

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

<b>Charles R. Hall, Jr., et al.,</b>	)	
	)	
Plaintiffs,	)	
	)	
v .	)	Case No. 3:10-cv-418-RJC-DSC
	)	
<b>International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW; and UAW Local Union 5285,</b>	)	
	)	
Defendants.	)	

**ANSWER AND AFFIRMATIVE DEFENSES  
OF DEFENDANT INTERNATIONAL UNION, UAW,  
TO PLAINTIFFS' SECOND AMENDED COMPLAINT**

Defendant International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW (hereinafter "International Union"), answers Plaintiffs' Second Amended Complaint ("Amended Class Action Complaint") as follows:

**INTRODUCTION**

1. This is an action brought by the Plaintiffs named in the caption, each individually and on behalf of all others similarly situated (the "Class" or "Class Members"), who seek redress from Defendant International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW and UAW Local Union 5285 (hereinafter collectively "Defendant UAW"), for the breach of the duty of fair representation by Defendant UAW in connection with the grievance filed against Daimler Trucks North America, LLC (hereinafter "Daimler Trucks") and the implementation of the Arbitration Award and Supplemental Arbitration Award. The Arbitration Award (issued January 21, 2010) held that Daimler Trucks had violated a Letter of Understanding ("LOU") requiring the production of a specific defined percentage of trucks at Daimler Truck's Mt. Holly truck assembly plant, as contained in the then existing August 26, 2006 to April 2, 2010

Collective Bargaining Agreement (“2006 CBA”) between the Defendant UAW and Daimler Trucks, which in turn led to mass layoffs. The Supplemental Arbitration Award was issued on December 23, 2010, during the course of this litigation, and was not provided to the Plaintiffs until January 17, 2011, through attachment to a court filing.

**Answer:** Defendant International Union neither admits nor denies the allegation of the first sentence of this Paragraph, because this sentence merely describes the basis for the lawsuit. It neither admits nor denies the allegation of the second sentence, because the arbitration award it refers to speaks for itself. It neither admits nor denies the third sentence, because it lacks knowledge thereof.

2. The January 21, 2010 Arbitration Award provided that Daimler Trucks shall “*make whole*” any bargaining unit employee who had been adversely affected by Daimler Truck’s breach of the 2006 CBA by the payment of back pay, benefits, and other forms of compensation, and further directed the increase of production at the Mt. Holly truck assembly plant to the agreed-upon levels per the LOU.

**Answer:** Defendant International Union neither admits nor denies this allegation, because the arbitration award speaks for itself.

3. As of the filing of the First Amended Complaint, not one of the approximately one thousand employees intended to be compensated by the Arbitration Award had received any form of compensation whatsoever from Daimler Trucks. Furthermore, Defendant UAW failed to take timely and reasonable steps to compel performance (of the Arbitration Award) by Daimler Trucks and, in so doing, breached its duty of fair representation to the employees who were to be compensated under the terms of the Arbitration Award. Further, the terms acceded to by Defendant UAW in the agreements contained in the Supplemental Arbitration Award demonstrate that UAW recklessly disregarded the employees’ rights, was grossly deficient in its representation, and otherwise acted arbitrarily, discriminatorily, and in bad faith in handling the grievances. As a result, Plaintiffs, and all others similarly situated, are entitled to bring this hybrid §301/fair representation action under 29 U.S.C. § 185(a) to recover for Defendant UAW’s breaches of the duty of fair representation.

**Answer:** Defendant International Union denies these allegations.

## JURISDICTION AND VENUE

4. This Court has jurisdiction of this action under 29 U.S.C. § 185(c) and 28 U.S.C. §§1331 and 1337.

**Answer:** Defendant International Union admits this allegation.

5. Venue is proper in the Western District of North Carolina pursuant to 29 U.S.C. § 185(a).

**Answer:** Defendant International Union admits this allegation.

## PARTIES

6. Plaintiff Charles R. Hall, Jr. is a resident of Gaston County, North Carolina. He was employed by Daimler Trucks (f/k/a Freightliner) at its Mt. Holly truck assembly plant at times relevant to this action, and is a member of UAW Local 5285.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not know Plaintiff's current residence or membership status in the Union, nor does it know what "times relevant" this allegation refers to.

7. Plaintiff John O'Neill, Jr. is a resident of Gaston County, North Carolina. He was employed by Daimler Trucks at its Mt. Holly truck assembly plant at times relevant to this action, and is a member of UAW Local 5285.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not know Plaintiff's current residence or membership status in the Union, nor does it know what "times relevant" this allegation refers to.

8. Plaintiff Timothy L. Phillips is a resident of Gaston County, North Carolina. He was employed by Daimler Trucks at its Mt. Holly truck assembly plant at times relevant to this action, and is a member of UAW Local 5285.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not know Plaintiff's current residence or membership status in the Union, nor does it know what "times relevant" this allegation refers to.

9. Plaintiff Charlie R. Wooten is a resident of Gaston County, North Carolina. He was employed by Daimler Trucks at its Mt. Holly truck assembly plant at times relevant to this action, and is a member of UAW Local 5285.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not know Plaintiff's current residence or membership status in the Union, nor does it know what "times relevant" this allegation refers to.

10. Plaintiff William T. Bolin is a resident of Gaston County, North Carolina. He was employed by Daimler Trucks at its Mt. Holly truck assembly plant at times relevant to this action, and is a member of UAW Local 5285.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not know Plaintiff's current residence or membership status in the Union, nor does it know what "times relevant" this allegation refers to.

11. Plaintiff Jeffrey S. Boston is a resident of Lincoln County, North Carolina. He was employed by Daimler Trucks at its Mt. Holly truck assembly plant at times relevant to this action, and is a member of UAW Local 5285.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not know Plaintiff's current residence or membership status in the Union, nor does it know what "times relevant" this allegation refers to.

12. Plaintiff Gary G. Bowlin, II is a resident of Gaston County, North Carolina. He was employed by Daimler Trucks at its Mt. Holly truck assembly plant at times relevant to this action, and is a member of UAW Local 5285.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not know Plaintiff's current residence or membership status in the Union, nor does it know what "times relevant" this allegation refers to.

13. Plaintiff Randell T. Burcham is a resident of Gaston County, North Carolina. He was employed by Daimler Trucks at its Mt. Holly truck assembly plant at times relevant to this action, and is a member of UAW Local 5285.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not know Plaintiff's current residence or membership status in the Union, nor does it know what "times relevant" this allegation refers to.

14. Plaintiff Joseph D. Burke, Jr. is a resident of Gaston County, North Carolina. He was employed by Daimler Trucks at its Mt. Holly truck assembly plant at times relevant to this action, and is a member of UAW Local 5285.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not know Plaintiff's current residence or membership status in the Union, nor does it know what "times relevant" this allegation refers to.

