

IN THE CIRCUIT COURT OF JACKSON COUNTY, WEST VIRGINIA

SCA EFiled: Apr 21 2023
10:15AM EDT
Transaction ID 69867146

SOUTHERN JACKSON COUNTY
PUBLIC SERVICE DISTRICT,

Plaintiff,

v.

Civil Action No. CC-18-2022-C-91

MASTER METER, INC., a Texas
Corporation; FERGUSON ENTERPRISES,
A Virginia Limited Liability Company; C.J.
HUGHES CONSTRUCTION COMPANY, INC.,
a West Virginia corporation; and TRI-STATE
PIPELINE, INC., an Ohio Corporation;

Defendants.

TO: THE HONORABLE CHIEF JUSTICE ELIZABETH D. WALKER

AMENDED MOTION TO REFER
TO THE WEST VIRGINIA BUSINESS COURT DIVISION

Pursuant to Rule 29.06 of the West Virginia Trial Court Rules, Defendants **Master Meter, Inc., Ferguson Enterprises, and C.J. Hughes Construction Company, Inc.**, collectively referred to herein as “Defendants¹,” by counsel, respectfully move this Court to refer this civil action to the West Virginia Business Court Division (“*Motion to Refer*”). In support of its *Motion to Refer*, Defendants state as follows:

NATURE OF CASE

The present matter involves a dispute between four sophisticated business entities. The matter involves allegations of breach of contract, negligence, misrepresentation, breach of warranty and fraud. The dispute is over a water line metering system installed in the Southern

¹ Upon information and belief Defendant Tri-State Pipeline, Inc. is no longer in business and has no representatives.

Jackson County Public Service District (“SJCPSD”) in 2012. The system was designed to allow employees of the SJCPSD to drive by businesses and residences to obtain water usage measurements for a particular period of time without always having to exit the vehicle being driven by the employee of the SJCPSD. Plaintiff claims that the system was defective, never operated properly, or as marketed, and, as a result, it was damaged.

The case originated in Jackson County on February 6, 2023, and is assigned to the Honorable Lora Dyer.

LEGAL STANDARD

West Virginia Code § 51-2-15 and West Virginia Trial Court Rule 29 provide that civil actions that constitute “business litigation” are eligible for transfer to the West Virginia Business Court Division (the “Business Court Division”). Under West Virginia Trial Court Rule 29, any party or judge may seek a referral of “business litigation” to the Business Court Division by filing a Motion to Refer with the Clerk of this Court after the time to answer the Complaint has expired. *See* W. Va. Tr. Ct. R. 29.06(a)(1)-(2). “A copy of the complaint, answer, docket sheet and any other documents that support referral under West Virginia Trial Court Rule 29.04(a) shall be attached to the motion.” W. Va. Tr. Ct. R. 29.06(a)(1).

As required by West Virginia Trial Court Rule 29.06(a), a true and accurate copy of the Complaint of SJCPSD is attached hereto as *Exhibit 1*. True and accurate copies of Defendants’ Responses are attached hereto as *Exhibits 2, 3, and 4*. The Docket Sheet is attached hereto as *Exhibit 5*. As noted, Tri-State Pipeline, Inc., although served, appears to be no longer in business, and its time to answer has expired.

ANALYSIS

The present case should be referred to the West Virginia Business Court Division for three reasons. First, civil actions eligible for transfer to the Business Court Division include matters in which “the principal claim or claims involve matters of significance to the transactions, operations, or governance between business entities.” W. Va. Tr. Ct. 29.04(a)(1). At the heart of this dispute is a determination of the rights, duties, and obligations of the parties under the contract for services and other business relationships between the SJCPD and the various defendants. Thus, this action falls squarely within those contemplated to be referred to the Business Court Division by West Virginia Trial Court Rule 29.04(a)(1).

Second, “business litigation” is defined as a dispute that “presents commercial and/or technology issues in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the controversy because of the need for specialized knowledge or expertise in the subject matter or familiarity with some specific law or legal principles that may be applicable.” W. Va. Tr. Ct. R. 29.04(a)(2). The issues likely to arise in the present litigation are nuanced and industry specific, requiring specialized knowledge of the water metering industry, ranging from an interpretation of the contractual rights related to the equipment, its use and warranties for the same and the statutory and administrative rights set forth by law, in order for a fair, expedient, and reasonable resolution. As a result, this case falls within the subject matter defined as business litigation” contemplated by West Virginia Trial Court Rule 29.

Third, the principal claims asserted in this litigation do not involve any of the categories of claims expressly excluded from the definition of “business litigation” provided by West Virginia Trial Court Rule 29.04(a)(3). Business Court Division’s jurisdiction does not include cases where:

the principal claim or claims do not involve: consumer litigation, such as products liability, personal injury, wrongful death, consumer class actions, actions arising under the West Virginia Consumer Credit Act and consumer insurance coverage disputes; non-commercial insurance disputes relating to bad faith, or disputes in which an individual may be covered under a commercial policy, but is involved in the dispute in an individual capacity; employee suites; consumer environmental actions; consumer malpractice actions; consumer and residential real estate, such as landlord-tenant disputes; domestic relations; criminal cases; eminent domain or condemnation; and administrative disputes with government organizations and regulatory agencies, provided, however, that complex tax appeals are eligible to be referred to the Business Court Division.

W. Va. Tr. Ct. R. 29.04(a)(3). The claims asserted by various defendants and SJCPSD do not relate to those matters specifically excluded from the Business Court Division's jurisdiction by West Virginia Trial Court Rule 29.04(a)(3). Therefore, Defendants' *Motion to Refer* should be granted.

CONCLUSION

For the reasons set forth herein, Defendants Master Meter, Inc., Ferguson Enterprises, and C.J. Hughes Construction Company, Inc., respectfully request that this Court grant their *Motion to Refer*.

MASTER METER, INC.

By Counsel,



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FERGUSON ENTERPRISES

By Counsel,

/s/ William R. Slicer 04/19/23

William R. Slicer (#5177)

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**C.J. HUGHES CONSTRUCTION
COMPANY, INC.**

By Counsel,

/s/ Daniel J. Konrad 04/19/2023

Daniel J. Konrad (#2088)

Matthew L. Ward (#11903)

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IN THE CIRCUIT COURT OF JACKSON COUNTY, WEST VIRGINIA

**SOUTHERN JACKSON COUNTY
PUBLIC SERVICE DISTRICT,**

Plaintiff,

v.

Civil Action No. CC-18-2022-C-91

**MASTER METER, INC., a Texas
Corporation; FERGUSON ENTERPRISES,
A Virginia Limited Liability Company; C.J.
HUGHES CONSTRUCTION COMPANY, INC.,
a West Virginia corporation; and TRI-STATE
PIPELINE, INC., an Ohio Corporation;**

Defendants.

CERTIFICATE OF SERVICE

I, David K. Hendrickson, do hereby certify that the foregoing *Amended Motion to Refer to the West Virginia Business Court Division* was filed this 20th day of April, 2023, via U.S. Mail to the following:


Bruce DeWees, Clerk
Jackson County Courthouse
PO Box 427
100 Court Street
Ripley, WV 25271

Judge Lora Dyer
Jackson County Courthouse
PO Box 800
100 Court Street
Ripley, WV 25271

Carol Miller
Berkely County Judicial Center
Business Court Division
380 W. South Street, Suite 2100
Martinsburg, WV 25401

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Office of the Secretary of State
Building 1 Suite 157-K
1900 Kanawha Blvd E.
Charleston, WV 25305

USPS CERTIFIED MAIL™



9214 8901 1251 3410 0003 7268 94

C. J. HUGHES CONSTRUCTION COMPANY, INC.
DOUGLAS REYNOLDS
PO BOX 7305
HUNTINGTON, WV 25776



Mac Warner
Secretary of State
State of West Virginia
Phone: 304-558-6000
886-767-8683
Visit us online:
www.wvsos.com

Control Number: 301382

Defendant: C. J. HUGHES CONSTRUCTION
COMPANY, INC.
PO BOX 7305
HUNTINGTON, WV 25776 US

Agent: DOUGLAS REYNOLDS

County: Jackson

Civil Action: 22-C-91

Certified Number: 92148901125134100003726894

Service Date: 1/17/2023

I am enclosing:

1 summons and complaint

which was served on the Secretary at the State Capitol as your statutory attorney-in-fact. According to law, I have accepted service of process in the name and on behalf of your corporation.

Please note that this office has no connection whatsoever with the enclosed documents other than to accept service of process in the name and on behalf of your corporation as your attorney-in-fact. Please address any questions about this document directly to the court or the plaintiff's attorney, shown in the enclosed paper, not to the Secretary of State's office.

Sincerely,

Mac Warner
Secretary of State

SUMMONS

E-FILED | 12/21/2022 2:34 PM
CC-18-2022-C-91
Jackson County Circuit Clerk
Bruce DeWees

IN THE CIRCUIT COURT OF JACKSON COUNTY, WEST VIRGINIA
Southern Jackson County Public Service District v. C.J. Hughes Construction Company, Inc.

Service Type: Filer - Secretary of State

NOTICE TO: C.J. Hughes Construction Company, Inc., Post Office Box 7305, Huntington, WV 25776

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU OR YOUR ATTORNEY ARE REQUIRED TO FILE THE ORIGINAL OF YOUR WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT WITH THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE OPPOSING PARTY'S ATTORNEY:

Marvin Masters, 181 Summers St, Charleston, WV 25301

THE ANSWER MUST BE MAILED WITHIN 30 DAYS AFTER THIS SUMMONS AND COMPLAINT WERE DELIVERED TO YOU OR A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT.

SERVICE:

12/21/2022 2:34:39 PM

Date

/s/ Bruce DeWees

Clerk

RETURN ON SERVICE:

☐ Return receipt of certified mail received in this office on _____

☐ I certify that I personally delivered a copy of the Summons and Complaint to _____

☐ I certify that I personally delivered a copy of the Summons and Complaint to the individual's dwelling place or usual place of abode to _____, a member of the individual's family who is above the age of sixteen (16) years and by advising such person of the purpose of the summons and complaint.

☐ Not Found in Bailiwick

Date

Server's Signature

IN THE CIRCUIT COURT OF JACKSON COUNTY, WEST VIRGINIA

SOUTHERN JACKSON COUNTY
PUBLIC SERVICE DISTRICT,

Plaintiff,

v.

Civil Action No. _____
Honorable _____

MASTER METER, INC., a Texas
Corporation; FERGUSON ENTERPRISES,
a Virginia Limited Liability Company; C. J.
HUGHES CONSTRUCTION COMPANY, INC.,
a West Virginia corporation; and TRI-STATE
PIPELINE, INC., an Ohio corporation;

Defendants.

COMPLAINT

Plaintiff complains and says as follows:

1. Plaintiff, Southern Jackson County Public Service District (hereinafter referred to as "the PSD" or "Plaintiff"), is a public corporation and political subdivision of the State of West Virginia.
2. The PSD is committed to providing safe, high quality water services in the areas of Jackson County, West Virginia in which it is authorized to serve.
3. C. J. Hughes Construction Company, Inc. (hereinafter referred to as "C. J. Hughes,") is a West Virginia corporation with its principal place of business in Huntington, West Virginia.
4. At all times complained of herein, C. J. Hughes was in the construction business, including the construction and installation of water lines and overall utility systems.
5. Tri-State Pipeline (hereinafter referred to as "Tri-State,") is an Ohio corporation with its principal place of business in Barboursville, West Virginia.

6. At all times complained of herein, Tri-State was in the construction business, including the construction and installation of water lines and overall utility systems.

7. Master Meter, Inc. (hereinafter referred to as "Master Meter,") is a Texas corporation with its principal place of business located at 101 Regency Parkway, Mansfield, Texas.

