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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

JANYCE L. MACKENZIE,

Plaintiff,

v.

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 MEINEKE CAR CARE
CENTERS, LLC'S **FIRST AMENDED**
ANSWER TO PLAINTIFF'S THIRD
AMENDED COMPLAINT FOR
DAMAGES

COMES NOW Defendant Meineke Car Care Centers, LLC ("Meineke"), by and through
its undersigned counsel of record, and answers Plaintiff's Third Amended Complaint for
Damages as follows:

DEFENDANT MEINEKE CAR CARE CENTERS,
LLC'S ANSWER TO PLAINTIFF'S THIRD
AMENDED COMPLAINT FOR DAMAGES - 1

FLOYD, PFLUEGER & RINGER P.S.
200 W. THOMAS ST., SUITE 500
SEATTLE, WA 98119-4296
TEL 206 441-4455
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1 **I. PARTIES**

2 1. In answer to Paragraph 1 of Plaintiff’s Third Amended Complaint for Damages,
3 Meineke is without sufficient knowledge and information to form a belief as to the truth of the
4 matters asserted therein, and therefore denies the same.

5 2. In answer to Paragraph 2 of Plaintiff’s Third Amended Complaint for Damages,
6 Meineke admits only that it is a North Carolina corporation and that its place of business is 440
7 S. Church Street, Suite 700, Charlotte, NC 28202. As to all other allegations contained in
8 Paragraph 2, Meineke denies all allegations not specifically admitted.

9 3. In answer to Paragraph 3 of Plaintiff’s Third Amended Complaint for Damages,
10 Meineke is without sufficient knowledge and information to form a belief as to the truth of the
11 matters asserted therein, and therefore denies the same.
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13 **II. JURISDICTION AND VENUE**

14 4. In answer to Paragraph 4 of Plaintiff’s Third Amended Complaint for Damages,
15 Meineke objects to the extent that the allegations contained in Paragraph 4 consist solely of legal
16 assertions and conclusions, to which no response is required. Without waiver, and to the extent
17 that a response is required, Meineke admits that jurisdiction in King County Superior Court is
18 proper.

19 5. In answer to Paragraph 5 of Plaintiff’s Third Amended Complaint for Damages,
20 Meineke objects to the extent that the allegations contained in Paragraph 5 consist solely of legal
21 assertions and conclusion, to which no response is required. Without waiver, and to the extent
22 that a response is required, Meineke admits that jurisdiction in the State of Washington is proper.

23 6. In answer to Paragraph 6 of Plaintiff’s Third Amended Complaint for Damages,
24 Meineke objects to the extent that the allegations contained in Paragraph 6 consist solely of legal
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1 assertions and conclusions, to which no response is required. Without waiver, and to the extent
2 that a response is required, Meineke admits that venue is proper in King County.

3 7. In answer to Paragraph 7 of Plaintiff's Third Amended Complaint for Damages,
4 Meineke objects to the extent that the allegations contained in Paragraph 7 consist solely of legal
5 assertions and conclusions, to which no response is required. Without waiver, and to the extent
6 that a response is required, Meineke admits only that the Court has personal jurisdiction over the
7 parties in this matter. As to all other allegations contained in Paragraph 7, Meineke denies all
8 allegations not specifically admitted.

9 8. In answer to Paragraph 8 of Plaintiff's Third Amended Complaint for Damages,
10 Meineke objects to the extent that the allegations contained in Paragraph 8 and its subparts (a)
11 through (m) consist solely of legal assertions and conclusions, to which no response is required.
12 Without waiver, and to the extent that a response is required, Meineke answers as follows.

13 a. In answer to Paragraph 8.a. of Plaintiff's Third Amended Complaint for Damages,
14 Meineke asserts that the allegations contained in Paragraph 8.a consist solely of legal
15 conclusions and assertions, which require no response. To the extent that a response is
16 required, Meineke denies.

