



Legal Impact for Chickens

Formal Demand on the Board of Directors of Costco Wholesale Corporation to
Stop Dehydration and Starvation of Disabled Chickens

July 1, 2023

VIA EMAIL

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WILSON SONSINI GOODRICH & ROSATI, P.C.

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Seattle, WA 98104 ██████████

Counsel for the Board of Directors of Costco Wholesale Corporation

Re: Formal Demand on the Board of Directors of Costco Wholesale
Corporation to Stop Dehydration and Starvation of Disabled Chickens

Dear Mr. ██████████, Mr. ██████████, and Ms. ██████████,

We hope this letter finds you and your clients well.

We write to the Board of Directors of Costco Wholesale Corporation on behalf of Krystil Smith and Tyler Lobdell, owners of Costco common stock. Ms.



Smith and Mr. Lobdell were Costco shareholders at all relevant times described in this correspondence and remain shareholders now.

We write to demand that Costco's Board take immediate corrective action to stop Costco from leaving large numbers of its predictably disabled chickens to die from thirst and hunger, without realistic access to water or food. We believe that this constitutes illegal neglect and abandonment. And, in turn, we believe that causing this neglect and abandonment constitutes ongoing violations of Costco's directors' and officers' fiduciary duties.

We are directing this letter to you due to your role representing the members of the Board with regards to legal issues concerning the treatment of Costco's chickens. Please let us know if you are no longer the proper representatives of Costco's board for us to correspond with.

I. Costco Executives Have Enabled, and Continue to Enable, the Ongoing Neglect and Abandonment of Costco's Chickens. This Harms Costco and its Shareholders.

As outlined in our clients' Second Amended Verified Shareholder Derivative Complaint in the recent Washington Superior Court case, *Smith v. Vachris*, No. 22-2-08937-7SEA, we believe that the following executives have violated their fiduciary duties to Costco by knowingly causing Costco to neglect and abandon chickens, as well as by willfully ignoring red flags regarding illegal poultry production practices: Roland Michael "Ron" Vachris, Walter Craig Jelinek, Hamilton Evans James, Susan Lynne Decker, Kenneth Darnell Denman, Richard Alan Galanti, Sally M. Jewell, Charles Thomas Munger, Jeffrey S. Raikes, John William Stanton, Mary Agnes "Maggie" Wilderotter, Walter Fredrick Shafer III, John Christopher Sullivan, Robert Craig Wilson, Timothy Lee Rose, Sarah Catherine George, and Jeff Cole.



Specifically, these individuals have caused, and continue to allow, a poultry production business model in which Costco knowingly propagates chickens that are bred to grow so fast that many of them cannot stand under their own weight.

Under these individuals' leadership, Costco sends millions of unnaturally fast-growing birds to dirty, crowded, factory farms, run by inexperienced contract growers whom Costco recruited and trained. There, disabled birds slowly die from thirst, hunger, injury, and illness. Our clients contend that Costco's poultry production practices violate the laws of Nebraska and Iowa, where Costco's poultry production occurs.

As you know, a February 2021 *New York Times* piece publicly revealed Costco's animal neglect and abandonment. The above-mentioned executives are aware of Costco's mistreatment of chickens as highlighted in the *New York Times* piece and other widely disseminated publications, social media posts, publicly released videos, and other sources. In fact, their awareness is plainly evidenced by, among other things, Costco's own statements in response to the outcry surrounding its mistreatment of chickens. Moreover, these various reports, responses, and social media interactions constitute material red flags raised about a critical aspect of Costco's business model, and the above-mentioned executives had (and continue to have) an obligation to investigate and correct Costco's illegal behavior, in accordance with the duties they owe Costco.

As detailed in the *Smith* complaint, there is extensive evidence that each of the above-mentioned executives cause, are aware of, and have control over, the poor treatment of Costco's chickens. After viewing that complaint, the Honorable Ken Schubert of the King County Superior Court indicated that he was satisfied that the defendants in that lawsuit—the same group of executives whom we urge Costco's Board to sue—were aware of Costco's treatment of chickens.