8. At all times complained of herein, Master Meter was in the business of conceiving, designing, manufacturing, marketing and selling water meters and associated mobile and electronic meter reading devices and other related products and selling them to customers, including the Plaintiff, a public service district in West Virginia.

9. At all times complained of herein, Master Meter designed, manufactured, marketed and sold water meters, mobile reading devices and components that were expected and intended to be used for the purposes of reading the water usage of customers of utility providers and remotely transmitting the readings to a mobile vehicle. The devices were sold and installed and used in West Virginia and in other locations in the United States.

10. On or about 2012, Plaintiff undertook a project to be performed in Jackson County, West Virginia which included the purchase, placement and installation of water meters which were to service various residents and businesses and residential and commercial properties in the community where Plaintiff provided water services to the public.

11. The overall project included the laying of new 8" waterlines, booster stations, modifications and various appurtenances, including but was not limited to, purchasing water meters and associated registers and mobile reading devices and software.

12. At all times complained of herein, Master Meter was and is in the business of conceiving, designing, manufacturing, marketing and selling water meters, registers and wireless products which purportedly would provide for and enable Master Meter's customers,

like Plaintiff, to electronically read the water meters and electronically transmit the amount of usage for each customer to a transceiver located in a vehicle being driven near to the location of the meter.

13. At all times complained of herein, Tri-State, in addition to other endeavors, was in the business of purchasing products and installing water lines and other related products for customers like the PSD, including the Plaintiff's project generally described above.

14. At all times complained of herein, C. J. Hughes was in the business of purchasing products and installing water lines and other related products for customers like the PSD, including the PSD's project generally described above.

15. Ferguson Enterprises, LLC (hereinafter referred to as "Ferguson Enterprises," and/or "Ferguson,") is a Virginia limited liability company with its principal place of business located at 12500 Jefferson Avenue, Newport News, Virginia.

16. At all times complained of herein, Ferguson was acting as a distributor, and the agent, servant and employee of Master Meter and Ferguson was an official representative and dealer for Master Meter in West Virginia and other jurisdictions to market and sell Master Meter's products to customers like the Plaintiff.

17. At all times complained of herein, Ferguson had the authority to make recommendations, representations and speak for and on behalf of itself and on behalf of Master Meter, as to the purposes and capabilities and reliability and all other aspects of the products to perform the functions which were represented by said Defendants to perform.

18. As part of the PSD's project described above, (hereinafter referred to as the "water project," or the "project") Ferguson and Master Meter approached the PSD concerning the PSD's need for a system which would meter each customer's water usage, and in that regard, Master

Meter and Ferguson, acting for and on behalf of themselves and for and on behalf of each other, made verbal and written representations to Plaintiff as to the quality, capability and reliability of the products which Master Meter and Ferguson proposed, recommended and offered to sell to the PSD as products to be included in the project.

19. The PSD relied upon Ferguson and Master Meter for all information concerning the products and their uses, capabilities and reliability which these Defendants were marketing, selling and recommending.

20. Master Meter and Ferguson had a duty to warn Plaintiff of any defects in the products and fully inform Plaintiff concerning the defects in the devices.

21. The products were represented to be effective and not defective.

22. Ferguson and Master Meter recommended and represented to the Plaintiff that Master Meter had conceived, designed and manufactured the specific products which, in fact, would accurately meter the water delivered and sold to each of Plaintiff's customers and that the Defendants' products would electronically and digitally transmit the accurate readings for each customer from the meters and registers to an electronic transceiver in the PSD's vehicle as it drove past each location where the meter for each customer had been installed while travelling at a speed of up to 15 miles per hour without the vehicle having to stop.

23. Ferguson and Master Meter represented that the above products were effective and would, at all times, read the meter and that the meter/register and electronic devices, would provide a signal which would be received and recorded remotely by a transceiver located in the Plaintiff's employees' vehicles as above and also it would provide various other information remotely.

24. The PSD relied upon Ferguson's and Master Meter's representations and, based upon Ferguson's and Master Meter's representations, Plaintiff agreed to purchase and Plaintiff did

purchase the aforesaid products, including the recommended number of such products, each to serve the individual needs for the entirety of the project.

25. Tri-State bid upon the first part of the project and it undertook, as part of the contract between Plaintiff and Tri-State, to purchase and it did purchase 102 of the meters and related devices on behalf of and as a representative for Plaintiff, meters and related products, including the digital electronic products which Ferguson and Master Meter had represented would provide the PSD with remote reading equipment and which would provide benefits and save the PSD substantial money, including that the PSD's employees would not be required to stop, get out of their vehicles and walk to and from the meters and Plaintiff has been required to replace multiple of the defective products which were not repaired or replaced by Master Meter.

26. Tri-State agreed to test each of the meters and the electronic transmission and transceivers and related products to assure that the product worked and would provide for full-time successful transmission enabling the capturing of the meter reading from a vehicle traveling at a speed of up to 15 miles per hour without the vehicle having to stop along a publically owned roadway in the closest proximity of the meter all without disturbance of the meter setting itself.

27. After Tri-State completed the first portion of the overall project, C. J. Hughes was awarded a second project and contract and undertook to purchase all of the meters and related products, for that phase of the project, including the digital electronic products which Ferguson and Master Meter had represented would provide the PSD with reliable remote reading equipment and which would provide benefits and save the PSD substantial money, including that the employees would not be required to stop, get out of their vehicles and walk to and from the meters.

28. C. J. Hughes also agreed to test the meters and the electronic transmission and transceiver devices to assure that they worked and would provide for full-time successful

transmission enabling the capturing of the meter reading from a vehicle traveling at a speed of up to 15 miles per hour without the vehicle having to stop along a publically owned roadway in the closest proximity of the meter all without disturbance to the meter setting itself.

29. C. J. Hughes purchased water meters and the related devices, for and on behalf of Plaintiff, which Defendants represented would provide the remote reading capability as alleged above in the second phase of the project.

30. Plaintiff purchased 892 water meters and related products recommended by Master Meter and Ferguson for the remote reading capabilities described above in the second phase of the project's contract, in which C. J. Hughes had contracted and agreed to test the products to assure that they would accurately record the water use and transmit the reading to the Plaintiff's vehicles remotely, as described above, however, and Plaintiff has been required to replace multiple of the defective products since the purchase.

31. In addition to the Master Meter and Ferguson contracts, agreements and representations, Master Meter and Ferguson warranted that the products would perform as advertised and as Defendants represented.

32. Ferguson and Master Meter made the aforesaid representations to the PSD directly and indirectly and, as a sole and proximate result of those representations, Plaintiff included and incorporated the above-described products into the bid documents and contracts which Tri-State and C. J. Hughes had bid on and who had contracted and agreed to construct, install and provide the system to Plaintiff.

33. Contrary to Master Meter's and Ferguson's representations, after the products were purchased, installed, delivered and put in use, the products began to fail to properly read remotely and transmit the readings remotely in the manner that Defendants had represented they would do.

34. Ferguson and Master Meter contracted and agreed to provide the products and represented that they would perform as represented.

35. Master Meter and Ferguson misrepresented the products, their quality, capability and reliability.

36. After the defective products began to fail, Master Meter and Ferguson undertook to repair and/or replace some of the products but Master Meter and Ferguson have failed and refused to return the defective products repaired and replaced with products which were not defective, and otherwise failed to comply with their duties, responsibilities, and agreements, and both Master Meter and Ferguson intentionally, recklessly, wrongfully and unlawfully made false representations and violated their contract and the warranty with respect to all of the meters and the system of meters which Plaintiff purchased and all the meters were and are defective.

37. On or about February 9, 2021, Defendants failed and refused to repair and/or replace the defective products.

38. Plaintiff would not have purchased the products if they had known the products were defective and that they were not fit for the use Master Meter and Ferguson represented them to be.

39. Plaintiff has been severely damaged as a result of Master Meter's and Ferguson's intentional, reckless, wrongful and unlawful representations and their failure to comply with their duties and responsibilities.

40. Plaintiff has been damaged by both Tri-State's and C. J. Hughes' failure to properly and completely test the products and by their failure to adequately test the products when they delivered and installed the products for and on behalf of the Plaintiff.

41. Tri-State and C.J. Hughes failed to adequately and fully test the above products

and, as a proximate result, the defects were not discovered and understood until Plaintiff had purchased the products, and had been included and installed the products as part of the project.

42. Ferguson and Master Meter knew or should have known that the products described above would fail and were not reliable and Master Meter and Ferguson did not adequately design, test and manufacture the products to assure that they would not fail, and that they would, in fact, perform as represented.

43. Ferguson's and Master Meter's representations to Plaintiff were made knowingly, recklessly and consciously with reckless and outrageous indifference to the PSD and its ability to utilize the products to service the customers which it served in Jackson County, West Virginia.

44. As a sole and proximate result of Defendants' acts and omissions described above, Plaintiff has been damaged, including, but not limited to, the following:

- a. The products are not fit for the uses as represented by Master Meter and Ferguson and Plaintiff would not have included the defective items in the project had they known prior to the purchase that they were defective and that the said products would fail.
- b. Plaintiff has incurred substantial monetary losses, aggravation, annoyance and inconvenience in employing and paying contractors and employees to first purchase and install them, gather the ones which did not read, return them, await the return of the failed devices and then attempt to utilize them again as used products which were defective as well.
- c. Plaintiff has been damaged by the failure of the devices, because its employees have been required to stop, get out of their vehicles and walk to the registers, read the meters and then return to the vehicle, which adds substantial sums to Plaintiff's employee and administrative costs.
- d. Defendants have not returned or replaced multiple defective devices and have abandoned Plaintiff and abandoned and breached their duties and obligations to Plaintiff and breached their duties and responsibilities under the contracts and warranties. Therefore, Plaintiff must purchase new products to replace all of the defective devices since the devices are unreliable.
- e. Plaintiff has been damaged by purchasing and installing all of the meters and other products in this project as a result of Defendants' misrepresentations and Plaintiff

is entitled to recover the cost of all of the devices and all consequential damages that Plaintiff has incurred, as a consequence of purchasing and installing the defective product, Plaintiff has incurred from dealing with the defective products including, the PSD's required re-installing and management of the failed devices.

- f. Plaintiff has been damaged by Tri-State's and C. J. Hughes' failure to properly test the meters and their installation and delivery of defective products.
- g. Plaintiff has been damaged in the amount of the purchase price of the products and for the cost of replacing the defective products with products which will perform as advertised.
- h. Plaintiff has been damaged by the lack of opportunity to undertake new projects and purchase other needed equipment and services in order to comply with Plaintiff's duties to its customers
- i. Plaintiff has lost the use of the money which it has had to pay out unnecessarily for repair and replacement of the defective products.
- j. Plaintiff has been otherwise damaged as the evidence will demonstrate.

Wherefore, Plaintiff demands judgment against Defendants Master Meter and Ferguson, jointly and severally, for compensatory damages, punitive damages, attorney fees, the litigation costs in this case, for prejudgment interest and post judgment interest and for such other general and special damage and general relief as the Court deems just and proper. Further, Plaintiff demands judgment against Tri-State and C. J. Hughes for compensatory damages, attorney fees, litigation expenses, prejudgment interest and post judgment interest for damages sustained by Plaintiff as a proximate result of their failure to test and inform Plaintiff of the defects in the product and for such other further and general relief as the Court deems just and proper.

COUNT I

45. Plaintiff realleges below all of the allegations above in paragraphs 1 through 44 and further complains and says as follows.

46. Defendants Master Meter and Ferguson knew or should have known the products

were defective and nevertheless, represented that they would perform as Defendants claimed they would.

