

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
ABERDEEN DIVISION**

**SARAH MCANALLY HEINKEL**

**PLAINTIFF**

**VS.**

**Case No. 1:17-cv-082-SA-DAS**

**YOKOHAMA TIRE  
MANUFACTURING MISSISSIPPI, LLC**

**DEFENDANT**

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**ANSWER AND AFFIRMATIVE AND OTHER DEFENSES OF  
YOKOHAMA TIRE MANUFACTURING MISSISSIPPI, LLC**

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Defendant Yokohama Tire Manufacturing Mississippi, LLC (“YTMM” or “Defendant”), by and through counsel, hereby files its Answer and Affirmative and Other Defenses to the Complaint filed against it by Plaintiff Sarah McAnally Heinkel (“Heinkel” or “Plaintiff”). All allegations contained in Plaintiff’s Complaint are denied unless expressly admitted by YTMM.

**ANSWER**

YTMM makes the following responses to each numbered paragraph of the Complaint as follows:

1. YTMM is without sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 1 of Plaintiff’s Complaint and therefore denies same.
2. YTMM admits the allegations in Paragraph 2 of Plaintiff’s Complaint.
3. Paragraph 3 of Plaintiff’s Complaint contains legal conclusions and jurisdictional allegations to which no factual response is required. To the extent Paragraph 3 contains factual allegations requiring a response, those allegations are denied.

4. Paragraph 4 of Plaintiff's Complaint characterizes documents attached to the Complaint as Exhibits A-D. YTMM admits only that the documents attached to the Complaint as Exhibits A-D speak for themselves.

5. YTMM is without sufficient information to either admit or deny the allegations relating to Plaintiff's performance in other employment and therefore denies the same. YTMM admits that Plaintiff was hired on or about March 3, 2014 as its Environmental Health & Safety Manager.

6. YTMM denies the allegations in Paragraph 6 of Plaintiff's Complaint.

7. YTMM denies the allegations in Paragraph 7 of Plaintiff's Complaint.

8. YTMM denies the allegations in Paragraph 8, including 8(A) and 8(B), of Plaintiff's Complaint.

9. YTMM admits only that Plaintiff received a "below average" performance review in March 2016 and it discharged Plaintiff on June 20, 2016. YTMM denies all remaining allegations in Paragraph 9 of Plaintiff's Complaint.

10. YTMM denies the allegations in Paragraph 10 of Plaintiff's Complaint.

11. YTMM admits only that it discharged Melissa Orman on August 5, 2016. YTMM denies all remaining allegations in Paragraph 11 of Plaintiff's Complaint.

12. YTMM denies the allegations in Paragraph 12 of Plaintiff's Complaint and denies that Plaintiff is entitled to damages requested in the Complaint or any other relief.

13. YTMM denies the allegations in Paragraph 13 of Plaintiff's Complaint. Answering further, YTMM denies that it engaged in any unlawful action with respect to Plaintiff.

14. YTMM denies the allegations in Paragraph 14 of Plaintiff's Complaint and denies that Plaintiff is entitled to any of the relief requested in the Complaint or any other relief.

15. YTMM denies that Plaintiff is entitled to any of the relief requested in the Complaint or any other relief.

16. YTMM denies all allegations in the Complaint not expressly admitted herein.

### **AFFIRMATIVE AND OTHER DEFENSES**

Defendant sets forth the following affirmative and other defenses:

#### **FIRST DEFENSE**

Plaintiff's Complaint fails to state a claim upon which relief can be granted, and should therefore be dismissed.

#### **SECOND DEFENSE**

All actions taken with regard to Plaintiff were taken in good faith, for reasonable and legitimate business reasons, and not in violation of any law, rule, regulation or public policy.

#### **THIRD DEFENSE**

Plaintiff cannot show that she engaged in protected activity, including protected opposition, to state a claim for retaliation under the Americans with Disabilities Act, the Pregnancy Discrimination Act, Title VII or other civil rights laws of the United States.

#### **FOURTH DEFENSE**

Plaintiff cannot show that she requested a reasonable accommodation required by law and/or that the pregnant employee was entitled to and denied a reasonable accommodation.

#### **FIFTH DEFENSE**

Plaintiff cannot show that she engaged in protected activity and/or cannot show that any alleged complaint or protected activity was the but for cause (or otherwise causally related) to

any alleged adverse action.

SIXTH DEFENSE

Plaintiff's claims should be dismissed because Defendant has not engaged in retaliation because of any complaint Plaintiff may have made.

SEVENTH DEFENSE

Plaintiff's retaliation claim(s) are barred, in whole or in part, because they exceed the scope of the charges she filed with the EEOC. As to matters not included in her EEOC charges, including retaliation for any complaint(s), Plaintiff has failed to exhaust her administrative remedies.

EIGHTH DEFENSE

Plaintiff cannot show that similarly situated, non-pregnant employees were treated more favorably or that she reasonably believed similarly situated, non-pregnant employees were treated more favorably.

