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IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT, IN AND FOR ST. JOHNS COUNTY, FLORIDA

CASE NO.: 2025-CA-001320A000MX

BRADLEY BYRD, an individual, and ANNA BYRD, an individual,

Plaintiffs,

v.

COSTCO WHOLESALE CORPORATION, a foreign for profit corporation, COSTCO-INNOVEL SOLUTIONS, LLC, d/b/a COSTCO WHOLESALE LOGISTICS, a foreign limited Liability company, and RXO LAST MILE, INC., a foreign for profit corporation,

Defendants.
_____/

DEFENDANT COSTCO WHOLESALE CORPORATION'S
MOTION FOR PROTECTIVE ORDER

Defendant, Costco Wholesale Corporation (Costco), per Rule 1.280 (i), Florida Rules of Civil Procedure, moves for a protective order regarding the proposed deposition of Tony Dattilo, a high-level Costco executive, under Florida's Apex Doctrine.

I. PROCEDURAL HISTORY

1. This case arises from Plaintiffs' purchase of a refrigerator from Costco.

2. On December 2, 2024, co-Defendant, RXO LAST MILE, INC. (RXO), or its vendor, delivered and installed the refrigerator in Plaintiffs' home.

3. On September 19, 2025, Plaintiffs filed a Complaint alleging the refrigerator installation was improper, resulting in water damage to Plaintiffs' home. [Doc. 5].

4. On December 15, 2025 and December 10, 2025, Costco and RXO, respectively, answered Plaintiffs' Complaint [Docs. 24, 18].

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5. On January 15, 2026, Costco responded to Plaintiffs' Interrogatories and Request to Produce and produced its vendor agreement with RXO. **Exhibit A**.

6. On July 24, 2025, Plaintiffs requested the deposition of Costco's Vice President of Logistics, Tony Dattilo, who works in the state of Illinois at Costco's corporate-national logistics office. This was Plaintiff's first deposition request to Costco in this case.[1]

7. On July 24, 2026, Costco attempted to resolve this matter in good faith with Plaintiffs' without court intervention, to no avail. **Exhibit B.**

II. LEGAL STANDARD

Florida Rule of Civil Procedure 1.280(i) states:

> **Apex Doctrine**. A current or former high-level government or corporate officer may seek an order preventing the officer from being subject to a deposition. The motion, whether by a party or by the person of whom the deposition is sought, must be accompanied by an affidavit or declaration of the officer explaining that the officer lacks unique, personal knowledge of the issues being litigated. If the officer meets this burden of production, the court shall issue an order preventing the deposition, unless the party seeking the deposition demonstrates that it has exhausted other discovery, such that discovery is inadequate, and that the officer has unique, personal knowledge of discoverable information. The court may vacate or modify the order if, after additional discovery, the party seeking the deposition can meet its burden of persuasion under this rule. The burden to persuade the court that the officer is high-level for purposes of this rule lies with the person or a party opposing the deposition.

Under the rule, the party resisting a deposition has two burdens: a burden to persuade the court that the would-be deponent meets the high-level officer requirement, and a burden to produce an affidavit or declaration explaining the official's lack of unique, personal knowledge of the issues being litigated. IN RE: Amend. to Fla. Rule of Civ. Proc. 1.280, 324 So.3d 459, 463 (Fla. 2021). If the resisting person or party satisfies those burdens, and the deposition-seeker still wants to depose the high-level officer, the deposition-seeker bears the burden to persuade

[1] On the same date, Plaintiffs also requested the deposition of Brandon Jacobs, of co-Defendant RXO, who visited Plaintiffs' home on December 3, 2024 to assess alleged property damage.

the court that it has exhausted other discovery, that such discovery is inadequate, and that the officer has unique, personal knowledge of discoverable information. Id.

Rule 1.280 (i), as adopted by the Florida Supreme Court, stands on its own as an alternative to rule 1.280 (d) for use in the limited context of depositions of high-level government and corporate officers. Id. Rule 1.280 (i) [formerly Rule 1.280 (h)] is not governed by the "good cause" standard of rule 1.280 (d) [formerly Rule 1.280 (c)] and it imposes burdens of production and persuasion that are distinct from the burdens at play in rule 1.280 (d). Id.

In Chewy, Inc. v. Covetrus, Inc., 384 So.3d 265, 269 (Fla. 4th DCA 2024), the Fourth DCA addressed the issue of whether the trial court departed from the essential requirements of law by ordering the deposition of Chewy, Inc.'s chief executive officer (CEO) in a suit sounding in libel, defamation, and unfair competition. In essence, respondent sought to depose Chewy's CEO about statements he made in a news article regarding veterinarian standards of care.

The appellate court held that the trial court departed from the essential requirements of law by ordering the CEO's deposition. Id. at 273. In reaching its decision, the Court held that petitioner's (Chewy's) CEO's affidavit met the requirements of Rule 1.280(i) and the respondent failed to exhaust discovery before seeking the depose the CEO. Id. The respondent also failed to sustain its burden that the CEO had unique, personal knowledge of discoverable information (i.e. information that could not be obtained from other sources). Id.

