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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

10 ROBERT SMITH AND DONNA SMITH,

11 Plaintiffs,

12 v.

13 ABC COMPANY, INC.
14 A Delaware Corporation,

15
16 Defendant.

Case No. CV _____

**DEFENDANT ABC COMPANY, INC.'S
ANSWER AND AFFIRMATIVE
DEFENSES TO PLAINTIFF'S
COMPLAINT**

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18 For its answer and affirmative defenses, defendant The ABC Company ("ABC Company") states
19 as follows:

20
21 **GENERAL ALLEGATIONS**

22
23 1. ABC Company admits that it designs, manufactures, and sells products in the
24 United States. ABC Company states that it is an Delaware corporation with its principal place of
25 business in Ohio. ABC Company denies the remaining allegations of paragraph 1.

26
27 2.-3. ABC Company is without knowledge or information sufficient to support a belief as
28 to the truth of the allegations contained in paragraphs 2 and 3 of Plaintiffs' Complaint.

29 ABC COMPANY/ANSWER TO COMPLAINT

1 4. ABC Company does not contest jurisdiction in the Southern District of California.
2 ABC Company is without knowledge or information sufficient to support a belief as to the truth
3 of the remaining allegations contained in paragraph 4 of Plaintiffs' Complaint.
4

5 5.-9. ABC Company is without knowledge or information sufficient to support a belief as
6 to the truth of the allegations contained in paragraphs 5, 6, 7, 8, and 9 of Plaintiffs' Complaint.
7

8 10.-11. ABC Company denies the allegations directed to it contained in paragraphs 10
9 and 11 of Plaintiffs' Complaint.

10 12.-13. ABC Company is without knowledge or information sufficient to support a belief
11 as to the truth of the allegations contained in paragraphs 12 and 13 of Plaintiffs' Complaint.
12

13 14.-15. ABC Company denies the allegations directed to it contained in paragraphs 14
14 and 15 of Plaintiffs' Complaint.
15

16 **FIRST AFFIRMATIVE DEFENSE**

17 **Failure to State a Claim**

18 Plaintiffs' complaint fails to state a claim upon which relief can be granted.
19

20 **SECOND AFFIRMATIVE DEFENSE**

21 **Incurred and Assumed Risk**

22 Plaintiffs' claims are barred because Plaintiffs incurred or assumed the risks of which
23 they
24 complain in this action.
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29 ABC COMPANY/ANSWER TO COMPLAINT

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2 **THIRD AFFIRMATIVE DEFENSE**

3 **Setoff**

4
5 To the extent Plaintiffs have been compensated for the alleged damages by receiving
6 payment from other persons or entities the amount of any such compensation should be set off
7 against any recovery plaintiffs may receive in this action.
8

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10 **FOURTH AFFIRMATIVE DEFENSE**

11 **Nondefective Product**

12 The product which allegedly caused injuries or damage to Plaintiffs was reasonably fit for
13 the uses for which it was intended.
14

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16 **FIFTH AFFIRMATIVE DEFENSE**

17 **Non-Party**

18
19 The injuries or damages of which Plaintiffs complain were caused in whole or in part by
20 nonparties whom plaintiffs have failed to join in this action.
21

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23 **SIXTH AFFIRMATIVE DEFENSE**

24 **Waiver and Estoppel**

25 Plaintiffs have waived any and all claims which they seek to assert in this action and are
26 estopped both to assert and to recover upon such claims.
27

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29 ABC COMPANY/ANSWER TO COMPLAINT

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2 **SEVENTH AFFIRMATIVE DEFENSE**

3 **Failure to Mitigate Damages**

4
5 Plaintiffs have failed, in whole or in part, to mitigate their alleged damages.
6

7 **EIGHTH AFFIRMATIVE DEFENSE**

8 **Statute of Limitations and Repose**

9
10 Plaintiffs' claims are barred, in whole or in part, by the applicable statutes of limitations
11 and/or repose.
12

