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**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

MICHAEL TREVORAH on behalf of himself and other similarly situated employees,	:	
	:	CIVIL ACTION
	:	
Plaintiff,	:	No. 3:16-cv-00492-JMM
v.	:	
	:	
LINDE CORPORATION,	:	
Defendant.	:	

**DEFENDANT'S ANSWER WITH AFFIRMATIVE DEFENSES TO
PLAINTIFF'S COMPLAINT**

Defendant, Linde Corporation ("Defendant"), by and through its undersigned counsel, hereby files this Answer with Affirmative Defenses to Plaintiff's Complaint, and in support thereof avers as follows:

INTRODUCTION

To the extent that the Complaint includes an unnumbered introductory statement comprised of a characterization of the Plaintiff's causes of action, conclusions of law and citation to the Knepper case, no response is required. To the extent that a response is deemed required, Defendant admits only that Plaintiff

has filed a purported class/collective action seeking relief under the Fair Labor Standards Act ("FLSA") and Pennsylvania Minimum Wage Act ("PMWA"), but denies the remaining allegations set forth in the introductory language of the Complaint. This includes, without limitation, that Defendant denies this case is properly maintainable as a class or collective action as alleged, and further denies that Plaintiff Trevorah/any member of the purported class is entitled to any relief whatsoever.

In addition, the claims of certain plaintiffs/purported class/collective action members are limited in accordance with the Order issued in this case on June 15, 2016 by Honorable Judge Munley (Document 42), and the claims of any other plaintiffs/purported class/collective action members who may file a consent to join this action, or are otherwise included as purported class/collective action members, and who are also listed on Schedule A to the Complaint filed in Case No. 3:16-cv-00292-JMM are also subject to the limitations as stated in the referenced Order.

JURISDICTION AND VENUE

1. The allegations set forth in paragraph 1 of the Complaint are legal conclusions to which no response is required.

2. The allegations set forth in paragraph 2 of the Complaint are legal conclusions to which no response is required.

3. The allegations set forth in paragraph 3 of the Complaint are legal conclusions to which no response is required.

PARTIES

4. Admitted, upon information and belief.

5. The allegations set forth in paragraph 5 of the Complaint are legal conclusions to which no response is required.

6. Admitted.

7. The allegations set forth in paragraph 7 of the Complaint are legal conclusions to which no response is required.

FACTS

8. Admitted.

9. Admitted in part and denied in part. It is admitted that some of Defendant's employees are eligible for and paid Extra Compensation Units or ECUs. The remaining allegations of paragraph 9 of the Complaint are denied including, without limitation, because such allegations are vague, ambiguous, and confusing.

10. Admitted in part and denied in part. It is admitted only that Defendant employed Plaintiff Trevorah from approximately September 2011 through approximately May 2015. The remaining allegations of paragraph 10 of

the Complaint are denied including, without limitation, because such allegations are vague, ambiguous and confusing.

11. Admitted in part and denied in part as stated. It is admitted only that Plaintiff Trevorah was paid \$1,260.00 for the referenced work week ending February 8, 2014. The remaining allegations are legal conclusions to which no response is required; to the extent any response is required, such allegations are denied as stated.

12. Admitted in part and denied in part as stated. It is admitted only that the referenced employees were paid a pre-determined salary and that Plaintiff Trevorah was paid was paid \$1,400.00 for the referenced work week ending February 28, 2015. The remaining allegations are legal conclusions to which no response is required; to the extent any response is required, such allegations are denied as stated.

13. Admitted in part and denied in part as stated. It is admitted only that the referenced employees were paid a pre-determined salary and extra compensation for working additional hours and that Plaintiff Trevorah was paid \$1,540.00 total for the referenced work week ending May 17, 2014. The remaining allegations are legal conclusions to which no response is required; to the extent any response is required, such allegations are denied as stated.

14. The allegations set forth in paragraph 14 of the Complaint are legal conclusions to which no response is required. By way of additional response, and without in any way limiting Defendant's response and/or defenses, at all times relevant hereto, the applicable employees were properly classified as exempt from the overtime compensation requirements of the Fair Labor Standards Act ("FLSA") and Pennsylvania Minimum Wage Act ("PMWA").

15. The allegations set forth in paragraph 15 of the Complaint are legal conclusions to which no response is required. Also see response in paragraph 14, which is incorporated by reference as if fully set forth herein.

CLASS/COLLECTIVE ACTION ALLEGATIONS

16. Admitted in part and denied in part. It is admitted only that the Plaintiff purports to bring this action as a collective action as alleged. The allegations set forth in paragraph 16 of the Complaint are otherwise denied.

17. The allegations set forth in paragraph 17 of the Complaint are legal conclusions to which no response is required.

18. Admitted in part and denied in part. It is admitted only that the Plaintiff purports to bring a PMWA claim as a class action pursuant to Federal Rule of Civil Procedure 23 as alleged. The allegations set forth in paragraph 18 of the Complaint are otherwise denied.

