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*Attorneys for Plaintiff Chloe Rodgeron*

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**IN THE UNITED STATES DISTRICT COURT**  
**DISTRICT OF UTAH, CENTRAL DIVISION**

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CHLOE RODGERSON, an individual,

Plaintiff,

vs.

COSTCO WHOLESALE CORPORATION, a  
Washington Corporation,

Defendants.

**COMPLAINT**  
**(JURY TRIAL DEMANDED)**

2:17-cv-00897-DBP

Judge Dustin B. Pead

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Plaintiff CHLOE RODGERSON (“Chloe”) complains against Defendant COSTCO

WHOLESALE CORPORATION (“Costco”) as follows:

**PARTIES**

1. Chloe is an individual who at all times relevant herein has been a resident of the State of Utah.
2. Costco is a corporation organized and existing under the laws of the State of

Washington, with its corporate headquarters and principal place of located in the State of Washington.

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 USC § 1332(a) because the matter in controversy exceeds \$75,000.00 exclusive of costs, and it is between citizens of different states.

4. The Court has personal jurisdiction over Costco in this matter because Costco has certain minimum contacts with the State of Utah such that the maintenance of the suit in this district does not offend traditional notions of fair play and substantial justice and the facts giving rise to this action occurred in the State of Utah.

5. Venue in the United States District Court for the District of Utah is proper pursuant to 28 USC § 1391(a)(2) because a substantial part of the acts or omissions giving rise to Chloe's claims and causes of action occurred in this judicial district, and because Costco was subject to personal jurisdiction in this judicial district at the time of the commencement of the action.

### **GENERAL ALLEGATIONS**

6. Chloe was born February 24, 1997 in Adrian, Michigan.

7. In 2003, Chloe moved with her mother and older sister to Utah.

8. During her early school years, Chloe enjoyed gymnastics, cheerleading, dancing, singing and any activity related to the performing arts. Chloe was happy, energetic and knew how to work hard.

9. Chloe showed an interest in performing at 5 years of age when she began gymnastics and dance classes. She was cast as a “bean” in her first play, "Jack and the Beanstalk" and fell in love with the stage.

10. After training and performing with the Hale Theater Youth Academy in Salt Lake City, Chloe became involved in her junior high school’s drama program where she continued her training with Brittini Smith (Hale Theater Youth Academy Director and stage performer) in voice, acting, directing, musical theater and improv. She played parts in several of the school’s productions, including the lead role of Charlotte in "Charlotte's Web".

11. Concurrently, she took private voice lessons from David Smith (2008-2010) and began training with Mindy Robbins at the Utah Conservatory of the Performing Arts after school. Chloe performed in several plays including the part of Cinderella in Cinderella, The Wizard of Oz, The Emperor’s New Clothes and A Christmas Carol in connection with Hale Center Theater’s Youth Academy. She was also Principal Talent or Featured Talent in several commercials and advertisements.

12. By the time Chloe entered high school, she had determined to become a Broadway actor. For Chloe, this was more than a dream; it was an obsession. And she paid the price to make her obsession come true.

13. Chloe enrolled in the newly-created Pioneer High School for the Performing Arts in American Fork, Utah, a charter school where she could focus on musical theater, dance, acting and instrumentals while taking her core classes online. Chloe excelled socially and academically.

14. Chloe was involved with student government and leadership from the 5th grade

through her high school years. She was appointed to student council by the school administration in her 10th grade year (2012-2013), and elected Vice President in her 11th grade year (2013-2014). Part way through her 11th grade year she became student body President. She graduated in 2015 with a 3.75 grade point average.

15. During her junior high and high school years, Chloe took numerous classes focused on the performing arts.

16. She also took private lessons and engaged in extra-curricular training workshops after school.

17. During the summers, she participated in extensive specialized training and performances in New York City, NY, Los Angeles, CA, Telluride, CO, and throughout the State of Utah, including the Tuacahn Theater in St. George, The Utah Shakespeare Festival in Cedar City and several Utah universities.

18. Chloe was featured in the Keith Merrill film “Twelve Dogs of Christmas II.”

19. In the fall of 2014, Chloe was a film intern for the movie “Warpigs”. Before the film was finished, she was hired as a paid Production Assistant.

20. Chloe has also been the lead singer in three bands: The Inevitable Swing Band, Radio Motion Indie Rock Band and the Advanced Core Ensemble Pop Band at Pioneer High School for the Performing Arts.

