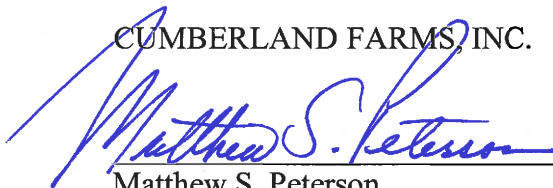


**CERTIFICATION**

I, Matthew S. Peterson , hereby certify the following:

1. I am employed by Cumberland Farms, Inc., the defendant in the above-entitled action, and sign the foregoing Answers to Interrogatories for and on behalf of the said defendant and am duly authorized to do so.
  
2. The matters stated in the foregoing answers to Interrogatories are not within my personal knowledge and I am informed that there is no single official of Cumberland Farms, Inc. who has personal knowledge of all such matters and that the matters stated in the foregoing Answers to Interrogatories have been assembled by representatives of and counsel to the defendant, Cumberland Farms, Inc.
  
3. I am informed by said representatives and counsel that the matters set forth in the aforesaid Answers to Interrogatories are in accordance with the information available to the defendant and are true insofar as it is possible to verify them.

CUMBERLAND FARMS, INC.



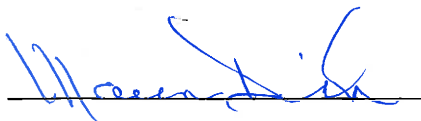
Matthew S. Peterson  
Risk Management

COMMONWEALTH OF MASSACHUSETTS)

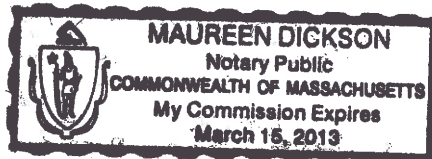
ss)

COUNTY OF MIDDLESEX )

On this 24<sup>th</sup> day of December, 2012, before me, the undersigned notary public, personally appeared Matthew Peterson, proved to me through satisfactory evidence of identification, which were personally known, to be the person whose name is signed on the preceding or attached document in my presence.

 (Notary Public)

My commission expires: March 15, 2013



COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF THE TRIAL COURT

HAMPDEN, ss

SUPERIOR COURT  
C.A. NO. 12-448

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ALBERT R. DUBUQUE, JR., EXECUTOR  
OF THE ESTATE OF KIMMY A.  
DUBUQUE,  
Plaintiff,

v.

CUMBERLAND FARMS, INC. and V.S.H.  
REALTY, INC.,  
Defendants.

---

**CUMBERLAND FARMS, INC'S RESPONSE TO  
PLAINTIFF'S FIRST SET OF INTERROGATORIES**

Defendant Cumberland Farms, Inc ("Cumberland") herein submits its Answers to Plaintiff's First Set of Interrogatories in accordance with Massachusetts Rules of Civil Procedure and Superior Court Standing Order 1-09.

**GENERAL OBJECTIONS**

1. Cumberland anticipates that additional discovery, investigation and analysis may supply additional facts, add meaning to known facts, or establish new factual and legal contentions, and therefore, it provides these responses without prejudice to its right to supplement its responses or introduce evidence of any subsequently discovered facts, writings, interpretations, or to modify or amend its responses.

2. Cumberland objects to these Interrogatories to the extent they seek confidential, proprietary and/or trade secret information. For each response for which plaintiff seeks information that is confidential or proprietary or which contains trade secrets and to which Cumberland states that it will produce documents, it will do so only after a protective order is in place to ensure the protection of confidential, proprietary or trade secret information.

3. Cumberland objects to these Interrogatories to the extent they seek to impose obligations beyond those imposed by the Massachusetts Rules of Civil Procedure. Cumberland also objects to producing documents at plaintiff attorney's office and states that documents will be produced, upon request, at the undersigned counsel's office at a mutually convenient time.

4. Cumberland objects to the definitions offered by the plaintiff to the extent they attempt to impose obligations beyond the scope of permissible discovery permitted by Mass. R. Civ. P. 26. Cumberland specifically objects to plaintiff's definition of the term "Barrier" and answers any interrogatory containing this term based upon the common understanding of the term.

