

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

ANNIE SONG, on behalf of herself and all  
others similarly situated,

Plaintiff,

v.

COSTCO WHOLESALE CORPORATION,

Defendant.

No.

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

Plaintiff Annie Song (“Plaintiff”), on behalf of herself and all others similarly situated, alleges the following against Costco Wholesale Corporation (“Costco” or “Defendant”) based upon personal knowledge with respect to herself and on information and belief derived from, among other things, investigation by her counsel, as to all other matters:

**NATURE OF THE ACTION**

1. This is a proposed class action seeking monetary damages and injunctive relief from Defendant Costco Wholesale Corporation (“Costco” or “Defendant”), arising from its fraudulent and material omissions regarding its deceptive mark-up of products sold online at Costco.com.



**JURISDICTION AND VENUE**

1  
2 9. This Court has jurisdiction over Plaintiff’s claims pursuant to 28 U.S.C. § 1332(d)  
3 because this is a class action with diversity between at least one class member (including Plaintiff)  
4 and Defendant and the aggregate amount of damages exceeds \$5,000,000. This action therefore  
5 falls within the original jurisdiction of the federal courts pursuant to the Class Action Fairness  
6 Act, 28 U.S.C § 1332(d).

7 10. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) because  
8 Costco’s principal place of business is in this District.

9 **COMMON FACTUAL ALLEGATIONS**

10 **A. Costco Fails to Disclose When Items Sold on Online are More Expensive than the**  
11 **Same Items Sold In-Store at a Costco Warehouse Despite its Explicit Promise to**  
12 **Inform Consumers of this Material Price Differential**

13 11. Defendant promises on its website that it will disclose to consumers whenever an  
14 online product sold on Costco.com is more expensive the same item sold in-store at a Costco  
15 warehouse location.

16 12. Such representation is made on the Customer Service Home Page on the Costco  
17 Wholesale website. Defendant specifically states:

18 **Are warehouse and online prices the same?**

19 As you may already know, not all products sold on Costco.com are available at  
20 your local Costco warehouse. Also, products sold online may have different  
21 pricing than the same products sold at your local Costco warehouse. That’s due  
22 to the shipping and handling fees charged for delivery to your home or business.  
23 And when an item is available both online and in the warehouse, you’ll see the  
24 message, “Item may be available in your local warehouse for a lower, non-  
25 delivered price,” on its product page on Costco.com.<sup>1</sup>

26 13. Indeed, Costco’s statement indicates that in all instances when an item is available  
27 both online and in stores, that it will necessarily include its pricing disclosure.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  

---

<sup>1</sup> See *Are warehouse and online prices the same?*, Coscto.com, [https://customerservice.costco.com/app/answers/answer\\_view/a\\_id/691/~are-warehouse-and-online-prices-the-same%3F](https://customerservice.costco.com/app/answers/answer_view/a_id/691/~are-warehouse-and-online-prices-the-same%3F) (last accessed on June 12, 2024).

1           14. But Defendant did not follow through with its promise and instead, routinely  
2 failed to disclose this material notification on its website and mobile app.

3       **B. Plaintiff's Experience**

4           15. On January 21, 2024, Plaintiff placed an order for 2-day delivery on Costco.com  
5 for various personal items in the total amount of \$145.52.

6           16. At all relevant times, Defendant represented on the Costco website that it would  
7 include a message whenever an online product was more expensive than the same in-store item  
8 by stating the “[i]tem may be available in your local warehouse for a lower, non-delivered price.”

9           17. None of the products Plaintiff purchased in her order included the disclosure that  
10 any of the items might be available at her Costco store at a lower price.

11           18. Upon information and belief, several of the products Plaintiff purchased on  
12 Costco.com for delivery were actually more expensive than if she had purchased the exact same  
13 items in-store.

14           19. For example, Plaintiff purchased a 30-Roll Count of Charmin Ultra Soft Bath  
15 Tissue for \$33.49. At no point during her transaction on Costco.com did Defendant disclose that  
16 this toilet paper might be available in-store at a cheaper price.