15. Plaintiff Maurice Burris is a resident of Gaston County, North Carolina. He was employed by Daimler Trucks at its Mt. Holly truck assembly plant at times relevant to this action, and is a member of UAW Local 5285.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not know Plaintiff's current residence or membership status in the Union, nor does it know what "times relevant" this allegation refers to.

16. Plaintiff Ricky L. Carpenter is a resident of Gaston County, North Carolina. He was employed by Daimler Trucks at its Mt. Holly truck assembly plant at times relevant to this action, and is a member of UAW Local 5285.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not know Plaintiff's current residence or membership status in the Union, nor does it know what "times relevant" this allegation refers to.

17. Plaintiff Alvin R. Carver, Jr. is a resident of Lincoln County, North Carolina. He was employed by Daimler Trucks at its Mt. Holly truck assembly plant at times relevant to this action, and is a member of UAW Local 5285.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not know Plaintiff's current residence or membership status in the Union, nor does it know what "times relevant" this allegation refers to.

18. Plaintiff Clyde M. Childers is a resident of Gaston County, North Carolina. He was employed by Daimler Trucks at its Mt. Holly truck assembly plant at times relevant to this action, and is a member of UAW Local 5285.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not know Plaintiff's current residence or membership status in the Union, nor does it know what "times relevant" this allegation refers to.

19. Plaintiff Timolyn A. Clark is a resident of Gaston County, North Carolina. She was employed by Daimler Trucks at its Mt. Holly truck assembly plant at times relevant to this action, and is a member of UAW Local 5285.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not know Plaintiff's current residence or membership status in the Union, nor does it know what "times relevant" this allegation refers to.

20. Plaintiff Earl E. Curry, III is a resident of Gaston County, North Carolina. He was employed by Daimler Trucks at its Mt. Holly truck assembly plant at times relevant to this action, and is a member of UAW Local 5285.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not know Plaintiff's current residence or membership status in the Union, nor does it know what "times relevant" this allegation refers to.

21. Plaintiff Darrell E. Dellinger is a resident of Lincoln County, North Carolina. He was employed by Daimler Trucks at its Mt. Holly truck assembly plant at times relevant to this action, and is a member of UAW Local 5285.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not know Plaintiff's current residence or membership status in the Union, nor does it know what "times relevant" this allegation refers to.

22. Plaintiff Charles E. Dilling is a resident of Mecklenburg County, North Carolina. He was employed by Daimler Trucks at its Mt. Holly truck assembly plant at times relevant to this action, and is a member of UAW Local 5285.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not know Plaintiff's current residence or membership status in the Union, nor does it know what "times relevant" this allegation refers to.

23. Plaintiff Tommy A. Faulkenbury is a resident of York County, South Carolina. He was employed by Daimler Trucks at its Mt. Holly truck assembly plant at times relevant to this action, and is a member of UAW Local 5285.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not know Plaintiff's current residence or membership status in the Union, nor does it know what "times relevant" this allegation refers to.

24. Plaintiff Ben Fewell is a resident of Gaston County, North Carolina. He was employed by Daimler Trucks at its Mt. Holly truck assembly plant at times relevant to this action, and is a member of UAW Local 5285.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not know Plaintiff's current residence or membership status in the Union, nor does it know what "times relevant" this allegation refers to.

25. Plaintiff John H. Hall, Jr. is a resident of Gaston County, North Carolina. He was employed by Daimler Trucks at its Mt. Holly truck assembly plant at times relevant to this action, and is a member of UAW Local 5285.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not know Plaintiff's current residence or membership status in the Union, nor does it know what "times relevant" this allegation refers to.

26. Plaintiff Brody L. Harkey is a resident of Lincoln County, North Carolina. He was employed by Daimler Trucks at its Mt. Holly truck assembly plant at times relevant to this action, and is a member of UAW Local 5285.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not know Plaintiff's current residence or membership status in the Union, nor does it know what "times relevant" this allegation refers to.

27. Plaintiff Deanie F. Harkey is a resident of Lincoln County, North Carolina. She was employed by Daimler Trucks at its Mt. Holly truck assembly plant at times relevant to this action, and is a member of UAW Local 5285.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not know Plaintiff's current residence or membership status in the Union, nor does it know what "times relevant" this allegation refers to.

28. Plaintiff Douglas W. Holt is a resident of Gaston County, North Carolina. He was employed by Daimler Trucks at its Mt. Holly truck assembly plant at times relevant to this action, and is a member of UAW Local 5285.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not know Plaintiff's current residence or membership status in the Union, nor does it know what "times relevant" this allegation refers to.

29. Plaintiff William D. Hovis is a resident of Gaston County, North Carolina. He was employed by Daimler Trucks at its Mt. Holly truck assembly plant at times relevant to this action, and is a member of UAW Local 5285.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not know Plaintiff's current residence or membership status in the Union, nor does it know what "times relevant" this allegation refers to.

30. Plaintiff Berwyn L. Johnson is a resident of Cleveland County, North Carolina. He was employed by Daimler Trucks at its Mt. Holly truck assembly plant at times relevant to this action, and is a member of UAW Local 5285.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not know Plaintiff's current residence or membership status in the Union, nor does it know what "times relevant" this allegation refers to.

31. Plaintiff Terrell Johnson is a resident of Gaston County, North Carolina. He was employed by Daimler Trucks at its Mt. Holly truck assembly plant at times relevant to this action, and is a member of UAW Local 5285.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not know Plaintiff's current residence or membership status in the Union, nor does it know what "times relevant" this allegation refers to.

32. Plaintiff Kevin D. Jones is a resident of Lincoln County, North Carolina. He was employed by Daimler Trucks at its Mt. Holly truck assembly plant at times relevant to this action, and is a member of UAW Local 5285.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not know Plaintiff's current residence or membership status in the Union, nor does it know what "times relevant" this allegation refers to.

33. Plaintiff Kelly J. Kowalczyk is a resident of Cleveland County, North Carolina. She was employed by Daimler Trucks at its Mt. Holly truck assembly plant at times relevant to this action, and is a member of UAW Local 5285.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not know Plaintiff's current residence or membership status in the Union, nor does it know what "times relevant" this allegation refers to.

34. Plaintiff Archie Laney is a resident of Lincoln County, North Carolina. He was employed by Daimler Trucks at its Mt. Holly truck assembly plant at times relevant to this action, and is a member of UAW Local 5285.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not know Plaintiff's current residence or membership status in the Union, nor does it know what "times relevant" this allegation refers to.

35. Plaintiff Marcus Leech is a resident of Gaston County, North Carolina. He was employed by Daimler Trucks at its Mt. Holly truck assembly plant at times relevant to this action, and is a member of UAW Local 5285.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not know Plaintiff's current residence or membership status in the Union, nor does it know what "times relevant" this allegation refers to.

36. Plaintiff Todd Lloyd is a resident of Gaston County, North Carolina. He was employed by Daimler Trucks at its Mt. Holly truck assembly plant at times relevant to this action, and is a member of UAW Local 5285.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not know Plaintiff's current residence or membership status in the Union, nor does it know what "times relevant" this allegation refers to.

