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31-24701

08/27/20

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

-----X  
MERCEDES CRUZ,

Plaintiff(s),

-against-

CHERRY VALLEY MARKETPLACE, BEDFORD  
BOULEVARD FOOD CORP., ASSOCIATED  
SUPERMARKET GROUP, LLC. JELB WEBSTER, LLC  
and THE NEW YORK BOTANICAL GARDEN,

Defendant(s).  
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**VERIFIED ANSWER  
WITH CROSS CLAIMS**  
Index No. 26278/2020E

The defendant JELB WEBSTER, LLC by its attorneys, MONTFORT, HEALY, McGUIRE & SALLEY LLP, answering the complaint of the plaintiff, herein, respectfully shows to this Court and alleges:

FIRST. Defendant denies that they have any knowledge or information thereof sufficient to form a belief as to the truth of each and every allegation contained in paragraphs designated "1", "2", "3", "4", "5", "6", "7", "10", "11", "12", "13", "14", "15", "16", "17", "18", "19", "20", "21", "22", "23", "24", "25", "26", "27", "28", "29", "30", "31", "32", "33", "34", "35", "36", "37", "38", "39", "40", "41", "42", "43", "44", "69", "72", "75" and "82" of the complaint herein.

SECOND. Upon information and belief, defendant denies each and every allegation set forth in paragraphs designated "8" and "9" of the complaint herein, except defendant admits that JELB WEBSTER, LLC was a domestic limited liability company duly authorized to conduct business in the State of New York.

THIRD. Upon information and belief, defendant denies each and every allegation set forth in paragraphs designated "45", "46", "47", "48", "49", "50", "51", "52", "53", "54", "55", "56", "57", "58",

"59", "60", "61", "62", "63", "64", "65", "66", "76", "77", "78", "79", "80", "81", "83", "84", "85", "86", "87", "88", "89" and "91" of the complaint herein.

FOURTH. Defendant denies that they have any knowledge or information thereof sufficient to form a belief as to the truth of each and every allegation contained in paragraphs designated "67", "68", "70", "71", "73" and "74" of the complaint herein, and respectfully refers all questions of law to this Court.

FIFTH. Upon information and belief, defendant denies each and every allegation set forth in paragraph designated "90" of the complaint herein except defendant denies that they have any knowledge or information thereof sufficient to form a belief as to the truth of each and every allegation contained therein which refer to injuries.

SIXTH. Upon information and belief, defendant denies each and every allegation set forth in paragraphs designated "92", "93", "94" and "95" of the complaint herein, and respectfully refers all questions of law to this Court.

**ANSWERING THE ALLEGED FIRST CAUSE OF ACTION**

SEVENTH. Answering paragraph designated "96" of the plaintiff's complaint, defendant repeats, reiterates and realleges each and every denial set forth in paragraphs designated "FIRST" through "SIXTH" of the defendant's answer.

EIGHTH. Upon information and belief, defendant denies each and every allegation set forth in paragraph designated "97" of the complaint herein.

NINTH. Defendant denies that they have any knowledge or information thereof sufficient to form a belief as to the truth of each and every allegation contained in paragraphs designated "98", "99", "100" and "101" of the complaint herein.

TENTH. Upon information and belief, defendant denies each and every allegation set forth in paragraph designated "102" of the complaint herein, and respectfully refers all questions of law to this

**ANSWERING THE ALLEGED SECOND CAUSE OF ACTION**

ELEVENTH. Answering paragraph designated "103" of the plaintiff's complaint, defendant repeats, reiterates and realleges each and every denial set forth in paragraphs designated "FIRST" through "TENTH" of the defendant's answer.

TWELFTH. Upon information and belief, defendant denies each and every allegation set forth in paragraph designated "104" of the complaint herein.

THIRTEENTH. Defendant denies that they have any knowledge or information thereof sufficient to form a belief as to the truth of each and every allegation contained in paragraphs designated "105", "106", "107" and "108" of the complaint herein.

FOURTEENTH. Upon information and belief, defendant denies each and every allegation set forth in paragraph designated "109" of the complaint herein, and respectfully refers all questions of law to this Court.

