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6 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY – SEATTLE DIVISION

7 KRYSTIL SMITH and TYLER LOBDELL,
8 derivatively on behalf of COSTCO
9 WHOLESALE CORPORATION,

10 Plaintiffs,

11 v.

12 **ROLAND MICHAEL “RON” VACHRIS,**
13 **WALTER CRAIG JELINEK, HAMILTON**
14 **EVANS JAMES, SUSAN LYNNE DECKER,**
15 **KENNETH DARNELL DENMAN,**
16 **RICHARD ALAN GALANTI, SALLY M.**
17 **JEWELL, CHARLES THOMAS MUNGER,**
18 **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 (FORMERLY
WEHLING), and JEFF COLE,

19 Defendants,

20 -and-

21 **COSTCO WHOLESALE CORPORATION,**

22 Nominal Defendant.

No. 22-2-08937-7SEA (Schubert Dept. 40)

**SECOND AMENDED VERIFIED
SHAREHOLDER DERIVATIVE
COMPLAINT FOR INJUNCTIVE
RELIEF, DECLARATORY JUDGMENT,
AND DAMAGES, FOR:**

1. BREACH OF FIDUCIARY DUTY, AND

2. *ULTRA VIRES* ACTS

COMPLAINT - 1

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**FIRST AMENDED VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT FOR
INJUNCTIVE RELIEF, DECLARATORY JUDGMENT, AND DAMAGES, FOR
BREACH OF FIDUCIARY DUTY AND *ULTRA VIRES* ACTS**

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1 Plaintiffs Krystil Smith (“Ms. Smith”) and Tyler Lobdell (“Mr. Lobdell,” and with Ms.
2 Smith, “Plaintiffs”), by and through their undersigned counsel, submit this Verified Complaint,
3 derivatively on behalf of Costco Wholesale Corporation (“Costco,” or the “Company”). The
4 Plaintiffs allege breaches of fiduciary duty and *ultra vires* acts by Costco’s directors and officers.
5 Ms. Smith and Mr. Lobdell make these allegations upon personal knowledge as to their respective
6 stock ownership and, as to all other matters, upon the investigation of their undersigned counsel
7 or information and belief. Counsels’ investigation included, among other things, the: (a) analysis
8 of the Company’s public filings with the United States Securities and Exchange Commission; (b)
9 review of news articles, videos, social media activity, and other publicly available information;
10 and (c) inspection of materials produced by Costco pursuant to a request under RCW 23B.16.020.
11 Ms. Smith and Mr. Lobdell allege herein as follows:

12 NATURE AND SUMMARY OF THE ACTION

13 1. This is a shareholder derivative action brought on behalf, and for the benefit, of
14 Nominal Defendant Costco. Costco is a global retailer operating members-only warehouse stores
15 throughout the United States and abroad. Costco offers members low prices on a wide range of
16 products, including food, such as chicken meat. A widely-known and prominent feature of
17 Costco’s business model is to use low-priced rotisserie chickens as a loss leader, to lure foot traffic
18 to its store. Public reports show this loss-leader strategy resulted in 106 million rotisserie chickens
19 sold last year. To execute this prominent feature of its business model and hold firm on the \$4.99
20 price its rotisserie chickens have been sold at for over a decade (despite rapidly rising input costs
21 and general inflation), Costco set up a vertically integrated poultry production business to supply
22 itself with a large quantity of cheap chicken meat. Given the integral role this important business

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1 strategy plays for Costco, it is widely recognized that “Costco is willing to go to extreme lengths
2 to keep its chickens at \$4.99.” See Nathaniel Meyersohn, *It’s only \$4.99. But Costco’s rotisserie*
3 *chicken comes at a huge price*, CNN Business (October 11, 2019) (last accessed June 2, 2022).

4 2. These deliberate choices by Costco fiduciaries, and the extreme lengths the
5 Company is willing to go in holding firm to a prominent and well-known feature of its business
6 model, come at a grave cost. Costco’s directors and officers have violated their fiduciary duty by
7 knowingly causing Costco to neglect and abandon chickens in violation of state laws. In addition,
8 Costco’s directors have violated their fiduciary duty by willfully ignoring red flags indicating their
9 poultry production practices are unlawful. Costco’s illegal neglect and abandonment is an integral
10 part of the Company’s poultry production strategy (and its business model).

11 3. Specifically, in its poultry production business, Costco knowingly propagates
12 chickens that are bred to grow so fast that many of them cannot stand under their own weight.
13 Costco then sends millions of these fast-growing birds to dirty, crowded, factory farms, run by
14 inexperienced contract growers who Costco recruited and trained. There, disabled birds slowly die
15 from hunger, thirst, injury, and illness. Costco’s directors and officers cause and are aware of these
16 illegal practices; and have chosen to ignore red flags plainly illuminating Costco’s illegal behavior.
17 They do this as a way to save money, hold firm to a key business strategy driving foot traffic in
18 stores, and increase profits, in violation of their fiduciary duties.

19 4. A February 2021 *New York Times* piece publicly revealed Costco’s illegal neglect
20 and abandonment of chickens. The piece described, in detail, and shared footage of, Costco’s
21 chicken mistreatment and sparked public outcry. See Nicholas Kristof, *The Ugly Secrets Behind*
22 *the Costco Chicken*, *New York Times* (Feb. 6, 2021),

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1 <https://www.nytimes.com/2021/02/06/opinion/sunday/costco-chicken-animal-welfare.html> (last
2 accessed May 20, 2022). The *New York Times* has millions of subscribers.

3 5. As detailed more fully herein, Costco’s directors and officers are aware of Costco’s
4 mistreatment of chickens as highlighted in *the New York Times* piece and other widely
5 disseminated publications, social media posts, publicly released videos, and other sources. In fact,
6 their awareness is plainly evidenced by, among other things, Costco’s own publicly released
7 responses to the outcry surrounding its mistreatment of chickens. Moreover, these various reports,
8 responses, and social media interactions constituted material red flags raised about a critical aspect
9 of their business model that Costco directors had an obligation to investigate and correct.

10 6. Despite Costco’s directors’ and officers’ knowledge of the Company’s illegal
11 animal neglect and abandonment, the directors and officers have caused and allowed Costco to
12 continue its current treatment of chickens, in violation of their fiduciary duties.

13 7. Costco’s practices—which cause birds to suffer and die without proper care—are
14 illegal in Nebraska and Iowa, the two States where Costco keeps chickens.

15 8. All directors and officers of corporations owe their corporation and its shareholders
16 a duty to act lawfully. *See, e.g.,* MELVIN AARON EISENBERG, *The Duty of Care of Corporate*
17 *Directors and Officers*, 51 U. PITT. L. REV. 945 (1990). Directors and officers who cause a
18 company to violate the law are breaching their fiduciary duties, even where illegal activity results
19 in a financial benefit to the corporation.

20 9. Directors of Washington corporations also owe their corporation and its
21 shareholders duties of loyalty, care, and good faith. These include a duty to monitor legal,
22 compliance, and ethical risks to the corporation (including violations of law). These fiduciary

1 duties cannot be avoided by conscious disregard of obligations, nor by failure to acknowledge red
2 flags. Consciously failing to monitor risks related to key business strategies or ignoring red flags
3 regarding such strategies constitutes bad faith and thus disloyal conduct.

4 10. This shareholder derivative action seeks to remedy and enjoin ongoing breaches by
5 Costco's directors and officers of their fiduciary duties.

6 11. For instance, Costco's directors are aware of, and have ignored red flags regarding,
7 the Company's violation of Nebraska's and Iowa's laws against livestock neglect and
8 abandonment.

9 12. Similarly, both Costco's directors and officers are aware of, intend, and have caused
10 and continue to cause, the Company's violation of Nebraska's and Iowa's laws against livestock
11 neglect and abandonment.

12 13. These violations include Costco intentionally propagating birds bred to grow so fast
13 that many of the young animals become unable to stand under their own weight; and then
14 knowingly and/or intentionally leaving a large number of these disabled birds to die a slow,
15 painful, and predictable death, without access to food, water, and/or individualized veterinary care,
16 as well as other misconduct.

17 14. By knowingly causing and allowing Costco to violate each of these State laws, and
18 by ignoring red flags regarding Costco's violation of those laws, Costco's directors and officers
19 breached, and are continuing to breach, their fiduciary duties to Costco and its shareholders.

20 15. Further, by causing and continuing to allow Costco to violate Nebraska's and
21 Iowa's laws against livestock neglect and abandonment, Costco's directors and officers have
22 caused, and are continuing to cause, Costco to engage in *ultra vires* acts.

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PARTIES

16. Shareholder Plaintiff Krystil Smith is a Costco shareholder.

17. Ms. Smith acquired her Costco stock in April 2020.

18. She has consistently held Costco stock since then, and will continue to hold Costco stock throughout the pendency of this action.

19. Ms. Smith will fairly and adequately represent the interests of the Company’s shareholders.

20. Shareholder Plaintiff Tyler Lobdell is a Costco shareholder.

21. Mr. Lobdell acquired his Costco stock in 2016.

22. He has continuously held Costco stock since then, and will continue to hold Costco stock throughout the pendency of this action.

23. Mr. Lobdell will fairly and adequately represent the interests of the Company’s shareholders.

24. Nominal Defendant, Costco Wholesale Corporation, is a Washington corporation with its principal executive offices located at 999 Lake Dr., Issaquah, WA 98027. Costco shares trade on the NASDAQ Stock Market under the symbol “COST.”

25. Defendant Roland Michael “Ron” Vachris (“Vachris”) is Costco’s President and Chief Operating Officer, and, as such, an officer of Costco. Defendant Vachris is also a Costco director. Defendant Vachris has been Costco’s director, president, and Chief Operating Officer since February 2022. In 2021, Vachris received over \$4.5 million in total compensation for his service as an officer of Costco serving as an Executive Vice President and Chief Operating Officer.

26. Defendant Walter Craig Jelinek (“Jelinek”) is Costco’s Chief Executive Officer. As

1 such, he is an officer of Costco. Defendant Jelinek is also a Costco director. Defendant Jelinek has
2 been a director of Costco since 2010, and has been Chief Executive Officer since 2012. Upon
3 information and belief, Defendant Jelinek is a resident of King County, Washington. In 2021,
4 Jelinek received over \$8.7 million in total compensation for his service as an officer and director
5 of Costco.