47. The acts and conduct of Ferguson and Master Meter were knowing, intentional, reckless and wrongful misrepresentations.

48. Plaintiff relied upon said Defendants' misrepresentations and agreed to purchase and purchased the items at great expense.

49. Plaintiff would not have purchased the said products if Plaintiff had known of the defects and damages to the PSD which it incurred as a result of the misrepresentations made to it and, as a proximate cause of said misrepresentations, Plaintiff would not have entered into contracts and agreements with Tri-State and C. J. Hughes and would not have purchased the Master Meter and Ferguson defective products.

50. Plaintiff is entitled to recover the costs of the project and the cost of all the products and the other damages as described above.

Wherefore, Plaintiff demands judgment against Defendants Master Meter and Ferguson, jointly and severally, for compensatory damages, punitive damages, attorney fees, the litigation costs in this case, for prejudgment interest and post judgment interest and for such other general and special damage and general relief as the Court deems just and proper. Further, Plaintiff demands judgment against Tri-State and C. J. Hughes for compensatory damages, attorney fees, litigation expenses, prejudgment interest and post judgment interest for damages sustained by Plaintiff as a proximate result of their failure to test and inform Plaintiff of the defects in the product and for such other further and general relief as the Court deems just and proper.

COUNT II

51. Plaintiff realleges below all of the allegations above in paragraphs 1 through 50 and

further complains and says as follows.

52. Master Meter conceived, designed, manufactured, marketed and sold the devices as described above when they knew or should have known they were not fit for the uses for which they represented them to be.

53. Plaintiff would not have purchased the products from Master Meter and Ferguson if it knew that the devices were defective and that a large number of the devices would fail to perform, leaving Plaintiff with the cost of recovering same and shipping them to Defendant and awaiting their return and incurring damages as described herein.

54. The devices are defective in design and manufacture and Defendant failed to provide Plaintiff with information, direction and warnings and the products are “use” defective.

55. Ferguson marketed and sold the defective products and Ferguson is liable to Plaintiff for the damages complained of herein.

56. As a proximate result of the Defendants’ marketing and sale of the defective products, Plaintiff has been damaged as set forth above.

Wherefore, Plaintiff demands judgment against Defendants Master Meter and Ferguson, jointly and severally, for compensatory damages, punitive damages, attorney fees, the litigation costs in this case, for prejudgment interest and post judgment interest and for such other general and special damage and general relief as the Court deems just and proper. Further, Plaintiff demands judgment against Tri-State and C. J. Hughes for compensatory damages, attorney fees, litigation expenses, prejudgment interest and post judgment interest for damages sustained by Plaintiff as a proximate result of their failure to test and inform Plaintiff of the defects in the product and for such other further and general relief as the Court deems just and proper.

COUNT III

57. Plaintiff realleges below all of the allegations above in paragraphs 1 through 56 and further complains and says as follows.

58. Master Meter negligently, carelessly and wrongfully designed, manufactured, marketed and sold the aforesaid defective products and Ferguson negligently marketed and sold the products to Plaintiff.

Wherefore, Plaintiff demands judgment against Defendants Master Meter and Ferguson, jointly and severally, for compensatory damages, punitive damages, attorney fees, the litigation costs in this case, for prejudgment interest and post judgment interest and for such other general and special damage and general relief as the Court deems just and proper. Further, Plaintiff demands judgment against Tri-State and C. J. Hughes for compensatory damages, attorney fees, litigation expenses, prejudgment interest and post judgment interest for damages sustained by Plaintiff as a proximate result of their failure to test and inform Plaintiff of the defects in the product and for such other further and general relief as the Court deems just and proper.

COUNT IV

59. Plaintiff realleges below all of the allegations above in paragraphs 1 through 58 and further complains and says as follows.

60. Master Meter and Ferguson breached their verbal and written contracts, agreements and warranties to Plaintiff.

61. As a proximate result of Defendants' Master Meters' and Ferguson's breach of the contracts, both written and verbal, and by breach and abandonment of the Defendants' duties under the contracts and warranty as described above, Plaintiff was damaged as set forth above.

Wherefore, Plaintiff demands judgment against Defendants Master Meter and Ferguson,

jointly and severally, for compensatory damages, punitive damages, attorney fees, the litigation costs in this case, for prejudgment interest and post judgment interest and for such other general and special damage and general relief as the Court deems just and proper. Further, Plaintiff demands judgment against Tri-State and C. J. Hughes for compensatory damages, attorney fees, litigation expenses, prejudgment interest and post judgment interest for damages sustained by Plaintiff as a proximate result of their failure to test and inform Plaintiff of the defects in the product and for such other further and general relief as the Court deems just and proper.

COUNT V

62. Plaintiff realleges below all of the allegations above in paragraphs 1 through 61 and further complains and says as follows.

63. Plaintiff described to Ferguson and Master Meter the intended project and the locations and meters and circumstances of the Plaintiff's need for the project prior to and at the time of the sale.

64. Defendants Ferguson and Master Meter, prior to the sale and purchase of the products, knew of the project, the environment, locations and circumstances which Plaintiff would be installing and using the products.

65. Defendants made representations and misrepresentations as described above and Plaintiff, as a result, made the purchase and purchases through each contractor, Tri-State and C. J. Hughes, and, therefore, included the products in the contracts based upon and in reliance upon said Defendants' knowing and intentional misrepresentations.

66. The goods were not fit for the PSD's purposes and the products would not read and record remotely as represented.

67. Defendants' acts, conduct and omissions, as described above, amount to an implied

warranty by Master Meter and Ferguson to Plaintiff which arose from the sale and sales of the products.

68. Ferguson and Master Meter breached the implied warranty of fitness for the particular purpose that Plaintiff purchased the goods and are liable to Plaintiff as a proximate result.

69. Plaintiff would not have purchased the goods if it had known of the defective products and, therefore, as a proximate result, Plaintiff was damaged thereby in that it would not have purchased them and they would not have been installed and left for Plaintiff to contend with and Plaintiff has been further damaged as set forth above.

70. As a proximate result of Defendants' Master Meters' and Ferguson's breach of the contracts, written and verbal, and the breach of warranty as described above, Plaintiff was damaged as set forth above.

Wherefore, Plaintiff demands judgment against Defendants Master Meter and Ferguson, jointly and severally, for compensatory damages, punitive damages, attorney fees, the litigation costs in this case, for prejudgment interest and post judgment interest and for such other general and special damage and general relief as the Court deems just and proper. Further, Plaintiff demands judgment against Tri-State and C. J. Hughes for compensatory damages, attorney fees, litigation expenses, prejudgment interest and post judgment interest for damages sustained by Plaintiff as a proximate result of their failure to test and inform Plaintiff of the defects in the product and for such other further and general relief as the Court deems just and proper.

COUNT VI

71. Plaintiff realleges below all of the allegations above in paragraphs 1 through 70 and further complains and says as follows.

72. C. J. Hughes and Tri-State contracted for and undertook the responsibility and duty

to adequately test the products described above to assure they were not defective and that they would perform as set forth in the contracts.

73. C. J. Hughes and Tri-State did not test the products and/or failed to adequately test the products and report to Plaintiff the defects as called for in the duties as set forth in the contractual agreements and in the contract bid documents.

74. C. J. Hughes and Tri-State negligently tested the products and negligently failed to advise Plaintiff of the failure or potential failure and inability of all of the products to perform as represented to Plaintiff.

75. Plaintiff relied upon Tri-State and C. J. Hughes to perform their duties in a good and workmanlike manner and, as a proximate result of Tri-States' and C. J. Hughes' negligence, Plaintiff purchased and continued to purchase and install the products and Plaintiff was damaged as set forth above.

Plaintiff demands judgment against Tri-State and C. J. Hughes for compensatory damages, attorney fees, litigation expenses, prejudgment interest and post judgment interest for damages sustained by Plaintiff and for such other further and general relief as the Court deems just and proper. Plaintiff further demands judgment against Defendants Master Meter and Ferguson, jointly and severally, for compensatory damages, punitive damages, attorney fees, the litigation costs in this case, for prejudgment interest and post judgment interest and for such other general and special damage and general relief as the Court deems just and proper.

SOUTHERN JACKSON PUBLIC
SERVICE DISTRICT,

By Counsel

/s/ Marvin W. Masters

Marvin W. Masters

West Virginia State Bar No. 2359

Kelly Elswick-Hall

West Virginia State Bar No. 6578

The Masters Law Firm lc

181 Summers Street

Charleston, West Virginia 25301

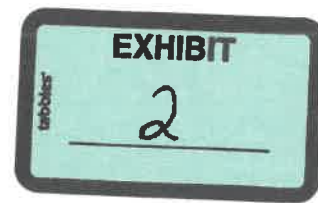
(304) 342-3106

Counsel for Plaintiff

F:\4\365\p001a.DOCX



West Virginia E-Filing Notice



CC-18-2022-C-91

Judge: Lora Dyer

To: William Slicer
wslicer@shumanlaw.com

NOTICE OF FILING

IN THE CIRCUIT COURT OF JACKSON COUNTY, WEST VIRGINIA
Southern Jackson County Public Service District v. C.J. Hughes Construction Company, Inc.
CC-18-2022-C-91

The following answer was FILED on 3/28/2023 6:03:14 PM

Notice Date: 3/28/2023 6:03:14 PM

Bruce DeWees
CLERK OF THE CIRCUIT COURT
Jackson County
PO Box 427
RIPLEY, WV 25271

(304) 373-2210
Bruce.DeWees@courtsww.gov

COVER SHEET

E-FILED | 3/28/2023 6:03 PM
CC-18-2022-C-91
Jackson County Circuit Clerk
Bruce DeWees

GENERAL INFORMATION

IN THE CIRCUIT COURT OF JACKSON COUNTY WEST VIRGINIA

Southern Jackson County Public Service District v. C.J. Hughes Construction Company, Inc.

First Plaintiff: ☒ Business ☐ Individual ☐ Government ☐ Other
First Defendant: ☒ Business ☐ Individual ☐ Government ☐ Other
Judge: Lora Dyer

COMPLAINT INFORMATION

Case Type: Civil **Complaint Type:** Contract

Origin: ☒ Initial Filing ☐ Appeal from Municipal Court ☐ Appeal from Magistrate Court

Jury Trial Requested: ☒ Yes ☐ No **Case will be ready for trial by:** 4/17/2024

Mediation Requested: ☐ Yes ☒ No

Substantial Hardship Requested: ☐ Yes ☒ No

☐ Do you or any of your clients or witnesses in this case require special accommodations due to a disability?

- ☐ Wheelchair accessible hearing room and other facilities
- ☐ Interpreter or other auxiliary aid for the hearing impaired
- ☐ Reader or other auxiliary aid for the visually impaired
- ☐ Spokesperson or other auxiliary aid for the speech impaired
- ☐ Other: _____

☐ I am proceeding without an attorney

☒ I have an attorney: William Slicer, PO Box 3953, Charleston, WV 25339

SERVED PARTIES

IN THE CIRCUIT COURT OF JACKSON COUNTY, WEST VIRGINIA

**SOUTHERN JACKSON COUNTY
PUBLIC SERVICE DISTRICT,**

Plaintiff,

v.

**Civil Action No. CC-18-2022-C-91
Honorable Lora Dyer, Judge**

**MASTER METER, INC., a Texas
Corporation; FERGUSON ENTERPRISES,
a Virginia Limited Liability Company; C. J.
HUGHES CONSTRUCTION COMPANY, INC.,
a West Virginia corporation; and TRI-STATE
PIPELINE, INC., an Ohio corporation;**

Defendants.