17           20. However, the exact same 30-Roll Count of Charmin Ultra Soft Bath Tissue that  
18 Plaintiff purchased online cost only \$29.99 at the Costco warehouse located at 779 Connecticut  
19 Ave, Norwalk, CT 06854.

20           21. Plaintiff would not have made the online purchase if she had known that she could  
21 purchase the exact same toilet paper in-store for approximately \$4 less than what she paid online.

22           22. If Plaintiff had known the true price of the toilet paper sold at her Costco  
23 warehouse, she would have purchased the toilet paper in-store instead of purchasing it online.

**CLASS ACTION ALLEGATIONS**

1  
2 23. Plaintiff brings this action on behalf of herself and all others similarly situated  
3 pursuant to Rule 23 of the Federal Rules of Civil Procedure. This action satisfies the numerosity,  
4 commonality, typicality, adequacy, predominance, and superiority requirements of Rule 23.

5 24. The proposed Class and Subclass are defined as:

6 All consumers who, within the applicable statute of limitations  
7 preceding the filing of this action to the date of class certification,  
8 made a purchase for delivery through the Costco mobile app or  
9 website and paid more for a product than was charged by Costco  
10 for the same product in-store when the online product page did not  
11 contain a disclosure warning consumers that the item may be  
12 available in-store for a lower price. (the “National Class”).

13 All consumers who, while residing in the State of Connecticut,  
14 within the applicable statute of limitations preceding the filing of  
15 this action to the date of class certification, made a purchase for  
16 delivery through the Costco mobile app or website and paid more  
17 for a product than was charged by Costco for the same product  
18 in-store when the online product page did not contain a disclosure  
19 warning consumers that the item may be available in-store for a  
20 lower price. (the “Connecticut Subclass”).

21 25. Excluded from the Class is Defendant, its officers and directors, members of their  
22 immediate families, and the heirs, successors, or assigns of any of the foregoing.

23 26. **Numerosity.** At this time, Plaintiff does not know the exact size of the Class;  
24 however, due to the nature of the trade and commerce involved, Plaintiff believes that the Class  
25 members are well into the thousands, and thus, are so numerous that joinder of all members is  
26 impractical. The number and identities of Class members is administratively feasible and can be  
27 determined through appropriate discovery in the possession of the Defendant.

28 27. **Commonality:** There are questions of law and fact common to the Class, which  
29 include, but are not limited to the following:

30 a. Whether during the class period, Defendant omitted the promised  
31 disclosure on its website and mobile app whenever an online product was more expensive than  
32 the same product sold in-store;

1           b.       Whether Defendant’s alleged omissions misled or had the tendency to  
2 mislead consumers;

3           c.       Whether Defendant’s alleged conduct constitutes violations of the laws  
4 asserted;

5           d.       Whether Plaintiff and members of the Class were harmed by Defendant’s  
6 omissions;

7           e.       Whether Plaintiff and the Class have been damaged, and if so, the proper  
8 measure of damages; and

9           f.       Whether an injunction is necessary to prevent Defendant from continuing  
10 to omit notice on the Costco mobile app and website that an online product is more expensive  
11 than the same in-store product.

12           28.     **Typicality.** Like Plaintiff, many other consumers purchased products for delivery  
13 from Costco’s website or mobile app, believing based on its promised disclosure, that Defendant  
14 would disclose whenever an item was more expensive online than that same item offered in-  
15 store. Plaintiff’s claims are typical of the claims of the Class because Plaintiff and each Class  
16 member was injured by Defendant’s omissions about the true price differential between the  
17 products sold online and those sold in-store. Plaintiff and the Class have suffered the same or  
18 similar injury as a result of Defendant’s omissions. Plaintiff’s claims and the claims of the  
19 members of the Class emanate from the same legal theory, Plaintiff’s claims are typical of the  
20 claims of the Class, and therefore, class treatment is appropriate.

21           29.     **Adequacy.** Plaintiff is committed to pursuing this action and has retained counsel  
22 competent and experienced in prosecuting and resolving consumer class actions. Plaintiff will  
23 fairly and adequately represent the interests of the Class and does not have any interests adverse  
24 to those of the Class.

