UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION

BAMIDELE AIYEKUSIBE, MISCHELE HIGGINSON, and SHANTAL BROWN-WINN, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

THE HERTZ CORPORATION and DTG OPERATIONS, INC.

Defendants.

CASE NO.: 2:18-CV-816-FtM-99MRM

COLLECTIVE ACTION REPRESENTATION

PLAINTIFFS' FOURTH AMENDED COLLECTIVE ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs, BAMIDELE AIYEKUSIBE, MISCHELE HIGGINSON, and SHANTAL BROWN-WINN, individually and on behalf of all others similarly situated who consent to their inclusion in this national collective action, bring this lawsuit pursuant to § 216(b) of the Fair Labor Standards Act ("FLSA"), against the above captioned Defendants, THE HERTZ CORPORATION, (hereinafter referred to as "Hertz" or "Defendant) and DTG OPERATIONS, INC. (hereinafter referred to as

"DTG" and collectively with Hertz as "Defendants") for violations of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* for failure to pay overtime compensation and any premium for all hours worked over forty (40) each week.

INTRODUCTION

1. The Fair Labor Standards Act is our nation's foremost wage law. The overtime requirements of the FLSA were designed to eliminate "labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers..." 29 U.S.C. §202(a). To achieve its goals, the FLSA sets minimum wage and overtime pay requirements for covered employers. 29 U.S.C. §§206(a) & 207(a). It requires minimum wage and overtime pay for certain non-exempt employees. 29 U.S.C. § 213.

2. Plaintiff, Bamidele Aiyekusibe (hereinafter referred to as "Aiyekusibe") worked for Defendants from November 2017, until his termination on or about November 8, 2018, working under the job titles, first as "Location Manager," and then as a "Function Manager"; aka "Functional Manager".

3. Plaintiff Mischele Higginson (hereinafter referred to as "Higginson"), worked for Defendants from approximately September 2017, until June 2018, first as a Location Manager, and then sometime in 2018 was later informed her job title changed to Function Manager.

4. Plaintiff Shantal Brown-Winn (hereinafter referred to as "Brown-Winn"), worked for Defendants from approximately November 2017 to March 22, 2019, first as a Location Manager for Hertz, but was then later assigned to work for the Dollar Thrifty brand. Subsequent to that, sometime in 2018 her job title was changed to Function Manager.

5. Plaintiffs, like their fellow Function and Location Managers, and members of this putative Class, worked at Defendants' rental car locations at Airports across the United States and its territories, were paid on a salary basis and improperly classified by Defendants as exempt employees under the FLSA.

6. Defendants classified all Function Managers and Location Managers as Exempt from overtime wages pursuant to either State law or the FLSA, without ever undertaking any individualized analysis of each person's job duties and responsibilities actually performed, and without regard to variances at each Airport Location.

7. Defendants classified the positions of Location Manager, Location Manager Trainee, Function Manager, and Functional Manager, (hereinafter referred to as "Managers") who comprise this proposed putative class of similarly situated, all as "Exempt" and not entitled to receive a premium for any overtime hours worked; and no overtime compensation was paid to Plaintiffs and this class of similarly situated for any hours that they worked for Defendants in excess of forty (40) hours in any single workweek.

7. Further, Plaintiffs, like their fellow Managers in Defendants' Airport rental car locations across the U.S. and its territories, in the past three (3) years preceding the filing of this complaint, and still to this day, were systematically denied any overtime pay for hours they worked in excess of forty (40) hours on behalf of Defendants.

8. Defendants maintained a common unlawful pay practice applicable to all Managers, treating them all as salaried, exempt employees, and having them work upwards of even eighty (80) or more hours in a week performing laborious, non-exempt duties, all for the purpose of increasing profits and saving many millions of dollars each year in labor costs.

9. Accordingly, Plaintiffs, individually, and on behalf of all others similarly situated who consent to their inclusion in this collective action, sue Defendants for violations

of the Fair Labor Standards Act for: (1) failing to pay the Plaintiffs, and others similarly situated, overtime compensation; and (2) failing to maintain and preserve accurate and true records of all hours worked.

10. Hertz Corp also operates the Dollar and Thrifty brands at most of the same Airports where it operates the Hertz brand. Plaintiffs, and the class of similarly situated, performed work for all these brands throughout their employment.

11. At airports where Hertz offers both Hertz brand rental cars and Dollar or Thrifty rental cars, Hertz utilizes the Location and Function Managers to perform work for the Dollar and Thrifty brands as well, including renting those brands of cars, cleaning and transporting cars to or from all brands, as Hertz and Dollar/Thrifty share the same fleet of cars for its brands at each airport.

CLASS DEFINITION AND RELIEF SOUGHT

12. This collective action is to recover from Defendants overtime compensation, liquidated damages, prejudgment interest, and the costs and reasonable attorney's fees under 29 U.S.C. §216(b) on behalf of the Plaintiffs and all similarly situated persons composed of:

> All persons employed by HERTZ Corporation, including through its wholly owned subsidiary, DTG OPERATIONS, INC., as Function Managers, Functional Managers, Location Managers or Location Manager Trainees, and any other job titles previously or currently used to describe the same position at any Airport location in the United States and its territories, at any time within the three (3) years preceding this lawsuit to the day of trial.