5. Cumberland also objects to these Interrogatories because they are over broad and unduly burdensome in going beyond the scope of permissible discovery permitted by Mass. R. Civ. P. 26 to the extent that the plaintiffs seek information that is not relevant to the pending action against Cumberland. Cumberland shall limit its responses to information that it believes to be relevant to the pending action.

Subject to and without waiving any of the foregoing general objections and reservations, which are incorporated in each response to these Interrogatories, Cumberland responds:

### **ANSWERS TO INDIVIDUAL INTERROGATORIES**

#### **INTERROGATORY NO. 1:**

Please identify the person answering these interrogatories fully, including full name, date of birth, current residential and business address and occupation.

#### **RESPONSE:**

The person answering these interrogatories is Cumberland. No individual person is answering them because no individual person is a defendant in the action and interrogatories may only be served on parties to the action. These responses have been verified on Cumberland's behalf by Matthew Peterson whom Cumberland has authorized to verify them for it. Cumberland's primary business address is 100 Crossing Boulevard, Framingham, MA 01702. Since Cumberland is a corporation it has no date of birth, residence or occupation. Cumberland objects to this interrogatory as seeking irrelevant, but private, information about non-parties to the action insofar as it seeks the date of birth and addresses of Matthew Peterson.

#### **INTERROGATORY NO. 2:**

Please identify all persons consulted in responding to these Interrogatories (with the exception of your counsel).

#### **RESPONSE:**

Cumberland objects to this Interrogatory as seeking irrelevant information and information protected by the work product immunity insofar as it seeks identification of everyone who was "consulted in responding to these Interrogatories." Subject to this objection, Cumberland states that these responses have been verified on Cumberland's behalf by Matthew Peterson, whom Cumberland has authorized to verify them for it. Cumberland objects to this interrogatory to the

extent it seeks irrelevant, but private, information about non-parties to the action insofar as it seeks the address of Matthew Peterson. Cumberland also consulted Fran Shefflin, Director of Planning, Dino DeThomas, Senior Vice President for Real Estate, and Tom Cacciola, Director of Facilities Support Services.

INTERROGATORY NO. 3:

If you contend that someone else is partly liable, or wholly liable, for the damages alleged in this suit, please identify that person and for each, please state the basis for your contentions.

RESPONSE:

Mr. Skowrya is wholly liable for the damages alleged in this suit because he lost control of his motor vehicle and drove it at a very high rate of speed from Front Street, across the parking lot of the Cumberland Farms store and into the store, instantly killing Mrs. Dubuque.

INTERROGATORY NO. 4:

Identify any policy of liability insurance which might provide coverage for this incident, including but not limited to the insurer, the amount and types of liability coverage for bodily injury, deductibles or self-insured retentions, etc.

RESPONSE:

Cumberland objects to this interrogatory because it is overbroad, overly burdensome and seeks irrelevant information. Without waiving this objection, Cumberland states that it is covered by Chartis general liability insurance policy number GL 714-63-39 for \$1.5 million dollars.

INTERROGATORY NO. 5:

Identify all property insurance carriers for all property owned or operated by Cumberland Farms from January 1, 2004 to the present, stating in your answer the policy numbers for each insurance carrier, as well as limitations of coverage for each insurance carrier.

RESPONSE:

Cumberland objects to this interrogatory because it is grossly overbroad, burdensome and seeks irrelevant information that is, however, commercially sensitive.

INTERROGATORY NO. 6:

Identify Cumberland Farm's risk manager(s) and safety manager(s) from 2004 to the present.

RESPONSE:

Thomas Masiello, Jr. has been Cumberland's Risk Manager and John Wojtas has been Cumberland's Safety Manager throughout the requested time period.

INTERROGATORY NO. 7:

Identify the person(s) with overall responsibility for maintenance of parking areas and pedestrian walkways from 2004 to the present for the defendant's operations nationally and in the Massachusetts region.