**ANSWERING THE ALLEGED THIRD CAUSE OF ACTION**

FIFTEENTH. Answering paragraph designated "110" of the plaintiff's complaint, defendant repeats, reiterates and realleges each and every denial set forth in paragraphs designated "FIRST" through "FOURTEENTH" of the defendant's answer.

SIXTEENTH. Upon information and belief, defendant denies each and every allegation set forth in paragraphs designated "111" and "112" of the complaint herein.

SEVENTEENTH. Defendant denies that they have any knowledge or information thereof sufficient to form a belief as to the truth of each and every allegation contained in paragraphs designated "113" and "114" of the complaint herein.

EIGHTEENTH. Upon information and belief, defendant denies each and every allegation set forth in paragraph designated "115" of the complaint herein, and respectfully refers all questions of law to this

**ANSWERING THE ALLEGED FOURTH CAUSE OF ACTION**

NINETEENTH. Answering paragraph designated "116" of the plaintiff's complaint, defendant repeats, reiterates and realleges each and every denial set forth in paragraphs designated "FIRST" through "EIGHTEENTH" of the defendant's answer.

TWENTIETH. Upon information and belief, defendant denies each and every allegation set forth in paragraphs designated "117", "118", "119", "120" and "121" of the complaint herein.

TWENTY-FIRST. Upon information and belief, defendant denies each and every allegation set forth in paragraph designated "122" of the complaint herein, and respectfully refers all questions of law to this Court.

**ANSWERING THE ALLEGED FIFTH CAUSE OF ACTION**

TWENTY-SECOND. Answering paragraph designated "123" of the plaintiff's complaint, defendant repeats, reiterates and realleges each and every denial set forth in paragraphs designated "FIRST" through "TWENTY-FIRST" of the defendant's answer.

TWENTY-THIRD. Upon information and belief, defendant denies each and every allegation set forth in paragraphs designated "124", "125", "126", "127" and "128" of the complaint herein.

TWENTY-FOURTH. Upon information and belief, defendant denies each and every allegation set forth in paragraph designated "129" of the complaint herein, and respectfully refers all questions of law to this Court.

**AS AND FOR A FIRST AFFIRMATIVE  
DEFENSE, THE DEFENDANT ALLEGES:**

TWENTY-FIFTH. Upon information and belief, that the injury or injuries, if any, sustained by the plaintiff at the time and place, or on the occasion referred to in the plaintiff's complaint, were sustained or so suffered or caused, in whole or in part, by the negligent act or acts and/or assumption of risk of the plaintiff herself, and that any damages recoverable by plaintiff, if any, shall be diminished in the proportion

which the culpable conduct attributable to the plaintiff bears to the culpable conduct which caused the damages.

TWENTY-SIXTH. Upon information and belief, the defendant, JELB WEBSTER, LLC, free from any negligence and in no way contributed to the occurrence and injuries referred to in the plaintiff's complaint.

**AS AND FOR A SECOND AFFIRMATIVE  
DEFENSE, THE DEFENDANT ALLEGES :**

TWENTY-SEVENTH. That in entering upon the activity upon which plaintiff was engaged at the time of the occurrence, the plaintiff assumed the risk thereof.

**AS AND FOR A THIRD AFFIRMATIVE  
DEFENSE, THE DEFENDANT ALLEGES:**

TWENTY-EIGHTH. This action is dismissible in that the defendant did not have notice of the alleged defective conditions prior to the happening of the accident.

**AS AND FOR A FOURTH AFFIRMATIVE  
DEFENSE, THE DEFENDANT ALLEGES:**

TWENTY-NINTH. Defendant, JELB WEBSTER, LLC, is not a proper party to this lawsuit.

**AS AND FOR A FIFTH AFFIRMATIVE  
DEFENSE, THE DEFENDANT ALLEGES:**

THIRTIETH. Defendant, JELB WEBSTER, LLC, has no possessory or ownership interest in the premises located at 2870 Webster Avenue, Bronx, New York on or prior to the date of loss and, thus, this action is dismissible as a matter of law.

**AS AND FOR A SIXTH AFFIRMATIVE  
DEFENSE, THE DEFENDANT ALLEGES :**

THIRTY-FIRST. That the plaintiff, MERCEDES CRUZ , was the sole proximate cause of the incident complained of.

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