In DecisionHR USA, Inc. et. al. v. Mills, III, et. al, 341 So.3d 448, 457 (2nd DCA 2022), the court held the trial court erred by not addressing the sufficiency of a company's director, chairman, and CEO's affidavit under R.1.280 (h). Instead, the trial court merely concluded that the director was not subject to the rule because he had "some level of previous interaction" with the opposing party. Id. at 454. The appellate court held the trial court was required to issue a

protective order unless Respondents "demonstrate[d] that [they] ha[d] exhausted other discovery, that such discovery is inadequate, and that [Dr. Strong] has unique, personal knowledge of discoverable information. Id. at 456. *See also*, McLane Food Service, Inc. v. Wool, 400 So.3d 706, 712 (Fla. 3rd DCA 2024)(Held: a company president qualifies as a "current high-level corporate officer" for purposes of the Rule, and that the protective order must issue upon the officer satisfying the burden of production and the trial court departed from the essential requirements of the law because respondent failed to demonstrate that she exhausted other discovery, that such discovery was inadequate, and that officer had unique, personal knowledge of discoverable information).

III. ARGUMENT

In the instant case, Tony Dattilo is a high-level Costco vice president overseeing the company's national logistics network and approximately one-thousand six hundred (1,600) Costco employees, spread among eight (8) regional offices. **Exhibit C, Affidavit of Tony Dattilo**. Mr. Dattilo works at Costco's corporate logistics office in Addison, Illinois and he reports to the President of Costco logistics, who reports solely to Costco's CEO.

Mr. Dattilo has no unique, independent, first-hand knowledge of relevant facts in this case. In particular, Mr. Dattilo did not investigate the incident, does not know how the alleged incident occurred; what (or who) caused the alleged incident; or any particulars regarding Plaintiffs' alleged property damage (scope or amount). Id.

However, circa February 2025, upon request of Costco's CEO, Mr. Dattilo had courtesy phone and email communication with Bradley Byrd. **Exhibit C**. Mr. Dattilo advised Mr. Byrd that a Costco vendor, RXO, was tasked to deliver and install the subject refrigerator and Mr. Byrd would likely hear from RXO, in the near term. **Id**. Shortly thereafter, RXO, or its representative, contacted Mr. Byrd in good faith, and assessed Mr. Byrd's alleged damages, to

potentially resolve this matter. **Id.** *See*, DecisionHR USA, Inc., 341 So. 3d at 454, *supra.* ("some level" of previous interaction between a high-ranking corporate employee and an opposing party does not strip the executive of Rule 1.280 (i) protection).

Furthermore, Plaintiff has not taken a single deposition in this case, let alone, exhausted discovery prior to requesting Mr. Dattilo's deposition. Plaintiff could easily discover the facts and circumstances of the refrigerator delivery and installation from RXO or its vendor's employees who have knowledge of the liability and damages issues in this case—as RXO or its vendor delivered and installed the refrigerator, not Costco. However, Plaintiff has not deposed any representative from RXO or its vendor, to date.

IV. CONCLUSION

Tony Dattilo is a high-level executive at Costco and possesses no unique, independent, personal knowledge of how a refrigerator Plaintiffs purchased at Costco allegedly leaked at their home following installation. Moreover, Plaintiffs have not taken, or exhausted, discovery (depositions) of persons with actual knowledge of the liability and damages issues in this case. Lastly, Plaintiff cannot show that after exhausting discovery efforts of persons with actual knowledge of the installation and delivery of the refrigerator, that such discovery was inadequate, such that an apex deposition is warranted, if—in the first instance—Mr. Dattilo has unique, independent knowledge of the salient liability and damages issues, which he does not.

WHEREFORE, Costco respectfully requests this Court grant this Motion and order that Mr. Dattilo not be deposed; Plaintiff take depositions of persons with actual knowledge of liability and damages issues in this case, in particular, persons who handled the delivery and installation of the subject refrigerator.

CERTIFICATE OF CONFERRAL PRIOR TO FILING

I certify that prior to filing this Motion, Defendant attempted to resolve this matter with Plaintiffs' counsel on August 3, 2026, but was unable to do so. **Exhibit B**

CERTIFICATE REGARDING RULE 2.515(2)(a-D) SIGNATURE AND REPRESENTATIVES TO COURT

(2) Each signer represents that:

(A) the signer has read the document;

(B) to the best of the signer's knowledge, information, and belief, there are good grounds to support the document;

(C) the document is not interposed for delay; and

(D) the legal authorities identified exist and are accurately cited.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to John D. "Jack" Webb, Esq., 1662 Stockton Street, Suite 201, Jacksonville, FL 32204, (Counsel for Plaintiff), jwebb@jackwebblaw.com; arichey@jackwebblaw.com, and Jupton@jackwebblaw.com, Heather L. Stover, Esq. and Richard S. Maselli, Esq., Ogden Sullivan, (Counsel or Defendant RXO), 5422 Bay Center Drive, Suite 100, Tampa, FL 33609, hstover@ogdensullivan.com, RMaselli@ogdensullivan.com, and Eservice@ogdensullivan.com, via Florida E-Portal, this 5th day of August, 2026.

JAKAB LAW, PLLC

/s/ Kevin E. Jakab, Esq.
KEVIN E. JAKAB, ESQ.
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Attorney for Defendant Costco

EXHIBIT A

IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT, IN AND FOR ST. JOHNS COUNTY, FLORIDA

CASE NO.: 2025-CA-001320A000MX

BRADLEY BYRD, an individual, and ANNA BYRD, an individual,

Plaintiffs,

v.

COSTCO WHOLESALE CORPORATION, a foreign for profit corporation, COSTCO-INNOVEL SOLUTIONS, LLC, d/b/a COSTCO WHOLESALE LOGISTICS, a foreign limited Liability company, and RXO LAST MILE, INC., a foreign for profit corporation,

Defendants.