RESPONSE:

Cumberland objects to this interrogatory because it is overbroad, overly burdensome and seeks irrelevant information. Without waiving this objection, Cumberland states that maintenance of parking areas and pedestrian walkways includes such tasks as removal of trash and debris, the cleaning of spills and removal of snow and ice, among others. Day to day responsibility for such routine tasks resides at the individual store level. Prior to 2009, maintenance of parking areas and pedestrian walkways that was not routine was managed and coordinated at the division level within Cumberland, with each division having a maintenance supervisor responsible for the stores within the division. [Who was responsible for the Chicopee store between 2004 – 2009?] In 2009, responsibility for the maintenance of parking areas across all Cumberland stores was consolidated at the corporate level under Tom Cacciola, Director of Facilities Support Services, who now has overall managerial responsibility for maintenance of parking areas and pedestrian walkways at stores in Massachusetts.

WILL  
MILLER

INTERROGATORY NO. 8:

With respect to the Premises, please describe with specificity all modifications, improvements or repairs of whatever sort, made from January 1, 2004 to the present, to the area outside the building, including parking areas, pedestrian walkways, parking lot, sidewalk, driveways, and including in your answer the date(s) of such improvement, modification or repair, the reason for such modification, improvement or repair, the identification of the contractor who performed the improvement, modification or repair.

RESPONSE:

Cumberland objects to this interrogatory because it is grossly overbroad, overly burdensome and seeks irrelevant information. Cumberland limits its answer to this interrogatory to improvements to the Premises related to the installation of bollards. Without waiving this objection, Cumberland states that following the Incident, bollards were installed between the pedestrian walkway in front of the Premises and the adjacent parking area. Nine 4" steel, concrete filled bollards were installed in the parking area and next to the existing parking curb at approximately 6 feet on center and 3 feet below grade in a concrete footing. Aharonian and Associates were the

architects hired for the store repairs, D.L. Poulin, Inc. was the general contractor, and FSS Maintenance was the subcontractor. The bollards were installed in the summer or fall of 2011.

INTERROGATORY NO. 9:

Describe all measures taken by Cumberland Farms at the Premises to prevent motor vehicles from striking the front of the store or persons inside the store or on pedestrian walkways in front of the store in effect at the time of the incident.

RESPONSE:

Cumberland objects to this interrogatory because it is grossly overbroad, overly burdensome and seeks irrelevant information. Without waiving this objection, Cumberland states that at the time of the Incident, persons inside the Premises were protected from being struck by a motor vehicle being operated at a low-speed by a small sidewalk curb measuring 2-3" in height and by the building structure itself.

INTERROGATORY NO. 10:

State the basis why no barrier was present in the front of the Premises between the pedestrian walkway and entrance and the parking area on November 28, 2010.

RESPONSE:

Barriers were not present when the Premises was purchased by Cumberland.

INTERROGATORY NO. 11:

Please list all incidents or accidents, including:

- a. Identity of operators
- b. Dates and locations of incidents or accidents
- c. Description of incidents or accidents
- d. Description of amount and type of damage caused

concerning motor vehicles striking stores owned or operated by Cumberland Farms from January 1, 2004 to the present, where damage to the store exceeded \$500.

RESPONSE:

Cumberland objects to this interrogatory because it is grossly overbroad, overly burdensome and seeks irrelevant information. Cumberland limits its response to accidents similar to the Incident where vehicles traveling at a very high rate of speed jumped the curb and pedestrian walkway before coming into contact with a Cumberland storefront and/or a pedestrian in the vicinity of

the building's storefront entrance. Without waiving this objection, Cumberland refers the plaintiff to the incident reports produced in response to his request for production of documents.

INTERROGATORY NO. 12:

Please identify all incidents or accidents concerning motor vehicles striking pedestrians on property owned or operated by Cumberland Farms from January 1, 2004 to the present including:

- a. Identity of operators and persons struck
- b. Dates and locations of incidents or accidents
- c. Description of incidents or accidents
- d. Description of type of damage caused

RESPONSE:

Please refer to Cumberland's answer to interrogatory 11.

