



viable claims under any such laws or theories and further denies that there is a collection or class of putative plaintiffs. Marriott denies all other allegations in this Paragraph.

**JURISDICTION AND VENUE**

1. Jurisdiction over the FLSA claim is proper under 28 U.S.C. § 1331.

**ANSWER:** Paragraph 1 is a statement of law to which no response is required. To the extent a response is required, Marriott admits that this Court has jurisdiction over Plaintiff's FLSA claim pursuant to 28 U.S.C. §1331. Marriott denies all other allegations in this Paragraph and denies that Plaintiff is entitled to any relief in connection with the FLSA claim.

2. Jurisdiction over the PMWA [sic]<sup>1</sup> claim is proper under 28 U.S.C. § 1367.

**ANSWER:** Paragraph 2 is a statement of law to which no response is required. To the extent a response is required, Marriott admits that this Court has supplemental jurisdiction over Plaintiff's Ohio state claims pursuant to 28 U.S.C. §1367(a). Marriott denies all other allegations in this Paragraph and denies that Plaintiff is entitled to any relief in connection with the Ohio state law claims.

3. Venue is proper under 28 U.S.C. § 1391.

**ANSWER:** Paragraph 3 is a statement of law to which no response is required. To the extent a response is required, Marriott admits venue is proper only with respect to Plaintiff. Marriott denies any and all remaining allegations in Paragraph 3.

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<sup>1</sup> Plaintiff inadvertently references what Defendant understands to be the Pennsylvania Minimum Wage Act of 1968 of 1968 ("PMWA"), 43 P.S. §§ 333.101–333.115. Defendant denies that Plaintiff brings claims under the PMWA in this Complaint and further denies that any such claims, to the extent Plaintiff intended to assert them, are viable.

**PARTIES**

4. Plaintiff resides in Erie, PA.

**ANSWER:** Marriott is without knowledge or information sufficient to form a belief as to the allegations regarding Plaintiff's residence.

5. Plaintiff is an employee covered by the FLSA, OMFWSA, and OPPA.

**ANSWER:** Paragraph 5 is a statement of law to which no response is required. To the extent a response is required, Marriott admits that while it employed Plaintiff, s was an "employee" for purposes of the FLSA, the Ohio Minimum Fair Wage Standards Act ("OMFWSA"), and the Ohio Prompt Pay Act ("OPPA"), but denies that it has violated Plaintiff's rights or the rights of any others and further denies that Plaintiff or any others are entitled to any of the relief set forth in the Complaint.

6. Defendant is a corporate entity headquartered in Bethesda, MD.

**ANSWER:** Marriott admits the allegations in Paragraph 6.

7. Defendant is an employer covered by the FLSA, OMFWSA, and OPPA.

**ANSWER:** Paragraph 7 is a statement of law to which no response is required. To the extent a response is required, Marriott admits that it is an "employer" for purposes of the FLSA, the OMFWSA, and the OPPA, but denies that it has violated Plaintiff's rights or the rights of any others and further denies that Plaintiff or any others are entitled to any of the relief set forth in the Complaint.

**FACTS**

8. Defendant “is a leading global lodging company with more than 6,700 properties across 130 countries and territories, reporting revenues of more than \$22 billion in fiscal year 2017.” See <https://www.marriott.com/marriott/aboutmarriott.mi>

**ANSWER:** Marriott admits the allegations in Paragraph 8.

9. Defendant operates a “Global Reservation Sales and Customer Care Center” in Solon, OH (“the Solon Call Center”). There, Defendant employs hundreds of individuals who are paid an hourly wage and perform various call center services to Defendant’s customers. These services include, for example, processing reservations, cancellations, and inquiries about room availability and rates. These employees hold job titles such as, for example, Reservations Sales Agent. They generally are referred to herein as “operators.”

**ANSWER:** Marriott denies the allegations in Paragraph 9.

10. Plaintiff was employed by Defendant at the Solon Call Center as an operator from approximately May 2017 until approximately July 2018. She was paid an hourly wage of approximately \$11.00.

**ANSWER:** Marriott denies the allegations in Paragraph 10.

11. During a typical week, Plaintiff and other operators are scheduled to work at least 40 hours and receive payroll credit and compensation for at least 40 hours. In fact, Plaintiff usually worked and received payroll credit for over 50 hours per week.

**ANSWER:** Marriott admits that while employed, Plaintiff was paid for the hours she worked, including for hours in excess of forty hours per workweek. Marriott further admits that other Reservations Clerks were similarly paid for the hours they worked, including for hours in

excess of forty in a workweek. Marriott denies any and all remaining allegations in Paragraph 11.

