

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TYSON FOODS, INC.,

Plaintiff,

vs.

COSTCO WHOLESALE CORPORATION,

Defendant.

Case No.

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

JURY TRIAL DEMANDED

Plaintiff Tyson Foods, Inc. ("Tyson"), by and through its undersigned counsel, hereby respectfully submits this Complaint seeking declaratory and injunctive relief against Defendant Costco Wholesale Corporation ("Costco") and alleges the following:

NATURE OF THE CASE

1. On December 10, 2021, Costco submitted a Demand for Arbitration and a Statement of Claim (together, "Demand") to the American Arbitration Association ("AAA") asserting a single cause of action against Tyson under the Sherman Act and seeking claimed damages under the Clayton Act (the "Claim").

2. Costco premised its asserted right to arbitrate the Claim on two documents, a two-page, fully-executed "Vendor Agreement" dated August 24, 1995 among Tyson, Costco, and "The Price Company," (the "1995 Vendor Agreement") and an unsigned document titled

1 “Costco Wholesale Standard Terms (2019) (U.S. and its Territories)” that makes no mention of
2 Tyson (the “2019 Standard Terms”). The 1995 Vendor Agreement incorporates by reference
3 certain documents, and defines those documents, together with the 1995 Vendor Agreement
4 itself, to constitute the “Agreement Documents” that collectively form the parties’ contract.

5 3. After Tyson challenged the sufficiency of Costco’s submission before the AAA
6 on grounds that, *inter alia*, Costco had failed to establish the existence of an enforceable
7 arbitration agreement, Costco disclosed a document titled “PriceCostco STANDARD TERMS”
8 dated “May 1994” (the “1994 Standard Terms”) that it contends was part of the original
9 Agreement Documents between Tyson and Costco. Costco also disclosed additional versions of
10 its purported standard terms from 2000 to 2017, none of which referenced, or was signed by,
11 Tyson.

12 4. The 1995 Vendor Agreement expressly states that the Agreement Documents can
13 be amended only in a writing signed by an authorized official from both Tyson and Costco.

14 5. In its Demand, Costco failed to establish that the 1995 Vendor Agreement and the
15 2019 Standard Terms form an enforceable agreement between Costco and Tyson to arbitrate the
16 Claim under the 2019 Standard Terms. Costco has provided no evidence that the parties ever
17 amended the Agreement Documents through a writing signed by authorized officials from Tyson
18 and Costco, as is expressly required under the terms of the 1995 Vendor Agreement.

19 6. Through this action, Tyson seeks a declaration that it has not agreed to arbitrate
20 Costco’s Claim under the 2019 Standard Terms, and it is therefore not obligated to do so. Tyson
21 seeks permanent injunctive relief barring Costco from arbitrating under the 2019 Standard Terms
22 and also seeks a preliminary injunction staying Costco’s arbitration (“the Arbitration”) pending a
23 ruling on Tyson’s request for declaratory and permanent injunctive relief.

24 7. The Court's determination that Tyson and Costco have not agreed to arbitrate
25 under the 2019 Standard Terms will have significant consequences for the parties given the
26 differences among the various versions of Costco’s standard terms.

8. Most notably, the 1994 Standard Terms, which Costco has not invoked in its Demand, operate as an absolute bar to Costco's Claim. The 1994 Standard Terms require the parties to raise arbitrable claims promptly or else forfeit them entirely—if a party fails to bring an arbitrable claim within 180 days after the claim is known and fully accrued, the 1994 Standard Terms impose an absolute bar to the claim.

THE PARTIES

9. Plaintiff Tyson is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located at 2200 West Don Tyson Parkway in Springdale, Arkansas.

10. At all relevant times, Tyson has engaged in the business of supplying broiler chicken products in the United States.

11. Upon information and belief, Defendant Costco is a corporation organized and existing under the laws of the State of Washington with its principal place of business located in Issaquah, Washington.

12. Upon information and belief, at all relevant times, Costco has been engaged in the business of purchasing broiler chicken products and reselling them to consumers in the United States.