6 27. Defendant Hamilton Evans James (“James”) is the Chairman of Costco’s Board of
7 Directors. He is a Costco director. Defendant James has been a Costco director since 1988 and has
8 been chairman of the board since 2017. In 2021, James received over \$300,000 in total
9 compensation for his service as a director of Costco.

10 28. Defendant Susan Lynne Decker (“Decker”) is a Costco director. She has been a
11 Costco director since 2004. In 2021, Decker received over \$300,000 in total compensation for her
12 service as a director of Costco.

13 29. Defendant Kenneth Darnell Denman (“Denman”) is a Costco director. He has been
14 a Costco director since 2017. In 2021, Denman received over \$300,000 in total compensation for
15 his service as a director of Costco.

16 30. Defendant Richard Alan Galanti (“Galanti”) is Costco’s Chief Financial Officer
17 and Executive Vice President and as such, an officer of Costco. He is also a Costco director.
18 Defendant Galanti has been a Costco director since 1995, and Executive Vice President and Chief
19 Financial Officer since 1993. Upon information and belief, Defendant Galanti is a resident of King
20 County, Washington. In 2021, Galanti received over \$4.9 million in total compensation for his
21 service as an officer and director of Costco.

22 31. Defendant Sally M. Jewell (“Jewell”) is a Costco director. She has been a Costco

1 director since 2020. Upon information and belief, she is a resident of King County, Washington.
2 In 2021, Jewel received over \$300,000 in total compensation for her service as a director of Costco.

3 32. Defendant Charles Thomas Munger (“Munger”) is a Costco director. He has been
4 a Costco director since 1997. In 2021, Munger received over \$300,000 in total compensation for
5 his service as a director of Costco.

6 33. Defendant Jeffrey S. Raikes (“Raikes”) is a Costco director. He has been a Costco
7 director since 2008. Upon information and belief, Defendant Raikes is a resident of King County,
8 Washington. In 2021, Raikes received over \$300,000 in total compensation for his service as a
9 director of Costco.

10 34. Defendant John William Stanton (“Stanton”) is a Costco director. He has been a
11 director since 2015. Upon information and belief, Defendant Stanton is a resident of King County,
12 Washington. In 2021, Stanton received over \$300,000 in total compensation for his service as a
13 director of Costco.

14 35. Defendant Mary Agnes “Maggie” Wilderotter (“Wilderotter”) is a Costco director.
15 She has been a director since 2015. In 2021, Wilderotter received over \$300,000 in total
16 compensation for her service as a director of Costco.

17 36. Defendant Walter Fredrick Shafer III (“Shafer”) is Costco’s Senior Vice President
18 of Lincoln Premium Poultry. As such, he is an officer of Costco. Upon information and belief,
19 Defendant Shafer has held a leadership position at Costco since at least 2015, when he became
20 Costco’s Chief Operating Officer of Lincoln Premium Poultry.

21 37. Defendant John Christopher Sullivan (“Sullivan”) is Costco’s Executive Vice
22 President, General Counsel, and Corporate Secretary. As such, he is an officer of Costco. Upon

1 information and belief, Defendant Sullivan was promoted to Executive Vice President in
2 approximately 2022. Upon information and belief, he has served as Costco's General Counsel
3 since at least 2016. And, upon information and belief, he has been a Costco officer since at least
4 2014.

5 38. Defendant Robert Craig Wilson ("Wilson") is Costco's Vice President of Quality
6 Assurance and Food Safety. As such, he is an officer of Costco. He has held that position since at
7 least 2011. Upon information and belief, Defendant Wilson is a resident of King County,
8 Washington.

9 39. Defendant Timothy Lee Rose ("Rose") is Costco's Executive Vice President of
10 Ancillary Businesses, Manufacturing & Business Centers. As such, he is an officer of Costco. Mr.
11 Rose has held his current title since approximately 2013. Upon information and belief, Defendant
12 Rose is a resident of King County, Washington.

13 40. Defendant Sarah Catherine George (formerly Wehling) is Costco's Senior Vice
14 President of Merchandising - Fresh Foods. As such, Ms. George is a Costco officer. Defendant
15 George has held her current title since at least November 2020. Upon information and belief, Ms.
16 George is a resident of Washington.

17 41. Defendant Jeff Cole ("Cole") is Costco's Senior Vice President of Costco
18 Wholesale Industries & Business Development. As such, Mr. Cole is a Costco officer. Costco
19 Wholesale Industries, a division of Costco, operates Costco's meat processing business. Defendant
20 Cole has served in his current role since at least August 2021.

21 42. Vachris, Jelinek, James, Decker, Denman, Galanti, Jewell, Munger, Raikes,
22 Stanton, Wilderotter, Shafer, Sullivan, Wilson, Rose, George, and Cole are each a "Defendant,"

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1 and collectively, the “Individual Defendants.”

2 **JURISDICTION AND VENUE**

3 43. This Court has subject matter jurisdiction over this action pursuant to RCW
4 2.08.010.

5 44. This Court has personal jurisdiction over all Defendants named herein because each
6 Defendant is either a corporation that conducts business in and maintains operations in King
7 County, Washington or is an individual who has sufficient minimum contacts with King County,
8 Washington to render the exercise of jurisdiction by this Court permissible under traditional
9 notions of fair play and substantial justice. Specifically, by voluntarily serving as directors or
10 officers of a Washington corporation with its principal place of business in King County,
11 Washington, the Individual Defendants have either consented to jurisdiction or have transacted
12 business or caused tortious acts or harm within this state as described herein. In addition, many of
13 the Individual Defendants reside in King County, Washington.

14 45. Venue is proper in this Court because: (1) Costco is a Washington corporation that
15 maintains its principal executive offices in Issaquah within King County, Washington; (2) the
16 Individual Defendants either reside or maintain executive/commercial offices in King County,
17 Washington; and (3) the Individual Defendants have received substantial compensation in King
18 County, Washington by doing business here and engaging in numerous activities here.

19 46. This verified shareholder-derivative Complaint satisfies the jurisdictional
20 requirements of CR 23.1. Specifically, (a) Ms. Smith was a shareholder at the times of the
21 transactions of which she complains (i.e., the continuing fiduciary duty breaches in or since April
22 2020), and Mr. Lobdell was a shareholder at the times of the transactions of which he complains

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1 (i.e., the continuing fiduciary duty breaches in or since 2016). In addition, (b) this action is not a
2 collusive one to confer jurisdiction on a court of this state that the court would not otherwise have.
3 In addition, the Complaint alleges with particularity why Ms. Smith and Mr. Lobdell did not make
4 a demand upon Costco's board in this case, and any requirement to make a demand was excused
5 as futile.

6 **FACTUAL BACKGROUND**

7 47. The Individual Defendants cause, have caused, and will continue to cause Costco
8 and its agents to breed, hatch, keep, and slaughter chickens in Nebraska and Iowa, without
9 following state animal-welfare laws.

10 48. Costco established a company called Lincoln Premium Poultry, LLC ("LPP") in
11 order to supply itself with cheap chicken meat and perpetuate Costco's famous rotisserie chickens,
12 which are used as a loss leader to draw consumers into Costco stores.

13 49. LPP is an owned and controlled subsidiary of Costco. LPP is led by Defendant
14 Shafer, who is a Senior Vice President at Costco.

15 50. All the chickens at issue in this case are owned by Costco, owned on Costco's
16 behalf by LPP, or both.

17 51. As detailed below, Costco's current treatment of chickens in Nebraska and Iowa
18 violates Nebraska and Iowa laws against livestock neglect. This is because, among other things,
19 (1) Costco breeds chickens that grow so fast that many of the birds will predictably become
20 disabled while still young, and (2) Costco then fails to provide any realistic method for its disabled
21 birds to reach food and water, or to receive individualized veterinary care.

22 52. As detailed below, the Individual Defendants know of, and consciously ignored red

1 flags illuminating, Costco's illegal neglect and abandonment of chickens. This fact is clear:
2 Costco's illegal actions were exposed in, amongst other places: (1) a *New York Times* article, for
3 which Defendant Sullivan personally provided comment, and which contained an exposé of
4 Costco's chicken abuse, neglect, and abandonment; (2) numerous social media posts and an online
5 petition signed by concerned members of the public; and (3) an online video showing illegal
6 neglect and abandonment and specifically addressing Costco "executives." Critically, this illegal
7 activity involved not a mere ancillary product or business strategy at Costco, but rather, the main
8 event. A well-known pillar of Costco's business model, to drive store traffic, is selling over 100
9 million ultra-cheap rotisserie chickens annually, and holding their price at \$4.99 for over a decade,
10 despite steeply rising input costs. As explained herein, illegal conduct in connection with a core
11 aspect of Costco's brand and business model is harming Costco and its shareholders.

12 **A. The Individual Defendants have caused and are causing Costco to violate Nebraska**
13 **and Iowa animal welfare laws.**

14 53. Under the Nebraska Livestock Animal Welfare Act ("NLAWA"), Neb. Rev. Stat.
15 § 54-901 *et seq.*, a defendant commits unlawful neglect if the defendant intentionally, knowingly,
16 or recklessly fails to provide a livestock animal in the defendant's care, whether as owner or
17 custodian, with feed, water, or other care as was reasonably necessary for the animal's health.

18 54. Under the NWALA, a defendant commits unlawful abandonment if the defendant
19 intentionally, knowingly, or recklessly leaves a livestock animal in the defendant's care, whether
20 as owner or custodian, for **any length of time**, without making effective provision for the livestock
21 animal's feed, water, or other care as is reasonably necessary for the livestock animal's health.

22 55. The Individual Defendants cause Costco to violate, are aware of violations of, and

1 consciously ignore red flags illuminating violations of, the NWALA, regarding animal neglect and
2 abandonment.

3 56. For instance, the Individual Defendants cause Costco, as owner and custodian of
4 chickens in Nebraska, to knowingly and/or intentionally fail to provide its chickens in Nebraska
5 with feed, water, and other care as reasonably necessary for the birds' health and survival. The
6 Individual Defendants cause Costco to do this, for example, by knowingly and/or intentionally
7 causing Costco: to breed birds that grow so fast many of the birds cannot move due to injury or
8 illness, and thus cannot reach food or water; to send huge numbers of birds to contract growers
9 who are unable to properly care for so many birds; to fail to provide individualized medical care
10 for Costco's ill and injured birds; to fail to provide timely rescue to birds who become stuck in
11 feeders; and in other ways.