_____/

DEFENDANT COSTCO-INNOVEL SOLUTIONS, LLC, d/b/a COSTCO WHOLESALE LOGISTICS' NOTICE OF SERVING ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

Notice is hereby given that the original Answers to the First Set of Interrogatories propounded by the Plaintiffs, Bradley and Anna Byrd, to Defendant, Costco-Innovel Solutions, LLC d/b/a Costco Wholesale Logistics, has been furnished to Jack Webb, Esq., together with a copy of this Notice, by E-mail service, this 15th day of January, 2026.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to John D. "Jack" Webb, Esq., 1662 Stockton Street, Suite 201, Jacksonville, FL 32204, (Counsel for Plaintiff), jwebb@jackwebblaw.com; arichey@jackwebblaw.com, and Jupton@jackwebblaw.com, Heather L. Stover, Esq. and Richard S. Maselli, Esq., Ogden Sullivan, (Counsel or Defendant RXO), 5422 Bay Center Drive, Suite 100, Tampa, FL 33609,

hstover@ogdensullivan.com, RMaselli@ogdensullivan.com, and Eservice@ogdensullivan.com, via Florida E-Portal, this 15th day of January, 2026.

JAKAB LAW, PLLC

/s/ Kevin E. Jakab, Esq.
KEVIN E. JAKAB, ESQ.
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kjakab@jakablaw.com
Attorney for Defendant Costco

ANSWERS TO INTERROGATORIES

Defendant, Costco-Innovel Solutions, LLC d/b/a Costco Wholesale Logistics, hereby answers Plaintiffs, Bradley and Anna Byrd's, First Set of Interrogatories and states as follows:

1. State the name, address and telephone number of the Person answering these interrogatories, and, if applicable, the Person's official position or relationship with the party to whom the interrogatories are directed.

ANSWER:

Germaine Klemmer, Claims Specialist
Costco Wholesale Corporation
c/o Jakab Law, PLLC
6277 DuPont Station Court, E., #3
Jacksonville, FL 32217
(With assistance of counsel)
NOTE: Mr. Klemmer is verifying these responses as part of his corporate capacity, but has no firsthand knowledge of the facts or circumstances of Plaintiff's claim.

2. List the names, addresses, telephone numbers, and employers of all Persons who have any knowledge concerning any of the issues in this lawsuit and specify the subject matter about which the Person knows.

ANSWER: See co-Defendant's, RXO's, initial disclosures identifying persons who may have knowledge concerning issues in this lawsuit. Costco did not install the subject refrigerator and did not have firsthand knowledge of the installation of the refrigerator, at or near the time it occurred.

3. State the name, address, telephone number and employer of each Person who was involved in installing, supervising, overseeing, and inspecting the installation of the Refrigerator.

ANSWER: See co-Defendant's, RXO's, initial disclosures identifying persons who may have knowledge concerning issues in this lawsuit. Costco did not install the subject refrigerator and did not have firsthand knowledge of the installation of the refrigerator, at or near the time it occurred.

4. State the name, address, telephone number and employer of each Person:

(a) who witnessed the Incident or the events occurring immediately before or after the Incident;

(b) who made any statement at the scene of the Incident;

(c) who heard any statements made about the Incident by any Person at the

scene of the Incident; and

(d) who You claim has knowledge of the Incident (except for expert witnesses).

ANSWER: See co-Defendant's, RXO's, initial disclosures identifying persons who may have knowledge concerning issues in this lawsuit. Costco did not install the subject refrigerator and did not have firsthand knowledge of the installation of the refrigerator, at or near the time it occurred.

5. Have You or anyone on Your behalf obtained a written or recorded statement from any Person concerning the Incident? If so, for each statement state:

(a) the name, address, telephone number and employer of the Person from whom the statement was obtained;

(b) the name, address, telephone number and employer of the Person who obtained the statement; and

(c) the date the statement was obtained.

ANSWER: No.

6. Do You or anyone acting on Your behalf know of any photographs, films, or videotapes depicting any place, object, or Person concerning the Incident? If so, state:

(a) the number of photographs or feet of film or videotape;

(b) the places, objects, or persons photographed, filmed, or videotaped;

(c) the date the photographs, films, or videotapes were taken; and

(d) the name, address, telephone number and employer of the Person taking the photographs, films, or videotapes.

ANSWER: No, other than items produced by Plaintiff and RXO.

7. Was a report made by any Person concerning the Incident? If so, state:

(a) the name, address, telephone number, and employer of the Person who made the report;

(b) the date and type of report made; and

(c) the name, address, telephone number and employer of the Person for whom the report was made.

ANSWER: None to Costco's knowledge, other than Plaintiff and RXO's respective claim adjuster/expert reports.

8. Have You or anyone acting on Your behalf inspected the scene of the Incident? If so, for each inspection state:

(a) the name, address, telephone number, and employer of the Person making the inspection (except for expert witness); and

(b) the date of inspection.

ANSWER: None, other than RXO's investigation.

9. Have You or anyone on your behalf interviewed any Person concerning the Incident? If so, for each Person state:

(a) the name, address, telephone number, and employer of the Person interviewed;

(b) the date of the interview; and

(c) the name, address, telephone number and employer of the Person who conducted the interview.

ANSWER: No.

10. Describe in detail how the Incident happened, including all actions taken by you to prevent the Incident.

ANSWER: Costco did not install the subject refrigerator and is in the process of investigating how the incident happened, as discovery is just starting.

