

COMMONWEALTH OF KENTUCKY  
MADISON CIRCUIT COURT  
DIVISION 2  
CIVIL ACTION NO. 18-CI-00294

RONALD D. HELD, JR., AND  
CAROL LEAR, ON BEHALF OF THEMSELVES  
AND ALL OTHER PERSONS SIMILARLY SITUATED  
PLAINTIFFS

v. **SECOND AMENDED CLASS ACTION COMPLAINT**  
**AND JURY DEMAND**

HITACHI AUTOMOTIVE SYSTEMS AMERICAS, INC. DEFENDANT

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COME the Plaintiffs, by counsel, and for their second amended Complaint, hereby state as follows.

**INTRODUCTION**

1. Plaintiffs Ronald D. Held, Jr., and Carol Lear bring this class action on behalf of themselves and all similarly situated employees employed in the Berea, Kentucky, manufacturing facilities<sup>1</sup> owned and operated by Defendant Hitachi Automotive Systems Americas, Inc. (“Hitachi”). Plaintiffs seek to recover overtime pay owed to the Supervisors pursuant to the Kentucky Wages and Hours Act (“KWA”), KRS 337.010, *et seq.* and Rule 23 of the Kentucky Rules of Civil Procedure.

**PARTIES**

**A. Plaintiffs**

2. Plaintiff Held is a resident of Berea, Madison County, Kentucky. He worked as an

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<sup>1</sup> Specifically, Plaintiffs bring this action on behalf of supervisors at Hitachi’s Berea, Kentucky facility and its Berea Motors North facility, both located in Berea, Kentucky. These employees are referred to herein as the “Supervisors.”

employee at the Berea, Kentucky, manufacturing facility now owned and operated by Hitachi from in or around October 1991, when it was owned by Tokico (USA) Inc., until in or around December 2013. Plaintiff Held became a Supervisor sometime in the early 2000s and remained in that position through the end of his employment. For the portion of his employment at the Berea, Kentucky, manufacturing facility covered by this lawsuit, Plaintiff Held worked as a Supervisor for Hitachi.

3. Plaintiff Lear is a resident of Berea, Madison County, Kentucky. She has worked as an employee at the Berea, Kentucky, manufacturing facility now owned and operated by Hitachi since approximately February of 1999, when it was owned by Tokico (USA) Inc. Plaintiff Lear has worked as a Supervisor for Hitachi at this facility for the entire time period covered by this lawsuit.

#### **B. Hitachi**

4. Hitachi is a Delaware corporation which manufactures automotive parts and equipment with its principal office in Harrodsburg, Mercer County, Kentucky.

5. Hitachi owns and operates the two manufacturing facilities in Berea, Kentucky: the Berea, Kentucky, facility located at 301 Mayde Road, Berea, Kentucky 40403; and the Berea Motors facility located at 1150 Mayde Road, Berea, Kentucky 40403.

6. At all relevant times, Hitachi has been an employer within the meaning of the KWAHA. *See* KRS 337.010, *et seq.*

#### **RELATED LEAR CASE IN U.S. DISTRICT COURT**

7. On April 24, 2017, a case was filed in the United States District Court for the Eastern District of Kentucky by Plaintiff Lear, asserting the KWAHA overtime claims asserted here on behalf of Plaintiff Lear and the Supervisors pursuant to Fed. R. Civ. P. 23.

8. That action was styled *Lear, et al. v. Hitachi Automotive Systems Americas, Inc.*, No. 5:17-cv-00186-CHB (E.D. Ky.) (hereafter the “*Lear* action”).

9. In the *Lear* action, the Plaintiffs also asserted federal overtime claims pursuant to the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et seq.*

10. By order dated March 26, 2018, Senior United States District Judge Joseph M. Hood conditionally certified the *Lear* action as an FLSA collective action.

11. In that same March 26, 2018, order, Senior Judge Hood also declined to exercise supplemental jurisdiction over Plaintiff Lear’s KWAHA claims and dismissed them without prejudice to the plaintiffs’ right to refile those claims in state court.

12. Pursuant to KRS 413.270, Plaintiffs filed their KWAHA claims in this Court on May 30, 2018—within 90 days from the March 26, 2018, dismissal of the KWAHA claims by Senior Judge Hood.