INTERROGATORY NO. 13:

Please provide the dates, location, insurer, claim and policy number for any and all incidents or accidents on all real property owned or operated by Cumberland Farms, caused by motor vehicles striking Cumberland Farms' store buildings from January 1, 2004 to the present, where claim was made to a Cumberland Farms insurer or the insurer of a third party, including in your answer, the identity of the drivers, the nature of the damage, the total amount of damage claimed and any amount paid by said insurer.

RESPONSE:

Please refer to Cumberland's answer to interrogatory 11.

INTERROGATORY NO. 14:

Please identify, including in your answer, the insurer and claim number, any and all claims made against Cumberland Farms, whether or not such claims resulted in lawsuits, dating back to January 1, 2004, which were the result of motor vehicles striking buildings or persons on any property owned or operated by Cumberland Farms.

RESPONSE:

Please refer to Cumberland's answer to interrogatory 11.

INTERROGATORY NO. 15:

Please identify, including in your answer, the parties, court, docket number and outcome, any and all lawsuits filed against Cumberland Farms since January 1, 2004, which concern motor vehicles striking building or persons on any real property owned or operated by Cumberland Farms.

RESPONSE:

Please refer to Cumberland's answer to interrogatory 11.

INTERROGATORY NO. 16:

If, since January 1, 2004, Cumberland Farms has received any communication concerning unsafe conditions in or on real property owned or operated by Cumberland Farms claiming that such conditions presented a danger to pedestrians from collision with motor vehicles, please identify for each and every communication:

- a. The author or speaker (including name and address)
- b. Date of communication
- c. Who was the recipient of said communication
- d. Action, if any taken by Cumberland Farms or any other agency acting on behalf of Cumberland Farms; and
- e. The substance of said communication.

RESPONSE:

Cumberland objects to this interrogatory because it is grossly overbroad, overly burdensome and seeks irrelevant information. Cumberland limits its response to communications concerning the existence or placement of bollards outside the front entrances of its stores and states that there are none, other than a letter received several years ago by Thomas Masiello, Jr. from Attorney Paul Weinberg concerning the need for bollards at Cumberland stores. That letter is no longer in the possession of Cumberland. To the extent that this interrogatory seeks information also requested by interrogatories 11, 12, 13, 14 or 15, please see the answers to those interrogatories.

INTERROGATORY NO. 17:

For each store owned or operated by Cumberland Farms in the Commonwealth of Massachusetts as of November 28, 2010, please specify:

- a. Which of the following features were in place at any time on or before November 28, 2010 between pedestrian walkways or store entrances and parking areas:
  - I. Bollards, posts or other barriers
  - II. Parallel parking only zones
  - III. No parking zones
- b. Where said features were placed



- c. The date(s) such features were put in place
- d. The reasons said features were put in place (i.e. compliance with zoning regulations, prior accident, general upkeep etc)
- e. If said features were ever removed or altered, the date(s) of such removal or alteration and the reason for such removal or alteration.

RESPONSE:

Cumberland objects to this interrogatory because it is overbroad, overly burdensome and seeks irrelevant information. Since Mr. Skowrya was not parking his vehicle at the time of the Incident but rather travelling at a very high rate of speed across the parking lot after losing control of his vehicle, Cumberland limits its response to existence and placement of bollards at its storefronts as of November 28, 2010. Without waiving this objection Cumberland states that the bollard program contract was signed and the program began on May 16, 2011. The first site was completed May 18, 2011 and sixteen additional sites were completed prior to Labor Day of that year. The following stores had bollards in place as of November 28, 2010: 2 Sugarloaf Street in South Deerfield, MA; 864 Stafford Road in Fall River, MA; and 435 Shore Road in Bourne, MA.

INTERROGATORY NO. 18:

Please identify each and every employee, agent or contractor of Cumberland Farms who is or was responsible from January 1, 2004 to the present, for the designing of any and all future Cumberland Farms to be built, or the hiring of outside agencies to design any and all future Cumberland Farms to be built, listing said outside agency, whether or not the proposed Cumberland Farms were ever in fact built.

