

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS

TRIAL COURT DEPARTMENT
SUPERIOR COURT
CIVIL ACTION NO. 13-00150

NILANTHI MOTSENIGOS,
on behalf of the Estate of Alexander
Motsenigos,

Plaintiff,

v.

DANA F.A. MCCOOMB,
C.J. MABARDY, INC., and
TRUCK LEASING FAMILY
LIMITED PARTNERSHIP,

Defendants

**PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO
DEFENDANT C. J. MABARDY, INCORPORATED**

COMES NOW, Plaintiff NILANTHI MOTSENIGOS, by and through her counsel of record, and submits the following Request for Production of Documents to Defendant C. J. MABARDY, INCORPORATED, pursuant to the Massachusetts Rules of Civil Procedure.

DEFINITIONS

As used herein, the terms listed below are defined as follows:

1. The term "**Document**" as used herein shall be given a very broad definition to include every type of paper, writing, data, record, graphic, drawing, photograph, audio recording and video recording. The term includes material in all forms, including printed, written, recorded, or other. The term includes all files, records and data contained in any computer system, computer component and/or computer storage (e.g., hard drive, disc, magnetic tape, backup system, cloud,

etc.). This term includes, but is not limited to, correspondence, reports, meeting minutes, memoranda, stenographic or handwritten notes, diaries, notebooks, account books, orders, invoices, statements, bills, checks, vouchers, purchase orders, studies, surveys, charts, maps, analyses, publications, books, pamphlets, periodicals, catalogues, brochures, schedules, circulars, bulletins, notices, instructions, manuals, journals, e-mails, e-mail attachments, data sheets, work sheets, statistical compilations, data processing cards, microfilms, computer records (including printouts, disks or other magnetic storage media), tapes, photographs (positive or negative prints), drawings, films, videotapes, hard drive recordings, pictures, and voice recordings. Plaintiff expressly intends for the term "Document" to include every copy of such writing, etc. when such copy contains any commentary or notation whatsoever that does not appear on the original and any attachments or exhibits to the requested document or any other documents referred to in the requested document or incorporated by reference.

2. "**Person**" means any natural person, corporation, partnership, proprietorship, association, organization, group of persons, or any governmental body or subdivision thereof.

3. (a) "**Identify**" with respect to any "**person**" or any reference to stating the "**identity**" of any "**person**" means to provide the name, home address, telephone number, business name, business address, and business telephone number of such person, and a description of each such person's connection with the events in question.

(b) "**Identify**" with respect to any "**document**" or any reference to stating the "**identification**" of any "**document**" means to provide the title and date of each such document, the name and address of the party or parties responsible for the preparation of each such document, the name and address of the party who requested or required the preparation of the document or on whose behalf it was prepared, the name and address of the recipient or recipients

of each such document, and the names and addresses of any and all persons who have custody or control of each such document, or copies thereof.

4. **"Subject Incident"** means the incident wherein Alexander Motsenigos was fatally injured which occurred on August 24, 2012, at or around 1:58 P.M., in Wellesley, Massachusetts.

5. **"You," "Your,"** or **"C. J. MABARDY"** means Defendant C. J. MABARDY, INCORPORATED.

6. **"DANA MCCOOMB"** means Defendant DANA MCCOOMB.

7. **"Similar"** shall have the meaning given in the American Heritage Dictionary, which is "showing some resemblance; related in appearance or nature; alike but not identical." As used here, the word "similar" shall not be limited as if modified by the word "substantially" and shall not mean "the same". If you limit the information provided because you use another interpretation of the word "similar," please state the interpretation you are using and reveal the nature of the information withheld.

8. The terms **"and"** as well as **"or"** shall be each construed conjunctively and disjunctively as necessary to bring within the scope of each interrogatory and request for documents all information and documents that might otherwise be construed to be outside its scope. The term **"and/or"** shall be construed likewise.

