

COMMONWEALTH OF KENTUCKY
MADISON CIRCUIT COURT
DIVISION NO. II
CIVIL ACTION NO.: 18-CI-00294
(Electronically Filed)

RONALD D. HELD, JR., AND CAROL
LEAR, on behalf of themselves and all other
persons similarly situated,

PLAINTIFFS

v. **DEFENDANT'S ANSWER TO SECOND AMENDED
CLASS ACTION COMPLAINT**

HITACHI AUTOMOTIVE SYSTEMS
AMERICAS, INC.

DEFENDANT

Defendant, Hitachi Automotive Systems Americas, Inc. (“Hitachi” or “Defendant”), by counsel, for its Answer to Plaintiffs’ Second Amended Class Action Complaint (“Complaint”) filed by Plaintiffs Ronald D. Held, Jr. and Carol Lear (collectively, “Plaintiffs”), on behalf of themselves and all others similarly situated, states as follows:

INTRODUCTION

1. With respect to the allegations set forth in numerical Paragraph 1 of the Complaint, Defendant admits only Plaintiffs are attempting to bring this matter as a class action under the Kentucky Wages and Hours Act (“KWHA”) but denies that class relief is appropriate for reasons explained in Defendant’s Response to Plaintiffs’ Motion to Certify Class and further denies the remaining allegations therein. Defendant affirmatively states that Plaintiffs are paid on a salary basis (paid a predetermined and guaranteed salary each calendar month) and receive

additional payments based on hours “worked” in excess of 40 hours per week, which is lawful pursuant to federal and Kentucky laws and regulations.¹

PARTIES

A. Plaintiffs

2. Defendant admits the allegations set forth in numerical Paragraph 2 of the Complaint.

3. Defendant denies the allegations set forth in numerical Paragraph 3 of the Complaint.

B. Hitachi

4. Defendant admits the allegations set forth in numerical Paragraph 4 of the Complaint.

5. Defendant admits the allegations set forth in numerical Paragraph 5 of the Complaint. Defendant further states that all future production in Berea will occur at the 301 Mayde Road facility.

6. The allegations set forth in numerical Paragraph 6 of the Complaint are legal conclusions to which no response is required.

RELATED LEAR CASE IN U.S. DISTRICT COURT

7. Defendant admits the allegations set forth in numerical Paragraph 7 of the Complaint that Plaintiff Lear, along with another individual, brought a KWHA claim in federal court. Defendant specifically denies that their claim has any merit and affirmatively states the U.S. District Court dismissed the *Lear* case with prejudice.

¹ Hitachi includes Paid Time Off hours and Holiday hours in the calculations of hours “worked” for determining extra pay for extra work.

8. Defendant admits the allegations set forth in numerical Paragraph 8 of the Complaint.

9. Defendant admits the allegations set forth in numerical Paragraph 9 of the Complaint. Defendant specifically denies Plaintiffs' FLSA claim has any merit.

10. Defendant admits the allegations set forth in numerical Paragraph 10 of the Complaint. Specifically, the Court held the collective action notice shall include "[a]ll current and former supervisors including, without limitation, Production Supervisors, Quality Supervisors, and Warehouse Supervisors employed by the Defendant in its Berea, Kentucky manufacturing facilities at any time since April 24, 2014, who worked more than forty (40) hours in any workweek during their employment, excluding all supervisors who have only worked on the south side of the Berea Motors facility since April 24, 2014."

11. Defendant admits the allegations set forth in numerical Paragraph 11 of the Complaint.

12. With respect to the allegations set forth in numerical Paragraph 12 of the Complaint, Defendant admits Plaintiffs have now filed their KWAHA claims in Madison Circuit Court. Defendant specifically denies Plaintiffs' KWAHA claims have any merit. Defendant affirmatively states that Plaintiffs are paid on a salary basis (paid a predetermined and guaranteed salary each calendar month) and receive additional payments based on hours "worked" in excess of 40 hours per week, which is lawful pursuant to federal and Kentucky laws and regulations.

13. Defendant admits the U.S. District Court dismissed Plaintiffs' claims "with prejudice" but denies the remaining allegations therein.