12 57. In violating the NWALA, Costco acts both directly and through its agents,
13 including LPP, employees of Costco and LPP, and contract growers.

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

17 59. The Individual Defendants also cause Costco to violate, are aware of violations of,
18 and consciously ignore red flags illuminating violations of, the ILNL.

19 60. For instance, the Individual Defendants cause Costco to impound and confine
20 chickens in its Iowa contract grower's facilities and deprive the chickens of necessary sustenance,
21 including food and water. The Individual Defendants do this by knowingly and/or intentionally
22 causing Costco to breed birds that grow so fast that many of the birds cannot move due to injury

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1 or illness, and thus cannot reach food or water. In doing so, Costco acts both directly and through
2 its agents, including LPP, employees of Costco and LPP, and contract growers.

3 61. The Individual Defendants caused Costco to take actions that cause (often
4 incapacitating) injury and disease in birds and then caused Costco to fail to ensure all birds have
5 access to food and water and receive individualized veterinary care, in violation of Iowa and
6 Nebraska law.

7 62. Leaving birds to slowly die without food and water, and then decompose for days
8 among other birds, causes unnecessary additional suffering to these animals already suffering from
9 painful infections or injuries. And it violates Iowa and Nebraska law.

10 **B. Costco has control over its chickens' lives.**

11 63. Costco owns the chickens referenced herein throughout their lives—either directly
12 or through LPP—from the time Costco hatches the birds to the time Costco slaughters them.

13 64. Costco has control over these birds' breeding, environment, lives, and deaths.

14 65. Costco owns a vertically integrated poultry facility in Nebraska. Costco built this
15 poultry facility, which it uses to supply itself with cheap chicken meat.

16 66. Costco sells chicken meat produced in this Costco-owned poultry facility, under
17 Costco's house brand, *Kirkland Signature*.

18 67. This Costco-owned poultry facility includes a testing laboratory, a hatchery, a feed
19 mill, a slaughterhouse, and a processing plant.

20 68. Costco controls its birds' genetics through breeding.

21 69. Costco chickens start their lives at the Costco-owned hatchery. They are then
22 brought to Costco's contract growers' factory farms, where they live most of their short lives. The

1 birds are ultimately slaughtered at the Costco-owned slaughterhouse.

2 70. Costco set up the entity LPP to operate Costco's vertically-integrated poultry
3 facility.

4 71. LPP was incorporated in Nebraska on February 24, 2016. LPP began operations on
5 approximately September 9, 2019.

6 72. Costco owns and controls LPP.

7 73. LPP slaughters and processes chickens exclusively for Costco.

8 74. LPP is an agent of Costco, and its actions and omissions are imputed to Costco.

9 75. Costco has extensive control over what happens to the chickens at every stage of
10 their lives—including at the breeding facilities (before they even hatch), in the factory farms where
11 they live out most of their short lives, and at slaughter.

12 76. The eggs that will ultimately hatch Costco's chicks are fertilized at one or more
13 Costco-controlled breeding facilities.

14 77. LPP, on behalf of Costco, invited individuals with no experience breeding chicks
15 or raising chickens to build and run chick-breeding facilities for LPP and Costco. LPP, on behalf
16 of Costco, encouraged these inexperienced individuals to rely exclusively on LPP's factory
17 farming practices to raise birds. The purpose of these breeding facilities is to provide Costco with
18 low-cost fertilized eggs.

19 78. Next, Costco, working through LPP, hatches the fertilized eggs.

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

22 80. Costco and LPP recruited approximately 120 individuals to become Costco contract

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1 growers. These new recruits obtained land in line with LPP’s specifications for placement of
2 chicken factory farms. Costco encouraged these individuals to build factory farms on their new
3 land in order to grow chickens for Costco; and to build the factory-farm buildings in sets of four,
4 eight, or twelve.

5 81. A few years ago, Costco spent approximately half a billion dollars on the chicken
6 meat industry in Nebraska. As a result of this significant investment, many chickens are currently
7 being kept on factory farms controlled by Costco.

8 82. Most of the individuals whom Costco contracted to raise chickens had never raised
9 chickens before they started working with Costco. As a result, Costco is responsible for training
10 these growers on how to raise chickens and how to care for animals, and for setting the animal-
11 welfare standards that these growers follow.

12 83. LPP, an agent of Costco, actually *prefers* new contract growers who have no
13 experience and, thus, are blank slates for LPP’s training and instruction.

14 84. A person whose family now grows chickens for LPP, after having never raised
15 chickens before, said this in a Costco promotional video: “So, on April 31st, 60,000 birds showed
16 up to our farm, and our lives have been changed forever. It’s been a learning experience, and often,
17 people say, ‘So what’s the learning curve been like?’ Well it’s not been a learning curve—it’s been
18 a learning line straight up. Sometimes backwards.”

19 85. Costco trains its contract growers and instructs them on how to operate their
20 chicken factory farms. The contract growers rely solely on this training and instruction.

21 86. In some instances, Costco and LPP expect a new contract grower, who has no
22 experience raising chickens at all, to raise as many as 190,000 chickens every six weeks.

1 87. Costco, working through LPP, encourages its growers to sign 15-year contracts.

2 88. The factory farms and equipment within them are built according to Costco's
3 specifications. As a result, as a practical matter, it would be nearly impossible for a contract grower
4 to profitably repurpose his or her barn, should the grower end his or her relationship with Costco.

5 89. Costco's recruits typically must take out large loans in order to finance the building
6 of the new factory farms according to Costco's specifications.

7 90. As a result of the debt growers must take on, the fifteen-year contracts they sign,
8 the fact that they end up with expensive factory farms which are hard to profitably repurpose, and
9 the fact that the contract growers often have no prior chicken growing experience, the contract
10 growers are vulnerable to Costco's decision making and virtually incapable of ending their
11 relationship with Costco.

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

15 92. Costco dictates to its contract growers what conditions they should keep the birds
16 in, including how to handle stocking density and ventilation.

17 93. Contract growers are encouraged to rely on LPP for technical instructions on how
18 to raise birds.

19 94. Contract growers follow a regimen regarding, among other things, food, light, and
20 temperature that is prescribed by Costco's LPP.

21 95. The contract growers are also encouraged to rely on LPP for veterinary services.

22 96. Costco is legally responsible for providing veterinary care to its birds.

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1 97. Costco has near-complete control over almost every decision that its contract
2 growers make with regard to how to raise Costco’s chickens. In fact, Costco’s contract growers
3 are so powerless that one agricultural economics expert publicly referred to a Costco contract
4 grower’s role as akin to “an indentured servant” or “a chicken house janitor.”

5 98. The contract growers’ factory farm facilities have been referred to as “Costco-
6 sponsored chicken houses” and “Costco’s grow farms.”

7 99. In at least some instances, Costco’s LPP even owns the factory farms where the
8 birds live.

9 100. The contract growers are agents of Costco, and their actions are attributable to
10 Costco.

11 101. In fact, the relationship between contract growers and integrators (like Costco and
12 LPP) smacks of an employee-employer relationship, rather than a true independent contractor
13 relationship.

14 102. In addition, contract growers may be particularly susceptible to influence from an
15 integrator like Costco. One economics report states: “The process of becoming a contract grower
16 is so completely controlled and structured by integrators that it leads to integrator[s] contracting
17 only with pliant, malleable, silent, trusting growers. In academia this is called adverse selection.”
18 C. Robert Taylor and David A. Domina, *Restoring Economic Health to Contract Poultry*
19 *Production* (2010).

20 103. Costco, working through LPP, then sends the chickens from the contract-grower
21 facilities to the LPP slaughterhouse and processing plant.

22 104. LPP built the slaughterhouse and processing plant on behalf of Costco.

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1 105. Costco is responsible for, and aware of, the treatment of its chickens at every stage,
2 including for their illegal neglect and abandonment.

3 106. Due to LPP being established, owned, and controlled by Costco, LPP's actions and
4 inactions towards chickens are attributable to Costco.

5 **C. Costco illegally neglects and abandons its chickens.**

6 107. Costco intentionally propagates chickens that are bred to grow unnaturally fast.

7 108. Birds bred to grow unnaturally fast have unique health problems. Such birds are
8 likely to become disabled (i.e., unable to stand or walk). And such birds require individualized
9 attention—including access to food and water that they can reach without standing or walking, and
10 individualized/specialized veterinary care. Without these fundamentals, many such birds will
11 inevitably suffer and die prematurely.

12 109. Broiler chickens who become too heavy will often lose the feathers on their
13 underside. This feather loss occurs due to weight and friction on the feather follicles. Without the
14 protection of feathers, the birds' skin is in direct contact with the dirty floor. This direct contact
15 often causes injury and ammonia burns.

16 110. Many of Costco's chickens have abnormally high body condition scores—In other
17 words, they are too heavy.

18 111. Costco carries out its breeding in Nebraska.

19 112. Costco then sends its young, fast-growing chickens to contract growers' factory
20 farms in Nebraska and Iowa.

21 113. Costco's birds arrive at contract-grower factory farms in Nebraska and Iowa when
22 the chicks are just a couple hours old.

1 114. Costco consigns its birds to live at those contract-grower factory farms, crowded
2 into filthy sheds amidst their own waste.

3 115. A single Costco contract-grower barn may hold 45,000 chickens.

4 116. Each contract grower generally has multiple barns full of chickens to raise.

5 117. As a result, a single grower may have as many as 360,000 chickens at a time.

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

11 119. By leaving tens of thousands of its birds at a given contract-grower factory farm in
12 Nebraska or Iowa where Costco knows the birds will not receive adequate care, Costco is both
13 abandoning and neglecting its birds in violation of the law.

14 120. Due to Costco's deliberate propagation of chickens bred to grow unnaturally fast,
15 a large number of birds owned by Costco are too sick or injured to stand or walk.

16 121. Costco's birds sometimes fall onto their backs and cannot get up because they are
17 too heavy.