37. Plaintiff Donnie Locklear is a resident of Gaston County, North Carolina. He was employed by Daimler Trucks at its Mt. Holly truck assembly plant at times relevant to this action, and is a member of UAW Local 5285.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not know Plaintiff's current residence or membership status in the Union, nor does it know what "times relevant" this allegation refers to.

38. Plaintiff John A. McCoig is a resident of Gaston County, North Carolina. He was employed by Daimler Trucks at its Mt. Holly truck assembly plant at times relevant to this action, and is a member of UAW Local 5285.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not know Plaintiff's current residence or membership status in the Union, nor does it know what "times relevant" this allegation refers to.

39. Plaintiff John Moore is a resident of Gaston County, North Carolina. He was employed by Daimler Trucks at its Mt. Holly truck assembly plant at times relevant to this action, and is a member of UAW Local 5285.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not know Plaintiff's current residence or membership status in the Union, nor does it know what "times relevant" this allegation refers to.

40. Plaintiff Ronald A. Muse is a resident of Gaston County, North Carolina. He was employed by Daimler Trucks at its Mt. Holly truck assembly plant at times relevant to this action, and is a member of UAW Local 5285.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not know Plaintiff's current residence or membership status in the Union, nor does it know what "times relevant" this allegation refers to.

41. Plaintiff David Neal is a resident of Lincoln County, North Carolina. He was employed by Daimler Trucks at its Mt. Holly truck assembly plant at times relevant to this action, and is a member of UAW Local 5285.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not know Plaintiff's current residence or membership status in the Union, nor does it know what "times relevant" this allegation refers to.

42. Plaintiff John E. Norman is a resident of Lincoln County, North Carolina. He was employed by Daimler Trucks at its Mt. Holly truck assembly plant at times relevant to this action, and is a member of UAW Local 5285.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not know Plaintiff's current residence or membership status in the Union, nor does it know what "times relevant" this allegation refers to.

43. Plaintiff Carl Privette is a resident of Gaston County, North Carolina. He was employed by Daimler Trucks at its Mt. Holly truck assembly plant at times relevant to this action, and is a member of UAW Local 5285.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not know Plaintiff's current residence or membership status in the Union, nor does it know what "times relevant" this allegation refers to.

44. Plaintiff John D. Roberts is a resident of York County, South Carolina. He was employed by Daimler Trucks at its Mt. Holly truck assembly plant at times relevant to this action, and is a member of UAW Local 5285.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not know Plaintiff's current residence or membership status in the Union, nor does it know what "times relevant" this allegation refers to.

45. Plaintiff Anthony J. Ryall is a resident of Cleveland County, North Carolina. He was employed by Daimler Trucks at its Mt. Holly truck assembly plant at times relevant to this action, and is a member of UAW Local 5285.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not know Plaintiff's current residence or membership status in the Union, nor does it know what "times relevant" this allegation refers to.

46. Plaintiff Steven J. Stamper is a resident of Gaston County, North Carolina. He was employed by Daimler Trucks at its Mt. Holly truck assembly plant at times relevant to this action, and is a member of UAW Local 5285.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not know Plaintiff's current residence or membership status in the Union, nor does it know what "times relevant" this allegation refers to.

47. Plaintiff Samuel J. Stephens, Jr. is a resident of Gaston County, North Carolina. He was employed by Daimler Trucks at its Mt. Holly truck assembly plant at times relevant to this action, and is a member of UAW Local 5285.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not know Plaintiff's current residence or membership status in the Union, nor does it know what "times relevant" this allegation refers to.

48. Plaintiff Jeff Thrift is a resident of Gaston County, North Carolina. He was employed by Daimler Trucks at its Mt. Holly truck assembly plant at times relevant to this action, and is a member of UAW Local 5285.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not know Plaintiff's current residence or membership status in the Union, nor does it know what "times relevant" this allegation refers to.

49. Plaintiff Daniel L. Usery is a resident of Gaston County, North Carolina. He was employed by Daimler Trucks at its Mt. Holly truck assembly plant at times relevant to this action, and is a member of UAW Local 5285.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not know Plaintiff's current residence or membership status in the Union, nor does it know what "times relevant" this allegation refers to.

50. Plaintiff Richard A. Whitener is a resident of Gaston County, North Carolina. He was employed by Daimler Trucks at its Mt. Holly truck assembly plant at times relevant to this action, and is a member of UAW Local 5285.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not know Plaintiff's current residence or membership status in the Union, nor does it know what "times relevant" this allegation refers to.

51. Plaintiff David W. Williams, Jr. is a resident of Gaston County, North Carolina. He was employed by Daimler Trucks at its Mt. Holly truck assembly plant at times relevant to this action, and is a member of UAW Local 5285.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not know Plaintiff's current residence or membership status in the Union, nor does it know what "times relevant" this allegation refers to.

52. Defendant International Union, United Automobile, Aerospace and Agricultural Implement Workers of America ("UAW") is a labor organization as defined by 29 U.S.C. § 152(5), headquartered at 8000 East Jefferson Avenue, Detroit, Michigan.

**Answer:** Defendant International Union admits this allegation.

53. United Auto Workers, Local Union 5285, a labor organization as defined by 29 U.S.C. § 152(5), is a subsidiary local union affiliated with, chartered by, subordinate to, and/or controlled by the UAW pursuant to the UAW Constitution and other governing documents, as well as in actual practice. UAW Local 5285 is headquartered at 113 East Charlotte Avenue, Mt. Holly, North Carolina.

**Answer:** Defendant International Union admits that Local Union 5285 is a labor organization and that it is chartered by the International Union and that it is headquartered at 113 East Charlotte Avenue, Mt. Holly, North Carolina. It admits that Local 5285 is bound by the provisions of the International constitution. It denies the remaining allegations of this Paragraph.

54. Defendant International Union, United Automobile, Aerospace and Agricultural Implement Workers of America and Defendant UAW Local 5285 are collectively referred to as the “Defendant UAW”.

**Answer:** Defendant International Union admits that the Second Amended Complaint refers to the International and the Local as “Defendant UAW” and that for ease of reference it may be appropriate to refer to both organizations as “the UAW.” Answering further, Defendant International Union states that the International and the Local are two separate labor organizations and that they have separate legal existence, governing documents, officers, and representatives.

55. As a labor organization, the primary function of the UAW and its subordinate local unions is to exclusively deal with employers on behalf of represented employees concerning employees’ grievances, labor disputes, wages, rates of pay, hours of employment, and conditions of work.

**Answer:** Defendant International Union admits that one of its functions is to deal with employers at which it represents the employees and that such dealing includes representing employees and members with respect to grievances, wages, rates of pay, hours of employment, and the conditions of work. It denies the other allegations of this Paragraph.

