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Costco Wholesale Corporation

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SHIRLEY "RAE" ELLIS, LEAH HORSTMAN, )  
and ELAINE SASAKI on behalf of themselves and )  
all others similarly situated, )

Plaintiffs, )

v. )

COSTCO WHOLESALE CORPORATION )

Defendant. )

Case No. C04 3341 EMC

**DEFENDANT COSTCO WHOLESALE CORPORATION'S ANSWER TO PLAINTIFFS' FOURTH AMENDED COMPLAINT**

Complaint filed: August 17, 2004  
FAC filed: November 2, 2004  
SAC filed: March 23, 2005  
TAC filed: March 23, 2012

In response to the Fourth Amended Complaint of Plaintiffs Shirley "Rae" Ellis, Leah Horstman, and Elaine Sasaki ("Plaintiffs"), Costco Wholesale Corporation ("Defendant") states as follows for its

1 answer and defenses, denying herein each material fact it does not expressly admit, and denying each  
2 argumentative heading in the Fourth Amended Complaint.

3 **INTRODUCTION**

4 1. Paragraph 1 contains conclusions of law as opposed to allegations of fact, and as such, no  
5 answer is required. To the extent that Paragraph 1 purports to contain any allegations of fact, Defendant  
6 denies those allegations.

7 2. Paragraph 2 contains conclusions of law as opposed to allegations of fact, and as such, no  
8 answer is required. To the extent that Paragraph 2 purports to contain any allegations of fact, Defendant  
9 denies those allegations.

10 3. Paragraph 3 contains conclusions of law as opposed to allegations of fact, and as such, no  
11 answer is required. To the extent that Paragraph 3 purports to contain any allegations of fact, Defendant  
12 denies those allegations.

13 4. Paragraph 4 contains conclusions of law as opposed to allegations of fact, and as such, no  
14 answer is required. To the extent that Paragraph 4 purports to contain any allegations of fact, Defendant  
15 denies those allegations.

16 **JURISDICTION AND VENUE**

17 5. Paragraph 5 contains conclusions of law as opposed to allegations of fact, and as such, no  
18 answer is required. To the extent that Paragraph 5 purports to contain any allegations of fact, Defendant  
19 denies those allegations.

20 6. Paragraph 6 contains conclusions of law as opposed to allegations of fact, and as such, no  
21 answer is required. To the extent that Paragraph 6 purports to contain any allegations of fact, Defendant  
22 denies those allegations.

23 **PARTIES**

24 7. Answering Paragraph 7, Defendant admits that Plaintiff Ellis was employed by  
25 Defendant until November 2004. Defendant also admits that Plaintiff Ellis resides in Arvada, Colorado.



1 16. Paragraph 16 contains conclusions of law as opposed to allegations of fact, and as such,  
2 no answer is required. To the extent that Paragraph 16 purports to contain any allegations of fact,  
3 Defendant denies those allegations.

4 17. Paragraph 17 contains conclusions of law as opposed to allegations of fact, and as such,  
5 no answer is required. To the extent that Paragraph 17 purports to contain any allegations of fact,  
6 Defendant denies those allegations.

7 18. Paragraph 18 contains conclusions of law as opposed to allegations of fact, and as such,  
8 no answer is required. To the extent that Paragraph 18 purports to contain any allegations of fact,  
9 Defendant denies those allegations.

10 19. Paragraph 19 contains conclusions of law as opposed to allegations of fact, and as such,  
11 no answer is required. To the extent that Paragraph 19 purports to contain any allegations of fact,  
12 Defendant denies those allegations.

13 20. Paragraph 20 contains conclusions of law as opposed to allegations of fact, and as such,  
14 no answer is required. To the extent that Paragraph 20 purports to contain any allegations of fact,  
15 Defendant denies those allegations.

16 21. Paragraph 21 contains conclusions of law as opposed to allegations of fact, and as such,  
17 no answer is required. To the extent that Paragraph 21 purports to contain any allegations of fact,  
18 Defendant denies those allegations.