18 122. Below is an illustrative screenshot from a YouTube video of a Mercy For Animals
19 undercover investigation in a Costco contract-grower factory farm, showing a Costco bird who
20 cannot stand:
21
22



See Mercy For Animals, *Costco Chicken Comes at a Huge Price*, YouTube <https://www.youtube.com/watch?v=mMdaBajzJDA> (Premiered Feb. 6, 2021).

123. Approximately 96% of Costco’s chicken meat is afflicted with a muscle condition known as *white striping*. White striping is a sign that Costco’s chickens are bred to grow dangerously fast. White striping occurs when a company breeds chickens to grow so fast that a chicken’s body cannot keep up with 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.

124. Birds like Costco’s, who have been bred to grow unnaturally fast, have special

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1 veterinary needs and require individualized care.

2 125. Indeed, among other things, the birds are highly susceptible to lung, bone, and heart
3 problems.

4 126. Selecting chicken breeds with such high rates of disease, knowing that the birds
5 will not receive individualized veterinary care—or individualized care of any kind—when they
6 become disabled is a form of illegal neglect.

7 127. Many birds owned by Costco cannot access food or water because they are too
8 weak or injured to stand or walk as a result of Costco’s breeding practices and will inevitably
9 suffer and die prematurely.

10 128. Naturally, a bird who cannot stand or walk cannot reach food or water. Moreover,
11 a chicken on her back (as a high percentage of non-ambulatory chickens are) would not be able to
12 access food or water, even if the food and water were close to her. And, if there is any significant
13 amount of space between the food and the water, a bird who cannot walk would be unable to travel
14 between food and water.

15 129. Moreover, in LPP contract grower barns, even falling inches away from the food
16 and water would not necessarily help a disabled bird: Some or all of these barns have feed and/or
17 water systems that rise as the birds grow. A bird who cannot stand would be unable to reach food
18 or water.

19 130. It is no surprise that an undercover investigation found Costco birds lying dead in
20 the factory farm. Here is an illustrative screenshot from the above-mentioned Mercy For Animals
21 YouTube video:
22



See Mercy For Animals, *Costco Chicken Comes at a Huge Price*, YouTube <https://www.youtube.com/watch?v=mMdaBajzJDA> (Premiered Feb. 6, 2021). The bird in this screenshot appears to have been decomposing for approximately 2 days or more. This decomposition further suggests that timely care is not being provided to the animals in Costco’s poultry production business.

131. Many of Costco’s injured birds die from thirst, hunger, illness, or injury while still on the factory farm.

132. The Mercy For Animals undercover investigation 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.

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1 133. Costco's birds' undersides frequently exhibit feather loss and dermatitis. This is
2 caused by some combination of excessive weight, the birds' inability to stand or difficulty standing
3 (lameness), and/or direct exposure to a high microbial environment—all compounded by lack of
4 individualized attention to disabled birds. (In an environment with adequate care, on the other
5 hand, the bird's weight would have been managed through dietary restriction and regular
6 monitoring; birds would have been provided with a soft, clean surface to rest on; and wound care
7 would have been provided. None of these are the case in Costco's poultry production system).

8 134. A large number of birds owned by Costco are suffering from severe medical
9 problems, and yet Costco fails to provide them with individualized veterinary care.

10 135. For instance, footage taken at a Costco chicken factory farm in Nebraska shows
11 birds with open wounds.

12 136. Other birds in Costco's poultry production business had severe, immobilizing limb
13 deformities, and metabolic disease which resulted in birds collapsing on their backs. There were
14 also diseased chicks, including chicks with yolk-sac infections (omphalitis), exacerbated by
15 unclean conditions.

16 137. Video evidence shows a dead chick inside a feeder. The chick appears trapped and
17 presumably died due to dehydration. The presence of this dead chick in the feeder is indicative of
18 a lack of necessary animal care (i.e. someone to remove chicks from feeders when they become
19 stuck).

20 138. Costco consigns its birds to live amidst their own feces. Feces from a given factory
21 farm is only hauled away approximately once a year.

22 139. Once they arrive at contract-grower facilities as hatchlings, Costco birds stay at

1 these contract-grower facilities for the first 42-to-44 days of their short lives.

2 140. Then, they are transported to the Costco-owned slaughterhouse.

3 141. In addition to illegally neglecting birds at its contract grower facilities, Costco also
4 illegally neglects birds at its slaughter facility.

5 142. For example, Costco’s agent, LPP, denied food and water to approximately 30,500
6 chickens for over 24 hours in January 2020, resulting in 1,622 deaths. This occurred at or near the
7 LPP facility, at 1325 E. Cloverly Road, Fremont, Nebraska. According to a government report, the
8 chickens were put into transport modules at approximately 4:00 a.m. on January 3, 2020. LPP then
9 held the birds overnight—without food and water—on at least two trailers. LPP did not begin
10 slaughtering the birds until approximately 4:52 am on January 4, 2020. A government agent
11 concluded that “the prolonged time being held . . . without access to food and water, in crowded
12 conditions, led to the” animals’ deaths.

13 143. In addition, on June 17, 2022, four days **after** the shareholder plaintiffs filed this
14 lawsuit, Costco’s agent, LPP, caused and allowed 1,000 of Costco’s chickens to burn to death, and
15 caused and allowed another 1,500 to suffer injuries, in a fire. LPP had been transporting the birds
16 to slaughter in a tractor-trailer, which LPP caused and allowed to catch fire.

17 144. Then, in December 2022, six months **after** the filing of this lawsuit, Costco’s agent,
18 LPP, caused and allowed over 2,000 of Costco’s chickens to freeze to death inside tractor-trailers.
19 Again, LPP had been transporting the birds to slaughter. LPP did so even though temperatures in
20 the area had dipped to 15 degrees below zero, and were the equivalent of 50 degrees below zero
21 considering windchill. A USDA supervisor thus determined that, in a single day, at least 2,070
22 chickens had died in “the extreme cold.” He described the birds as “rigid,” “frozen,” and with their

1 “heads and necks cocked abnormally.”

2 145. This December 2022 incident was not the first time that Costco caused and allowed
3 its chickens to freeze to death while transporting them to slaughter. In April 2020, a USDA
4 employee expressed concern that LPP had caused and allowed numerous chickens to die from cold
5 and freezing rain en route to slaughter. The USDA agent explained: “The majority of the chickens
6 were huddled to one side of the trailer. . . . The chickens were damp from the weather, and the live
7 chickens were quieter and more depressed than typically observed. Many chickens that were
8 underneath other chickens were deceased or moribund.”

9 146. Costco is responsible for and guilty of the illegal animal neglect and abandonment
10 discussed above, including the illegal neglect and abandonment that occurs at contract-grower
11 factory farms and *en route* to Costco’s LPP facility.

12 147. Costco’s poultry production takes place in Nebraska and Iowa. As a result, the
13 neglect and abandonment discussed in this subsection refers to neglect and abandonment occurring
14 in Nebraska and Iowa.

15 **D. Each of the Individual Defendants caused, is aware of, and consciously disregarded**
16 **clear signs of Costco’s ongoing mistreatment of chickens.**

17 148. As detailed below and throughout this Complaint, each of the Individual
18 Defendants is causing, aware of, and consciously ignored red flags regarding the ongoing illegal
19 chicken neglect and abandonment described in this Complaint.

20 149. Neglect and abandonment can be committed by inaction. By knowing that many of
21 Costco’s birds cannot access food, water, and individualized veterinary care, and declining to
22 provide those birds with such food, water, and individualized veterinary care, each of the

1 Individual Defendants is responsible for Costco’s neglect and abandonment.

2 150. The Individual Defendants are aware of, and consciously ignored red flags
3 illuminating, Costco’s illegal neglect and abandonment of birds. This is clear because, among other
4 things, the neglect and abandonment was covered by the *New York Times*, the exposé caused a
5 public outcry, and an animal-protection organization publicly released a video about the neglect
6 and abandonment which specifically addressed Costco’s “executives.”

7 151. Defendants Jelinek, James, Decker, Denman, Galanti, Jewell, Munger, Raikes,
8 Stanton, Wilderotter, Shafer, Sullivan, Wilson, Rose, and George each caused, knew of, and
9 consciously ignored red flags illuminating, Costco’s illegal chicken neglect and abandonment
10 since at least 2021.

11 152. Defendants Vachris and Cole each caused, knew of, and consciously ignored red
12 flags illuminating Costco’s illegal chicken neglect and abandonment since they assumed their
13 current positions.

14 153. Defendants Vachris, Jelinek, James, Decker, Denman, Galanti, Jewell, Munger,
15 Raikes, Stanton, and Wilderotter (the “Director Defendants”) all are Costco directors. As Costco
16 directors, the Director Defendants have control over Costco’s major projects and decisions. One
17 major project is Costco’s vertically-integrated poultry production business used to facilitate
18 continued low-cost rotisserie chickens in Costco stores to drive foot traffic—a well-known staple
19 of Costco’s business model. Each of the Director Defendants knows of the major projects and
20 decisions Costco is undertaking, including with regard to poultry production.

21 154. Defendants Vachris, Jelinek, Galanti, and Sullivan all are high-level Costco
22 executive officers who oversee Costco’s operations and its major projects and decisions, including

1 poultry production. Each of Defendants Vachris, Jelinek, Galanti, and Sullivan know of and
2 facilitate the major projects and decisions that Costco is undertaking, including with regard to
3 poultry production.

4 155. Defendants Shafer, Wilson, Rose, George, and Cole are Costco officers whose roles
5 specifically cover Costco's project of breeding, raising, and slaughtering chickens. As officers
6 with such roles, Defendants Shafer, Wilson, Rose, George, and Cole have control over Costco's
7 poultry production. Each of Defendants Shafer, Wilson, Rose, George, and Cole know of and
8 facilitate Costco's illegal mistreatment of chickens.

9 156. Moreover, the Individual Defendants know of and facilitate the projects and
10 decisions Costco undertakes that are in the news and the subject of public controversy. In fact, the
11 Individual Defendants have caused Costco to publicly respond to public concerns about those
12 major projects and decisions by defending Costco's current treatment of chickens.