**DEFENDANT FERGUSON ENTERPRISES'
ANSWER TO PLAINTIFF'S COMPLAINT**

NOW COMES Defendant Ferguson Enterprises, by counsel, William R. Slicer of the law firm of Shuman McCuskey Slicer PLLC, and hereby answers Plaintiff's Complaint as follows:

FIRST DEFENSE

1. In response to Paragraph 1 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted therein.

2. In response to Paragraph 2 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted therein.

3. In response to Paragraph 3 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted therein.

4. In response to Paragraph 4 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted therein.

5. In response to Paragraph 5 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted therein.

6. In response to Paragraph 6 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted therein.

7. In response to Paragraph 7 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted therein.

8. In response to Paragraph 8 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted therein.

9. In response to Paragraph 9 of Plaintiff's Complaint, Defendant admits that the devices were sold and installed and used in West Virginia and in other locations in the United States. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 9 of Plaintiff's Complaint.

10. In response to Paragraph 10 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted therein.

11. In response to Paragraph 11 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted therein.

12. In response to Paragraph 12 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted therein.

13. In response to Paragraph 13 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted therein.

14. In response to Paragraph 14 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted therein.

15. In response to Paragraph 15 of Plaintiff's Complaint, Defendant admits the allegations asserted therein.

16. In response to Paragraph 16 of Plaintiff's Complaint, Defendant denies the allegations asserted therein as inclusively pled rather than pled in the alternative.

17. In response to Paragraph 17 of Plaintiff's Complaint, Defendant denies the allegations asserted therein.

18. In response to Paragraph 18 of Plaintiff's Complaint, Defendant denies the allegations asserted therein.

19. In response to Paragraph 19 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted therein.

20. Defendant denies the allegations asserted in Paragraph 20 of Plaintiff's Complaint as to this Defendant.

21. In response to Paragraph 21 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted therein.

22. In response to Paragraph 22 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted therein.

23. In response to Paragraph 23 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted therein.

24. In response to Paragraph 24 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted therein.

25. In response to Paragraph 25 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted therein.

26. In response to Paragraph 26 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted therein.

27. In response to Paragraph 27 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted therein.

28. In response to Paragraph 28 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted therein.

29. In response to Paragraph 29 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted therein.

30. In response to Paragraph 30 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted therein.

31. In response to Paragraph 31 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted therein.

32. In response to Paragraph 32 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted therein.

33. In response to Paragraph 33 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted therein.

34. In response to Paragraph 34 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted therein.

35. In response to Paragraph 35 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted therein.

36. In response to Paragraph 36 of Plaintiff's Complaint, Defendant denies the allegations asserted therein, with the exception of repair or replacement pursuant to warranty.

37. Defendant denies the allegations asserted in Paragraph 37 of Plaintiff's Complaint as to this Defendant, and Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 37 of Plaintiff's Complaint.

38. In response to Paragraph 38 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted therein.

39. In response to Paragraph 39 of Plaintiff's Complaint, Defendant denies the allegations asserted therein.

40. In response to Paragraph 40 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted therein.

41. In response to Paragraph 41 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted therein.

42. Defendant denies the allegations asserted in Paragraph 42 of Plaintiff's Complaint as to this Defendant, and Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 42 of Plaintiff's Complaint.

43. Defendant denies the allegations asserted in Paragraph 43 of Plaintiff's Complaint as to this Defendant, and Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 43 of Plaintiff's Complaint.

44. Defendant denies the allegations asserted in Paragraph 44 of Plaintiff's Complaint as to this Defendant, and Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 44 of Plaintiff's Complaint.

In response to the Wherefore clause immediately following numbered Paragraph 44 and its subparts in Plaintiff's Complaint, Defendant denies that Plaintiff is entitled to any relief requested as to this Defendant.

COUNT I

45. In response to Paragraph 45 of Plaintiff's Complaint, Defendant incorporates the responses to Paragraphs 1 through 44 of Plaintiff's Complaint as if fully set forth herein.

46. Defendant denies the allegations asserted in Paragraph 46 of Plaintiff's Complaint as to this Defendant, and Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 46 of Plaintiff's Complaint.

47. Defendant denies the allegations asserted in Paragraph 47 of Plaintiff's Complaint as to this Defendant, and Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 47 of Plaintiff's Complaint.

48. In response to Paragraph 48 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted therein.

49. In response to Paragraph 49 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations as to what Plaintiff did, would have done, and knew. Defendant denies the allegations asserted in Paragraph 49 of Plaintiff's Complaint as to this Defendant, and Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 49 of Plaintiff's Complaint.

50. In response to Paragraph 50 of Plaintiff's Complaint, Defendant denies the allegations asserted therein.

In response to the Wherefore clause immediately following numbered Paragraph 50 in Plaintiff's Complaint, Defendant denies that Plaintiff is entitled to any relief requested as to this Defendant.

COUNT II

51. In response to Paragraph 51 of Plaintiff's Complaint, Defendant incorporates the responses to Paragraphs 1 through 50 of Plaintiff's Complaint as if fully set forth herein.

52. In response to Paragraph 52 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted therein.

53. In response to Paragraph 53 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted therein.

54. In response to Paragraph 54 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted therein.

55. In response to Paragraph 55 of Plaintiff's Complaint, Defendant denies the allegations asserted therein.

56. Defendant denies the allegations asserted in Paragraph 56 of Plaintiff's Complaint as to this Defendant, and Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 56 of Plaintiff's Complaint.

In response to the Wherefore clause immediately following numbered Paragraph 56 in Plaintiff's Complaint, Defendant denies that Plaintiff is entitled to any relief requested.

COUNT III

57. In response to Paragraph 57 of Plaintiff's Complaint, Defendant incorporates the responses to Paragraphs 1 through 56 of Plaintiff's Complaint as if fully set forth herein.

58. Defendant denies the allegations asserted in Paragraph 58 of Plaintiff's Complaint as to this Defendant, and Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 58 of Plaintiff's Complaint.

In response to the WHEREFORE clause immediately following numbered Paragraph 58 in Plaintiff's Complaint, Defendant denies that Plaintiff is entitled to any relief requested.

COUNT IV

59. In response to Paragraph 59 of Plaintiff's Complaint, Defendant incorporates the responses to Paragraphs 1 through 58 of Plaintiff's Complaint as if fully set forth herein.

60. In response to Paragraph 60 of Plaintiff's Complaint, Defendant denies the allegations asserted therein as to this Defendant, and is without knowledge or information

sufficient to form a belief as to the truth of the remaining allegations in Paragraph 60 of Plaintiff's Complaint.

61. In response to Paragraph 61 of Plaintiff's Complaint, Defendant denies the allegations asserted therein as to this Defendant, and is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 61 of Plaintiff's Complaint.

In response to the WHEREFORE clause immediately following numbered Paragraph 61 in Plaintiff's Complaint, Defendant denies that Plaintiff is entitled to any relief requested.

COUNT V

62. In response to Paragraph 62 of Plaintiff's Complaint, Defendant incorporates the responses to Paragraphs 1 through 61 of Plaintiff's Complaint as if fully set forth herein.

63. In response to Paragraph 63 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted therein.

64. In response to Paragraph 64 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted therein.

65. Defendant denies the allegations asserted in Paragraph 65 of Plaintiff's Complaint as to this Defendant, and Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 65 of Plaintiff's Complaint.

66. In response to Paragraph 66 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted therein.

67. In response to Paragraph 67 of Plaintiff's Complaint, Defendant denies the allegations asserted therein.

68. In response to Paragraph 68 of Plaintiff's Complaint, Defendant denies the allegations asserted therein as to this Defendant, but is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 68 of Plaintiff's Complaint.

69. In response to Paragraph 69 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted therein.

70. In response to Paragraph 70 of Plaintiff's Complaint, Defendant denies the allegations asserted therein.

In response to the Wherefore clause immediately following numbered Paragraph 70 in Plaintiff's Complaint, Defendant denies that Plaintiff is entitled to any relief requested.

COUNT VI

71. In response to Paragraph 71 of Plaintiff's Complaint, Defendant incorporates the responses to Paragraphs 1 through 70 of Plaintiff's Complaint as if fully set forth herein.

72. In response to Paragraph 72 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted therein.

73. In response to Paragraph 73 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted therein.

74. In response to Paragraph 74 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted therein.

75. In response to Paragraph 75 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted therein.

In response to the judgment demand immediately following numbered Paragraph 75 in Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted therein.

76. Plaintiff's Complaint fails to state a claim upon which relief can be granted.

77. For further defense, this Defendant provisionally pleads that this action has been brought in an improper venue.

AFFIRMATIVE DEFENSES

Plaintiff's claims against Defendant are barred in whole or in part by the affirmative defenses of statute of frauds, indefinite terms, mistake, capacity, fraud, unconscionability, estoppel, statute of limitations, statute of repose, misuse, failure to mitigate, failure of conditions precedent, *quantum meruit*, offset, lack of privity, failure to provide pre-litigation notice 46-2-607(3)(a), and any and all other matters constituting an affirmative defense which may become apparent through the course of discovery.

SECOND DEFENSE

This Defendant pleads the affirmative defenses of contributory negligence, comparative negligence and assumption of risk, to the extent the same are applicable herein.

THIRD DEFENSE

This Defendant provisionally pleads that the damages of which the Plaintiff complains were caused by separate, prior, supervening and/or intervening causes rather than by any act or omission of this Defendant.

FOURTH DEFENSE

This Defendant provisionally pleads that the injuries and damages complained of by the Plaintiff were not caused by any act or omission of this Defendant.

FIFTH DEFENSE

The Defendant pleads that the claims of the Plaintiff for punitive damages violate, and are therefore barred by, the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the Constitution of the United States of America on grounds including, but not limited to, the following:

- (1) It is a violation of the Due Process and the Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution to impose punitive damages, which are penal in nature, against a civil defendant beyond the plaintiff satisfying a burden of proof which is less than the “beyond a reasonable doubt” burden of proof required in criminal cases;
- (2) The procedures pursuant to which punitive damages are awarded may result in the award of joint and several judgment against multiple defendants for different alleged acts of wrongdoing, which infringes upon the Due Process and the Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution;
- (3) The procedures to which punitive damages are awarded fail to provide a reasonable limit on the amount of the award against the defendant, which thereby violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution;
- (4) The procedures pursuant to which punitive damages are awarded fail to provide specific standards for the amount of the award of punitive damages, which thereby violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution;
- (5) The procedures pursuant to which punitive damages are awarded result in the imposition of different penalties for the same or similar acts, and thus

violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution;

- (6) The procedures pursuant to which punitive damages are awarded permit the imposition of punitive damages in excess of the maximum criminal fine for the same or similar conduct, which thereby infringes upon the Due Process Clause of the Fifth and Fourteenth Amendments and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution;
- (7) The procedures pursuant to which punitive damages are awarded permit the imposition of excessive fines in violation of the Eighth Amendment of the United States Constitution;
- (8) The award of punitive damages to the plaintiff in this action would constitute a deprivation of property without due process of law; and,
- (9) The procedures pursuant to which punitive damages are awarded permit the imposition of an excessive fine and penalty.