19 22. Paragraph 22 contains conclusions of law as opposed to allegations of fact, and as such,  
20 no answer is required. To the extent that Paragraph 22 purports to contain any allegations of fact,  
21 Defendant denies those allegations.

22 **GENERAL ALLEGATIONS**

23 *Senior Management and Executive Hierarchy*

24 23. Answering Paragraph 23, Defendant admits that James Sinegal is Costco's co-founder  
25 and was the company CEO from 1983 until January 2012. Defendant further admits that Craig Jelinek  
26 became President and CEO after Mr. Sinegal stepped down. Defendant avers that Mr. Sinegal remains a  
27 member of its Board of Directors.

1           24.     Answering Paragraph 24, Defendant admits that Mr. Sinegal, provided overall strategic  
2 leadership for the organization during his tenure as CEO. To the extent the vague allegations in  
3 Paragraph 24 purport to suggest that Mr. Sinegal engaged in any unlawful conduct or exerted  
4 discriminatory motives over Costco's management, Defendant expressly denies those allegations. To  
5 the extent that Paragraph 24 purports to contain any additional allegations of fact, Defendant also  
6 expressly denies those allegations.

7           25.     Answering Paragraph 25, Defendant admits that U.S. operations have three geographic  
8 divisions, each overseen by an Executive Vice President, who reports to the CEO. To the extent that  
9 Paragraph 25 purports to contain any additional allegations of fact, Defendant expressly denies those  
10 allegations.

11           26.     Answering Paragraph 26, Defendant admits that each division has regions, generally  
12 overseen by a Senior Vice President, and which generally have two or more districts, each overseen by  
13 a regional manager who eventually becomes a Vice President. To the extent that Paragraph 26 purports  
14 to contain any additional allegations of fact, Defendant expressly denies those allegations.

15           27.     Answering Paragraph 27, Defendant avers that regional and divisional vice presidents  
16 generally attend budget or other meetings in corporate offices at Issaquah, Washington that typically  
17 occur every four weeks. To the extent that Paragraph 27 purports to contain any additional allegations  
18 of fact, Defendant expressly denies those allegations.

19           28.     Answering Paragraph 28, Defendant avers that it has an executive committee at least two  
20 members of which are women. To the extent that Paragraph 28 purports to contain any additional  
21 allegations of fact, Defendant expressly denies those allegations.

22           29.     Answering Paragraph 29, Defendant admits that certain personnel policies are contained  
23 in Costco's Employee Agreement. Defendant further admits that Costco's Employee Agreement applies  
24 to all Costco employees, to the extent they are consistent with collective bargaining agreements.

25 Warehouse Management Hierarchy

26           30.     Answering Paragraph 30, Defendant admits that its warehouses typically have one  
27 General Manager, two to three Assistant General Managers and three to four Senior (Staff Level)

1 Managers. Defendant further admits that Senior Staff Managers are categorized as Front End Managers,  
2 Administrative Managers, Receiving Managers and Merchandise Managers. To the extent that  
3 Paragraph 30 purports to contain any additional allegations of fact, Defendant expressly denies those  
4 allegations.

5 31. Answering Paragraph 31, Defendant admits that its senior management, offices in various  
6 parts of the country, sets salary ranges for the management positions within the warehouse. To the  
7 extent that Paragraph 31 purports to contain any additional allegations of fact, Defendant expressly  
8 denies those allegations.

9 32. Answering Paragraph 32, Defendant admits that General Managers are responsible for  
10 the operations of the warehouse to which they have been assigned. Defendant further admits that  
11 General Managers report to senior management within the district and region to which the warehouse is  
12 assigned. To the extent that Paragraph 32 purports to contain any additional allegations of fact,  
13 Defendant expressly denies those allegations.

14 33. Answering Paragraph 33, Defendant admits that individuals selected for promotion to a  
15 GM position have typically held an AGM position. Defendant denies the remaining allegations of  
16 Paragraph 33.

17 *Pre-Selection By Means of Promotable Lists and the Green Room*

18 34. Defendant denies the allegations of Paragraph 34.