13 157. Costco's current method of breeding, raising, and slaughtering chickens is a major
14 project and corporate decision: Costco is known for its famous rotisserie chickens. Costco uses
15 these rotisserie chickens as a loss leader, to entice consumers into its stores to spend money on
16 higher margin and more expensive items. A CNN Business article aptly put it this way: "For
17 Costco, the chickens are a lure, pulling customers into stores and getting them to browse the
18 aisles, adding sometimes hundreds of dollars' worth of items to their shopping carts before they
19 pick up that bird." *See* Nathaniel Meyersohn, *It's only \$4.99. But Costco's rotisserie chicken*
20 *comes at a huge price*, CNN Business (October 11, 2019) (last accessed June 2, 2022).

21 158. Costco also uses the rotisserie chickens to encourage Costco membership renewals.
22 In fact, Defendant Jelinek publicly gave Costco's "rotisserie chicken" part of the credit for

1 maintaining customer loyalty—encouraging customers to renew their Costco memberships—
2 during the pandemic. Using rotisserie chickens to drive membership renewals and store traffic
3 requires Costco to sell the rotisserie chickens for a very low price. Indeed, Defendant Galanti has
4 spoken publicly about how important it is to Costco to keep its rotisserie chicken prices low. And,
5 as a result, Costco’s current strategy places great weight on decreasing the cost to Costco of
6 obtaining chickens, so as to mitigate the loss from Costco’s loss leader. In short, public statements
7 by Costco’s senior executive officers confirm the critical nature of its low-cost rotisserie chicken
8 business.

9 159. Costco is even involved in a legal controversy with Tyson regarding Costco’s
10 concern over the price of buying chicken meat from third parties. To control the amount of money
11 that Costco loses on its rotisserie chickens, Costco decided to cut out the middleman and become
12 vertically integrated. In doing so, Costco’s goal was to supply itself with cheap meat. Toward this
13 end, Costco set up LPP, recruited and trained a huge number of Nebraskans and Iowans to become
14 chicken contract growers, and built a 450-million-dollar poultry complex in Nebraska. Costco
15 spent approximately half a billion dollars bringing the chicken meat industry to Nebraska. Costco
16 now produces approximately 100 million chickens a year. Because a main reason for entering the
17 poultry production business was to keep chicken meat prices low, Costco’s production strategy
18 focuses heavily on finding a cheap way to raise birds. The cheap way Costco has found involves
19 breeding birds that grow dangerously fast, and then illegally depriving them of individualized
20 access to food, water, and veterinary care.

21 160. The importance of Costco’s chicken production business to Costco is exemplified
22 by Costco board meeting minutes. Costco’s October 17–18, 2019 board meeting minutes say:

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1 “Report of Craig Jelinek. Mr. Jelinek reported on the status and prospects of the Company,
2 including (among other things) the fiscal 2020 budget and five-year cash flow projections, the
3 success of the Shanghai opening, operations at the poultry complex, and priorities for the coming
4 year.” Similarly, Costco’s January 23–24, 2020 board meeting minutes say: “State of the
5 Company. Mr. Jelinek updated on the status and prospects of the Company including, among other
6 things, factors pressuring margins (including the poultry complex).” And Costco’s July 13–14,
7 2021 board meeting minutes include a presentation which discusses “Feed Cost per Chicken.” The
8 presentation notes “13 year record high corn prices,” and “52% inc. cost to feed a chicken.” Lastly,
9 Costco’s January 20, 2022 board meeting minutes contain a presentation which says: “Long-Term
10 Challenges / Supply to keep up with our growth . . . / Chicken - Rotisserie growth relative to
11 category / Animal Welfare and Sustainability / Chicken - Center for Food Integrity, Temple
12 Grandin.”

13 161. Costco’s current method of breeding, raising, and slaughtering chickens—and the
14 inherent and actual neglect and abandonment in that method—have been in the news and have
15 been the subject of controversy.

16 162. Costco—including through Defendant Sullivan—has publicly responded to
17 concerns about the company’s mistreatment of its birds. In responding, Costco defended its current
18 treatment of chickens.

19 163. The suffering of Costco’s chickens is not an accident. Rather, Costco has put a great
20 deal of money and effort into creating the negligent and abusive situation that its birds are currently
21 in by, among other things, intentionally propagating birds bred to be so large that many of them
22 cannot stand. Costco continues to finance and further this situation with knowledge that it turns on

1 illegal abandonment and neglect.

2 164. In approximately 2020, an animal protection organization recorded undercover
3 footage of the routine, ongoing, abuse, neglect, and abandonment of Costco's chickens. This video
4 was publicly released.

5 165. A February 2021 *New York Times* piece broke the story of the investigation into the
6 mistreatment of Costco's chickens. The piece described and shared footage of Costco's chicken
7 abuse, neglect, and abandonment. See Nicholas Kristof, *The Ugly Secrets Behind the Costco*
8 *Chicken*, *New York Times* (Feb. 6, 2021),
9 <https://www.nytimes.com/2021/02/06/opinion/sunday/costco-chicken-animal-welfare.html>.

10 166. The *New York Times* columnist asked Costco for comment. In response, Defendant
11 Sullivan viewed the video *plainly depicting* Costco's illegal neglect and abandonment, but stated
12 "much" of the video depicts "normal and uneventful activity."

13 167. Costco's agent, LPP, similarly declined to apologize for the obvious neglect, abuse,
14 and abandonment shown in the undercover investigation video. Rather, and concerningly, LPP
15 stated that the video depicts "normal and uneventful livestock activity." LPP said that the
16 undercover investigation video showed that the particular contract grower who the animal
17 protection organization had investigated "was following this process that we've laid out for them."

18 168. According to an article, LPP "has made no secret of the fact that a certain
19 percentage of the chickens in its operations die before being sent to slaughter. Each poultry
20 operation [allegedly] has 'mortality sheds' where dead animals are composted." Matt Olberding,
21 *Animal rights group targets Costco poultry farm in Nebraska*, *Lincoln Journal Star* (Feb. 8, 2021),
22 <https://columbustelegram.com/animal-rights-group-targets-costco-poultry-farm-in->

1 nebraska/article_0cf2345f-c0f9-593f-9500-e5c0420f50d7.html.

2 169. ““Yes, there are going to be some (animals) that don’t make it,”” LPP said. LLP
3 thus expressed no remorse for the fact that many of the birds died as a result of preventable and
4 recurring abuse, neglect, and abandonment, and then were left rotting for days before being
5 removed from the factory farm.

6 170. After the above-mentioned animal protection organization revealed its undercover
7 investigation, the same organization released additional footage of chickens used by Costco being
8 illegally neglected and abandoned.

9 171. Costco has sought to publicly justify the harm it causes to birds by pointing out the
10 sheer number of birds that it factory farms, protesting that “no system is foolproof when you are
11 raising 18 million broilers at any given time.” But one cannot justify animal neglect by
12 intentionally breeding an unmanageable number of animals.

13 172. Common sense dictates Costco and its officers and directors, including all
14 Individual Defendants, know the contents of a *New York Times* piece directly targeting the
15 Company, and know the publicly available information about the Costco undercover investigation
16 discussed in that piece.

17 173. Any potential doubt that Costco and its decisionmakers were aware of the *New York*
18 *Times* piece and its contents was obliterated in March 2021, when Costco released a public
19 statement titled *COSTCO WHOLESALE STATEMENT REGARDING BROILER WELFARE*. In
20 that statement, Costco defended its current and continuing treatment of chickens and rejected
21 requests from members of the public for Costco to “change to breeds that grow more slowly.” This
22 statement shows Costco and its officers and directors were aware of the abuse, neglect, and

1 abandonment occurring within its poultry production process, but chose to defend, rather than
2 correct, Costco's illegal practices.

3 174. In September 2021, amidst continued concerns about the Company's treatment of
4 chickens, Costco issued another statement on the same topic. Costco once again rejected requests
5 for Costco to "change to breeds that grow more slowly."¹ This statement (once again) evidences
6 the Costco directors' and officers' knowledge of Costco's illegal abuse, neglect, and abandonment,
7 or, at the very least, indicates the presence of a red flag that should have caused the directors to
8 investigate and correct Costco's illegal practices.

9 175. Moreover, the public outcry against Costco's mistreatment of birds has at times
10 specifically called out Costco's "executives." For instance, one online video by The Humane
11 League was titled, "Meet the Costco executives making millions off of animal cruelty."
12 <https://www.youtube.com/watch?v=fH15WQAIs4c>. The video was uploaded to social media in
13 approximately May 2021 and has since been shared on Facebook numerous times. The video
14 states, "Costco executives don't want you to watch this video." It shows and describes undercover
15 footage of birds suffering illegally in Costco's poultry production business. It then shows a
16 screenshot of a social media post tagging Defendants Decker, Denman, and Jewell, to urge better
17 treatment of chickens. The video also shows photographs of certain Costco executives who it
18 identifies by name. These executives include three of the Individual Defendants: "Craig Jelinek,"
19 "Craig Wilson," and "Hamilton E. James." The video even goes so far as to state Defendants
20

21
22 ¹ Apparently recognizing its neglect and abandonment of its chickens, this second statement indicated LPP was at least "exploring a reduced density standard" for chicken factory farms. Nonetheless, the statement gave no indication that Costco plans to start abiding by the law by making sure each of its birds has access to bare necessities such as food, water, and individualized veterinary care.

1 Jelinek’s and James’s salaries, while urging viewers to “hold these executives accountable for the
2 animal abuse happening at Costco.” The video provides a phone number for Costco. The video
3 closes on a screen listing certain titles of additional Costco executives next to silhouettes. The
4 Individual Defendants are, thus, almost certainly aware of the footage shown in this video, which
5 plainly depicts illegal animal neglect and abandonment.

6 176. Defendant Decker’s Twitter handle is @suedecker. Between February and May
7 2021, Twitter users tagged Defendant Decker (@suedecker) in at least 10 tweets relating to
8 Costco’s mistreatment of chickens. These tweets said, among other things: (1) “how are you letting
9 this happen to these poor chickens? this is so sad : (please do something!”, (2) “This is so
10 disheartening to hear... I hope these @Costco board members, @suedecker , @kendenman , and
11 @sallyjewell , make the connection soon and use their influence to help the millions of chickens
12 suffering in #Costco’s supply chains,” and (3) “Please address this horrible abuse! This is sad.
13 Chickens are suffering in your supply chain. This is not OK. ❤️”. Defendant Decker can be
14 presumed to be aware of information in tweets which tag her on Twitter, because Twitter generally
15 notifies users of tweets which tag the user’s Twitter handle.

