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Attorneys for Defendant Tulsa Aircraft Engines, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

BROOK NEF, and NEF FLYING SERVICE,
INC., an Idaho corporation,

Plaintiffs,

v.

ENGINE COMPONENTS, INC., a foreign
corporation; TULSA AIRCRAFT ENGINES,
INC., a foreign corporation; AIRCRAFT
CYLINDERS OF AMERICA, INC., a foreign
corporation,

Defendants.

TULSA AIRCRAFT ENGINES, INC., a
foreign corporation,

Cross-Plaintiff,

v.

ENGINE COMPONENTS, INC., a foreign
corporation,

Cross-Defendant.

Case No. CIV 04-362-E-MHW

**ANSWER, COUNTERCLAIM AND
CROSS-CLAIM OF TULSA
AIRCRAFT ENGINES, INC.**

lp

1. Defendant Tulsa Aircraft Engines, Inc. ("TAE" or "Defendant") is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 1 of the Complaint, and on that basis, denies the allegations in paragraph 1 of the Complaint.

2. Defendant admits that it is an Oklahoma corporation with its principal place of business in Oklahoma. Defendant denies the remaining allegations in paragraph 2 of the Complaint.

3. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 3 of the Complaint, and on that basis, denies the allegations in paragraph 3 of the Complaint.

4. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 4 of the Complaint, and on that basis, denies the allegations in paragraph 4 of the Complaint.

5. Paragraph 5 of the Complaint contains conclusions of law for which no response is necessary. To the extent a response is necessary, Defendant denies the allegations in paragraph 5 of the Complaint.

6. Paragraph 6 of the Complaint contains conclusions of law for which no response is necessary. To the extent a response is necessary, Defendant denies the allegations in paragraph 6 of the Complaint.

General Allegations Common to all Counts

7. Defendant admits that Plaintiff agreed to purchase an aircraft engine from Defendant. Defendant is without sufficient knowledge or information to form a belief as to the truth of the rest of the allegations set forth in paragraph 7 of the Complaint, and on that basis, denies the allegations in paragraph 7 of the Complaint.

8. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 8 of the Complaint, and on that basis, denies the allegations in paragraph 8 of the Complaint.

9. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 9 of the Complaint, and on that basis, denies the allegations in paragraph 9 of the Complaint.

10. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 10 of the Complaint, and on that basis, denies the allegations in paragraph 10 of the Complaint.

11. Defendant admits that Plaintiff ordered an engine for Defendant. Defendant denies the remainder of the allegations in paragraph 11 of the Complaint.

12. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 12 of the Complaint, and on that basis, denies the allegations in paragraph 12 of the Complaint.

13. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 13 of the Complaint, and on that basis, denies the allegations in paragraph 13 of the Complaint.

14. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 14 of the Complaint, and on that basis, denies the allegations in paragraph 14 of the Complaint.

15. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 15 of the Complaint, and on that basis, denies the allegations in paragraph 15 of the Complaint.

16. Paragraph 16 of the Complaint contains conclusions of law for which no response is necessary. To the extent a response is necessary, Defendant denies the allegations in paragraph 16 of the Complaint.

17. Paragraph 17 of the Complaint contains conclusions of law for which no response is necessary. To the extent a response is necessary, Defendant denies the allegations in paragraph 17 of the Complaint.

18. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 18 of the Complaint. Paragraph 18 of the Complaint contains conclusions of law for which no response is necessary. To the extent a response is necessary, Defendant denies the allegations in paragraph 18 of the Complaint.

19. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 19 of the Complaint, and on that basis, denies the allegations in paragraph 19 of the Complaint.

20. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 20 of the Complaint, and on that basis, denies the allegations in paragraph 20 of the Complaint.

21. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 21 of the Complaint, and on that basis, denies the allegations in paragraph 21 of the Complaint.

22. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 22 of the Complaint. Paragraph 22 of the Complaint contains conclusions of law for which no response is necessary. To the extent a response is necessary, Defendant denies the allegations in paragraph 22 of the Complaint.

Count One

23. Defendant repeats, reiterates, and alleges every allegation, admission, and denial in response to paragraphs 1 through 22 with the same force and effect as if set forth in full here.

24. Paragraph 24 of the Complaint contains conclusions of law for which no response is necessary. To the extent a response is necessary, Defendant denies the allegations in paragraph 24 of the Complaint.

25. Defendant denies the allegations in paragraph 25 of the Complaint.

Count Two

26. Defendant repeats, reiterates, and alleges every allegation, admission, and denial in response to paragraphs 1 through 25 with the same force and effect as if set forth in full here.

27. Defendant denies the allegations in paragraph 27 of the Complaint.

28. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 28 of the Complaint, and on that basis, denies the allegations in paragraph 28 of the Complaint.