Despite these executives' knowledge of Costco's animal neglect and abandonment, the above-mentioned executives have caused and allowed Costco to continue its current mistreatment of chickens.

Costco's neglect and abandonment of its chickens involves not a mere ancillary product or business strategy at Costco, but rather, the main event. A well-known pillar of Costco's business model is selling over 100 million ultra-cheap rotisserie chickens annually, and holding their price at \$4.99 for over a decade, despite steeply rising input costs. This misconduct in connection with a core aspect of Costco's brand and business model harms Costco and its shareholders by (1) risking criminal liability, which could be detrimental to Costco's core business, (2) fueling ongoing reputational harm, and (3) violating Costco's most fundamental interest in following the law.

II. Nebraska and Iowa Law Require Costco to Provide all its Birds with Water and Food—But Costco Knows that Many of its Birds Cannot Reach Either.

We believe the correct reading of Nebraska and Iowa law indicates that Costco's practices—which cause birds to suffer and die without proper care—are illegal in the two states where Costco raises chickens. Even if you disagree with this legal assertion, we submit that, at a minimum, it would be the safest choice for Costco to ensure that each of its birds has **realistic** access to food and water, in order to ensure compliance with applicable state law.

Under the Nebraska Livestock Animal Welfare Act (“NLAWA”), Neb. Rev. Stat. § 54-901 *et seq.*, a defendant commits unlawful neglect if the defendant intentionally, knowingly, or recklessly fails to provide a livestock animal in the defendant's care, whether as owner or custodian, with feed, water, or other care as is reasonably necessary for the animal's health. Under the NWALA, a defendant commits unlawful abandonment if the defendant intentionally, knowingly, or recklessly leaves a livestock animal in the defendant's care, whether



as owner or custodian, for any length of time, without making effective provision for the livestock animal's feed, water, or other care as is reasonably necessary for the livestock animal's health.

Under the Iowa Livestock Neglect Law ("ILNL"), Iowa Code § 717.2, a defendant who impounds or confines livestock in any place and deprives the livestock of necessary sustenance commits the offense of livestock neglect.

III. Costco Controls its Chickens' Lives and Deaths.

Costco has full control over the lives of its chickens. Costco is in charge of these birds' breeding, environment, lives, and deaths.

As you know, Costco established Lincoln Premium Poultry, LLC ("LPP") in order to supply itself with cheap meat for Costco's famous rotisserie chickens. LPP is a wholly owned and controlled subsidiary of Costco. LPP is led by Mr. Shafer, who is a Senior Vice President at Costco. LPP is an agent of Costco, and its actions and omissions are imputed to Costco.

As you also know, Costco built and owns a vertically integrated poultry facility in Nebraska, which includes a testing laboratory, a hatchery, a feed mill, a slaughterhouse, and a processing plant.

Every aspect of these chickens' lives is controlled by Costco, beginning with the birds' genetics through breeding, to the start of their lives at the Costco-owned hatchery. The young chicks are then brought to Costco's contract growers' factory farms, where they live most of their short lives.

Costco-controlled LPP provides contract growers with not only the chicks, but also the food to feed them, instructions on how to feed them, and other technical instructions on how to raise the birds. The contract growers are also



encouraged to rely on LPP for veterinary services, as Costco is responsible for providing veterinary care to its birds. The birds are ultimately slaughtered at the Costco-owned slaughterhouse.

Costco's chickens' eggs are fertilized at one or more Costco-controlled breeding facilities. LPP, on behalf of Costco, invited individuals with no experience breeding chicks or raising chickens to build and run chick-breeding facilities for LPP and Costco. LPP, on behalf of Costco, encouraged these inexperienced individuals to rely exclusively on LPP's factory farming practices to raise birds. The purpose of these breeding facilities is to provide Costco with low-cost fertilized eggs. Next, Costco, working through LPP, hatches the fertilized eggs.

After that, Costco, working through LPP, sends the newly hatched chicks to contract-grower facilities to be fattened for slaughter.