9. Whenever necessary to bring within the scope of an interrogatory or request for production of documents any information or document that might otherwise be construed to be outside its scope: (i) the use of a verb in any tense shall be construed as the use of the verb in all other tenses; (ii) the use of the singular shall be construed as the use of the plural and vice versa; and (iii) **"any"** includes **"all,"** and **"all"** includes **"any."**

10. With regard to any term used herein that is deemed by the responding party as being ambiguous or vague, a term shall be construed in its broadest sense to encompass all reasonable definitions of that term.

DOCUMENT REQUESTS

GENERAL

REQUEST NO. 1: A copy of each document utilized by you in any way in responding to Plaintiff's First Interrogatories to C. J. MABARDY.

REQUEST NO. 2: A copy of the document retention policy in effect for C. J. MABARDY at any time between the time of the Subject Incident and present.

REQUEST NO. 3: A copy of each insurance policy (and declarations page for each policy) that provides or may provide coverage for damages sustained in the Subject Incident.

REQUEST NO. 4: Copies of all reservation of rights letters and/or agreements regarding insurance coverage for the Subject Incident.

DRIVER

REQUEST NO. 5: All documents setting forth the relationship between DANA MCCOOMB and C. J. MABARDY as of the date of the Subject Incident. This includes, but is not limited to all leases, employment contracts, and independent contractor agreements and other contracts, agreements, memorandum and the like.

REQUEST NO. 6: The contents of DANA MCCOOMB's driver qualification file and all documents that demonstrate compliance with federal and state driver qualification laws and regulations. The requested documents include, but are not limited to all documents required by FMCSR, 49 CFR Part 391, and the state equivalent thereto. If any responsive documents have

been removed from the driver qualification file and reside in another file location, these should be produced nonetheless.

REQUEST NO. 7: All documents of any kind that relate to any pre-employment background investigation of DANA MCCOOMB, including without limitation any investigation of DANA MCCOOMB's qualifications, character, driving history, training, criminal history, drug use, financial responsibility, medical conditions, health conditions, and/or any other matter relevant to employment with C. J. MABARDY. This specifically includes all data and information obtained through FMCSA's Pre-Employment Screening Program.

REQUEST NO. 8: All documents that relate in any way to your recruiting of DANA MCCOOMB.

REQUEST NO. 9: All documents that relate in any way to you hiring DANA MCCOOMB.

REQUEST NO. 10: All documents that explain the orientation provided by C. J. MABARDY to DANA MCCOOMB and all documents used during orientation.

REQUEST NO. 11: All documents that demonstrate training of DANA MCCOOMB.

REQUEST NO. 12: All materials used to train DANA MCCOOMB.

REQUEST NO. 13: All quizzes, tests and/or other assessments (questions and answers) ever given by or on behalf of C. J. MABARDY to DANA MCCOOMB at any time. An answer key should also be provided.

REQUEST NO. 14: Copies of all documents (a) explaining how DANA MCCOOMB was compensated for the two weeks leading up to and including the date of the Subject Incident and extending one week after the date of the Subject Incident; and (b) showing any detention of wages over the same time period.

REQUEST NO. 15: A copy of the front and back of every driver's license issued to DANA MCCOOMB (regardless of name used) in your possession, custody and/or control.

REQUEST NO. 16: All documents placing you on notice of any violation by DANA MCCOOMB of any law, ordinance or regulation. This includes, but is not limited to, reports of violations pursuant to Section 391.27(a) of the Federal Motor Carrier Safety Regulations and any MVR.

REQUEST NO. 17: A copy of each traffic citation, FMCSA terminal or road equipment and driver compliance inspection, warning and/or citation issued to DANA MCCOOMB.

REQUEST NO. 18: All documents relating to any and all blood, urine or other type of drug or alcohol testing of DANA MCCOOMB in your possession, custody and/or control.

REQUEST NO. 19: A copy of all documents relating to any violation of any safety rule or principle by DANA MCCOOMB at any time.

REQUEST NO. 20: All documents of any kind that relate to any action (formal or informal) by any supervisor or manager or anyone working by or on behalf of C. J. MABARDY directed to DANA MCCOOMB for the purpose of teaching, counseling, disciplining, correcting or otherwise managing DANA MCCOOMB in any way relating to the safe operation of a commercial vehicle. This includes but is not limited to all disciplinary actions and the contents of all disciplinary folders or files of any kind by whatever name called.

