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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.

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

6 **THE PARTIES**

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

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

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

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

18 **JURISDICTION AND VENUE**

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

23 14. Additionally, this Court has subject matter jurisdiction over this matter under 28  
24 U.S.C. § 1332 because the parties are citizens of different states and the amount in controversy  
25 exceeds \$75,000, exclusive of interest and costs.  
26



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

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

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

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

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

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

15 **Costco’s Arbitration Demand**

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

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

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

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

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