11. Describe in detail each act or omission on the part of each Person that you contend constituted negligence that was a contributing legal cause of the Incident.

ANSWER: Costco did not install the subject refrigerator and is in the process of investigating the subject incident.

12. Describe any and all policies of insurance which You contend cover or may cover You for the allegations set forth in the Complaint, detailing the name of the insurer, the number of the policy, the effective dates of the policy, the available limits of liability, and the name and address of the custodian of the policy.

ANSWER: None, see RXO's answer to the corresponding interrogatory directed to RXO.

13. Do you intend to call any expert witnesses at the trial of this case? If so, state as to each such witness the name and business address of the witness, the witness's qualifications as an expert, the subject matter upon which the witness is expected to testify, the substance of the facts and opinions to which the witness is expected to testify, and a summary of the grounds for each opinion.

ANSWER: Defendant reserves the right to call expert witnesses at trial, per the trial order. However, Costco did not install the refrigerator, therefore, Costco has not retained an expert to date.

VERIFICATION

Before me, the undersigned authority, this day personally appeared Germaine Klemmer as Complex Claims Spec for Costco Wholesale Corp, who after being by me first duly sworn, and under penalty of perjury deposes and says these answers to Interrogatories are true and correct.

STATE OF FLORIDA

COUNTY OF

Sworn to and subscribed before me this 15 day of ~~December, 2025~~ January, 2026. Such person did take an oath: (*Notary must check applicable box*).

✓ In my physical presence; or

___ By online notarization; and

✓ is personally known to me; and

___ produced a current _____ driver's license as identification.

___ produced _____ as identification.

{Notary Seal must be affixed}

NOTARY PUBLIC
Commission Number
20108005
Kim Thompson
My Appointment Expires
5/1/2028
STATE OF WASHINGTON

SIGNATURE OF NOTARY

Kim Thompson
Name of Notary

20108005
Commission Number:
[if not legible on seal]

May 1, 2024
My Commission Expires:
[if not legible on *seal]*

IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT, IN AND FOR ST. JOHNS COUNTY, FLORIDA

CASE NO.: 2025-CA-001320A000MX

BRADLEY BYRD, an individual, and ANNA BYRD, an individual,

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Defendants.
_____/

DEFENDANT COSTCO-INNOVEL SOLUTIONS, LLC, d/b/a COSTCO WHOLESALE LOGISTICS' RESPONSE TO PLAINTIFFS' FIRST REQUEST FOR PRODUCTION

Defendant, Costco-Innovel Solutions, LLC, d/b/a Costco Wholesale Logistics, responds to Plaintiffs', Bradley and Anna Byrd's, First Request for Production, and states:

1. All documents and communications relating to any allegation in the Complaint.

RESPONSE: Defendant objects to this request upon the grounds that it is overbroad, ambiguous, and vague regarding the phrase "all documents and communications relating to any allegation" as that could be anything, including items not reasonably calculated to lead to the discovery of admissible evidence.

2. All documents reflecting communications between You and/or any other Defendant, and/or any other Person relating to the allegations in the Complaint.

RESPONSE: Objection as said request is overbroad, ambiguous, and vague regarding the phrase "all documents reflecting communications between You and/or any other Defendant, and/or any other Person relating to the allegations in the Complaint" as said request, based on the definitions of said terms, could be anything, including items not reasonably calculated to lead to the discovery of admissible evidence; work product and attorney-client information. Without

waiving said objection, see Exhibit A, communications with Plaintiff regarding the refrigerator installation, and Privilege Log.

3. All documents regarding selecting and contracting with subcontractors for the delivery and installation of the Refrigerator, including standards, qualifications, and certifications required for selection of a subcontractor to install a Refrigerator.

RESPONSE: Defendant objects to this request upon the grounds that it is overbroad, ambiguous, and vague regarding the phrase "all documents...including standards, qualifications, and certifications required for selection of a subcontractor..." as this request does not define standards, qualifications, and certifications being requested. Without waiving said objection, see Exhibit B.

4. All documents related to contracts or agreements concerning the installation of the Refrigerator.

RESPONSE: See Exhibit B.

5. All documents that demonstrate compliance with local, state, or federal regulations regarding the Incident.

RESPONSE: Defendant objects to this request upon the grounds that it is overbroad, ambiguous, and vague and requests information not reasonably calculated to lead to the discovery of admissible evidence. In the phrase "all documents that demonstrate compliance with local, state, or federal regulations" no such terms are defined to determine applicability to the subject installation or relevance to this case and could reference anything. Without waiving said objection, see Exhibit B.

6. All documents related to inquiries, inspections, investigations and communications by You concerning how to properly connect the water supply line in the Byrds' residence to the Refrigerator.

RESPONSE: None.

7. All documents related to the installation of the Refrigerator, including directing, supervising, overseeing, and inspecting the installation of the Refrigerator.

RESPONSE: See Exhibits B and C.

8. All documents maintained by You related to policies or procedures concerning the installation, safety, and damage prevention in connection with installing household appliances.

RESPONSE: See Exhibits B and C.

9. All documents provided by You to RXO related to policies or procedures concerning the installation, safety, and damage prevention in connection with the installation of the Refrigerator.

RESPONSE: See Exhibits B and C.

10. All documents maintained by You concerning the installation instructions or guidelines, including any manufacturer's specifications, in connection with the installation of the Refrigerator.

RESPONSE: See Exhibits B and C.

11. All documents concerning installation instructions or guidelines You provided to RXO, including any manufacturer's specifications, in connection with the installation of the Refrigerator.