## FACTS OF THE CASE

56. Daimler Trucks operates a truck assembly plant at Mt. Holly, North Carolina (the “Freightliner Mt. Holly truck assembly plant”). The Freightliner Mt. Holly truck assembly plant manufactures the truck model identified as the Freightliner Business Class M2 medium duty truck.

**Answer:** Defendant International Union admits this allegation.

57. The workers at the Freightliner Mt. Holly truck assembly plant are represented by Defendant UAW, and its local, UAW Local 5285. According to the UAW website, UAW Local 5285 represents more than 1,700 active, retired, and laid-off union workers.

**Answer:** Defendant International Union admits the allegation of the first sentence. With respect to the second sentence, Defendant International Union neither admits nor denies, because the contents of the website of the Local change from time to time.

58. Defendant UAW on its own behalf and on behalf of its Local 5285 entered into the 2006 CBA with an effective start date of August 26, 2006, covering employees in its bargaining unit at the Truck Manufacturing Plant and PDI Center at Mt. Holly, North Carolina. A true copy of the 2006 CBA is attached hereto as **Exhibit A** and is incorporated by reference.

**Answer:** Defendant International Union admits this allegation.

59. As stated in the 2006 CBA, “the Company (Daimler Trucks) recognizes the Union (Defendant UAW) as the exclusive representative for Production and Maintenance employees at the Truck Manufacturing Plant and PDI Center located at Mt. Holly, North Carolina for the purpose of collective bargaining.”

**Answer:** Defendant International Union admits this allegation.

60. When acting as the exclusive bargaining representative of employees, the UAW and its subordinate local unions owe a fiduciary duty of complete loyalty to represented employees.

**Answer:** Defendant International Union neither admits nor denies this allegation, because it states a legal conclusion.

61. As of approximately the end of March 2007, on information and belief, Daimler Trucks threatened to close completely its original truck manufacturing plant in Portland, Oregon, and transferred much of those manufacturing operations to a plant it owned in Mexico. Upon information and belief, Daimler Trucks had commenced manufacturing Freightliner brand trucks at an assembly plant it owned and operated in Santiago Tianguistenco, Mexico, in or about the 1990s.

**Answer:** Defendant International Union neither admits nor denies the first sentence of this Paragraph, because it lacks knowledge thereof. The allegation in the second sentence is too vague for Defendant to formulate a specific answer thereto.

62. As of March 2007, there were approximately 1,500 workers employed at the Freightliner Mt. Holly truck assembly plant. Later in 2007, Daimler Trucks laid off some workers at the Freightliner Mt. Holly truck assembly plant.

**Answer:** Defendant International Union admits this allegation.

63. Subsequent to March 2007, Daimler Trucks began to move more of its Freightliner brand truck assembly operations to Mexico, including, on information and belief, some of the production previously performed at the Freightliner Mt. Holly truck assembly plant.

**Answer:** Defendant International Union neither admits nor denies this allegation, because it is too vague for Defendant to formulate a specific answer thereto.

64. At the end of August 2008, Daimler Trucks notified employees and union representatives at the Freightliner Mt. Holly truck assembly plant that it would be laying off another approximately 675 of the plant's 1,145 workers, effective October 31, 2008.

**Answer:** Defendant International Union admits this allegation.

65. In a letter dated January 26, 2009, Daimler Trucks' Chief Operating Officer, Roger M. Nielsen, announced that all new orders for several models of Freightliner trucks, including the M2 trucks, would thenceforth be built at Daimler Truck's plant in Santiago Tianguistenco, Mexico. Such an arrangement, when implemented, would violate terms of the 2006 CBA.

**Answer:** Defendant International Union admits that the transfer of work and layoff of workers in Mt. Holly that took place in January 2009 violated the 2006 collective bargaining agreement between the UAW and Freightliner.

66. In March 2009, Daimler Trucks laid off several hundred other workers at a plant it operated in Gastonia, and at least another 109 workers at the Freightliner Mt. Holly truck assembly plant.

**Answer:** Defendant International Union admits that layoffs took place at the Freightliner plants in Gastonia and Mt. Holly in March 2009.

67. By the end of March 2009, Daimler Trucks also closed a Freightliner plant in St. Thomas, Ontario, Canada, and the only trucks it continued to manufacture in Portland were military vehicles. On information and belief, the production previously performed at the Freightliner St. Thomas plant was transferred to Daimler Trucks' plants in Mexico.

**Answer:** Defendant International Union neither admits nor denies these allegations, because it has insufficient knowledge thereof. It does not represent the employees at either of the plants in question. Moreover, Freightliner operates plants in many countries. Finally, demand for trucks was falling sharply during this period of time due to the worldwide global downturn.

68. On information and belief, in the same timeframe as the layoffs that occurred in October 2008 and March 2009, several hundred other workers at the Freightliner Mt. Holly truck assembly plant were pressured to take early retirements, at lesser benefits than they would otherwise have been entitled to at full retirement, under threat of plant closure and the loss of further benefits.

**Answer:** Defendant International Union neither admits nor denies this allegation, because it has no knowledge thereof.

69. Thus, by the end of March 2009, approximately 1,000 or more workers at the Freightliner Mt. Holly truck assembly plant had been laid off or pressured to take early retirement by Daimler Trucks since the previous fall.

**Answer:** Defendant International Union admits that employment in its bargaining unit at Mt. Holly decreased from approximately 1,074 on October 28, 2008, to approximately 153 on April 28, 2009. Defendant denies the other allegations of this Paragraph.

70. According to published sources, after the March 2009 layoffs, the Freightliner Mt. Holly truck assembly plant was expected to be left with only about 30 active employees, compared with having had 1,740 in early 2007.

**Answer:** Defendant international Union neither admits nor denies these allegations, because it does not know what “published sources” the allegation refers to.

71. Over the several months following their layoffs, most or all of the laid off workers received unemployment benefits in varying degrees. These benefits amounted to only about half, or less, of the workers’ cash compensation, and none of their fringe benefits – which were a substantial part of their total compensation and amounted to approximately another 44% of the value of cash compensation.

**Answer:** Defendant International Union admits that most or all of the laid-off workers received unemployment benefits and that such benefits are less than wages. It also admits that layoff has an effect on the fringe benefits received by employees. Defendant denies the remaining allegations.

72. Upon information and belief, after the layoffs by Daimler Trucks in October 2008, which Defendant UAW considered to be in violation of the 2006 CBA, Defendant UAW instituted, in late January 2009, a class action grievance on behalf of all the adversely affected workers seeking, *inter alia*, that Daimler Trucks be compelled to cease violating the terms of the 2006 CBA, that the workers be returned to their employment, and that the workers be made whole for the loss of their cash compensation, benefits, and other consequential losses.

**Answer:** Defendant International Union admits that it filed a grievance in January 2009 alleging that Freightliner had violated the 2006 collective bargaining agreement and that the grievance sought an order requiring that the violation cease, that employees be rehired if appropriate, and that employees laid off in violation of the contract receive an appropriate remedy for that violation of the contract. Defendant denies the remaining allegations.

