

**COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT**

**SUFFOLK, ss.**

**SUPERIOR COURT  
CIVIL ACTION NO.:**

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**LAURA SAPP and KATHLEEN  
LAMKIN,**

**Plaintiffs,**

**V.**

**KONE, INC., MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY,**

**Defendants.**

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**COMPLAINT AND DEMAND FOR JURY TRIAL**

**THE PARTIES**

1. Plaintiff Laura Sapp is a resident of the state of Louisiana and resides at, 4932 Jasper Street, Metairie, Jefferson Parish, Louisiana.
2. Plaintiff Kathleen Lamkin is a resident of the state of Louisiana and resides at, 23525 Silver Springs Drive, Abita Springs, St. Tammany Parish, Louisiana.
3. 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.
4. The MBTA is responsible for operating and maintaining subway, commuter rail and public transportation services throughout the Greater Boston area.
5. 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.

6. Defendant Kone is in the business of installing, servicing, testing, and maintaining elevators and escalators.
7. 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 subject escalator before the accident that is the subject of this Complaint. The plaintiff's cause of action against Kone concerns its maintenance or failure to maintain the subject escalator arises out of Kone's conduct in Massachusetts.

### FACTUAL ALLEGATIONS

8. The plaintiffs incorporate by reference all of the allegations contained in the foregoing paragraphs as if they were fully restated herein.
9. On September 26, 2021 and at all relevant times, the Massachusetts Bay Transportation Authority owned, operated, maintained and controlled an escalator located at and around the passenger station on Dartmouth Street in Boston, Massachusetts, known as the Back Bay Station (hereinafter "the subject escalator").
10. On September 26, 2021, the Plaintiffs disembarked at commuter rail train at the lower level of Back Bay Station. They walked to and boarded the escalator at the level for the purpose of travelling up to the street level of Back Bay Station. Plaintiffs were lawfully and in the exercise of due care utilizing the subject escalator for its intended and reasonably foreseeable purpose of ascending from the underground train platform to ground level of the Back Bay Station. As they ascended, the escalator malfunctioned and failed, causing the stairs of the escalator to rapidly slide backwards towards the underground platform.
11. As a result of the subject escalator's malfunction, plaintiff Laura Sapp fell and was crushed against the moving escalator stairs by the weight of other escalator passengers that fell on top of her, resulting in numerous injuries including, but not limited to, disfiguring lacerations to her scalp, lacerations and contusions to her hands, and impact injuries to her shoulder resulting in a labral tear.
12. As a result of the subject escalator's malfunction, other passengers collided with Kathleen Lamkin, resulting in her tumbling over the top of the other passengers on the way to the train's platform landing. During her decent, her ankle was caught, and twisted, resulting in injuries, including but not limited to injury to her ankle.
13. On September 26, 2021, and at all relevant times, the MBTA contracted with Kone to test, service and maintain the subject escalator. Therefore, both the MBTA and Kone and its parents, subsidiaries, divisions and related entities, had a duty to service, test, and maintain

the subject escalator at the Back Bay Station in a safe condition and in compliance with all applicable codes and regulations.

## COUNT I

### **CLAIMS AGAINST THE DEFENDANT, MASSACHUSETTS BAY TRANSPORTATION AUTHORITY, PREDICATED ON NEGLIGENCE AND THE FAILURE TO EXERCISE UTMOST CARE**

14. The plaintiffs incorporate by reference all of the allegations contained in the foregoing paragraphs as if they were fully restated herein.
15. The MBTA, as a common carrier and the owner of the escalator and the Back Bay Station, owed a nondelegable duty to the plaintiffs, as lawful passengers on the subject escalator, to exercise the highest degree of care, including reasonable care, in providing, inspecting, repairing, and maintaining the subject escalator to ensure it operated in a reasonably safe manner to avoid injury to public commuters and other lawful visitors using the escalator in a reasonably safe manner.
16. As a common carrier concerning the transportation of passengers for a fee, the MBTA was bound to exercise the degree of care which the circumstances demanded, including the exercise of the utmost caution which is 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.
17. The MBTA breached its duty of care to the plaintiffs by failing to maintain and repair the subject escalator to avoid the dangerous malfunction of the escalator suddenly running backwards and otherwise providing for the public's use an escalator that was in an unreasonably dangerous and defective condition causing it to malfunction.
18. The incident that caused the plaintiffs' injuries is not the type that would occur in the absence of the MBTA's negligence and failure to exercise utmost care in owning, providing, inspecting, servicing, repairing and/or maintaining the subject escalator and there was greater likelihood or probability that the injuries sustained by Plaintiffs was due to causes for which the MBTA was responsible than from any other cause.
19. Because the accident is not the type that would have occurred in the absence of negligence and the failure to exercise utmost care, the accident gives rise to a reasonable inference that the MBTA negligently committed unspecified acts or omissions and that those acts or omissions caused the plaintiffs' injuries.
20. But for the MBTA's wrongdoing and as a proximate cause thereof, the plaintiff Laura Sapp sustained permanent injury including, but not limited to, disfiguring injury to her scalp, hair loss and thinning, scarring of her scalp resulting in the inability to grow hair, injury to