JURISDICTION AND VENUE

13. This Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. §1331, because this action involves a federal question under the Fair Labor Standards Act, 29 U.S.C., §§ 201-219, inclusive.

14. This Court has personal jurisdiction over this action because the Defendants are engaged in business within the State of Florida.

15. Venue is proper in the Middle District of Florida pursuant to 28 U.S.C. 1391(b) because acts complained of herein took place in this District, this is the home District where Defendants' corporate offices are located, and where the unlawful policies and practices complained of herein were created, carried and enforced.

THE PARTIES

16. At all times relevant to this action, Representative Plaintiff, Bamidele Aiyekusibe, resided in Houston, Texas, Representative Plaintiff, Mischele Higginson, resided in Maryland, and Representative Plaintiff, Shantal Brown-Winn, resided in Maryland.

17. At all times relevant to this action, Plaintiff Aiyekusibe worked for Hertz at its rental car facility or location at the William P. Hobby International Airport, in Houston, Texas.

18. At all times relevant to this action, Plaintiff Higginson worked for Hertz at its rental car facility or location at the Baltimore/Washington International Thurgood Marshall Airport ("BWI") in Baltimore, Maryland.

19. At all times relevant to this action, Plaintiff Brown-Winn worked for Hertz and Dollar/Thrifty at its rental car facility or location at BWI Airport in Baltimore, Maryland.

20. At all times relevant to this action, Aiyekusibe, Higginson Brown-Winn, and all other members of the proposed putative class of similarly situated, were employees of Defendants within the meaning of 29 U.S.C. § 203(e)(1).

21. Aiyekusibe initially worked under the title of Location Manager, and then his position was renamed or retitled as a Function or Functional Manager during his employment with Hertz from November 2017, until his termination on or about November 7, 2018.

22. When hired, Plaintiffs Aiyekusibe, Higginson and Brown-Winn were given the title of Location Manager and Defendants have used interchangeably the title of Location Manager as synonymous with Function Manager. Hertz even posts a job under the term "Location Manager" on its website, but in the description, refers to this posted position as a Function Manager part of the Operations Management. Other postings for Function Manager or Functional Manager all describe the same position. See https://hertz.jobs/tucson-az/locationmanager/7CDB152773E44827853E88CD44BA0510/job/; https://hertz.jobs/boston-ma/functionmanager/F58E07A821B9477085965638AFB44387/job/; https://hertz.jobs/greer-sc/functionmanager/94778860B13D4EF9B8F5E7F03C0DA9D9/job/.

23. For purposes of the collective action, Aiyekusibe, Higginson, and Brown-Winn herein by this Complaint give their written consents to be a party to this action pursuant to 29 U.S.C. § 216(b).

24. At all times relevant to this action, Defendants employed Aiyekusibe, Higginson, Brown-Winn, and all other Managers of this proposed FLSA collective action, within the meaning of 29 U.S.C. § 203(g).

DEFENDANT HERTZ CORPORATION

24. Defendant, HERTZ CORPORATION, is a for-profit corporation, which owns and operates the Hertz brand and its associated Hertz rental car facilities and locations across the United States and its territories, at airports and other non-airport locations, with its principal place of business at 8501 Williams Road, Estero, Florida 33928. Defendant Hertz Corporation can be served through its registered agent, CT Corporation System, 1200 S. Pine Island Road, Plantation, FL 33324.

25. Hertz is one of the nation's largest rental car companies, with over 1600 franchise and corporate owned locations nationally, including Puerto Rico and the US Virgin Islands, and also operates Dollar and Thrifty rental companies and brands.

26. Based upon information and belief and from the HERTZ 10k, and other information, Hertz employs more than 1,000 Function Managers and/or Location Managers throughout the United States at over 200 airport locations. These include four (4) or more currently employed Function Managers at Hobby International in Houston, and five (5) or more at the BWI airport.

27. Given turnover, Plaintiffs believe there are upwards of 3,000 or more members in this proposed putative class whose rights are affected by this case.

28. Hertz conducts substantial business in the state of Florida and throughout the country subjecting it to enterprise coverage under the FLSA.

29. Hertz had more than $500,000 in revenues for the preceding three (3) years of 2018, 2017, and 2016.

30. At all relevant times, Hertz has been and continues to be an employer engaged in interstate commerce and/or the production of goods for commerce, within the meaning of FLSA 29 U.S.C. §§ 206(a) and 207(a).

31. HERTZ is subject to the FLSA as a matter of law under enterprise coverage.

DEFENDANT DTG OPERATIONS, INC.

32. Defendant, DTG OPERATIONS, INC., is a for-profit corporation, which owns the Dollar and Thrifty brands and its associated rental car facilities and locations across the United States and its territories, at airports and other non-airport locations, with its principal place of business at 8501 Williams Road, Estero, Florida 33928. Defendant DTG can be served

through its registered agent, CT Corporation System, 1200 S. Pine Island Road, Plantation, FL 33324.

33. DTG is a wholly owned subsidiary of Hertz, which in turn controls and manages the operations of DTG.

34. DTG and Hertz share the same principal place of business and registered agent.

35. DTG conducts substantial business in the state of Florida and throughout the country subjecting it to enterprise coverage under the FLSA.

