

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

**DEFENDANT COSTCO
WHOLESALE CORPORATION'S
RESPONSES TO PLAINTIFF'S
NOTICE TO ADMIT**

PLEASE TAKE NOTICE, that the above-named defendant COSTCO WHOLESALE CORPORATION, (hereinafter “answering defendant”), by and through its attorneys, WEBER GALLAGHER SIMPSON STAPLETON FIRES & NEWBY, LLP, as and for a response to the Notice to Admit of plaintiff CAPREESE MOORE, dated August 24, 2023, respectfully states as follows:

PRELIMINARY STATEMENT AND GENERAL OBJECTIONS

1. By providing these responses, answering defendant does not waive any of its affirmative defenses, nor does it concede that the subject information is properly discoverable or admissible at trial. Answering defendant reserves the right to further object to discovery regarding the subject matter of the requests herein, and to object to the admissibility of the information provided.

2. Further, answering defendant objects to the requests herein insofar as they seek information that is not relevant or material to the issues in this matter, is inadmissible, and/or is not reasonably calculated to lead to discovery of admissible evidence and otherwise is not required disclosure under Article 31 of the CPLR.

3. Further, answering defendant objects to the requests herein insofar as they are not the proper disclosure device for the information sought therein. See, e.g., *Lolly v. Brookdale Univ. Hosp. and Med. Ctr.*, 45 A.D.3d 537, 844 N.Y.S.2d 718 (2nd Dept. 2007) (“the purpose of a notice to admit is not to obtain information in lieu of other disclosure devices, such as the taking of depositions before trial”).

4. Further, answering defendant objects to the requests herein insofar as they seek admissions as to legal conclusions or facts that go to the heart of the issue in this case. See, e.g., *Glasser v. NYC*, 265 A.D.2d 526 (2nd Dept. 1999) (“The Supreme Court properly determined that the plaintiff’s notice to admit sought an admission that went to the heart of the matter at issue, i.e., constructive notice of a defect, and was thus improper.”); *Ashkenazi v. City of New York*, 239 A.D.2d 186, 656 N.Y.S.2d 461 (1st Dept. 1997) (“A purported admission, by way of nonresponse to a pedestrian’s notice to admit, that a tile that had struck the pedestrian as she walked by a city school building was dropped from one of two windows of the building was properly vacated as bearing upon the ultimate issue in the pedestrian’s action against the city that should more appropriately be explored through other disclosure devices.”).

5. Further, answering defendant objects to the requests insofar as discovery in this matter is ongoing, and to the extent that information sought herein is not within the possession or control of answering defendant.

RESPONSES

1. That on November 12, 2021, and upon information and belief, the defendant, COSTCO WHOLESALE CORPORATION owned a certain 2022 International LT625 truck, bearing Indiana State registration number, 3058781.

RESPONSE: Denied.

2. That on November 12, 2021, and upon information and belief, the defendant, COSTCO WHOLESALE CORPORATION was the title owner of a certain 2022 International LT625 truck, bearing Indiana State registration number, 3058781.

RESPONSE: Denied.

3. That on November 12, 2021, and upon information and belief, the defendant, COSTCO WHOLESALE CORPORATION was the register owner of a certain 2022 International LT625 truck, bearing Indiana State registration number, 3058781.

RESPONSE: Denied.

4. That on November 12, 2021, and upon information and belief, the defendant, COSTCO WHOLESALE CORPORATION, owned a certain 2022 International LT625 truck, bearing a vehicle identification number, 3HSDZTZRNN565422.

RESPONSE: Denied.

5. That on November 12, 2021, and upon information and belief, the defendant, COSTCO WHOLESALE CORPORATION, was the title owner of a certain 2022 International LT625 truck, bearing a vehicle identification number, 3HSDZTZRNN565422.

RESPONSE: Denied.

6. That on November 12, 2021, and upon information and belief, the defendant, COSTCO WHOLESALE CORPORATION, was the register owner of a certain 2022 International LT625 truck, bearing a vehicle identification number, 3HSDZTZRNN565422.

RESPONSE: Denied.

7. That on November 12, 2021, and upon information and belief, the defendant, COSTCO WHOLESALE CORPORATION, was lessor of a certain 2022 International LT625 truck, bearing Indiana State registration number, 3058781.

RESPONSE: Denied.

8. That on November 12, 2021, and upon information and belief, the defendant, COSTCO WHOLESALE CORPORATION, was lessee of a certain 2022 International LT625 truck, bearing Indiana State registration number, 3058781.

RESPONSE: Denied.

9. That on November 12, 2021, and upon information and belief, the defendant, COSTCO WHOLESALE CORPORATION, owner of a certain 2018 Wabash National Trailer bearing New Jersey State registration number TSU65V.

RESPONSE: Denied, as this Request does not state an actual request to admit or deny a specific fact.

10. That on November 12, 2021, and upon information and belief, the defendant, COSTCO WHOLESALE CORPORATION, was the title owner of a certain 2018 Wabash National Trailer bearing New Jersey State registration number TSU65V.

RESPONSE: Admitted.

11. That on November 12, 2021, and upon information and belief, the defendant, COSTCO WHOLESALE CORPORATION, was the register owner of a certain 2018 Wabash National Trailer bearing New Jersey State registration number TSU65V.

RESPONSE: Admitted.

12. That on November 12, 2021, and upon information and belief, the defendant, COSTCO WHOLESALE CORPORATION, was the lessor of a certain 2018 Wabash National Trailer bearing New Jersey State registration number TSU65V.

RESPONSE: Denied.

13. That on November 12, 2021, and upon information and belief, the defendant, COSTCO WHOLESALE CORPORATION, was the lessee of a certain 2018 Wabash National Trailer bearing New Jersey State registration number TSU65V.

RESPONSE: Denied.

14. That on November 12, 2021, and upon information and belief, the defendant, DUK HUR, i/s/h/ as DUKE HUR, operated a certain 2022 International LT625 truck, bearing Indiana State registration number, 3058781, with the knowledge, permission and consent of the defendant, COSTCO WHOLESALE CORPORATION.

RESPONSE: Denied.

15. That on November 12, 2021, and upon information and belief, the defendant, DUK HUR, i/s/h/ as DUKE HUR, operated a certain 2022 International LT625 truck, bearing a vehicle identification number, 3HSDZTZRXNN565422, with the knowledge, permission and consent of the defendant, COSTCO WHOLESALE CORPORATION.

RESPONSE: Denied.

16. That on November 12, 2021, and upon information and belief, the defendant, DUK HUR, i/s/h/ as DUKE HUR, operated a certain 2018 Wabash National Trailer bearing New Jersey State registration number, TSU65V, with the knowledge, permission and consent of the defendant, COSTCO WHOLESALE CORPORATION.

RESPONSE: Denied.

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