SIXTH DEFENSE

The Plaintiff's claims for punitive damages violate and is therefore barred by the provisions of the Constitution of the State of West Virginia, including but not limited to Article III, Sections 4, 5, 6 and 10, on grounds including, but not limited to, the following:

- (1) It is a violation of the Due Process and the Equal Protection Clauses to impose punitive damages, which are penal in nature, against a civil defendant upon the plaintiff satisfying a burden of proof which is less than the "beyond a reasonable doubt" burden of proof required in criminal cases;
- (2) The procedures pursuant to which punitive damages are awarded may result in the award of joint and several judgments against multiple defendants for different alleged acts of wrongdoing;
- (3) The procedures to which punitive damages are awarded fail to provide a limit on the amount of the award against the defendant;
- (4) The procedures pursuant to which punitive damages are awarded fail to provide specific standards for the amount of the award of punitive damages;
- (5) The procedures pursuant to which punitive damages are awarded result in the imposition of different penalties for the same or similar acts;

- (6) The procedures pursuant to which punitive damages are awarded permit the imposition of punitive damages in excess of the maximum criminal fine for the same or similar conduct;
- (7) The procedures pursuant to which punitive damages are awarded permit the imposition of excessive fines;
- (8) The award of punitive damages to the plaintiff in this action would constitute a deprivation of property without due process of law; and,
- (9) The procedures pursuant to which punitive damages are awarded permit the imposition of an excessive fine and penalty.

SEVENTH DEFENSE

For further defense, this Defendant provisionally pleads that the claims of the Plaintiff are barred by the Plaintiff's reckless conduct.

EIGHTH DEFENSE

For further defense, this Defendant denies that the Plaintiff sustained any injury as a result of contact or use of any product sold by this Defendant, and further states that the Plaintiff's damages, if any, were caused by employers and/or by third parties and instrumentalities in no way connected with this Defendant and over whom this Defendant had no control.

NINTH DEFENSE

For further defense, this Defendant asserts that the damages of which the Plaintiff complains were caused or contributed to by the act, omission and/or other culpable conduct of a party, person and/or entity over which this Defendant had no right of or duty to control and for which this Defendant cannot be held liable.

TENTH DEFENSE

For further defense, this Defendant asserts that the damages of which the Plaintiff complains was caused or contributed to by the abuse, misuse and/or improper use of the subject product and, thus, Plaintiff's claims herein are barred or reduced by the same.

ELEVENTH DEFENSE

For further defense, this Defendant pleads that the products which this Defendant has sold, if any, have at all times been reasonably fit and suitable for the purposes for which they were made and sold, and Defendant denies that the same were defective in any manner for any such uses or purposes.

TWELFTH DEFENSE

For further defense, this Defendant pleads that the Plaintiff may not maintain any action against this Defendant based on warranties, either expressed or implied, as such warranties were not provided by this Defendant to the Plaintiff.

THIRTEENTH DEFENSE

For further defense, this Defendant asserts that Plaintiff's claims are barred or otherwise limited by the spoliation doctrine.

FOURTEENTH DEFENSE

For further defense, this Defendant pleads that if the Plaintiff sustained damages as a result of any product sold by this Defendant, which it specifically denies, this Defendant owed no duty to warn Plaintiff of any potential dangers involved.

FIFTEENTH DEFENSE

For further defense, this Defendant provisionally pleads that its products were distributed for use in a limited market by a limited class of workers who held themselves out as having

special knowledge and expertise in the handling of such products. Plaintiff and Plaintiff's employers were experienced members of that limited class of skilled individuals upon whose special knowledge and expertise concerning the use of that product, this Defendant was entitled to rely. This Defendant contends that Plaintiff knew or should have known how to properly use the product.

SIXTEENTH DEFENSE

For further defense, this Defendant pleads that if there is any actionable liability of this Defendant, which it specifically denies, such liability must be compared to the fault of the Plaintiff and the other Defendants, nonparties or other actors as mandated under Chapter 55, Article 7, Section 13a, *et seq.* Any award made to Plaintiff in this action must be proportionately allocated among Plaintiff, Defendants, nonparties, or other actors found to be culpable in accordance with the percentages of any negligence or fault attributable to each.

SEVENTEETH DEFENSE

For further defense, this Defendant pleads that it is an "innocent seller" as defined in Chapter 55, Article 7, Section 31 of *The West Virginia Code*. This Defendant did not have actual knowledge of any alleged defect in the product which is alleged to be a proximate cause for the harm for which recovery is sought. This Defendant did not exercise substantial control over the aspect of the manufacture, construction, design, formula, installation, preparation, assembly, testing, labeling, warnings or instructions of any alleged product that was a proximate cause of the harm for which recovery is sought. This Defendant did not alter, modify or install any alleged product that was a proximate cause of the harm for which recovery is sought after such product left the possession of the manufacturer. This Defendant did not make an express warranty regarding any alleged product that was a proximate cause of the harm for which recovery is

sought that was independent of any express warranty made by the manufacturer regarding the product. This Defendant did not resell any alleged product after the product's first sale for use or consumption, and any product sold by this Defendant that was a proximate cause of the harm for which recovery was in substantially the same condition as it was at the time the product left the possession of the manufacturer. This Defendant did not fail to exercise reasonable and product-appropriate care in assembling, maintaining, storing, transporting or repairing any alleged product that was a proximate cause of the harm for which recovery is sought. This Defendant did not remove, or fail to convey to the user or consumer of any alleged product that was a proximate cause for the harm for which recovery is sought, the manufacturer's labels, warnings or instructions. This Defendant is not a controlled subsidiary of a manufacturer, and the manufacturer of the alleged product is not a controlled subsidiary of the seller, with regard to any alleged product that was a proximate cause of the harm for which recovery is sought. This Defendant did not repackage the alleged product that allegedly was a proximate cause of the harm for which recovery is sought, and did not place its own brand name or label on the product. Any manufacturer of any product allegedly distributed by this Defendant that allegedly was a proximate cause of the harm for which recovery is sought is subject to service of process under the laws of the State of West Virginia, is not insolvent, and there is no clear and convincing evidence that the Plaintiff would be unable to enforce any judgment against the product manufacturer.

WHEREFORE, Defendant respectfully requests this Court to dismiss Plaintiff's Complaint against it with prejudice, and to award Defendant its costs, fees, and expenses incurred as a result of this action.

THIS DEFENDANT DEMANDS A TRIAL BY JURY.

FERGUSON ENTERPRISES
by counsel

/s/ William R. Slicer
William R. Slicer, Esq. (WVBN 5177)
Shuman McCuskey Slicer PLLC
1411 Virginia Street, East, Suite 200
Post Office Box 3953
Charleston, WV 25339-3953
(304) 345-1400

IN THE CIRCUIT COURT OF JACKSON COUNTY, WEST VIRGINIA

SOUTHERN JACKSON COUNTY
PUBLIC SERVICE DISTRICT,

Plaintiff,

v.

Civil Action No. CC-18-2022-C-91
Honorable Lora Dyer, Judge

MASTER METER, INC., a Texas
Corporation; FERGUSON ENTERPRISES,
a Virginia Limited Liability Company; C. J.
HUGHES CONSTRUCTION COMPANY, INC.,
a West Virginia corporation; and TRI-STATE
PIPELINE, INC., an Ohio corporation;

Defendants.

CERTIFICATE OF SERVICE

The undersigned, counsel for Ferguson Enterprises, hereby certifies that on this 28th day of March 2023 the foregoing *Defendant Ferguson Enterprises' Answer to Plaintiff's Complaint* was electronically filed with the Clerk of the Court using the West Virginia E-Filing system, which will provide copies of such filing to counsel of record:

Marvin W. Masters, Esquire
The Masters Law Firm lc
181 Summers Street
Charleston, WV 25301
mwm@themasterslawfirm.com
Counsel for Plaintiff

David K. Hendrickson, Esquire
Hendrickson & Long
Post Office Box 11070
Charleston, WV 25339-1070
daveh@handl.com
Counsel for Master Meter, Inc.

/s/ William R. Slicer
William R. Slicer, WV Bar No. 5177



West Virginia E-Filing Notice



CC-18-2022-C-91

Judge: Lora Dyer

To: Daniel Konrad
daniel.konrad@dinsmore.com

NOTICE OF FILING

IN THE CIRCUIT COURT OF JACKSON COUNTY, WEST VIRGINIA
Southern Jackson County Public Service District v. C.J. Hughes Construction Company, Inc.
CC-18-2022-C-91

The following answer was FILED on 3/30/2023 9:53:38 AM

Notice Date: 3/30/2023 9:53:38 AM

Bruce DeWees
CLERK OF THE CIRCUIT COURT
Jackson County
PO Box 427
RIPLEY, WV 25271

(304) 373-2210
Bruce.DeWees@courtsww.gov

COVER SHEET

E-FILED | 3/30/2023 9:53 AM
CC-18-2022-C-91
Jackson County Circuit Clerk
Bruce DeWees

GENERAL INFORMATION

IN THE CIRCUIT COURT OF JACKSON COUNTY WEST VIRGINIA

Southern Jackson County Public Service District v. C.J. Hughes Construction Company, Inc.

First Plaintiff:

☒ Business ☐ Individual
☐ Government ☐ Other

First Defendant:

☒ Business ☐ Individual
☐ Government ☐ Other

Judge:

Lora Dyer

COMPLAINT INFORMATION

Case Type: Civil

Complaint Type: Contract

Origin:

☒ Initial Filing ☐ Appeal from Municipal Court ☐ Appeal from Magistrate Court

Jury Trial Requested:

☒ Yes ☐ No

Case will be ready for trial by: _____

Mediation Requested:

☐ Yes ☒ No

Substantial Hardship Requested: ☐ Yes ☒ No

☐ Do you or any of your clients or witnesses in this case require special accommodations due to a disability?

- ☐ Wheelchair accessible hearing room and other facilities
- ☐ Interpreter or other auxiliary aid for the hearing impaired
- ☐ Reader or other auxiliary aid for the visually impaired
- ☐ Spokesperson or other auxiliary aid for the speech impaired
- ☐ Other: _____

☐ I am proceeding without an attorney

☒ I have an attorney: Daniel Konrad, 611 Third Ave, Huntington, WV 25701

SERVED PARTIES

IN THE CIRCUIT COURT OF JACKSON COUNTY, WEST VIRGINIA

**SOUTHERN JACKSON COUNTY
PUBLIC SERVICE DISTRICT,**

Plaintiff,

v.

Civil Action No. CC-18-2022-C-91

**MASTER METER, INC., a Texas
Corporation; FERGUSON ENTERPRISES,
A Virginia Limited Liability Company; C.J.
HUGHES CONSTRUCTION COMPANY, INC.,
a West Virginia corporation; and TRI-STATE
PIPELINE, INC., an Ohio Corporation;**

Defendants.

**ANSWER AND AFFIRMATIVE DEFENSES OF
C.J. HUGHES CONSTRUCTION COMPANY, INC.**

Now comes C.J. Hughes Construction Company, Inc., (“C.J. Hughes”) by and through undersigned counsel and in answering the Complaint filed against it in the above-captioned matter and stating its affirmative defenses states as follows:

1. This Defendant admits the allegations contained in Paragraph 1 of the Complaint.
2. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 2 of the Complaint.
3. This Defendant admits the allegations contained in Paragraph 3 of the Complaint.
4. This Defendant admits the allegations contained in Paragraph 4 of the Complaint.
5. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 5 of the Complaint.

6. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 6 of the Complaint.

7. This Defendant admits the allegations contained in Paragraph 7 of the Complaint.

8. This Defendant admits and denies in part the allegations contained in Paragraph 8 of the Complaint. C.J. Hughes admits that Master Meter is in the business of marketing and selling water meters and associated mobile and electronic meter reading devices and other related products and selling them to distributors, and in some limited cases end-user customers. This Defendant is without sufficient knowledge to either admit or deny the remaining allegations contained in Paragraph 8 of the Complaint.

9. This Defendant admits that certain water meters and certain components thereof were installed on Plaintiff's property. This Defendant is without sufficient knowledge to either admit or deny the remaining allegations contained in Paragraph 9 of the Complaint.

10. This Defendant admits the allegations contained in Paragraph 10 of the Complaint.

11. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 11 of the Complaint.

12. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 12 of the Complaint.

13. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 13 of the Complaint.

14. This Defendant admits the allegations contained in Paragraph 14 of the Complaint.

15. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 15 of the Complaint.

16. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 16 of the Complaint.

17. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 17 of the Complaint.

18. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 18 of the Complaint.

19. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 19 of the Complaint.

20. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 20 of the Complaint.

21. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 21 of the Complaint.

22. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 22 of the Complaint.

23. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 23 of the Complaint.

24. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 24 of the Complaint.

25. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 25 of the Complaint.

26. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 26 of the Complaint.

27. This Defendant admits that C.J. Hughes was awarded a contract by Plaintiff. As to the remaining allegations contained in Paragraph 27 of the Complaint, this Defendant is without sufficient knowledge to either admit or deny the same.

28. This Defendant denies the allegations contained in Paragraph 28 of the Complaint.

29. This Defendant admits that it purchased water meters and related products as requested by Plaintiff. This Defendant is without sufficient knowledge to either admit or deny the remaining allegations contained in Paragraph 29 of the Complaint.

30. This Defendant admits that Plaintiff purchased a number of meters but denies the remaining allegations contained in Paragraph 30 of the Complaint that refer to the obligations of C.J. Hughes.

31. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 31 of the Complaint.

32. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 32 of the Complaint.

33. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 33 of the Complaint.

34. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 34 of the Complaint.

35. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 35 of the Complaint.

36. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 36 of the Complaint.

37. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 37 of the Complaint.

38. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 38 of the Complaint.

39. This Defendant denies the allegations contained in Paragraph 39 of the Complaint.

40. This Defendant denies the allegations contained in Paragraph 40 of the Complaint.

41. This Defendant denies the allegations contained in Paragraph 41 of the Complaint.

42. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 42 of the Complaint.

43. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 43 of the Complaint.

44. This Defendant denies the allegations contained in Paragraph 44.

COUNT I

45. In response to Paragraph 45 of the Complaint this Defendant incorporates by reference its answers to the previous 44 paragraphs as if responded to herein verbatim.

46. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 46 of the Complaint.

47. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 47 of the Complaint as related to Ferguson.

48. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 48 of the Complaint.

49. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 49 of the Complaint.

50. This Defendant denies the allegations contained in Paragraph 50 of the Complaint.

COUNT II

51. In response to Paragraph 51 of the Complaint, this Defendant incorporates by reference its answers to the previous 50 paragraphs as if responded to herein verbatim.

52. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 52 of the Complaint.

53. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 53 of the Complaint.

54. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 54 of the Complaint.

55. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 55 of the Complaint.

56. This Defendant denies the allegations contained in Paragraph 56 of the Complaint.

COUNT III

57. In response to Paragraph 57 of the Complaint, this Defendant incorporates by reference its answers to the previous 56 paragraphs as if responded to herein verbatim.

58. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 58 of the Complaint.

COUNT IV

59. In response to Paragraph 59 of the Complaint, this Defendant incorporates by reference its answers to the previous 58 paragraphs as if responded to herein verbatim.

60. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 60 of the Complaint as related to Ferguson.

61. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 61 of the Complaint as related to Ferguson.

COUNT V

62. In response to Paragraph 62 of the Complaint, this Defendant incorporates by reference its answers to the previous 61 paragraphs as if responded to herein verbatim.

63. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 63 of the Complaint.

64. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 64 of the Complaint.

65. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 65 of the Complaint.

66. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 66 of the Complaint.

67. This Defendant denies the allegations contained in Paragraph 67 of the Complaint.

68. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 68 of the Complaint.

69. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 69 of the Complaint.

70. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 70 of the Complaint.

COUNT VI

71. In response to Paragraph 71 of the Complaint, this Defendant incorporates by reference its answers to the previous 70 paragraphs as if responded to herein verbatim.

72. This Defendant denies the allegations contained in Paragraph 72 of the Complaint.

73. This Defendant denies the allegations contained in Paragraph 73 of the Complaint.

74. This Defendant denies the allegations contained in Paragraph 74 of the Complaint.

75. This Defendant denies the allegations contained in Paragraph 75 of the Complaint.

76. Except as hereinabove specifically admitted, this Defendant denies each and every factual assertion set forth in the Complaint.

AFFIRMATIVE DEFENSES

Until there has been complete discovery in this case, a final determination cannot be made as to whether Plaintiff's claims are barred, in whole or in part, by some or all of the following defenses and other matters asserted in these claims. Therefore, in order to preserve and not waive such defenses and other matters, C.J. Hughes, by and through its counsel, sets forth the following further defenses:

1. C.J. Hughes incorporates by reference its above responses to paragraphs 1 through 75 of Plaintiff's Complaint as though same were set forth herein at length.

2. Plaintiff's claims are barred by the expiration of the statute(s) of limitations applicable to such claims and/or any applicable statute(s) of repose and, therefore, Plaintiff is not entitled to recover against this Defendant.

3. The acts and/or omissions and/or products of other individuals or entities over whom this Defendant had no right or duty to control, or exercised no control, constitute intervening or superseding causes of any injuries and damages allegedly sustained by Plaintiff, which injuries and damages are, in any event, denied.

4. Plaintiff's claims are barred or limited, in whole or in part, by Plaintiff's own negligence in failing to exercise due and proper care under the circumstances, which negligence caused or contributed to Plaintiff's injuries and damages, if any, which injuries and damages are, in any event, denied.

5. Plaintiff's claims are barred or limited, in whole or in part, because any injuries, damages and/or losses to Plaintiff as alleged in the Complaint were caused, in whole or in part, or proximately caused, by the fault, negligence or other liability-inducing acts and/or omissions of Plaintiff or others which, by comparison, were greater than any alleged liability-inducing conduct by this Defendant.

6. At all times material hereto, this Defendant acted properly, reasonably and with due and reasonable care and did not breach any duties owed to Plaintiff and performed each and every duty owed to Plaintiff, if any.

7. Plaintiff's claims should be dismissed because Plaintiff has failed to join indispensable parties necessary for a just and entire adjudication of the issues.

8. Plaintiff's claims are barred by the Economic Loss Doctrine.

9. Plaintiff's claims are barred by the affirmative defense that the warranty period provided by this Defendant has expired.

10. Plaintiff's claims are barred by the affirmative defense of lack of reasonable notice to this Defendant of alleged breach of warranties (whether express or implied).

11. If there is any actionable liability of this Defendant, which liability is specifically denied, such liability should be compared to the fault of the Plaintiff's and the other parties and actors involved in the matters alleged in the Complaint. Pursuant to W.Va. Code § 55-7-13c(1), this Defendant further alleges that any Defendant, party or actor found to be negligent or at fault with respect to the Plaintiff's alleged claims must be required to satisfy any claims only in accordance with its proportional share of negligence or fault to be determined in this action.

12. This Defendant reserves any and all defenses available under Rule 8 and Rule 12 of the West Virginia Rules of Civil Procedure that may arise upon the discovery of further information.

13. Because of the generality of the allegations of the Complaint, this Defendant reserves the right to amend its Answer and Affirmative Defenses if investigation, discovery and further information should warrant such amendment, and, further, to assert any applicable matters of law during the pendency of this action.

WHEREFORE, this Defendant demands judgment in its favor and against Plaintiff and the dismissal of Plaintiff's claims, with prejudice, along with such other further legal and/or equitable relief as the Court may deem just and proper.

THIS DEFENDANT REQUESTS A TRIAL BY JURY.

**C.J. HUGHES CONSTRUCTION
COMPANY, INC.**

By Counsel.

/s/ Daniel J. Konrad

Daniel J. Konrad (#2088)

Matthew L. Ward (#11903)

DINSMORE & SHOHL LLP

611 Third Avenue

Huntington, West Virginia 25701

(304) 529-6187

(304) 522-4312 (facsimile)

daniel.konrad@dinsmore.com

IN THE CIRCUIT COURT OF JACKSON COUNTY, WEST VIRGINIA

**SOUTHERN JACKSON COUNTY
PUBLIC SERVICE DISTRICT,**

Plaintiff,

v.

Civil Action No. CC-18-2022-C-91

**MASTER METER, INC., a Texas
Corporation; FERGUSON ENTERPRISES,
A Virginia Limited Liability Company; C.J.
HUGHES CONSTRUCTION COMPANY, INC.,
a West Virginia corporation; and TRI-STATE
PIPELINE, INC., an Ohio Corporation;**

Defendants.

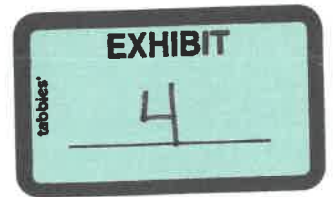
CERTIFICATE OF SERVICE

I, Daniel J. Konrad, do hereby certify that the foregoing **ANSWER AND
AFFIRMATIVE DEFENSES OF DEFENDANT C.J. HUGHES CONSTRUCTION
COMPANY, INC.** was filed this 3rd day of March, 2023, using the WV E-Filing System,
which will send notice to and constitutes service upon counsel of record, and/or electronic mail or
U.S. mail.

/s/ Daniel J. Konrad
Daniel J. Konrad (#2088)
Matthew L. Ward (#11903)
DINSMORE & SHOHL LLP
611 Third Avenue
Huntington, West Virginia 25701
(304) 529-6187
(304) 522-4312 (facsimile)
daniel.konrad@dinsmore.com



West Virginia E-Filing Notice



CC-18-2022-C-91

Judge: Lora Dyer

To: David Hendrickson
daveh@handl.com

NOTICE OF FILING

IN THE CIRCUIT COURT OF JACKSON COUNTY, WEST VIRGINIA
Southern Jackson County Public Service District v. C.J. Hughes Construction Company, Inc.
CC-18-2022-C-91

The following answer was FILED on 3/28/2023 5:19:55 AM

Notice Date: 3/28/2023 5:19:55 AM

Bruce DeWees
CLERK OF THE CIRCUIT COURT
Jackson County
PO Box 427
RIPLEY, WV 25271

(304) 373-2210
Bruce.DeWees@courtsww.gov

COVER SHEET

E-FILED | 3/28/2023 5:19 AM
CC-18-2022-C-91
Jackson County Circuit Clerk
Bruce DeWees

GENERAL INFORMATION

IN THE CIRCUIT COURT OF JACKSON COUNTY WEST VIRGINIA

Southern Jackson County Public Service District v. C.J. Hughes Construction Company, Inc.

First Plaintiff:

☒ Business ☐ Individual
☐ Government ☐ Other

First Defendant:

☒ Business ☐ Individual
☐ Government ☐ Other

Judge:

Lora Dyer

COMPLAINT INFORMATION

Case Type: Civil

Complaint Type: Contract

Origin:

☒ Initial Filing ☐ Appeal from Municipal Court ☐ Appeal from Magistrate Court

Jury Trial Requested:

☒ Yes ☐ No

Case will be ready for trial by: 9/3/2024

Mediation Requested:

☐ Yes ☒ No

Substantial Hardship Requested:

☐ Yes ☒ No

☐ Do you or any of your clients or witnesses in this case require special accommodations due to a disability?

- ☐ Wheelchair accessible hearing room and other facilities
- ☐ Interpreter or other auxiliary aid for the hearing impaired
- ☐ Reader or other auxiliary aid for the visually impaired
- ☐ Spokesperson or other auxiliary aid for the speech impaired
- ☐ Other: _____

☐ I am proceeding without an attorney

☒ I have an attorney: David Hendrickson, PO Box 11070, Charleston, WV 25339

SERVED PARTIES

IN THE CIRCUIT COURT OF JACKSON COUNTY, WEST VIRGINIA

**SOUTHERN JACKSON COUNTY
PUBLIC SERVICE DISTRICT,**

Plaintiff,

v.