73. The arbitration was held before Robert B. Moberly, a nationally recognized labor law expert and Arbitrator, and Professor (and former Dean) of the University of Arkansas School of Law.

**Answer:** Defendant International Union admits this allegation.

74. On January 21, 2010, the Arbitrator ruled in favor of Defendant UAW and ordered that Daimler Trucks must “make whole” the adversely affected workers, specifically including those that were laid off in October 2008 and March 2009 in connection with the violations of the LOU contained within the relevant 2006 CBA. The Arbitration Award states as follows:

#### **AWARD**

**The company violated the LOU contained in the CBA when it laid off substantial numbers of employees in late 2008 and 2009, but did not subsequently produce 70% of M2’s sold in the US and Canada at its Mt Holly plant, as required by the contract. Such conduct made the Mt Holly workforce, in the language of the LOU, “disproportionately disadvantaged,” and entitled to a remedy for the contract violation.**

**As a remedy for the above violation, the company shall increase production with bargaining unit employees at Mt Holly to 70% of the M2’s sold in the US and Canada, calculated on a monthly basis. The Company also shall make whole any bargaining unit employee who has been adversely affected by its contract violations, including layoffs**

**beginning near the end of October and early November 2008, and continuing thereafter. The Arbitrator refers the question of employee losses back to the parties for further consideration and determination, but shall retain jurisdiction to determine any disputes over the interpretation or application of this award, including the extent of employee losses.**

**Robert B Moberly,  
Arbitrator  
January 21, 2010**

A true copy of the January 21, 2010 Arbitration Award, signed by the Arbitrator, is attached hereto as **Exhibit B** and is incorporated by reference.

**Answer:** Defendant International Union admits that Exhibit B to the Second Amended Complaint is a copy of the Arbitration Award and that the Second Amended Complaint has accurately quoted a portion of the Award. Defendant neither admits nor denies the remaining allegations of this Paragraph, because the arbitration award speaks for itself

77. In his January 21, 2010 Arbitration Opinion and Award, the Arbitrator ruled that Daimler Trucks had breached the 2006 CBA.

**Answer:** Defendant International Union admits this allegation.

78. Until September 24, 2010, neither the Defendant UAW, nor Daimler Trucks, provided Plaintiffs (or any others similarly situated) with a full, complete copy of said January 21, 2010 Arbitration Award.

**Answer:** Defendant International Union neither admits nor denies this allegation, because it has no knowledge thereof.

79. Shortly after it was issued, the Arbitration Award was announced to the membership of UAW Local 5285 through its website and through its Local President, Ricky McDowell.

**Answer:** Defendant International Union admits that the decision of the arbitrator was announced to the membership of the Local. It neither admits nor denies the remaining allegations, because it lacks sufficient knowledge thereof.

80. At the regular monthly membership meeting held in March 2010, President Ricky McDowell announced to the assembled members that the “total amount” of the Arbitration Award to be paid to the laid off workers, pursuant to the Arbitrator’s ruling was then presently in the amount of “over \$30 million,” not including amounts necessary to “make whole” the laid off workers for the loss of their benefits or their consequential damages.

**Answer:** Defendant International Union neither admits nor denies this allegation, because it lacks sufficient knowledge thereof.

81. At a UAW Local 5285 union meeting in April 2010, President Ricky McDowell told some of the adversely affected union members that the amounts to be paid pursuant to the Arbitration Award was then “roughly \$34 million, and growing,” again, without even taking into account the loss of fringe benefits or other consequential financial losses.

**Answer:** Defendant International Union neither admits nor denies this allegation, because it lacks sufficient knowledge thereof.

82. The benefits that were part of the total compensation package paid to workers at the Freightliner Mt. Holly truck assembly plant included the following: Health Benefits, in the form of Medical, Dental, and Vision coverage and/or insurance; Financial Security Benefits, in the form of Basic Life Insurance, Supplemental Life Insurance (for employees, spouses, and children), Optional Accident Insurance, Business Travel Accident Insurance; Income Protection, including Short Term Disability Insurance, and Extended Sick Pay; Flexible Spending Accounts; Other Benefits, including Employee Assistance Program (EAP), Employee Scholarship Program, Daimler Chrysler Discount, Personal Computer Discount, Cell Phone Discount, and Credit Union Membership; Retirement Benefits, including Retiree Health coverage, Retirement Savings Plan (40 1K), and Pension Plan; Vacation Pay; and Sick Pay.

**Answer:** Defendant International Union admits this allegation.

83. Defendant UAW failed or neglected to timely enforce the Arbitration Award by asserting the rights of the adversely affected workers to be returned to employment after the issuance of the Arbitration Award through the end of the 2006 CBA that was violated, which was scheduled to end on April 2, 2010.

**Answer:** Defendant International Union denies this allegation.

84. On information and belief, in the months after the issuance of the January 21, 2010 Arbitration Award, Defendant UAW was more interested in negotiating and securing a new Collective Bargaining Agreement to replace the 2006 CBA, than it was in calculating losses and securing timely enforcement of the Award.

**Answer:** Defendant International Union denies this allegation.

85. After the layoffs, but both before and after the issuance of the January 21, 2010 Arbitration Award, when the Freightliner Mt. Holly Plant truck assembly plant was staffed by just a few hundred workers, UAW officials failed to grieve the substantial amounts of overtime which the remaining workers were working. A proper grievance would have resulted in more affected workers coming back to work – as was intended by the Arbitration Award. Instead, certain Union officials (including Union representatives who were still on the job) were self-benefited by substantial overtime and double-time pay which would have been lost if the UAW had grieved and brought more laid-off workers back into the plant.

**Answer:** Defendant International Union neither admits nor denies this allegation, because it has no knowledge thereof.

86. As of approximately one full year after the initial January 21, 2010 Arbitration Award, neither the Union, Defendant UAW, nor the employer, Daimler Trucks, had paid any compensation whatsoever to laid off bargaining unit employees who were adversely affected by the layoffs that occurred in October 2008 and March 2009.

**Answer:** Defendant International Union denies this allegation.

87. As of approximately one full year after the initial January 21, 2010 Arbitration Award, neither the Union, Defendant UAW, nor the employer, Daimler Trucks, had paid any benefits whatsoever to laid off bargaining unit employees who were adversely affected by the layoffs that occurred in October 2008 and March 2009.

**Answer:** Defendant International Union denies this allegation.

88. Not until January 17, 2011, nearly one full year after the initial January 21, 2010 Arbitration Award, did Union and the employer, Daimler Trucks, even reveal to the adversely affected employees that they had reached some agreement on a claims process as directed by the Arbitrator. Such agreements and claims process were set forth in filings in this action. The detail of such process was not mailed out to the bargaining unit employees who were adversely affected by the layoffs until approximately February 2011. A true copy of the December 23, 2010 Supplemental Arbitration Award is attached hereto as **Exhibit C** and is incorporated by reference.