13. On March 5, 2019, Plaintiffs moved the *Lear* Court to stay or dismiss the *Lear* action, in order to allow this action to take priority. On March 22, 2019, the *Lear* Court dismissed the plaintiffs’ claims in the *Lear* action with prejudice, noting that its “ruling is not intended to have any effect on the substance of the claims or issues in the parallel litigation styled *Held v. Hitachi Automotive Systems Americas, Inc.*, Case No. 18-CI-00294 presently pending in Madison Circuit Court.”

### **FACTS**

14. Plaintiffs and the Supervisors are current and former supervisors (which include, without limitation, Production Supervisors, Quality Supervisors, and Warehouse Supervisors) for Hitachi in its Berea, Kentucky, production facilities.

15. Hitachi has employed more than 150 Supervisors at its Berea, Kentucky, and

Berea Motor North facilities since April 24, 2012.

16. During his time as a Supervisor, Plaintiff Held supervised the Brake Machining department.

17. Plaintiff Lear currently supervises the Sub-Assembly/Bstops department, which assembles automotive valves.

18. Plaintiffs and the Supervisors at Hitachi's Berea, Kentucky, production facilities who they seek to represent have routinely worked in excess of 40 hours in a workweek.

19. In fact, Plaintiffs and the Supervisors routinely work 11 to 12 hours per shift, six (and sometimes seven) days per week. In other words, Plaintiffs and those they seek to represent routinely work 60 and 70 hours per week (and, in many weeks, even more than 70 hours).

20. Hitachi operates its productions facilities based on scheduled shifts.

21. The Supervisors are assigned to work in accordance with a scheduled shift.

22. The Supervisors are typically assigned to work 6 days per week, and often 7 days per week. At a minimum, the Supervisors are assigned to work 5 days per week.

23. Hitachi tracks and records the number of regular hours and overtime hours (*i.e.*, hours over 40) worked by the Supervisors on a weekly basis. In fact, Hitachi tracks and records this time to the minute based on the Supervisors' time punches. Then, those time recordings are rounded to the nearest quarter hour for pay purposes.

24. Hitachi pays the Supervisors for their work on an hourly basis, based on time tracked to the minute. However, Hitachi does not pay them overtime premium pay for all hours worked over 40 in a workweek at one and one-half times their regular rates of pay.

25. On occasions when Supervisors have not worked 40 hours in a workweek and have run out of Paid Time Off (PTO) or holiday pay benefits, Supervisors have been paid less

than 40 hours in a workweek, because they recorded less than 40 hours worked in such workweeks.

26. In other instances, when Hitachi did not have work available, Supervisors have been paid less than 40 hours in a workweek.

27. Until June 13, 2016, Hitachi's pay practice was to pay Plaintiffs and other Supervisors the same hourly rate for all hours worked, including hours over 40 ("Pre-June 2016 Pay Practice").

28. Since June 13, 2016, Hitachi has capped the number of paid hours for Plaintiffs and the supervisors they seek to represent at 50 in a workweek, though they routinely work more than 50 hours per week ("Post-June 2016 Pay Practice"). In other words, since June 13, 2016, Hitachi has paid Plaintiffs and other Supervisors the same hourly rate for all hours worked up to 50 in a workweek and does not pay them at all for hours in excess of 50 hours. Despite the fact that Hitachi has limited the pay for Supervisors to 50 hours in a week, Hitachi tracks all the time they work, including time worked in excess of 50 hours in a week, to the minute and rounds such recorded time to the nearest quarter hour.

29. Hitachi claims that it provides Supervisors a guarantee of pay of 40 hours per week regardless of whether Supervisors work less than 40 hours in a week. However, as noted above, in several instances, Hitachi has failed to meet this guarantee, resulting in Supervisors receiving pay for fewer hours than 40 in a workweek.

30. In 2019, nearly a year after this action was filed and nearly two years after the *Lear* action was filed, Hitachi made payments it characterized as "retro pay" to eleven Plaintiffs in the *Lear* action who are putative class members in this action. Hitachi made these payments to re-pay what Hitachi claims were inadvertent deductions from these Supervisors' supposed

salaries.

31. When Supervisors were paid less than 40 hours in a workweek, it was not the result of any reduction from a purported salary but rather because an amount of work time less than 40 hours was recorded for their workweek. This lower amount of pay was not the result of a deduction of a salary.

32. When Supervisors were paid less than 40 hours in a workweek, it was neither an isolated occurrence nor an inadvertent occurrence by Hitachi but rather a result of Hitachi's practice of paying its Supervisors by the hour.