FACTS

14. With respect to the allegations set forth in numerical Paragraph 14 of the Complaint, Defendant admits only Plaintiffs are seeking to represent a group of current and former supervisors at certain of its Berea facilities. Defendant affirmatively states class certification is inappropriate for reasons explained in Defendant's Response to Plaintiffs' Motion to Certify Class

15. Upon information and belief, Defendant admits the allegations set forth in numerical Paragraph 15 of the Complaint.

16. With respect to the allegations set forth in numerical Paragraph 16 of the Complaint, Defendant affirmatively states Plaintiff Held was employed as a supervisor in the South Machining Department.

17. Defendant denies the allegations set forth in numerical Paragraph 17 of the Complaint.

18. Defendant denies the allegations set forth in numerical Paragraph 18 of the Complaint.

19. Defendant denies the allegations set forth in numerical Paragraph 19 of the Complaint.

20. With respect to the allegations set forth in numerical Paragraph 20 of the Complaint, Defendant admits only that production at the Berea, Kentucky and Berea Motors North facilities is centered around three shifts that are typically 8.5 hours per day, including meal time. Team members and team leaders typically work one of these shifts. When production demands dictate, longer hours, included weekends, may be required.

21. With respect to the allegations set forth in numerical Paragraph 21 of the Complaint, Defendant admits only that Supervisors typically work the same shifts as the team

members and team leaders whom they are supervising, with the expectation of working as production needs dictate. Supervisors, however, typically arrive approximately 30 minutes before the shift begins and remain until approximately 30 minutes after the shift concludes.

22. With respect to the allegations set forth in numerical Paragraph 22 of the Complaint, Defendant admits only that Supervisors typically work the same shifts as the team members and team leaders whom they are supervising, with the expectation of working as production needs dictate. Supervisors, however, typically arrive approximately 30 minutes before the shift begins and remain until approximately 30 minutes after the shift concludes. Whether a Supervisor will work on weekends is dependent upon production needs.

23. With respect to the allegations set forth in numerical Paragraph 23 of the Complaint, Defendant admits only it tracks employee time to the minute for purposes of providing extra compensation beyond the Supervisor's predetermined and guaranteed salary and denies the remaining allegations therein. Defendant affirmatively states that Plaintiffs are paid on a salary basis (paid a predetermined and guaranteed salary each calendar month) and receive additional payments based on hours "worked" in excess of 40 hours per week, which is lawful pursuant to federal and Kentucky laws and regulations.

24. Defendant denies the allegations set forth in numerical Paragraph 24 of the Complaint and affirmatively states that Plaintiffs and other putative class members are exempt from overtime payments pursuant to federal and Kentucky laws and regulations. Plaintiffs are paid on a salary basis (paid a predetermined and guaranteed salary each calendar month) and receive additional payments based on hours "worked" in excess of 40 hours per week, which is lawful pursuant to federal and Kentucky laws and regulations.

25. Defendant denies the allegations set forth in numerical Paragraph 25 of the Complaint. Defendant affirmatively states that Plaintiffs are paid on a salary basis (paid a predetermined and guaranteed salary each calendar month) and receive additional payments based on hours “worked” in excess of 40 hours per week, which is lawful pursuant to federal and Kentucky laws and regulations. Defendant further affirmatively states it can show numerous examples of workweeks in which Supervisors have worked less than 40 hours in a workweek and received no deduction from their predetermined and guaranteed monthly salary.

26. Defendant denies the allegations set forth in numerical Paragraph 26 of the Complaint. Defendant affirmatively states that Plaintiffs are paid on a salary basis (paid a predetermined and guaranteed salary each calendar month) and receive additional payments based on hours “worked” in excess of 40 hours per week, which is lawful pursuant to federal and Kentucky laws and regulations.

27. Defendant denies the allegations set forth in numerical Paragraph 27 of the Complaint and affirmatively states that Plaintiffs and other putative class members are exempt from overtime payments pursuant to federal and Kentucky laws and regulations. Plaintiffs are paid on a salary basis (paid a predetermined and guaranteed salary each calendar month) and receive additional payments based on hours “worked” in excess of 40 hours per week, which is lawful pursuant to federal and Kentucky laws and regulations.