16 177. Defendant Denman’s Twitter handle is @kendenman. In April 2021, Twitter users
17 tagged Defendant Denman (@kendenman) in at least five tweets related to Costco’s mistreatment
18 of chickens. This includes each of the three tweets quoted above. Defendant Denman can be
19 presumed to be aware of information in tweets which tag him on Twitter.

20 178. Defendant Jewell’s Twitter handle is @sallyjewell. In April 2021, Twitter users
21 tagged Defendant Jewell (@sallyjewell) in at least five tweets related to Costco’s mistreatment of
22 chickens. This includes each of the three tweets quoted above. Defendant Jewell can be presumed

1 to be aware of the information in tweets which tag her on Twitter.

2 179. Among the tweets which have tagged Defendants Decker, Denman, and Jewell is a
3 tweet from The Humane League. The Humane League’s tweet is shown in the above-mentioned
4 “Meet the Costco executives making millions off of animal cruelty” video. The tweet says, “While
5 we appreciate that Costco board members @suedecker, @kendenman, and @sallyjewell are active
6 on matters of climate change and human rights, why were they silent when animal cruelty was
7 exposed in Costco’s supply chain? Please take action to address this horrible abuse!” The tweet
8 contains another, earlier video from The Humane League. The earlier video includes Mercy For
9 Animals’ undercover footage of chicken neglect at a Costco contract-grower factory farm. As of
10 the filing of this Complaint, the tweet has been retweeted at least 50 times, has been quote tweeted
11 at least 5 times, has received at least 67 “likes,” and has received at least 26 comments. Because
12 they are tagged in the tweet, Defendants Decker, Denman, and Jewell can be presumed to be aware
13 of the tweet’s contents, including the video within it depicting animal neglect and abandonment,
14 and can also be presumed to be aware of the public reaction to the tweet.

15 180. Animal welfare advocates also created a website at the URL richard-galanti.com.
16 The website contains a picture of Defendant Galanti. The website says, “WHO IS RICHARD
17 GALANTI? Richard Galanti is the Executive Vice President and Chief Financial Officer of Costco
18 Richard has been a Board member of Costco since 1995 and has been Costco’s CFO for 35
19 years. Richard’s total compensation for 2019 was estimated to be over \$4 million dollars. Most
20 importantly, as a leader at Costco, Richard has the power and responsibility to end the horrific
21 animal abuse that was recently exposed in Costco’s supply chain. For Costco, animal cruelty is
22 standard practice. In early February, *The New York Times* broke an undercover investigation from

1 Mercy For Animals, exposing the horrible conditions on one of the farms that supplies Costco with
2 chicken. The investigation found piles of dying animals, extreme overcrowding, floors covered in
3 waste, and chickens with chemical burns—it couldn’t have been any worse. . . . In Costco’s supply
4 chain, chickens are bred to grow so large, so quickly, that they suffer pain and can hardly even
5 stand. Some even die prematurely from heart attacks or other health issues as a result of their
6 excessive growth. Life for these chickens is one nightmare after another. . . . It’s time for Richard
7 Galanti and Costco to put an end to this animal abuse.” Defendant Galanti can be presumed to be
8 aware of the content of a website named after him, which contains a picture of him, and which is
9 dedicated to him.

10 181. A Costco member also created a petition on Change.org directed to Defendants
11 Jelinek, Galanti, Vachris, Wilson, and George, as well as other Costco representatives. Change.org
12 lists Defendants Jelinek, Galanti, Vachris, Wilson, and George as among the “[d]ecision makers”
13 for the petition.² The petition is titled, “Costco: stop supporting animal cruelty.” As of the time of
14 filing this Complaint, the petition has received at least 126,816 signatures. The petition details the
15 mistreatment of chickens in Costco’s poultry production business, and links to the *New York Times*
16 exposé. The fact that Change.org lists Defendants Jelinek, Galanti, Vachris, Wilson, and George
17 as among the “[d]ecision makers” for the petition means that, for each of Defendants Jelinek,
18 Galanti, Vachris, and Wilson, either: (1) the petition creator included the Defendant’s email
19 address when setting up the petition, or (2) the Defendant has a “Decision Maker” profile on
20 Change.org. In either case, Defendants Jelinek, Galanti, Vachris, Wilson, and George are
21

22

² The petition refers to Defendant George by her former last name, Wehling.

1 presumed to be aware of the contents of the petition.

2 182. In addition, Costco's leadership has discussed the public concern over Costco's
3 treatment of chickens, and Costco's decision to continue its current treatment of chickens, in
4 multiple board meetings.

5 183. On April 14, 2021, two months after the *New York Times* broke the story of the
6 investigation into the mistreatment of Costco's chickens, Costco's board discussed Costco's
7 refusal to adopt the Better Chicken Commitment. The April 14, 2021 board meeting minutes say:
8 "Ms. Wehling discussed sourcing strategies concerning owned and dedicated production options,
9 [and] animal welfare policies (including a detailed discussion of why the Better Chicken
10 Commitment urged by certain third-parties is not appropriate for the Company)." Ms. Wehling is
11 Defendant George. "[O]wned and dedicated production options" presumably refers to Lincoln
12 Premium Poultry and Costco's poultry production business. The Better Chicken Commitment is a
13 humane animal care policy which involves choosing chickens bred to grow at a more natural rate—
14 as opposed to the chickens Costco uses, which have been bred to grow unnaturally fast. The
15 organization that carried out the undercover investigation of Costco's poultry production
16 operations, Mercy For Animals, has been urging Costco to adopt the Better Chicken Commitment.
17 A second animal-welfare organization, The Humane League, has also been urging Costco to adopt
18 the Better Chicken Commitment, in response to the undercover investigation. "All directors were
19 present" at the April 14, 2021 board meeting, "as [was] John Sullivan (Senior Vice President)."
20 As of April 14, 2021, Costco's board members included Defendants Jelinek, James, Decker,
21 Denman, Galanti, Jewell, Munger, Raikes, Stanton, and Wilderotter. Therefore, each of
22 Defendants Jelinek, James, Decker, Denman, Galanti, Jewell, Munger, Raikes, Stanton, and

1 Wilderotter—as well as Defendants George and Sullivan—were aware of, and part of, Costco’s
2 decision to continue breeding chickens to grow so fast that many of them can’t stand up.

3 184. On July 14, 2021, the board discussed Costco’s plan for defending Costco’s current
4 treatment of chickens. The July 13–14, 2021 board meeting minutes say: “Ms. Wehling reviewed
5 fresh foods developments, including supply chain challenges . . . and animal welfare initiatives
6 (including the transition in the dedicated poultry supply to ‘no antibiotics ever’). Discussion was
7 held concerning communication alternatives around broiler welfare.” “All directors were present.
8 Also present from the Company were Messrs. [] Sullivan[] and Vachris, as well as [Ms.]
9 Wehling.” As of July 14, 2021, Costco’s board members included Defendants Jelinek, James,
10 Decker, Denman, Galanti, Jewell, Munger, Raikes, Stanton, and Wilderotter. As discussed
11 elsewhere in this Complaint, Costco’s public communications about broiler welfare have always
12 defended Costco’s current practice. Thus, each of Defendants Jelinek, James, Decker, Denman,
13 Galanti, Jewell, Munger, Raikes, Stanton, and Wilderotter—as well as Defendants Sullivan,
14 Vachris, and George—were evidently aware of Costco’s current treatment of chickens and were
15 evidently part of Costco’s decision to continue and publicly defend that treatment.

16 185. In March 2022, Ms. Smith and Mr. Lobdell submitted a books-and-records request
17 to Costco’s board regarding Costco’s treatment of chickens. The books-and-records request
18 mentioned and linked to the *New York Times* article about the undercover investigation into
19 Costco’s mistreatment of chickens. The books-and-records request also explicitly mentioned Ms.
20 Smith’s and Mr. Lobdell’s belief that Costco’s behavior violates the Nebraska Livestock Animal
21 Welfare Act and the Iowa Livestock Neglect Law. The board’s receipt of this books-and-records
22 request thus creates **additional** certainty that the Director Defendants are by now **well** aware of

1 Costco's illegal neglect and abandonment of chickens.

2 186. The repeated USDA reports of Costco chickens freezing, burning, and starving en
3 route to slaughter provides additional evidence that the defendants must be aware of, and are
4 consciously disregarding, Costco's neglect and abandonment of birds. The defendants should be
5 presumed to be aware of the content of USDA reports citing animal deaths at their company's
6 hands. Multiple reports issued **during the pendency of this litigation**, when the defendants should
7 be expected to be paying particularly close attention to such issues.

8 187. In addition, the animal rights organization People for the Ethical Treatment of
9 Animals (PETA) has responded to these repeated incidents of Costco chickens freezing, burning,
10 and starving en route to slaughter. PETA has contacted LPP and issued press releases calling on
11 LPP to change its practices. A January 19, 2023 press release, for instance, was titled, "Feds Find
12 Thousands of Birds Frozen to Death; PETA Calls For Cameras Throughout Lincoln Premium
13 Poultry Operations."

14 188. Lastly, the existence of this very lawsuit, in which all defendants are represented
15 by counsel, provides conclusive evidence that, at least since June 2022, all defendants are fully
16 aware of the ongoing neglect and abandonment happening within their company. Unfortunately,
17 this undeniable awareness has not stopped the ongoing chicken neglect and abandonment.

18 189. It is evident that Costco and the Individual Defendants are aware of and intend the
19 current, ongoing abandonment and neglect of Costco's birds.

20 190. It is also evident that the Director Defendants consciously ignored red flags
21 illuminating the current, ongoing abandonment and neglect of Costco's birds.

22 191. Costco's response to the undercover investigation makes clear that the illegal

1 abandonment and neglect revealed is business as usual for Costco, and will remain ongoing unless
2 enjoined.