33. Hitachi has not clearly communicated a policy that prohibits improper pay deductions. Instead, Hitachi pays its Supervisors by the hour and therefore there is no salary from which to deduct pay.

34. Hitachi has not provided a complaint mechanism for Supervisors to use to complain about improper deductions from any purported salary. Instead, Hitachi pays its Supervisors by the hour.

35. Hitachi has not reimbursed its Supervisors for deductions it has made to any purported salary.

36. Hitachi has not made a good faith commitment to pay its Supervisors a salary in such a way that would ensure that it does not pay its Supervisors an amount less than 40 hours in each workweek.

37. Hitachi characterizes its purported guarantee of providing 40 hours of pay in a workweek as a salary.

38. Hitachi also claims it has paid Plaintiffs and similarly situated workers, in addition to their supposed salary, hourly pay for hours worked in excess of 40 in a workweek at a

straight time hourly rate.

39. However, from April 24, 2012 through June 13, 2016, when Hitachi applied its Pre-June 2016 Pay Practice, the purported salary for Plaintiffs and the supervisors they seek to represent was illusory. From April 24, 2012 through June 13, 2016, the total compensation for Hitachi's Supervisors was more than 1.5 times the purported guaranteed minimum provided to the Supervisors.

40. Hitachi's fiscal year as applied to Supervisors' compensation is April through March. For any increases in pay, Hitachi's practice is to provide Supervisors with those increases effective April 1.

41. During each fiscal year covered by this lawsuit while the Pre-June 2016 Pay Practice was employed, in the aggregate, Hitachi's Supervisors' total compensation was more than 1.5 times their purported guaranteed minimum compensation.

42. Because Hitachi does not pay the Supervisors on a salary basis, but instead pays them on an hourly basis, they are not exempt from the overtime protections of the KWA.

43. Even if Hitachi's purported salary is found to be a guaranteed amount that constitutes a salary, the amounts that Hitachi pays its Supervisors by the hour bears no reasonable relationship to their guaranteed amount.

44. Accordingly, Hitachi's failure to pay its Supervisors for all overtime hours worked at one and one-half times the regular rates of pay violates the applicable provisions of the KWA.

45. Hitachi instituted this compensation scheme for supervisors in order to avoid its obligation under the KWA to pay overtime at one and one-half times the regular rate of pay for hours over 40 in a workweek, both to supervisors and to employees with different job titles, such

as team leads and production employees.

46. Plaintiffs and those they seek to represent would often work seven days a week, would sometimes go several weeks without a day off, and, in such weeks, would work in excess of 80 hours. This is evident on the face of the paystubs Hitachi distributed to Plaintiffs and those they seek to represent, which often reflect well in excess of 100 hours of “overtime” (paid at the same hourly rate as “regular” hours—*i.e.*, hours up to 40 in a workweek) during a single one-month pay period (the pay period used by Hitachi at its Berea, Kentucky, production facilities).

47. By paying supervisors based on hours worked and working them hundreds of hours each month without paying them at the mandated overtime rate for overtime hours worked, Hitachi’s pay scheme has undermined the purpose of the overtime provisions of the KWHHA.

48. In contrast, Hitachi does not apply this pay scheme to workers at its Berea Motors South Plant, at its nearby Harrodsburg, Kentucky facility, or at its facility in Monroe, Georgia.

### **CLASS ACTION ALLEGATIONS**

49. Plaintiffs bring this action on their own behalf and, pursuant to CR 23, on behalf of the following two classes of individuals:

All current and former supervisors (including, without limitation, Production Supervisors, Quality Supervisors, and Warehouse Supervisors) employed by Hitachi in its Berea, Kentucky, manufacturing facilities at any time since April 24, 2012, excluding all supervisors who have only worked on the south side of the Berea Motors facility since April 24, 2012.

(“Post-2012 Class”); and

All current and former supervisors (including, without limitation, Production Supervisors, Quality Supervisors, and Warehouse Supervisors) employed by Hitachi in its Berea, Kentucky, manufacturing facilities at any time from April 24, 2012 to June 13, 2016, excluding all supervisors who have only worked on the south side of the Berea Motors facility during that time period.

(“Pre-2016 Class”) (Post-2012 Class and Pre-2016 Class are referred to herein collectively as the

“Classes”).

