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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT
CIVIL ACTION NO.

2484CV1722 E

MARIANNE LAYOUSSE,

Plaintiff,

v.

MASSACHUSETTS BAY
TRANSPORTATION AUTHORITY,
and KONE, INC.

Defendants.

SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE
2024 JUN 28 P 12:16
JOHN E. POWERS III
ACTING CLERK/REGISTRAR

COMPLAINT AND DEMAND FOR JURY TRIAL

THE PARTIES

1. Marianne Layousse is an individual who resides in Ann Arbor, Michigan ("Ms. Layousse" or "Plaintiff").
2. Defendant Massachusetts Bay Transportation Authority ("MBTA") is a public agency of the Commonwealth of Massachusetts with its principal place of business located at 10 Park Plaza, Boston, Suffolk County, Massachusetts. The MBTA is responsible for operating and maintaining subway, commuter rail and public transportation services throughout the Greater Boston area, including the escalator that failed catastrophically when Plaintiff was using it on September 26, 2021, and that is the subject of this litigation ("the Escalator").
3. Defendant Kone, Inc. ("Kone") is a corporation organized and incorporated in the State of Delaware having its principal place of business at One Kone Court, Moline,

Rock Island County, Illinois. Defendant Kone is in the business of installing, servicing, testing, and maintaining elevators and escalators.

4. Kone is subject to the personal jurisdiction of the Massachusetts courts because it regularly conducts and transacts business in the Commonwealth of Massachusetts; derives substantial economic benefit from such business; maintains a local office in Massachusetts; has designated Corporation Service Company, 84 State Street, Boston, Suffolk County, Massachusetts as its Registered Agent to conduct its business in the Commonwealth; entered into a contract with the MBTA in Massachusetts to maintain the Escalator located in Massachusetts that is the subject of this Complaint; and performed maintenance on the Escalator before the incident that is the subject of this Complaint. The Plaintiff's cause of action against Kone concerns the company's breach of its responsibility and duty to maintain and ensure that the Escalator operated properly and in a safe manner, resulting in injury to Plaintiff (and dozens of others), and arises out of Kone's conduct in Massachusetts.

FACTUAL ALLEGATIONS

5. Plaintiff incorporates by reference all of the allegations contained in the foregoing paragraphs as if they were fully restated herein.
6. On September 26, 2021, and at all relevant times hereto, the MBTA owned, operated, maintained and controlled the Escalator located at and around the passenger station on Dartmouth Street in Boston, Massachusetts, known as the Back Bay Station.
7. On September 26, 2021, Plaintiff was returning from a New England Patriots' game via the MBTA's commuter rail train. She was accompanied by her friend, Omar Dreidi. She disembarked the commuter rail train at the lower-level underground

platform of Back Bay Station and walked to and boarded the Escalator for the purpose of travelling up the approximately 30-40 feet of distance on the Escalator to the street level of Back Bay Station.

8. Plaintiff was lawfully and in the exercise of due care utilizing the Escalator for its intended and reasonably foreseeable purpose of ascending from the underground train platform to ground level of the Back Bay Station.

9. The Escalator was full of other people also ascending. As Ms. Layousse and Mr. Dreidi neared the top, the Escalator suddenly and catastrophically failed causing the jagged-edged metal stairs of the Escalator to rapidly slide in reverse and downward toward the train platform. An eyewitness to the incident stated in news reports that he “[h]eard a lot of people yelling behind me and I saw a pile of bodies down the Escalator.”

10. Ms. Layousse was one of those unfortunate individuals on the Escalator who ended up being hurled downwards the length of the Escalator and ended up in the “pile of bodies” on the cement floor during which her back and neck were twisted and struck by other passengers and the Escalator. Ms. Layousse experienced immediate, sharp pain in her back and neck from this event and suffered lacerations to her back (“the Incident”).