3 **E. Costco’s neglect and abandonment of birds is not commonly accepted.**

4 192. Costco’s abdication of its responsibility to care for its animals offends public
5 notions of decency, and is illegal under the laws of both Iowa and Nebraska (where Costco controls
6 factory farms and operates its poultry production business). The response by members of the public
7 to Costco’s animal neglect and abandonment is (understandably) to feel horrified, disgusted, and
8 morally outraged.

9 193. Costco’s neglect and abandonment of birds is **not** commonly accepted.

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

13 195. As stated above, in March 2021, Costco issued a public statement which rejected
14 requests from members of the public for Costco to “change to breeds that grow more slowly.”

15 196. And, as stated above, Costco’s board’s books-and-records production under RCW
16 23B.16.020 revealed that, on April 14, 2021, the Costco board once again affirmatively decided
17 for Costco **not** to adopt the Better Chicken Commitment.

18 197. As stated above, in September 2021, Costco issued another public statement, which
19 once again rejected requests for Costco to “change to breeds that grow more slowly.”

20 198. This despite the fact that, according to the organization that carried out the
21 undercover investigation of Costco’s poultry production business, tens of thousands of people have
22 called on Costco to treat chickens better.

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

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

9 201. Costco's mistreatment of birds is so unacceptable, it has turned even the most
10 enthusiastic Costco chicken fans into critics.

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

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1 203. Even the National Chicken Council (“NCC”) has sought to distance itself from the
2 description of Costco’s chicken neglect. NCC responded to an article about the undercover Costco
3 investigation by saying, “[t]he conditions described in the article are not an accurate representation
4 of the health and welfare of today’s broiler chickens.” Contrast this with Costco’s response to the
5 undercover investigation, which stated that much of the investigation footage simply depicts
6 “normal and uneventful activity.”

7 204. NCC is the U.S. chicken meat industry trade association. So it is not just the general
8 public that finds Costco’s mistreatment of birds unacceptable. Rather, Costco’s poor treatment of
9 chickens is considered unacceptable even within the chicken meat industry—an industry that has
10 financial motivation to find a large range of behavior towards chickens acceptable.

11 205. This mistreatment of Chickens is not only unlawful, but threatens to harm Costco’s
12 business and its shareholders financially. If Costco continues its illegal mistreatment of chickens,
13 it risks undermining its long-running and successful traffic-generation strategy. As more
14 consumers learn of the mistreatment of Costco chickens, the benefits reaped using loss-leading
15 rotisserie chickens to drive customer traffic and purchases—which are important enough for
16 Costco to invest in significantly—will vanish or greatly diminish because consumer preferences
17 to not buy products made illegally or unethically will trump the lure of a “cheap” chicken. Costco
18 may also face significant liability and be forced to cease its chicken production altogether. Costco’s
19 illegal activity will or has financially and reputationally harmed Costco and its stockholders.

20 **F. The Costco directors and officers breached their fiduciary duties.**

21 206. In the words of the Honorable Leo E. Strine, Jr., former Delaware Supreme Court
22 Justice:

1 For a corporate director knowingly to cause the corporation to engage in unlawful
2 acts or activities or enter an unlawful business is disloyal in the most fundamental
3 of senses. A publicly chartered corporation becomes a legal citizen imbued with
4 rights and responsibilities. When directors knowingly cause the corporation to do
5 what it may not—engage in unlawful acts or unlawful businesses—they are disloyal
6 to the corporation’s essential nature. By causing the corporation to become a
7 lawless rogue, they make the corporation untrue to itself and to the promise
8 underlying its own societally authorized birth. No agent can act loyally toward a
9 principal by undertaking, without authority, consciously unlawful activity in the
10 name of the principal. In the case of a corporation, the corporation has no power to
11 give directors that authority because the corporation’s existence is premised on the
12 nondefeasible promise that it will conduct only lawful business through lawful
13 activities. Law compliance thus comes ahead of profit-seeking as a matter of the
14 corporation’s mission, and directors owe a duty of loyalty to that hierarchy. In so
15 creating that hierarchy, corporation law has imbued all corporations with the
16 mandatory value system of many sole proprietors, who would rather make less
17 money than reap profits by engaging in illegal businesses or activities. Fidelity to
18 that hierarchy is required of corporate directors in their supervision of the
19 corporation’s affairs.

20 HON. LEO E. STRINE, JR. ET. AL., *Loyalty’s Core Demand: The Defining Role of Good Faith in*
21 *Corporation Law*, 98 GEO. L.J. 629, 650-51 (2010).

22 207. The Individual Defendants have violated this fundamental duty to act lawfully³ by
23 knowingly causing Costco to violate the laws of Iowa and Nebraska.

24 208. This is true even if Costco’s illegal activity in the past resulted in a net-gain for the
25 Company. See DAVID ROSENBERG, *Delaware’s “Expanding Duty of Loyalty” and Illegal*
26 *Conduct: A Step Towards Corporate Social Responsibility*, 52 SANTA CLARA L. REV. 81, 88
27 (2012).

28 ³ The duty to act lawfully is sometimes considered a component of the duty of loyalty and good faith. We respectfully
29 submit the duty is independent. See MELVIN A. EISENBERG, *The Duty of Care of Corporate Directors and Officers*,
30 BERKELEY LAW SCHOLARSHIP REPOSITORY (Jan. 1, 1989) (“Directors and officers . . . are [] liable for damages
31 caused by breaches of their fiduciary duties of care and loyalty, and the duty to act lawfully.”). Regardless, the
32 applicable analysis is the same and a breach of the duty to act lawfully, like the duty of loyalty, is bad faith. See, e.g.,
Fitzpatrick v. Fed. Deposit Ins. Corp., 765 F.2d 569, 576 (6th Cir. 1985) (“a [director’s] knowing violation of positive
law is bad faith”).

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1 209. In addition to their duty to act lawfully, the Costco directors also have a duty to
2 take action in the face of red flags indicating Costco is or may be engaging in practices that violate
3 applicable laws and regulations, such as the laws of Iowa and Nebraska, where the Company's
4 contract-grower factory farms are located.

5 210. The fact that Costco may have ultimately made more money by breaking the law
6 does not change the fact that the officer's and director's knowledge and conscious disregard of red
7 flags regarding Costco's illegal activity represents a breach of their fiduciary duties that is
8 compensable in damages.

9 211. Further, having been confronted by the various red flags described above, and yet
10 declining to stop the company's ongoing animal neglect and abandonment, the Individual
11 Defendants not only failed to exercise proper oversight, but also are now knowingly causing
12 Costco to violate positive laws of the States of Nebraska and Iowa.

13 **DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS**

14 212. Plaintiffs bring this action derivatively in the right and for the benefit of Costco to
15 redress injuries suffered, and to be suffered, by Costco as a direct result of the Individual
16 Defendants' breaches of fiduciary duties by virtue of the wrongs alleged herein.

17 **A. Ms. Smith and Mr. Lobdell are adequate representatives of Costco and owned Costco**
18 **stock at relevant times.**

19 213. Plaintiffs Smith and Lobdell will adequately and fairly represent the interests of
20 Costco in enforcing and prosecuting its rights.

21 214. This is not a collusive action to confer jurisdiction that the Court would otherwise
22 lack, and is not being used by Plaintiffs to gain any personal advantage, nor do Plaintiffs maintain

1 any personal agenda other than seeking to correct the wrongs that have been done to the Company
2 by the Individual Defendants. Plaintiffs have not received, been promised, or offered, and will not
3 accept, any form of compensation, directly or indirectly, for prosecuting or serving as a
4 representative party in this action, except for such fees or other payments, including attorneys'
5 fees, as the Court expressly approves to be paid to Plaintiffs or on Plaintiffs' behalf.

6 215. Ms. Smith has been a shareholder of Costco stock since April 2020. Ms. Smith's
7 allegations in this Complaint, and the relief she seeks, relate solely to events beginning in or after
8 April 2020. Ms. Smith continues to be a Costco shareholder.

9 216. Mr. Lobdell has been a shareholder of Costco stock since 2016. Mr. Lobdell's
10 allegations in this Complaint, and the relief he seeks, relate solely to events beginning in or after
11 2016. Mr. Lobdell continues to be a Costco shareholder.

12 217. The focus of both Plaintiffs' allegations is the illegal actions that Costco has
13 continued to engage in since 2021, when the world found out about the illegal mistreatment of
14 animals in Costco's system, and yet Costco's directors and officer chose to continue business as
15 usual. This includes the neglect and abandonment that is presently occurring and that will continue
16 into the future if not enjoined by this Court.

17 218. As such, both Smith and Lobdell were shareholders at the time of the transactions
18 of which they complain in seeking injunctive, declaratory, and other equitable relief.

19 **B. Demand is futile.**

20 219. The Plaintiffs did not make a pre-suit demand on Costco's Board of Directors (the
21 "Board") to assert the claims set forth herein because, for the reasons detailed above and as further
22 set forth below, any such demand would be futile. Costco would not be able to act on such a

1 demand except through its Board of Directors, and the Board could not and would not objectively
2 determine whether bringing the claims set forth herein was in the best interests of the Company
3 and its shareholders.

4 220. Washington has adopted Delaware’s demand futility rule, letting shareholder-
5 derivative plaintiffs go straight to court without making a demand, if they can show that doing so
6 would be futile. *See In re F5 Networks, Inc.*, 166 Wn.2d 229, 240 (2009) (*en banc* Washington
7 Supreme Court case). In doing so, Washington explained that the demand futility rule is meant to
8 be “generous to plaintiffs because it allows them to go directly to court without first asking the
9 corporate board to take action.” *Id.* at 237.

10 221. When a complaint raises the reasonable suggestion that a majority of the board’s
11 current directors face a substantial likelihood of liability, then demand is excused as futile.

12 222. This Complaint, through its particularized factual allegations that the directors
13 knew of and intended Costco’s illegal conduct, raises the reasonable suggestion and reasonable
14 doubt that a majority of Costco’s current directors are liable for breaching the fiduciary duty to act
15 lawfully. None of the directors can claim exculpation for their violations of that duty—which
16 represents bad faith *per se*. Bad faith is disloyal conduct by a fiduciary that cannot be exculpated.

17 223. At the time this action was commenced, Costco’s board comprised the following
18 directors: Defendants Vachris, Jelinek, James, Decker, Denman, Galanti, Jewell, Munger, Raikes,
19 Stanton, and Wilderotter.

