

**FILED**  
**08-02-2021**  
**John Barrett**  
**Clerk of Circuit Court**  
**2020CV004571**

STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY  
BRANCH 27

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NICOLE MCDANIEL, et al.

Plaintiffs,

v.

Case No. 2020CV4571

WISCONSIN DEPARTMENT OF  
CORRECTIONS,

Defendant.

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**ANSWER TO SECOND AMENDED CLASS ACTION COMPLAINT**

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Defendant, Wisconsin Department of Corrections (DOC), by its attorneys, Attorney General Joshua L. Kaul, and Assistant Attorney General Steven C. Kilpatrick, hereby answers the Second Amended Class Action Complaint (“Complaint”) of Plaintiffs Nicole McDaniel, David Smith, and Matthew Davis (“Plaintiffs”) and provides defenses, as follows:

**Introduction**

1. Answering paragraph 1 of the “Introduction” section of Plaintiffs’ Complaint, Defendant ADMITS that Plaintiffs have styled this civil action as a class action for unpaid compensation, ADMITS that Plaintiffs are or were employed with the Wisconsin Department of Corrections on a non-exempt, hourly basis at some point in time, DENIES that Plaintiffs have obtained or are entitled to class certification, DENIES that Plaintiffs are entitled to any relief they seek, and DENIES any remaining allegations.

2. Answering paragraph 2 of the “Introduction” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have pre- and post-shift duties for which they are entitled to compensation, DENIES that Plaintiffs have obtained or are entitled to class certification, and DENIES any remaining allegations.

3. Answering paragraph 3 of the “Introduction” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have any pre- and post-shift duties for which they are entitled to compensation and DENIES that Plaintiffs have obtained or are entitled to class certification. Defendant admits Plaintiffs’ work activities include maintaining order, discipline, safety and security, guarding and escorting inmates, and enforcing rules and regulations at DOC facilities where inmates are housed or incarcerated.

4. Answering paragraph 4 of the “Introduction” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have any pre- and post-shift duties for which they are entitled to compensation, DENIES that Plaintiffs have obtained or are entitled to class certification, and AFFIRMATIVELY ALLEGES that the remaining allegations contained therein constitute legal conclusions to which no response is required, but to the extent a response is required, DENIES and DENIES that Plaintiffs are entitled to any of the relief they seek.

5. Answering paragraph 5 of the “Introduction” section of Plaintiffs’ Complaint, Defendant DENIES Plaintiffs have obtained or are entitled to class certification and DENIES that Plaintiffs are entitled to any of the relief they seek.

## **Parties**

### **A. Plaintiffs**

6. Answering paragraph 6 of the “Parties” section of Plaintiffs’ Complaint, Defendant ADMITS that Plaintiff Nicole McDaniel is a citizen of the State of Wisconsin, ADMITS that she was employed by the Wisconsin Department of Corrections at Wisconsin Secure Program Facility, DENIES that such employment occurred “[d]uring the Class Period” because “the Class Period” is not defined, and DENIES the remaining allegations. Defendants AFFIRMATIVELY ALLEGE that Nicole McDaniel, a/k/a Nicole Loomis, resigned on September 24, 2019.

7. Answering paragraph 7 of the “Parties” section of Plaintiffs’ Complaint, Defendant ADMITS that Plaintiff David Smith is a citizen of the State of Wisconsin, ADMITS that he was employed by the Wisconsin Department of Corrections at Dodge Correctional Institution, DENIES that such employment occurred “[d]uring the Class Period” because “the Class Period” is not defined, and DENIES the remaining allegations. Defendant AFFIRMATIVELY ALLEGES that Smith retired from DOC on August 1, 2020.

8. Answering paragraph 8 of the “Parties” section of Plaintiffs’ Complaint, Defendant ADMITS that Plaintiff Matthew Davis is a citizen of the State of Wisconsin and is employed by the Wisconsin Department of Corrections. Defendant DENIES that Davis works at the Oshkosh Correctional Institution. Defendant AFFIRMATIVELY ALLEGES that Davis works at the Wisconsin Resource Center, a Department of Health Services facility for which DOC provides security positions, overseen by the Warden of the Oshkosh Correction Institution. Defendant DENIES that such employment occurred “[d]uring the Class Period” because “the Class Period” is not defined and DENIES the remaining allegations.