36. Upon information and belief, DTG employs more than 1,000 Function Managers and/or Location Managers throughout the United States and had more than $500,000 in revenues for the preceding three (3) years of 2018, 2017, and 2016.

37. At all relevant times, DTG has been and continues to be an employer engaged in interstate commerce and/or the production of goods for commerce, within the meaning of FLSA 29 U.S.C. §§ 206(a) and 207(a).

38. DTG is subject to the FLSA as a matter of law under enterprise coverage.

GENERAL ALLEGATIONS

39. Hertz operates its Hertz, Dollar, and Thrifty brands as a single business enterprise.

40. Defendants operate their vehicle rental business through three (3) brands: Hertz, Dollar, and Thrifty, thereby offering to the public varying levels of products, services, and price points. However, all three (3) brands use "a single fleet, fleet management team and combined maintenance, cleaning and back office functions, where applicable." See Hertz's 2017 10-K Report at 4.

41. Based upon information and belief, all Location and Function(al) Managers were, and are still, ultimately supervised by a HERTZ CORP General or Branch Managers, or some sort of District Manager who oversees the management of the rental locations and its staff, regardless of the brand a Manager is primarily working for and regardless of the entity paying their wages.

42. Upon information and belief, at each airport location, a Hertz Corp. General or Branch Manager, or District Manager oversees the Hertz and DTG Function(al) and Location Manager employees as a single work force.

43. All Location and Function Managers for both Defendants or brands at each airport location attend weekly, and other periodic important management meetings, regardless of the brand they work for or the Defendant which pays their wages; and during such meetings airport and company policies and procedures are discussed, enforced and rolled out and are applicable to all Location and Function Managers as a single workforce.

44. Location and Function Managers of Hertz and DTG are subject to the same overtime policies, the same classification as non-exempt employees, the same compensation plans, the same training, career paths, job titles, hierarchy, employment policies and procedures and receive the same employee manuals as does a Manager from a sister brand.

45. Location and Function Managers worked for all brands simultaneously, meaning a Hertz Manager has frequently worked the Dollar and Thrifty rental counter, and vice versa.

46. Additionally, some opt-in plaintiffs, including Plaintiff Brown-Winn, applied for a Manager position with Hertz and ended up working as a Manager for DTG.

47. Hertz looks at its staffing needs for the location as a whole. Where they are short staffed, they draw employees from whatever brand has Managers available. Thus, if Dollar or Thrifty is short staffed, a Hertz Location or Function Manager will fill that spot.

48. Essentially, Defendants do not really care which brand the Location or Function Manager is assigned to or paid from, so long as there is a Location or Function Manager to fuel, clean, stall, and prepare Defendants' fleet of cars for rental.

49. DTG and Hertz are joint employers over the putative class of similarly situated.

50. Based upon information and belief, the Location and Function (or Functional) Manager job descriptions are the same, and nearly identical in all States across the nation.

51. Job descriptions and postings for Location Manager, Function or Functional Manager positions for both Defendants' brands are nearly identical and are found on the same website.

52. The attached job postings are both from the Hertz website for Manager positions in Salt Lake City, Utah. The first posting is for a Dollar Thrifty Function Manager, the second is for a Hertz Function Manager. Except for changing the word Hertz to Dollar Thrifty, and vice versa, these job descriptions for putatively different companies are, word for word, exactly the same. See *Exhibit A Dollar Thrifty Function Manager*; *Exhibit B Hertz Function Manager*.

53. Defendants historically have not required a four (4) year college degree or four (4) year college education as a condition or requirement for employment in Manager Positions; Plaintiff Higginson does not have a four (4) year college degree and neither do numerous other Location and Function Managers who are opt-in plaintiffs in this case.

54. Plaintiffs, and members of the Class, worked overtime hours on a regular and routine basis and were scheduled by Defendants to work a mandatory overtime work schedule, including being instructed not to leave until all job duties and responsibilities were completed.

55. Plaintiffs, and all other members of the putative class of similarly situated in this proposed collective action, are and were employees of Defendants within the meaning of 29 U.S.C. § 203(e)(1).

56. Plaintiffs and members of the Class were willfully misclassified by Defendants as a whole, or group, as exempt employees, regardless and without any individualized analysis of their actual work performed, and thus, all were declared by Defendants not entitled to be paid a premium for hours worked in excess of forty (40) per week.

57. Despite Defendants' classification of its Managers, including Plaintiffs and members of the Class as exempt from the overtime protections of the FLSA, and any applicable State laws, the primary job duty or duties, responsibilities and the actual circumstances of each Function and Location Managers' work environment, as well as the character of their jobs as a whole, dictate that they were not, and should not have been classified as exempt under the FLSA. The reality was, and is, that Plaintiffs and members of the Class were, and/or, are not in reality managers or executives as that term is defined pursuant to the FLSA, as their primary duty and primary job duties and responsibilities were not managing the locations.

58. During their employment with Defendants, the Plaintiffs' primary job duties were performing repetitive, laborious, and non-exempt work, such as, renting cars, cleaning and fueling cars, checking in or returning cars, and working the exit gate, all of which are part of production and the flow of rental cars in and out of the airport locations.