28. Defendant denies the allegations set forth in numerical Paragraph 28 of the Complaint and affirmatively states that Plaintiffs and other putative class members are exempt from overtime payments pursuant to federal and Kentucky laws and regulations. Plaintiffs are paid on a salary basis (paid a predetermined and guaranteed salary each calendar month) and

receive additional payments based on hours “worked” in excess of 40 hours per week, which is lawful pursuant to federal and Kentucky laws and regulations.

29. Defendant denies the allegations set forth in numerical Paragraph 29 of the Complaint and affirmatively states that Plaintiffs and other putative class members are exempt from overtime payments pursuant to federal and Kentucky laws and regulations. Plaintiffs are paid on a salary basis (paid a predetermined and guaranteed salary each calendar month) and receive additional payments based on hours “worked” in excess of 40 hours per week, which is lawful pursuant to federal and Kentucky laws and regulations.

30. With respect to the allegations set forth in numerical Paragraph 30 of the Complaint, Hitachi admits it and its expert identified certain isolated or inadvertent deductions from the pay of 11 Supervisors out of approximately 2,000 pay periods reviewed and, shortly thereafter, Hitachi reimbursed the Supervisors for those isolated or inadvertent deductions, and issued checks for a total of double the amount of back pay due from the isolated or inadvertent deductions. Hitachi denies the remaining allegations therein and affirmatively states that Plaintiffs and other putative class members are exempt from overtime payments pursuant to federal and Kentucky laws and regulations. Plaintiffs are paid on a salary basis (paid a predetermined and guaranteed salary each calendar month) and receive additional payments based on hours “worked” in excess of 40 hours per week, which is lawful pursuant to federal and Kentucky laws and regulations.

31. Defendant denies the allegations set forth in numerical Paragraph 31 of the Complaint and affirmatively states that Plaintiffs and other putative class members are exempt from overtime payments pursuant to federal and Kentucky laws and regulations. Plaintiffs are paid on a salary basis (paid a predetermined and guaranteed salary each calendar month) and

receive additional payments based on hours “worked” in excess of 40 hours per week, which is lawful pursuant to federal and Kentucky laws and regulations.

32. Defendant denies the allegations set forth in numerical Paragraph 32 of the Complaint and affirmatively states that Plaintiffs and other putative class members are exempt from overtime payments pursuant to federal and Kentucky laws and regulations. Plaintiffs are paid on a salary basis (paid a predetermined and guaranteed salary each calendar month) and receive additional payments based on hours “worked” in excess of 40 hours per week, which is lawful pursuant to federal and Kentucky laws and regulations.

33. Defendant denies the allegations set forth in numerical Paragraph 33 of the Complaint and affirmatively states that Plaintiffs and other putative class members are exempt from overtime payments pursuant to federal and Kentucky laws and regulations. Plaintiffs are paid on a salary basis (paid a predetermined and guaranteed salary each calendar month) and receive additional payments based on hours “worked” in excess of 40 hours per week, which is lawful pursuant to federal and Kentucky laws and regulations.

34. Defendant denies the allegations set forth in numerical Paragraph 34 of the Complaint and affirmatively states that Plaintiffs and other putative class members are exempt from overtime payments pursuant to federal and Kentucky laws and regulations. Plaintiffs are paid on a salary basis (paid a predetermined and guaranteed salary each calendar month) and receive additional payments based on hours “worked” in excess of 40 hours per week, which is lawful pursuant to federal and Kentucky laws and regulations.

35. Defendant denies the allegations set forth in numerical Paragraph 35 of the Complaint. Defendant further states it has reimbursed Supervisors for all 11 isolated or inadvertent

deductions of which it is aware and will continue to do so should it learn of any other isolated or inadvertent deductions during the course of this Litigation.

36. Defendant denies the allegations set forth in numerical Paragraph 36 of the Complaint and affirmatively states that Plaintiffs and other putative class members are exempt from overtime payments pursuant to federal and Kentucky laws and regulations. Plaintiffs are paid on a salary basis (paid a predetermined and guaranteed salary each calendar month) and receive additional payments based on hours “worked” in excess of 40 hours per week, which is lawful pursuant to federal and Kentucky laws and regulations.

37. Defendant denies the allegations set forth in numerical Paragraph 37 of the Complaint and affirmatively states that Plaintiffs and other putative class members are exempt from overtime payments pursuant to federal and Kentucky laws and regulations. Plaintiffs are paid on a salary basis (paid a predetermined and guaranteed salary each calendar month) and receive additional payments based on hours “worked” in excess of 40 hours per week, which is lawful pursuant to federal and Kentucky laws and regulations.