RESPONSE: See Exhibits B and C.

12. All documents related to communications between You, RXO, its employees, Plaintiffs, and any third parties regarding the Incident.

RESPONSE: Defendant objects to this request upon the grounds that it is overbroad, ambiguous, and vague regarding "all documents related to communications between You, RXO, its employees, Plaintiffs, and any third parties relating to the Incident" and is not reasonably calculated to lead to the discovery of admissible evidence and may call for attorney-client privileged documents and/or work product, as the terms are defined in the request. Without waiving said objection, none at or near the time of the installation and see Exhibit A, and Privilege Log.

13. All documents related to directing, supervising, overseeing, and inspecting the installation of the Refrigerator.

RESPONSE: None.

14. All documents related to liability insurance policies held by You and/or RXO or related companies at the time of the installation of the Incident that you contend would cover you for the allegations in the Complaint.

RESPONSE: Defendant objects to this request upon the grounds that it calls for items not related to this Defendant. Without waiving this objection, none.

15. All documents related to any warranties for the installation of the Refrigerator.

RESPONSE: See Exhibit C.

16. All photographs or videos taken before, during and after the Incident.

RESPONSE: None, other than those produced by Plaintiffs and/or RXO.

17. All documents related to claims or incidents related to faulty installations of household appliances by You and/or RXO in the past seven years.

RESPONSE: Defendant objects to this request upon the grounds that it is overly broad in time and scope and not reasonably calculated to lead to the discovery of admissible evidence and is beyond the scope of discovery in this case.

18. All documents related to assessments or evaluations made by You, Your contractors, insurance adjusters, or other professionals regarding the installation of the Refrigerator and/or the Incident.

RESPONSE: Defendant objects to this request upon the grounds that it is overbroad, ambiguous, and vague regarding the phrase "assessments or evaluations" as this request may call for attorney-client privileged documents and/or work product. Without waiving said objection, none other than those performed by RXO, and see Privilege Log.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to John D. "Jack" Webb, Esq., 1662 Stockton Street, Suite 201, Jacksonville, FL 32204, (Counsel for Plaintiff), jwebb@jackwebblaw.com; arichev@jackwebblaw.com, and Jupton@jackwebblaw.com, Heather L. Stover, Esq. and Richard S. Maselli, Esq., Ogden Sullivan, (Counsel or Defendant RXO), 5422 Bay Center Drive, Suite 100, Tampa, FL 33609, hstover@ogdensullivan.com, RMaselli@ogdensullivan.com, and Eservice@ogdensullivan.com, via Florida E-Portal, this 15th day of January, 2026.

JAKAB LAW, PLLC

/s/ Kevin E. Jakab, Esq.
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Attorney for Defendant Costco

DocuSign Envelope ID: 3D2143F3-1128-4E98-9D10-DE58D5AC4015

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July 2021

HOME DELIVERY & SHUTTLE LOGISTICS BROKER AGREEMENT

This HOME DELIVERY & SHUTTLE LOGISTICS BROKER AGREEMENT (BROKER) ("**Agreement**") is effective February 13, 2023 ("**Effective Date**") between **Costco-Innovel Solutions LLC**, a Delaware company with its principal place of business at 10 North Martingale Road, Schaumburg, IL 60173 ("**Innovel**") and **RXO Last Mile, Inc.**, a Georgia company with its principal place of business at 11215 North Community House Road, Charlotte, NC 28277("**Logistics Provider**").

8. **Indemnity.**

A. To the fullest extent permitted by law, Logistics Provider shall defend, hold harmless, and indemnify, and shall require its Servicing Carriers to defend, hold harmless, and indemnify, Innovel, Costco Wholesale Corp., Clients, and their respective affiliates, subsidiaries, employees, agents, and representatives (collectively, the "**Indemnified Parties**") from and against any and all claims, suits, actions, demands, damages, liabilities, losses, fines, penalties, costs and expenses (including reasonable attorneys' and experts' fees) (collectively "**Damages**")

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arising out of the provision of the Services and including without limitation any of the matters in the following subparagraphs, provided that this indemnity shall not extend to Damages claimed by one Indemnified Party against another Indemnified Party:

i. Any actual or alleged death of, injury to, or illness of any person, damage to or loss of any property, or any other damage or loss to any person, claimed to result in whole or in part from the acts or omissions of Logistics Provider, Servicing Carriers, their employees, subcontractors or agents, whether or not lawful;

ii. Any actual or alleged violation of any law, statute, ordinance, code, rule, regulation or requirement of a public authority, including any inquiry or investigation by any public authority relating to the Services;

iii. Any actual or alleged breach of any provision of this Agreement;

iv. Any actual or alleged infringement or misappropriation of any patent, trademark, trade name, trade dress, copyright, or other right relating to the provision of the Services;

v. Any actual or alleged injury, damage or other loss claimed to have been suffered by any employee of Logistics Provider or any Servicing Carrier during such employee's provision of Services, including any claim under worker's compensation or similar employee benefit programs, or applicable federal, state or local laws governing workplace discrimination, harassment, wage and hour requirements, retaliation, accommodation, leave of absence, compensation, working conditions, and safety, as well as any claim under tort or contract including any claim for negligence, misrepresentation, wrongful termination, privacy, and infliction of emotional distress; or

vi. Any other act, activity or omission of Logistics Provider or any Servicing Carrier or any of their affiliates, employees, representatives, agents or contractors, including activities on Innovel's premises and the use of any vehicle, equipment, fixture or material of Logistics Provider or Servicing Carrier in connection with the provision of the Services.