Most of the individuals with whom Costco contracts had never raised chickens before they started working with Costco. As a result, Costco is responsible for training these growers on how to raise chickens and how to care for animals, and for setting the animal-welfare standards that these growers follow. LPP, an agent of Costco, actually prefers new contract growers who have no experience and, thus, are blank slates for LPP's training and instruction. Costco and LPP expect a new contract grower, who has no experience raising chickens at all, to raise hundreds of thousands of chickens at a time. Costco, working through LPP, encourages its growers to sign 15-year contracts.

The factory farms and equipment within them are built according to Costco's specifications. As a result, and as a practical matter, it would be nearly impossible for a contract grower to profitably repurpose his or her barn, should the grower desire to end his or her relationship with Costco. Costco's recruits typically must take out large loans in order to finance the building of the new



factory farms according to Costco's specifications. As a result of the debt these growers must take on, the 15-year contracts they sign, the fact that they end up with expensive factory farms which are hard to profitably repurpose, and the fact that the contract growers often have no prior chicken growing experience, the contract growers are vulnerable to Costco's decision making and are virtually incapable of ending their relationship with Costco. Costco has near-complete control over almost every decision that its contract growers make with regard to how to raise Costco's chickens.

Costco, working through LPP, ultimately sends its chickens from the contract-grower facilities to the LPP slaughterhouse and processing plant that LPP built on behalf of Costco.

IV. Costco Intentionally Mass-Produces Chickens Bred to Grow Unnaturally Fast, Resulting in Frequent Disability.

Costco intentionally propagates chickens that are bred to grow unnaturally fast. Birds bred to grow unnaturally fast have unique health problems. Such birds are likely to become disabled (i.e., unable to stand or walk). And such birds require individualized attention—including access to water and food that they can reach without standing or walking, and individualized, specialized veterinary care. Without these fundamentals, many such birds will inevitably suffer and die prematurely. Broiler chickens who become too heavy will often lose the feathers on their underside. Without the protection of feathers, the birds' skin is in direct contact with the dirty floor. This direct contact often causes injury and ammonia burns.

A single Costco contract-grower barn may hold 45,000 chickens. Each contract grower generally has multiple barns full of chickens to raise. As a result, a single grower may have as many as 360,000 chickens at a time.



Given these birds' health problems, the fact that Costco and LPP select contract growers without prior experience, the fact that the growers are entirely reliant on Costco and LPP for training, coupled with the immense financial pressure placed on contract growers, it is essentially impossible for a single Costco contract grower to take proper care of 360,000 birds—many of whom are severely injured or wounded. Costco is aware of this impossibility.

Indeed, among other things, Costco's birds are highly susceptible to lung, bone, and heart problems. Selecting chicken breeds with such high rates of disease, knowing that the birds will not receive individualized veterinary care—or individualized care of any kind—when they become disabled is a form of neglect.

Approximately 96% of Costco's chicken meat is afflicted with a muscle condition known as white striping. White striping occurs when a company breeds chickens to grow so fast that a chicken's body cannot keep up with the unnaturally fast muscle growth. The chicken's body has trouble getting blood to all of the animal's muscles. As a result, the chicken's muscle tissue dies from lack of oxygen. The chicken's body then replaces the dead muscle tissue with fat and fibrous tissue, which appears as white stripes. White striping is a sign of poor animal welfare, and is a sign that Costco's chickens are bred to grow dangerously fast.

Many of Costco's birds cannot access water or food because, as a result of Costco's breeding practices, they are too weak or injured to stand or walk. These birds will inevitably suffer and die prematurely, from painful causes such as dehydration or hunger.

Based on the way Costco's contract-grower barns are set up, a bird who cannot stand or walk cannot reach water or food. Costco's contract grower barns have water and feed systems that rise up as the birds grow. So a bird who cannot



stand will ultimately suffer dehydration—even if the bird is laying very close to a water source. The same goes for food.

Undercover footage taken in a Costco contract-grower barn reveals multiple dead birds who appear to be a day or more into the process of decomposition. This fact provides additional demonstration that animals in Costco’s poultry production business are not receiving timely care.