19 35. Answering Paragraph 35, Defendant admits that it typically promotes individuals to  
20 AGM and GM positions from within its organization.

21 36. Answering Paragraph 36, Defendant admits that Mr. Sinegal has generally advised  
22 managers to list candidates for managerial promotions for purposes of succession planning, and has  
23 hoped that they do so. Defendant denies that Mr. Sinegal generally instructed senior regional managers  
24 to prepare lists for promotions into AGM positions. Such lists as were prepared were prepared at a  
25 lower level in the hierarchy. Defendant denies the remaining allegations of Paragraph 36.

26 37. Defendant denies the allegations of Paragraph 37.

27 38. Defendant denies the allegations of Paragraph 38.

1           39.     Answering Paragraph 39, Defendant admits that photographs and biographies of some  
2 members of management were once displayed in a room referred to as the “Green Room” at its  
3 corporate office. Defendant further admits that such information is now maintained electronically.  
4 Defendant avers that access has been limited to senior management. To the extent that Paragraph 39  
5 purports to contain any additional allegations of fact, Defendant expressly denies those allegations.

6           40.     Answering Paragraph 40, to the extent that it contains conclusions of law as opposed to  
7 allegations of fact, no answer is required. Defendant also admits that individuals from each region  
8 identified for promotion to General Manager positions have been invited to the annual General  
9 Managers’ conference. To the extent that Paragraph 40 purports to contain any additional allegations of  
10 fact, Defendant expressly denies those allegations.

11           41.     Defendant denies the allegations of Paragraph 41.

12           42.     Paragraph 42 contains conclusions of law as opposed to allegations of fact, and as such,  
13 no answer is required. To the extent that Paragraph 42 purports to contain any allegations of fact,  
14 Defendant denies those allegations.

15           43.     Defendant denies the allegations of Paragraph 43, except that it admits that the quoted  
16 excerpts reflect a portion of CEO Sinegal’s testimony.

17           44.     Defendant denies the allegations of Paragraph 44, except that it admits that the quoted  
18 excerpts reflect a portion of CEO Sinegal’s testimony.

19           45.     Defendant denies the allegations of Paragraph 45.

20 *Selections for General Manager*

21           46.     Answering Paragraph 46, Defendant admits that openings for General Manager positions  
22 are not posted.

23           47.     Defendant denies the allegations of Paragraph 47.

24           48.     Answering Paragraph 48, Defendant admits that decision-makers are not required to  
25 conduct interviews before making promotion decisions for General Manager positions. Defendant  
26 otherwise denies the allegations of Paragraph 48.

27           49.     Defendant denies the allegations of Paragraph 49.

1 50. Defendant denies the allegations of Paragraph 50.

2 51. Defendant denies the allegations of Paragraph 51.

3 52. Defendant denies the allegations of Paragraph 52.

4 53. Defendant denies the allegations of Paragraph 53.

5 54. Defendant denies the allegations of Paragraph 54, except that it admits that the standards  
6 used to make General Manager promotion decisions are generally the same.

7 55. Defendant denies the allegations of Paragraph 55.

8 56. Defendant denies the allegations of Paragraph 56.

9 Selections for Assistant General Manager

10 57. Answering Paragraph 57, Defendant admits that openings for Assistant General Manager  
11 positions generally are not posted.

12 58. Defendant denies the allegations of Paragraph 58.

13 59. Answering Paragraph 59, Defendant admits that decision-makers are not required to  
14 conduct interviews before making promotion decisions for Assistant General Manager positions.

15 Defendant otherwise denies the allegations of Paragraph 59.

16 60. Defendant denies the allegations of Paragraph 60.

17 61. Defendant denies the allegations of Paragraph 61.

18 62. Defendant denies the allegations of Paragraph 62.

19 63. Defendant denies the allegations of Paragraph 63.

20 64. Defendant denies the allegations of Paragraph 64.

21 65. Defendant denies the allegations of Paragraph 65, except that it admits that the standards  
22 used to make Assistant General Manager promotion decisions are generally the same.