B. Logistics Provider shall provide a defense against any claims, suits, or actions against any Indemnified Party seeking Damages that may be covered by this indemnity ("**Claims**"). Logistics Provider shall appoint counsel to defend such Claims, subject to Innovel's approval, and Logistics Provider may settle Claims with Innovel's written consent. Notwithstanding the above, Innovel shall have the right, but not the obligation, to participate as it deems necessary in the handling, adjustment or defense of any Claim. If Innovel elects to participate in the defense of a Claim, it will have the right to select counsel, control the defense, and settle Claims, and Logistics Provider shall pay for all defense costs and expenses as they are incurred. Logistics Provider will not enter into any settlement that obligates Innovel without Innovel's written approval.

C. In connection with the indemnification obligation set forth in this Section 8, Logistics Provider specifically waives any liability limitation or protection it otherwise might have under state worker's compensation laws or similar laws.

D. The obligations of Logistics Provider under this Section 8 shall apply to the fullest extent permitted by law regardless of any strict liability or negligence (whether sole, concurrent, or

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contributory) by any Indemnified Party; provided, however, that Logistics Provider shall have no obligation to defend, hold harmless and indemnify an Indemnified Party for loss caused solely by the negligence or intentional wrongful acts of Innovel.

10. Independent Contractor

A. Logistics Provider will ensure that the Servicing Carriers provide and direct, supervise and otherwise control all drivers and helpers ("Delivery Teams"), dispatchers and other personnel, procure necessary licenses, provide maintenance, and furnish all tools, equipment and supplies necessary to perform the Services safely and efficiently. Logistics Provider will ensure that Delivery Teams are adequately trained to perform Customer deliveries to Innovel's specifications. Logistics Provider will comply with Innovel's policies that require Customer courtesy and will prevent Logistics Provider employees, Servicing Carrier employees, or other unauthorized persons from entering restricted areas in shipping and receiving facilities. If Logistics Provider's employees or a Servicing Carrier's employees violate these policies or Innovel's site safety and security policies, or otherwise engage in offensive, reckless, dishonest, violent or insulting conduct, Logistics Provider will, or will cause the applicable Servicing Carrier to, immediately correct the violation, including, if requested by Innovel, removing the offending employees from further work under this Agreement. Innovel's request to remove any individual from Innovel work under this Agreement will not be construed to be a direct or

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indirect request or instruction to Logistic Provider or the Servicing Carrier to terminate the employment of that individual.

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COSTCO-INNOVEL SOLUTIONS LLC:

Costco-Innovel Solutions LLC
Vice President and Head of Supply Chain
10 N Martingale Road, Suite 600
Schaumburg, IL 60173

Costco Wholesale Corp.
General Counsel
999 Lake Drive
Issaquah, WA 98027

LOGISTICS PROVIDER:

RXO Last Mile, Inc.
11215 N. Community House Rd
Charlotte, NC 28277

EXHIBIT B

From: Jack Webb <jwebb@jackwebblaw.com>
Sent: Monday, August 3, 2026 5:54 PM
To: Kevin Jakab <kjakab@jakablaw.com>
Cc: Alexis Richey <arichey@jackwebblaw.com>; Richard Maselli <rmaselli@ogdensullivan.com>; Lisa Reagor <LReagor@jakablaw.com>
Subject: Re: Byrd--P's request for (b)(6) depositions of Ds, 7-24-26, Costco's 8-3-26 reply

We respectfully disagree. He was engaged in substantive detailed conversations with Mr. Byrd regarding his loss. If you feel the need to file a motion, protective order, please proceed.

John D. "Jack" Webb, Esq.
John D. Webb, P.A.
1662 Stockton Street, Suite 201
Jacksonville, Florida 32204
(904) 803-4686
www.jackwebblaw.com

This is a transmission from the law firm of John D. Webb, P.A. and may contain information which is privileged, confidential, and protected by the attorney-client or attorney work product privileges. If you are not the addressee or intended recipient, note that any disclosure, copying, distribution, or use of the contents of this message is prohibited. If you have received this transmission in error, please destroy it and notify us immediately at our telephone number (904) 803-4686.

> On Aug 3, 2026, at 4:09 PM, Kevin Jakab <kjakab@jakablaw.com> wrote:
>
> Jack:
>
> I heard back from Costco re: P's deposition request of Tony Dattilo, Costco's VP of Logistics.
>
> Mr. Dattilo does not have any unique, independent knowledge of the liability or damages aspects of the case. Evidently, in Feb. 2025, he advised Mr. Byrd by email that RXO handled the delivery and installation of the refrigerator and he had a phone call with Mr. Byrd that RXO or its representative would be reaching out to him.

Mr. Dattilo high executive at Costco who works at Costco's out-of-state logistics headquarters. We request that Ps rescind their deposition request of Mr. Dattilo.

Please accept this as Costco's good faith attempt to resolve this matter w/out filing a MPO per Fla.'s apex doctrine.

If you have any questions, let me know or call anytime. Ty, kj.

