

1 SHARON L. NELSON  
Nevada Bar No. 6433  
2 NELSON LAW  
3 8670 West Cheyenne Avenue, Suite 120  
Las Vegas, NV 89129  
4 Telephone: (702) 247-4529  
Facsimile: (702) 737-4529  
5 Attorneys for Defendant  
6 Costco Wholesale Corporation

7 **UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF NEVADA**

9 GLENDA MAKEPEACE, individually,  
10 Plaintiff,

11 vs.

12 COSTCO WHOLESALE, CORPORATION,  
13 a Washington Corporation; DOES I-V; and  
14 ROE CORPORATIONS I-V, inclusive,

15 Defendants.

Case No:

**DEFENDANT COSTCO WHOLESALE  
CORPORATION'S NOTICE OF REMOVAL OF  
ACTION**

16 TO: UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

17 PLEASE TAKE NOTICE that Defendant Costco Wholesale Corporation (hereinafter referred to  
18 as "Costco"), by and through its counsel, Nelson Law, hereby files this Notice of Removal of Action of  
19 this cause from the Eighth Judicial District Court of the State of Nevada, Case No. A639147 (the "State  
20 Action"), in which it is now pending, to the United States District Court for the District of Nevada, and  
21 respectively states as follows:

22 1. The jurisdiction of this court is invoked under 28 U.S.C. § 1332.

23 2. On April 13, 2011, Plaintiff Glenda Makepeace (hereinafter referred to as "Plaintiff")  
24 filed Plaintiff's Complaint against Costco in the State Action, which Complaint, together with a  
25 Summons and Demand for Jury Trial, were served on Costco on May 11, 2011. Copies of all pleadings,  
26 process and order served in the State Action are appended.  
27

28 3. Grounds for removal exist based on diversity jurisdiction under 28 U.S.C. § 1332.

1 Plaintiff is a resident of Nevada. Costco is a Washington Corporation with its principal places of  
2 business in Washington State. Various corporate officers, directors and departments are located in  
3 Washington State. Pursuant to 28 U.S.C. § 1441(a), the citizenship of defendants sued under fictitious  
4 names is to be disregarded. Costco is not a citizen of Nevada and complete diversity of citizenship  
5 exists between Plaintiff and Costco.  
6

7 While Costco denies any liability to Plaintiff, the amount in controversy, exclusive of interest  
8 and costs, exceeds \$75,000.00.<sup>1</sup> The Complaint alleges Plaintiff was an “invitee” of Costco and fell out  
9 of a display chair that was missing a wheel; that Costco “failed to place signs, caution, warn or otherwise  
10 make safe the dangerous condition.” Plaintiff has undergone surgery and seeks in excess of \$75,000.00.  
11

12 Finally, Plaintiff has not filed anything in the State Action indicating an intention not to seek  
13 more than \$75,000.00 in the litigation. This creates an inference Plaintiff thinks her case may be worth  
14 more. *Workman v. United Parcel Services, Inc.*, 234 F.3d 998, 1000 (7th Circ. 2000).

15 4. This Notice of Removal of Action is executed pursuant to Rule 11 of the Federal Rules of  
16 Civil Procedure.

17 Dated this 23 day of May 2011.

18 **NELSON LAW**

19  
20  
21 

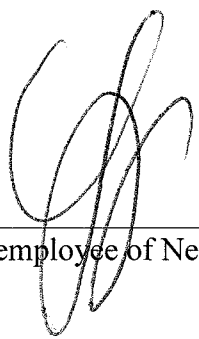
22 SHARON L. NELSON  
23 Nevada Bar No. 6433  
24 8670 West Cheyenne Avenue, Suite 120  
25 Las Vegas, NV 89129  
26 Attorneys for Defendant  
27 Costco Wholesale Corporation

28 <sup>1</sup> The Complaint only seeks damages in excess of \$10,000.00, but pursuant to Nevada Rules of Civil Procedure 8(a), Plaintiff could not specify a greater sum of damages.