#### **B. Defendant**

9. Answering paragraph 9 of the “Parties” section of Plaintiffs’ Complaint, Defendant ADMITS and AFFIRMATIVELY ALLEGES that Defendant has other powers.

#### **Jurisdiction and Venue**

10. Answering paragraph 10 of the “Jurisdiction and Venue” section of Plaintiffs’ Complaint, Defendant AFFIRMATIVELY ALLEGES that the allegations contained therein constitute legal conclusions to which no response is required.

11. Answering paragraph 11 of the “Jurisdiction and Venue” section of Plaintiffs’ Complaint, Defendant AFFIRMATIVELY ALLEGES that the

allegations contained therein constitute legal conclusions to which no response is required, but to the extent a response is required, DENIES.

### **Statement of Facts**

#### **A. WDOC Contracted to Pay Plaintiffs and Other Class Members for all Hours Worked**

Defendant DENIES the allegations in the above heading.

12. Answering paragraph 12 of the “Statement of Facts” section of Plaintiffs’ Complaint, Defendant ADMITS that Plaintiffs are or were employed with the Wisconsin Department of Corrections at some point in time, DENIES that Plaintiffs have obtained or are entitled to class certification, DENIES that such employment occurred “[d]uring the relevant time period” because “the relevant time period” is not defined, and DENIES the remaining allegations.

13. Answering paragraph 13 of the “Statement of Facts” section of Plaintiffs’ Complaint, Defendant DENIES the existence of any employment contracts, DENIES that Plaintiffs have obtained or are entitled to class certification, and DENIES the remaining allegations. Defendants AFFIRMATIVELY ALLEGE that Defendant has agency wide policies pertaining to Compensation Plans, Compensation, Standard Hours of Work, and Additional Hours of Work. Defendants AFFIRMATIVELY ALLEGE that each institution is unique and may have its own policies or practices in regard

to security protocols, entrance and exit procedures, and deadlines for recording time.

14. Answering paragraph 14 of the “Statement of Facts” section of Plaintiffs’ Complaint, Defendant DENIES the existence of any employment contracts, DENIES that Plaintiffs have obtained or are entitled to class certification, DENIES that Plaintiffs are entitled to any of the relief they seek, and DENIES the remaining allegations. Defendants AFFIRMATIVELY ALLEGE that, in accordance with the State of Wisconsin Compensation Plan, certain Fair Labor Standards Act (FLSA) non-exempt professional employees are paid the straight rate until 40 hours are worked within one week and the premium rate (1 1/2 times) is paid for additional hours over 40 hours worked.

15. Answering paragraph 15 of the “Statement of Facts” section of Plaintiffs’ Complaint, Defendant DENIES the existence of any employment contracts, DENIES that Plaintiffs have obtained or are entitled to class certification, DENIES that Plaintiffs are entitled to any of the relief they seek, and DENIES the remaining allegations.

16. Answering paragraph 16 of the “Statement of Facts” section of Plaintiffs’ Complaint, Defendant DENIES the existence of any employment contracts, DENIES that Plaintiffs have obtained or are entitled to class certification, DENIES that Plaintiffs are entitled to any of the relief they seek, and DENIES the remaining allegations. Defendants AFFIRMATIVELY

ALLEGE that, in accordance with the State of Wisconsin Compensation Plan, certain FLSA non-exempt professional employees are paid the straight rate until 40 hours are worked within one week and the premium rate (1 1/2 times) is paid for additional hours over 40 hours worked.

17. Answering paragraph 17 of the “Statement of Facts” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification, DENIES that Plaintiffs have been subject to Department of Corrections Human Resources Policy, Number 200.30.13, Sec. X, entitled “PAYMENT OF OVERTIME” “[d]uring the relevant time period” because “the relevant time period” is not defined, and DENIES the remaining allegations. Defendants AFFIRMATIVELY ALLEGE that, in accordance with the State of Wisconsin Compensation Plan, FLSA non-exempt professional employees are paid the straight rate until 40 hours are worked within one week and the premium rate (1 1/2 times) is paid for additional hours over 40 hours worked.

