

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D33118  
W/mv

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - November 16, 2011

PETER B. SKELOS, J.P.  
DANIEL D. ANGIOLILLO  
ARIEL E. BELEN  
PLUMMER E. LOTT  
SHERI S. ROMAN, JJ.

2011-06088

DECISION & ORDER

Elaine Gelda, et al., appellants, v  
Costco Wholesale Corp., respondent.

(Index No. 13015/09)

Richard M. Kenny, New York, N.Y. (Dara L. Warren of counsel), for appellants.

Gallagher, Walker, Bianco & Plastaras, Mineola, N.Y. (Robert J. Walker and Ivonne Estevez-Sarkinen of counsel), for respondent.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal, as limited by their brief, from so much of an order of the Supreme Court, Nassau County (Brandveen, J.), entered April 25, 2011, as denied that branch of their motion which was to compel the defendant to produce additional employees for depositions.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The Supreme Court did not improvidently exercise its discretion in denying that branch of the plaintiffs' motion which was to compel the defendant to produce additional employees for depositions. A corporation has the right to designate, in the first instance, which of its employees will appear for a deposition (*see Trueforge Global Mach. Corp. v Viraj Group*, 84 AD3d 938, 939; *Aronson v Im*, 81 AD3d 577; *Sladowski-Casolaro v World Championship Wrestling, Inc.*, 47 AD3d 803). The plaintiffs failed to sustain their burden of demonstrating that the defendant's employee who was already deposed had insufficient knowledge or was otherwise inadequate, and that there was a substantial likelihood that the additional employees of the defendant sought for depositions

November 29, 2011

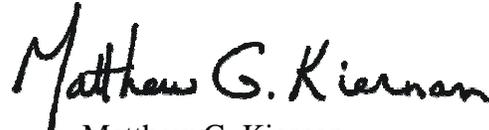
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possessed information that was material and necessary to the prosecution of the action (*see Conte v County of Nassau*, 87 AD3d 559, 560; *Thristino v County of Suffolk*, 78 AD3d 927, 927-928; *Sladowski-Casolaro v World Championship Wrestling, Inc.*, 47 AD3d at 803-804).

SKELOS, J.P., ANGIOLILLO, BELEN, LOTT and ROMAN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan  
Clerk of the Court