25           30.     **Predominance and Superiority.** The common questions of law and fact  
26 enumerated above predominate over questions affecting only individual members of the Class,  
27

1 and a class action is the superior method for fair and efficient adjudication of the controversy.  
2 The likelihood that individual members of the Class will prosecute separate actions is remote due  
3 to the extensive time and considerable expense necessary to conduct such litigation, especially  
4 when compared to the relatively modest amount of monetary, injunctive, and equitable relief at  
5 issue for each individual Class member.

6 **CAUSES OF ACTION**

7 **FIRST CLAIM FOR RELIEF**

8 **Violation of Washington’s Consumer Protection Act (“CPA”), RCW § 19.86.20 *et seq.*  
9 (on Behalf of Plaintiff and the National Class)**

10 31. Plaintiff realleges and incorporates herein the allegations of the paragraphs above  
11 of this Complaint as if fully set forth herein.

12 32. Washington’s Consumer Protection Act makes unlawful any “[u]nfair methods of  
13 competition and unfair or deceptive acts or practices in the conduct of any trade or commerce...”  
14 RCW § 19.86.020.

15 33. Plaintiff and members of the Class are “persons” as defined in RCW  
16 19.86.010(1).

17 34. Defendant is a “person” as defined in RCW 19.86.010(1).

18 35. Defendant committed unfair and deceptive practices by promising that it would  
19 include a clear disclosure on its website or mobile app whenever an online item was more  
20 expensive than that same item sold in-store at Costco and then omitting that disclosure on online  
21 items before a consumer makes a purchase on Costco.com.

22 36. Defendant’s failure to disclose to consumers when an online product was more  
23 expensive than the same item sold in-store was material to Plaintiff’s and the proposed Class’s  
24 purchasing decisions and has misled Plaintiff and the proposed Class and will continue to mislead  
25 them in the future.

26 37. Defendant’s conduct was also unfair. Its omissions were, and are, likely to cause  
27 substantial injury to consumers who paid more for products than they would have paid had they

1 purchased the same products in store instead of online. These additional costs were not  
2 reasonably avoidable by consumers and not outweighed by countervailing benefits.

3 38. Had Plaintiff known of Defendant's omissions regarding the true price differential  
4 between Costco's online products and those same products sold in-store, Plaintiff would not have  
5 purchased those items for delivery on Costco's website and would have instead purchased those  
6 products in-store at the lower price.

7 39. Defendant's omissions regarding its online product mark-ups occurred in the  
8 conduct of Defendant's trade and commerce. These bad acts were intended to, and did, result in  
9 Defendant profiting from its misleading practice.

10 40. Defendant's omissions caused Plaintiff and the Class injury to their business or  
11 property because they paid more for Defendant's products than they would have paid had they  
12 purchased the same products in-store instead of online.

13 41. Plaintiff and the Class have been injured by Defendant's CPA violations in an  
14 amount to be determined at trial. Plaintiff seeks all damages available under CPA § 19.86.090,  
15 including actual damages, costs (including reasonable attorneys' fees), treble damages, and  
16 injunctive relief.

17  
18 **SECOND CLAIM FOR RELIEF**

19 **Alternative Cause of Action for Violation of Connecticut Unfair Trade Practices Act,  
20 Conn. Gen. Stat. § 42-110a, *et seq.*  
21 (on Behalf of Plaintiff and the Connecticut Subclass)**

22 42. Plaintiff realleges and incorporates herein the allegations of the paragraphs above  
23 of this Complaint as if fully set forth herein.

24 43. Plaintiff states this alternative claim for relief under the law of the state of  
25 Connecticut, the state where her local Costco warehouse is located.

26 44. The Connecticut Unfair Trade Practices Act ("CUTPA") prohibits unfair  
27 competition and unfair and deceptive acts. Conn. Gen. Stat. § 42-110b provides: "(a) No person



1 shall engage in unfair methods of competition and unfair or deceptive acts or practices in the  
2 conduct of any trade or commerce.”

3 45. Costco committed unfair and deceptive acts or practices in or affecting commerce  
4 by failing to disclose that consumers would pay more for product listed on Costco’s website or  
5 mobile app than the same product offered in-store at a Costco location, despite its explicit  
6 promise that it would do so.