38. Defendant denies the allegations set forth in numerical Paragraph 38 of the Complaint and affirmatively states that Plaintiffs and other putative class members are exempt from overtime payments pursuant to federal and Kentucky laws and regulations. Plaintiffs are paid on a salary basis (paid a predetermined and guaranteed salary each calendar month) and receive additional payments based on hours “worked” in excess of 40 hours per week, which is lawful pursuant to federal and Kentucky laws and regulations.

39. Defendant denies the allegations set forth in numerical Paragraph 39 of the Complaint.

40. With respect to the allegations set forth in numerical Paragraph 40 of the Complaint, Defendant admits its fiscal year runs from April 1 through March 31 but affirmatively states Supervisors are typically but not always provided raises effective April 1 of each year, as raises have been provided on other dates or not at all.

41. Defendant denies the allegations set forth in numerical Paragraph 41 of the Complaint.

42. Defendant denies the allegations set forth in numerical Paragraph 42 of the Complaint and affirmatively states that Plaintiffs and other putative class members are exempt from overtime payments pursuant to federal and Kentucky laws and regulations. Plaintiffs are paid on a salary basis (paid a predetermined and guaranteed salary each calendar month) and receive additional payments based on hours “worked” in excess of 40 hours per week, which is lawful pursuant to federal and Kentucky laws and regulations.

43. Defendant denies the allegations set forth in numerical Paragraph 43 of the Complaint.

44. Defendant denies the allegations set forth in numerical Paragraph 44 of the Complaint.

45. Defendant denies the allegations set forth in numerical Paragraph 45 of the Complaint and affirmatively states that Plaintiffs and other putative class members are exempt from overtime payments pursuant to federal and Kentucky laws and regulations. Plaintiffs are paid on a salary basis (paid a predetermined and guaranteed salary each calendar month) and receive additional payments based on hours “worked” in excess of 40 hours per week, which is lawful pursuant to federal and Kentucky laws and regulations.

46. Defendant denies the allegations set forth in numerical Paragraph 46 of the Complaint.

47. Defendant denies the allegations set forth in numerical Paragraph 47 of the Complaint.

48. With respect to the allegations set forth in numerical Paragraph 48 of the Complaint, Defendant admits only that its pay practices across facilities are not uniform. Defendant affirmatively states its pay practices at all of its facilities are lawful, regardless of any differences among them across facilities.

CLASS ACTION ALLEGATIONS

49. With respect to the allegations set forth in numerical Paragraph 49 of the Complaint, Defendant admits Plaintiffs are attempting to bring a class action under the KWAHA pursuant to CR 23. Defendant denies that this action is properly brought as a class action under the KWAHA for reasons explained in Defendant's Response to Plaintiffs' Motion to Certify Class and further denies that Plaintiffs are owed or are entitled to recover alleged unpaid wages. Defendant also asserts that two classes are inappropriate on these facts. Defendant denies the remaining allegations set forth in numerical Paragraph 49 of the Complaint.

50. Defendant denies the allegations set forth in numerical Paragraph 50 of the Complaint.

51. Defendant denies the allegations set forth in numerical Paragraph 51 of the Complaint.

52. Defendant denies the allegations set forth in numerical Paragraph 52 of the Complaint.

53. Defendant denies the allegations set forth in numerical Paragraph 53 of the Complaint.

54. Defendant denies the allegations set forth in numerical Paragraph 54 of the Complaint.

55. Defendant denies the allegations set forth in numerical Paragraph 55 of the Complaint.

56. Defendant denies the allegations set forth in numerical Paragraph 56 of the Complaint.

CAUSES OF ACTION

First Cause of Action

57. In response to numerical Paragraph 57 of the Complaint, Defendant incorporates by references its responses to numerical Paragraphs 1 through 56 of the Complaint.