21. In the fall of 2016, Chloe was a Principal Talent in the T.C. Christensen film “Love, Kennedy.”

22. Chloe’s greatest credit to date is her Ensemble role in Jason Robert Brown's

Parade which she performed at the Lincoln Center, Avery Fisher Hall in NYC in 2015 where she had a taste of Broadway at 17 years of age and was more determined than ever to return.

23. Chloe's schooling and extra-curricular activities required hours and hours of hard work practicing, rehearsing and studying. Her activities were physically demanding, required diet control, and athletic conditioning.

24. In addition, Chloe worked many part-time jobs and participated in multiple fundraisers to defray the cost of her expensive training. She worked hard doing everything from cleaning the dance studio after ballet classes to serving frozen yogurt at night.

25. Chloe was offered a 13-month full-time salaried position with benefits as a Disney princess at Disney World in Orlando, Florida. Not only was Chloe to be paid for her time, but Disney offered her tuition reimbursement. Chloe accepted the offer and the financial relocation package for her to start there on December 1, 2015.

26. Chloe was also offered a position as a performer at Universal Studios Japan for the same time period, but chose to accept the Disney position instead.

27. Chloe's plan was to earn an Associate's Degree online while working at Disney, and earn and save money for graduate school at Pace University in New York to further her dream of becoming a Broadway actor.

28. By the fall of 2015, Chloe was well on her way to realizing her dream. As a Disneyland princess, she would start to acquire Equity points necessary to qualify for membership in the Equity Actors Guild, a guild which offers frequent opportunities to audition

for parts on Broadway. It was just a matter of time and more hard work—something with which Chloe was very familiar.

**Chloe's *E. coli* O157:H7 Infection**

29. On October 9th and again on October 23rd, Chloe's father, Chad Renshaw, went to the Costco store located at 198 North 1200 East, Lehi, UT 84043 where he purchased chicken salad for sandwiches.

30. Chloe and other family members and friends ate the chicken salad one or more times before October 25th.

31. Each of the ten people who ingested the chicken salad had some physical reaction to it (stomach cramping, diarrhea, and gas pains).

32. But Chloe's reaction was more traumatic: she was infected with *E. coli* O157:H7 bacteria, that infection would change her life forever.

**Costco Chicken Salad *E. coli* O157:H7 Outbreak**

33. Beginning in October 2015, the Centers for Disease Control and Prevention ("CDC"), US Food and Drug Administration ("FDA"), the US Department of Agriculture ("USDA") Food Safety and Inspection Service ("FSIS"), and public health officials in several states investigated an outbreak of Shiga toxin-producing *Escherichia coli* O157:H7 ("STEC O157:H7") infections.

34. Using the PulseNet system to identify outbreak associated cases, investigators identified 19 people infected with the outbreak strain of *E. coli* O157:H7, coded as PulseNet

strain EXHX01.0225/EXHA26.0621. The outbreak was assigned CDC Cluster Code 1511MTEXH-1.

35. The majority of the *E. coli* O157:H7 cases were reported from the western United States. The number of ill persons reported from each state was as follows California (1), Colorado (4), Missouri (1), Montana (6), Utah (5), Virginia (1) and Washington (1).

36. Among people for whom information was available, illnesses started on dates ranging from October 6, 2015 to November 3, 2015. Ill people ranged in age from 5 to 84 years, with a median age of 18 years. Fifty-seven percent of ill people were female. Five (29%) people were hospitalized, and two people developed hemolytic uremic syndrome.

37. Epidemiologic evidence collected during this investigation suggested that rotisserie chicken salad made and sold in Costco stores was the likely source of this outbreak.

38. State and local public health officials interviewed ill people to obtain information about foods they might have eaten and other exposures in the week before their illness started.

39. Fourteen of the 19 *E. coli* O157:H7 cases involved persons who purchased or ate rotisserie chicken salad from Costco.

40. On November 20, 2015, Costco reported to public health officials that the company had removed all remaining rotisserie chicken salad from all stores in the United States.

41. The Montana Public Health Laboratory tested a sample of celery and onion diced blend contained in the Costco chicken salad that was collected from a Costco store in Montana. Their preliminary results indicated the presence of *E. coli* O157:H7.