19. The allegations set forth in paragraph 19 of the Complaint are legal conclusions to which no response is required.

20. The allegations set forth in paragraph 20 of the Complaint are legal conclusions to which no response is required.

21. The allegations set forth in paragraph 21 of the Complaint are legal conclusions to which no response is required.

22. The allegations set forth in paragraph 22 of the Complaint are legal conclusions to which no response is required.

23. The allegations set forth in paragraph 23 of the Complaint are legal conclusions to which no response is required.

24. The allegations set forth in paragraph 24 of the Complaint are legal conclusions to which no response is required.

COUNT I
(Alleging FLSA Violations)

25. The responses set forth in paragraphs 1 through 24 above are incorporated by reference as if fully set forth herein.

26. The allegations set forth in paragraph 26 of the Complaint are legal conclusions to which no response is required.

27. The allegations set forth in paragraph 27 of the Complaint are legal conclusions to which no response is required. Also see response in paragraph 14, which is incorporated by reference as if fully set forth herein.

28. The allegations set forth in paragraph 28 of the Complaint are legal conclusions to which no response is required.

COUNT II
(Alleging PMWA Violations)

29. The responses set forth in paragraphs 1 through 28 above are incorporated by reference as if fully set forth herein.

30. The allegations set forth in paragraph 30 of the Complaint are legal conclusions to which no response is required.

31. The allegations set forth in paragraph 31 of the Complaint are legal conclusions to which no response is required. Also see response in paragraph 14, which is incorporated by reference as if fully set forth herein.

All allegations in the Amended Complaint not specifically admitted are denied.

WHEREFORE, Defendant denies that Plaintiff is entitled to any relief whatsoever and respectfully requests the Complaint be dismissed with prejudice.

ADDITIONAL OR AFFIRMATIVE DEFENSES

1. The Complaint fails, in whole or in part, to state a claim upon which relief may be granted.

2. At all times potentially relevant hereto, Plaintiff and other employees of Defendant whom Plaintiff seeks to solicit to join this action were properly classified as exempt administrative employees under the FLSA and PMWA and, therefore, were not legally entitled to any overtime compensation.

3. In the event that this Court finds that Defendant committed any violation of the FLSA and/or the PMWA any alleged acts or omissions by Defendant giving rise to Plaintiff's claims for relief or the claims for relief of any potential collective action or class members were made in good faith and in conformity with and in reliance on written administrative regulations and interpretations of the Administrator of the Wage and Hour Division of the U.S. Department of Labor and/or an administrative practice or enforcement policy of the Administrator with respect to the class of employers to which Defendant belongs, barring any liability or damages.

4. In the event that this Court finds that Defendant committed any violation of the FLSA and/or the PMWA, any alleged acts or omissions by Defendant giving rise to Plaintiff's claims for relief or the claims for relief of any potential collective action or class members were made in good faith, and

Defendant had reasonable grounds for believing that its alleged acts or omissions were not a violation of the FLSA and/or the PMWA. Accordingly, liquidated damages are not appropriate in this action.

5. Plaintiff and any potential collective action or class members are not entitled to any penalty, fine, multiplication of damages, or extension of any statute of limitations period because Defendant did not willfully, knowingly, or intentionally fail to comply with the provisions of the FLSA and/or the PMWA.

6. To the extent that Plaintiff and any potential collective action or class members are asserting claims under the FLSA and/or the PMWA for compensation outside applicable statutes of limitations, such claims are barred.

7. Plaintiff's claims and the claims of any potential collective action or class members are barred, in whole or in part, by statutory exclusions, exceptions, credits, or offsets under applicable law.

8. Plaintiff is not an adequate representative of any purported collective or class action.

9. Plaintiff cannot establish the existence of commonality between Plaintiff and any potential collective action or class members.

10. Plaintiff cannot show that individual suits would be impractical in this instance.

11. The claims asserted by Plaintiff on behalf of any potential collective or class action cannot properly be certified or maintained as a class action pursuant to Fed. R. Civ. P. 23 or as a collective action pursuant to 29 U.S.C. § 216(b).

12. Plaintiff's/Plaintiffs' claims are barred by the express terms of §16(b) (29 USC 216(b)) and/or §16(c) (29 USC 216(c)) of the FLSA in light of the previously filed related Complaint by the U.S. Department of Labor prior to the filing of Plaintiffs' Complaint (namely, *Perez v. Linde Corporation, et al.*, U.S. District Court for the Middle District of Pennsylvania, Case No. 3:16-CV-00292-JMM, filed on February 18, 2016.)

13. The the claims of certain plaintiffs/purported class/collective action members are limited in accordance with the Order issued in this case on June 15, 2016 by Honorable Judge Munley (Document 42), and the claims of any other plaintiffs/purported class/collective action members who may file a consent to join this action, or are otherwise included as purported class/collective action members, and who are also listed on Schedule A to the Complaint filed in Case No. 3:16-cv-00292-JMM are also subject to the limitations as stated in the referenced Order.

14. Although Plaintiff is not similarly situated to others, if anyone other than Plaintiff should file a consent to join this action, Defendant reserves the right to assert any of the above defenses as to each such individual.

15. Defendant reserves the right to assert additional defenses that may appear and prove applicable during the course of this litigation.

WHEREFORE, Defendant Linde Corporation respectfully requests that this Court enter judgment in its favor on all claims asserted by Plaintiff and award it attorneys' fees and expenses incurred in defending this action, as well as such further relief as is just and proper.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By /s/ Joseph Sileo

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Attorney for Defendant

Dated: July 1, 2016

CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the foregoing document with the Clerk of Court using CM/ECF and that the document is being served electronically upon Counsel of Record through the Court's electronic transmission facilities.

Counsel of record in the instant case are:

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Respectfully Submitted,

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