58. With respect to the allegations set forth in numerical Paragraph 58 of the Complaint, Defendant admits Plaintiffs are attempting to bring a class action under the KWAHA pursuant to CR 23. Defendant denies that this action is properly brought as a class action under the KWAHA for reasons explained in Defendant's Response to Plaintiffs' Motion to Certify Class and further denies that Plaintiffs are owed or are entitled to recover alleged unpaid wages. Defendant denies the remaining allegations set forth in numerical Paragraph 58 of the Complaint.

59. The allegations set forth in numerical Paragraph 59 of the Complaint are legal conclusions to which no response is required.

60. The allegations set forth in numerical Paragraph 60 of the Complaint are legal conclusions to which no response is required. Defendant affirmatively states it has at all relevant times complied with the KWAHA and corresponding regulations.

61. The allegations set forth in numerical Paragraph 61 of the Complaint are legal conclusions to which no response is required. Defendant affirmatively states it has properly classified and lawfully paid Supervisors pursuant to the KWA and corresponding regulations.

62. Defendant denies the allegations set forth in numerical Paragraph 62 of the Complaint.

63. Defendant denies the allegations set forth in numerical Paragraph 63 of the Complaint.

64. Defendant denies the allegations set forth in numerical Paragraph 64 of the Complaint.

65. Defendant denies the allegations set forth in numerical Paragraph 65 of the Complaint and denies Plaintiffs are entitled to any damages.

66. Defendant denies the allegations set forth in numerical Paragraph 66 of the Complaint and denies Plaintiffs are entitled to any damages, costs, or attorney's fees.

Second Cause of Action

67. In response to numerical Paragraph 67 of the Complaint, Defendant incorporates by references its responses to numerical Paragraphs 1 through 66 of the Complaint.

68. With respect to the allegations set forth in numerical Paragraph 68 of the Complaint, Defendant admits Plaintiffs are attempting to bring a second cause of action as an alternative to its first cause of action but asserts neither cause of action has any merit.

69. With respect to the allegations set forth in numerical Paragraph 69 of the Complaint, Defendant admits Plaintiffs are attempting to bring a class action under the KWA pursuant to CR 23. Defendant denies that this action is properly brought as a class action under the KWA for reasons explained in Defendant's Response to Plaintiffs' Motion to Certify Class

and further denies that Plaintiffs are owed or are entitled to recover alleged unpaid wages. Defendant denies the remaining allegations set forth in numerical Paragraph 69 of the Complaint.

70. Defendant denies the allegations set forth in numerical Paragraph 70 of the Complaint.

71. The allegations set forth in numerical Paragraph 71 of the Complaint are legal conclusions to which no response is required.

72. The allegations set forth in numerical Paragraph 72 of the Complaint are legal conclusions to which no response is required. Defendant affirmatively states it has at all relevant times complied with the KWA and corresponding regulations.

73. The allegations set forth in numerical Paragraph 73 of the Complaint are legal conclusions to which no response is required. Defendant affirmatively states it has properly classified and lawfully paid Supervisors pursuant to the KWA and corresponding regulations.

74. Defendant denies the allegations set forth in numerical Paragraph 74 of the Complaint.

75. Defendant denies the allegations set forth in numerical Paragraph 75 of the Complaint.

76. Defendant denies the allegations set forth in numerical Paragraph 76 of the Complaint.

77. Defendant denies the allegations set forth in numerical Paragraph 77 of the Complaint.

78. Defendant denies the allegations set forth in numerical Paragraph 78 of the Complaint.

79. Defendant denies the allegations set forth in numerical Paragraph 79 of the Complaint.

80. Defendant denies the allegations set forth in numerical Paragraph 80 of the Complaint.

81. Defendant denies the allegations set forth in numerical Paragraph 81 of the Complaint and denies Plaintiffs are entitled to any damages, costs, or attorney's fees.

Defendant's Wherefore Clause contains statements to which no response is required. To the extent a response is required, Defendant's Wherefore Clause is denied.

Defendant denies that Plaintiffs are entitled to the damages sought and the relief requested in the Complaint, including, but not limited to, the Relief stated in the "Prayer for Relief" on pages 13 and 14 of the Complaint.

Defendant denies all allegations in the Complaint not specifically admitted herein.

FIRST DEFENSE

Plaintiffs' Complaint, in whole or in part, fails to state a claim or cause of action upon which relief can be granted.

SECOND DEFENSE

Some or all of Plaintiffs' and purported class members' claims against Defendant are barred, in whole or in part, by waiver, release, and the applicable statute of limitations under the FLSA and Kentucky law.