18. Answering paragraph 18 and all subparagraphs of the “Statement of Facts” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification, DENIES that Plaintiffs have been subject to Wisconsin Human Resources Handbook, ch. 520 “[d]uring the relevant time period” because “the relevant time period” is not defined, DENIES the remaining allegations and AFFIRMATIVELY ALLEGES that

certain allegations contained therein constitute legal conclusions to which no response is required, but to the extent a response is required, DENIES.

**B. Plaintiffs and the Other Class Members Worked Off-The-Clock Without Compensation Both Before and After Their Shifts**

Defendant DENIES the allegations in the above heading.

19. Answering paragraph 19 of the “Statement of Facts” section of Plaintiffs’ Complaint, Defendant ADMITS that the stated activities are activities that one or more Plaintiffs perform to the extent they are employed by DOC, DENIES that Plaintiffs have obtained or are entitled to class certification, and DENIES the remaining allegations.

20. Answering paragraph 20 of the “Statement of Facts” section of Plaintiffs’ Complaint, Defendant ADMITS some of the Plaintiffs have some of the duties described therein, DENIES that Plaintiffs have obtained or are entitled to class certification, and therefore DENIES the remaining allegations.

21. Answering paragraph 21 of the “Statement of Facts” section of Plaintiffs’ Complaint, Defendant ADMITS some of the Plaintiffs have some of the duties described therein, DENIES that Plaintiffs have obtained or are entitled to class certification, and therefore DENIES the remaining allegations.



22. Answering paragraph 22 of the “Statement of Facts” section of Plaintiffs’ Complaint, Defendant DENIES.

23. Answering paragraph 23 of the “Statement of Facts” section of Plaintiffs’ Complaint, Defendant DENIES.

24. Answering paragraph 24, including subparagraphs a. through f., of the “Statement of Facts” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification, and DENIES that all Plaintiffs are required to complete the activities before their scheduled shifts begin in subparagraphs a. through f., and DENIES all remaining allegations.

25. Answering paragraph 25, including subparagraphs a. through f., of the “Statement of Facts” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification, and DENIES that all Plaintiffs are required to complete the activities post-shift in subparagraphs a. through f., and DENIES all remaining allegations.

26. Answering paragraph 26 of the “Statement of Facts” section of Plaintiffs’ Complaint, Defendant ADMITS some of the Plaintiffs have some of the duties described therein, DENIES that Plaintiffs have obtained or are entitled to class certification, and therefore DENIES the remaining allegations

27. Answering paragraph 27 of the “Statement of Facts” section of Plaintiffs’ Complaint, Defendant ADMITS that some Plaintiffs are in close

proximity to inmates and must remain on-guard and vigilant before and after shifts. Defendant AFFIRMATIVELY ALLEGES that Plaintiffs are not required to respond to inmate emergencies or incidents before or after shifts, but if they responded to an emergency during that time, they would be compensated. Defendant DENIES that Plaintiffs have obtained or are entitled to class certification, DENIES that all Plaintiffs are still employed by Defendant, and DENIES the remaining allegations.

28. Answering paragraph 28 of the “Statement of Facts” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification and DENIES the remaining allegations. Defendant AFFIRMATIVELY ALLEGES that some Plaintiffs are placed in pay status prior to screening upon entering the workplace.

29. Answering paragraph 29 of the “Statement of Facts” section of Plaintiffs’ Complaint, Defendant LACKS KNOWLEDGE or information sufficient to form a belief as to the truth of the allegations and therefore DENIES.

30. Answering paragraph 30 of the “Statement of Facts” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification and DENIES the remaining allegations.

31. Answering paragraph 31 of the “Statement of Facts” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification and DENIES the remaining allegations.

32. Answering paragraph 32 of the “Statement of Facts” section of Plaintiffs’ Complaint, Defendant ADMITS that each institution runs its own operations resulting in variances in pre- and post-shift activities, DENIES that Plaintiffs have obtained or are entitled to class certification, and DENIES the remaining allegations.