her hands, and injury to her shoulder. As a direct, proximate result of her physical injuries, plaintiff Sapp has incurred medical expenses and endured pain and suffering, mental anguish, emotional distress and the loss of the enjoyment and quality of life.

21. Plaintiff Sapp's injuries constitute serious bodily injury 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.
22. But for the MBTA's negligence and as a proximate cause thereof, the plaintiff Kathleen Lamkin sustained injuries including, but not limited to, injury to her ankle. As a direct, proximate result of her physical injuries, plaintiff Lamkin has incurred medical expenses and endured pain and suffering, mental anguish, emotional distress and the loss of the enjoyment and quality of life.
23. On May 13, 2022, the plaintiffs presented their claims in writing via certified mail to the General Managers of the MBTA, Steve Poftak and Jeff Gonnville, as well as the Massachusetts Department of Transportation Secretary and CEO Jamey Tesler. The MBTA failed to respond to the plaintiffs' presentment letter.

WHEREFORE, the plaintiffs demand judgment against the Massachusetts Bay Transportation Authority in an amount sufficient to fully and fairly compensate them for their personal injuries and emotional distress, including interest and costs, and for all other just or proper relief.

## **COUNT II**

### **CLAIMS AGAINST THE DEFENDANT, KONE. INC., PREDICATED ON NEGLIGENCE**

24. The plaintiffs incorporate by reference all of the allegations contained in the foregoing paragraphs as if they were fully restated herein.
25. Kone entered into a contract with the MBTA to maintain the subject escalator and to ensure its proper and safe operation.
26. Kone had a contractual and common law duty to the plaintiffs, as lawful passengers on the subject escalator, to exercise reasonable care, in inspecting, repairing, and maintaining the subject escalator to ensure it operated in a reasonably safe manner to avoid injury to public commuters and other lawful visitors.
27. Kone had a contractual duty to the plaintiffs, as lawful passengers on the subject escalator, to perform its obligations under the contract with the MBTA in a workmanlike manner, including the inspecting, repairing, and maintaining of the subject escalator to ensure it

operated in a reasonably safe manner to avoid injury to public commuters and other lawful visitors using the escalator is a reasonably safe manner.

28. Kone breached its duties of care to the plaintiffs by failing to maintain and repair the subject escalator to avoid the dangerous malfunctioning of the escalator causing it to suddenly stop ascending and to rapidly move backwards resulting in the plaintiffs' injuries.
29. The incident that caused the plaintiffs' injuries is not the type that would occur in the absence of Kone's negligence in inspecting, servicing, repairing and/or maintaining the subject escalator and there was greater likelihood or probability that the harm complained of was due to causes for which Kone was responsible than from any other cause.
30. Because the accident is not the type that would have occurred in the absence of negligence, the accident gives rise to a reasonable inference that Kone negligently committed unspecified acts or omissions and that those acts or omissions caused the plaintiffs' injuries.
31. But for Kone's negligence and as a proximate cause thereof, the plaintiff Laura Sapp sustained permanent injury including, but not limited to, disfiguring injury to her scalp, hair loss and thinning, scarring of her scalp resulting in the inability to grow hair, injury to her hands, and injury to her shoulder. As a direct, proximate result of her physical injuries, plaintiff Sapp has incurred medical expenses and endured pain and suffering, mental anguish, emotional distress and the loss of the enjoyment and quality of life.
32. But for Kone's negligence and as a proximate cause thereof, the plaintiff Kathleen Lamkin sustained injuries including, but not limited to, injury to her ankle. As a direct, proximate result of her physical injuries, plaintiff Lamkin has incurred medical expenses and endured pain and suffering, mental anguish, emotional distress and the loss of the enjoyment and quality of life.

WHEREFORE, the plaintiffs demand judgment against Kone, Inc. in an amount sufficient to fully and fairly compensate them for their personal injuries and emotional distress, including interest and costs, and for all other just or proper relief

THE PLAINTIFFS DEMANDS TRIAL BY JURY ON ALL COUNTS OF HIS COMPLAINT.

Dated: February 6, 2023

The Plaintiffs,  
By their attorneys,

/s/ Joseph P. Musacchio

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