42. On November 26, 2015, Taylor Farms Pacific, Inc., the producer and manufacturer of the celery and onion blend, voluntarily recalled the blend and many other products containing celery. Upon information and belief, Taylor Farms Pacific, Inc. believed that the products containing their celery were possibly contaminated with *E. coli* O157:H7.

***E. coli* O157:H7 and HUS**

43. *Escherichia coli* is the name of a common family of bacteria, most members of which do not cause human disease. *E. coli* O157:H7, and other STECs, are specific members of this family that can cause bloody diarrhea (hemorrhagic colitis) and worse, in humans.

44. After a susceptible individual ingests STEC, the bacteria attaches to the inside surface of the large intestine and initiates an inflammatory reaction of the intestine. The mean incubation period (time from ingestion to the onset of symptoms) of *E. coli* O157:H7 and other STECs is estimated to be two-to-four days. Typically, a patient with an acute *E. coli* O157:H7 infection presents with abdominal cramps, bloody diarrhea, and vomiting. But *E. coli* O157:H7 and other STECs can produce a wide spectrum of disease from mild, non-bloody diarrhea, to severe bloody diarrhea accompanied by excruciating abdominal pain and life-threatening complications.

45. About five-to-ten percent of individuals infected with *E. coli* O157:H7 develop hemolytic uremic syndrome (“HUS”). HUS was first described in 1955, and today is recognized as the most common cause of kidney failure in children. HUS is believed to develop when the toxin from the bacteria, known as Shiga-like toxin (“SLT”), enters circulation through the inflamed bowel wall. Some organs, including the kidney, pancreas, and brain, seem more



susceptible to SLT, perhaps due to the presence of increased numbers of receptors. By definition, when fully expressed, HUS presents with the triad of hemolytic anemia (destruction of red blood cells), thrombocytopenia (low platelet count), and acute renal failure (loss of the filter function of the kidney).

46. There is no known therapy to halt the progression of HUS. The most important aspect of treating patients with HUS remains excellent supportive care, which includes: close observation in a tertiary-care pediatric facility; meticulous attention to fluid, electrolyte, and metabolic balance; optimal nutrition; and careful blood pressure control. The active stage of the disease usually lasts one-to-two weeks, during which a variety of complications are possible. Blood transfusions may be necessary several times during the course of the active stage. Dialysis or interventional therapy, such as plasma exchange (plasmapheresis), may be necessary for patients at risk for a bad outcome. HUS is a frightening condition that even in the best American centers has a mortality rate of about five percent. Among survivors, about five percent will eventually develop end stage renal disease (“ESRD”) with a resulting need for dialysis or even transplantation.

**E. coli O157:H7 Ravages Chloe’s Life**

47. Chloe experienced onset of diarrhea on October 27, 2015.

48. On October 31<sup>st</sup>, Chloe called her mother from work to report that: “She had just vomited blood and passed bloody stool.” Her mother picked her up from work and rushed her to urgent care where her primary care physician evaluated her for abdominal pain, nausea, vomiting, diarrhea, chills and aching joints. Her doctor considered this an emergency and

referred her to the emergency room at American Fork Hospital.

49. Chloe's stool specimen was collected and tested by EIA at Intermountain Central Laboratory as antigen positive for Shiga Toxins.

50. The specimen was forwarded to the Utah Public Health Laboratory (UPHL) where microbiologists cultured *E. coli* O157:H7 from Chloe's specimen (Specimen ID# 1005627).

51. UPHL analyzed Chloe's isolate by Pulsed Field Gel Electrophoresis. Results of the analysis showed that Chloe Rodgerson was infected with the Costco Chicken Salad outbreak strain EXHX01.0225/EXHA26.0621. She eventually developed HUS.

52. On November 6, 2015, Chloe was transferred to Intermountain Medical Center where Chloe spent nearly a month in shock traumatic intensive care. She was treated by a battery of specialists who endeavored to determine the cause of her symptoms. Chloe began to experience renal failure and significant weight loss.

53. On November 12, 2015, Chloe underwent surgery for removal of her large intestine.

54. On November 14, 2015, Chloe underwent a second surgery for creation of an end ileostomy.

55. On November 16, 2015, Chloe underwent another surgery to close her abdomen from her prior surgeries.

56. Chloe began hemodialysis to treat her renal failure.

57. On November 26, 2015, Chloe was discharged from the hospital with final

discharge diagnoses of acute anuric renal failure, *E. coli* O157:H7 hemorrhagic colitis, GERF/Esophagitis, malnutrition, microangiopathic hemolytic anemia and pericardial anemia.