17 b. In answer to Paragraph 8.b. of Plaintiff's Third Amended Complaint for Damages,
18 Meineke asserts that the allegations contained in Paragraph 8.b. consist solely of legal
19 assertions and conclusions, which require no response. To the extent that a response is
20 required, Meineke denies.

21 c. In answer to Paragraph 8.c. of Plaintiff's Third Amended Complaint for Damages,
22 Meineke asserts that the allegations contained in Paragraph 8.c. consist solely of legal
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1 assertions and conclusions, which require no response. To the extent that a response is
2 required, Meineke denies.

3 d. In answer to Paragraph 8.d. of Plaintiff's Third Amended Complaint for Damages,
4 Meineke asserts that the allegations contained in Paragraph 8.d. consist solely of legal
5 assertions and conclusions, which require no response. To the extent that a response is
6 required, Meineke denies.

7 e. In answer to Paragraph 8.e. of Plaintiff's Third Amended Complaint for Damages,
8 Meineke asserts that the allegations contained in Paragraph 8.e. consist solely of legal
9 assertions and conclusions, which require no response. To the extent that a response is
10 required, Meineke denies.

11 f. In answer to Paragraph 8.f. of Plaintiff's Third Amended Complaint for Damages,
12 Meineke asserts that the allegations contained in Paragraph 8.f. consist solely of legal
13 assertions and conclusions, which require no response. To the extent that a response is
14 required, Meineke denies.

15 g. In answer to Paragraph 8.g. of Plaintiff's Third Amended Complaint for Damages,
16 Meineke asserts that the allegations contained in Paragraph 8.g. consist solely of legal
17 assertions and conclusions, which require no response. To the extent that a response is
18 required, Meineke denies.

19 h. In answer to Paragraph 8.h. of Plaintiff's Third Amended Complaint for Damages,
20 Meineke asserts that the allegations contained in Paragraph 8.h. consist solely of legal
21 assertions and conclusions, which require no response. To the extent that a response is
22 required, Meineke denies.
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1 i. In answer to Paragraph 8.i. of Plaintiff's Third Amended Complaint for Damages,
2 Meineke asserts that the allegations contained in Paragraph 8.i. consist solely of legal
3 assertions and conclusions, which require no response. To the extent that a response is
4 required, Meineke denies.

5 j. In answer to Paragraph 8.j. of Plaintiff's Third Amended Complaint for Damages,
6 Meineke asserts that the allegations contained in Paragraph 8.j. consist solely of legal
7 assertions and conclusions, which require no response. To the extent that a response is
8 required, Meineke denies.

9 k. In answer to Paragraph 8.k. of Plaintiff's Third Amended Complaint for Damages,
10 Meineke asserts that the allegations contained in Paragraph 8.k. consist solely of legal
11 assertions and conclusions, which require no response. To the extent that a response is
12 required, Meineke denies.

13 l. In answer to Paragraph 8.l. of Plaintiff's Third Amended Complaint for Damages,
14 Meineke asserts that the allegations contained in Paragraph 8.l. consist solely of legal
15 assertions and conclusions, which require no response. To the extent that a response is
16 required, Meineke denies.

17 m. In answer to Paragraph 8.m. of Plaintiff's Third Amended Complaint for Damages,
18 Meineke asserts that the allegations contained in Paragraph 8.m. consist solely of legal
19 assertions and conclusions, which require no response. To the extent that a response is
20 required, Meineke denies.
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1 **III. THE PRODUCT**

2 9. In answer to Paragraph 9 of Plaintiff's Third Amended Complaint for Damages,
3 Meineke admits that discovery has established that the subject tire at issue in this Complaint for
4 Damage was manufactured by Cooper Tire & Rubber Company, that the subject vehicle was a
5 Ford Explorer owned and operated by Plaintiff Janyce MacKenzie, that that Angela Kelly was a
6 passenger in the subject vehicle on August 4, 2016. As to all remaining allegations contained in
7 Paragraph 9, Meineke denies all allegations not specifically admitted.
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9 10. In answer to Paragraph 10 of Plaintiff's Third Amended Complaint for Damages,
10 Meineke admits only that discovery has uncovered that the subject tire was between eight and
11 nine years old on August 4, 2016. As to all remaining allegations contained in Paragraph 10,
12 Meineke denies all allegations not specifically admitted.