Video evidence taken inside a Costco contract-grower barn also shows a dead chick inside a feeder. The chick appears trapped and presumably died due to dehydration. The presence of this dead chick in the feeder is also indicative of a lack of necessary animal care (i.e., someone to remove chicks from feeders when they become stuck).

V. Costco’s Mistreatment of its Chickens *is not* Commonly Accepted.

According to the organization that carried out the undercover investigation of Costco’s poultry production business, tens of thousands of people have called on Costco to treat chickens better.

A second, larger, animal welfare organization collected over 119,000 signatures on a letter objecting to Costco’s mistreatment of chickens.

Members of the public responded to learning about Costco’s treatment of birds by saying things like: (1) “As a member of Costco, I’m afraid that I can no longer purchase one of their chickens;” (2) “I regret I just joined Costco for those rotisseries;” (3) “I will NEVER buy another rotisserie chicken from them again. Shame on you, Costco;” and (4) “This is terrible. They don’t have to be treated like this. I don’t think I will ever buy another from Costco. They can do better than this.”



Costco's mistreatment of birds is so unacceptable that it has turned even the most enthusiastic Costco chicken fans into critics. Costco's Rotisserie Chicken once had its own Facebook fan page. The page had been up since 2009, and, as of January 21, 2019, it had 11,645 likes. The fan page was created by someone who, at the time, had loved Costco rotisserie chickens so much that she bought them twice a month. But even *she* was horrified to learn how Costco treats its chickens. When the creator of the fan page read the *New York Times* article and watched the undercover investigation, she decided to turn the page into a platform to protest Costco's unethical behavior. She publicly demanded that Costco treat its birds better, and encouraged her Facebook page followers to do the same. She also starred in a NowThis video about the suffering involved in Costco's poultry production practices. In the video, she asks, "Why would they do it this way?" She explained her reaction to the undercover investigation: "You would see these animals just writhing in their own feces and you would see these birds with [] no feathers, and just the filth. They're living in their filth."

Even the National Chicken Council ("NCC") has sought to distance itself from the description of Costco's chicken neglect. The NCC responded to an article about the undercover Costco investigation by stating, "[t]he conditions described in the article are not an accurate representation of the health and welfare of today's broiler chickens."

Indeed, in apparent recognition that fast growth harms birds, approximately 200 leading food companies have adopted the "Better Chicken Commitment," which involves, among other things, switching to slower-growing chicken breeds for animal-welfare reasons.

This mistreatment of chickens not only puts Costco at legal risk, but also threatens to harm Costco's business and its shareholders financially. If Costco continues its mistreatment of chickens, Costco risks undermining its long-running and successful traffic-generation strategy. As more consumers learn



of the mistreatment of Costco's chickens, the benefits once reaped by using these birds as a loss leader to drive customer traffic and membership renewals will vanish or greatly diminish. This is because consumer preferences to not buy products made illegally or unethically will trump the lure of a "cheap" chicken. Costco could also face significant liability and be forced to cease its chicken production altogether.

VI. Costco's Board Should Take Action to Stop the Neglect and Abandonment of Costco's Chickens.

We believe that the above-mentioned actions have resulted in, and are continuing to result in, breaches of fiduciary duties owed to Costco. The failure to properly care for Costco's chickens has harmed, and is continuing to harm, Costco. Specifically, we believe the above-mentioned actions are causing Costco to break the laws against livestock neglect and abandonment in Nebraska and Iowa. This: (1) violates the most fundamental interest of every Washington corporation in following laws, (2) puts Costco and its shareholders at risk of steep penalties, and (3) causes Costco to act *ultra vires*.

We understand that the Board's position has thus far been that the actions outlined in this letter do not violate the law. At a minimum, however, the Board must acknowledge that it is at least a close call, based on the plain text of Nebraska and Iowa law. As a result, regardless of whether the Board chooses to initiate a lawsuit against the above-mentioned individuals, the Board should swiftly move to improve Costco's treatment of chickens.