12. Prior to the beginning of each paid shift and prior to the end of each unpaid meal break, Plaintiff and other operators must arrive at their assigned work station, boot-up their assigned computers, and access Defendant's various computer systems, databases, and programs. Plaintiff and other operators depend upon these computer systems, databases, and programs throughout the workday. It would be impossible for them to perform their job duties without having access to such computer systems, databases, and programs.

**ANSWER:** Marriott admits that some Reservations Clerks must use certain computer software to perform certain aspects of their jobs. Marriott denies any and all remaining allegations in Paragraph 12.

13 The activities described in paragraph 12 above, which will be referred to as "Start-Up Activities," generally take 10-15 minutes to complete. Thus, Plaintiff and other operators generally spend 20-30 minutes per day performing Start-Up Activities.

**ANSWER:** Marriott denies the allegations in Paragraph 13.

14. Defendant does not compensate Plaintiff and other operators for time spent performing Start-Up Activities.

**ANSWER:** Marriott denies the allegations in Paragraph 14.

15. Because Plaintiff and other operators often work and receive payroll credit for at least 40 hours per week, the time spent performing Start-Up Activities often would qualify as overtime work if credited by Defendant.

**ANSWER:** Paragraph 15 is a statement of law to which no response is required. To the extent a response is required, Marriott denies the allegations in Paragraph 15.

16. By failing to pay Plaintiff and other operators for overtime work associated with Start-Up Activities, Defendant has acted willfully and with reckless disregard of clearly applicable FLSA, OMFWSA, and OPPA provisions.

**ANSWER:** Marriott denies the allegations in Paragraph 16.

**CLASS/COLLECTIVE ALLEGATIONS**

17. Plaintiff brings her legal claims on behalf of all operators (as defined in paragraph 9) employed at the Solon Call Center during any week within the past three years.

**ANSWER:** Marriott admits that Plaintiff purports to bring “legal claims on behalf of all operators (as defined in paragraph 9) employed at the Solon Call Center during any week within the past three years.” Marriott denies engaging in any conduct that would give rise to the claims alleged in the Complaint. Marriott also denies that any claims can be brought by Plaintiff on behalf of “all operators.” Marriott also denies that Plaintiff’s claims give rise to a proper collective or class action and further denies all remaining allegations in Paragraph 17.

18. Plaintiff’s FLSA claim should proceed as a collective action because Plaintiff and other potential members of the collective, having worked pursuant to the common timekeeping and compensation policies described herein, are “similarly situated” as that term is defined in 29 U.S.C. § 216(b) and the associated decisional law.

**ANSWER:** Marriott denies the allegations in Paragraph 18.

19. Class action treatment of Plaintiff’s OMFWSA and OPPA claims are appropriate because, as alleged below, all of Federal Rule of Civil Procedure 23’s class action requisites are satisfied.

**ANSWER:** Marriott denies the allegations in Paragraph 19.

20. The class includes hundreds of individuals, all of whom are readily ascertainable based on Defendant's standard payroll records and are so numerous that joinder of all class members is impracticable.

**ANSWER:** Marriott denies the allegations in Paragraph 20.

21. Plaintiff is a class member, her claims are typical of the claims of other class members, and she has no interests that are antagonistic to or in conflict with the interests of other class members.

**ANSWER:** Marriott denies the allegations in Paragraph 21.

22. Plaintiff will fairly and adequately represent the class members and their interests, and she has retained competent and experienced counsel who will effectively represent the class members' interests.

**ANSWER:** Marriott denies the allegations in Paragraph 22.

23. Questions of law and fact are common to all class members, because, *inter alia*, this action concerns Defendant's companywide timekeeping and compensation policies. The legality of these policies will be determined through the resolution of generally applicable legal principles to a common set of facts.

**ANSWER:** Marriott denies the allegations in Paragraph 23.

24. Class certification is appropriate under Federal Rule of Civil Procedure 23(b)(3) because common questions of law and fact predominate over questions affecting only individual class members and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation.

**ANSWER:** Marriott denies the allegations in Paragraph 24.

**COUNT I – FLSA**

25. All previous paragraphs are incorporated as though fully set forth herein.

**ANSWER:** Marriott incorporates its Answers to Paragraphs 1 through 24 herein as its Answer to Paragraph 25.

26. The FLSA entitles employees to overtime premium compensation “not less than one and one-half times” their regular pay rate for hours worked over 40 per week. See 29 U.S.C. § 207(a)(1).

**ANSWER:** Paragraph 26 is a statement of law to which no response is required. To the extent a response is required, Marriott admits the allegations in Paragraph 26.

27. Defendant has violated the FLSA by failing to pay Plaintiff and the collective any compensation for overtime work associated with Start-Up Activities.

**ANSWER:** Marriott denies the allegations in Paragraph 27.

28. In violating the FLSA, Defendant has acted willfully and with reckless disregard of clearly applicable FLSA provisions and, as such, has willfully violated the FLSA.

