

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: _____

LINDA KILBY,

Plaintiff,

vs.

FORWARD PROGRESS INC.
d/b/a MAINSTREET CAR WASH,

Defendant.

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, LINDA KILBY (“Plaintiff” or “Ms. Kilby”), by and through undersigned counsel, and pursuant to the Florida Rules of Civil Procedure hereby sues Defendant, FORWARD PROGRESS INC. d/b/a MAINSTREET CAR WASH (“Defendant”), and as grounds therefore states as follows:

I. PARTIES, JURISDICTION, AND VENUE

1. This is an action for damages in excess of Fifty Thousand Dollars (\$50,000.00), exclusive interest, costs, and attorneys’ fees.
2. At all times material, Plaintiff was and is a resident of the State of Florida.
3. At all times material, Defendant owned, operated, managed, maintained, and/or controlled a car wash business known as “Main Street Car Wash,” located at 201 E Boynton Beach Blvd, Boynton Beach, Palm Beach County, Florida 33435, and was authorized to do business in the State of Florida.
4. The incident giving rise to this action occurred in Palm Beach County, Florida; therefore, venue is proper in Palm Beach County, Florida.

5. At all times material, Defendant's employees and/or agents were acting within the course and scope of their employment/agency with Defendant, which is vicariously liable for their acts and omissions.

II. GENERAL ALLEGATIONS

6. On or about February 18, 2022, Plaintiff lawfully entered Defendant's automatic car wash as a customer and invitee and remained seated in her vehicle as directed while Defendant's car wash conveyor/drive mechanism advanced her vehicle through the wash tunnel.
7. Before Plaintiff's vehicle completed the wash cycle, Plaintiff's Vehicle stopped moving and Defendant's system advanced a subsequent vehicle into the tunnel, causing that trailing vehicle to collide with the rear of Plaintiff's Vehicle.
8. As a result of the collision, Plaintiff sustained injuries to her back, and her vehicle was significantly damaged. Following the incident, Defendant's personnel directed Plaintiff to a nearby body shop for repairs to her Vehicle and Defendant later paid Plaintiff \$3,000.00 toward the subject vehicle repairs. No payment or settlement was reached related to Plaintiff's bodily injuries.
9. Following the incident, Plaintiff underwent medical evaluation and treatment, including back surgery. She remains under active medical care, continues therapy for recovery, and continues to experience significant pain and functional limitations.
10. All conditions precedent to the filing of this action have been performed, have occurred, or have been waived.

COUNT I - NEGLIGENCE AGAINST DEFENDANT

11. Plaintiff realleges and incorporates paragraphs 1 through 10 as though fully set forth herein.
12. At all times material, Plaintiff was a business invitee on Defendant's premises.

13. Defendant owed Plaintiff a duty to exercise reasonable care in the ownership, operation, inspection, maintenance, repair, monitoring, and control of its premises and the automated car wash equipment, including the conveyor/drive mechanism, sensors, interlocks, queue-control systems, emergency-stop systems, and other safety devices; and to protect invitees from reasonably foreseeable harms.

14. Defendant breached its duty of care by, including but not limited to:

- a. Failing to properly maintain, inspect, and repair the car wash conveyor/drive mechanism and related equipment, permitting a dangerous condition to exist whereby a trailing vehicle was advanced into an occupied tunnel
- b. Failing to ensure functional safety interlocks, sensors, and queue-control mechanisms to prevent advancing a trailing vehicle into an occupied tunnel;
- c. Failing to implement and enforce adequate operating procedures, monitoring, and staffing;
- d. Failing to adequately train and supervise employees operating and/or overseeing the car wash conveyor/drive mechanism;
- e. Failing to stop operations upon actual or constructive notice of a hazardous condition; and
- f. Otherwise operating the premises and equipment in a negligent manner.

15. As a direct and proximate result of the incident, Plaintiff sustained damages including bodily injury and resulting pain and suffering, disability, physical impairment, disfigurement, mental anguish, inconvenience, loss of capacity for the enjoyment of life; medical, hospital, surgical, rehabilitation, therapy, pharmaceutical, and related expenses

(past and future); and incidental expenses. These losses are permanent and continuing and Plaintiff will suffer them in the future.

