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SUPERIOR COURT OF WASHINGTON FOR COUNTY OF KING

JANYCE L. MACKENZIE,
Plaintiff,

vs.

MEINEKE CAR CARE CENTERS, LLC, a
North Carolina corporation; MCCC 4333, INC.
d/b/a MEINEKE CAR CARE CENTER #4333,
a Washington corporation
Defendants.

NO. 18-2-17249-7 SEA

DEFENDANT MCCC 4333, INC.
d/b/a MEINEKE CAR CARE
CENTER #4333 ANSWER TO
PLAINTIFF’S THIRD AMENDED
COMPLAINT FOR DAMAGES

COMES NOW defendant MCCC 4333, Inc. d/b/a Meineke Car Care Center #4333, Inc. (“Meineke 4333”), by and through its attorneys of record, Fallon McKinley, PLLC, and answers Plaintiff’s Third Amended Complaint for Damages (“Complaint”) as follows:

I. PARTIES

1. In answer to paragraph 1, MCCC 4333 is without knowledge or information sufficient to form a belief as to the truth thereof, and so denies the same.

2. In answer to paragraph 2, MCCC 4333 is without knowledge or information sufficient to form a belief as to the truth thereof, and so denies the same.

3. In answer to paragraph 3, MCCC 4333 admits it is a Washington corporation with its principal place of business located at 9424 Evergreen Way, Everett, Washington

1 98104. As to all other allegations contained in paragraph 3, MCCC 4333 denies all allegations
2 not specifically admitted.

3 **II. JURISDICTION AND VENUE**

4 4. In answer to paragraph 4, MCCC 4333 asserts the allegations contained in
5 paragraph 4 consist solely of legal assertions and conclusions to which no response is required.
6 To the extent a response is required, MCCC 4333 admits that jurisdiction in the Superior Court
7 of King County, State of Washington is proper.

8 5. In answer to paragraph 5, MCCC 4333 asserts the allegations contained in
9 paragraph 5 consist solely of legal assertions and conclusions to which no response is required.
10 To the extent a response is required, MCCC 4333 admits that jurisdiction in the State of
11 Washington is proper.

12 6. In answer to paragraph 6, MCCC 4333 asserts the allegations contained in
13 paragraph 6 consist solely of legal assertions and conclusions to which no response is required.
14 To the extent a response is required, MCCC 4333 admits that venue is proper in King County.

15 7. In answer to paragraph 7, MCCC 4333 asserts the allegations contained in
16 paragraph 7 consist solely of legal assertions and conclusions to which no response is required.
17 To the extent a response is required, MCCC admits This Court has personal jurisdiction over
18 the parties in this matter. As to all other allegations contained in paragraph 7, MCCC 4333
19 denies all allegations not specifically admitted.

20 8. In answer to paragraph 8, including subparts, MCCC 4333 asserts the
21 allegations contained in paragraph 8 consist solely of legal assertions and conclusions to which
22 no response is required. To the extent a response is required, MCCC 4333 denies the same,
23 including subparts.

III. THE PRODUCT

1 9. In answer to paragraph 9, MCCC 4333 admits that discovery has established
2 that the Subject Tire was manufactured by Cooper Tire & Rubber Company. MCCC 4333
3 admits that the Subject Vehicle was owned by Plaintiff Janyce MacKenzie at the time of the
4 accident on August 4, 2016. MCCC 4333 admits that Angela Kelly was a passenger in the
5 Subject Vehicle at the time of the accident on August 4, 2016. As to all remaining allegations
6 contained in paragraph 9, MCCC 4333 denies all allegations not specifically admitted.

7 10. In answer to paragraph 10, MCCC 4333 admits that discovery has established
8 that the Subject Tire was between eight and nine years old at the time of the accident on August
9 4, 2016. As to all remaining allegations contained in paragraph 10, MCCC 4333 denies all
10 allegations not specifically admitted.