29. Paragraph 29 of the Complaint contains conclusions of law for which no response is necessary. To the extent a response is necessary, Defendant denies the allegations in paragraph 29 of the Complaint.

30. Defendant denies the allegations in paragraph 30 of the Complaint.

Count Three

31. Defendant repeats, reiterates, and alleges every allegation, admission, and denial in response to paragraphs 1 through 30 with the same force and effect as if set forth in full here.

32. Paragraph 32 of the Complaint contains conclusions of law for which no response is necessary. To the extent a response is necessary, Defendant denies the allegations in paragraph 32 of the Complaint.

33. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 33 of the Complaint, and on that basis, denies the allegations in paragraph 33 of the Complaint.

34. Paragraph 34 of the Complaint contains conclusions of law for which no response is necessary. To the extent a response is necessary, Defendant denies the allegations in paragraph 34 of the Complaint.

35. Defendant denies the allegations in paragraph 35 of the Complaint.

Count Four

36. Defendant repeats, reiterates, and alleges every allegation, admission, and denial in response to paragraphs 1 through 35 with the same force and effect as if set forth in full here.

37. Defendant denies the allegations in paragraph 37 of the Complaint.

38. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 38 of the Complaint, and on that basis, denies the allegations in paragraph 38 of the Complaint.

39. Paragraph 39 of the Complaint contains conclusions of law for which no response is necessary. To the extent a response is necessary, Defendant denies the allegations in paragraph 39 of the Complaint.

40. Defendant denies the allegations in paragraph 40 of the Complaint.

Count Five

41. Defendant repeats, reiterates, and alleges every allegation, admission, and denial in response to paragraphs 1 through 40 with the same force and effect as if set forth in full here.

42. Paragraph 42 of the Complaint contains conclusions of law for which no response is necessary. To the extent a response is necessary, Defendant denies the allegations in paragraph 42 of the Complaint.

43. Paragraph 43 of the Complaint contains conclusions of law for which no response is necessary. To the extent a response is necessary, Defendant denies the allegations in paragraph 43 of the Complaint.

44. Defendant denies the allegations in paragraph 44 of the Complaint.

Count Six

45. Defendant repeats, reiterates, and alleges every allegation, admission, and denial in response to paragraphs 1 through 44 with the same force and effect as if set forth in full here.

46. Defendant admits that it is in the business of selling rebuilt airplane engines. Defendant denies the remainder of the allegations in paragraph 46 of the Complaint.

47. Paragraph 47 of the Complaint contains conclusions of law for which no response is necessary. To the extent a response is necessary, Defendant denies the allegations in paragraph 47 of the Complaint.

48. Defendant denies the allegations in paragraph 48 of the Complaint.

Count Seven

49. Defendant repeats, reiterates, and alleges every allegation, admission, and denial in response to paragraphs 1 through 22 with the same force and effect as if set forth in full here.

50. Paragraph 50 of the Complaint contains conclusions of law for which no response is necessary. To the extent a response is necessary, Defendant denies the allegations in paragraph 50 of the Complaint.

51. Paragraph 51 of the Complaint contains conclusions of law for which no response is necessary. To the extent a response is necessary, Defendant denies the allegations in paragraph 51 of the Complaint.

Count Eight

52. Defendant repeats, reiterates, and alleges every allegation, admission, and denial in response to paragraphs 1 through 22, and 49 through 51 with the same force and effect as if set forth in full here.

53. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 53 of the Complaint, and on that basis, denies the allegations in paragraph 53 of the Complaint.

54. Paragraph 54 of the Complaint contains conclusions of law for which no response is necessary. To the extent a response is necessary, Defendant denies the allegations in paragraph 54 of the Complaint.

Count Nine

55. Defendant repeats, reiterates, and alleges every allegation, admission, and denial in response to paragraphs 1 through 22, and 49 through 54 with the same force and effect as if set forth in full here.

56. Paragraph 56 of the Complaint contains conclusions of law for which no response is necessary. To the extent a response is necessary, Defendant denies the allegations in paragraph 56 of the Complaint.

57. Defendant denies the allegations in paragraph 57 of the Complaint.

58. Paragraph 58 of the Complaint contains conclusions of law for which no response is necessary. To the extent a response is necessary, Defendant denies the allegations in paragraph 58 of the Complaint.

Count Ten

59. Defendant repeats, reiterates, and alleges every allegation, admission, and denial in response to paragraphs 1 through 22, and 49 through 58 with the same force and effect as if set forth in full here.

60. Paragraph 60 of the Complaint contains conclusions of law for which no response is necessary. To the extent a response is necessary, Defendant denies the allegations in paragraph 60 of the Complaint.