REQUEST NO. 21: A copy of all documents in your possession relating in any way to any motor vehicle collision and/or accident of any kind in which DANA MCCOOMB has been involved.

REQUEST NO. 22: Copies of all documents relating to any complaint, criticism or concern raised by any person or entity regarding the driving performance and/or safety of DANA MCCOOMB. This should include, but is not limited to, customer complaints and call-ins by motorists either to company directly or to any service (i.e., How's My Driving? Call 800...)

REQUEST NO. 23: For each communication device (e.g., cell phones, PDAs, smartphones, texting and e-mailing devices, etc.) that was in the tractor that DANA MCCOOMB was operating at the time of the Subject Incident, produce all documents reflecting usage and billing for the time period beginning 48 hours before the Subject Incident and ending 48 hours after the Subject Incident. This includes all devices, whether owned by DANA MCCOOMB or not, and whether it was in use at the time of the Subject Incident or not.

REQUEST NO. 24: Copies of all documents prepared by DANA MCCOOMB that describes his observations of ALEX MOSTINEGOS on the date of the Subject Incident.

REQUEST NO. 25: All documents evidencing any evaluation of the driving abilities, safety, and/or performance of DANA MCCOOMB that has not been produced in response to the preceding Requests.

REQUEST NO. 26: A complete copy of the contents of each and every file (whether maintained physically, electronically or otherwise), regardless of what the file is called, regarding or addressing DANA MCCOOMB in any way, that has not been produced in response to other Requests above.

HOURS OF SERVICE RELATED DOCUMENTS

REQUEST NO. 27: A copy of all DANA MCCOOMB' hours of service logs and any other driving logs and/or time sheets for the period beginning 60 days before the Subject Incident and ending 7 days following the Subject Incident.

REQUEST NO. 28: In addition to the documents responsive to the preceding Request, all documents in your possession custody or control that can be used to verify whether DANA MCCOOMB's logs and time sheets for the period beginning 14 days before the Subject Incident and ending two days following the Subject Incident are correct. The requested documents, include, but are not limited to: driver's trip envelopes, trip reports, bills of lading, manifests, cargo documents, load documents of any kind, loading and unloading records, gate records, video, load detention records of any kind, freight bills, pick-up and delivery records of any kind, directions (e.g., routes to take), instructions (delivery notes, times, special handling), driver's trip check and settlement sheets, dispatch records, mileage reports, weight and scale records, receipts (for fuel, food, tolls, lodging, permits, repairs, and/or other purchases and expenses), final trip accounting documents and printouts, as well as any and all reports and/or summaries of any kind referencing the above information and all driver communication records

PLEASE NOTE – NOTHING IN THIS REQUEST SHOULD BE READ TO MEAN THAT PLAINTIFF IS NOT INTERESTED IN DEFENDANT MAINTAINING ALL INFORMATION REGARDING ALL COMMERCIAL DRIVING ACTIVITIES FOR SIX MONTHS PRECEDING THE INCIDENT AT ISSUE AND SINCE THE INCIDENT AT ISSUE. THESE MATERIALS SHOULD BE RETAINED IN THE EVENT THEY ARE REQUESTED.

REQUEST NO. 29: A copy of all audits and summaries of DANA MCCOOMB' hours of service covering the period beginning 180 days prior to the Subject Incident and ending 14 days following the Subject Incident.

REQUEST NO. 30: A copy of all hours of service audits and summaries for all drivers working under the authority of C. J. MABARDY covering the period beginning six months prior to the Subject Incident and ending 14 days following the Subject Incident.