13 **NINTH AFFIRMATIVE DEFENSE**

14 **State of the Art**

15
16 The product at issue was in compliance with all federal, state and local codes, standards,
17 regulations, specifications and statutes regarding the manufacture, sale and use of the product at
18 all times pertinent to this action.
19

20 **TENTH AFFIRMATIVE DEFENSE**

21 **Product Misuse**

22
23 Plaintiffs are not entitled to recover to the extent any alleged damages or injuries were
24 caused by the misuse, abuse, or failure to properly maintain or care for the product.
25
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29 ABC COMPANY/ANSWER TO COMPLAINT

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2 **ELEVENTH AFFIRMATIVE DEFENSE**

3 **Contributory or Comparative Negligence**

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5 ABC Company denies that it was negligent in any way in connection with the design,
6 manufacture or sale of its products but as to any and all acts of negligence alleged in the
7 Complaint, ABC Company affirmatively alleges that plaintiffs' contributory negligence, incurred
8 risk, comparative fault and other fault caused the damages sought in this action, and they are
9 more than 50% at fault in causing such damages and therefore plaintiffs cannot recover in this
10 action or the damages should be diminished in proportion to the amount of fault attributable to
11 them.
12

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14 **TWELFTH AFFIRMATIVE DEFENSE**

15 **Constitutionality of Punitive Damages**

16
17 Plaintiffs' request for punitive damages cannot be sustained because an award of punitive
18 damages under state law by a jury that (1) is not provided constitutionally adequate standards of
19 sufficient clarity for determining the appropriate imposition of, and the appropriate size of, a
20 punitive damages awarded, (2) is not adequately instructed on the limits of punitive damages
21 imposed by the applicable principles of deterrence and punishment, (3) is not expressly
22 prohibited from awarding punitive damages, or determining the amount of an award of punitive
23 damages, in whole or in part on the basis of invidiously discriminatory characteristics, including
24 without limitation the residence, wealth, and corporate status of ABC Company, (4) is permitted
25 to award punitive damages under a standard for determining liability for punitive damages that is
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29 ABC COMPANY/ANSWER TO COMPLAINT

1 vague and arbitrary and does not define with sufficient clarity the conduct or mental state that
2 makes punitive damages permissible, (5) is not properly instructed regarding Plaintiffs' burden of
3 proof with respect to each and every element of a claim for punitive damages, or (6) is not
4 subject to trial court and appellate judicial review for reasonableness and furtherance of
5 legitimate purposes on the basis of constitutionally adequate and objective standards violates
6 ABC Company's due process and equal protection rights guaranteed by the Fifth and Fourteenth
7 Amendments to the United States Constitution and by the applicable state constitutions, and
8 would be improper under the common law and public policies of the states. Plaintiffs' request for
9 punitive damages also cannot be sustained because the applicable state laws regarding the
10 standards for determining liability for and the amount of punitive damages fail to give ABC
11 Company prior notice of the conduct for which punitive damages may be imposed and the
12 severity of the penalty that may be imposed and are void for vagueness in violation of ABC
13 Company's due process rights guaranteed by the Fifth and Fourteenth Amendments to the United
14 States Constitution and applicable state constitutions. Further, plaintiffs' request for punitive
15 damages against ABC Company cannot be sustained, because an award of punitive damages
16 exceeding the limits authorized by the criminal laws or other comparable laws of the applicable
17 state would violate ABC Company's due process and equal protection rights guaranteed by the
18 Fifth and Fourteenth Amendments to the United States Constitution and the applicable state
19 constitutions, and would be improper under the common law and public policies of applicable
20 state law. Plaintiffs' request for punitive damages against ABC Company also cannot be
21 sustained because any award of punitive damages under applicable state law, which would be
22 penal in nature, without affording ABC Company the same protections that are afforded to all
23 ABC COMPANY/ANSWER TO COMPLAINT

