



## JURISDICTION AND VENUE

2. Denied as to Defendant MGM. Defendant Borgata admits that there is subject matter jurisdiction with respect to the claims asserted against Borgata only in the United States District Court for the District of New Jersey pursuant to 29 USC §216(b) and 28 USC §1331.

3. Denied as to Defendant MGM. Defendant Borgata does not challenge venue in the United States District Court for the District of New Jersey.

## PARTIES

4. Defendants are without information sufficient to form a belief as to the current residency of Plaintiff and, therefore, leave Plaintiff to her proofs. Defendants admit that Plaintiff, at certain times relevant to this matter, was employed by Borgata. Defendants deny that Plaintiff was ever employed by MGM. Plaintiff is otherwise left to her proofs with respect to the remainder of the allegations contained in this paragraph of Plaintiff's Complaint.

5. Admitted.

6. It is admitted that Borgata operates a casino/hotel/entertainment establishment located in the City of Atlantic City, County of Atlantic, State of New Jersey. It is also admitted that as of August 2016 MGM held a 100% ownership interest in Borgata. It is admitted that Borgata is a wholly owned subsidiary of MGM.

## COMMON FACTUAL ALLEGATIONS

7. It is denied that MGM and Borgata were joint employers of Plaintiff or any similarly situated employees.

8. Denied.

9. Denied insofar as this paragraph of Plaintiff's Complaint contains an incomplete and inaccurate recitation of the entirety of the statutes and/or regulations it references.

10. All applicable Regulations contained in the Code of Federal Regulations speak for themselves.

11. Denied insofar as it is denied that MGM is a joint employer of Plaintiff and otherwise denied.

12. Denied.

13. Denied.

14. Denied insofar as Defendants deny any alleged violations of the Fair Labor Standards Act and otherwise denied.

15. Denied.

#### COLLECTIVE ACTION ALLEGATIONS

16. Defendants deny all substantive allegations which may be contained in this paragraph of Plaintiff's Complaint and otherwise deny this paragraph of Plaintiff's Complaint.

17. Defendants hereby deny all substantive allegations made in this paragraph of Plaintiff's Complaint. The rights of Plaintiff and any similarly situated individuals who "opt in" to this collective action are set forth in the FLSA.

#### COUNT I

18. Defendants repeat and incorporate their responses to each and every allegation contained in Plaintiff's Complaint as if more fully set forth herein.

19. Admitted.

20. Denied insofar as this paragraph inaccurately and incompletely sets forth the applicable statutes and regulations. The FLSA and specifically 29 USC §206(a) and 29 USC §207(a)(1) speak for themselves.

21. Denied insofar as MGM is not the employer of Plaintiff or those similarly situated to Plaintiff in this matter. It is admitted that Borgata is subject to the minimum wage and overtime pay requirements as contained in the Fair Labor Standards Act.

22. It is denied that MGM Resorts International was the employer of Plaintiff or those similarly situated to Plaintiff. It is admitted that Borgata was Plaintiff's employer.

23. It is denied that MGM Resorts International was the employer of Plaintiff or those similarly situated to Plaintiff. It is admitted that Borgata was Plaintiff's employer.

24. Defendants neither admit nor deny the allegations of this paragraph of Plaintiff's Complaint insofar as this paragraph of Plaintiff's Complaint is too vague to warrant a response, and leave Plaintiff to her proofs.

25. It is admitted that the Fair Labor Standards Act requires employers to compensate non-exempt employees at the rate of no less than 1½ times their regular rate of pay for all hours worked in excess of 40 hours in a work week.

26. Denied.

27. Defendants neither admit nor deny the allegations of this paragraph of Plaintiff's Complaint and leaves Plaintiff to her proofs.

28. Denied.

29. Denied.

30. Denied.

31. Denied.

#### AFFIRMATIVE DEFENSES

1. Plaintiff's Complaint, or portions thereof, fails to state a claim upon which relief can be granted.

2. Plaintiff's Complaint, or portions thereof, is barred by the applicable Statute of Limitations.

3. Defendants invoke the defenses, protections and limitations of the Fair Labor Standards Act, 29 USC §201 *et seq.* ("FLSA").

4. MGM Resorts International is not a joint employer and Plaintiff's Complaint, as against them, fails as a matter of law.

5. At all times relevant hereto, Defendants acted in good faith and had reasonable grounds for believing their actions were in compliance with the FLSA.

6. Defendants did not show reckless disregard for whether or not their conduct was prohibited by the FLSA.

7. This action is barred to the extent that Plaintiff seeks recovery for any time that is not compensable time under the FLSA.

8. Plaintiff, and others similarly situated, are not entitled to liquidated damages or exemplary damages as Defendants did not act or fail to act in a manner sufficient to give rise to an entitlement of liquidated damages or exemplary damages.

9. Plaintiff and other members of the purported collective action are not similarly situated.

10. Plaintiff has failed to mitigate her alleged damages.

11. Plaintiff's claims are barred by the Doctrines of Waiver, Estoppel and Laches.

12. Plaintiff has failed to exhaust her administrative remedies and is barred from pursuing this action.

13. Defendants reserve the right to assert further affirmative defenses in this matter as they become evident through discovery and investigation.

JURY DEMAND

Trial by jury is hereby demanded as to all issues set forth herein.

CERTIFICATION

It is hereby certified that a copy of the within pleading was served upon, Andrew Santillo, Esq., attorney for Plaintiff, by ECF electronic filing.

NOTICE OF TRIAL COUNSEL

PLEASE BE NOTIFIED that pursuant to Rule 4:25, Russell L. Lichtenstein, Esquire, is hereby designated as trial counsel in the above-captioned litigation on behalf of the firm of Cooper Levenson, P.A.

COOPER LEVENSON, P.A.



BY \_\_\_\_\_

RUSSELL L. LICHTENSTEIN, ESQUIRE  
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Dated: July 13, 2020