VEHICLE INFORMATION

REQUEST NO. 31: For the tractor involved in the Subject Incident, produce the following documents:

- a. Title;
- b. Registration;
- c. All documents evidencing maintenance performed on the tractor at any time within 6 months before the Subject Incident;
- d. All documents evidencing any inspections of the tractor during the 6 months before the Subject Incident;
- e. All documents evidencing any repairs and/or modifications to the tractor at any time within 6 months before the Subject Incident;
- f. All documents evidencing any repairs made to the tractor as a result of the subject collision (including insurance submissions);
- g. All leases involving the vehicle;
- h. Documents evidencing the purchase of the vehicle;
- i. Documents evidencing the sale of the vehicle if it has been sold;
- j. Documents evidencing mileage and weight at time of the Subject Incident;
and
- k. Copies of each and every logbook, ledger, file or the like maintained for any reason regarding the vehicle.

REQUEST NO. 32: For the trailer involved in the Subject Incident, produce the following documents:

- a. Title;
- b. Registration;

- c. All documents evidencing maintenance performed on the trailer at any time within 6 months before the Subject Incident;
- d. All documents evidencing any inspections of the trailer during the 6 months before the Subject Incident;
- e. All documents evidencing any repairs and/or modifications to the trailer at any time within 6 months before the Subject Incident;
- f. All documents evidencing any repairs made to the trailer as a result of the subject collision (including insurance submissions);
- g. All leases involving the vehicle;
- h. Documents evidencing the purchase of the vehicle;
- i. Documents evidencing the sale of the vehicle if it has been sold;
- j. Documents evidencing milcage and weight at time of the Subject Incident; and
- k. Copies of each and every logbook, ledger, file or the like maintained for any reason regarding the vehicle.

REQUEST NO. 33: If any data is available (whether or not downloaded or retrieved) from the tractor or any part or system from the tractor (e.g., engine control module (ECM), event data recorder (EDR), Sensing Diagnostic Module (SDM), drive-train or transmission control unit, power steering unit, airbag module, ABS or other brake system, or any EOBR), please produce both the printout of the data and the data file in its original format. This request is intended to cover data for as long as it was recorded before during and after the Subject Incident.

REQUEST NO. 34: If any data is available (whether or not downloaded or retrieved) from the trailer or any part or system from the trailer (e.g., event data recorder, ABS or other

brake system, or any EOBR), please produce both the printout of the data and the data file in its original format. This request is intended to cover data for as long as it was recorded before during and after the Subject Incident.

REQUEST NO. 35: If the tractor at issue was equipped with a lane departure warning system or collision warning system (e.g., VORAD), please produce the printout of the downloaded data and to the degree possible produce the data file in its original format.

REQUEST NO. 36: Produce copies of all e-mails and texts between DANA MCCOOMB and anyone at C. J. MABARDY for the time period beginning 90 days prior to the Subject Incident and to the present.

REQUEST NO. 37: Produce the FleetMatics detailed report for the tractor that was driven by MCCOOMB every day for 90 days leading up to the collision.

REQUEST NO. 38: Produce copies of all communications and transmissions between DANA MCCOOMB and C. J. MABARDY that were transmitted through any system on-board of the tractor or trailer involved in the Subject Incident for the period beginning 30 days before the Subject Incident and ending seven days after the Subject Incident. This includes any and all satellite or cellular systems, regardless of manufacturer, and includes, without limitation, all electronic on-board recorders (EOBRs) and system such as those made available by Qualcomm, TransCore, SkyBitz, Fluensee, Fleetilla, Teletrac, Lat-Lon, Telogis, GeoLogic, Chectah, Xata, PeopleNet and other transportation service and product providers.

REQUEST NO. 39: If the tractor was equipped with any on-board audio or video recording or monitoring devices and/or any other driver or driver safety monitoring system, please produce everything that was retrieved or could be retrieved from such devices and systems.

REQUEST NO. 40: To the degree that it has not been produced in response to other Requests above, produce all data of any kind that was recovered from the tractor, the trailer and/or anything inside or connected to any part or system of the tractor and/or trailer that were involved in the Subject Incident.

REQUEST NO. 41: A copy of each out of service report or violation concerning the tractor and/or the trailer involved in the Subject Incident from the period beginning one year prior to the Subject Incident through present. This request includes any supplements, responses, amendments and dispositions regarding any violation.