50. Plaintiffs are members of both of the Classes they seek to represent.

51. Hitachi has employed more than 150 supervisors who are members of the Post-2012 Class and the Pre-2016 Class, respectively. Thus, the Post-2012 Class and the Pre-2016 Class are each sufficiently numerous that joinder of all members is impractical, satisfying CR 23.01(a).

52. All members of Post-2012 Class share the same pivotal questions of law and fact, thereby satisfying CR 23.01(b). For example, all members of the Post-2012 Class share the questions of: (1) whether Hitachi pays members of the Post-2012 Class based on the hours they work; (2) whether Hitachi pays members of the Post-2012 Class on a salary basis or an hourly basis; (3) whether Hitachi misclassified Plaintiffs and the Post-2012 Class as exempt from the overtime pay provisions of the KWHA; (4) whether Plaintiffs and the Post-2012 Class are entitled to overtime premium pay for hours worked in excess of 40 hours per week; and (5) how Hitachi paid Plaintiffs and the Post-2012 Class for hours worked over 40 in a week.

53. All members of the Pre-2016 Class share the same pivotal questions of law and fact, thereby satisfying CR 23.01(b). For example, all members of the Pre-2016 Class share the questions of: (1) whether Hitachi pays members of the Pre-2016 Class a guaranteed minimum amount; (2) whether Hitachi pays members of Pre-2016 Class extra compensation by the hour above their purported guaranteed minimum; (3) whether the extra hourly compensation Hitachi pays members of Pre-2016 Class is reasonably related to their guaranteed minimum compensation; and (4) whether Plaintiffs and members of the Pre-2016 Class are entitled to overtime premium pay for hours worked in excess of 40 hours per week.

54. Hitachi’s misclassification of members of the Classes as exempt from the

Kentucky law overtime requirements and Hitachi's failure to pay for all hours worked was not the result of any Plaintiff-specific circumstances. Rather, it arose from Hitachi's common pay policies, which Hitachi applied generally to its Plaintiffs and the members of the Post-2012 Class and the Pre-2016 Class, respectively. Thus, the claims of Plaintiffs are typical of the claims of the Post-2012 Class and the Pre-2016 Class, respectively, thus satisfying CR 23.01(c).

55. Plaintiffs' interests are aligned with the interests of members of the Classes and they have retained competent counsel experienced in representing classes of employees against their employers related to their employers' failure to pay them properly under the law. Thus, Plaintiffs will fairly and adequately represent and protect the interests of the Classes, satisfying CR 23.01(d).

56. By misclassifying its supervisors and consistently failing to pay them, and similarly-paid employees, an overtime premium for all hours worked over 40 in a week, Hitachi has created a scenario where questions of law and fact common to members of the Post-2012 Class and Pre-2016 Class, respectively, predominate over any questions affecting only individual members. Furthermore, litigating the claims of members of the Classes in a single forum will prevent inconsistent rulings regarding the application of the KWA to Hitachi's common pay practices and will promote the efficient adjudication of common claims. Thus, a class action is superior to other available methods for fair and efficient adjudication of this matter. Accordingly, Plaintiffs are entitled to pursue their claims as a class action pursuant to CR 23.02(c).

### **CAUSES OF ACTION**

#### **Failure to Pay Overtime under the KWA, KRS 337.010, *et seq.***

##### **First Cause of Action**

57. All previous paragraphs are incorporated as though fully set forth herein.
58. Plaintiffs bring this first cause of action on behalf of themselves and, pursuant to

CR 23, all members of the proposed Post-2012 Class.

59. KRS 337.285 requires that employees receive overtime compensation “not less than one and one-half (1-1/2) times” the employee’s regular rate of pay for all hours worked over 40 in one workweek.

60. Hitachi is a covered employer required to comply with the KWHHA.

61. Plaintiffs and members of the Post-2012 Class are covered employees entitled to the protections of the KWHHA.

62. Plaintiffs and members of the Post-2012 Class are not exempt from receiving the KWHHA’s overtime benefits because Hitachi does not pay them on a salary basis. As a result, they do not fall within any of the exemptions set forth in the KWHHA.

63. Hitachi has violated the KWHHA with respect to Plaintiffs and members of the Post-2012 Class by failing to compensate them at one and one-half times their regular hourly rate for all hours worked over 40 in a work week.