**Answer:** Defendant International Union admits that Exhibit C is a copy of the Supplemental Arbitration Award. It denies the remaining allegations.

89. For nearly a full year, Daimler Trucks and the UAW and Local 5285 failed to implement the Award, failed to seek enforcement of the Arbitration Award, failed to take the matter back to the Arbitrator, as necessary, to compel enforcement of the “make whole” award, and failed or neglected to implement a claims procedure whereby the harms and losses of the individual workers could be calculated.

**Answer:** Defendant International Union denies this allegation.

90. Instead, Defendant UAW and Local 5285 attempted to placate and mollify the adversely affected workers, and in fact as recently as mid-September 2010 (during the pendency of this lawsuit) stated that the *“UAW Heavy Truck Department has communicated they are working hard to resolve this settlement. ... When I [Union Local 5285 President, Ricky McDowell] am contacted with any additional information on the Arbitration Case Award, I will notify the membership.”*

**Answer:** Defendant International Union denies this allegation.

91. Very little substantive information was ever made available to the adversely affected employees as to when the “make whole” award would be paid, except that Defendant UAW Local 5285 President stated in or about April 2010 that the amount to be paid was approximately “\$34 million, and growing,” not including fringe benefits. At other times, UAW officials pegged the value of the compensation to be paid to adversely affected workers at higher amounts, and thereby grossly exaggerated what the actual recovery would be.

**Answer:** Defendant International Union denies this allegation.

92. The UAW, through its officials, failed to give timely and accurate information to the adversely affected workers during 2010, and when the UAW did give information, it egregiously misstated the amount of compensation and other benefits to which the workers would be entitled and could expect to receive pursuant to the Arbitrator’s “make whole” award.

**Answer:** Defendant International Union denies this allegation.

93. The named Plaintiffs, and others within the class they seek to represent, were not direct parties to the arbitration between Defendant UAW and UAW Local 5285, and Daimler Trucks, but the arbitration was nonetheless for their benefit and the Arbitration Award was rendered in their favor and to make them “whole” for the breaches by Daimler Trucks.

**Answer:** Defendant International Union admits that it arbitrated the grievance regarding the transfer of work, in part to secure relief for employees who were wrongly laid off and to ensure future compliance with the collective bargaining agreement. It denies the remaining allegations.

94. The named Plaintiffs, and others within the class they seek to represent, have been laid off, unemployed, and suffered the loss of their livelihood for periods of time as long as nearly 30 months, and have suffered and continue to suffer great financial harm which, collectively, is in the tens of millions of dollars.

**Answer:** Defendant International Union denies this allegation.

95. The failure of Defendant UAW to proceed with all due haste and speed in seeking the enforcement of the Arbitration Award, and to obtain payment of the “make whole” damages award rendered in favor of the adversely affected workers, evidences such indifference and callousness to the severe economic plight of the workers as to be irrational, and so amounts to conduct that is arbitrary and in bad faith.

**Answer:** Defendant International Union denies this allegation.

96. The Defendant UAW further arbitrarily, irrationally, and in bad faith favored a few workers who remained at the plant after the layoffs – many of whom earned substantial overtime and double-time pay – by allowing them to participate in the claims process (and to claim still more money) contained in the Supplemental Arbitration Award, at the expense of other adversely affected workers who have been substantially harmed.

**Answer:** Defendant International Union denies this allegation.

97. There are no contractual or internal procedures that allow individual union members of UAW Local 5285 who are “adversely affected” by the company’s violations [as so stated in the Arbitration Award] to directly intervene in the arbitration between Defendant UAW and Daimler Trucks.

**Answer:** Defendant International Union denies this allegation.

98. There are no grievance procedures or internal union remedies for these Plaintiffs, and others within the class they seek to represent, to assert their claim that Defendant UAW has breached its fiduciary duties and duty of fair representation to the adversely affected workers in handling the class action grievance against Daimler Trucks that resulted in the mass layoffs.

**Answer:** Defendant International Union denies this allegation.

99. Subsequent to the ratification of a new 2010 CBA between Defendant UAW, and the employer, Daimler Trucks in mid-April 2010, Daimler Trucks began recalling workers back to the Freightliner Mt. Holly truck assembly plant in limited numbers, based on dates of hiring.

**Answer:** Defendant International Union admits that Freightliner recalled employees to work in 2010. It demies the remaining allegations.

100. The named Plaintiffs, and all others similarly situated, are persons who are bargaining unit employees who were adversely affected by Daimler Trucks' contract violations, including layoffs, beginning near the end of October and early November 2008, and continuing thereafter.

**Answer:** Defendant International Union denies this allegation.

101. The named Plaintiffs, and all others similarly situated, have suffered immediate tangible damages in the form of the loss of their employment and livelihood, including the loss of their cash compensation and their benefits.

**Answer:** Defendant International Union denies this allegation.

102. The named Plaintiffs, and others similarly situated, also suffered severe, and in many cases, financially catastrophic consequential damages as a result of Daimler Trucks' breach of the 2006 CBA and Defendant UAW's breach of its duty of fair representation.

**Answer:** Defendant International Union denies this allegation.

103. Further, those adversely affected employees who might have been recalled pursuant to the Arbitration Award would have been entitled to at least six months of additional health insurance coverage when called back to the plant.

**Answer:** Defendant International Union denies this allegation.

104. The named Plaintiffs, and others similarly situated, have suffered consequential damages in varying degrees, but that include some combination of the following, among other damages:

- the loss of homes to foreclosure;

- the loss of homes due to unpaid tax liabilities;
- the loss of assets, including vehicles and other assets either sold for money or forfeited to creditors;
- the depletion of their savings;
- the cancellation of vacations and other planned events;
- the loss of health insurance coverage, with consequent substantial liability for unpaid medical bills;
- increased health insurance costs, such as COBRA, for those adversely affected employees who could afford to buy that insurance;
- the loss of physical health due to lack of resources to seek medical care;
- the loss of credit sources and reduced credit scores;
- the loss of life insurance coverage and benefits;
- the loss of ability to maintain a safe and secure home and make necessary repairs;
- the accrual of excessive debt;
- increased physical maladies due to depression, stress, high blood pressure, ulcers, and the like, occasioned by the layoffs, and financial fallout;
- severe emotional distress caused by being laid off and being unable to meet obligations.

In addition, other adversely affected workers have endured marital strife and discord, divorce, and the loss of children who have had to go and live with other relatives due to insufficient finances.

**Answer:** Defendant International Union denies this allegation.

105. The named Plaintiffs, and others similarly situated, have attempted to maintain their households and quality of life for a period of greater than two years in most cases. However, by the time the Arbitration Award was determined, including (at last) the issuance of the December 23, 2010 Supplemental Award on January 17, 2011, many of said individuals and their families were financially ruined and could ill afford yet further, additional delay in the enforcement of the Arbitration Award by Defendant UAW or the continued failure of Daimler Trucks to make them whole, pursuant to the Arbitrator's ruling.