IV. FACTS

11 11. In answer to paragraph 11, MCCC 4333 admits that discovery has established
12 that the Subject Vehicle was taken to a Sears for battery service in 2016. As to all remaining
13 allegations contained in paragraph 11, MCCC 4333 is without knowledge or information
14 sufficient to form a belief as to the truth thereof, and so denies the same.

15 12. In answer to paragraph 12, MCCC 4333 admits, based upon documents
16 produced in discovery, that the Subject Vehicle was taken to MCCC 4333 on or about April
17 22, 2016. As to all remaining allegations contained in paragraph 12, MCCC 4333 is without
18 knowledge or information sufficient to form a belief as to the truth thereof, and so denies the
19 same.

20 13. In answer to paragraph 13, MCCC 4333 admits, based on documents produced
21 in discovery, that the Subject Vehicle was taken to MCCC 4333 on August 2, 2016. As to all
22 remaining allegations contained in paragraph 13, MCCC 4333 is without knowledge or
23 information sufficient to form a belief as to the truth thereof, and so denies the same.
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1 14. In answer to paragraph 14, MCCC 4333 admits the same.

2 15. In answer to paragraph 15, MCCC 4333 admits that discovery has established
3 that the tread on the Subject Tire delaminated. MCCC 4333 admits that discovery has
4 established that a roll-over event occurred. As to the remaining allegations contained in
5 paragraph 15, MCCC 4333 is without knowledge or information sufficient to form a belief as
6 to the truth thereof, and so denies the same.

7 V. FIRST CAUSE OF ACTION

8 **NEGLIGENCE AGAINST MEINEKE AND MCCC (“MEINEKE DEFENDANTS”)**

9 16. In answer to paragraph 16, MCCC 4333 reasserts its answers to paragraphs 1
10 through 15 above.

11 17. In answer to paragraph 17, MCCC 4333 denies the same.

12 18. In answer to paragraph 18, MCCC 4333 denies the same.

13 19. In answer to paragraph 19, MCCC 4333 denies the same.

14 20. In answer to paragraph 20, MCCC 4333 denies the same, including all subparts.

15 21. In answer to paragraph 21, MCCC 4333 denies the same, including all subparts.

16 22. In answer to paragraph 22, MCCC 4333 denies the same.

17 VI. PROXIMATE CAUSE/DAMAGES

18 23. In answer to paragraph 23, MCCC 4333 denies the allegations directed at
19 MCCC 4333. As to the remaining allegations against other Defendants contained in paragraph
20 23, MCCC 4333 is without knowledge or information sufficient to form a belief as to the truth
21 thereof, and so denies the same.

22 24. In answer to paragraph 24, MCCC 4333 denies the allegations directed at
23 MCCC 4333. As to the remaining allegations against other Defendants contained in paragraph
24

1 23, MCCC 4333 is without knowledge or information sufficient to form a belief as to the truth
2 thereof, and so denies the same.

3 25. In answer to paragraph 25, MCCC 4333 denies the allegations directed at
4 MCCC 4333. As to the remaining allegations against other Defendants contained in paragraph
5 23, MCCC 4333 is without knowledge or information sufficient to form a belief as to the truth
6 thereof, and so denies the same.

7 26. In answer to paragraph 26, MCCC 4333 denies the allegations directed at
8 MCCC 4333. As to the remaining allegations against other Defendants contained in paragraph
9 23, MCCC 4333 is without knowledge or information sufficient to form a belief as to the truth
10 thereof, and so denies the same.

11 **VII. PRAYER FOR RELIEF**

12 MCCC 4333 denies that Plaintiff is entitled to the relief sought in Section VII,
13 paragraphs 1-5 in her Complaint, or to any relief. MCCC 4333 denies any factual allegations
14 not specifically admitted.

