

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
1650 ARCH STREET
PHILADELPHIA, PA 19103**

In the Matter of:)	Docket No.: CAA-03-2021-0058
)	
Keystone Automotive Operations, Inc.)	
)	
<i>Respondent</i>)	

ANSWER

Pursuant to the consolidated Rules of Practice, 40 C.F.R. § 22.15, Respondent Keystone Automotive Operations, Inc. (“Respondent” or “Keystone”), by counsel, offers the following Answer to the U.S. Environmental Protection Agency’s (“Complainant”) Complaint (“Complaint”). For ease of reference, Respondent follows the same headings, format, and numbering used in the Complaint. Respondent’s use of such headings, format, and numbering is in no way an admission of their contents or accuracy.

RESPONSES TO NUMBERED PARAGRAPHS¹

1. This paragraph consists of a legal conclusion to which no response is required. To the extent a response is deemed required, the allegations of this paragraph are denied.
2. This paragraph consists of a legal conclusion to which no response is required. To the extent a response is deemed required, the allegations of this paragraph are denied.
3. Admitted.

¹ To the extent the Complaint contains headings and subheadings that may require a response, Respondent denies every allegation in each heading and subheading contained therein.

Jurisdiction

4. Admitted insofar as the Complaint speaks for itself. Otherwise denied to the extent that this paragraph consists of a legal conclusion to which no response is needed.

5. This paragraph consists of a legal conclusion to which no response is required. To the extent a response is deemed required, the allegations of this paragraph are denied.

6. This paragraph consists of a legal conclusion to which no response is required. To the extent a response is deemed required, the allegations of this paragraph are denied.

7. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 7, and, on that basis, denies them.

8. This paragraph consists of a legal conclusion to which no response is required. To the extent a response is deemed required, the allegations of this paragraph are denied.

9. Admitted.

Governing Law and Relevant Background

Regulation of Air Pollution from New Motor Vehicles and Motor Vehicle Engines

10. Admitted insofar as the statutory language and applicable law speak for themselves. Otherwise, this paragraph consists of a legal conclusion to which no response is required. To the extent a response is deemed required, the allegations of this paragraph are denied.

11. Admitted insofar as the statutory language and applicable law speak for themselves. Otherwise, this paragraph consists of a legal conclusion to which no response is required. To the extent a response is deemed required, the allegations of this paragraph are denied.

12. Denied.

13. Respondent admits that certain pollutants may be emitted by motor vehicles. Respondent is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 13, and, on that basis, denies them.

14. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 14, and, on that basis, denies them.

15. Respondent admits that certain pollutants may be emitted by motor vehicles. Respondent is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 15, and, on that basis, denies them.

16. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 16, and, on that basis, denies them.

17. Respondent admits that certain pollutants may be emitted by motor vehicles. Respondent is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 17, and, on that basis, denies them.

18. Respondent admits that certain pollutants may be emitted by motor vehicles. Respondent further understands and admits that carbon monoxide (“CO”) generally causes headaches, dizziness, vomiting, nausea, loss of consciousness and could lead to death. Respondent is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 18, and, on that basis, denies them.

19. Admitted insofar as the statutory language and applicable law speak for themselves. Otherwise, this paragraph consists of a legal conclusion to which no response is required. To the extent a response is deemed required, the allegations of this paragraph are denied.

EPA's Certificate of Conformity Program for New Motor Vehicle and Motor Vehicle Engines

20. This paragraph consists of a legal conclusion to which no response is required. To the extent a response is deemed required, the allegations of this paragraph are denied.

21. This paragraph consists of a legal conclusion to which no response is required. To the extent a response is deemed required, the allegations of this paragraph are denied.

22. This paragraph consists of a legal conclusion to which no response is required. To the extent a response is deemed required, the allegations of this paragraph are denied.

Motor Vehicle and Motor Vehicle Engine Emissions-Related Elements of Design

23. Admitted insofar as the statutory language and applicable law speak for themselves. Otherwise, this paragraph consists of a legal conclusion to which no response is required. To the extent a response is deemed required, the allegations of this paragraph are denied.