61. Defendant denies the allegations in paragraph 61 of the Complaint.

62. Defendant denies the allegations in paragraph 62 of the Complaint.

63. As to Plaintiffs' prayer for damages, including those set forth in the "Wherefore" paragraph, Defendant denies that Plaintiffs are entitled to the relief requested.

64. Defendant denies every allegation of the Complaint that is not expressly admitted in this Answer.

AFFIRMATIVE DEFENSES

65. The alleged damages complained of were caused, solely or partially, by the negligence or other conduct of parties other than TAE and for whom TAE is not responsible and over whom TAE had no control or right of control, and said acts or omissions are a superceding cause of Plaintiffs' damages. TAE is not liable to Plaintiff, or in the alternative, TAE's liability to Plaintiffs should be reduced in accordance with applicable law.

66. The Complaint fails to state a claim against Defendant upon which relief can be granted.

67. Plaintiffs' causes of action are barred in whole or in part by the applicable statute of limitations.

68. Plaintiffs have failed to mitigate their damages.

69. Plaintiffs may lack capacity or standing to maintain this action.

70. The acts or omissions of third parties were intervening, interceding, superceding, unforeseeable, or new and independent causes of Plaintiffs' damages, if any.

71. At the time the product left TAE's possession, custody, and control, and at all relevant times, it was not defective in design, warning, manufacture, or marketing, nor was it

unreasonably dangerous for use because TAE conducted itself in accordance with the standard of care required under the applicable law; the assembly, and marketing of the product were at all times consistent with the custom and practice of sellers of similar products, and in accordance with relevant industry standards and governmental statutes, regulations, and codes.

72. At the time the product left the possession, custody, and control of TAE, and at all relevant times, it was not defective, nor was it unreasonably dangerous for use because the state of technical and scientific knowledge and the published literature and other information reflecting such knowledge, at all relevant times, was such that TAE neither knew, nor should have known, nor could have known that the product presented a foreseeable risk of harm to the Plaintiffs arising out of the normal and expected use and handling of the product.

73. TAE is not liable because the product was subject to unforeseeable and improper misuse or handling.

74. Plaintiffs' alleged damages, if any, were proximately caused in whole or in part, by the modification, alteration, or change in the condition of the product, after it left the possession, custody, and control of TAE, by persons over whom TAE had no control or right of control, and without TAE's knowledge, consent, or advice.

75. Plaintiffs' recovery, if any, must be reduced by any collateral source payment that has been or will be paid to Plaintiff.

76. TAE reserves the right to make an election of credit for any settlements as allowed pursuant to the applicable law.

77. The manufacture and marketing of the product is controlled by federal and international law, and TAE was at all times in compliance and obedience with the applicable law. If Plaintiffs' causes of action against TAE are permitted and allowed, they would impede, impair, frustrate, and/or burden the effectiveness of law regulating transportation and would constitute an invalid burden on interstate commerce, violating the supremacy and commerce

clauses of the United States Constitution, Article VI, Section 2 and Article 1, Section 8, respectively. Thus, Plaintiffs' claims are preempted or barred by applicable law.

78. The product was fit for its intended purpose, was reasonably safe for its intended purpose, was not reasonably certain to be dangerous when put to its normal use, and the benefits of the product, and each component thereof outweigh the inherent risks, if any.

79. Plaintiffs' claims and damages were not substantially or proximately caused by any alleged defect in the subject product.

80. TAE is not liable because it met the standard of care under the learned-, responsible-, sophisticated-, or informed-intermediary doctrines.

81. TAE is not liable under the relevant state law since it was a simply non-manufacturing seller.

82. TAE reserves the right to add those affirmative defenses which it deems necessary to its defense during or upon the conclusion of investigation and discovery.

83. TAE is not liable to Plaintiffs for breach of warranty because the product conformed to all warranties, if any, and all warranties, if any, were disclaimed, excluded, or otherwise limited under TAE's contracts, or through course of dealing, course of performance, or usage of trade.

84. Plaintiffs did not rely on any alleged warranty and are not third-party beneficiaries to any warranties, if any, that may have been made.

85. Plaintiffs' claims are barred whole or in part by waiver or release.

86. Plaintiffs' claims are barred in whole or part by ratification, and accord and satisfaction.

COUNTERCLAIM

Pursuant to Federal Rule Civil Procedure 13, TAE files this Counterclaim against Brook Nef and Nef Flying Service, Inc. and respectfully shows the Court the following:

Parties

1. Counter-plaintiff TAE is an Oklahoma corporation with its principal place of business in Oklahoma.
2. Counter-defendant Brook Nef is an individual residing in Bonneville County, Idaho, and Counter-defendant Nef Flying Service, Inc. is an Idaho corporation with its principal place of business in Bonneville County, Idaho. Counter-defendants Brook Nef and Nef Flying Service, Inc. (collectively "Nef") have already appeared in this action and can be served through their attorney of record: Alan C. Stephens, Thompson Stephens Law Offices, 2635 Channing Way, Idaho Falls, ID 83404.