RESPONSE:

Cumberland objects to this interrogatory because it is overbroad, overly burdensome and seeks irrelevant information. Without waiving this objection, Fran Shefflin is the person with overall responsibility for designing future Cumberland Farms stores to be built in Massachusetts and has had that responsibility throughout the requested time period.

INTERROGATORY NO. 19:

Please identify each and every manufacturer, fabricator and distributor of any and all barriers (as defined above in Definitions section M) in place between pedestrian walkways and store entrances and parking areas on premises owned or operated by Cumberland Farms in Massachusetts from January 1, 2001 to the present, including in your answer as to each barrier, a description, including specifications as to height, width or circumference and composition.

RESPONSE:

Cumberland objects to this interrogatory because it is overbroad as to scope and timeframe, overly burdensome and seeks irrelevant information. Cumberland limits its response to manufacturers, fabricators and distributors of the bollards installed at its stores since the bollard program was initiated on May 16, 2011. See Cumberland's response to interrogatory number 17 for further information about that program. The bollards installed as part of the Cumberland bollard program were installed by Solutions Buy Imports, LLC ("SBI") located at 21739 State Hwy. 64, Canton, TX 75103. The specification for the bollards obtained from SBI is a 4" diameter schedule 20 steel pipe 7'-0" in length. They are installed 3'-0" below grade and 4'-0" above grade. The pipe is then filled with concrete and installed into a concrete footing. Finally the pipe is covered with a PVC sleeve with two bands of reflective tape at the top of each bollard. The bollards are installed as close to the face of the concrete sidewalk as possible and at 6'-0" on center. Encore Commercial Products, Inc. in Southfield, Michigan sold the steel guard pipe used for the bollards to Cumberland Farms.

INTERROGATORY NO. 20:

Please identify each expert witness you plan to call to trial, including:

- a. His or her name, address and field(s) of specialty;
- b. The subject matter of which they are expected to testify;
- c. The substance of the facts and opinions to which the expert is expected to testify;
- d. A summary of the grounds for each opinion;
- e. Full identifications of all books, journals, articles, or other publications or treatises consulted or relied upon; and
- f. All documents, records, or other things examined or reviewed.

RESPONSE:

Cumberland objects to this interrogatory because it is premature. Cumberland will disclose its experts as required by Massachusetts Rules of Civil Procedure and according to the court's scheduling order in this case.

INTERROGATORY NO. 21:

Please identify any person likely to have knowledge concerning any discoverable matter relevant to the subject matter of Plaintiff's Complaint or any defense and, in addition to the information sought in the definition of "identify", briefly state the substance of each person's knowledge of any discoverable matter. Identify all relevant documents with respect to each such person.

RESPONSE:

Cumberland objects to this interrogatory because it is so overly broad as to be unanswerable. It is plaintiff's obligation, not Cumberland's, to identify matters about which to seek discoverable information. Without waiving this objection, Cumberland states that plaintiff, Mr. Skowrya, a customer in the store at the time of the accident named John Smith, the store employee present at

the time of the accident and the Massachusetts State Police may have information about the details and immediate aftermath of the accident. Also, the persons referenced by Cumberland in its answers to these interrogatories may have discoverable information concerning the areas referenced in the applicable interrogatory.

As to Objections:

DEFENDANT,  
CUMBERLAND FARMS, INC.,  
BY IT'S ATTORNEYS,

---

Richard P. Campbell (BBO#071600)  
Richard L. Campbell (BBO#663934)  
CAMPBELL CAMPBELL EDWARDS &  
CONROY, P.C.  
One Constitution Center, 3<sup>rd</sup> Floor  
Boston, MA 02129  
(617) 241-3000

**CERTIFICATE OF SERVICE**

I, Richard L. Campbell, hereby certify that a true copy of the above document was served via first class mail on \_\_\_\_\_ upon the following parties of record:

Paul S. Weinberg, Esq.  
Weinberg & Garber P.C.  
71 King Street  
Northampton, MA 01060

Robert J. Lefebvre, Esq.  
Gelinias & Lefebvre, P.C.  
554 Grattan Street  
Chicopee, MA 01020

\_\_\_\_\_  
Richard L. Campbell