaintiff or any member of the Settlement Class has been harmed by any conduct by Costco, whether as alleged in the Action or otherwise. Costco nonetheless has concluded that it is in its best interests that the Action be settled on the terms and conditions set forth herein in light of the expense that would be necessary to defend this litigation and the benefits of disposing of protracted and complex litigation.
- 9.2 To the extent permitted by law, neither this Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be offered as evidence or received in evidence in any pending or future civil, criminal, or administrative action or proceeding to establish any liability or admission by Costco, or to establish the truth of any of the claims or allegations alleged in the Action.

- 9.3 Neither the Agreement nor anything that the Parties said or did during the negotiation of the Agreement shall be construed or used in any manner as an admission of liability or evidence of any Party's fault, liability, or wrongdoing of any kind; nor as an admission of any lack of merit of the causes of action asserted in the Action.
- 9.4 To the extent permitted by law, the Agreement may be pleaded or invoked as a full and complete defense to and may be used as the basis for an injunction against, any action, suit, or other proceeding which may be instituted, prosecuted, or attempted for the Released Claims.

10. RELEASES AND WARRANTIES

- 10.1 As of the Effective Date, Releasing Parties hereby fully and irrevocably release and forever discharge Released Parties from any and all liabilities, claims, cross-claims, causes of action, rights, actions, suits, debts, liens, contracts, agreements, damages, costs, attorneys' fees, losses, expenses, obligations, or demands, of any kind whatsoever, whether state or federal, whether known or unknown, existing or potential, or suspected or unsuspected, whether raised by claim, counterclaim, setoff, or otherwise, including any known or unknown claims, which they have or may claim now or in the future to have, that have been or could have been asserted in the Action related to the purchase, sale, and warranty of Interstate Batteries during the Class Period (the "Released Claims"). The Released Claims exclude claims for personal injury.
- 10.2 In consideration for this Agreement and the consideration set forth herein, Plaintiff and the Settlement Class Members acknowledge that the release herein includes potential claims and costs that may not be known or suspected to exist, and that Plaintiff and the Settlement Class Members hereby agree that all rights under California Civil Code § 1542, and any similar law of any state or territory of the United States, are expressly and affirmatively waived. California Civil Code § 1542 states as follows:
- A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.
- 10.3 Each Party to this Agreement represents and warrants that they have not heretofore assigned or transferred, or purported to assign or transfer, any of the Released Claims to any other person and that they are fully entitled to compromise and settle the same.
- 10.4 No person will have any claim of any kind against the Parties or their counsel or the Settlement Administrator with respect to the Settlement and the matters set forth herein or based on determinations or distributions made substantially in accordance with this Agreement, the Final Approval Order, or other order(s) of the Court.

11. EFFECTIVE DATE OF THE AGREEMENT; TERMINATION

11.1 The “Effective Date” of this Agreement shall be the first day after which all of the following events and conditions of this Agreement have been met or have occurred:

11.1.1 All of the Parties and their counsel have executed this Agreement;

11.1.2 The Court has entered the Final Approval Order finally approving the Settlement and has entered Judgment; and

11.1.3 The Judgment has become final in that the time for appeal of, or writ as to, the Judgment has expired or, if any such appeal and/or petition for review is taken and the Settlement is affirmed, the time period during which further petition for hearing, appeal, or writ of certiorari can be taken has expired. If the Judgment is set aside, materially modified, or overturned by the trial court or on appeal, and is not fully reinstated on further appeal, the Judgment shall not become final as contemplated by this Section.

11.1.4 Notwithstanding the foregoing, in the event there are no objections to the Settlement, Costco shall pay the Attorneys’ Fees and Costs Payment within 14 days of Final Approval.

11.2 If the Judgment does not become final and/or this Agreement is terminated pursuant to the express provisions of this Agreement or for cause or fails to become effective for any reason, the Parties shall be restored to their respective positions in the Action as of the date of the signing of this Agreement. In such event, any Final Approval Order and Judgment or other order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*, and the Parties shall be returned to the status quo ante with respect to the Action as if this Agreement had never been entered into. In the event of a termination, the Settlement Administrator shall return any remaining monies funded by Costco for Settlement Administration within 14 days of receiving notice of the termination.

12. MISCELLANEOUS

12.1 **Extensions of time.** All time periods and dates described in this Agreement are subject to the Court’s approval. Unless otherwise ordered by the Court, the Parties through their counsel may jointly agree to reasonable extensions of time to carry out any of the provisions of this Agreement. The time periods and dates provided for herein or in the Preliminary Approval Order may be altered by the Court or through written consent of the Parties’ counsel, without notice to the Settlement Class; provided, however, that any such changes will be posted on the Settlement Website.

12.2 **Integration.** This Agreement, including all exhibits, constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.