33. Answering paragraph 33 of the “Statement of Facts” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification and DENIES the remaining allegations. Defendant AFFIRMATIVELY ALLEGES that some Plaintiffs are placed in pay status prior to screening upon entering the workplace. Defendant ADMITS that per HR policy, employees are considered on duty when they are present at their assigned work location/post, and prepared to assume their duties, at their designated start time. Additionally, upon exit, employees are on duty until they are relieved by the oncoming shift or it is their designated stop time (for posts that do not require relief). Defendant DENIES the remaining allegations and AFFIRMATIVELY ALLEGES that exiting the workplace is required by all employees and is not integral and indispensable to the principal activities of their employment.

34. Answering paragraph 34 of the “Statement of Facts” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification, and therefore DENIES the remaining allegations. Defendant AFFIRMATIVELY ALLEGES that the Department does not use timeclocks and pays its employees in accordance with what time employees record in PeopleSoft Employee Self Service (ESS) and supervisors approve in Manager Self Service (MSS).

35. Answering paragraph 35 of the “Statement of Facts” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification and DENIES the remaining allegations. Defendant AFFIRMATIVELY ALLEGES its employees are compensated for their time on-duty.

36. Answering paragraph 36 of the “Statement of Facts” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification, and AFFIRMATIVELY ALLEGES that the remaining allegations contained therein constitute legal conclusions to which no response is required, but to the extent a response is required, DENIES.

37. Answering paragraph 37 of the “Statement of Facts” section of Plaintiffs’ Complaint, Defendant AFFIRMATIVELY ALLEGES that the allegations contained therein constitute legal conclusions to which no response is required, but to the extent a response is required, DENIES.

38. Answering paragraph 38 of the “Statement of Facts” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification, DENIES that any contracts exist, and AFFIRMATIVELY ALLEGES that the remaining allegations contained therein constitute legal conclusions to which no response is required, but to the extent a response is required, DENIES.

39. Answering paragraph 39 of the “Statement of Facts” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification, and AFFIRMATIVELY ALLEGES that the remaining allegations contained therein constitute legal conclusions to which no response is required, but to the extent a response is required, DENIES.

40. Answering paragraph 40 of the “Statement of Facts” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification, DENIES Defendant failed to keep accurate time records, and AFFIRMATIVELY ALLEGES that the remaining allegations contained therein constitute legal conclusions to which no response is required, but to the extent a response is required, DENIES.

### **Class Action Allegations**

41. Answering paragraph 41 of the “Class Action Allegations” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification and DENIES any remaining allegations.

42. Answering paragraph 42 of the “Class Action Allegations” section of Plaintiffs’ Complaint, Defendant DENIES because “within the Class Period” is not defined. Defendant ADMITS the policies and practices described in the Complaint were in place on a Department-wide basis during the two years before the Complaint was filed in this matter.

43. Answering paragraph 43 of the “Class Action Allegations” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification and DENIES any remaining allegations.

44. Answering paragraph 44 of the “Class Action Allegations” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification and DENIES any remaining allegations. Defendant AFFIRMATIVELY ALLEGES that the allegations contained therein constitute legal conclusions to which no response is required, but to the extent a response is required, DENIES.

45. Answering paragraph 45, including subparagraphs a. through q., of the “Class Action Allegations” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification and DENIES any remaining allegations. Defendant AFFIRMATIVELY ALLEGES that the allegations contained therein constitute legal conclusions to which no response is required, but to the extent a response is required, DENIES.

46. Answering paragraph 46 of the “Class Action Allegations” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification and DENIES any remaining allegations. Defendant AFFIRMATIVELY ALLEGES that the allegations contained therein constitute legal conclusions to which no response is required, but to the extent a response is required, DENIES.

47. Answering paragraph 47 of the “Class Action Allegations” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification and DENIES any remaining allegations. Defendant AFFIRMATIVELY ALLEGES that the allegations contained therein constitute legal conclusions to which no response is required, but to the extent a response is required, DENIES.