11. Ms. Layousse was barely able to extricate herself from the pile of bodies at the bottom of the Escalator and did so only with help from Mr. Dreidi. The Boston Globe article written the day after the Incident aptly described it as “a bloody, horrific scene.” When emergency personnel arrived on the scene Ms. Layousse was placed on a stretcher and given a cervical collar to secure her spine and neck and taken by

ambulance to the Emergency Department at Tufts Medical Center (“Tufts”) in Boston, MA. Her friend Mr. Dreidi was also transported in the ambulance to Tufts for treatment.

12. As is known to defendants, numerous people were seriously injured and nine were reportedly taken to local hospitals. In fact, security-camera footage and other videos captured the Incident and its horror, and are widely available on the internet, including a video available through the following website:

<https://www.boston.com/news/local-news/2021/12/21/escalator-accident-back-bay-new-video/>.

13. After arriving at Tufts, Ms. Layousse was examined/treated by emergency department physician Kathryn Lupez. The treatment at Tufts focused on injuries Ms. Layousse sustained to her neck area and, upon information and belief, an x-ray was taken of her neck. Ms. Layousse was discharged from Tufts later that day with a prescription for IC Ibuprofen (600 mg); Acetaminophen (325 mg); and a Lidoderm topical adhesive patch for her pain. She was also instructed to wear a cervical collar, which she did. Photographs of Ms. Layousse in the hospital show her in a cervical collar and with lacerations on her back from the jagged metal stairs.

14. Ms. Layousse continued to experience debilitating pain in her back and neck in the weeks following the Incident, including during a trip to Los Angeles, CA, to visit friends. While in Los Angeles and due to the severe nature of the pain, Ms. Layousse sought medical care at the UCLA Health Center where she was examined and treated by Dr. Chen in early October 2021, including, without limitation, x-rays taken of her

- cervical and thoracic spine. While receiving treatment at UCLA, Ms. Layousse received a prescription from Dr. Chen for physical therapy.
15. Shortly after being provided with a prescription for physical therapy, Ms. Layousse began treating with ATI Physical Therapy located in Boston, MA -- where she was attending college -- in or around December 2021. Initially, Ms. Layousse had three physical therapy sessions per week. The frequency of physical therapy sessions changed over time, becoming less frequent as Ms. Layousse's condition improved slightly, and/or because of limitations/restrictions imposed by her health insurance carrier and/or as her college schedule permitted.
16. Ms. Layousse's pain in her neck and back area persisted from that time through mid-2022 when it began worsening. As a result, she sought further treatment in June 2022 at Boston Orthopaedic and Spine and had x-rays of her cervical spine at Mount Auburn Hospital. She was diagnosed with disc herniation, cervicgia and a cervical spine and neck strain. Ms. Layousse's medical providers recommended a thoracic MRI be taken and, thereafter, further physical therapy.
17. After an MRI of her thoracic spine was done in July 2022, Ms. Layousse continued to treat with physical therapists near her home in Ann Arbor, MI and continued with the exercise program provided to her by prior physical therapists, including, without limitation, strengthening and range of motion exercises.
18. In February 2023, Ms. Layousse was again suffering pain severe enough that she sought medical treatment at the Meir Medical Center at Tel Aviv University during a trip there. As described in her medical records there, Ms. Layousse was experiencing "cervical pain with antalgic limitations in ROM. Pain radiating to Periscapular

regions.” The medical records noted further that the “patient suffers from lower back pain that radiates to the right buttock and leg to ankle level. The pain is accompanied by intermittent complaints of tingling sensation in the foot.” The physician treating Ms. Layousse recommended further treatment, including (1) pain medications; (2) continued physical therapy; and (3) acupuncture. The medical professionals at the Meir Medical Center advised that further diagnostic testing may be necessary, stating that due to “persistent pain in the cervical, thoracic and lumbar spine, without any improvement in physical therapy, with radicular pain down her right leg, my recommendation is to further expand the investigation by performing cervical and lumbar spine MRI.”