23 66. Defendant denies the allegations of Paragraph 66.

24 No Changes to Selection System Since Original Class Certification Order

25 67. Defendant admits that it has not changed its policies or procedures for promotion into  
26 AGM or GM positions since the district court's class certification order in January 2007, which was  
27 vacated and remanded on September 16, 2011.



1 Discriminatory Impact of Selection System for AGM and GM Promotions

2 68. Defendant denies the allegations of Paragraph 68.

3 69. Defendant denies the allegations of Paragraph 69.

4 70. Defendant denies the allegations of Paragraph 70.

5 71. Defendant denies the allegations of Paragraph 71.

6 72. Defendant denies the allegations of Paragraph 72.

7 73. Paragraph 73 contains conclusions of law as opposed to allegations of fact, and as such,  
8 no answer is required. To the extent that Paragraph 73 purports to contain any allegations of fact,  
9 Defendant denies those allegations.

10 Admissions of Biases in Selection System and CEO's Decision to Veto Changes to System

11 74. Answering Paragraph 74, Defendant admits that it convened a series of meetings and  
12 focus groups known as the "Bold Initiative" with its managers in 2001. Defendant denies the remaining  
13 allegations of Paragraph 74.

14 75. Answering Paragraph 75, Defendant admits that certain participants in focus groups  
15 offered conclusory opinions Plaintiffs have selectively quoted. Defendant otherwise denies the  
16 allegations of Paragraph 75.

17 76. Answering Paragraph 76, Defendant admits that a May 2011 report includes excerpts  
18 Plaintiffs have selectively quoted. Defendant otherwise denies the allegations of Paragraph 76.

19 77. Answering Paragraph 77, Defendant admits in or before 2001 it adopted the Rothman  
20 Workplan. Defendant otherwise denies the allegations of Paragraph 77.

21 78. Defendant denies the allegations of Paragraph 78.

22 79. Defendant denies the allegations of Paragraph 79.

23 80. Answering Paragraph 80, Defendant admits that CEO Sinegal referred to the bureaucratic  
24 notion that vacancies in high-level management should be posted, with mandatory interviews, etc., as  
25 "bullshit." Defendant otherwise denies the allegations of Paragraph 80.

26 81. Answering Paragraph 81, Defendant admits that in 2005 it held focus groups on ideas to  
27 advance its diversity initiatives. Defendant otherwise denies the allegations of Paragraph 81.

1           82.     Answering Paragraph 82, Defendant admits that certain participants in focus groups  
2 offered conclusory opinions Plaintiffs have selectively quoted. Defendant otherwise denies the  
3 allegations of Paragraph 82.

4           83.     Answering Paragraph 83, Defendant admits that certain participants in focus groups  
5 offered conclusory opinions Plaintiffs have selectively quoted. Defendant otherwise denies the  
6 allegations of Paragraph 83.

7 Anti-Discrimination, EEO and Diversity Policies Have Been Ineffective

8           84.     Paragraph 84 contains conclusions of law as opposed to allegations of fact, and as such,  
9 no answer is required. To the extent that paragraph 84 purports to contain any allegations of fact,  
10 Defendant denies those allegations in light of Plaintiffs' argumentative characterizations, except that  
11 Defendant admits that it has had several anti-discrimination and EEO policies.

12           85.     Paragraph 85 contains conclusions of law as opposed to allegations of fact, and as such,  
13 no answer is required. To the extent that Paragraph 85 purports to contain any allegations of fact,  
14 Defendant denies those allegations.

15                           **CLAIMS OF NAMED PLAINTIFF SHIRLEY "RAE" ELLIS**

16           86.     Answering Paragraph 86, Defendant admits that Plaintiff Ellis was hired as an Assistant  
17 Manager in 1998.

18           87.     Defendant lacks sufficient knowledge and information to form a belief as to the truth or  
19 falsity of the allegations of Paragraph 87, and therefore denies the same.

20           88.     Defendant denies the allegations of Paragraph 88.