48. Answering paragraph 48 of the “Class Action Allegations” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification and DENIES any remaining allegations. Defendant AFFIRMATIVELY ALLEGES that the allegations contained therein constitute legal conclusions to which no response is required, but to the extent a response is required, DENIES.

49. Answering paragraph 49 of the “Class Action Allegations” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification and DENIES any remaining allegations.

Defendant AFFIRMATIVELY ALLEGES that the allegations contained therein constitute legal conclusions to which no response is required, but to the extent a response is required, DENIES.

50. Answering paragraph 50 of the “Class Action Allegations” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification and DENIES any remaining allegations. Defendant AFFIRMATIVELY ALLEGES that the allegations contained therein constitute legal conclusions to which no response is required, but to the extent a response is required, DENIES.

### **Claims for Relief**

#### **Count One Wisconsin Wage and Hour Laws**

51. Answering paragraph 51 of the “Claims for Relief Count One” section of Plaintiffs’ Complaint, Defendant realleges and incorporates its responses made in the previous paragraphs.

52. Answering paragraph 52 of the “Claims for Relief Count One” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification and AFFIRMATIVELY ALLEGES that the allegations contained therein constitute legal conclusions to which no response is required, but to the extent a response is required, DENIES.

53. Answering paragraph 53 of the “Claims for Relief Count One” section of Plaintiffs’ Complaint, Defendant AFFIRMATIVELY ALLEGES that



the allegations contained therein constitute legal conclusions to which no response is required.

54. Answering paragraph 54 of the “Claims for Relief Count One” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification and AFFIRMATIVELY ALLEGES that the remaining allegations contained therein constitute legal conclusions to which no response is required, but to the extent a response is required, DENIES.

55. Answering paragraph 55 of the “Claims for Relief Count One” section of Plaintiffs’ Complaint, Defendant AFFIRMATIVELY ALLEGES that the allegations contained therein constitute legal conclusions to which no response is required, but to the extent a response is required, DENIES.

56. Answering paragraph 56 of the “Claims for Relief Count One” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification, Defendant DENIES the remaining allegations.

57. Answering paragraph 57 of the “Claims for Relief Count One” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification and AFFIRMATIVELY ALLEGES that the remaining allegations contained therein constitute legal conclusions

to which no response is required, but to the extent a response is required, DENIES.

58. Answering paragraph 58 of the “Claims for Relief Count One” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification and AFFIRMATIVELY ALLEGES that the remaining allegations contained therein constitute legal conclusions to which no response is required, but to the extent a response is required, DENIES.

59. Answering paragraph 59 of the “Claims for Relief Count One” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification and DENIES the remaining allegations.

60. Answering paragraph 60 of the “Claims for Relief Count One” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification and DENIES the remaining allegations.

61. Answering paragraph 61 of the “Claims for Relief Count One” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification and AFFIRMATIVELY ALLEGES that the remaining allegations contained therein constitute legal conclusions

to which no response is required, but to the extent a response is required, DENIES.

62. Answering paragraph 62 of the “Claims for Relief Count One” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification and DENIES the remaining allegations.

63. Answering paragraph 63 of the “Claims for Relief Count One” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification and AFFIRMATIVELY ALLEGES that the remaining allegations contained therein constitute legal conclusions to which no response is required, but to the extent a response is required, DENIES.

64. Answering paragraph 64 of the “Claims for Relief Count One” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification and AFFIRMATIVELY ALLEGES that the remaining allegations contained therein constitute legal conclusions to which no response is required, but to the extent a response is required, DENIES.

65. Answering paragraph 65 of the “Claims for Relief Count One” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification and AFFIRMATIVELY ALLEGES

that the remaining allegations contained therein constitute legal conclusions to which no response is required, but to the extent a response is required, DENIES.

66. Answering paragraph 66 of the “Claims for Relief Count One” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification and DENIES Plaintiffs are entitled to any of the relief they seek.

67. Answering paragraph 67 of the “Claims for Relief Count One” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification and DENIES Plaintiffs are entitled to any of the relief they seek.

**Count Two**  
**Breach of Contract**

68. Answering paragraph 68 of the “Claims for Relief Count Two” section of Plaintiffs’ Complaint, Defendant realleges and incorporates its responses made in the previous paragraphs.

