

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF CHEMUNG

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CAPREESE MOORE :

Plaintiff, :

-against- :

LESHA P. MASSOUP, DUKE HUR, J.B.
HUNT TRANSPORT, INC., and COSTCO
WHOLESALE CORPORATION :

Defendant. :

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INDEX NO. 2023/5539

**NOTICE OF APPEARANCE AND
VERIFIED ANSWER TO VERIFIED
COMPLAINT**

PLEASE TAKE NOTICE, that the above-named defendant, COSTCO WHOLESALE CORPORATION, (hereinafter “defendant” and/or “answering defendant”), hereby appears in this action and the undersigned have been retained as attorneys for said defendant and demands that you serve all papers in this proceeding upon them at the address stated below.

PLEASE TAKE FURTHER NOTICE that answering defendant hereby interposes the following answer to the amended verified complaint:

1. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraphs numbered “1”, “2”, “4”, “5”, “6”, “7”, “8”, “9”, “10”, “11”, “12”, “61”, “62”, “63”, “64”, “65”, “66”, “67”, “68”, “69”, “70”, and “71”, and as a conclusion of law to which no responsive pleading is required and refer all questions of law to the trial court.

2. Admit the allegations contained in paragraphs numbered “3” and “14”.

3. Deny the allegations contained in paragraphs numbered “13”, “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”, “45”, “46”, “47”, “48”, “49”, “50”, “51”, “52”, “53”, “54”, “55”, “56”, “57”, “58”, “59”, and “60”, and refer all questions of law to the trial court.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

Plaintiff is not the proper party in interest and has no standing to bring this action.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

Plaintiff's claim is time barred by the relevant Statute of Limitations and/or the contract(s) governing shipment and all applicable federal regulations and statutes.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

Plaintiff's Complaint fails to state a cause of action against answering defendant for which relief can be granted.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

Any damages claimed by plaintiff, said damages being specifically denied by answering defendant, were caused by the culpable conduct of parties or entities other than answering defendant and/or other parties or entities or persons, over which answering defendant has no control and for whose conduct answering defendant has no liability or responsibility.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

Answering defendant is not guilty of any negligence which was a proximate cause of any alleged incident, injuries or damages of which plaintiff complains.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

Plaintiff failed to mitigate any alleged damages, said damages being specifically denied by answering defendant.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's damages are speculative and, therefore, plaintiff is barred from recovery.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

To the extent plaintiff seeks special and/or consequential damages, plaintiff's claims are barred because plaintiff and/or its subrogors failed to provide such damages would be sought in the event of a claim of loss.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

In the event plaintiff recovers a verdict or judgment against answering defendant, then the verdict or judgment must be reduced pursuant to CPLR §4545(c) by those amounts which have been, or will, with reasonable certainty, replace or indemnify plaintiff, in whole or in part, for any past or future claimed economic loss, from any collateral source such as insurance.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

The provisions of C.P.L.R. Article 50-B apply to this action.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

Answering defendant did not employ nor did otherwise hire the alleged tortfeasor, Lasha P. Massop.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

Answering defendant did not employ nor did otherwise hire the alleged tortfeasor, Duk Hur.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

The Complaint is improperly venued in the Supreme Court of New York, County of Chemung.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

The Complaint is barred by lack of personal jurisdiction over answering defendant.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

Answering defendant did not own, operate, manage, control or otherwise direct the operation of the tractor involved in the alleged accident which is the subject matter of plaintiff's Complaint.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

Answering defendant is not liable to plaintiff because answering defendant merely owned the trailer that was attached to co-defendant's tractor at the time of the accident.


AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

Answering defendant reserves the right to assert such further affirmative defenses as may become known through discovery or as this matter progresses.

Dated: September 6, 2023
New York, New York.

**WEBER GALLAGHER SIMPSON
STAPLETON FIRES & NEWBY LLP**

By: _____


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TO (Via ECF):
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JAMES A. WESCOE, ESQ., an attorney at law duly admitted to practice before the courts of the State of New York, affirms the following to be true under the penalties of perjury:

1. That I am a partner in the law firm of WEBER GALLAGHER SIMPSON STAPLETON FIRES & NEWBY, LLP, attorneys for answering defendant COSTCO WHOLESALE CORPORATION in the above-entitled action.
2. That I have read the foregoing answer and know the contents thereof, and that the same is true to my own knowledge except as to the matters therein stated to be alleged upon information and belief, and that as to those matters, I believe it to be true.
3. This verification is made by myself and not by the defendant because the defendant is not in the county in which your deponent maintains his office.
4. The grounds of my belief as to all matters not stated upon my knowledge are based upon the books, records and documents in my possession.

Dated: September 6, 2023
New York, New York

By: 

 JAMES A. WESCOE