7 46. Costco’s deceptive omissions regarding its online product mark-ups were likely  
8 to affect consumer purchasing decisions because the pricing disclosure affects whether  
9 consumers decide to place their orders on Costco’s website or mobile app for delivery as opposed  
10 to purchasing the same items in-store.

11 47. As a result of Costco’s deceptive and unfair business practices, Plaintiff and the  
12 Class have suffered ascertainable losses within the meaning of C.G.S. § 42-110g(a) and have  
13 been damaged by Costco’s unlawful acts.

14 48. Costco’s deceptive and unfair acts and practices present an ongoing threat and  
15 likelihood of deception to members of the public and constitute fraud upon the members of the  
16 public, as well as unfair, unlawful, and deceptive acts in violation of CUTPA.

17 49. Costco engaged in unfair and deceptive acts or practices as alleged herein with  
18 the intent that others rely upon its concealment, suppression, and omission of material facts  
19 regarding its online product mark-ups, and acted intentionally, or at a minimum, with reckless  
20 disregard for Plaintiff’s rights and the rights of the Class.

21 50. Costco knew that it unfairly and deceptively omitted this material information to  
22 consumers on its website and mobile app.

23 51. Costco’s material omissions regarding its deceptive online product mark-ups  
24 offended established public policy and were immoral, unethical, oppressive, unscrupulous, or  
25 substantially injurious to consumers.

1 52. Costco's unfair and deceptive omissions regarding its online product mark-up  
2 practices were material to Plaintiff's and Class members' purchasing decisions and Plaintiff and  
3 Class members reasonably and materially relied upon the information in deciding whether to  
4 make their purchases on the Costco website or mobile app.

5 53. These unfair or deceptive omissions caused damages to Plaintiff and members of  
6 the Class by causing them to pay more for online items than they otherwise would have had they  
7 purchased the exact same items in-store.

8 54. As a direct and proximate result of Costco's foregoing acts and omissions,  
9 Plaintiff and the Class were damaged in an amount to be determined at trial, which Plaintiff and  
10 the Class are entitled to recover, together with appropriate punitive damages, injunctive relief,  
11 attorneys' fees and costs of suit.

12 **PRAYER FOR RELIEF**

13 **WHEREFORE**, Plaintiff on behalf of herself and the Class seeks judgment in an amount  
14 to be determined at trial as follows:

15 A. Certifying this action for class treatment pursuant to Rule 23 of the Federal Rules  
16 of Civil Procedure;

17 B. Awarding Plaintiff and the Class actual and/or compensatory damages, treble  
18 damages, and punitive damages in an amount to be proven at trial;

19 C. Awarding Plaintiff and the Class pre-judgment and post-judgment interest, as well  
20 as attorneys' fees and costs, at the maximum rate allowed by law;

21 D. For injunctive and declaratory relief as set forth above;

22 E. For an order requiring Defendant to disgorge and make restitution of all monies  
23 acquired by means of the unlawful practices set forth above; and

24 F. Awarding such other and further relief as this Court deems just, proper, and  
25 equitable.

**JURY DEMAND**

Plaintiff hereby demands a jury trial on all claims so triable.

Dated: June 12, 2024

By: s/ Kim D. Stephens, P.S.

Kim D. Stephens, P.S., WSBA #11984

By: s/ Cecily C. Jordan.

Cecily C. Jordan, WSBA #50061

**TOUSLEY BRAIN STEPHENS PLLC**

1200 Fifth Avenue, Suite 1700

Seattle, WA 98101

Telephone: 206-682-5600

Facsimile: 206-682-2992

kstephens@tousley.com

cjordan@tousley.com

Sophia G. Gold \*

sgold@kalielgold.com

Jeffrey D. Kaliel \*

jkaliel@kalielpllc.com

**KALIELGOLD PLLC**

1100 15th Street NW, 4<sup>th</sup> Floor

Washington, D.C. 20005

Tel: (202) 350-4783

*\*pro hac vice application to be filed*

*Attorneys for Plaintiff and the Proposed Class*