13 **IV. FACTS**

14 11. In answer to Paragraph 11 of Plaintiff's Third Amended Complaint for Damages,
15 Meineke admits only that discovery has uncovered evidence that the subject vehicle was taken
16 for battery service to a Sears in early 2016. As to all other allegations contained in Paragraph
17 11, Meineke is without sufficient knowledge and information to form a belief as to the truth of
18 the matters asserted therein, and therefore denies the same.
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20 12. In answer to Paragraph 12 of Plaintiff's Third Amended Complaint for Damages,
21 Meineke admits only that discovery and documents exchanged in litigation have uncovered
22 evidence that Plaintiff took the subject vehicle to MCCC 4333 in April 2016 for vehicle service.
23 As to all other allegations contained in Paragraph 12, Meineke is without sufficient knowledge
24 and information to form a belief as to the truth of the matters asserted therein, and therefore
25 denies the same.

1 17. In answer to Paragraph 17 of Plaintiff’s Third Amended Complaint for Damages,
2 Meineke denies each and every allegation stated therein.

3 18. In answer to Paragraph 18 of Plaintiff’s Third Amended Complaint for Damages,
4 Meineke denies each and every allegation stated therein.

5 19. In answer to Paragraph 19 of Plaintiff’s Third Amended Complaint for Damages,
6 Meineke denies each and every allegation stated therein.

7 20. In answer to Paragraph 20 of Plaintiff’s Third Amended Complaint for Damages,
8 Meineke denies each and every allegation stated therein. Meineke answers subparts (a) through
9 (e) as follows:

10 a. In answer to Paragraph 20.a. of Plaintiff’s Third Amended Complaint for Damages,
11 Meineke denies each and every allegation stated therein.

12 b. In answer to Paragraph 20.b. of Plaintiff’s Third Amended Complaint for Damages,
13 Meineke denies each and every allegation stated therein.

14 c. In answer to Paragraph 20.c. of Plaintiff’s Third Amended Complaint for Damages,
15 Meineke denies each and every allegation stated therein.

16 d. In answer to Paragraph 20.c. of Plaintiff’s Third Amended Complaint for Damages,
17 Meineke denies each and every allegation stated therein.

18 e. In answer to Paragraph 20.c. of Plaintiff’s Third Amended Complaint for Damages,
19 Meineke
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1 26. In answer to Paragraph 26 of Plaintiff's Third Amended Complaint for Damages,
2 Meineke denies each and every allegation stated therein.

3 **VII. PLAINTIFF'S PRAYER FOR RELIEF**

4 Meineke denies Plaintiff's Prayer for Relief stated in Section VII, Paragraphs 1 through
5 5 in its entirety, and denies all factual allegations not specifically admitted.

6 **VIII. MEINEKE'S AFFIRMATIVE DEFENSES**

7 BY WAY OF FURTHER ANSWER AND AFFIRMATIVE DEFENSES, Meineke
8 denies all factual allegations not specifically admitted, and as additional defenses to Plaintiff's
9 Complaint for Damages, Meineke alleges as follows:
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11 1. *Failure to State a Claim.* Plaintiff's Complaint fails to state a claim upon which
12 relief can be granted.

13 2. *Assumption of Risk.* Plaintiff's claims are barred by the doctrine of assumption of
14 risk.

15 3. *Non-Agency.* No principal-agent relationship exists between Meineke and its
16 franchisees. Accordingly, Meineke cannot be held liable for the acts or omissions of its
17 franchisee.

18 4. *Improper Party.* Meineke does not employ its franchisee's employees, and does
19 not own, operate, or control the subject location where Plaintiff alleges their vehicle was serviced.
20 Accordingly, Meineke is not a proper party and should be dismissed from this litigation.