REQUEST NO. 42: Produce all documents evidencing damage to any vehicle or other property as a result of the Subject Incident, including but not limited to repair estimates, appraisals, purchase invoices, repair bills, and checks or drafts reflecting payment for repair or replacement, and any other documents concerning or establishing the value of any item of property before or after the Subject Incident.

REQUEST NO. 43: For the tractor and trailer involved in the Subject Incident, produce all the Driver Vehicle Inspection Reports (DVIR) from the period beginning 90 days before the Subject Incident and ending one week after the Subject Incident.

REQUEST NO. 44: Produce all pre-trip inspection reports for the trip in question and three months prior to the date of the Subject Incident for the tractor and trailer.

LOAD

REQUEST NO. 45: All documents that relate to the load being hauled by DANA MCCOOMB at the time of the Subject Incident, including, by way of example and without limitation, all manifests, bills of lading, weight receipts, dispatch documents, content summaries, and documents that address the contents, ownership, pick-up, detainment, and delivery of the

load.

SUBJECT INCIDENT

REQUEST NO. 46: A copy of every document related to any investigation done by or on behalf of C. J. MABARDY of the scene of the Subject Incident.

REQUEST NO. 47: All documents authored by anyone working for or on behalf of C. J. MABARDY that set forth any facts relating to the Subject Incident.

REQUEST NO. 48: All documents that purport to explain what caused the Subject Incident.

REQUEST NO. 49: All documents assessing and/or discussing preventability of and/or fault for the Subject Incident.

REQUEST NO. 50: Copies of all photographs, video, computer simulations, and any other documents depicting:

- a. Any vehicle involved in the Subject Incident;
- b. Any person involved in the Subject Incident;
- c. The scene of the Subject Incident; and/or
- d. Any evidence (roadway markings or other) relevant to the Subject Incident.

REQUEST NO. 51: Copies of all reports relating to the Subject Incident including those prepared by DANA MCCOOMB and those prepared by anyone working for or on behalf of C. J. MABARDY.

REQUEST NO. 52: A copy of all correspondence and other communications (including e-mail) that you have had with any person other than your lawyer involving the Subject Incident.

REQUEST NO. 53: All tapes and transcripts of conversations, interviews, and/or

statements of any person who purports to know any facts or circumstances relevant to the issues of liability, comparative fault, causation and/or damages in this case.

REQUEST NO. 54: If an Accident Review Board or similar entity reviewed the Subject Incident on behalf of C.J MABARDY, produce the following:

- a. A copy of all documents (as defined) and other materials of any kind reviewed by said board or entity;
- b. A copy of all reports and documents (as defined) of any kind generated by said board or entity;
- c. Documents evidencing who was on the board;
- d. Documents evidencing all criteria for review; and
- e. Determination of preventability and all other conclusions reached by said board or entity.

GOVERNMENTAL INTERVENTION

REQUEST NO. 55: Copy of all documents evidencing and/or relating in any way to each intervention by the FMCSA alleging lack of compliance with Federal Motor Carrier Safety Regulations. This includes all communications of any kind in the past 5 years.

REQUEST NO. 56: Copy of all communications within the past five years between C.J MABARDY and any state agency or department addressing alleged safety issues or failures to comply with any law or regulation.

POLICIES AND PROCEDURES

REQUEST NO. 57: Copies of all C. J. MABARDY policies, procedures, rules, guidelines, directives, manuals, handbooks and instructions that were in effect at the time of the Subject Incident, relating to:

- a. Working for or with C.J. MABARDY (e.g., employee manual or handbook);
- b. Operation of any motor vehicle (e.g., driving manuals or handbooks, and the like);
- c. Operation of a commercial vehicle;
- d. Driving safety;
- e. Defensive driving;
- f. Compliance with federal and state laws and regulations;
- g. Accident investigation;
- h. Accident review boards;
- i. Determination of preventability of accidents;
- j. Hiring, training and supervising drivers; and
- k. Disciplinary actions.

