

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF CHEMUNG

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CAPREECE MOORE	:	
Plaintiff,	:	INDEX NO. 2023-5539
-against-	:	
LESHA P. MASSOUP, DUKE HUR, J.B. HUNT TRANSPORT, INC., and COSTCO WHOLESALE CORPORATION	:	<b>NOTICE OF APPEARANCE AND VERIFIED ANSWER TO VERIFIED COMPLAINT</b>
Defendants.	:	
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**PLEASE TAKE NOTICE**, that the above-named defendants, DUKE HUR and J.B. HUNT TRANSPORT, INC., (hereinafter “defendants” and/or “answering defendants”), hereby appear in this action and the undersigned have been retained as attorneys for said defendants and demand that you serve all papers in this proceeding upon them at the address stated below.

**PLEASE TAKE FURTHER NOTICE** that answering defendants hereby interpose the following answer to the 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”, “15”, “16”, “26”, “27”, “28”, “29”, “30”, “31”, “32”, “33”, “34”, “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”, “17”, “18”, “19”, “20”, “21”, “22”, “23”, “24”, “25”, “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 defendants 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 defendants, were caused by the culpable conduct of parties or entities other than answering defendants and/or other parties or entities or persons, over which answering defendants have no control and for whose conduct answering defendants have no liability or responsibility.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

Answering defendants are 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 defendants.

**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 defendants, 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 defendants do not employ or otherwise hire the alleged tortfeasor, Lesha P. Massop.

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE**

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

**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**

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

**AS AND FOR A FIRST CROSS-CLAIM OVER AND AGAINST DEFENDANT, LESHA P. MASSOUP, ANSWERING DEFENDANTS ALLEGE UPON INFORMATION AND BELIEF**

Without admitting or being deemed to admit any of the allegations contained in the Complaint and while expressly disclaiming any liability therefore, if plaintiff sustained the injuries and damages in the manner, time and place alleged, and if it is found that defendants are liable to plaintiff herein, then said damages were sustained by reason of the sole, active and primary negligence, carelessness, and recklessness by the defendant, LESHA P. MASSOUP and answering defendants are entitled to complete indemnification from any judgment or damages from said defendant, LESHA P. MASSOUP, as well as partial indemnification or contribution from said defendant, LESHA P. MASSOUP, for any liability to the plaintiff in excess of the answering defendants' proportionate share of active negligence.

**AS AND FOR A SECOND CROSS-CLAIM OVER AND AGAINST DEFENDANT,  
LESHA P. MASSOUP, ANSWERING DEFENDANTS ALLEGE UPON INFORMATION  
AND BELIEF**

That if the plaintiff sustained damages as alleged in the Complaint, through the negligence, breach of contract, breach of warranty, carelessness and/or strict liability of defendants, then such damages were sustained due to the primary, active and sole fault of the defendant, LESHA P. MASSOUP, by reason of negligence, breach of contract, breach of warranty, carelessness and/or strict liability and if the plaintiff should obtain and/or recover judgment against answering defendants, then the defendant, LESHA P. MASSOUP shall be liable to answering defendants for the full amount of said judgment or for any part hereof obtained and/or recovered on the basis of apportionment of responsibility for the alleged occurrence as found by the Court or jury.

**WHEREFORE**, the answering defendants demand judgment dismissing the Verified Complaint, together with the costs and disbursements of this action, including attorneys' fees.

Dated: August 24, 2023  
New York, New York.

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



By: \_\_\_\_\_

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TO (Via ECF):

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