58. Chloe's happiness at returning home was short-lived. On November 28, 2015, less than 48 hours after discharge, Chloe began having seizures. Her parents took her to the emergency room at approximately 4:00 a.m. where she was again referred to the shock trauma intensive care unit. After an MRI and two days of other diagnostic testing, Chloe's doctors determined she had a staph infection resulting from her prior surgeries for which she was treated.

59. Chloe was discharged the second time on December 1, 2015 with discharge diagnoses of hypertension, anasarca/pulmonary edema, acute hypoxic respiratory failure, anuric renal failure, and likely atypical HUS.

60. On December 3, 2015, Chloe began outpatient dialysis at South Mountain Dialysis. Her sessions lasted several hours three times a week and generally resulted in excruciating headaches, nausea, anxiety and sensitivity to light and sound.

61. Chloe continued regular follow-up visits with her primary care physician, her neurologist, a mental health counselor and other health care providers. She faithfully took the numerous medications which they prescribed.

62. On March 2, 2016, Chloe had an MRI. It confirmed that her kidneys had died and that she would need a kidney transplant.

63. On March 7, 2016, it was confirmed that Chloe's *E. coli* O157:H7 infection had rendered her diabetic.

64. On May 13, 2016, Chloe underwent extensive laparoscopic lysis of adhesions, an

open ileostomy reversal with small bowel resection, and endoscopic evaluation of the rectal stump and distal small bowel.

65. That same day, Chloe underwent further surgery to install a left brachiocephalic fistula to facilitate dialysis while Chloe was waiting for a kidney transplant.

66. Chloe's older sister and mother were tested as potential kidney donors, but complications made either of them risky donors. The search continued for a better donor.

67. Chloe developed a segmental occlusion in her fistula which resulted in further surgery on June 7, 2016 for a transposed left brachiocephalic fistula.

68. Chloe continued dialysis through the summer and fall, received treatment for her scarring on her arm and stomach, and continued her numerous follow-up visits with various health care providers. During this time, she suffered significant hair loss.

69. On November 5, 2017, Chloe experienced extreme head and stomach aches that rendered her unable to move. Within an hour of arriving at the American Fork Hospital Emergency Room, Chloe suffered another seizure. She was given additional medication and sent home.

70. In January 2017, Chloe identified her fiancé, Josh Batstone, as a potential transplant candidate. The Intermountain Transplant Center began tests on Josh and confirmed he would be an acceptable candidate.

71. Chloe and Josh initially scheduled the transplant surgery for Valentine's Day. However, Chloe developed a *C. difficile infection*, which resulted in a postponement of the surgery.

72. Finally on February 24, 2017, Chloe received a kidney transplant from Josh.

73. On March 12, 2017, Chloe was readmitted to Intermountain Medical Center with large-volume diarrhea incident to another *C. difficile* infection. She was treated and discharged the next day.

74. On March 20, 2017, Chloe was re-admitted to the hospital with a resurgence of her diarrhea. Chloe and her doctors feared that her symptoms may indicate transplant rejection; however, a kidney biopsy showed no indications of rejection. Chloe was again discharged.

75. On April 2, 2017, Chloe was re-admitted to the hospital with elevated heart rate, paleness, recurrent upper abdominal pain, vomiting and diarrhea. It was determined that Chloe was experiencing a bowel obstruction which they successfully treated. She was discharged on April 7, 2017.

76. As a result of Chloe's *E. coli* O157:H7 infection, Chloe has already incurred medical expenses in excess of \$2,000,000.

77. Chloe's health care providers have advised her that she can expect a lifetime of regular visits to her various health care providers, recurrent adjustments to diet and medication, continuing anti-rejection medication, diabetes mitigation medications, and other treatments. She can expect at least one future kidney transplant following the inevitable failure of her current donor kidney, additional dialysis and other serious anticipated challenges. In addition, her medications continually compromise her immune system such that she is overly susceptible to disease and bacteria. Future medical expenses will be in the tens of millions of dollars.