Kevin Jakab, Esq.
Board Certified Civil Trial Lawyer
Florida Supreme Court Certified Circuit Mediator
Jakab Law, PLLC
6277 Dupont Station Ct, Suite 3
Jacksonville, FL 32217
904-683-2290 (p)
904-683-7588 (f)
Email: kjakab@jakablaw.com
Website: www.JakabLaw.com

From: Alexis Richey <arichey@jackwebblaw.com>
Sent: Friday, July 24, 2026 1:11 PM
To: Jack Webb <jwebb@jackwebblaw.com>; Kevin Jakab <kjakab@jakablaw.com>
Cc: Richard Maselli <rmaselli@ogdensullivan.com>; Lisa Reagor <LReagor@jakablaw.com>
Subject: Re: Byrd--P's request for (b)(6) depositions of Ds, 7-24-26

Here are the corrected notices.

Alexis Richey
Paralegal
John D. Webb, P.A.
1662 Stockton Street, Suite 201
Jacksonville, Florida 32204



http://www.jackwebblaw.com/

From: Jack Webb <jwebb@jackwebblaw.com>
Date: Friday, July 24, 2026 at 1:03 PM
To: Kevin Jakab <kjakab@jakablaw.com>
Cc: Alexis Richey <arichey@jackwebblaw.com>; Richard Maselli <rmaselli@ogdensullivan.com>; Lisa Reagor <LReagor@jakablaw.com>
Subject: Re: Byrd--P's request for (b)(6) depositions of Ds, 7-24-26

We are correcting the notices. Thank you
John D. "Jack" Webb, Esq.
John D. Webb, P.A.
1662 Stockton Street, Suite 201
Jacksonville, Florida 32204
(904) 803-4686

www.jackwebblaw.com

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On Jul 24, 2026, at 12:58 PM, Kevin Jakab <kjakab@jakablaw.com> wrote:

The notices are per 1.310 (b)(6)...

Kevin Jakab, Esq.
Board Certified Civil Trial Lawyer
Florida Supreme Court Certified Circuit Mediator
Jakab Law, PLLC
6277 Dupont Station Ct, Suite 3
Jacksonville, FL 32217
904-683-2290 (p)
904-683-7588 (f)
Email: kjakab@jakablaw.com
Website: www.JakabLaw.com

From: Alexis Richey <arichey@jackwebblaw.com>
Sent: Friday, July 24, 2026 12:52 PM
To: Kevin Jakab <kjakab@jakablaw.com>
Cc: Jack Webb <jwebb@jackwebblaw.com>; Richard Maselli <rmaselli@ogdensullivan.com>; Lisa Reagor <LReagor@jakablaw.com>
Subject: Re: Byrd--P's request for (b)(6) depositions of Ds, 7-24-26

I don't believe that we noticed these as corporate representative depositions.

Alexis Richey
Paralegal
John D. Webb, P.A.
1662 Stockton Street, Suite 201
Jacksonville, Florida 32204



http://www.jackwebblaw.com/

From: Kevin Jakab <kjakab@jakablaw.com>
Date: Friday, July 24, 2026 at 12:48 PM
To: Alexis Richey <arichey@jackwebblaw.com>
Cc: Jack Webb <jwebb@jackwebblaw.com>; Richard Maselli <rmaselli@ogdensullivan.com>; Lisa Reagor <LReagor@jakablaw.com>
Subject: Byrd--P's request for (b)(6) depositions of Ds, 7-24-26
Jack:

We are in receipt of these (b)(6) deposition notices, however, there are no areas on inquiry listed on either?

Please send us the areas of inquiries for these so we can forward them to the clients and gets dates. Ty, kj.

Kevin Jakab, Esq.
Board Certified Civil Trial Lawyer
Florida Supreme Court Certified Circuit Mediator
Jakab Law, PLLC
6277 Dupont Station Ct, Suite 3
Jacksonville, FL 32217
904-683-2290 (p)
904-683-7588 (f)
Email: kjakab@jakablaw.com
Website: www.JakabLaw.com

From: Alexis Richey <arichey@jackwebblaw.com>
Sent: Thursday, July 23, 2026 3:26 PM
To: Jack Webb <jwebb@jackwebblaw.com>; Kevin Jakab <kjakab@jakablaw.com>; Richard Maselli <rmaselli@ogdensullivan.com>
Cc: Deirdre Connolly <dconnolly@jackwebblaw.com>
Subject: Re: Byrd demand letter

Good afternoon,

Please see the attached draft notices of deposition. If we do not receive dates available, we will notice them unilaterally.

Thanks.

Alexis Richey
Paralegal
John D. Webb, P.A.
1662 Stockton Street, Suite 201
Jacksonville, Florida 32204



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EXHIBIT C

Docusign Envelope ID: E28B7271-2C79-8C27-8243-42B36BCED525

IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT, IN AND FOR ST. JOHNS COUNTY, FLORIDA

CASE NO.: 2025-CA-001320A000MX

BRADLEY BYRD, an individual, and ANNA BYRD, an individual,

Plaintiffs,

v.

COSTCO WHOLESALE CORPORATION, a foreign for profit corporation, COSTCO-INNOVEL SOLUTIONS, LLC, d/b/a COSTCO WHOLESALE LOGISTICS, a foreign limited Liability company, and RXO LAST MILE, INC., a foreign for profit corporation,

Defendants.

_____/

AFFIDAVIT OF TONY DATTILO

STATE OF ILLINOIS
COUNTY OF DUPAGE

BEFORE ME, the undersigned authority, personally appeared **TONY DATTILO**, to me well known, who, having first been duly sworn, deposes and says:

1. I am TONY DATTILO and I have personal knowledge of all matters and things set forth herein.

2. I am Vice President (VP) of Costco Logistics at Costco Wholesale Corporation, and I work at Costco's corporate logistics office, 2250 S. Pinehurst, Blvd., Addison, Illinois, 60102.