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that I am an employee of Nelson Law and on this 23 day of May 2011, a true and correct copy of the **COSTCO WHOLESALE CORPORATION'S NOTICE OF REMOVAL OF ACTION** was served via U.S. Mail, postage prepaid, upon the following counsel of record as follows:

Corey M. Eschweiler  
Adam D. Smith  
Glen J. Lerner & Associates  
4795 South Durango Drive  
Las Vegas, NV 89147  
Attorneys for Plaintiff  
Glenda Makepeace



---

An employee of Nelson Law

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**A- 11- 639147- C**

CIVIL COVER SHEET  
CIVIL COVER SHEET

Clark County, Nevada

Case No. \_\_\_\_\_

(Assigned by Clerk's Office)

III

**I. Party Information**

Plaintiff(s) (name/address/phone): GLENDA MAKEPEACE

Defendant(s) (name/address/phone): COSTCO WHOLESALE CORPORATION

Attorney (name/address/phone):

Adam D. Smith, Esq., Glen J. Lerner & Associates; 4795 S. Durango Dr., Las Vegas, NV 89147 (702) 877-1500

Attorney (name/address/phone):

**II. Nature of Controversy** (Please check applicable bold category and applicable subcategory, if appropriate)

Arbitration Requested

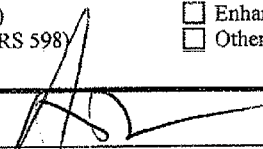
**Civil Cases**

Real Property	Torts	
<input type="checkbox"/> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> <b>Title to Property</b> <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> <b>Condemnation/Eminent Domain</b> <input type="checkbox"/> <b>Other Real Property</b> <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<input type="checkbox"/> <b>Negligence</b> <input type="checkbox"/> Negligence - Auto <input type="checkbox"/> Negligence - Medical/Dental <input checked="" type="checkbox"/> <b>Negligence - Premises Liability</b> (Slip/Fall) <input type="checkbox"/> Negligence - Other	<input type="checkbox"/> <b>Product Liability</b> <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> <b>Intentional Misconduct</b> <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> <b>Employment Torts</b> (Wrongful termination) <input type="checkbox"/> <b>Other Torts</b> <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition
Probate	Other Civil Filing Types	
<input type="checkbox"/> <b>Summary Administration</b> <input type="checkbox"/> <b>General Administration</b> <input type="checkbox"/> <b>Special Administration</b> <input type="checkbox"/> <b>Set Aside Estates</b> <input type="checkbox"/> <b>Trust/Conservatorships</b> <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> <b>Other Probate</b>	<input type="checkbox"/> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> <b>Breach of Contract</b> <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> <b>Civil Petition for Judicial Review</b> <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	<input type="checkbox"/> <b>Appeal from Lower Court</b> (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> <b>Civil Writ</b> <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> <b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment - Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters

**III. Business Court Requested** (Please check applicable category, for Clark or Washoe Counties only.)

- |   |  |   |
|---|--|---|
| <input type="checkbox"/> NRS Chapters 78-88   | <input type="checkbox"/> Investments (NRS 104 Art. 8)        | <input type="checkbox"/> Enhanced Case Mgmt/Business  |
| <input type="checkbox"/> Commodities (NRS 90) | <input type="checkbox"/> Deceptive Trade Practices (NRS 598) | <input type="checkbox"/> Other Business Court Matters |
| <input type="checkbox"/> Securities (NRS 90)  | <input type="checkbox"/> Trademarks (NRS 600A)               |   |

4-13-11  
Date

  
Signature of initiating party or representative

Electronically Filed  
04/13/2011 11:07:02 AM  
04/13/2011 11:07:02 AM

  
CLERK OF THE COURT

**COMP**

Corey M. Eschweiler, Esq.  
Nevada Bar No. 6635  
Adam D. Smith, Esq.  
Nevada Bar No. 9690  
**GLEN J. LERNER & ASSOCIATES**  
4795 South Durango Drive  
Las Vegas, Nevada 89147  
Telephone: (702) 877-1500  
Facsimile: (702) 933-7043  
E-mail: ceschweiler@glenlerner.com  
asmith@glenlerner.com  
Attorneys for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

GLEND A MAKEPEACE, individually,  
Plaintiff,

vs.