21           89.     Answering Paragraph 89, Defendant admits that Plaintiff Ellis repeatedly transferred  
22 locations during her employment. Defendant lacks sufficient knowledge and information to form a  
23 belief as to the truth or falsity of the remaining allegations of Paragraph 89, and therefore denies them.

24           90.     Answering Paragraph 90, Defendant admits that Plaintiff Ellis expressed indefinite  
25 interest in promotion to a General Manager position in Southern California and has not been offered a  
26 General Manager position in any of approximately 100 California warehouses. To the extent that  
27 Paragraph 90 purports to contain any additional allegations of fact, Defendant lacks sufficient  
28

1 knowledge and information to form a belief as to the truth or falsity of the allegations of Paragraph 90,  
2 and therefore denies the same.

3 91. Answering Paragraph 91, Defendant admits that Ellis wrote a letter regarding her career  
4 progression that included the phrase “burning desire.”

5 92. Defendant lacks sufficient knowledge and information to form a belief as to the truth or  
6 falsity of the allegations of Paragraph 92, and therefore denies them.

7 93. Defendant denied the allegations of Paragraph 93.

8 94. Defendant lacks sufficient knowledge and information to form a belief as to the truth or  
9 falsity of the allegations of Paragraph 94, and therefore denies them.

10 95. Defendant denies the allegations of Paragraph 95.

11 96. Defendant denies the allegations of Paragraph 96.

12 97. Defendant denies the allegations of Paragraph 97.

13 98. Defendant denies that it has discriminated against Plaintiff or the alleged Classes in any  
14 manner. To the extent that Paragraph 98 purports to contain any additional allegations of fact,  
15 Defendant lacks sufficient knowledge and information to form a belief as to the truth or falsity of the  
16 allegations of Paragraph 98, and therefore denies the same.

17 **CLAIMS OF NAMED PLAINTIFF LEAH HORSTMAN**

18 99. Answering Paragraph 99, Defendant admits that Plaintiff Horstman was hired as a  
19 “caller” in May 1981. Defendant also admits that Plaintiff Horstman held the position of Receiving  
20 Manager at Costco’s La Mesa, California warehouse when she left Costco in July 2004.

21 100. Answering Paragraph 100, Defendant admits that Plaintiff Horstman was a Costco  
22 employee for 23 years. Defendant lacks sufficient knowledge and information to form a belief as to the  
23 truth or falsity of the remaining allegations of Paragraph 100, and therefore denies the same.

24 101. Defendant denies the allegations contained in Paragraph 101, except Defendant admits  
25 that Plaintiff Horstman has not been offered a position of Assistant Manager.

26 102. Defendant denies the allegations contained in Paragraph 102.

1 103. Defendant lacks sufficient knowledge and information to form a belief as to the truth or  
2 falsity of the allegations of Paragraph 103, and therefore denies the same.

3 104. Defendant denies the allegations contained in Paragraph 104.

4 105. Defendant denies that it has discriminated against Plaintiff or the class generally in any  
5 manner. To the extent that Paragraph 105 purports to contain any additional allegations of fact,  
6 Defendant lacks sufficient knowledge and information to form a belief as to the truth or falsity of the  
7 allegations of Paragraph 45, and therefore denies the same.

8 **CLAIMS OF NAMED PLAINTIFF ELAINE SASAKI**

9 106. Answering Paragraph 106, Defendant admits that Plaintiff Sasaki was hired as a cashier  
10 in 1985. Defendant also admits that Plaintiff Sasaki is currently an Assistant Manager at a California  
11 warehouse.