19. Ms. Layousse has had to continue treating the painful injuries she sustained during the Incident, including, without limitation, through physical therapy (including when she can get it approved/covered by her health care insurance provider); home physical therapy exercises provided to her by physical therapists; and exercises to improve her back/neck area with a trainer specialized in training individuals who suffer from back and neck injuries.

20. Ms. Layousse has suffered and continues to suffer persistent physical pain and debilitation and mental anguish as a result of the traumatic Incident.

21. On September 26, 2021, and at all relevant times hereto, the MBTA contracted with Kone to test, service and maintain the Escalator in proper working condition. Therefore, both the MBTA and Kone and its parents, subsidiaries, divisions and related entities, had a duty to service, test, and maintain the Escalator at the Back Bay Station in a safe condition and in compliance with all applicable codes and

regulations. The defendants, individually and/or collectively failed horribly with serious consequence for Plaintiff for which they are jointly and severally liable.

**COUNT I: CLAIMS AGAINST DEFENDANT MASSACHUSETTS
BAY TRANSPORTATION AUTHORITY FOR NEGLIGENCE AND
FAILURE TO EXERCISE UTMOST CARE**

22. Plaintiff incorporates by reference all of the allegations contained in the foregoing paragraphs as if they were fully restated herein.

23. The MBTA, as a common carrier and the owner of the Escalator and the Back Bay Station, owed a nondelegable duty to Plaintiff, as a lawful passenger on the Escalator, to operate the Escalator in a safe manner and to exercise the highest degree of care, including reasonable care, in providing, inspecting, repairing, and maintaining the Escalator to ensure it operated in a reasonably safe manner to avoid injury to public commuters and other lawful visitors using the Escalator for its intended purpose.

24. As a common carrier concerning the transportation of passengers for a fee, the MBTA was bound to operate the Escalator safely and without injuring passengers and to exercise the degree of care which the circumstances demanded, including the exercise of utmost caution compatible with the conduct of its business according to the requirements of the need for public safety and to use all such means and precautions as are reasonably practicable for the protection and safety of its passengers in transit and those on the MBTA's premises for purposes of transportation.

25. The MBTA breached its duty of care to Plaintiff by operating the Escalator that failed catastrophically. Similarly, it breached its duty of care by failing to maintain and repair said Escalator to avoid the dangerous malfunction of the Escalator suddenly running in reverse at significant speed and otherwise providing for the public's use of

an escalator that was per se in an unreasonably dangerous and defective condition causing it to malfunction.

26. Plaintiff's injuries are not the type that would occur from riding the Escalator in the absence of the MBTA's failure to operate a safe escalator and/or its negligence and failure to exercise utmost care in owning, operating, providing, inspecting, servicing, repairing and/or maintaining the Escalator. In fact, the injuries to Plaintiff caused by the catastrophic failure of the Escalator were reasonably foreseeable.

27. The Incident would not have occurred had the MBTA operated the Escalator safely as expected, intended and required. It failed to do so thus causing Plaintiff's injuries.

28. Moreover, because the Incident is not the type that would have occurred in the absence of negligence and the failure to exercise utmost care, the Incident gives rise to a clear and reasonable inference that the MBTA negligently committed unspecified acts or omissions and that those acts or omissions caused Plaintiff's injuries.

29. But for the MBTA's failure to perform and its wrongdoing and as a proximate cause thereof, Ms. Layousse has suffered and continues to suffer persistent physical pain and debilitation and mental anguish as a result of the traumatic Incident.

30. Ms. Layousse continues to experience back and neck pain from injuries she sustained in the Incident. These injuries have interfered with her education, work and job prospects, and have interfered with and/or prevented her from participating in many of the normal activities of life. This has also caused Ms. Layousse to suffer anxiety, sleeplessness and nightmares. As a direct, proximate result of her physical injuries, Ms. Layousse has incurred medical expenses and endured pain and suffering, mental anguish, emotional distress and the loss of enjoyment and quality of life.