COSTCO WHOLESALE CORPORATION, a  
Washington Corporation; DOES I-V; and ROE  
CORPORATIONS I-V, inclusive,  
Defendants.

**A- 11- 639147- C**

CASE NO.  
DEPT. NO.

**III**

COMPLAINT

**ARBITRATION EXEMPT**  
**[Amount in Controversy Exceeds \$50,000]**

Plaintiff complains as follows:

GENERAL ALLEGATIONS

1. Plaintiff is, and at all times relevant herein, was, a resident of Clark County, Nevada.
2. The actions complained of herein occurred in Clark County, Nevada.
3. Defendant COSTCO WHOLESALE CORPORATION (hereinafter "COSTCO") is, and at all times mentioned herein an entity conducting business in Clark County, Nevada.

4. The true names and capacities of the Defendants designated herein as Doe or Roe Corporations are presently unknown to Plaintiff at this time, who therefore sues said Defendants by such fictitious names. When the true names and capacities of these defendants are ascertained, Plaintiffs will amend this Complaint accordingly.

5. At all times pertinent herein, Defendants were agents, servants, employees or joint venturers of every other Defendant, and at all times mentioned herein were acting within the scope and course of said agency, employment, or joint venture, with knowledge and permission and consent of all other named

1 Defendants.

2 6. On September 19, 2009, Plaintiff was an invitee of COSTCO in Henderson, Nevada  
3 (hereafter the "Property").

4 7. Defendants maintained and were in control of the Property.

5 8. While visiting the Property, Plaintiff fell out of a display chair with a missing wheel  
6 (hereafter the "dangerous condition").

7 9. Defendants failed to place signs, caution, warn or otherwise make safe the dangerous  
8 condition.

9 10. Defendants should have warned or otherwise made safe the dangerous condition because  
10 that condition was non-obvious to Plaintiff.

11 11. Defendants negligently, carelessly, and recklessly maintained, and allowed the dangerous  
12 condition to exist.

13 **FIRST CAUSE OF ACTION**

14 12. Plaintiff incorporates paragraphs 1 through 11 of the Complaint as if those paragraphs were  
15 fully incorporated herein.

16 13. Defendants owed Plaintiff a duty of care to warn Plaintiff of the non-obvious and dangerous  
17 condition.

18 14. Defendants breached this duty of care by failing to warn Plaintiff of the dangerous, non-  
19 obvious condition.

20 15. Defendants' negligence directly and proximately caused Plaintiff serious injury.

21 16. As a direct and proximate result of Defendants' negligence, Plaintiff received medical and  
22 other treatments for injuries sustained to her body, limbs, organs and nervous systems, all or some of which  
23 conditions may be permanent and disabling, and all to Plaintiff's damage in a sum in excess of \$10,000.00.  
24 Said services, care, and treatment are continuing and shall continue in the future.

25 17. As a direct and proximate result of Defendants' negligence, Plaintiff has been required to  
26 and has limited certain recreational activities, which have caused, and shall continue to cause loss of  
27 enjoyment of life.

28 18. Plaintiff has been required to engage the services of an attorney, incurring attorney's fees

1 and costs to bring this action.

2 WHEREFORE, Plaintiff expressly reserving the right to amend this complaint prior to or at the time  
3 of trial of this action, to insert those items of damage not yet fully ascertainable, prays judgment against all  
4 Defendants, and each of them, as follows:

- 5 1. For general damages in an amount in excess of \$10,000.00;
- 6 2. For special damages in an amount in excess of \$10,000.00;
- 7 3. For reasonable attorney's fees and costs;
- 8 4. For interest at the statutory rate; and
- 9 5. For such other relief as the Court deems just and proper.