**ANSWER:** Marriott denies the allegations in Paragraph 28.

**COUNT II – OMFWSA**

29. All previous paragraphs are incorporated as though fully set forth herein.

**ANSWER:** Marriott incorporates its Answers to Paragraphs 1 through 28 herein as its Answer to Paragraph 29.

30. The OMFWSA entitles employees to overtime premium compensation “at a wage rate of one and one-half times the employee’s wage rate for hours worked in excess of” 40 hours per week. See Ohio Rev. Code Ann. § 4111.03(A).

**ANSWER:** Paragraph 30 is a statement of law to which no response is required. To the extent a response is required, Marriott admits the allegations in Paragraph 30.

31. Defendant has violated the OMFWSA by failing to pay Plaintiff and the class members any compensation for overtime work associated with Start-Up Activities.

**ANSWER:** Marriott denies the allegations in Paragraph 31.

32. In violating the OMFWSA, Defendant has acted willfully and with reckless disregard of clearly applicable OMFWSA provisions and, as such, has willfully violated the OMFWSA.

**ANSWER:** Marriott denies the allegations in Paragraph 32.

### **COUNT III – OPPA**

33. All previous paragraphs are incorporated as though fully set forth herein.

**ANSWER:** Marriott incorporates its Answers to Paragraphs 1 through 32 herein as its Answer to Paragraph 33.

34. The OPPA entitles employees to be paid all “wages earned” in a timely fashion. In particular, wages earned during the first half of a month must be paid by the first day of the next month. See Ohio Rev. Code Ann. § 4113.15(A). Likewise, wages earned during the second half of a month must be paid by the fifteenth day of the next month. See *id.*

**ANSWER:** Paragraph 34 is a statement of law to which no response is required. To the extent a response is required, Marriott admits the allegations in Paragraph 34.

35. The OPPA’s protections apply to all wages earned regardless of whether such wages, if paid, would qualify as overtime wages. *See, e.g., Shoots v. iQor Holdings US Inc.*, 2015 U.S. Dist. LEXIS 141617, \*25-27 (D. Minn. Oct. 19, 2015) (applying OPPA to non-overtime wages).

**ANSWER:** Paragraph 35 is a statement of law to which no response is required. To the extent a response is required, Marriott denies the allegations in Paragraph 35.

36. Defendant violated the OPPA by failing to timely pay Plaintiff and the class members any compensation for work associated with Start-Up Activities.

**ANSWER:** Marriott denies the allegations in Paragraph 36.

**JURY DEMAND**

Plaintiff demands a jury trial.

**ANSWER:** Marriott admits that Plaintiff has requested a jury trial but denies that this case presents issues that are suitable for a trial by jury.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, on behalf of herself and other members of the class/collective, seeks the following relief:

- A. An order permitting this action to proceed as a collective and class action;
- B. Prompt notice, pursuant to 29 U.S.C. § 216(b), of this litigation to all members of the FLSA collective informing them of this action and permitting them to join this action;
- C. Unpaid overtime wages to the fullest extent permitted under the FLSA, OMFWSA, and OPPA;
- D. Unpaid regular wages to the fullest extent permitted under the OPPA;
- E. Liquidated damages, penalties, and prejudgment interest to the fullest extent permitted under the FLSA, OMFWSA, and OPPA;
- F. Litigation costs, expenses, and attorneys' fees to the fullest extent permitted under the FLSA, OMFWSA, and OPPA; and
- G. Such other and further relief as this Court deems just and proper.

**ANSWER:** With regard to the unnumbered PRAYER FOR RELIEF, including subparts A through G, Marriott denies that any putative class members are similarly-situated to Plaintiff so as to constitute an appropriate collective, denies that Plaintiff has or can present sufficient

evidence to support certification of a class or proceeding with this action as a class action, and denies that Plaintiff or any putative collective or class members are entitled to any damages, relief or recovery sought in this Paragraph or elsewhere in the Complaint. Marriott denies any and all remaining allegations in the unnumbered PRAYER FOR RELIEF.

### **ADDITIONAL AND AFFIRMATIVE DEFENSES**

Marriott denies each and every allegation in Plaintiff's Complaint that is not expressly admitted in this Answer. Marriott further states that the defenses included in this Answer are set forth to ensure compliance with Federal Rule of Civil Procedure 8(c), without representing or conceding that Marriott has the burden of proof or that the defenses necessarily constitute "avoidances" or "affirmative defenses" within the meaning of Federal Rule of Civil Procedure 8(c) or other applicable law. No defense in this Answer shall be deemed an affirmative defense unless failure to assert the defense will result in waiver thereof. Marriott also reserves the right to assert additional defenses (including affirmative defenses) and matters in avoidance that may be disclosed by additional investigation and discovery.