59. Plaintiffs' primary job duty was not managing and directing the work of subordinate employees or managing Defendants' enterprise or location, as those terms are defined under the FLSA, the corresponding CFR, and the Executive or Administrative Exemptions.

60. Plaintiffs Aiyekusibe, Higginson, and Brown-Winn did not perform annual job reviews of their alleged subordinate employees, such as counter staff, flex staff, lot employees, cleaners, service employees or Vehicle Service Attendants.

61. Managers who worked rental counters sometimes did so alone or with just one (1) other hourly employee, but not two (2) or more full-time employees.

62. Plaintiff Aiyekusibe was supposedly to supervise and "manage" a group of Vehicle Service Attendants (VSAs), but, in reality, did not as he did not direct their work, delegate work to them, set their schedules, make decisions on discipline, evaluate their annual job performance, nor make decisions or recommendations on hiring, firing or disciplining of employees, nor have any role in determining their pay rates or raises.

63. Plaintiff Higginson was supposedly to supervise and manage staff at the rental counter and exit booth or gate, but in reality, she primarily handled the same work as they performed, basic non-exempt duties of customer service, and did not direct their work, delegate work to them, make decisions on disciplining them, make decisions or recommendations on hiring or firing employees, or otherwise have any role in determining their pay rates or raises.

64. Plaintiff Brown-Winn was supposedly to supervise and manage staff at the rental counter and exit booth or gate, but in reality, she primarily handled the same work as they performed, basic non-exempt duties of customer service, and did not direct their work, delegate work to them, make decisions on disciplining them, make decisions or recommendations on hiring or firing employees, or otherwise have any role in determining their pay rates or raises.

65. In fact, Plaintiffs were never involved with decisions on hiring or firing, and none were involved with selecting employees to interview or conduct the job interviews, and/or giving recommendations on hiring to their superiors that were given any weight. Likewise, Plaintiffs had no authority or discretion to discipline any employees.

66. Plaintiff Aiyekusibe's job duties primarily were repetitive manual labor, hands-on work and well known to be recognized as non-exempt job duties such as cleaning cars, moving cars, fueling cars, inspecting cars, and getting the vehicles ready for rental by customers or

customer service. Plaintiff Aiyekusibe primarily worked outside or in the "lot," and his job duties generally and primarily were not involved with either sales or renting vehicles or customer service, nor managing the Hertz location.

67. Plaintiff Higginson also spent the majority of her work hours working outside and was involved with cleaning, transporting, fueling, washing and checking in cars, with other duties of working the rental counter and exit gate or booth, where customers are either checked out or their information verified, all of which are non-specialized menial job functions.

68. Plaintiff Brown-Winn also spent the majority of her time performing repetitive job duties such as cleaning, transporting, fueling, washing and checking in cars, with other duties of working the rental counter and exit gate or booth, where customers are either checked out or their information is verified, all of which are non-specialized menial job functions.

69. Aiyekusibe, Higginson, and Brown-Winn were directed and instructed by their General or Branch managers to areas in the airport and lot to perform the same work as other hourly staff, working side-by-side hourly non-exempt employees. They could not delegate these assignments or tasks to others or refuse the instructions.

70. Managers were instructed to fill in gaps where needed because of lack of hourly employed staff if the location was behind in moving cars in and out of the rental car process.

71. Managers also worked other parts of the Airport locations performing additional, non-exempt duties such as customer service or working the counter inside, renting cars or inside sales, working the Gold-booth, working the gate, or working the check-ins, performing in fleeting, inspecting cars etc. However, all were treated as Exempt from overtime as a class and no individualized analysis or assessment was ever conducted by Defendants as to their job duties and the satisfaction of any Exemption under the FLSA.

72. The overwhelming majority of Plaintiffs and members of the putative Class' work hours were, or are still, spent performing such repetitive menial tasks and/or hands-on laborious, nonexempt job duties as described in paragraphs 58 and 59: cleaning cars, washing cars, moving cars, customer service, renting cars, in fleeting new cars, placing cars in stalls, data entry and reporting, fueling cars, working the exit gates and the Gold-booth, delivering or transporting cars, or working the instant check-in lanes or return sections.

73. Plaintiffs and other Managers, while working in the lots and outside, were not generally providing customer facing services which Defendants call the rental counter, the exit gate or the returns. Such laborious duties were well known to Defendants to be non-exempt duties, while performing these job duties throughout their work weeks, Plaintiffs' primary job duties were not management, nor did they involve the exercise of discretion and independent judgment in matters of significance.

74. Similarly, Defendants knew that the customer service work performed by Location and Function Managers are generally not recognized as exempt job duties under the FLSA, and while Plaintiffs, including Higginson, Brown-Winn and other opt-in Plaintiffs in this case who did perform such work at rental counters and exit gates were working these areas, their primary duty was still not managing the enterprise or location, nor did it involve the exercise of discretion and independent judgment in matters of significance.

75. Those Managers working in the exterior generally had no role with Defendants' sales and did not involve exercising discretion and independent judgment in matters of significance related to the company and its rental business, or otherwise were making any decisions affecting management or company policies.