10 GLEN J. LERNER & ASSOCIATES

11  
12 By: 

13 Corey M. Eschweiler, Esq.  
14 Nevada Bar No. 6635  
15 Adam D. Smith, Esq.  
16 Nevada Bar No. 9690  
17 4795 South Durango Drive  
18 Las Vegas, Nevada 89147  
19 Attorneys for Plaintiff  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **IAFD**

Corey M. Eschweiler, Esq.

2 Nevada Bar No. 6635

Adam D. Smith, Esq.

3 Nevada Bar No. 9690

**GLEN J. LERNER & ASSOCIATES**

4 4795 South Durango Drive

Las Vegas, Nevada 89147

5 Telephone: (702) 877-1500

6 Facsimile: (702) 933-7043

E-mail: ceschweiler@glenlerner.com

asmith@glenlerner.com

7 Attorneys for Plaintiff

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 GLENDA MAKEPEACE, individually,

11 Plaintiff,

12 v.

13 COSTCO WHOLESALE CORPORATION, a

14 Washington Corporation; DOES I - V; and

15 ROE CORPORATIONS I - V, inclusive,

16 Defendants.

Case No.:  
Dept. No.:

17 INITIAL APPEARANCE FEE DISCLOSURE  
18 (NRS CHAPTER 19)

19 Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for the  
20 parties appearing in the above entitled action as indicated below:

21 Glenda Makepeace \$270.00

22 TOTAL REMITTED: \$270.00

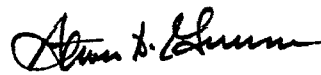
24 GLEN J. LERNER & ASSOCIATES

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

26 Corey M. Eschweiler, Esq.  
27 Nevada Bar No. 6635  
Adam D. Smith, Esq.  
28 Nevada Bar No. 9690  
4795 South Durango Drive  
Las Vegas, Nevada 89147  
Attorneys for Plaintiff



Electronically Filed  
04/14/2011 11:26:55 AM  
04/14/2011 11:26:55 AM

  
CLERK OF THE COURT

1 **DMJT**  
2 Corey M. Eschweiler, Esq.  
3 Nevada Bar No. 6635  
4 Adam D. Smith, Esq.  
5 Nevada Bar No. 9690  
6 **GLEN J. LERNER & ASSOCIATES**  
7 4795 South Durango Drive  
8 Las Vegas, Nevada 89147  
9 (702) 877-1500  
10 Fax: (702) 933-7043  
11 E-mail: [ceschweiler@glenlerner.com](mailto:ceschweiler@glenlerner.com)  
12 [asmith@glenlerner.com](mailto:asmith@glenlerner.com)

13 Attorneys for Plaintiff

14 **DISTRICT COURT**  
15 **CLARK COUNTY, NEVADA**

16 GLENDA MAKEPEACE, individually,

17 Plaintiff,

18 vs.

19 COSTCO WHOLESALE CORPORATION, a  
20 Washington Corporation; DOES I-V; and ROE  
21 CORPORATIONS I-V, inclusive,

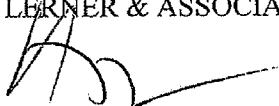
22 Defendants.

CASE NO. *A1039147*  
DEPT. NO. *111*

**DEMAND FOR JURY TRIAL**

23 COMES NOW, Plaintiff, GLENDA MAKEPEACE, by and through her attorneys of record,  
24 COREY M. ESCHWEILER, ESQ., and ADAM D. SMITH, ESQ., of GLEN J. LERNER &  
25 ASSOCIATES, and hereby demands a jury trial of all of the issues in the above matter.

26 GLEN J. LERNER & ASSOCIATES

27 By:   
28 ADAM D. SMITH, ESQ.  
Nevada Bar No. 9690  
4795 South Durango Drive  
Las Vegas, Nevada 89147  
Attorneys for Plaintiff