1. Plaintiff's Complaint fails to state a claim upon which relief can be granted.
2. Marriott denies all allegations, requests for relief, captions, headings or notes throughout the Complaint which are not specifically admitted by Marriott.
3. Marriott has not violated any legal duty owed to Plaintiff, therefore, Plaintiff is not entitled to recovery against Marriott.
4. Plaintiff has been paid all wages which were due and owing, and to which she was entitled.

5. Plaintiff lacks standing to raise the claims that she seeks to bring as a collective action.

6. Plaintiff lacks standing to raise the claims she seeks to bring as a class action.

7. The type of claims on which Plaintiff seeks to bring a collective and class action are matters on which individual issues predominate and are not appropriate for collective or class action.

8. Plaintiff's claims are not similar, common, or typical to those of any alleged similarly situated individuals, and there is no basis in law or fact for a collective or class action.

9. Plaintiff and any alleged similarly situated class of employees (the existence of which is expressly denied), at all times material herein, were lawfully compensated in accordance with the FLSA, the applicable regulations of the United States Department of Labor, and judicial decisions construing the FLSA.

10. Marriott acted in full compliance and conformity with and in reliance on the FLSA and applicable laws, regulations, orders, opinions and interpretations and with the enforcement policies with respect to the class of employers to which it belongs and acted in good faith as a reasonably prudent entity/person would have acted under the circumstances and with a belief of reasonable compliance and of no violative actions and are not subject to any liability for alleged failure to pay wages required by the FLSA, and any claims of willful violations or for a three (3) year limitations period or for liquidated damages under the FLSA should be dismissed.

11. Plaintiff's claims, and those of any alleged similarly situated class of employees (the existence of which is expressly denied), are barred to the extent that they were not filed within the applicable limitations period under the law.

12. Defendant is entitled to a setoff against any liability for amounts already paid to Plaintiff for working additional hours and all wage payments to Plaintiff (which she has had the use of for purposes of her own choosing but were unearned) for time which actually was not worked by Plaintiff and hours which were not compensable.

13. Without conceding that Plaintiff (and/or "similarly situated individuals") has suffered any damages as a result of any alleged wrongdoing by Marriott, all or part of the damages alleged in the Complaint are barred because of the unclean hands or bad faith of Plaintiff (and/or "similarly situated individuals") to the extent that Plaintiff (and/or "similarly situated individuals"): (1) intentionally failed or refused to meet Marriott's reasonable standards, expectations, and/or requirements of the position held; and/or (2) took other inappropriate actions in order to attempt to deceive Marriott as to the nature of Plaintiff's employment, to discourage Marriott from taking actions aimed at complying with the law, or to interfere with Marriott's compliance efforts.

14. Plaintiff's claims, in whole or in part, are barred by the doctrines of ratification, acquiescence, accord and satisfaction, settlement, consent, agreement, payment and release.

15. Plaintiff's claims, in whole or in part, are barred to the extent that Plaintiff has failed to properly perform her respective duties and failed to perform those duties which Marriott realistically expected her to perform.

16. Plaintiff's claims, in whole or in part, are barred to the extent she violated policies and guidelines or disregarded her supervisor's or manager's instructions.

17. Plaintiff's claim for liquidated damages is barred, in whole or in part, under Section 11 of the Portal-to Portal Act, 29 U.S.C. § 260.

18. Plaintiff's claim for liquidated damages under the OPPA is barred because there exists a legitimate dispute over whether the alleged unpaid wages are actually owed.

19. The activities for which Plaintiff was allegedly not compensated involved only insubstantial and insignificant periods of time, and are *de minimis*, and are not compensable under the FLSA or any other applicable law or regulation.

20. Plaintiff has failed, refused and neglected to mitigate or avoid the damages complained of in the Complaint, if any.

21. Plaintiff's claims are barred as to all hours during which Plaintiff was engaged in activities that were preliminary or postliminary to her principal activities.

22. Plaintiff is not entitled under any statute, or any theory of relief, to multiple recoveries for the same damages.

23. To the extent that Plaintiff worked any hours for which she was not compensated, Marriott lacked knowledge of those hours worked.

WHEREFORE, Marriott demands that the claims against it raised in the Complaint be dismissed with prejudice, that judgment be entered in its favor, and that it recovers its costs and expenses, including reasonable attorney fees, and such other and further relief to which it may be entitled at law or in equity or as this Court deems just and appropriate.

Dated: December 14, 2018

Respectfully submitted,

/s/ Allison N. Powers

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*Marriott International, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on December 14, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF, which will transmit notice of such filing to all counsel of record.

*/s/ Allison N. Powers* \_\_\_\_\_

Allison N. Powers

*One of the attorneys for Defendant  
Marriott International, Inc.*