24. Denied that exhaust gas recirculation ("EGR") is an emissions-related element of design because that statement is a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required and except as stated, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 24, and, on that basis, denies them. Further, Respondent generally believes that EGR increases engine temperature, and on that basis Respondent denies the allegation.

25. Denied that diesel oxidation catalysts ("DOCs") are emissions-related elements of design because that statement is a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required and except as stated, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 25, and, on that basis, denies them.

26. Denied that diesel particulate filters (“DPFs”) are emissions-related elements of design because that statement is a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required and except as stated, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 26, and, on that basis, denies them.

27. Denied that catalytic converters are emissions-related elements of design because that statement is a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required and except as stated, Respondent denies that catalytic converters are contained in all OEM-installed stock-exhaust pipe systems, and Respondent is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 27, and, on that basis, denies them.

28. Denied that NOx Adsorption Catalysts (“NACs”) are emissions-related elements of design because that statement is a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required and except as stated, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 28, and, on that basis, denies them.

29. Denied that selective catalytic reduction (“SCR”) is an emissions-related element of design because that statement is a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required and except as stated, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 29, and, on that basis, denies them.

30. Denied that air injection reactors (“AIRs”) and “air pumps” are emissions-related elements of design because that statement is a legal conclusion to which no response is required.

To the extent a response is nonetheless deemed to be required and except as stated, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 30, and, on that basis, denies them.

31. Denied that “oxygen sensors” are emissions-related elements of design because that statement is a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required and except as stated, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 31, and, on that basis, denies them.

32. Admitted.

33. Admitted that the On-Board Diagnostic Systems (“OBDS”) include systems of components and sensors designed to detect, record, and report malfunctions of monitored emissions-related systems or components, along with other functions. Admitted that a properly functioning OBD system will illuminate a “check engine light” (“CEL”) or “malfunction indicator light” (“MIL”) on the vehicle dashboard to provide alerts, and records diagnostic trouble codes (“DTCs”). For the remaining allegations in paragraph 33, Respondent denies to the extent they make legal conclusions to which an answer is required, otherwise, Respondent is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 33, and, on that basis, denies them.

34. Admitted insofar as the statutory language and applicable law speak for themselves. Otherwise denied; this paragraph consists of a legal conclusion to which no response is required.

Acts Prohibited by Section 203(a)(3)(B) of the Clean Air Act

35. Admitted insofar as the statutory language and applicable law speak for themselves. Otherwise denied; this paragraph consists of a legal conclusion to which no response is required.

36. This paragraph consists of a legal conclusion to which no response is required. To the extent a response is deemed required, the allegations of this paragraph are denied.

General Allegations

37. Admitted insofar as the statutory language and applicable law speak for themselves. Otherwise, this paragraph consists of a legal conclusion to which no response is required. To the extent a response is deemed required, the allegations of this paragraph are denied.

38. Admitted.

39. Admitted.

40. Admitted.

41. Admitted.

42. Admitted, except that Respondent denies to the extent the allegations in paragraph 42 imply Respondent manufactured parts, which it did not. Respondent further lacks knowledge or information sufficient to form a belief about the truth of the statement that EPA issued the Request for Information “to determine Respondent’s compliance.” Respondent does not know EPA’s intent.

43. Admitted.

44. Admitted that EPA issued a Notice of Violation and that the Notice of Violation speaks for itself; otherwise, denied.

45. Admitted.

46. Denied.

Violations

COUNT ONE (Violations 1-2,637)

Sale or Offer to Sell EGR Delete Hardware Parts

47. Respondent restates its responses to the preceding Paragraphs.

48. Admitted that in its RFI Response or in the additional information provided after receipt of the NOV, Respondent disclosed that from January 1, 2015 through August 28, 2018 it sold or offered to sale the part numbers identified in Paragraph 48. Denied insofar as this Paragraph makes conclusions regarding quantities sold without regard to returned stock as identified in Respondent's RFI Response. Denied that Respondent identified the name/description, number, type, and manufacturer information categorized by part type, as alleged in Paragraph 48. Denied that Respondent provided the chart listed in Paragraph 48 or all of the information listed in the Chart, including but not limited to the marketing or advertising statements identified as "Manufacturer/Information," which are not attributable to Respondent.

49. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 49, and, on that basis, denies them.

50. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 50, and, on that basis, denies them. Further, this paragraph consists of a legal conclusion to which no response is required. To the extent a response is deemed required, the allegations of this paragraph are denied.

51. This paragraph consists of a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required and except as stated, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 51, and, on that basis, denies them.

52. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 52, and, on that basis, denies them. Further, this paragraph consists of a legal conclusion to which no response is required. To the extent a response is deemed required, the allegations of this paragraph are denied.

53. Denied.

54. Denied.

55. Denied.

56. Denied.

57. Denied that Respondent has violated section 203(a)(3)(B) of the Clean Air Act (“CAA”) or that any penalties should be assessed against Respondent.

COUNT TWO (Violations 2,638-6,054)

Sale or Offer to Sell Aftertreatment Delete Hardware Parts

58. Respondent restates its responses to the preceding Paragraphs.

59. Admitted that in its RFI Response or in the additional information provided after receipt of the NOV, Respondent disclosed that from January 1, 2015 through August 28, 2018, Respondent sold or offered for sale the part numbers identified in Paragraph 59. Denied insofar as this Paragraph makes conclusions regarding quantities sold without regard to returned stock as identified in Respondent’s RFI Response. Denied that Respondent identified the name/description, number, type, and manufacturer information categorized by part type, as alleged in Paragraph 59. Denied that Respondent provided the chart listed in Paragraph 59 or all of the information listed in the Chart, including but not limited to the marketing or advertising statements identified as “Manufacturer/Information,” which are not attributable to Respondent.

60. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 60, and, on that basis, denies them.

61. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 61, and, on that basis, denies them. Further, this paragraph consists of a legal conclusion to which no response is required.

62. Denied; insofar as this paragraph consists of a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required and except as stated, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 62, and, on that basis, denies them.

63. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 63, and, on that basis, denies them. Further, this paragraph consists of a legal conclusion to which no response is required.

64. Denied.

65. Denied.

66. Denied; insofar as this paragraph consists of a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required and except as stated, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 66, and, on that basis, denies them.

67. Denied.

68. Denied.

69. Denied.

70. Denied.

71. Denied that Respondent has violated section 203(a)(3)(B) of the CAA or that any penalties should be assessed against Respondent.

COUNT THREE (Violations 6,055-6,600)

Sale or Offer to Sell AIR/Air Pump Delete Hardware Parts

72. Respondent restates its responses to the preceding Paragraphs.

73. Admitted that in its RFI Response or in the additional information provided after receipt of the NOV, Respondent disclosed that from January 1, 2015 through August 28, 2018, Respondent sold or offered to sale the part numbers identified in Paragraph 73. Denied insofar as this Paragraph makes conclusions regarding quantities sold without regard to returned stock as identified in Respondent's RFI Response. Denied that Respondent identified the name/description, number, type, and manufacturer information categorized by part type, as alleged in Paragraph 73. Denied that Respondent provided the chart listed in Paragraph 73 or all of the information listed in the Chart, including but not limited to the marketing or advertising statements identified as "Manufacturer/Information," which are not attributable to Respondent.

74. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 74, and, on that basis, denies them.

75. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 75, and, on that basis, denies them. Further, this paragraph consists of a legal conclusion to which no response is required.

76. Denied; insofar as this paragraph consists of a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required and except as stated, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 76, and, on that basis, denies them.

77. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 77, and, on that basis, denies them. Further, this paragraph consists of a legal conclusion to which no response is required.

78. Denied.

79. Denied.

80. Denied.

81. Denied.

82. Denied that Respondent has violated section 203(a)(3)(B) of the CAA or that any penalties should be assessed against Respondent.

COUNT FOUR (Violations 6,601-15,621)

Sale or Offer to Sell Tuning Parts

83. Respondent restates its responses to the preceding Paragraphs.

84. Respondent assumes “IRL” is a typo, which should read “RFI Response.” Admitted that in its RFI Response or in the additional information provided after receipt of the NOV, Respondent disclosed that from January 1, 2015 through August 28, 2018, Respondent sold or offered for sale the part numbers identified in Paragraph 84. Denied insofar as this Paragraph makes conclusions regarding quantities sold without regard to returned stock as identified in Respondent’s RFI Response. Denied that Respondent identified the name/description, number, type, and manufacturer information categorized by part type, as alleged in Paragraph 84. Denied that Respondent provided the chart listed in Paragraph 84 or all of the information listed in the Chart, including but not limited to the marketing or advertising statements identified as “Manufacturer/Information,” which are not attributable to Respondent.

85. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 85, and, on that basis, denies them.

86. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 86, and, on that basis, denies them. Further, this paragraph consists of a legal conclusion to which no response is required.

87. Denied; insofar as this paragraph consists of a legal conclusion to which no response is required. To the extent a response is nonetheless deemed to be required and except as stated, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 87, and, on that basis, denies them.

88. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 88, and, on that basis, denies them. Further, this paragraph consists of a legal conclusion to which no response is required.

89. Denied.

90. Denied.

91. Denied.

92. Denied.

93. Denied that Respondent has violated section 203(a)(3)(B) of the CAA or that any penalties should be assessed against Respondent.

Relief Sought: Civil Penalty

The relief sought section of the Complaint, including each paragraph therein, are legal conclusions to which no response is required. To the extent a response is deemed necessary, Respondent denies the allegations in each paragraph. Respondent further denies that Respondent violated the CAA and denies that Complainant is entitled to any of the relief they seek. Insofar as

a penalty calculation is deemed necessary and appropriate, and Complainant relies on a penalty policy, the appropriate penalty policy, if any, is EPA’s “Clean Air Act Title II Vehicle & Engine Civil Penalty Policy,” issued on January 18, 2021.

GENERAL STATEMENT OF DENIAL

To the extent that Respondent failed to answer any allegation of fact—material or otherwise—Respondent denies those allegations. Further, Respondent may present expert testimony on the allegations within the Complaint for which it currently is without knowledge or information sufficient to form a belief as to the truth of the allegations.

DEFENSES

Respondent hereby asserts the following separate and distinct defenses to EPA’s Complaint. By assertion of these defenses, Respondent does not assume the burden of proving any matter upon which EPA bears the burden of proof under applicable law.

FIRST AFFIRMATIVE DEFENSE

(No Statutory Authority)

Neither the CAA nor its implementing regulations give the EPA enforcement power over the alleged conduct. Legal uses exist for the parts at issue in this Complaint, including legal competition use and/or other legal uses. Congress expressly exempted competition vehicles from the CAA, including motor vehicles that are converted to competition vehicles.

SECOND AFFIRMATIVE DEFENSE

(Exemption)

EPA has no authority to enforce provisions of the CAA to activities outside of its statutory authority. The CAA prohibitions found in section 203(a) do not apply to vehicles that are not used on streets or highways and are used solely for competition, including EPA-certified production

vehicles that are permanently converted to sanctioned competition-use only vehicles. EPA itself has previously acknowledged the legitimate racing community and indicated it only has interest in enforcing against vehicles used on streets or highways. EPA cannot prove that the parts at issue were “intended for use with, or as part of, any motor vehicle or motor vehicle engine” because vehicles used solely for competition are not motor vehicles, and the CAA therefore does not apply.

THIRD AFFIRMATIVE DEFENSE

(No Deference)

EPA’s interpretation of key statutory and regulatory provisions is not entitled to deference. EPA incorrectly interprets and applies certain critical statutory and regulatory provisions upon which it bases its allegations, including Section 203(a)(3)(B), the term “motor vehicle,” and other provisions of the CAA and its implementing regulations. EPA’s interpretation and application are inconsistent with the statutory language and legislative history of the CAA, and are also inconsistent with EPA’s own prior statements and interpretations. EPA’s inconsistent and inaccurate interpretation is therefore not entitled to deference.