Civil Action No. CC-18-2022-C-91

**MASTER METER, INC., a Texas
Corporation; FERGUSON ENTERPRISES,
A Virginia Limited Liability Company; C.J.
HUGHES CONSTRUCTION COMPANY, INC.,
a West Virginia corporation; and TRI-STATE
PIPELINE, INC., an Ohio Corporation;**

Defendants.

**ANSWER AND AFFIRMATIVE DEFENSES OF
MASTER METER, INC.**

Now comes Master Meter, Inc., (“Master Meter”) by and through undersigned counsel and in answering the Complaint filed against it in the above-captioned matter and stating its affirmative defenses states as follows:

1. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 1 of the Complaint.

2. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 2 of the Complaint.

3. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 3 of the Complaint.

4. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 4 of the Complaint.

5. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 5 of the Complaint.

6. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 6 of the Complaint.

7. This Defendant, Master Meter, admits it is a Texas corporation, with its principal place of business located at 101 Reggency Parkway, Mansfield, Texas.

8. This Defendant admits and denies in part the allegations contained in Paragraph 8 of the Complaint. Master Meter admits that it is in the business of marketing and selling water meters and associated mobile and electronic meter reading devises and other related products and selling them to distributors, and in some limited cases end-user customers. Master Meter denies it is in the business of designing or manufacturing such products as alleged in Paragraph 8 of the Complaint. Master Meter denies it sold any of the water metering products to Plaintiff.

9. Master Meter denies that it designed or manufactured water meters as alleged in Paragraph 9 of the Complaint. This Defendant admits the remaining allegations contained in Paragraph 9 of the Complaint.

10. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 10 of the Complaint.

11. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 11 of the Complaint.

12. Master Meter denies that it designed or manufactured registers and wireless products which purportedly would provide for and enable its customers, like Plaintiff, to electronically read the water meters and electronically transmit the amount of usage for each

customer to a transceiver located in a vehicle being driven near to the location of the meter. This Defendant admits the remaining allegations contained in Paragraph 12 of the Complaint.

13. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 13 of the Complaint.

14. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 14 of the Complaint.

15. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 15 of the Complaint.

16. This Defendant denies the allegations contained in Paragraph 16 of the Complaint, in that Ferguson was acting as the agent, servant, employee or official representative of Master Meter. This Defendant admits the allegations contained in Paragraph 16 of the Complaint in that Ferguson was acting as a distributor and dealer for Master Meter

17. This Defendant denies the allegations contained in Paragraph 17 of the Complaint.

18. This Defendant denies the allegations contained in Paragraph 18 of the Complaint.

19. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 10 of the Complaint.

20. This Defendant denies the allegations contained in Paragraph 20 of the Complaint.

21. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 21 of the Complaint.

22. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 22 of the Complaint as it relates to Ferguson and denies the allegations contained in Paragraph 22 of the Complaint as it relates to Master Meter.

23. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 23 of the Complaint as it relates to Ferguson and denies the allegations contained in Paragraph 23 of the Complaint as it relates to Master Meter.

24. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 24 of the Complaint.

25. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 25 of the Complaint.

26. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 26 of the Complaint.

27. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 27 of the Complaint.

28. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 28 of the Complaint.

29. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 29 of the Complaint.

30. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 30 of the Complaint.

31. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 31 of the Complaint. Master Meter specifically denies that it entered into any contract with Plaintiff for the sale of the products in question.

32. This Defendant denies the allegations contained in Paragraph 32 of the Complaint that Master Meter made the aforesaid representations to the PSD directly and indirectly. This

Defendant is without sufficient knowledge to either admit or deny the remaining allegations contained in Paragraph 32 of the Complaint as it relates to Ferguson.

33. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 33 of the Complaint.

34. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 34 of the Complaint as related to Ferguson and denies the remaining allegations contained in Paragraph 34 of the Complaint as related to Master Meter.

35. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 35 of the Complaint as related to Ferguson. This Defendant is without sufficient knowledge to either admit or deny the remaining allegations contained in Paragraph 35 of the Complaint.

36. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 36 of the Complaint. Master Meter admits that Master Meter replaced, pursuant to the terms of its written warranty, certain products purchased by Plaintiff.

37. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 37 of the Complaint.

38. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 38 of the Complaint.

39. This Defendant denies the allegations contained in Paragraph 39 of the Complaint.

40. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 40 of the Complaint.

41. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 41 of the Complaint.

42. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 42 of the Complaint as related to Ferguson. This Defendant denies the remaining allegations contained in Paragraph 42 of the Complaint.

43. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 43 of the Complaint as related to Ferguson. This Defendant denies the remaining allegations contained in Paragraph 43 of the Complaint.

44. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 44, Subparagraphs a, b, c, d, e, f, g, h, i, and j, of the Complaint as related to Ferguson. This Defendant denies the remaining allegations contained in Paragraph 44, Subparagraphs a, b, c, d, e, f, g, h, i, and j of the Complaint as related to Master Meter.

COUNT I

45. In response to Paragraph 45 of the Complaint this Defendant incorporates by reference its answers to the previous 44 paragraphs as if responded to herein verbatim.

46. This Defendant Master Meter denies the allegations contained in Paragraph 46 of the Complaint as related to Master Meter. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 46 of the Complaint as related to Ferguson.

47. This Defendant Master Meter denies the allegations contained in Paragraph 47 of the Complaint as related to Master Meter. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 47 of the Complaint as related to Ferguson.

48. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 48 of the Complaint.

49. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 49 of the Complaint.

50. This Defendant denies the allegations contained in Paragraph 50 of the Complaint.

This Defendant Master Meter denies the allegations contained in the Wherefore Paragraph of the Complaint as related to Master Meter. This Defendant is without sufficient knowledge to either admit or deny the remaining allegations contained in the Wherefore Paragraph of the Complaint as related to Ferguson, Tri-State and C.J. Hughes.

COUNT II

51. In response to Paragraph 51 of the Complaint, this Defendant incorporates by reference its answers to the previous 50 paragraphs as if responded to herein verbatim.

52. This Defendant denies the allegations contained in Paragraph 52 of the Complaint.

53. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 53 of the Complaint.

54. This Defendant denies the allegations contained in Paragraph 54 of the Complaint.

55. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 55 of the Complaint.

56. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 56 of the Complaint.

This Defendant Master Meter denies the allegations contained in the Wherefore Paragraph of the Complaint as related to Master Meter. This Defendant is without sufficient knowledge to either admit or deny the remaining allegations contained in the Wherefore Paragraph of the Complaint as related to Ferguson, Tri-State and C.J. Hughes.

COUNT III

57. In response to Paragraph 57 of the Complaint, this Defendant incorporates by reference its answers to the previous 56 paragraphs as if responded to herein verbatim.

58. This Defendant denies the allegations contained in Paragraph 58 of the Complaint.

This Defendant Master Meter denies the allegations contained in the Wherefore Paragraph of the Complaint as related to Master Meter. This Defendant is without sufficient knowledge to either admit or deny the remaining allegations contained in the Wherefore Paragraph of the Complaint as related to Ferguson, Tri-State and C.J. Hughes.

COUNT IV

59. In response to Paragraph 59 of the Complaint, this Defendant incorporates by reference its answers to the previous 58 paragraphs as if responded to herein verbatim.

60. This Defendant Master Meter denies the allegations contained in Paragraph 60 of the Complaint as related to Master Meter. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 60 of the Complaint as related to Ferguson.

61. This Defendant Master Meter denies the allegations contained in Paragraph 61 of the Complaint as related to Master Meter. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 61 of the Complaint as related to Ferguson.

This Defendant Master Meter denies the allegations contained in the Wherefore Paragraph of the Complaint as related to Master Meter. This Defendant is without sufficient knowledge to either admit or deny the remaining allegations contained in the Wherefore Paragraph of the Complaint as related to Ferguson, Tri-State and C.J. Hughes.

COUNT V

62. In response to Paragraph 62 of the Complaint, this Defendant incorporates by reference its answers to the previous 61 paragraphs as if responded to herein verbatim.

63. This Defendant Master Meter denies the allegations contained in Paragraph 63 of the Complaint as related to Master Meter. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 63 of the Complaint as related to Ferguson.

64. This Defendant Master Meter denies the allegations contained in Paragraph 64 of the Complaint as related to Master Meter. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 64 of the Complaint as related to Ferguson.

65. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 65 of the Complaint.

66. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 66 of the Complaint.

67. This Defendant denies the allegations contained in Paragraph 67 of the Complaint.

68. This Defendant Master Meter denies the allegations contained in Paragraph 68 of the Complaint as related to Master Meter. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 68 of the Complaint as related to Ferguson.

69. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 69 of the Complaint.

70. This Defendant Master Meter denies the allegations contained in Paragraph 70 of the Complaint as related to Master Meter. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 70 of the Complaint as related to Ferguson.

This Defendant Master Meter denies the allegations contained in the Wherefore Paragraph of the Complaint as related to Master Meter. This Defendant is without sufficient knowledge to either admit or deny the remaining allegations contained in the Wherefore Paragraph of the Complaint as related to Ferguson, Tri-State and C.J. Hughes.

COUNT VI

71. In response to Paragraph 72 of the Complaint, this Defendant incorporates by reference its answers to the previous 71 paragraphs as if responded to herein verbatim.

72. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 72 of the Complaint.

73. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 73 of the Complaint.

74. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 74 of the Complaint.

75. This Defendant is without sufficient knowledge to either admit or deny the allegations contained in Paragraph 75 of the Complaint.

This Defendant Master Meter denies the allegations contained in the Wherefore Paragraph of the Complaint as related to Master Meter. This Defendant is without sufficient knowledge to either admit or deny the remaining allegations contained in the Wherefore Paragraph of the Complaint as related to Ferguson, Tri-State and C.J. Hughes.

AFFIRMATIVE DEFENSES

Until there has been complete discovery in this case, a final determination cannot be made as to whether Plaintiff's claims are barred, in whole or in part, by some or all of the following defenses and other matters asserted in these claims. Therefore, in order to preserve and not waive

such defenses and other matters, Master Meter, by and through its counsel, sets forth the following further defenses:

1. Master Meter incorporates by reference its above responses to paragraphs 1 through 75 of Plaintiff's Complaint as though same were set forth herein at length.

2. Plaintiff's claims are barred by the expiration of the statute(s) of limitations applicable to such claims and/or any applicable statute(s) of repose and, therefore, Plaintiff is not entitled to recover against Master Meter.

3. The acts and/or omissions and/or products of other individuals or entities over whom Master Meter had no right or duty to control, or exercised no control, constitute intervening or superseding causes of any injuries and damages allegedly sustained by Plaintiff, which injuries and damages are, in any event, denied.

4. This Court lacks personal jurisdiction over Master Meter.

5. Plaintiff's claims are barred or limited, in whole or in part, by Plaintiff's own negligence in failing to exercise due and proper care under the circumstances, which negligence caused or contributed to Plaintiff's injuries and damages, if any, which injuries and damages are, in any event, denied.

6. Plaintiff's claims are barred or limited, in whole or in part, because any injuries, damages and/or losses to Plaintiff as alleged in the Complaint were caused, in whole or in part, or proximately caused, by the fault, negligence or other liability-inducing acts and/or omissions of Plaintiff or others which, by comparison, were greater than any alleged liability-inducing conduct by Master Meter.

7. Plaintiff's Complaint fails to state a claim or cause of action upon which relief may be granted.

8. At all times material hereto, Master Meter acted properly, reasonably and with due and reasonable care and did not breach any duties owed to Plaintiff and performed each and every duty owed to Plaintiff, if any.