- 12.3 **Governing law.** This Agreement shall be construed in accordance with, and be governed by, the laws of Florida, without regard to the principles thereof regarding choice of law.
- 12.4 **Gender and plurals.** As used in this Agreement, the masculine, feminine, or neutral gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.
- 12.5 **Representative capacity.** Each person executing this Agreement in a representative capacity represents and warrants that they are empowered to do so.
- 12.6 **Headings and counterparts.** The headings or captions in this Agreement will not be deemed to have any effect and are provided for convenience only. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts.
- 12.7 **Cooperation of Parties.** The Parties and their counsel agree to prepare and execute all documents, to seek Court approvals, to defend Court approvals, and to do all things reasonably necessary to complete the Settlement.
- 12.8 **Voluntary execution.** This Agreement is executed voluntarily by each of the Parties without any duress or undue influence on the part, or on behalf, of any of them. The Parties represent and warrant to each other that they have read and fully understand the provisions of this Agreement and have relied on the advice and representation of legal counsel of their own choosing. Each of the Parties has cooperated in the drafting and preparation of this Agreement and has been advised by counsel regarding the terms, effects, and consequences of this Agreement. Accordingly, in any construction or interpretation to be made of this Agreement, the Agreement shall not be construed as having been drafted solely by any one or more of the Parties or their counsel. The Agreement has been, and must be construed to have been, drafted by all Parties and their counsel, so that any rule that construes ambiguities against the drafter will have no force or effect.
- 12.9 **Notices.** Any notice provided in connection with the Agreement or other document to be given by any Party to any other Party shall be in writing and (1) delivered personally or by registered or certified mail, postage prepaid, to the appropriate address(es) set forth immediately below, or to other contact points as the Parties may identify by notice given in accordance with this Section; and also (2) transmitted by email to the appropriate email address(es) set forth immediately below.

INTENTIONALLY BLANK

Notice to Plaintiff and Class Counsel: Jeff Ostrow KOPELOWITZ OSTROW P.A. One West Las Olas Blvd., Suite 500 Fort Lauderdale, Florida 33301 ostrow@kolawyers.com Geoffrey Stahl GORDON & PARTNERS P.A. 4114 Northlake Boulevard Palm Beach Gardens, Florida 33410 GStahl@fortheinjured.com	Notice to Costco: Purvi G. Patel MORRISON & FOERSTER, LLP 707 Wilshire Boulevard Los Angeles, CA 90017-3543 PPatel@mofo.com
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The notice recipients and addresses designated above may be changed by written notice pursuant to this Section.

12.10 **Modification or amendment.** Except as otherwise provided herein, this Agreement may be amended or modified only by a written instrument signed by the Parties' counsel.

12.11 **Continuing jurisdiction.** Any and all disputes arising from or related to the Settlement or this Agreement must be brought by the Parties, Class Counsel, Costco's Counsel and/or each Settlement Class Member, exclusively in the Court. The Parties, Class Counsel, Costco's Counsel, and each Settlement Class Member hereby irrevocably submit to the exclusive and continuing jurisdiction of the Court for any suit, action, proceeding, or dispute arising out of or relating to the Settlement or this Agreement.

Date: September 7, 2023

JOHN SKRANDEL

By: John J.R. Skrandel
John J.R. Skrandel (Sep 7, 2023 13:23 EDT)
John Skrandel

Date: September __, 2023

COSTCO WHOLESALE CORPORATION

By: _____
By:
Its:

Notice to Plaintiff and Class Counsel: Jeff Ostrow KOPELOWITZ OSTROW P.A. One West Las Olas Blvd., Suite 500 Fort Lauderdale, Florida 33301 ostrow@kolawyers.com Geoffrey Stahl GORDON & PARTNERS P.A. 4114 Northlake Boulevard Palm Beach Gardens, Florida 33410 GStahl@fortheinjured.com	Notice to Costco: Purvi G. Patel MORRISON & FOERSTER, LLP 707 Wilshire Boulevard Los Angeles, CA 90017-3543 PPatel@mofo.com
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Date: September __, 2023

JOHN SKRANDEL

By: _____
John Skrandel

Date: September 6, 2023

COSTCO WHOLESALE CORPORATION

By: 
By: Simon
Its: Costco Counsel

APPROVED AS TO FORM:

Date: September 6, 2023

By: Jeffrey Ostrow
Jeffrey Ostrow (Sep 6, 2023 17:40 EDT)
Jeff Ostrow
Kopelowitz Ostrow P.A.
Attorneys for Plaintiff and the Settlement Class

Date: September 6, 2023

By: Geoffrey Stahl
Geoffrey Stahl (Sep 6, 2023 17:47 EDT)
Geoffrey Stahl
Gordon & Partners, P.A.
Attorneys for Plaintiff and the Settlement Class

Date: September 6, 2023

By: Purvi G. Patel
Purvi G. Patel (Sep 6, 2023 14:52 PDT)
Purvi G. Patel
Morrison & Foerster LLP
Attorneys for Costco Wholesale Corporation