64. By implementing the challenged pay scheme in order to circumvent the overtime requirements of the KWHHA as alleged above, Hitachi acted willfully and with reckless disregard of clearly applicable provisions of the KWHHA.

65. Pursuant to the KWHHA, specifically KRS 337.285, because Hitachi failed to pay Plaintiffs and members of the Post-2012 Class the required amount of overtime at the statutory rate, it must reimburse them not only for the unpaid overtime wages, but also for liquidated damages in an amount equal to the amount of unpaid overtime wages.

66. Pursuant to the KWHHA, specifically KRS 337.285, Plaintiffs and members of the Post-2012 Class are entitled to recover their costs and attorney’s fees if they are successful in prosecuting an action for unpaid overtime wages.

## Second Cause of Action

67. All previous paragraphs are incorporated as though fully set forth herein.

68. Plaintiffs bring this second cause of action as an alternative cause of action to the first cause of action asserted herein.

69. Plaintiffs bring this second cause of action on behalf of themselves and, pursuant to CR 23, all members of the proposed Pre-2016 Class.

70. All members of the Pre-2016 Class are members of the Post-2012 Class.

71. KRS 337.285 requires that employees receive overtime compensation “not less than one and one-half (1-1/2) times” the employee’s regular rate of pay for all hours worked over 40 in one workweek.

72. Hitachi is a covered employer required to comply with the KWHA.

73. Plaintiffs and members of the Pre-2016 Class are covered employees entitled to the protections of the KWHA.

74. Plaintiffs and members of the Pre-2016 Class are not exempt from receiving the KWHA’s overtime benefits because Hitachi does not pay them appropriately on a salary basis. As a result, they do not fall within any of the exemptions set forth in the KWHA.

75. Hitachi paid Plaintiffs and members of the Pre-2016 Class a guaranteed minimum amount of pay, consistent with KWHA’s requirements for paying employees on a salary basis.

76. Hitachi paid Plaintiffs and members of the Pre-2016 Class extra compensation on an hourly basis in addition to their guaranteed minimum amount of pay.

77. The total compensation Hitachi paid Plaintiffs and members of the Pre-2016 Class was not reasonably related to the guaranteed minimum amount of pay Hitachi paid Plaintiffs and members of the Pre-2016 Class.

78. Hitachi has violated the KWHHA with respect to Plaintiffs and members of the Pre-2016 Class by failing to compensate them at one and one-half times their regular hourly rate for all hours worked over 40 in a workweek.

79. By implementing the challenged pay scheme in order to circumvent the overtime requirements of the KWHHA as alleged above, Hitachi acted willfully and with reckless disregard of clearly applicable provisions of the KWHHA.

80. Pursuant to the KWHHA, specifically KRS 337.285, because Hitachi failed to pay Plaintiffs and members of the Pre-2016 Class the required amount of overtime at the statutory rate, it must reimburse them not only for the unpaid overtime wages, but also for liquidated damages in an amount equal to the amount of unpaid overtime wages.

81. Pursuant to the KWHHA, specifically KRS 337.285, Plaintiffs and members of the Pre-2016 Class are entitled to recover their costs and attorney's fees if they are successful in prosecuting an action for unpaid overtime wages.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for the following relief on behalf of themselves and all others similarly situated:

- A. An order permitting this litigation to proceed as a class action pursuant to the KWHHA and CR 23;
- B. Prompt notice, pursuant to CR 23, of this litigation to all members of the Classes;
- C. A finding and declaration that Hitachi has violated the KWHHA.
- D. A judgment against Hitachi and in favor of Plaintiffs and either the Post 2012 Class or the Pre-2016 Class for all unpaid and underpaid overtime wages under the KWHHA;
- E. A finding and declaration that Hitachi's KWHHA violations have been willful;
- F. A judgment against Hitachi and in favor of Plaintiffs and either the Post-2012

Class or the Pre-2016 Class for liquidated damages to the fullest extent permitted under the KWAH;

G. Litigation costs, expenses, and Plaintiffs’ attorneys’ fees to the fullest extent permitted under the KWAH and the Kentucky Rules of Civil Procedure; and,

H. Such other and further relief as this Court deems just and proper.

**JURY DEMAND**

Plaintiffs demand a jury trial as to all claims so triable.

Dated: July 11, 2019

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

This is to certify that, pursuant to CR 5.02(2), a true and accurate copy of the foregoing document has been served by electronic means on July 11, 2019, to the following counsel and parties of record:

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