Subject Matter Jurisdiction and Venue

3. Subject matter jurisdiction is based on 28 U.S.C. § 1367(a) because such claims form part of the same case or controversy as Nef's causes of action.
4. Venue is proper in the District of Idaho pursuant to 28 U.S.C. §§ 1391(a), and (c).

Facts

5. In May, 2002, Nef agreed to purchase an aircraft engine from TAE. Nef agreed to pay TAE \$30,691.10 in exchange for the engine.
6. TAE made delivery as the parties agreed, and Nef took possession of the engine. Nef never paid for the engine, though.

Count I.

Breach of Contract

7. TAE incorporates paragraphs 1-6 of the Counterclaim into this paragraph as if fully set forth herein.
8. By failing to pay for the engine, Nef has breached the contract with TAE and caused TAE to suffer damages.

9. Nef's breach has caused TAE to retain counsel and has caused TAE to incur attorneys' fees.

10. All conditions precedent have been performed or have occurred.

CROSS CLAIM AGAINST ENGINE COMPONENTS, INC.

Pursuant to Federal Rule Civil Procedure 13, TAE files this Crossclaim against Engine Components, Inc. and respectfully shows the Court the following

1. Cross-plaintiff TAE is an Oklahoma corporation with its principal place of business in Oklahoma.

2. On information and belief, cross-defendant Engine Components, Inc. ("ECI"), is a Texas corporation with its principal place of business in Texas. ECI has appeared in this lawsuit and can be served through its attorneys of record: Howard D. Burnett, Hawley Troxell Ennis & Hawley LLP, 333 S. Main St. PO Box 100, Pocatello, ID 83204.

Subject Matter Jurisdiction and Venue

3. Subject matter jurisdiction is based on 28 U.S.C. § 1367(a) because such claims form part of the same case or controversy as Plaintiffs' original causes of action.

4. Venue is proper in the District of Idaho pursuant to 28 U.S.C. §§ 1391(a), and (c).

Facts

5. TAE purchased new cylinders and pistons from ECI to install in an engine TAE was rebuilding for Nef.

6. ECI manufactured and supplied new cylinders and pistons for the engine in question.

7. TAE did not have a reasonable opportunity to inspect the cylinders supplied by ECI in a manner which would or should reveal the existence of any defective condition.

8. TAE had no knowledge or reason to know of any defects in the cylinders.

9. TAE did not modify or alter the cylinders provided by ECI, and the installation of the cylinders complied with directions or specifications provided by ECI, if any.

Count I

Indemnification

10. TAE incorporates paragraphs 1-10 of the Crossclaim into this paragraph as if fully set forth herein.

11. ECI is obligated to hold TAE harmless and indemnify it for all liabilities, costs and expenses, including attorneys fees it may be obligated to Plaintiffs for, or which it may otherwise incur herein.

Prayer

WHEREFORE, PREMISES CONSIDERED, Counter/Cross-Plaintiff TAE prays that Nef be cited to appear and answer herein, that ECI be cited to appear and answer herein, that Nef take nothing on its claims against TAE, and that upon final judgment, TAE have the following relief:

- a. That all of the Plaintiffs' claims be dismissed and Plaintiffs take nothing thereby;
- b. That Nef pay TAE for all damages suffered by TAE resulting from Nef's breach of contract,
- c. That Nef pay TAE its costs incurred herein, as well as reasonable attorneys' fees;
- d. Prejudgment interest on monies due from Plaintiffs' purchase of the engine in controversy;
- e. That ECI pay TAE its reasonable attorneys' fees and costs;
- f. That ECI indemnify and hold TAE harmless for any liability, costs and expenses suffered or incurred in this cause; and
- g. All other and further relief as the Court deems just and proper.

DATED: July 19, 2004.

STOEL RIVES LLP



Mark S. Geston
Attorneys for Defendant Tulsa Aircraft
Engines, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused to be served the foregoing ANSWER, COUNTERCLAIM AND CROSS-CLAIM OF TULSA AIRCRAFT ENGINES, INC. on the following named person(s) on the date indicated below in the manner indicated:

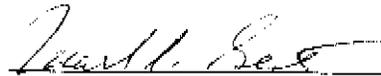
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Via U.S. Mail
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Fax: (208) 233-1304
Attorney for Defendant Engine Components, Inc.

Via U.S. Mail
 Via Facsimile
 Via Overnight Mail
 Via Hand Delivery

DATED this 19 of July, 2004.



Mark S. Geston