3. As VP of Costco logistics, I oversee, at a national-level, Costco's one-hundred thirty (130) home delivery centers whereby third-party vendors take possession, deliver, and handle installation of large appliances after customer purchase.

4. I oversee approximately one-thousand six hundred (1,600) Costco employees at Costco's corporate logistics office in Illinois, and eight (8) regional offices. I am two-levels below Costco's Chief Executive Officer (CEO), and report directly to an executive vice president, who reports directly to Costco's CEO. Given my position at Costco, I do not oversee day-to-day operations of the home deliver centers, which are handled by the local, onsite Costco managers and employees.

5. I do not have unique, independent, personal knowledge of how a refrigerator Plaintiffs purchased at Costco allegedly leaked at their home following installation (incident). One of Costco's third-party vendors, RXO (co-defendant) provided the delivery and installation of Plaintiffs' refrigerator. I have no knowledge as to when, what, or who, caused the alleged incident, nor did I investigate any particulars regarding Plaintiffs' alleged property damage forming the basis of this case (scope or amount).

6. However, circa February 2025, upon request of Costco's CEO, I had courtesy phone and email communication with Bradley Byrd. **Exhibit A**. I advised that a Costco vendor, RXO, was tasked to deliver and install the subject refrigerator and Mr. Byrd would likely hear from RXO, in the near term. Shortly thereafter, it is my understanding that RXO, or its representative, contacted Mr. Byrd in good faith, and assessed Mr. Byrd's alleged damages, to potentially resolve this matter.

7. The information above is the corpus of knowledge I have of this matter. All other knowledge would be inferior to that of those with direct knowledge of the facts and circumstances giving rise to this case or was attained from Costco's legal counsel and would constitute attorney-client privileged information.

DocuSigned by:
Tony Dattilo
F01908ECE2F14BB...

Tony Dattilo
Vice President, Costco Logistics

STATE OF ILLINOIS
COUNTY OF DUPAGE

BEFORE ME, the undersigned authority personally appeared Tony Dattilo, who is personally known to me, or has produced _____ as identification and who executed the foregoing in my presence.

WITNESS my hand and official seal this 5th day of Aug, 2026.

Lisa Reagor
Notary Public (Signature)

My Commission Expires:____

LISA L. REAGOR
Commission # HH 286122
Expires November 8, 2026

EXHIBIT A
to Affidavit

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From: **Byrd Bradley E** <bradley.e.byrd@gmail.com>
Date: Wed, Feb 26, 2025 at 2:41 PM
Subject: Re: Costco
To: Tony Dattilo <tdattilo@costco.com>

Tony,

Nice to hear from you again.

My email did not state that I had retained counsel. I just read it again to confirm. That is upcoming.

My claim is with Costco. I have no contract with RXO. Costco does. Costco contracted with RXO to install an appliance I purchase from Costco.com, I did not.

I think it's rich you ask for my courtesy in this regard, when you promised to contact me weekly many weeks ago and only have twice. I am the injured party.

Our local news station filmed my house today and reached out to Costco media relations today for a comment. I'm sure you'll be seeing that soon.

Regards,

Brad Byrd

On Feb 26, 2025, at 5:18 PM, Tony Dattilo <tdattilo@costco.com> wrote:

February 26, 2025

Mr. Bradley Byrd
[redacted]
Saint Johns, FL 32259

Dear Mr. Byrd:

In reference to your email sent yesterday to Ron Vachris, Russ Miller and me, among others, I am writing to remind you that your claim is with RXO, and any correspondence regarding your claim should be directed to RXO.

In your email you indicated that you have retained counsel. Please direct any Costco-related communications from you or your lawyer to our

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counsel. Our counsel is Kevin Jakab, 6277 Dupont Station Court East, Suite 3, Jacksonville, FL 32217. His email address is kjakab@jakablaw.com.

Thank you for your courtesy in this regard.

Sincerely,
Tony Dattilo
Vice President Costco Logistics
tdattilo@costco.com
847-[redacted] mobile

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From: Ron Vachris <rvachris@costco.com>

Date: December 2, 2024 at 4:31:02 PM PST

To: "Bradley E. Byrd" <bradley.e.byrd@gmail.com>, Tony Jaswal

<tjaswal@costco.com>, Tony Dattilo <tdattilo@costco.com>, Jim Ridle

<jimridle@costco.com>, Russ Miller <rdmiller@costco.com>

Subject: Re: Costco Logistics Damage documentation

Mr Byrd, I am very sorry to hear that this happened to you. I will get our logistics teams involved right away. I am not sure if you have been in contact with anyone else at Costco? Please feel free to take any other steps you feel appropriate but we will focus on getting this problem fixed if our people caused it.

Ron...

On Mon, Dec 2, 2024 at 3:34 PM Bradley E. Byrd <bradley.e.byrd@gmail.com> wrote:

Hi Ron,

My name is Brad Byrd. I had a refrigerator delivered today. The hookup leaked while we were out and in 3 hours it did $200k+ of damage. We re currently getting it mitigated now. We had 1.5 of water covering our first floor. Anyhow, I went through a flood damage earlier this year and it was awful. I told myself that if I ever had to go through it again I would document the process. Since this is a third party claim against Costco I just wanted to you to be aware that I am going to start an online website blog to document the claim against Costco Logistics and the process, including insurance, repairs, payments, etc . I wanted to reach out ahead of time and make you aware that I will be well documenting this and making it public to share with others.

Regards,

Brad Byrd