69. Answering paragraph 69 of the “Claims for Relief Count Two” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification, ADMITS that Plaintiffs are required to comply with State and DOC policies and procedures, and DENIES that any Contracts exist.

70. Answering paragraph 70 of the “Claims for Relief Count Two” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification and DENIES that any Contracts exist.

71. Answering paragraph 71 of the “Claims for Relief Count Two” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification, DENIES that any Contracts exist, and AFFIRMATIVELY ALLEGES that the remaining allegations contained therein constitute legal conclusions to which no response is required, but to the extent a response is required, DENIES.

72. Answering paragraph 72 of the “Claims for Relief Count Two” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification, DENIES that any Contracts exist, and AFFIRMATIVELY ALLEGES that the remaining allegations contained therein constitute legal conclusions to which no response is required, but to the extent a response is required, DENIES.

73. Answering paragraph 73 of the “Claims for Relief Count Two” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification, DENIES that any Contracts exist, and AFFIRMATIVELY ALLEGES that the remaining allegations

contained therein constitute legal conclusions to which no response is required, but to the extent a response is required, DENIES.

74. Answering paragraph 74 of the “Claims for Relief Count Two” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification, DENIES that any Contracts exist, and AFFIRMATIVELY ALLEGES that the remaining allegations contained therein constitute legal conclusions to which no response is required, but to the extent a response is required, DENIES.

75. Answering paragraph 75 of the “Claims for Relief Count Two” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification, DENIES that any Contracts exist, and AFFIRMATIVELY ALLEGES that the remaining allegations contained therein constitute legal conclusions to which no response is required, but to the extent a response is required, DENIES.

76. Answering paragraph 76 of the “Claims for Relief Count Two” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification, DENIES that any Contracts exist, and AFFIRMATIVELY ALLEGES that the remaining allegations contained therein constitute legal conclusions to which no response is required, but to the extent a response is required, DENIES.

77. Answering paragraph 77 of the “Claims for Relief Count Two” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification, and DENIES Plaintiffs are entitled to any of the relief they seek. Defendant AFFIRMATIVELY ALLEGES that this Court dismissed Plaintiffs’ Breach of Contract claim in a May 3, 2021, Order.

**Count Three  
Unjust Enrichment**

78. Answering paragraph 78 of the “Claims for Relief Count Three” section of Plaintiffs’ Complaint, Defendant realleges and incorporates its responses made in the previous paragraphs.

79. Answering paragraph 79 of the “Claims for Relief Count Three” section of Plaintiffs’ Complaint, Defendant ADMITS that Plaintiffs plead Count Three in the alternative to Count Two and DENIES Plaintiffs are entitled to any relief.

80. Answering paragraph 80 of the “Claims for Relief Count Three” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification and DENIES the remaining allegations.

81. Answering paragraph 81 of the “Claims for Relief Count Three” section of Plaintiffs’ Complaint, Defendant DENIES.

82. Answering paragraph 83 of the “Claims for Relief Count Three” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification and DENIES the remaining allegations.

83. Answering paragraph 83 of the “Claims for Relief Count Three” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification and DENIES the remaining allegations.

84. Answering paragraph 84 of the “Claims for Relief Count Three” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification and DENIES the remaining allegations.

85. Answering paragraph 85 of the “Claims for Relief Count Three” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification, AFFIRMATIVELY ALLEGES that the remaining allegations contained therein constitute legal conclusions to which no response is required, but to the extent a response is required, DENIES.

86. Answering paragraph 86 of the “Claims for Relief Count Three” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have



obtained or are entitled to class certification, and DENIES Plaintiffs are entitled to any of the relief they seek.

87. Answering paragraph 87 of the “Claims for Relief Count Three” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification, AFFIRMATIVELY ALLEGES that the remaining allegations contained therein constitute legal conclusions to which no response is required, but to the extent a response is required, DENIES. Defendant AFFIRMATIVELY ALLEGES that this Court dismissed Plaintiffs’ Unjust Enrichment claim in a May 3, 2021, Order.