**Answer:** Defendant International Union denies this allegation.

106. From all that can be ascertained from documents filed with the Court in this proceeding, the settlement agreement dated on or about December 20, 2010 (otherwise identified as the "Stipulation of Employee Losses") which was ultimately reached by Daimler and the Defendant UAW (as contained within the Supplemental Award which was ultimately approved by the

Arbitrator on or about December 23, 2010) failed to produce the outcome which was envisioned by the January 21, 2010 Arbitration Award which mandated that the Company “shall make whole any bargaining unit employee who has been adversely affected by its contract violations.”

**Answer:** Defendant International Union denies this allegation.

107. Although approximately eight hundred employees were laid off by Daimler in violation of the 2006 Collective Bargaining Agreement, the settlement agreement contained in the Supplemental Award depicts that on average only 425 employees will be compensated during any particular month. Hence, approximately 400 or so employees who were laid off are not going to be compensated at all per the terms of the Supplemental Award.

**Answer:** Defendant International Union denies this allegation.

108. Further, the settlement agreement contained in the Supplemental Award depicts that Daimler and the Defendant UAW used a man-hours per truck ratio of 95 (to calculate back pay due to the employees per the production model) which represents a significant reduction from pre-layoff levels.

**Answer:** Defendant International Union denies this allegation.

109. The settlement agreement contained in the Supplemental Award depicts that employees who incurred medical expenses which were not covered by health insurance due to the lapse in coverage which resulted in accrued debt or liability will not be compensated for such expenses.

**Answer:** Defendant International Union denies this allegation.

110. The settlement agreement contained in the Supplemental Award depicts that any income earned by any employee during their period of layoff shall be a setoff against monies to be paid by Daimler.

**Answer:** Defendant International Union denies this allegation.

111. The settlement agreement contained in the Supplemental Award depicts that no interest will be paid on any compensation paid to the employees for earnings which should have been paid to the employees months ago.

**Answer:** Defendant International Union admits that the Settlement Agreement and Supplemental Award did not require Freightliner to pay interest on back pay awards. It denies the remaining allegations.

112. The settlement agreement contained in the Supplemental Award depicts that no compensation is being paid for the month of December 2008 although the Arbitrator ruled that Daimler violated the 70% LOU mandate in December 2008.

**Answer:** Defendant International Union denies this allegation.

113. The settlement agreement contained in the Supplemental Award does not contain any compensation for damages for those who were foreclosed on, had their credit destroyed, or lost other assets due to Daimler's breach of the 2006 CBA and consequent layoffs in violation thereof, even though the Arbitrator directed that the adversely affected employees were to be "made whole."

**Answer:** Defendant International Union denies this allegation.

114. The Defendant UAW failed to fairly represent its membership by entering into the settlement agreement depicted in the Supplemental Award as evidenced by the aforescribed shortcomings and other shortcomings which may hereafter be identified.

**Answer:** Defendant International Union denies this allegation.

### **CLASS ACTION ALLEGATIONS**

115. This is a class action brought by Plaintiffs individually and on behalf of all others similarly situated pursuant to Federal Rules of Civil Procedure 23(a) and 23(b). The Class consists of all employees whose terms and conditions of employment are governed by, or were governed by, the UAW-Daimler Trucks CBA in effect during the period August 26, 2006 to April 2, 2010 who

were adversely affected by Daimler Truck's contract violations, including layoffs beginning near the end of October and early November 2008 and continuing thereafter, and who were to be compensated pursuant to the January 21, 2010 Arbitration Award, and by Defendant UAW's breaches of the duty of fair representation ("the Class").

**Answer:** Defendant International Union denies this allegation.

116. The number of persons in the proposed Plaintiff Class are so numerous that joinder of the entire class is impractical. On information and belief, approximately one thousand employees were adversely affected by Daimler Trucks 2006 CBA contract violations who were to receive compensation pursuant to the Arbitration Award dated January 21, 2010.

**Answer:** Defendant International Union denies this allegation.

117. There are questions of law and fact common to all members of the proposed Plaintiff Class in that all the members of the Class were bargaining unit employees who were adversely affected by Daimler Trucks' 2006 CBA contract violations and Defendant UAW's breaches of the duty of fair representation, and are to receive compensation pursuant to the Arbitration Award dated January 21, 2010, *to wit*:

- Whether Defendant UAW's failure to enforce the Arbitration Award against Daimler Trucks has been arbitrary, discriminatory, or in bad faith?
- Whether Defendant UAW's actions in reaching agreements with Daimler Trucks, as set forth in attachments to the Supplemental Arbitration Award, and the agreements themselves, were arbitrary, discriminatory, or in bad faith?
- Whether Defendant UAW's failure to grieve excessive overtime by workers remaining in the plant after the rounds of layoffs in November 2008, and March 2009, to the detriment of other adversely affected workers who could have been brought back to work was arbitrary, discriminatory, or in bad faith?
- What is the amount and type of lost wages, benefits and other consequential damages which Daimler Trucks and Defendant UAW should have been required to pay to "make whole" the adversely affected employees pursuant to the Arbitration Award, which are attributable to Defendant UAW's breach of the duty of fair representation?

**Answer:** Defendant International Union denies this allegation.

118. The Plaintiffs' claims are typical of all other members of the class. The Plaintiffs each were adversely affected by Daimler Trucks' 2006 CBA contract violations and were to each receive compensation pursuant to the Arbitration Award dated January 21, 2010 as were all the other members of the proposed class. The Plaintiffs each have been injured by Defendant UAW's breaches of its fiduciary duties.

**Answer:** Defendant International Union denies this allegation.

119. Plaintiffs can fairly and adequately represent the interests of the proposed Plaintiff Class. Plaintiffs have no interests relevant to the lawsuit's subject matter antagonistic to class members.

**Answer:** Defendant International Union denies this allegation.

120. Plaintiffs have retained competent counsel who are experienced in complex business matters and are experienced and capable of maintaining a class action on behalf of the Class described herein.

**Answer:** Defendant International Union neither admits nor denies this allegation, because it has insufficient knowledge thereof.

121. Plaintiffs will provide adequate notice to the Class members as directed by the Court and as required by Federal Rules of Civil Procedure Rule 23.

**Answer:** Defendant International Union neither admits nor denies this allegation, because it has insufficient knowledge thereof.

122. A class action is superior to all other methods for the fair and efficient adjudication of Class Members' claims.

**Answer:** Defendant International Union denies this allegation.

123. Certification of a Class to resolve this dispute will reduce the possibility of repetitious litigation involving approximately one thousand class members.

**Answer:** Defendant International Union denies this allegation.

124. This case is maintainable as a class action under Federal Rule of Civil Procedure 23(b)(1) because the prosecution of separate actions by or against individual members of the class would create risk of either inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not party to the adjudications or substantially impair or impede their ability to protect their interests.