78. In addition, Chloe has experienced and will continue to experience severe pain

and suffering. She has undergone numerous painful surgeries, has suffered severe headaches, seizures, abdominal pain, chronic diarrhea and nausea. She has suffered depression and discouragement resulting from her traumatic change in life plan. She is now diabetic and limited in her physical activities. She is likely unable (practically, if not physically) from having children. Her life and dreams of a couple years ago are gone. She can no longer hope for a career as a Broadway actor. In fact, her life-care planner has confirmed she will not have the physical ability to pursue that goal any longer. He has determined Chloe will not be physically able to work full-time, that her work skills have been permanently diminished, and that she will experience significant loss of income resulting from her *E. coli* O157:H7 infection.

**FIRST CLAIM FOR RELIEF**  
**(Strict Liability)**

79. Costco manufactured and sold the adulterated food product that is the subject of the action.

80. The adulterated food product that Costco manufactured, distributed, or sold was, at the time it left Costco's control, defective and unreasonably dangerous for its ordinary and expected use because it contained *E. coli* O157:H7, a harmful pathogen.

81. The adulterated food product that Costco manufactured, distributed, or sold reached Chloe without any change in its defective condition.

82. The adulterated food product that Costco manufactured, distributed, or sold was used in the manner expected and intended, and was consumed by Chloe.

83. Chloe suffered injury and damages as a direct and proximate result of the defective and unreasonably dangerous condition of the adulterated food product that Costco manufactured, distributed, or sold.

**SECOND CLAIM FOR RELIEF**  
**(Negligence)**

84. Costco owed Chloe a duty to use reasonable care in the manufacture, distribution, and sale of its food product, the observance of which duty would have prevented or eliminated the risk that Costco's food products would become contaminated by *E. coli* O157:H7 or any other dangerous pathogen.

85. Costco breached this duty.

86. Costco had a duty to comply with all statutes, laws, regulations, or safety codes pertaining to the manufacture, distribution, storage, and sale of its food product.

87. Costco failed to comply with its duty and was therefore negligent.

88. Chloe is among the class of persons designed to be protected by these statutes, laws, regulations, safety codes or provision pertaining to the manufacture, distribution, storage, and sale of similar food products.

89. Costco had a duty to properly supervise, train, and monitor its employees, and to ensure its employees' compliance with all applicable statutes, laws, regulations, or safety codes pertaining to the manufacture, distribution, storage, and sale of similar food products.

90. Costco failed to do so and was therefore negligent.

91. Costco further had a duty to use ingredients, supplies, and other constituent materials that were reasonably safe, wholesome, free of defects, and that otherwise complied

with applicable federal, state, and local laws, ordinances, and regulations, and that were clean, free from adulteration, and safe for human consumption.

92. Costco failed to do so and was therefore negligent.

93. As a direct and proximate result of Costco's acts and omissions of negligence, Chloe sustained injuries and damages in an amount to be proven at trial.

**THIRD CLAIM FOR RELIEF**  
**(Negligence *Per Se*)**

94. Costco had a duty to comply with all applicable state and federal regulations intended to ensure the purity and safety of its food product, including the requirements of the Federal Food, Drug and Cosmetics Act (21 U.S.C. § 301 *et seq.*).

95. Costco failed to comply with the provisions of the health and safety acts identified above, and, as a result, was negligent per se in its manufacture, distribution, and sale of food adulterated with *E. coli* O157:H7, a harmful pathogen.

96. As a direct and proximate result of conduct by Costco that was negligent per se, Chloe sustained damages in an amount to be proven at trial.

**DAMAGES**

97. Chloe has suffered general, special, incidental, and consequential damages as the direct and proximate result of the acts and omissions of Costco, in an amount that shall be fully proven at the time of trial. These damages include, but are not limited to: damages for general pain and suffering; damages for loss of enjoyment of life, both past and future; medical and medical related expenses, both past and future; travel and travel-related expenses, past and future; emotional distress, past and future; pharmaceutical expenses, past and future; and all



other ordinary, incidental, or consequential damages that would or could be reasonably anticipated to arise under the circumstances.

**JURY DEMAND**

Chloe hereby demands a jury trial.

**PRAYER FOR RELIEF**

WHEREFORE, Chloe prays for judgment against Costco as follows:

- A. Ordering compensation for all general, special, incidental, and consequential damages suffered by the Chloe as a result of the Costco's conduct;
- B. Awarding Chloe her reasonable attorneys' fees and costs, to the fullest extent allowed by law; and
- C. Granting all such additional and/or further relief as this Court deems just and equitable.

DATED this 7<sup>th</sup> day of July, 2017.

/s/ David M. Wahlquist  
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