FOURTH AFFIRMATIVE DEFENSE

(No Violations)

EPA bears the burden to demonstrate actionable violations of Section 203(a)(3)(B) of the CAA by Respondent. EPA has not alleged facts that satisfy its burden, including a failure to demonstrate that (a) the products identified in EPA’s Complaint were intended for use with “motor vehicles,” (b) a principal effect of the identified products is to bypass, defeat, or render inoperative any device or element installed on or in a motor vehicle, or (c) that Respondent knows or should know that any such product was being offered for sale or installed for such use or put to such use. In particular, EPA fails to meet its burden because the parts at issue can be sold and used for legal

purposes, including but not limited to competition use, replacement parts, installation in combination with applicable emissions control components, and/or use on antique or vintage vehicles that are not required to be certified and, therefore, are outside the scope of the CAA restrictions. Additionally, as a distributor of aftermarket automotive equipment with over 250,000 different SKUs per year, Respondent does not know nor should it know of the intended design or use of the products it distributes or their potential impact on emissions.

FIFTH AFFIRMATIVE DEFENSE

(Lack of Fair Notice – Competition Use)

The EPA's decades-long practice of permitting conduct similar to that alleged in the Complaint affirmatively misled Respondent and the public or, at a minimum, failed to provide Respondent notice that the EPA considered Respondent's actions unlawful, making EPA's current enforcement action for pre-fair-notice conduct a violation of due process as protected by the Fifth Amendment. EPA's failure to publicly specify what actions it expects distributors to take when marketing and selling legal racing parts in order to avoid enforcement likewise constituted a lack of fair notice or opportunity to seek such non-enforcement. Moreover, EPA's penalty request fails to comply with due process and fair notice requirements insofar as the underlying claims arise from a statute and regulatory scheme that fails to provide a person of ordinary intelligence fair notice of what is prohibited. This is especially true in light of EPA's confusing and inconsistent interpretation and application of the competition-use exemption.

SIXTH AFFIRMATIVE DEFENSE

(Lack of Fair Notice – Derive/SCT Parts)

EPA's treatment of the parts at issue in the Complaint is inconsistent with the Agency's previous treatment of the same or similar parts in other enforcement proceedings. In particular, in

its previous enforcement proceeding against Derive Systems, Inc. (“Derive”) and the resulting September 24, 2018 Consent Decree (“Derive Consent Decree”) (Civil Action No. 1:18-cv-2201), EPA established a program under which Derive could continue to sell or offer for sale some of the very parts at issue in this Complaint, manufactured and sold by Derive under its SCT brand. EPA’s treatment of the same or similar products in other enforcement contexts has created vast confusion in the industry, which causes companies, such as Respondent, to lack fair notice in violation of due process as protected by the Fifth Amendment.

SEVENTH AFFIRMATIVE DEFENSE

(Equitable Estoppel)

EPA is estopped from retroactively applying a new interpretation of these provisions of the CAA, particularly where it has selectively and inconsistently enforced these same provisions against parties engaged in the same or more egregious conduct than Respondent and where it has previously indicated that it would not enforce on these claims.

Further, the CAA prohibitions found in section 203(a) do not apply to vehicles that are not used on streets or highways and are used solely for competition, including EPA-certified production vehicles that are permanently converted to sanctioned competition-use only vehicles. EPA itself has previously acknowledged the legitimate racing community and indicated it only has interest in enforcing against vehicles used on streets or highways. EPA now asserts an entirely different position in the context of this enforcement action, effectively seeking to penalize Respondent for precisely the activities in which it has previously stated it had “no interest.” EPA is estopped from enforcing a contrary interpretation of its enforcement authority and the applicability of section 203(a).

EIGHTH AFFIRMATIVE DEFENSE

(Ratification)

EPA effectively ratified the industry-wide sale of the parts manufactured and sold by Derive when it allowed Derive to continue marketing and selling such parts to its customers as part of the Derive Consent Decree. EPA knew that Respondent and other similarly situated distributors and retailers sold the Derive parts at issue and allowed Derive to continue selling such parts to its customers, thereby ratifying the behavior of the market.

NINTH AFFIRMATIVE DEFENSE

(Inappropriate Administrative Proceeding)

Respondent requests full proof of an appropriate determination by the Administrator and the Attorney General that the penalties sought are appropriate for administrative penalty assessment pursuant to section 205(c)(1) of the CAA, 42 U.S.C. § 7524(c)(1).

TENTH AFFIRMATIVE DEFENSE

(Violation of Due Process and Sixth Amendment Rights)

Because the penalties Complainant seeks are essentially penal in character, this proceeding violates Respondent's Sixth Amendment rights to confrontation, compulsory process for obtaining witnesses, and a trial by jury and related procedural rights. It would also violate certain due process protections relating to the burden of proof, obligations to disclose adverse evidence, and others.