WHEREFORE, Plaintiff demands judgment for all recoverable personal injury and economic damages against Defendant, together with taxable costs, interest, and such other relief as the Court deems just and proper, and demands trial by jury.

**COUNT II – PREMISES LIABILITY: DANGEROUS CONDITION
ON BUSINESS PREMISES**

16. Plaintiff realleges and incorporates paragraphs 1 through 10 as though fully set forth herein.
17. A dangerous condition existed on Defendant's premises and in its operations, including malfunctioning and/or negligently operated car wash conveyor/drive mechanism and inadequate safety controls and procedures that allowed a trailing vehicle to be advanced into and collide with the back of Plaintiff's Vehicle causing significant damage.
18. Defendant had actual or constructive knowledge of the dangerous condition, or the condition occurred with such regularity and foreseeability that Defendant should have known of it through the exercise of reasonable care, yet failed to correct it, implement reasonable safety measures, and/or warn Plaintiff of the danger.
19. As a direct and proximate result of the incident, Plaintiff sustained damages including bodily injury and resulting pain and suffering, disability, physical impairment, disfigurement, mental anguish, inconvenience, loss of capacity for the enjoyment of life; medical, hospital, surgical, rehabilitation, therapy, pharmaceutical, and related expenses (past and future); and incidental expenses. These losses are permanent and continuing and Plaintiff will suffer them in the future.

WHEREFORE, Plaintiff demands judgment for all recoverable personal injury and property damages against Defendant, together with taxable costs, interest, and such other relief as the Court deems just and proper, and demands trial by jury.

COUNT III – NEGLIGENT TRAINING, SUPERVISION, AND RETENTION

20. Plaintiff realleges and incorporates paragraphs 1 through 10 as though set forth herein.
21. At all times material, Defendant's employees and/or agents were responsible for monitoring, sequencing, and operating the car wash tunnel and for stopping the line to prevent collisions.
22. Defendant owed a duty to exercise reasonable care in training, supervising, and retaining its employees and/or agents to safely operate the car wash and protect invitees.
23. Defendant breached this duty by failing to develop, implement, and enforce reasonable training, supervision, and retention practices, thereby allowing unsafe operation and vehicle sequencing that caused the incident.
24. As a direct and proximate result of the incident, Plaintiff sustained damages including bodily injury and resulting pain and suffering, disability, physical impairment, disfigurement, mental anguish, inconvenience, loss of capacity for the enjoyment of life; medical, hospital, surgical, rehabilitation, therapy, pharmaceutical, and related expenses (past and future); and incidental expenses. These losses are permanent and continuing and Plaintiff will suffer them in the future.

WHEREFORE, Plaintiff demands judgment for all recoverable personal injury and property damages against Defendant, together with taxable costs, interest, and such other relief as the Court deems just and proper, and demands trial by jury.

**COUNT IV – BREACH OF IMPLIED WARRANTY OF WORKMANLIKE
PERFORMANCE (SERVICES)**

25. Plaintiff realleges and incorporates paragraphs 1 through 10 as though fully set forth herein.
26. For consideration, Defendant undertook to provide automated car wash services to Plaintiff, which carried an implied duty to perform the services in a reasonably safe and workmanlike manner.
27. Defendant breached that implied duty by providing services via malfunctioning and/or negligently operated equipment and unsafe procedures, resulting in a foreseeable collision.
28. As a direct and proximate result of the incident, Plaintiff sustained damages including bodily injury and resulting pain and suffering, disability, physical impairment, disfigurement, mental anguish, inconvenience, loss of capacity for the enjoyment of life; medical, hospital, surgical, rehabilitation, therapy, pharmaceutical, and related expenses (past and future); and incidental expenses. These losses are permanent and continuing and Plaintiff will suffer them in the future.

WHEREFORE, Plaintiff demands judgment for all recoverable personal injury and property damages against Defendant, together with taxable costs, interest, and such other relief as the Court deems just and proper, and demands trial by jury.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues so triable as a matter of right.

Respectfully submitted,

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