#### **Count Four Declaratory Judgment**

88. Answering paragraph 88 of the “Claims for Relief Count Four” section of Plaintiffs’ Complaint, Defendant realleges and incorporates its responses made in the previous paragraphs.

89. Answering paragraph 89 of the “Claims for Relief Count Four” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification and AFFIRMATIVELY ALLEGES that the remaining allegations contained therein constitute legal conclusions to which no response is required, but to the extent a response is required, DENIES.

90. Answering paragraph 90 of the “Claims for Relief Count Four” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have

obtained or are entitled to class certification and AFFIRMATIVELY ALLEGES that the remaining allegations contained therein constitute legal conclusions to which no response is required, but to the extent a response is required, DENIES.

91. Answering paragraph 91 of the “Claims for Relief Count Four” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification and AFFIRMATIVELY ALLEGES that the remaining allegations contained therein constitute legal conclusions to which no response is required, but to the extent a response is required, DENIES.

92. Answering paragraph 92 of the “Claims for Relief Count Four” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification and AFFIRMATIVELY ALLEGES that the remaining allegations contained therein constitute legal conclusions to which no response is required, but to the extent a response is required, DENIES.

93. Answering paragraph 93 of the “Claims for Relief Count Four” section of Plaintiffs’ Complaint, Defendant DENIES that Plaintiffs have obtained or are entitled to class certification and AFFIRMATIVELY ALLEGES that the remaining allegations contained therein constitute legal conclusions to which no response is required, but to the extent a response is required,

DENIES. Defendant AFFIRMATIVELY ALLEGES that this Court dismissed Plaintiffs' Declaratory Judgment claim, in part, in a May 3, 2021, Order.

**REQUEST FOR RELIEF**

Answering the Requests for Relief section of Plaintiffs' Complaint, Defendant **DENIES** Plaintiffs are entitled to any of the relief they seek.

### **OTHER**

Defendant **DENIES** any and all paragraphs in Plaintiffs' Complaint not specifically admitted above.

### **DEFENSES**

As and for the defenses in this action, Defendant states as follows:

1. Plaintiffs' Complaint must be dismissed for non-compliance with Wis. Stat. § 802.04(1).
2. Any damages sustained by Plaintiffs were caused by intervening and/or superseding causes over which this answering Defendant had no control, including but not limited to, the acts or omissions of Plaintiff.
3. All or a portion of Plaintiffs' Complaint is subject to or barred by the doctrines of comparative negligence or contributory negligence.
4. All or portions of Plaintiffs' Complaint must be dismissed pursuant to sovereign immunity.
5. All or a portion of Plaintiffs' Complaint fails to state a claim upon which relief can be granted.
6. All or a portion of Plaintiffs' Complaint must be dismissed for non-compliance with the applicable statute of limitations.
7. All or a portion of Plaintiffs' Complaint must be dismissed because Defendant has provided payment.

8. Plaintiffs lack standing for the purpose of pursuing some or all of the claims made against Defendant.

9. Defendant reserves all possible defenses to class action certification.

10. Defendant reserves the right to name additional defenses, as they may become known through further discovery or otherwise in this action.

Dated this 2nd day of August 2021.

Respectfully submitted,

JOSHUA L. KAUL  
Attorney General of Wisconsin

Electronically signed by:

s/ Steven C. Kilpatrick  
STEVEN C. KILPATRICK  
Assistant Attorney General  
State Bar #1025452

COLIN A. HECTOR  
Assistant Attorney General  
State Bar #1120064

KARLA Z. KECKHAVER  
Assistant Attorney General  
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### **CERTIFICATE OF SERVICE**

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed the foregoing Answer to Second Amended Class Action Complaint with the clerk of court using the Wisconsin Circuit Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

I further certify that a copy of this document was mailed on August 2, 2021, to:

CHRISTOPHER STOMBAUGH  
DICELLO, LEVITT, GUTZLER, LLC.  
POST OFFICE BOX 437,  
PLATTEVILLE, WI 53818

Dated this 2nd day of August 2021.

s/ Steven C. Kilpatrick  
STEVEN C. KILPATRICK  
Assistant Attorney General