NINTH DEFENSE

Plaintiff cannot show that she engaged in protected activity to support a wrongful discharge claim.

TENTH DEFENSE

Plaintiff has not and cannot show that she complained of illegal conduct that warranted the imposition of criminal penalties to support a wrongful discharge claim.

ELEVENTH DEFENSE

Plaintiff cannot state a claim for wrongful discharge for alleged conduct that occurred outside of the United States and/or outside the jurisdiction of Mississippi and/or U.S. law.

TWELFTH DEFENSE

Plaintiff's claims and damages are precluded, in whole or in part, by her violation of Defendant's policies, practices and/or procedures.

THIRTEENTH DEFENSE

The alleged losses set forth in the Complaint did not result from anything Defendant allegedly did or allegedly failed to do.

FOURTEENTH DEFENSE

Plaintiff's claims are barred, in whole or in part, by her failure to adhere to the applicable statute of limitations, required time period for asserting claims, and/or other statutory period for asserting and/or filing claims.

FIFTEENTH DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands, laches, and/or waiver.

SIXTEENTH DEFENSE

Plaintiff's claims should be dismissed, in whole or in part, because she is estopped as to such claims by her own actions.

SEVENTEENTH DEFENSE

Plaintiff's Complaint fails to allege any facts that would support the imposition of punitive damages against Defendant and the imposition of any such damages would violate the constitutional and/or other rights of Defendant.

EIGHTEENTH DEFENSE

Plaintiff's claims are unavailable, in whole or in part, because Defendant has taken and is taking available means to ensure that its employees are not subjected to unlawful

discrimination, retaliation, or other unlawful conduct.

NINETEENTH DEFENSE

Any monetary relief Plaintiff seeks, or might otherwise be entitled to receive, must be reduced by the amounts Plaintiff earned, or with reasonable diligence could have earned through mitigation, or which she otherwise failed to seek or accept, during or covering the period for which she seeks monetary relief.

TWENTIETH DEFENSE

Defendant did not engage in any negligent conduct as it relates to Plaintiff and exercised reasonable care to prevent and correct any alleged harassing or retaliatory behavior or conduct.

TWENTY-FIRST DEFENSE

At all times relevant hereto, Defendant maintained reasonable policies and procedures to prevent and correct harassment, other forms of discrimination/hostile work environment, and retaliation and Plaintiff failed to avail herself of these policies and procedures. Accordingly, Plaintiff's claims against Defendant are barred under the principles enunciated in the Supreme Court's Farragher/Elterth decisions because she failed to take advantage of Defendant's existing policies and other measures designed to prevent and correct unlawful discrimination, harassment and retaliation in its workplace, or to avoid harm otherwise.

TWENTY-SECOND DEFENSE

Plaintiff's claims are unavailable, in whole or in part, because there was no causal connection between events alleged in his Complaint and any damages which she allegedly suffered.

TWENTY-THIRD DEFENSE

Defendant did not act with willfulness or malice towards Plaintiff.

TWENTY-FOURTH DEFENSE

Plaintiff's claims should be dismissed, in whole or in part, because she has failed to meet the jurisdictional or administrative or other prerequisites or conditions precedent for maintaining all or part of this lawsuit, including, but not limited to, her duty to file a charge, exhaust available administrative or internal remedies and/or her duty to file suit within 90 days of his receipt of a Dismissal and Notice of Rights.

TWENTY-FIFTH DEFENSE

Plaintiff's claims are barred, in whole or in part, by the after-acquired evidence doctrine because Plaintiff engaged in misconduct during employment and in applying for employment that would have resulted in termination had Defendant been made aware of the misconduct.

TWENTY-SIXTH DEFENSE

Defendant pleads the protections of Mississippi Code Annotated § 11-1-65.

TWENTY-SEVENTH DEFENSE

Defendant pleads the protection of Mississippi Code Annotated § 11-1-60.

TWENTY-EIGHTH DEFENSE

Defendant expressly reserves the right to assert additional defenses, counterclaims, or any other claims Defendant deems appropriate after further proceedings in this case.

**RELIANCE ON JURY DEMAND**

Defendant relies on Plaintiff's demand for a trial by jury and demands for itself a trial by jury on all claims asserted by Plaintiff.

WHEREFORE, Defendant Yokohama Tire Manufacturing Mississippi, LLC, moves the Court to (1) dismiss Plaintiff's Complaint, with prejudice, (2) enter judgment in Defendant's favor on Plaintiff's claim(s); (3) award Defendant its attorneys' fees and costs incurred in

connection with the defense of this action; and (4) grant Defendant any other relief this Court deems just and proper.

Dated: August 22, 2017

**Yokohama Tire Manufacturing Mississippi, LLC**

By: /s/ Scott F. Singley  
Of Counsel

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**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/CEF system which sent notification of such filing to all counsel of record.

Dated: August 22, 2017

By: /s/ Scott F. Singley  
Scott F. Singley