12 107. Answering Paragraph 107, Defendant admits that Plaintiff Sasaki was hired by Costco on  
13 or about September 5, 1985. Defendant admits that on or about October 18, 1990, Plaintiff Sasaki  
14 transferred to the Costco warehouse in Clovis, California, where she held numerous positions, including  
15 staff level manager. Defendant admits that Plaintiff Sasaki worked as an Administrative Assistant at the  
16 Bay Area Regional office between approximately April 26, 1995 and November 13, 1996. Defendant  
17 admits that on or about November 13, 1996, Plaintiff Sasaki transferred to the Costco warehouse in  
18 Chico, California, and that she worked as an Assistant Manager there. Defendant admits that on or  
19 about March 12, 2001, Plaintiff Sasaki transferred to Costco's Texas Region, where she worked as an  
20 Assistant Manager in the Willowbrook, Texas warehouse. Finally, Defendant admits that Plaintiff  
21 Sasaki laterally transferred as an Assistant Manager to the Visalia, California warehouse in or around  
22 June 2002. Defendant lacks sufficient knowledge and information to form a belief as to the truth or  
23 falsity of the remaining allegations of Paragraph 107, and therefore denies the same.

24 108. Answering Paragraph 108, Defendant admits that it has approximately 100 warehouses in  
25 the State of California. Defendant lacks sufficient knowledge and information to form a belief as to the  
26 truth or falsity of the remaining allegations of Paragraph 108, and therefore denies the same.

1 109. Defendant lacks sufficient knowledge and information to form a belief as to the truth or  
2 falsity of the allegations of Paragraph 109, and therefore denies the same.

3 110. Answering Paragraph 110, Defendant admits that Sasaki complained to Judy Vadney  
4 about Sasaki's lack of promotion and included the quoted statements in her letter. Defendant otherwise  
5 denies the allegations of Paragraph 110.

6 111. Defendant lacks sufficient knowledge and information to form a belief as to the truth or  
7 falsity of the allegations of Paragraph 111, and therefore denies the same.

8 112. Answering Paragraph 112, Defendant admits that Sasaki was promoted to Assistant  
9 Warehouse Manager in 1996. Defendant denies that it has retaliated against Sasaki in any manner. To  
10 the extent that Paragraph 112 purports to contain any additional allegations of fact, Defendant lacks  
11 sufficient knowledge and information to form a belief as to the truth or falsity of the allegations of  
12 Paragraph 112, and therefore denies the same.

13 113. Defendant denies the allegations contained in Paragraph 113.

14 114. Defendant denies that it has discriminated against Plaintiff or the alleged Classes  
15 generally in any manner. To the extent that Paragraph 114 purports to contain any additional allegations  
16 of fact, Defendant lacks sufficient knowledge and information to form a belief as to the truth or falsity of  
17 the allegations of Paragraph 114, and therefore denies the same.

18 **FIRST CLAIM FOR RELIEF**

19 (Title VII of the Civil Rights Act of 1964  
20 42 U.S.C. §§2000(3), *et seq.* on behalf of the Title VII class)

21 115. Defendant incorporates its answers to Paragraphs 1 through 114 as and for its answer to  
22 Paragraph 115.

23 116. Paragraph 116 contains conclusions of law as opposed to allegations of fact, and as such,  
24 no answer is required. To the extent that Paragraph 116 purports to contain any allegations of fact,  
25 Defendant denies those allegations.

26 117. Paragraph 117 contains conclusions of law as opposed to allegations of fact, and as such,  
27 no answer is required. To the extent that Paragraph 117 purports to contain any allegations of fact,  
28 Defendant denies those allegations.

1 118. Defendant lacks sufficient knowledge and information to form a belief as to the truth or  
2 falsity of the allegations of Paragraph 118, and therefore denies the same.

3 119. Defendant denies the allegations of Paragraph 119.

4 120. Paragraph 120 contains conclusions of law as opposed to allegations of fact, and as such,  
5 no answer is required. To the extent that Paragraph 120 purports to contain any allegations of fact,  
6 Defendant denies those allegations.

7 121. Paragraph 121 contains conclusions of law as opposed to allegations of fact, and as such,  
8 no answer is required. To the extent that Paragraph 121 purports to contain any allegations of fact,  
9 Defendant denies those allegations.

10 122. Defendant denies the allegations of Paragraph 122.

11 123. Defendant expressly denies that Plaintiffs are entitled to any relief, including but not  
12 limited to the relief sought by Plaintiffs in their Fourth Amended Complaint.