76. Plaintiffs, as well as other Managers, were involved with the movement of Defendants' cars and the production aspect or element of Defendants' business, and their roles

were primarily to keep the flow of vehicles moving and out of the airport and vehicles cleaned, and ready for rental.

77. At the Hobby Airport rental location, Hertz employed four (4) or more other outside Managers, and the day was divided into two (2) shifts among them. Hertz also had four (4) other inside Managers at this location whose duties and job requirements were similar to Plaintiff Aiyekusibe.

78. Plaintiff Aiyekusibe was advised by his superior that he was to be primarily in charge of the car wash and the fuel pump areas, while other Managers were responsible for instant returns, the lot, cleaning, replenishing, stalling of vehicles, or working the gate. However, Aiyekusibe also performed work in the other areas as needed or instructed by his superiors.

79. Plaintiff Higginson spent part of her daily shift working either the rental counter or the exit gate booth, but routinely spent much of her work day cleaning cars, fueling cars, checking in and handling returns of cars, moving and transporting cars from different areas and into stalls.

80. Plaintiff Brown-Winn spent part of her daily shift working either the rental counter or the exit gate booth, but routinely spent much of her work day cleaning cars, fueling cars, checking in and handling returns of cars, moving and transporting cars from different areas and into stalls.

81. Plaintiffs' primary job duties, and the majority of their job duties, were routine, repetitive and did not involve the exercise of discretion of independent judgment in matters of significance, nor involve the necessity to make any decisions related to the Defendants' business or business operation, including the management of the location.

82. Plaintiffs and members of the Class did not have the authority to make the decisions on hiring or firing employees, nor could they set pay, provide pay raises to employees or promote employees or make any other type of personnel decision; only their superiors or Branch or General Managers had such authority to do so.

83. Plaintiffs and members of the Class' duties did not involve making decisions on which employees to interview nor were they interviewing and making recommendations on hiring of employees.

84. Likewise, Plaintiffs and members of the Class' job duties did not provide them with the authority to make independent decisions on matters that affected the business as a whole or any significant part of the business, or any decisions free from direct oversight and requiring approval by their superiors. Their respective job duties did not include engaging in any type of analysis, nor the creation of any reports, other than data entry into prepared, formatted spreadsheets and reports.

85. Plaintiffs, and all Managers, simply followed and/or utilized automated or pre-established procedures, checklists or formats in performing all job duties, even including those which arguably did not involve menial tasks such as completing any reports.

86. Defendants had a written disciplinary guide that spelled out progressive disciplinary actions, such as when employees were late or failed to show up for work or other offenses which did not involve the necessity to use discretion on discipline.

87. Plaintiffs Aiyekusibe, Higginson, and Brown-Winn were paid a weekly base salary and were eligible for a quarterly performance type percentage of goal bonus plan which Hertz provided and utilized for all Managers across the U.S. and its territories.

88. Plaintiffs and the other Managers were scheduled to work a mandatory overtime work schedule of (9) hours or more per day, and a minimum mandatory work schedule of forty-five (45) hours per week, working a minimum of (5) days a week.

89. Some Managers were often called in on their days off or scheduled to work six (6) days in a week.

90. Defendants know that the Manager positions were mandatory overtime schedules and all such employees were required to work more than forty (40) hours in a week and did so on a routine basis.

91. Defendants also know that the work of the Manager positions could not be completed within forty (40) hours each week.

92. Despite their set schedule, Plaintiffs consistently averaged closer to sixty (60) hours worked per week.

93. Breaks were considered a luxury which Managers were not afforded, as Plaintiffs were not able to take even thirty (30) minute uninterrupted meal breaks. Plaintiffs' breaks were abbreviated, and even if Plaintiffs could grab some food to eat, they continued to work even while eating, ate on the run, or in less than five (5) minutes usually.

94. Plaintiffs could not simply just clock out and go to the airport restaurants and have a thirty (30) minute or one (1) hour uninterrupted break.

95. Plaintiffs were required by Defendants to be "on call" while not at work, answering phone calls, text messages and emails using their personal cell phones, and incurring additional work hours they were not being paid for.

96. Plaintiffs and members of the Class were, and/or are usually, the first employees required to take up the slack performing the job duties for alleged other subordinate employees

who were behind and required to fill in shifts for those non-exempt hourly paid employees who were out sick or absent for various reasons.

97. Defendants did not require Plaintiffs and the class of similarly situated to track and record their work hours, and they did not punch any time clock or enter or log in or report their work hours in any system or on any form.

98. Plaintiffs were expected to stay for as long as necessary to compete all job duties and make the vehicles ready for the day to be rented and taken by customers on the reservation list, regardless of the number of hours worked or lack of break time.

99. Plaintiffs could not use their discretion as salaried managers to vary their work schedule, to come and go when they pleased, arrive when they wanted or leave when they felt enough was done or otherwise felt exhausted.

100. Defendants have engaged in a systematic practice of using and forcing its salaried Manager employees, including the Plaintiffs in this case, who do not receive overtime pay, to work many hours performing well known non-exempt job duties in order to avoid having to pay its hourly employees overtime wages for performing the same job duties and work, and thereby saving many millions of dollars in labor costs.