THIRD DEFENSE

Plaintiffs' and purported class members' claims are barred to the extent they exceed the five-year statute of limitations period applicable to the KWHHA.

FOURTH DEFENSE

Plaintiffs' and purported class members' claims are barred in whole or in part by the exemptions, exclusions, exceptions, or credits set forth in Section 7 of the FLSA, 29 U.S.C. § 207 and/or corresponding Kentucky law, including KRS 337.010 *et seq.* and 803 KAR 1:070. Plaintiffs' and purported class members' claims are barred in whole or in part by the exemptions set forth in Section 13 of the FLSA, 29 U.S.C. § 213 and/or corresponding Kentucky law, including but not limited to the executive and administrative exemptions to minimum wage, overtime, and timekeeping. Plaintiffs and the purported class members are exempt from the overtime pay requirements of the FLSA, KWHHA, and applicable laws and regulations, including 803 KAR 1:070. Plaintiffs and the purported class members meet all of the "duties" tests under the executive, administrative, professional, supervisor, and/or other recognized exempt statuses, including but not limited to the supervisor exemption set forth in 803 KAR 1:070 Sec. 5. Plaintiffs and the purported class members are lawfully paid on a salary basis in accordance with the FLSA and Kentucky laws and regulations. Plaintiffs and the purported class members are paid on a salary basis (paid a predetermined and guaranteed salary each calendar month) and receive additional payments for based on hours "worked" in excess of 40 hours per work week, which is lawful pursuant to the FLSA and Kentucky laws and regulations.

FIFTH DEFENSE

Production Supervisors and other Supervisors employed are not "employees" as defined by KRS § 337.010 and, as such, are not entitled to overtime wages under Kentucky laws and regulations.

SIXTH DEFENSE

This action is not properly brought as a class action under the KWHHA.

SEVENTH DEFENSE

Any deductions from Plaintiffs' or purported class members' salaries due to absences for sickness or disability were made in accordance with a bona fide plan, policy, or practice of providing compensation for lost salary occasioned by sickness or disability as permitted by the FLSA and Kentucky laws and regulations, including 803 KAR 1:070. Any deductions for Plaintiffs' or purported class members' salaries for absences associated with Family and Medical Leave Act leaves were legally and lawfully deducted in accordance with federal and Kentucky laws and regulations. Defendant did not make deductions from Plaintiffs' and purported class members' salaries which were not permitted by the FLSA and Kentucky laws and regulations.

EIGHTH DEFENSE

Plaintiffs' and purported class members' claims are barred in whole or in part by the provisions of Section 10 of the Portal to Portal Act, 29 U.S.C. § 259 and/or corresponding Kentucky law, to the extent actions taken in connection with Plaintiffs' compensation were done in good faith in conformity with and reliance upon written administrative regulations, orders, rulings, approvals, interpretations, and written and unwritten administrative practices or enforcement policies of the Administrator of the Wage and Hour Division of the United States Department of Labor.

NINTH DEFENSE

Plaintiffs' and purported class members' claims are barred in whole or in part by the provisions of Section 11 of the Portal-to-Portal Act, 29 U.S.C. § 260 and/or corresponding Kentucky law, because any acts or omissions giving rise to this action were done in good faith and with reasonable grounds for believing that the acts or omissions were not a violation of the FLSA and Kentucky laws and regulations.

TENTH DEFENSE

Plaintiffs' and purported class members' claims are barred in whole or in part by the payments of wages to Plaintiffs. Plaintiffs' and the purported class members' claims are barred in whole or in part by the doctrine of *de minimis non curat lex*.

ELEVENTH DEFENSE

Plaintiffs' and purported class members' claims for liquidated damages, in whole or in part, are barred because Defendant's conduct and actions were in good faith and based on reasonable grounds for believing that such conduct complied with the FLSA and Kentucky laws and regulations.

TWELFTH DEFENSE

Plaintiffs' Complaint fails to properly state, meet, plead, and/or otherwise satisfy the requirements to maintain a class action under Federal Rule of Civil Procedure 23.

THIRTEENTH DEFENSE

Plaintiffs' proposed class of plaintiffs is inappropriate because Plaintiffs are not proper or adequate class representatives under applicable law.