13 **SECOND CLAIM FOR RELIEF**

14 **(Title VII of the Civil Rights Act of 1964**  
15 **42 U.S.C. §§2000(e), *et seq.* on behalf of the Title VII class)**

16 124. Defendant incorporates its answers to Paragraphs 1 through 114 as and for its answer to  
17 Paragraph 124.

18 125. Paragraph 125 contains conclusions of law as opposed to allegations of fact, and as such,  
19 no answer is required. To the extent that Paragraph 124 purports to contain any allegations of fact,  
20 Defendant denies those allegations.

21 126. Paragraph 126 contains conclusions of law as opposed to allegations of fact, and as such,  
22 no answer is required. To the extent that Paragraph 126 purports to contain any allegations of fact,  
23 Defendant denies those allegations.

24 127. Defendant denies the allegations of Paragraph 127.

25 128. Defendant denies the allegations of Paragraph 128.

26 129. Defendant denies the allegations of Paragraph 129.

27 130. Defendant expressly denies that Plaintiffs are entitled to any relief, including but not  
28 limited to the relief sought by Plaintiffs in their Fourth Amended Complaint.

**THIRD CLAIM FOR RELIEF**

**(California Fair Employment and Housing Act,  
Govt. Code §§12940, *et seq.* on behalf of Plaintiffs only)**

131. Defendant incorporates its answers to Paragraphs 1 through 114 as and for its answer to Paragraph 131.

132. Paragraph 132 contains conclusions of law as opposed to allegations of fact, and as such, no answer is required. To the extent that Paragraph 132 purports to contain any allegations of fact, Defendant denies those allegations.

133. Paragraph 133 contains conclusions of law as opposed to allegations of fact, and as such, no answer is required. To the extent that Paragraph 133 purports to contain any allegations of fact, Defendant denies those allegations.

134. Defendant denies the allegations contained in Paragraph 134.

135. Paragraph 135 contains conclusions of law as opposed to allegations of fact, and as such, no answer is required. To the extent that Paragraph 135 purports to contain any allegations of fact, Defendant denies those allegations.

**FOURTH CLAIM FOR RELIEF**

**(Title VII of the Civil Rights Act of 1964  
42 U.S.C. §§2000(e), *et seq.* for Retaliation Against Plaintiff Ellis)**

136. Defendant incorporates its answers to Paragraphs 1 through 98 as and for its answer to Paragraph 136.

137. Paragraph 137 contains conclusions of law as opposed to allegations of fact, and as such, no answer is required. To the extent that Paragraph 137 purports to contain any allegations of fact, Defendant denies those allegations.

138. Defendant denies the allegations of Paragraph 138.

139. Defendant denies the allegations of Paragraph 139.

140. Paragraph 140 contains conclusions of law as opposed to allegations of fact, and as such, no answer is required. To the extent that Paragraph 140 purports to contain any allegations of fact, Defendant denies those allegations.

1 141. Defendant expressly denies that Plaintiffs are entitled to any relief, including but not  
2 limited to the relief sought by Plaintiffs in their Fourth Amended Complaint.

3 **FIFTH CLAIM FOR RELIEF**

4 (Title VII of the Civil Rights Act of 1964  
5 42 U.S.C. §§2000(e), *et seq.* for Retaliation Against Plaintiff Sasaki)

6 142. Defendant incorporates its answers to Paragraphs 1 through 114 as and for its answer to  
7 Paragraph 142.

8 143. Paragraph 143 contains conclusions of law as opposed to allegations of fact, and as such,  
9 no answer is required. To the extent that Paragraph 143 purports to contain any allegations of fact,  
10 Defendant denies those allegations.

11 144. Defendant denies the allegations of Paragraph 144.

12 145. Defendant denies the allegations of Paragraph 144.

13 146. Paragraph 146 contains conclusions of law as opposed to allegations of fact, and as such,  
14 no answer is required. To the extent that Paragraph 146 purports to contain any allegations of fact,  
15 Defendant denies those allegations.