15 **AFFIRMATIVE DEFENSES**

16 BY WAY OF FURTHER ANSWER AND AFFIRMATIVE DEFENSES, MCCC 4333
17 alleges as follows:

- 18 1. Plaintiff has failed to state a claim upon which relief can be granted
- 19 2. Plaintiff's injuries and/or damages, if any, were solely and proximately caused
20 by her own comparative fault.
- 21 3. Plaintiff's injuries and/or damages, if any, were proximately caused by the fault
22 of others, including third parties and/or non-parties, over whom MCCC 4333 has no right of
23 control and for whom MCCC 4333 has no legal responsibility, including Big Dawg Motors,
24 Cooper Tire and Rubber Company, TBC Corporation, and Sears, Roebuck and Co. For
25 purposes of RCW 4.22.070, MCCC 4333 denies all fault for Plaintiff's claimed damages and

1 alleges that non-parties were at fault in causing Plaintiff's claimed damages, including Big
2 Dawg Motors, Cooper Tire and Rubber Company, and TBC Corporation..

3 4. Plaintiff has failed to mitigate her damages.

4 5. Venue should be transferred in this case pursuant to the doctrine of forum non
5 conveniens as there is an adequate alternative forum that is more convenient for the parties and
6 would better serve the interests of justice.

7 6. Any injuries or damages sustained by Plaintiff were the sole and proximate
8 cause of an unavoidable accident.

9 7. Plaintiff's injuries and/or damages, if any, resulted from an independent,
10 intervening, and/or superseding cause.

11 8. Plaintiff's injuries and/or damages, if any, are due to Plaintiff's own acts or
12 admissions, and should be reduced in proportion thereto.

13 9. Plaintiff's damages, if any, resulted from two or more events, and liability for
14 Plaintiff's alleged injuries should be apportioned thereto.

15 10. Plaintiff's injuries and/or damages, if any, are a result of pre-existing injuries,
16 physical conditions, mental conditions, and/or psychological conditions.

17 11. Pursuant to RCW 4.22 *et seq.*, MCCC 4333 is entitled to an allocation of fault
18 and apportionment of damages among all persons or entities responsible for Plaintiff's alleged
19 damages, including parties and non-parties not named.

20 12. MCCC 4333 reserves the right to assert additional affirmative defenses that may
21 be identified through investigation and discovery in this matter and/or dispose of any
22 affirmative defenses herein asserted as future discovery dictates.

23 **DEFENDANT'S PRAYER FOR RELIEF**

24 WHEREFORE, having fully answered Plaintiff's Third Amended Complaint for
25 Damages, MCCC 4333 prays that the same be dismissed with prejudice and at Plaintiff's cost.

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DATED this 19th day of August, 2020.

FALLON MCKINLEY, PLLC

By/s/ *Eden E. Goldman*

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CERTIFICATE OF SERVICE

I hereby certify that on this day I served a true and correct copy of the foregoing upon the following counsel in the manner as indicated below:

<p>Attorney for Plaintiff Janyce MacKenzie Lawrence M. Kahn Lawrence Kahn Law Group PS 135 Lake Street S., Suite 265 Kirkland, WA 98033-6487 Telephone: (425) 453-5679 Fax: (425) 453-5685 [X] E-mail/Per the Court's E-Filing/E-Service: LMK@lklegal.com; apa@lklegal.com</p> <p>John Kawai Keith Bruno Nicholas Rowley Carpenter, Zuckerman & Rowley 407 Bryant Circle, Suite F Ojai, CA 93023 [X] E-mail/Per the Court's E-Filing/E-Service: jk@czrlaw.com kbruno@czrlaw.com nick@tl4j.com</p>	<p>Attorneys for Defendant Meineke Car Care Centers, LLC Francis S. Floyd Amanda D. Daylong Floyd, Pflueger & Ringer, P.S. 200 W. Thomas St., Suite 500 Seattle, WA 98119-4455 Telephone: (206) 441-4455 Fax: (206) 441-8484 [X] E-mail/Per the Court's E-Filing/E-Service: ffloyd@floyd-ringer.com; ADaylong@floyd-ringer.com</p>
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DATED this 19th day of August, 2020 in Seattle, Washington.

/s/ Judith Hong
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