FOURTEENTH DEFENSE

Defendant's pay practices comply with and have complied with at all relevant times the requirements of all applicable statutes and regulations.

FIFTEENTH DEFENSE

Should Defendant be found liable for unpaid wages and/or improper deductions, Defendant is entitled to an offset or credit for all time for which Defendant voluntarily paid Plaintiffs greater wages than required by law. Defendant is further entitled to a credit or offset for all voluntary payments made by Defendant in satisfaction of claims asserted herein.

SIXTEENTH DEFENSE

On information and belief, Plaintiffs and those similarly situated, if any, have failed to mitigate their damages and, to the extent of such failure, any damages awarded should be reduced accordingly.

SEVENTEENTH DEFENSE

Defendant's pay practices are in compliance with 29 C.F.R. § 541.604, 29 C.F.R. § 541.603, 803 KAR 1:070, and other applicable FLSA and Kentucky laws and regulations.

EIGHTEENTH DEFENSE

Plaintiffs and purported class members are lawfully paid on a salary basis in accordance with federal and Kentucky laws and regulations. Plaintiffs and purported class members regularly receive a predetermined and guaranteed monthly salary constituting all or part of their compensation for the month, which amount is not subject to reduction because of variations in the quality or quantity of work performed. All deductions from their salaries were made by and permitted by federal and Kentucky laws and regulations, and any deductions not permitted by law were isolated or inadvertent.

NINETEENTH DEFENSE

All of Defendant's communications and actions with respect to Plaintiffs and the purported class members were taken for legitimate, non-discriminatory reasons, and all of Defendant's actions and communications were made in good faith, without malice, reckless indifference or intent to harm Plaintiffs. All managerial actions were undertaken and exercised with good cause, and for proper, lawful business reasons and necessity.

TWENTIETH DEFENSE

Plaintiffs' division of the Supervisors into two classes with overlapping members is arbitrary and inappropriate.

TWENTY-FIRST DEFENSE

The reasonable relationship test is inapplicable on these facts, as Plaintiffs were paid on a salary basis. To the extent the reasonable relationship test is applicable, it renders class certification inappropriate. Plaintiffs also cannot show a reasonable relationship test on these facts for, among other reasons, certain items such as shift premiums and bonuses should not be included in the reasonable relationship ratio.

TWENTY-SECOND DEFENSE

At all relevant times, Hitachi intended to and in fact did pay its Supervisors on a salary basis. Hitachi's consistent practice was to only take lawful deductions, its Handbook provides a clear policy regarding compensation as well as a mechanism for Supervisors to complain about any improper deductions, no Supervisor complained about Hitachi's compensation practices, and any isolated or inadvertent deductions should not compromise the exemption as Hitachi has now reimbursed Supervisors for all isolated or inadvertent deductions of which it is aware and otherwise can demonstrate all factors set forth in 803 KAR 1:070 Section 10 should be construed in its favor.

TWENTY-THIRD DEFENSE

Defendant hereby gives notice that it intends to rely upon such additional affirmative defenses as may become available or apparent during the course of discovery and, therefore, incorporates by reference each and every affirmative defense available to it pursuant to the Kentucky Rules of Civil Procedure which discovery might reveal to be appropriate, and

specifically reserves the right to amend and supplement this Answer, file further pleadings, and assert additional claims and defenses as supported by the evidence during and following discovery.

WHEREFORE, Defendant, Hitachi Automotive Systems Americas, Inc., demands and prays for judgment as follows:

1. That Plaintiffs' Complaint and each allegation contained therein be dismissed with prejudice;
2. That judgment be awarded in favor of Hitachi;
3. For judgment against Plaintiffs awarding Hitachi its costs and expenses incurred in this action, including reasonable legal costs and attorneys' fees;
4. Any and all other relief to which Hitachi may appear entitled.

Respectfully submitted,

/s/ Timothy J. Weatherholt

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COUNSEL FOR DEFENDANT,
HITACHI AUTOMOTIVE SYSTEMS
AMERICAS, INC.

CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2019 I electronically filed the foregoing *Defendant's Answer to Second Amended Class Action Complaint* with the Clerk of Court using the CM/ECF system, which will send a notice of electronic filing to:

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