101. Plaintiffs and members of the Class spent the great majority of their work weeks performing menial, repetitive, laborious and well-known non-exempt job duties which had nothing to do with managing the Defendants' airport locations or the enterprise, nor any department as that term is defined and/or contemplated under the FLSA.

102. The Defendants have willfully violated and continue to violate §207 of the FLSA by failing to pay Plaintiffs and others similarly situated Managers overtime compensation for all hours worked in excess of forty (40) per week.

103. Upon information and belief, for the three (3) year period before this filing, (the "Class Period"), the continued violations of the FLSA §207 that are complained of herein have been practiced and imposed upon all Managers nationwide who have regularly worked in excess of forty (40) hours per week.

104. The FLSA provides that, with certain exceptions, employers must pay employees overtime of at least one and one-half (1.5) times their regular rate of pay for any hours over forty (40) worked in a week. 29 U.S.C. S 207(a)(1). Although the FLSA provides for certain exemptions to the mandates of paying overtime compensation, no exemption applies in the instant matter.

105. Unless proven to be exempt from the protection of overtime laws, all employees are entitled to premium overtime pay for work in excess of forty (40) hours per week.

106. Plaintiffs and members of the Class were, and continue to be, required to work more than forty (40) hours a week during the course of their employment with Defendants.

107. Plaintiffs herein allege on behalf of the members of the putative Class of similarly situated, that Defendants' failure to pay overtime and other compensation was, and is, a knowing and willful violation of the overtime wage requirements of the FLSA. Accordingly, Plaintiffs and the Class seek and are entitled to recover all overtime pay due from overtime hours worked for which compensation was not paid, an equal sum in liquidated damages, prejudgment interest, attorneys' fees and costs under the FLSA's three (3) year statute of limitations.

FAILURE TO MAINTAIN TRUE & ACCURATE RECORDS OF HOURS WORKED

108. Evidence reflecting the precise number of overtime hours worked by Plaintiffs and every member of the Class, as well as the applicable compensation rates, is in the possession of Defendants.

109. However, and to the extent records are unavailable, Plaintiffs and members of the Class may establish the hours they worked solely by their testimony and the burden of overcoming such testimony shifts to the employer. Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680 (1946).

110. All employers subject to the FLSA must maintain and preserve certain records describing the wages, hours and working conditions of their employees.

111. With respect to an employee subject to the FLSA provisions, the following records must be kept:

a. Personal information, including employee's name, home address, occupation, sex, and birth date if under nineteen (19) years of age;

b. Hour and day when workweek begins;

c. Regular hourly pay rate for any week when overtime is worked;

d. Total hours worked each workday and each workweek;

e. Total daily or weekly straight-time earnings;

f. Total overtime pay for the workweek;

g. Deductions from or additions to wages;

h. Total wages paid each pay period; and

i. Date of payment and pay period covered

112. Failure to comply with the recordkeeping requirements is a violation of the FLSA for which criminal or civil sanctions may be imposed, whether or not other statutory violations exist. *See,* 29 U.S.C. § 215(a)(5); *Also See,* Dunlop v. Gray-Goto, Inc., 528 F.2d 792 (10th Cir. 1976).

113. Accurate records are not only required for regulatory purposes, they are critical to an employer's defense of claims that it violated the Act. An employer that fails to maintain the

required records cannot avoid liability in a wage-hour case through argument that there is insufficient evidence of the claimed hours worked. *See,* Wirtz v. First State Abstract Ins. Co., 362 F.2d 83 (8th Cir. 1966); Boekemeier v. Fourth Universalist Soc'y, 86 F. Supp. 2d 280 (S.D.N.Y. 2000).

114. An employer's failure to maintain records may create a presumption in the aggrieved employee's favor. *See,* Myers v. The Copper Cellar Corp., 192 F.3d 546, 551 n.9 (7th Cir. 1999), *citing* Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680 (1946).

115. Defendants have failed to accurately record, track and report the Plaintiffs' and Class of similarly situated members' time and work hours as required under the FLSA.

116. Defendants have failed to make, keep and preserve records, with respect to each of its employees sufficient to determine the wages, hours and other conditions and practices of employment in violation of 29 CFR 516.2 and 29 U.S.C. §§ 211, 216 and related laws.

COLLECTIVE ACTION ALLEGATIONS

117. Plaintiffs bring this action individually and on behalf of a proposed Class, as a collective action pursuant to the Fair Labor Standards Act. 29 USC § 216(b).

118. In Young v. Cooper Cameron Corp., the court stated that: "The requirements of Fed. R. Civ. P. 23 do not apply to the approval of a collective action and thus no showing of numerosity, typicality, commonality and representativeness need be made." Young v. Cooper Cameron Corp., 229 F.R.D. 50, 54 (S.D.N.Y. 2005).

119. Still, despite the Young Court's ruling, the members of the Class are so numerous that joinder of all members is impracticable and in the interests of justice, as well as in keeping with the legislature's intent in creating Collective Actions under Section 216(b) proceeding as a collective action is proper in this case. While the exact number of the members of the Class is unknown to the Plaintiffs at this time, and can only be ascertained through appropriate discovery,

upon information and belief, Plaintiffs believe that there are 2,000 or more individuals in the defined class, perhaps up to 3,000 or more within the three (3) year relevant class period.