ELEVENTH AFFIRMATIVE DEFENSE

(Violation of the Excessive Fines Clause)

To the extent that Respondent's acts or omissions may, without admitting or denying the allegations, be in non-compliance with the CAA, those failures are de minimis in nature. Moreover, as a distributor of aftermarket automotive equipment with over 250,000 different SKUs

per year, Respondent has no insight into the design or intended purpose of the products it distributes or their potential impact on emissions, nor does it have insight into or control over how the products are ultimately used by customers. Further, to the extent, Complainant has recovered penalties from the manufacturers of the parts at issue, seeking the same penalties against Keystone and in excess amounts is inappropriate. Therefore, the penalties EPA seeks against Responent are grossly disproportionate to the nature of the alleged offense and injury and thereby violate the Eighth Amendment's Excessive Fines Clause.

TWELFTH AFFIRMATIVE DEFENSE

(Arbitrary and Capricious Penalties)

The penalties alleged in the complaint are unreasonable, arbitrary, and capricious, contrary to the ultimate standard of review of EPA actions set forth in 5 U.S.C. § 706(2)(A). EPA's alleged violations are not supported by the data provided in Respondent's RFI Response.

THIRTEENTH AFFIRMATIVE DEFENSE

(No Damages or Injury)

To the extent Complainant alleges violations stemming from the sale of parts that were ultimately returned by the customer, such allegations are moot and inappropriate because no alleged damage or injury could result from parts that were returned and therefore never installed or used. Further, to the extent, Complainant has recovered penalties from the manufacturers of the parts at issue, seeking the same penalties against Keystone and in excess amounts is inappropriate.

FOURTEENTH AFFIRMATIVE DEFENSE

(No Legal or Equitable Basis for Penalties)

Civil penalties are not appropriate or should be substantially mitigated because EPA cannot demonstrate meaningful impacts associated with the alleged violations or an equitable basis for

imposing a civil penalty, including harm to human health or the environment, economic benefit to Respondent, or a history of noncompliance by Respondent.

FIFTEENTH AFFIRMATIVE DEFENSE

(Additional Defenses)

Respondent alleges that investigation and evaluation of EPA's allegations are ongoing and, therefore, Respondent reserves the right to assert additional defenses, claims, counterclaims, and third-parties to this action as evaluation, investigation, and discovery continues in this matter.

* * *

The pleading of the defenses described above shall not be construed as an undertaking by Respondent of any burden that would otherwise be the responsibility of the Complainant. Respondent has not waived any defenses and reserves its right to amend or supplement the above defenses or to delete and withdraw such defenses as may become necessary as the matter progresses.

RESPONDENT'S REQUEST FOR HEARING

Pursuant to the consolidated Rules of Practice, 40 C.F.R. § 22.15(c), Respondent requests a hearing in which it will contest (1) the Complaint's allegations of material fact; (2) its applications of law; and (3) its proposed penalties.

RESPONDENT'S CONSENT TO ELECTRONIC SERVICE

Pursuant to 40 C.F.R. § 22.5(b)(2), Respondent consents to receive service documents filed in the above-captioned may by email to Jennifer Adams at jennifer.adams@hoganlovells.com.

PRAYER

Respondent requests that the Complaint be withdrawn with prejudice in whole or in part, and for such other relief to which Respondent shows itself to be entitled.

Dated: March 3, 2021

Respectfully submitted,

**Jennifer P.
Adams**  Digitally signed by
Jennifer P. Adams
Date: 2021.03.03
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COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I, Hannah Graae, hereby certify that on this third day of March 2021, I have served, by electronic mail, a true and correct copy of Respondent's Answer to the U.S. EPA's Complaint on the Regional Hearing Clerk at R3_Hearing_Clerk@epa.gov and on the following counsel for Complainant via email in accordance with Complainant's Consent to Electronic Service:

Jennifer Abramson
Senior Assistant Regional Counsel
USEPA Region III
Abramson.Jennifer@epa.gov

/s/ Hannah Graae
Hannah Graae