16 147. Defendant expressly denies that Plaintiffs are entitled to any relief, including but not  
17 limited to the relief sought by Plaintiffs in their Fourth Amended Complaint.

18 **RELIEF ALLEGATIONS**

19 148. Paragraph 148 contains conclusions of law as opposed to allegations of fact, and as such,  
20 no answer is required. To the extent that Paragraph 148 purports to contain any allegations of fact,  
21 Defendant denies those allegations.

22 149. Paragraph 149 contains conclusions of law as opposed to allegations of fact, and as such,  
23 no answer is required. To the extent that Paragraph 149 purports to contain any allegations of fact,  
24 Defendant denies those allegations.

25 **DENIAL OF PRAYER FOR PRAYER**

26 Defendant expressly denies that Plaintiffs are entitled to any relief, including but not limited to  
27 the relief sought by Plaintiffs in their Fourth Amended Complaint. Defendant generally denies any  
28 allegations of Plaintiffs' Fourth Amended Complaint not specifically admitted herein.



1 **DEFENSES**

2 In further answer to the Fourth Amended Complaint, and pursuant to Rule 8 of the Federal Rules  
3 of Civil Procedure, Defendant states as follows for its defenses:

4 **FIRST DEFENSE**

5 **(Statute of Limitations)**

6 Plaintiffs' claims are limited by applicable statutes of limitations, including, but not limited to,  
7 42 U.S.C. § 2000e-5 and California Government Code § 12960, as established by the dates of their  
8 administrative and judicial filings.

9 **SECOND DEFENSE**

10 **(Scope of Administrative Charge)**

11 Plaintiffs' claims are limited by the scope of the charges filed with the Equal Employment  
12 Opportunity Commission or the California Department of Fair Employment and Housing.

13 **THIRD DEFENSE**

14 **(Failure to Mitigate)**

15 Plaintiffs Horstman and Ellis voluntarily resigned their employment with Costco and, on  
16 information and belief, have failed to make reasonable efforts to find comparable employment.

17 **FOURTH DEFENSE**

18 **(Lack of Standing)**

19 As a current Assistant General Manager, Elaine Sasaki lacks standing to assert any claim for a  
20 discriminatory failure to promote to AGM.

21 **FIFTH DEFENSE**

22 **(Good Faith)**

23 Plaintiffs are not entitled to recover punitive damages since Defendant cannot be vicariously  
24 liable for discriminatory employment decisions of managers. Costco's employment policies forbid  
25 discrimination on the basis of gender.

1 **SIXTH DEFENSE**

2 **(Same Action)**

3 Defendant would have taken the same action with respect to the Plaintiffs in the absence of an  
4 impermissible motivating factor. 42 U.S.C. § 2000e-5(g)(B). Plaintiff Sasaki at relevant times lacked  
5 outstanding performance evaluations. Plaintiff Horstman at relevant times had disclaimed interest in  
6 promotion or rotation. Plaintiff Ellis lied in obtaining employment and abused her subordinates and  
7 indicated she was limited geographically.

8 **SEVENTH DEFENSE**

9 **(After Acquired Evidence)**

10 Discovery disclosed information that, if timely discovered, would have resulted in denial of hire  
11 to Ellis or the termination of her employment. She misrepresented her employment status at her former  
12 employer, leading Defendant to believe she was a success there when in fact she was a failure. Had  
13 Defendant known of this conduct, it would not have hired her, and it would have terminated her  
14 employment upon learning of it.

15 **EIGHTH DEFENSE**

16 **(Business Necessity)**

17 Insofar as Defendant's promotion practices, or any other employment policy or procedure  
18 utilized by Defendant, has had an adverse impact on women, such policies or practices nevertheless are  
19 lawful as job related and consistent with business necessity.

20 WHEREFORE, Defendant prays:

- 21 1. That Plaintiffs take nothing by their Fourth Amended Complaint;  
22 2. For attorneys' fees and costs of suit; and  
23 3. For such other and further relief as the Court deems just and proper.