120. Plaintiffs will fairly and adequately protect the interests of the Class and have retained counsel that is experienced and competent in class/collective actions and employment litigation. Plaintiffs have no interest that is contrary to, or in conflict with, members of the Class.

121. A collective action suit, such as the instant one, is superior to other available means for a fair and efficient adjudication of this lawsuit. The damages suffered by individual members of the Class may be relatively small when compared to the expense and burden of litigation, making it virtually impossible for members of the Class to individually seek redress for the wrongs done to them.

122. A collective action is, therefore, superior to other available methods for the fair and efficient adjudication of the controversy. Absent these actions, the members of the Class likely will not obtain redress of their injuries and Defendants will retain the proceeds from its violations of the FLSA.

123. Furthermore, even if any member of the Class could afford individual litigation against the Defendants, it would be unduly burdensome to the judicial system. The instant methodology, when compared to voluminous individual actions, has fewer management difficulties and provides the benefits of unitary adjudication, economies of scale, and comprehensive supervision by a single court. Concentrating this litigation in one forum will promote judicial economy and parity among the claims of individual members of the Class and provide for judicial consistency.

124. Upon information and belief, all Managers were trained on an ad hoc basis, including Plaintiffs, without any formalized training program. While Plaintiffs and other Location and Function Managers watched some training videos online, their real training came

in the form of shadowing existing employees and were then expected to perform and pick up the work responsibilities as they went along.

125. Plaintiffs were not put through any structured or instructor taught management training program, as the videos they reviewed were primarily for the purpose of demonstrating how the hourly work at the location was to be performed and the processes or procedures for or systems involved.

126. Managers were not thereafter required to attend any subsequent management training nor ever provided any Manager guidebooks or manuals to use in order to know what they were expected to do nor were they given formal training on managing staff or employees.

127. Plaintiffs, like other Managers, literally had no time to even worry or concern themselves about performing any management duties or furthering their management skills or knowledge, as they were too busy and overloaded with their routine, repetitive, and laborious non-exempt job duties.

128. The reports or reporting that Managers were required to complete involved data entry and inputting information into standardized reports or spreadsheets and did not involve Plaintiffs creating their own individualized reports using their judgment, analysis or recommendations.

129. Plaintiffs, like other Managers, could not use either discretion to vary or deviate from the set schedules, come and go as he or she pleased, and were not treated as "salaried" employees typically are.

130. Managers were subject to discipline if they were late or sought to leave early and could not simply just leave the Defendants' location and take an uninterrupted meal break for an hour.

131. No prior management history or experience was required to be hired as a Manager.

132. There is a well-defined community of interest in the questions of law and fact affecting the Class as a whole. The question of law and fact common to each of the Class predominate over any questions affecting solely individual members of the action. Among common questions of law and fact are:

a. Whether Defendants employed members of the Class within the meaning of the applicable provisions of the FLSA;

b. Whether Plaintiffs and members of the Class were and/or are improperly classified as exempt pursuant to the protections of the FLSA;

c. Whether Plaintiffs and members of the Class were expected to, and/or mandated to regularly work hours in excess of forty (40) per week;

d. Whether Defendants knowingly failed to maintain and preserve accurate and true records of all hours worked and wages earned by the Class; and

e. Whether Plaintiffs and the Class have sustained damages, and if so, what is the proper measure of such damages.

133. Plaintiffs know of no difficulty that will be encountered in the management of this litigation that would preclude its continued maintenance.

134. Pursuant to 20 U.S.C. § 207, Plaintiffs seek to prosecute the FLSA claims as a collective action on behalf of:

> All persons employed by HERTZ Corporation, including through its wholly owned subsidiary, DTG OPERATIONS, INC., as Function Managers, Functional Managers, Location Managers or Location Manager Trainees, and any other job titles previously or currently used to describe the same position at any Airport location in the United States and its territories, at any time within the three (3) years preceding this lawsuit to the day of trial.

135. Notice of the pendency and any resolution of this action can be provided to Collective Action Members by mail, print, and/or internet publication.

COUNT I – VIOLATION OF SECTION § 207 OF THE FLSA: FAILURE TO PAY OVERTIME WAGES

136. Paragraphs one (1) through 135 are realleged and incorporated as if fully set forth herein.

137. At all relevant times, Defendants employed Plaintiffs, and/or each member of the Putative Class of similarly situated and/or continues to employ members of the Class, within the meaning of the FLSA.

138. Upon information and belief, all Managers were paid under a common and similar compensation plan on a national set pay scale or national basis, comprised of a base salary, in addition to being eligible for a quarterly percentage to goal bonus.

139. Defendants have a policy and practice of refusing to pay overtime compensation to Managers for the hours worked in excess of forty (40) hours per week, regardless of the actual work duties performed.

140. The primary job duty and requirements of Managers which were actually performed by the Managers are traditionally non-exempt, laborious and menial labor job duties, such as customer service and even inside sales, the rental of cars by making sure that there was a continuous flow of cleaned and readied vehicles in and out of the airport lot, all of which were related to production.