JURISDICTION AND VENUE

13. This is an action for a declaratory judgment and injunctive relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq. This Court has subject matter jurisdiction over this matter under 28 U.S.C. § 1331 because Costco asserts that the underlying Claim arises under the laws of the United States, including the Sherman Act and the Clayton Act.

14. Additionally, this Court has subject matter jurisdiction over this matter under 28 U.S.C. § 1332 because the parties are citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

1 15. This Court has personal jurisdiction over Costco in this case because Costco has
2 its principal place of business in this District.

3 16. This Court also has personal jurisdiction over Costco in this case because Costco
4 has purposefully availed itself of the privilege of conducting business in this District, including
5 by ordering broiler chicken products from Tyson from its offices in this District, selling Tyson's
6 broiler chicken products to consumers in this District, and communicating with Tyson about its
7 broiler chicken products from this District; and because both Costco's Claim and the claim for
8 declaratory relief in this case arise from these activities.

9 17. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because a
10 substantial part of the events giving rise to Costco's Claim and to this case occurred in this
11 District.

12 **BACKGROUND**

13 **The Broiler Chicken Litigation**

14 18. On September 2, 2016, a putative class of direct purchasers of broiler chicken
15 products filed a complaint against Tyson, three of its affiliates, more than a dozen other
16 corporate families of broiler chicken producers, and a benchmarking service called Agri Stats,
17 Inc., in the United States District Court for the Northern District of Illinois.

18 19. This case, which remains pending today, is known as *In re Broiler Chicken*
19 *Antitrust Litigation*, No. 1:16-cv-08637 (N.D. Ill.), or the *Broilers* case, and it is assigned to the
20 Hon. Thomas M. Durkin.

21 20. Costco was an absent member of the putative direct purchaser class when the
22 *Broilers* case began. On November 20, 2017, the End User Consumer Plaintiffs served Costco
23 with a third-party subpoena requesting the preservation of documents. This was followed by a
24 request to produce documents on January 30, 2018.

25 21. In January 2020, Tyson reached a settlement with the putative direct purchaser
26 class in the *Broilers* case.

22. Judge Durkin granted preliminary and final approval to Tyson's settlement with the direct purchaser class, and approved a distribution plan for the settlement proceeds.

23. Costco opted out of Tyson's direct purchaser class settlement on May 14, 2021.

24. Costco then filed its own direct action complaint on August 27, 2021, *Costco Wholesale Corp. v. Koch Foods, Inc.*, No. 1:21-cv-04611 (N.D. Ill.), which was consolidated into the *Broilers* case on or about August 31, 2021.

25. Costco's complaint in the *Broilers* case alleges, among other things, that producers of broiler chicken products engaged in an overarching conspiracy to inflate prices by reducing output, manipulating a price index known as the Georgia Dock, and rigging bids.

26. Costco's complaint in the *Broilers* case names entities from fourteen corporate families as defendants and identifies entities from seven other corporate families as non-defendant co-conspirators.

27. Tyson and its affiliate Keystone are among the alleged non-defendant co-conspirators identified in Costco's complaint in the *Broilers* case.

Costco's Arbitration Demand

28. On or about December 10, 2021, Costco submitted its Demand to the AAA.

29. The Claim in Costco's Demand substantively mirrors the overarching conspiracy claim Costco has asserted in the *Broilers* case.

30. Among other things, Costco's Demand alleges an overarching conspiracy to artificially raise prices that was achieved by at least the following three primary mechanisms: (1) an agreement to reduce the supply of broiler chickens, (2) manipulation of the Georgia Dock index, and (3) bid rigging.

31. Costco's Demand further alleges that the following producer families participated in the claimed conspiracy: Tyson, Pilgrim's Pride, Perdue, Sanderson Farms, Koch Foods, Wayne Farms, House of Raeford, Claxton Poultry, Fieldale Farms, Foster Farms, Harrison Poultry, Mar-Jac Poultry, Mountaire, O.K. Foods, Simmons, Keystone, Amick, Case Farms,

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