**Answer:** Defendant International Union denies this allegation.

125. This case is maintainable as a class action under Federal Rule of Civil Procedure 23(b)(2) because the party opposing the Class has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the class as a whole.

**Answer:** Defendant International Union denies this allegation.

126. This case is maintainable as a class action under Federal Rule of Civil Procedure 23(b)(3) because questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy. In particular:

- a. members of the class have an interest in pursuing a class action;
- b. on information and belief, substantially similar litigation has not been initiated by any member of the class, or any other party;
- c. concentrating the litigation of the claims in this particular forum is desirable; and
- d. on information and belief, there are no difficulties likely to be encountered in the management of a class action in this case.

**Answer:** Defendant International Union denies this allegation.

**COUNT ONE**  
**Breach of Duty of Fair Representation by Defendant UAW**

127. Plaintiffs reallege the allegations of Paragraphs 1 through 117 as if fully set forth herein.

**Answer:** Defendant International Union reincorporates its answers to the prior paragraphs as if fully set forth herein.

128. As the exclusive bargaining representative for the Plaintiffs and all others similarly situated, Defendant UAW had a duty to fairly represent the Plaintiffs and all others similarly situated by enforcing their rights under the 2006 CBA with Daimler Trucks by compelling Daimler Truck's compliance with the Arbitration Award.

**Answer:** Defendant International Union admits that it had a duty of fair representation toward Plaintiffs. It denies the remaining allegations.

129. Defendant UAW breached its duty of fair representation owed to the Plaintiffs, and all others similarly situated, in one or more of the following ways:

- a. Defendant UAW acted arbitrarily and unreasonably delayed reaching agreement with Daimler Trucks on the question of employee losses, as directed by the Arbitrator on January 21, 2010;
- b. Defendant UAW acted arbitrarily, discriminatorily, and in bad faith, and unreasonably delayed reaching agreement with Daimler Trucks on the question of employee losses, when it placed its interest of negotiating and executing a future Collective Bargaining Agreement ahead of its duty to reach agreement and obtain compensation for the benefit of adversely affected employees pursuant to the January 21, 2010 Arbitration Award;

- c. Defendant UAW acted arbitrarily, discriminatorily, and in bad faith by using the January 21, 2010 Arbitration Award as a bargaining chip in negotiating a future Collective Bargaining Agreement;
- d. Defendant UAW acted arbitrarily, discriminatorily, and in bad faith when it unreasonably delayed reaching agreement with Daimler Trucks on the question of employee losses, and then failed to return the matter to the Arbitrator after the Defendants had been unable to resolve the issues after several months;
- e. Defendant UAW acted arbitrarily, discriminatorily, and in bad faith by failing to grieve excessive overtime by workers who remained at the Freightliner Mt. Holly truck assembly plant after the layoffs that occurred in November 2009 and March 2010, such that more workers could return to their jobs;
- f. Defendant UAW acted arbitrarily, discriminatorily, and in bad faith by virtue of the egregious misstatements made by Union officials with regard to the timing and the size of the recovery to be obtained in favor of the adversely affected workers;
- g. Defendant UAW acted arbitrarily, discriminatorily, and in bad faith by virtue of the content of the agreements it reached with Daimler Trucks, attached to the Supplemental Arbitration Award, the application of which will result in their being very limited “make whole” compensation that will be recovered by the adversely affected workers;
- h. Defendant UAW acted arbitrarily, discriminatorily, and in bad faith by virtue of the content of the agreements it reached with Daimler Trucks, attached to the Supplemental Arbitration Award, the application of which will result in no compensation paid for accrued medical expense and liability resulting from the lapse in health insurance coverage;
- i. Defendant UAW acted arbitrarily, discriminatorily, and in bad faith by virtue of the content of the agreements it reached with Daimler Trucks, attached to the Supplemental Arbitration Award, the application of which will result in no compensation for approximately **half** of those laid off due to Daimlers violations of the 70% production mandate and reduced compensation for many of those who are to be compensated;

- j. Defendant UAW acted arbitrarily, discriminatorily, and in bad faith by virtue of the content of the agreements it reached with Daimler Trucks, attached to the Supplemental Arbitration Award, the application of which will result in no compensation being paid for the month of December 2008 even though the Arbitrator ruled that Daimler violated the 70% production mandate during December 2008;
- k. Defendant UAW acted arbitrarily, discriminatorily, and in bad faith by virtue of the content of the agreements it reached with Daimler Trucks, attached to the Supplemental Arbitration Award, the application of which applied a man-hours per truck ratio which did not reflect pre-layoff experience and thus significantly reduced compensation paid to employees who would be paid per the terms of the Supplemental Award;
- l. Defendant UAW acted arbitrarily, discriminatorily, and in bad faith by virtue of the content of the agreements it reached with Daimler Trucks, attached to the Supplemental Arbitration Award, the application of which did not allow for any compensation for damages for those who suffered foreclosure, destroyed credit, or lost other assets due to the loss of income resulting from the layoffs;
- m. Defendant UAW acted arbitrarily, discriminatorily, and in bad faith by virtue of the agreements it reached with Daimler Trucks, attached to the Supplemental Arbitration Award, the application of which diminishes recoveries by other income earned;
- n. Defendant UAW acted arbitrarily, discriminatorily, and in bad faith by virtue of the agreements it reached with Daimler Trucks, attached to the Supplemental Arbitration Award, the application of which fails to pay interest on the awards to the adversely affected workers, further diminishing the recovery to the adversely affected workers.

**Answer:** Defendant International Union denies each of these allegations.

130. The allegations raised herein and elsewhere in this lawsuit demonstrate that there is no internal grievance procedure or internal union remedy whereby the Plaintiffs can seek recourse against Defendant UAW and Local 5285's breach of the duty of fair representation. Therefore, the named Plaintiffs and all others similarly situated whom they seek to represent should be excused

from proceeding through any alleged internal grievance procedure or remedy since no such procedures exist and the exercise would therefore be futile.

**Answer:** Defendant International Union denies this allegation.

131. As a direct and proximate result of Defendant UAW's breaches of its duty of fair representation, as alleged, Defendant UAW is liable in damages in favor of the Plaintiffs, in such sums as are proven at trial.

**Answer:** Defendant International Union denies this allegation.



**CERTIFICATE OF SERVICE**

I, Stephen A. Yokich, an attorney, hereby certify that on December 27, 2011, I caused a true and accurate copy of the foregoing **Answer and Affirmative Defenses of Defendant International Union, UAW, to Plaintiffs' Second Amended Complaint** to be filed electronically with the Court. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt, including those listed below. Parties may access this filing through the Court's electronic filing system.

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I further certify that, as of December 27, 2011, there are no nonregistered participants in this case.

/s/ Stephen A. Yokich  
\_\_\_\_\_  
Stephen A. Yokich