141. Defendants knowingly and willfully failed to pay Plaintiffs and all other members of the Class overtime compensation at the appropriate legal rate for all hours they performed work on behalf of Defendants above and beyond forty (40) hours per workweek in violation of the FLSA; in particular 29 U.S.C. §§ 206 and 207.

142. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

143. Upon information and belief, Defendants did not have any legal opinion it relied upon or other Department of Labor opinion to classify all Managers as exempt, such that it cannot and does not have a good faith basis under the FLSA for classifying all as a class as exempt employees, and certainly not without undertaking any individualized analysis or assessment of each person and the work they were or would be doing.

144. Defendants took advantage of the persons they hired under the titles of Location and Function Managers for the purpose of increasing profits by saving many millions of dollars in overtime wages they would otherwise have to pay out for their work, knowing that all Location and Function Managers would routinely be working over forty (40) hours each week and primarily performing traditionally recognized non-exempt job duties.

145. Defendants induced and mislead persons applying for and accepting the positions of Function Managers and Location Managers into believing that they were primarily going to manage staff and be involved with important decisions for the location, as well as primarily directing the work of others, delegation of job duties and making decisions on hiring, firing and disciplining of employees.

146. Instead, Plaintiffs, for the majority of their work hours, were performing the same work and duties of non-exempt employees, working side by side other employees as some type of working supervisor, and forced to work laborious, physically exhausting, overtime work schedules day after day, with generally no ability to take breaks.

147. Defendants knew that the Location and Function Managers' job duties would not able to be completed within forty (40) hours per week, and that Plaintiffs would routinely be working heavy mandatory overtime hours each week without the discretion to refuse or vary their schedules. Plaintiffs were not informed of the heavy mandatory overtime work schedules when they were interviewed for the position.

148. Defendants knew or should have known that the work being performed was not as described or intended and that Managers were primarily performing non-exempt job duties and should have been paid a premium for overtime hours worked.

149. Hertz brand Managers performed work for their other brands, Dollar and Thrifty; similarly, Location and Function Managers of Dollar and Thrifty performed work for the Hertz brand.

150. Upon information and belief, Defendants began to roll out the new job titles of "Function Manager" in an attempt to separate the roles in some manner to lesser sections or parts as a means to somehow make their jobs fit within an exemption when they knew that the Location managers were not meeting the elements of the administrative or executive exemptions, possibly due to complaints or lawsuits by other Location or Function Managers or their own investigation and analysis.

151. When calculating the compensation of the Plaintiffs and other Managers, taking into consideration the overtime hours worked, including the hours while not at the location but on call, Plaintiffs and other Managers made not much more, and potentially even less than, hourly paid non-exempt employees.

152. Some Location and Function Managers worked six (6) days a week, and upwards of seventy (70) to eighty-four (84) hours per week, such that they were paid not much more than minimum wage.

153. Plaintiffs and the class of similarly situated thus are entitled and should be awarded liquidated damages of an equal sum of the overtime wages awarded or recovered.

154. Due to Defendants' willful FLSA violations, Plaintiffs allege on behalf of the members of the Class that they have suffered damages and are entitled to recover from Defendants the unpaid overtime compensation, and an additional equal amount as liquidated

damages, prejudgment interest, reasonable attorneys' fees, costs and disbursements of this action, pursuant to 29 U.S.C. §216(b).

WHEREFORE Plaintiffs, Bamidele Aiyekusibe, Mischele Higginson, and Shantal Brown-Winn pray for:

a. An order designating this action as a collective action and issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated individuals across the nation with instructions to permit them to assert timely FLSA claims in this action by filing individual Consents to Join this action as Plaintiffs pursuant to §216(b); and that notice be sent to all past and present employees of HERTZ Corp and DTG OPERATIONS, INC. any time during the three (3) year period immediately preceding the filing of this suit, through and including the date of this Court's issuance of the Court Supervised Notice;

b. An order awarding attorneys' fees and costs pursuant to § 216 of the FLSA;

c. That the Court find Defendants in violation of the overtime compensation provisions of the FLSA and that the Court find that Defendants' violations of the FLSA were, and are, willful, and their class wide treatment of Location and Function Managers as Exempt is and was without a good faith basis under the FLSA;

d. That the Court award Aiyekusibe, Higginson, Brown-Winn, and the putative Class of all similarly situated employees, overtime compensation for all the previous hours worked over forty (40) hours in each and every workweek that they did not receive at least a premium for, in any given week during the past three (3) years, AND an equal sum in liquidated damages. In addition, interest on said award pursuant to § 216 of the FLSA.

e. That the Court award Aiyekusibe, Higginson, and Brown-Winn a collective action, class representative fees or service award fees for their efforts and time dedicated to bringing justice through this action; and

f. That the Court award any other legal and equitable relief as this Court may deem appropriate.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury on all questions of fact raised by this Complaint and on all other issues so triable.

Dated: March 26, 2019

Respectfully submitted.

/s/Mitchell Feldman, Esq.
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Of similarly situated

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of March 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which forwards copies to all counsel of record. Parties may access this filing through the Court's system.

/s/Mitchell L. Feldman
Mitchell L. Feldman
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