20 224. Defendants Vachris, Jelinek, James, Decker, Denman, Galanti, Jewell, Munger,
21 Raikes, Stanton, and Wilderotter, in their roles as current Costco directors, for all of the reasons
22 stated herein, are aware of and are currently choosing to continue Costco’s unlawful poultry

1 production strategy. As discussed above, each of the Director Defendants have caused, and are
2 aware of but failed to stop, Costco's illegal chicken neglect and abandonment.

3 225. Defendants Jelinek, James, Decker, Denman, Galanti, Jewell, Munger, Raikes,
4 Stanton, and Wilderotter have all been Costco directors since before 2021. As discussed above,
5 each of those Individual Defendants have caused and are aware of, but failed to stop, Costco's
6 illegal chicken neglect and abandonment at least since 2021.

7 226. Defendant Vachris has been a Costco director since February 2022. As discussed
8 above, he caused and was aware of but failed to stop Costco's illegal chicken neglect and
9 abandonment since February 2022.

10 227. Because all of the Director Defendants face a substantial likelihood of personal
11 liability by their continuation of illegal conduct, which constitutes both bad faith and a breach of
12 the duty to act lawfully, a majority of the directors are **not** disinterested with respect to the acts
13 and omissions alleged herein. A majority of the directors are therefore presumed to be incapable
14 of exercising independent and disinterested judgment about whether to pursue this action on behalf
15 of the shareholders of Costco. These Director Defendants' blatant disregard for their responsibility
16 to avoid causing the Company to engage in illegal acts represents a clear, bad-faith breach of the
17 duty to act lawfully, and is incapable of ratification. Demand is, therefore, excused as futile.

18 228. In addition to the fact that demand is futile for the reasons stated directly above,
19 Plaintiffs did not make a demand on the Board to pursue this action because the Plaintiffs desired
20 to prevent, as efficiently as possible, the irreparable harms that are occurring and will continue to
21 occur absent an injunction from this Court.

22 229. Animal suffering cannot be adequately recompensed with money.

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1 238. The Individual Defendants, individually and collectively, breached their fiduciary
2 duties by willfully and knowingly causing the Company to violate the law, including the laws of
3 Iowa and Nebraska, where Costco's chickens are located. Specifically, among other things, Costco
4 has violated and continues to violate the Nebraska Livestock Animal Welfare Act, Neb. Rev. Stat.
5 § 54-901 et seq., and the Iowa Livestock Neglect Law, Iowa Code § 717.2.

6 239. These actions are bad faith *per se* and render the Individual Defendants personally
7 liable to the Company.

8 240. As set forth above, the Individual Defendants had actual knowledge that Costco
9 was and is illegally neglecting and abandoning its chickens, but have failed to take any action to
10 prevent Costco from continuing to violate the law. Instead, the Individual Defendants have
11 participated in the ongoing violation.

12 241. The Individual Defendants have breached, and are continuing to breach, their
13 fiduciary duty to act lawfully.

14 242. The Individual Defendants' breaches of their fiduciary duties could subject the
15 Company to significant liability.

16 243. The actions of the Individual Defendants described herein were not a good-faith
17 exercise of prudent business judgment to protect and promote the Company's corporate interests
18 and those of its shareholders.

19 244. Moreover, the decision to cause a company to engage in illegal action can never be
20 a good-faith exercise of prudent business judgment.

21 245. As a direct and proximate result of the Individual Defendants' breaches of their
22 fiduciary duty to act lawfully, Costco has experienced and will continue to experience significant

1 harm as knowing violations of the law represent compensable harm to a corporation even where
2 the Corporation may not yet have suffered financially. Thus, as a result of the wrongdoing alleged
3 herein, the Individual Defendants are liable to Costco for substantial harm in an amount to be
4 determined at trial.

5
6 **COUNT II**
Breach of Fiduciary Duty of Loyalty
Against the Director Defendants

7 246. Plaintiffs hereby incorporate by reference each and every allegation in this
8 Complaint as though fully set forth herein.

9 247. The Director Defendants, individually and collectively, owed and owe the
10 Company and its shareholders a duty of loyalty in the management, administration, and oversight
11 of the Company's business and affairs.

12 248. The conduct of the Director Defendants, individually and collectively, as set forth
13 herein, was due to their intentional and/or knowing disregard for their fiduciary duty of loyalty.

14 249. By reason of their fiduciary relationships, the Director Defendants owed the
15 Company and its shareholders the highest obligation of oversight.

16 250. Faced with credible and cumulative information/ red flags, the Director Defendants
17 had a duty to act in good faith and ensure Costco did not continue to violate the law by, among
18 other things, overseeing and correcting Costco's poultry production practices.

19 251. The Director Defendants, individually and collectively, breached their fiduciary
20 duties by knowingly disregarding numerous red flags plainly showing that Costco's poultry
21 production practices—which resulted and continue to result in the neglect and abandonment of
22 chickens—are violating applicable laws and regulations. The Director Defendants' actions

1 constitute a conscious and/or reckless disregard for their oversight obligations, bad faith, and a
2 breach of the duty of loyalty.

3 252. The Director Defendants' actions were not a good faith exercise of prudent business
4 judgment to protect and promote the Company's interests and those of its shareholders.

5 253. As a direct and proximate result of the Director Defendants' breaches of their
6 fiduciary duty of loyalty, the Company is exposed to liability together with reputational harm and
7 financial losses. Indeed, the Director Defendants are undermining a long-running and key pillar of
8 Costco's business strategy by permitting persistent illegal conduct in sourcing a key product. As a
9 result of the wrongdoing alleged herein, the Director Defendants are liable to the Company for
10 substantial financial harm in an amount to be determined at trial.

11 **COUNT III**
12 ***Ultra Vires* Action**
13 **Against All Individual Defendants**

14 254. Plaintiffs hereby incorporate by reference each and every allegation in this
15 Complaint as though fully set forth herein.

16 255. A corporation's power to act may be challenged on the ground that the corporation
17 lacks or lacked power to act, in a proceeding by the corporation, derivatively, against a director or
18 officer of the corporation. *See* RCWA § 23B.03.040.

19 256. Costco's purpose is limited to carrying out lawful actions.

20 257. An *ultra vires* act is one that goes beyond the purposes of the corporation as
21 outlined in its certificate of incorporation.

22 258. Illegal actions are always *ultra vires* because corporate law restricts the powers and
duties contained in corporate formation documents to lawful acts.

COMPLAINT - 53

ANIMAL LAW OFFICES, PLLC
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1 that causes Costco to violate Nebraska's animal neglect laws;

2 viii. Permanently enjoining the Individual Defendants and their successors, agents,
3 representatives, employees, and any party acting in concert with them, from engaging in conduct
4 that causes Costco to violate Iowa's animal neglect laws;

5 ix. Ordering the Individuals Defendants to take, on behalf of Costco, all necessary actions to
6 reform and improve Costco's policies, procedures, and practices to comply with applicable laws;

7 x. Ordering the Individual Defendants and their successors, agents, representatives,
8 employees, and any party acting in concert with them to certify compliance with this Court's orders
9 in writing, to Krystil Smith and Tyler Lobdell, or any representatives they each select, once a year;

10 xi. Allowing Krystil Smith, Tyler Lobdell, and each of their chosen representatives to conduct
11 random and unannounced inspection of any property where Costco's birds are kept, to ensure
12 compliance with this Court's orders;

13 xii. Determining and awarding to Costco all damages sustained as a result of the breaches of
14 fiduciary duties set forth herein from each of the Individual and Director Defendants, as
15 appropriate, jointly and severally, together with interest thereon;

16 xiii. Awarding nominal damages to Costco from the Individual Defendants;

17 xiv. Awarding to Plaintiffs the cost and disbursement of the action, including reasonable
18 attorneys' fees, costs, and expenses;

19 xv. Awarding pre- and post- judgment interest; and

20 xvi. Awarding such other and further relief as is just and equitable.

21
22 Respectfully submitted,

COMPLAINT - 55


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DATED: 2.6.23, 2022

ANIMAL LAW OFFICES, PLLC

By: 
ADAM P. KARP, WSBA No. 28622
Attorney for Plaintiffs,
KRYSTIL SMITH and TYLER LOBDELL,
derivatively on behalf of COSTCO
WHOLESALE CORPORATION

DATED: February 6, 2023

LEGAL IMPACT FOR CHICKENS


By: /s/ Alene Anello
ALENE ANELLO, *Pro Hac Vice*
Attorney for Plaintiffs,
KRYSTIL SMITH and TYLER LOBDELL,
derivatively on behalf of COSTCO
WHOLESALE CORPORATION

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VERIFICATION BY KRYSTIL SMITH

I, KRYSTIL SMITH, declare under penalty of perjury under the laws of the State of Washington that I have reviewed the Verified Shareholder Derivative Complaint prepared on behalf of Costco Wholesale Corporation and authorize its filing. I have reviewed the allegations made in the Complaint, and to those allegations of which I have personal knowledge, I believe those allegations to be true. As to those allegations of which I do not have personal knowledge, I rely on my counsel and their investigation and for that reason believe them to be true. I further declare that I am a current holder, and have been a holder, of Costco stock as set forth in the Complaint.

Executed this 6th day of February, 2023 in the city of Hyattsville, Maryland

Signed: 
KRYSTIL SMITH

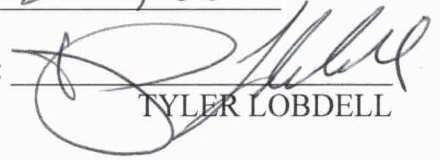
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VERIFICATION BY TYLER LOBDELL

I, TYLER LOBDELL, declare under penalty of perjury under the laws of the State of Washington that I have reviewed the Verified Shareholder Derivative Complaint prepared on behalf of Costco Wholesale Corporation and authorize its filing. I have reviewed the allegations made in the Complaint, and to those allegations of which I have personal knowledge, I believe those allegations to be true. As to those allegations of which I do not have personal knowledge, I rely on my counsel and their investigation and for that reason believe them to be true. I further declare that I am a current holder, and have been a holder, of Costco stock as set forth in the Complaint.

Executed this 6th day of Feb., 2023 in the city of Boise, Idaho

Signed:



TYLER LOBDELL

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