31. Plaintiff 's injuries constitute serious bodily injury, *inter alia*, within the meaning of the Massachusetts Tort Claims Act, G.L. c. 258, § 2, because they involve bodily injury which results in a permanent disfigurement, or loss or impairment of a bodily function, limb or organ.

32. On August 30, 2023, Plaintiff presented her claims in writing via certified mail to Phillip Eng, General Manager of the MBTA, and at the time of the presentment letter, Hon. Gina Fiandaca, the Secretary of the Massachusetts Department of Transportation. The presentment letter was received by the MBTA on September 5, 2023, and the Massachusetts Department of Transportation on September 5, 2023. No response whatsoever has been received by Plaintiff or her counsel from the MBTA or the Massachusetts Department of Transportation.

WHEREFORE, Plaintiff demands judgment against the Massachusetts Bay Transportation Authority in an amount sufficient to fully and fairly compensate her for her personal injuries and emotional distress, including prejudgment interest, costs, reasonable attorneys' fees and for all other just or proper relief.

**COUNT II: CLAIMS AGAINST
DEFENDANT KONE, INC. FOR NEGLIGENCE**

33. Plaintiff incorporates by reference all of the allegations contained in the foregoing paragraphs as if they were fully restated herein.

34. Kone entered into a contract with the MBTA to maintain the Escalator and to ensure its proper and safe operation.

35. Kone had a contractual and common law duty to Plaintiff, as a lawful passenger on the Escalator, to exercise reasonable care in operating, inspecting, repairing, and

maintaining the Escalator to ensure it operated in a reasonably safe manner to avoid injury to public commuters and other lawful visitors.

36. Kone had a contractual duty to Plaintiff, as a lawful passenger on the Escalator, to perform its obligations under the contract with the MBTA in a workmanlike manner, including inspecting, repairing, and maintaining of the Escalator to ensure it operated in a safe manner to avoid injury to public commuters and other lawful visitors using the Escalator as intended.

37. Kone breached its contractual and common law duties of care to Plaintiff by failing to properly maintain and/or repair the Escalator to avoid the dangerous malfunctioning of the Escalator that caused it to suddenly stop ascending and to rapidly move in reverse resulting in Plaintiff's reasonably foreseeable injuries.

38. The Incident that caused Plaintiff's injuries is not the type that would occur in the absence of Kone's negligence in operating, inspecting, servicing, repairing and/or maintaining the Escalator and there is greater likelihood or probability that the harm complained of was due to causes for which Kone was responsible than from any other cause.

39. Because the Incident is not the type that would have occurred in the absence of negligence, the Incident gives rise to a reasonable inference that Kone negligently committed unspecified acts or omissions and that those acts or omissions caused Plaintiff's injuries.

40. But for Kone's negligence and as a proximate cause thereof, Ms. Layousse sustained injuries to her body including, but not limited to, injuries to her back and neck as described herein. These injuries have interfered with her education, work, job

prospects and have interfered with and/or prevented her from participating in many of the normal activities of life. This has also caused Ms. Layousse to suffer anxiety, sleeplessness and nightmares. As a direct, proximate result of her physical injuries, Ms. Layousse has incurred medical expenses and endured pain and suffering, mental anguish, emotional distress and the loss of enjoyment and quality of life.

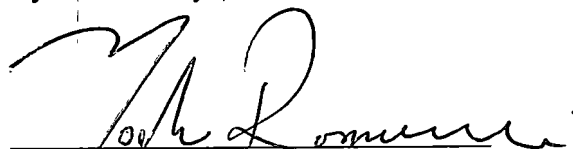
WHEREFORE, Plaintiff demands judgment against Kone, Inc. in an amount sufficient to fully and fairly compensate her for her personal injuries and emotional distress, including prejudgment interest, costs, reasonable attorneys' fees and for all other just or proper relief.

PLAINTIFF DEMANDS TRIAL BY JURY ON ALL COUNTS OF HER COMPLAINT.

Respectfully submitted,

Marianne Layousse,

By her attorneys,



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