9. There exists no proximate cause between Plaintiff's alleged injuries and damages and any alleged acts or omissions attributable to Master Meter or any product(s) sold or supplied by Master Meter and, therefore, Plaintiff is not entitled to recover from Master Meter.

10. Master Meter asserts that any injuries, losses and/or damages to Plaintiff, which injuries and damages are specifically denied, are the result of one or more pre-existing conditions that were unrelated to any acts, omissions, conduct, or product(s) of Master Meter.

11. Master Meter cannot be liable to Plaintiff to the extent that any injuries, losses and/or damages to Plaintiffs as alleged were caused by the unauthorized, unintended, unanticipated or improper use and/or intentional or knowing misuse of any products of Master Meter which may be found to have caused and/or contributed to Plaintiff's alleged injuries, losses and/or damages, if any.

12. This court lacks jurisdiction over the subject matter of Plaintiff's Complaint which should therefore be dismissed.

13. Plaintiff's Complaint should be dismissed due to insufficient specificity in pleading.

14. Plaintiff's claims should be dismissed because any products produced, distributed or introduced into commerce by Master Meter were not defective, unreasonably unfit for the purpose or purposes for which they were intended, but were reasonably fit, suitable and suitable for their intended purpose.

15. Master Meter cannot be liable for any injuries, losses or damages to Plaintiff caused by material and/or substantial alterations of any product(s) of Master Meter.

16. Master Meter exercised no control over, and had no legal right or duty to control, the use or manner of use, storage or handling of any of the products allegedly involved.

17. To the extent that Plaintiff seeks to impose liability on Master Meter based on any labeling or other matter which is regulated under and/or which has been approved or authorized pursuant to any federal labeling law or regulations promulgated thereunder, such claims are barred under the doctrine of preemption.

18. Master Meter cannot be held liable to Plaintiff insofar as, and to the extent that, any product(s) which may have caused or contributed to any alleged injuries, losses or damages to Plaintiff was not designed, manufactured, sold, distributed, or supplied by Master Meter.

19. Plaintiff's claims are barred by the absence of privity between Plaintiff and Master Meter.

20. Plaintiff's claims are barred by the Doctrine of Spoliation.

21. Plaintiff's damages, if any, in whole or in part, are speculative and not actionable.

22. Master Meter asserts that it is immune from claims of failure to inspect for or discover latent defects in connection with any of the alleged products by reason of Master Meter's status in the chain of distribution of such products.

23. Plaintiff's claims should be dismissed because Plaintiff has failed to join indispensable parties necessary for a just and entire adjudication of the issues.

24. Plaintiff's claims against Master Meter should be dismissed, in whole or in part, because Plaintiff failed to mitigate or take corrective action upon realizing exposure or potential exposure to Master Meter's alleged products.

25. Plaintiff is barred from maintaining this action against Master Meter to the extent that Master Meter was not a (“direct”) seller or supplier of one or more of the products referred to in Plaintiff’s Complaint.

26. Master Meter should be dismissed from all claims asserted in Plaintiff’s Complaint because at all relevant times Master Meter fully performed and complied with all applicable federal and state statutes, laws and regulations.

27. To the extent that the products at issue in Plaintiff’s Complaint were not used in the manner in which they were intended to be used and/or were used in a manner that was abnormal and not reasonably foreseeable to Master Meter, such unintended, unexpected, unforeseeable and abnormal use or misuse proximately caused or contributed to Plaintiff’s alleged damages, injuries and/or losses, if any.

28. Plaintiff’s claims should be dismissed, in whole or in part, pursuant to the doctrine of estoppel.

29. Plaintiff’s claims should be dismissed, in whole or in part, pursuant to the doctrine of waiver.

30. Plaintiff’s claims should be dismissed, in whole or in part, pursuant to the doctrine of laches.

31. Master Meter alleges that punitive damages may not be imposed for conduct which comports with industry custom and standards.

32. Plaintiff’s claims are barred, in whole or in part, pursuant to the terms of any full or partial release of Plaintiff’s claims.

33. Any damages or injuries as alleged were caused by an act or acts of God and act or acts of government or acts or omissions of Plaintiff or third parties over whom Master Meter had

no control or right of control, or a combination of the foregoing, and Master Meter exercised due care with respect to the products alleged, taking into consideration the characteristics of such products in light of all relevant facts and circumstances, and Master Meter took precautions against foreseeable risks or omissions attributable to Plaintiff or third parties and the consequences that could reasonably result from such acts or omissions.

34. If Plaintiff has settled, or in the future settle with any other parties for the injuries, losses and damages as alleged in Plaintiff's Complaint, Master Meter asserts that it is entitled to a credit, pro rata or pro tanto, as appropriate, for any consideration received by Plaintiff pursuant to any release given by or on behalf of Plaintiff or to the extent of any proportionate share of the liability of any other defendants that may be attributable to such defendants.

35. Plaintiff's claims against Master Meter are barred, in whole or in part, by the doctrine of accord and satisfaction.

36. Plaintiff's claims are barred by the affirmative defense of Release.

37. Plaintiff's claims are barred by the Economic Loss Doctrine.

38. Plaintiff's claims are barred by the affirmative defense of Exclusive remedy limited to express warranty.

39. Plaintiff's claims are barred by the affirmative defense of lack of reasonable notice to Master Meter of alleged breach of warranties (whether express or implied).

40. Plaintiff's claims are barred by the affirmative defense of Disclaimers of Warranty found in written warranty.

41. Plaintiff's claims are barred by the affirmative defense of Contractual and Express warranties.

42. Plaintiff's claims are barred by the affirmative defense that Texas law applies based on written warranty.

43. Master Meter incorporates by reference as if fully set forth herein at length the affirmative defenses asserted or to be asserted by the other defendants to this action, and reserves the right to rely upon such other and further affirmative defenses as are or may be asserted by the other defendants to this action and/or any other defenses that may become available or apparent during pre-trial proceedings and/or the trial of this matter and expressly reserves the right to amend its Answer and Affirmative Defenses.

44. Plaintiff's choice of venue over this action is improper and/or inconvenient and Master Meter reserves the right to move for a dismissal of this action pursuant to the doctrine of *forum non conveniens*, or, in the alternative, for a change of venue and transfer of this action to a more appropriate forum.

45. If there is any actionable liability of Master Meter, which liability is specifically denied, such liability should be compared to the fault of the Plaintiff's and the other parties and actors involved in the matters alleged in the Complaint. Master Meter alleges that any award made to Plaintiff in this action must be proportionally allocated among Plaintiff, parties, or actors found to be culpable in accordance with the percentage of any negligence or fault attributed to said Plaintiff, Master Meter, parties, and actors. Pursuant to W.Va. Code § 55-7-13c(1), Master Meter further alleges that any Defendant, party or actor found to be negligent or at fault with respect to the Plaintiff's alleged claims must be required to satisfy any claims only in accordance with its proportional share of negligence or fault to be determined in this action.

46. Master Meter reserves any and all defenses available under Rule 8 and Rule 12 of the West Virginia Rules of Civil Procedure that may arise upon the discovery of further information.

47. Because of the generality of the allegations of the Complaint, Master Meter reserves the right to amend its Answer and Affirmative Defenses if investigation, discovery and further information should warrant such amendment, and, further, to assert any applicable matters of law during the pendency of this action.

WHEREFORE, Defendant Master Meter, Inc., demands judgment in its favor and against Plaintiff and the dismissal of Plaintiff's claims, with prejudice, together with an award of costs and attorney's fees in favor of Defendant Master Meter, Inc., along with such other further legal and/or equitable relief as the Court may deem just and proper.

THIS DEFENDANT REQUESTS A TRIAL BY JURY.

MASTER METER, INC.

By Counsel.

/s/ David K. Hendrickson 03/28/2023

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Case Docket Entries

CC-18-2022-C-91

Court: **Circuit** County: **18 - Jackson** Created Date: **12/21/2022** Security Level: **Public**
 Judge: **Lora Dyer** Case Type: **Civil** Case Sub-Type: **Contract** Status: **Open**
 Related Cases:
 Style: **Southern Jackson County Public Service District v. C.J. Hughes Construction Company, Inc.**

	<u>Entered Date</u>	<u>Event</u>	<u>Ref. Code</u>	<u>Description</u>
1	12/21/2022 2:34:45 PM	E-Filed		Complaint
	1-1 12/21/2022	Civil Case Information Statement		
	1-2 12/21/2022	Complaint - Complaint		
	1-3 12/21/2022	Transmittal		
	1-4 12/21/2022	Summons		
2	12/21/2022 2:34:45 PM	Judge Assigned	J-18002	Lora Dyer
3	12/21/2022 2:34:45 PM	Party Added	P-001	Southern Jackson County Public Service District
4	12/21/2022 2:34:45 PM	Party Added	D-001	C.J. Hughes Construction Company, Inc.
5	12/21/2022 2:34:45 PM	Party Added	D-002	Tri-State Pipeline, Inc.
6	12/21/2022 2:34:45 PM	Party Added	D-003	Ferguson Enterprises, LLC
7	12/21/2022 2:34:45 PM	Party Added	D-004	Master Meter, Inc.
8	12/21/2022 2:34:45 PM	Attorney Listed	P-001	A-2359 - Marvin W. Masters
9	12/21/2022 2:34:45 PM	Service Requested	D-001	Filer - Secretary of State
10	12/21/2022 2:34:45 PM	Service Requested	D-002	Filer - Secretary of State
11	12/21/2022 2:34:45 PM	Service Requested	D-003	Filer - Secretary of State
12	12/21/2022 2:34:45 PM	Service Requested	D-004	Filer - Secretary of State
13	1/23/2023 10:25:30 AM	E-Docketed		Supporting Documents - ACCEPTANCE OF SERVICE - SECRETARY OF STATE
	13-1 1/23/2023	Service Return - CJ HUGHES CONSTRUCTION COMPANY		
	13-2 1/23/2023	Transmittal		
14	2/2/2023 10:38:22 AM	E-Docketed		Service Return - RETURN OF SERVICE ON TRI STATE PIPELINE
	14-1 2/2/2023	Service Return - RETURN OF SERVICE ON TRI STATE PIPELINE		
	14-2 2/2/2023	Transmittal		
15	2/10/2023 11:00:47 AM	E-Docketed		Supporting Documents - ACCEPTANCE OF SERVICE FROM SECRETARY OF STATE
	15-1 2/10/2023	Service Return - MASTER METER INC		
	15-2 2/10/2023	Transmittal		
16	3/28/2023 5:20:09 AM	E-Filed		Answer - Complaint Denied
	16-1 3/28/2023	Civil Case Information Statement		
	16-2 3/28/2023	Answer - Answer and Affirmative Defenses of Master Meter, Inc.		
	16-3 3/28/2023	Transmittal		
17	3/28/2023 5:20:09 AM	Attorney Listed	D-004	A-1678 - David K. Hendrickson
18	3/28/2023 6:03:18 PM	E-Filed		Answer - Complaint Denied
	18-1 3/28/2023	Civil Case Information Statement		
	18-2 3/28/2023	Answer - Defendant Ferguson Enterprises' Answer to Plaintiff's Complaint		
	18-3 3/28/2023	Transmittal		
19	3/28/2023 6:03:18 PM	Attorney Listed	D-003	A-5177 - William Robert Slicer
20	3/30/2023 9:53:48 AM	E-Filed		Answer - Answer and Affirmative Defenses of C.J. Hughes
	20-1 3/30/2023	Civil Case Information Statement		
	20-2 3/30/2023	Answer - Answer of C.J. Hughes Construction Company, Inc.		
	20-3 3/30/2023	Transmittal		
21	3/30/2023 9:53:48 AM	Attorney Listed	D-001	A-2088 - Daniel J. Konrad