1 criminal defendants, including the protection against unreasonable searches and seizures, self-
2 incrimination, and the right to confront adverse witnesses, a speedy trial, and the effective
3 assistance of counsel, would violate ABC Company's rights guaranteed under the Fourth, Fifth,
4 and Sixth Amendments as incorporated into the Fourteenth Amendment to the United States
5 and Sixth Amendments as incorporated into the Fourteenth Amendment to the United States
6 Constitution, and applicable state constitutions, and would be improper under the common law
7 and public policies of applicable state law. ABC Company further states that plaintiff's
8 Complaint fails to state sufficient facts to support the prayer for punitive damages against ABC
9 Company.
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12 **THIRTEENTH AFFIRMATIVE DEFENSE**

13 **Barred Claims**

14 Plaintiffs' claims under a negligence theory are barred by _____ Product Liability
15 Act.
16

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18 **FOURTEENTH AFFIRMATIVE DEFENSE**

19 **Misuse by Others**

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21 Plaintiffs' claims may be barred because the physical harm alleged by plaintiffs in this
22 action resulted from the misuse of the tire at issue by some person not reasonably expected by
23 ABC Company at the time the tire at issue in this action was sold or otherwise conveyed to
24 another party
25

26 **FIFTEENTH AFFIRMATIVE DEFENSE**

27 **Intervening Acts**

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29 ABC COMPANY/ANSWER TO COMPLAINT

1 The damages complained of may have been the result of the intervening actions of others
2 and were not proximately caused by the actions or omissions of ABC Company.
3

4 **SIXTEENTH AFFIRMATIVE DEFENSE**

5 **Incurring Risk by Others**

6
7 Plaintiffs' claims may be barred because third parties knew of the defects alleged in the
8 Complaint and were aware of the danger and nevertheless proceeded unreasonably to make use
9 of
10 such product.
11

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13 **SEVENTEENTH AFFIRMATIVE DEFENSE**

14 **Modification or Alteration**

15
16 Plaintiffs' claims may be barred because the physical harm complained of was caused by
17 a
18 modification or alteration of the product at issue made by a person after the delivery to the initial
19 user or consumer which modification or alteration was the proximate cause of the physical harm
20 complained of by plaintiffs and such modification or alteration was not reasonably expectable by
21 ABC Company.
22

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24 **EIGHTEENTH AFFIRMATIVE DEFENSE**

25 **Joint Liability Abolished**

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29 ABC COMPANY/ANSWER TO COMPLAINT

1 The doctrine of joint and several liability has been statutorily abolished in California in a
2 case such as this, and, should plaintiffs prevail against ABC Company, ABC Company's liability
3 is several and is limited to its own actionable segment of fault, if any.
4

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9 **NINETEENTH AFFIRMATIVE DEFENSE**

10 **Contribution**

11 Any physical harm alleged can be attributed to several causes and the damages for this
12 harm, if any, should be apportioned among the various causes according to the contribution of
13 each cause to the harm sustained.
14

15
16 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

17 **Notice of Additional Affirmative Defenses**

18 ABC Company hereby gives notice that it intends to rely upon such other affirmative
19 defenses as may become available or apparent during the course of discovery and thus reserves
20 the right to amend its Answer to assert such defenses.
21

22
23 **WHEREFORE**, ABC Company demands judgment dismissing the Complaint with
24 costs,
25 attorney's fees to the extent recoverable, disbursements and such other and further relief as this
26 Court may deem just and proper.
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29 ABC COMPANY/ANSWER TO COMPLAINT

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DATED: _____, 20XX Respectfully submitted,

JAMES J. JONES (SBN _____)
1600 Alton Parkway,
Irvine, California 92618
(XXX) XXX-XXXX
Counsel for Defendant ABC Company, Inc.

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a copy of the foregoing has been served upon the following counsel of record by depositing a copy of the same in the United States mail, first class postage prepaid this __th day of _____, 20XX and addressed as follows:

William W. Williams
Steven S. Stevens
Williams & Stevens
P.O. Box 1234
5678 North South Street
Los Angeles, CA 90003

James J. Jones

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