Specifically, the Board should come up with a plan to ensure that each of Costco's birds receives **realistic** access to food and water. There could be multiple methods to accomplish this. One solution would be to increase staff at contract-grower facilities, to ensure that all birds who cannot stand or walk will actually receive timely euthanasia. Another idea could be to provide growers with



easy-to-use on-farm euthanasia tools, which may increase the likelihood that contract growers actually carry out necessary euthanasias. Switching to slower growing breeds or adding enrichments to improve leg health could help as well.

But something must be done. The status quo is simply not working, as it's clear that many Costco birds are simply left disabled and unable to reach water and food, until they die and decompose.

VII. The Shareholders' Demand:

The Honorable Ken Schubert of the King County Superior Court has explicitly left open the possibility of this demand. *See Smith v. Vachris*, 22-2-08937-7 SEA (Doc. No. 76) (Wash. King Cnty. Super. Ct. Mar. 28, 2023) (“Nothing in this Order shall preclude Plaintiffs from making a litigation demand on the Costco Board.”).

Consequently, Ms. Smith and Mr. Lobdell demand the Board redress the above-mentioned wrongful conduct and the harm to the Corporation by: (1) immediately improving the Company's treatment of chickens, (2) investigating the neglect, abandonment, and pre-slaughter death of Costco's chickens, and (3) suing the individuals responsible for the animals' mistreatment. Specifically, the shareholders ask you to do the following:

(1) Please immediately institute a realistic and reliable plan to ensure that each of Costco's birds receives access to water and food at least once every six (6) hours. In doing so, acknowledge the fact that birds who cannot stand or cannot walk cannot reach water or food. As a result, please ensure that all birds who cannot stand or cannot walk are promptly euthanized, within six (6) hours of becoming immobile or downed. A reliable plan for euthanasia **cannot** rely solely on an unrealistic hope, such as simply telling contract growers to perform cervical dislocation on all injured animals, while knowing full well that, as a practical



matter, the contract growers lack the capacity to do this. A reliable plan may, however, involve various efforts, such as some combination of the following: (a) changing to slower-growth breeds; (b) taking other measures to improve birds' ability to stand, such as via breeding or mobility-enhancing enrichments; (c) decreasing the number of birds per barn; (d) hiring, or reimbursing contract growers to hire, additional workers to help the contract growers with this task; (e) providing contract growers with on-farm euthanasia devices at Costco's expense, to make the process of euthanasia both physically and psychologically easier, such as to increase the likelihood that contract growers will actually euthanize all immobile birds; (f) keeping the feeders and waterers at ground-level so that downer birds can reach them; and (g) implementing any other methods that will reliably prevent injured birds from dehydrating or starving.

(2) Please also conduct an internal investigation into the neglect, abandonment, and pre-slaughter neglect of Costco's chickens. Please publicly report on the outcome of this investigation, including statistics about the frequency and cause of such deaths.

(3) Please take legal action against Roland Michael "Ron" Vachris, Walter Craig Jelinek, Hamilton Evans James, Susan Lynne Decker, Kenneth Darnell Denman, Richard Alan Galanti, Sally M. Jewell, Charles Thomas Munger, Jeffrey S. Raikes, John William Stanton, Mary Agnes "Maggie" Wilderotter, Walter Fredrick Shafer III, John Christopher Sullivan, Robert Craig Wilson, Timothy Lee Rose, Sarah Catherine George, and Jeff Cole, for breaches of the fiduciary duty to act lawfully and the fiduciary duty of loyalty, and for causing Costco to act *ultra vires*.

Ms. Smith and Mr. Lobdell demand that the Board implement these measures by **September 1, 2023**. Should the Board not take the actions Ms. Smith and Mr. Lobdell demand in this letter by that date, Ms. Smith and Mr. Lobdell



will treat that inaction as a refusal of this demand and will consider all appropriate legal avenues to address the refusal.

Thank you for your time and consideration. If there is any way we can be of assistance in the Board's efforts to address this demand, please let us know.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alene Anello'. The signature is fluid and cursive, with a long horizontal stroke at the end.

Alene Anello

Sarah Gold

Legal Impact for Chickens

Counsel for Krystil Smith and Tyler Lobdell