REQUEST NO. 58: Copies of each document that DANA MCCOOMB signed to prove that DANA MCCOOMB received and/or agreed to be bound by any policies, procedures, rules, guidelines and/or standards of C. J. MABARDY.

REQUEST NO. 59: To the degree that C. J. MABARDY has any rules, policies, procedures, guidelines, driving manuals, employee handbooks or manuals, or other similar documents that were not provided to DANA MCCOOMB before the Subject Incident, please produce them.

REQUEST NO. 60: A complete copy of, or in the alternative, access to, each driver safety training film, video, videotape, videocassette, audio cassette, computer program, simulator, driver diagnostic record or test, maintained by your company, or used by C. J.

MABARDY, its personnel, agents, or employees during the year of the Subject Incident and three years prior.

REQUEST NO. 61: Copies of all industry and/or other guidelines and/or practices that you rely upon to support your contentions in this case.

TRUCKING COMPANY

REQUEST NO. 62: Copy of documents showing the hierarchy of managerial positions at C. J. MABARDY and who occupied such positions as of the time of the subject incident and presently.

REQUEST NO. 63: A copy of each document (including articles and presentations) prepared and/or presented by any C. J. MABARDY representative relating to the safe operation of a commercial motor vehicle and/or the safe operation of a trucking company in the past five years.

REQUEST NO. 64: All company newsletters distributed during the time period beginning two years before the Subject Incident and present.

REQUEST NO. 65: A copy of all lease and trip lease contracts applicable to DANA MCCOOMB and/or any vehicle involved in the Subject Incident.

REQUEST NO. 66: Copies of any contract under which your company was operating the truck in question at the time of the Subject Incident.

REQUEST NO. 67: A copy of C. J. MABARDY's accident register maintained as required by 49 CFR § 390.35.

REQUEST NO. 68: Transcripts or recordings of all depositions of corporate designees for C. J. MABARDY given in the past five years in cases where it was alleged that a driver working for C. J. MABARDY caused injury or death to another person.

REQUEST NO. 69: Copies of all documents putting any third party on notice of a claim arising from the Subject Incident.

REQUEST NO. 70: Copy of all video that shows DANA MACCOOMB and/or any vehicle operated by him, on the premises of C.J MABARDY for the time period beginning 14 days before the Subject Incident and ending 7 days after the Subject Incident.

MISCELLANEOUS

REQUEST NO. 71: With respect to each expert witness who may provide testimony at the trial of this case, provide:

- a. A copy of all documents (as that term is defined above) and items of any kind produced **to** said expert;
- b. A copy of all documents (as that term is defined above) and items of any kind generated or produced **by** said expert;
- c. A copy of the entire file of said expert;
- d. A current résumé or curriculum vitae for said expert; and
- e. All billing records and work logs for said expert.

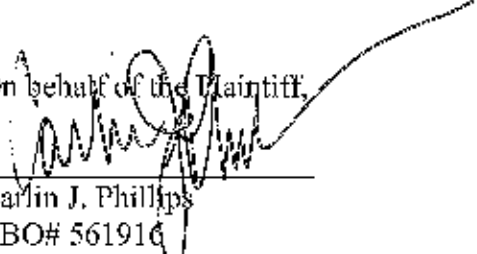
REQUEST NO. 72: A copy of any and all documents and other materials which support any contention that the Subject Incident was the fault of anyone other than the Defendants.

REQUEST NO. 73: Copies of all diagrams, graphs, illustrations, photographs, charts, pictures, models, blow-ups, or any other document or thing, including electronically created charts, animations, or data that you intend to utilize as an exhibit, demonstrative exhibit, or aid in the trial of this case not previously supplied.

REQUEST NO. 74: Produce each document or thing that you contend is evidence, proof, or support of your claims on any issue of negligence or causation as to the Subject Incident, including but not limited to admissions of fault, engineering analysis, scientific tests, and official or unofficial reports.

REQUEST NO. 75: If any surveillance has been undertaken by or on behalf of C. J. MABARDY, produce a copy of all reports, photographs, video and anything else generated through that investigation.

On behalf of the Plaintiff,



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Dated:

5/13/2013