21 5. *No Right of Control.* Meineke does not own, operate, or control the subject
22 location, and has no right of control over its franchisees. As a result, Meineke cannot be held
23 liable for the acts or omissions of its franchisee or its employees.
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1 6. *Plaintiff's Acts or Omissions.* Plaintiff's injuries and/or damages, if any, are due,
2 in whole or in part, to Plaintiff's own act or omissions, and should be reduced in proportion
3 thereto.

4 7. *Plaintiff's Contributory Fault.* Plaintiff's injuries and/or damages, if any, were
5 proximately caused by Plaintiff's own negligence or fault and Plaintiff's failure to exercise
6 reasonable care for their own safety. Pursuant to Chapter 4.22 RCW, damages are to be
7 apportioned and reduced proportionate to Plaintiff's own negligence.

8 8. *Intervening/Superseding Cause.* Plaintiff's injuries and/or damages, if any,
9 resulted from an independent, intervening, and superseding cause.

10 9. *Failure to Mitigate.* Plaintiff's failed to fully mitigate their alleged damages and
11 to protect themselves from avoidable consequences.

12 10. *Proximate Cause.* No act or omission by Meineke proximately caused Plaintiff's
13 alleged injuries or damages.

14 11. *Third-Party Fault.* Plaintiff's alleged damages, if any, were proximately caused
15 in whole or in part by the acts or omissions of third parties over whom Meineke has no right of
16 control, and for whom Meineke has no legal responsibility including, Big Dawg Motors, Cooper
17 Tire and Rubber Company, and TBC Corporation. As a result, Meineke has no liability to
18 Plaintiffs, or Meineke's liability should be reduced by an amount to be demonstrated at trial.
19 Accordingly, Meineke reserves the right to claim for purposes of RCW 4.22.070(1) that a non-
20 party is at fault. The identities of any such nonparties will be pled when they become known to
21 Meineke.
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DECLARATION OF SERVICE

Pursuant to RCW 9A.72.085, I declare under penalty of perjury and the laws of the State of Washington that on the below date, I delivered a true and correct copy of DEFENDANT MEINEKE CAR CARE CENTERS, LLC'S FIRST AMENDED ANSWER TO PLAINTIFF'S THIRD AMENDED COMPLAINT FOR DAMAGES via the method indicated below to the following parties:

Lawrence M. Kahn Lawrence Kahn Law Group PS 135 Lake Street S., Suite 265 Kirkland, WA 98033 LMK@lklegal.com staff@lklegal.com	<i>Counsel for Plaintiff</i> <i>Janyce L. MacKenzie</i>	<input type="checkbox"/> Via Messenger <input checked="" type="checkbox"/> Via King County E-Service/Email <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via U.S. Mail
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Nicholas Rowley Courtney Rowley (<i>Pro Hac Vice</i>) Keith Bruno John Kawai Carpenter, Zuckerman & Rowley 407 Bryant Circle, Suite F Ojai, CA 93023 nick@tl4j.com therowleylawfirm@gmail.com Kbruno@czrlaw.com jk@czrlaw.com	<i>Counsel for Plaintiff</i> <i>Janyce L. MacKenzie</i>	<input type="checkbox"/> Via Messenger <input checked="" type="checkbox"/> Via King County E-Service/Email <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via U.S. Mail
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Nancy McKinley Eden Goldman Fallon McKinley & Wakefield, PLLC 155 NE 100 th Street Suite 401 Seattle, WA 98125 bfallon@fmwlegal.com nmckinley@fmwlegal.com	<i>Counsel for Defendant</i> <i>MCCC #4333</i>	<input type="checkbox"/> Via Messenger <input checked="" type="checkbox"/> Via King County E-Service/Email <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via U.S. Mail
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DATED this 4th day of February, 2021.

/s/ Sadie E. Scott
Sadie E. Scott, Legal Assistant

DEFENDANT MEINEKE CAR CARE CENTERS,
LLC'S ANSWER TO PLAINTIFF'S THIRD
AMENDED COMPLAINT FOR DAMAGES - 13

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