

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

|                        |   |                            |
|------------------------|---|----------------------------|
| MARC PUGLIESE, et al., | ) |                            |
|                        | ) |                            |
| Plaintiffs,            | ) |                            |
|                        | ) |                            |
| v.                     | ) | Case No. 1:21-CV-11629-DJC |
|                        | ) |                            |
| GOVERNMENT EMPLOYEES   | ) |                            |
| INSURANCE COMPANY,     | ) |                            |
| d/b/a GEICO,           | ) |                            |
|                        | ) |                            |
| Defendant.             | ) |                            |
| _____                  | ) |                            |

**DEFENDANT GOVERNMENT EMPLOYEES INSURANCE COMPANY'S  
ANSWER AND DEFENSES TO PLAINTIFFS'  
CLASS ACTION AND COLLECTIVE ACTION COMPLAINT**

Defendant, Government Employees Insurance Company d/b/a GEICO ("GEICO") answers the Class Action and Collective Action Complaint (ECF No. 1) as follows:

The introductory paragraph of the Complaint does not require an answer. To the extent a response is required, Defendant denies the allegations in the unnumbered introductory paragraph of the Complaint and refers all questions of law to this Court.

**PARTIES AND JURISDICTION**

1. Defendant admits the allegations in Paragraph 1 of the Complaint.
2. Defendant admits that Plaintiff brings this action on behalf of himself and seeks to bring it on behalf of all others similar situated. Defendant denies the allegations of Paragraph 2, except as expressly admitted, and expressly denies that it has liability for

any violation of the FLSA or Massachusetts law, and expressly denies that Plaintiff's claims are appropriate for treatment as a class or collective action.

3. Defendant admits the allegations in Paragraph 3 of the Complaint.

4. Defendant admits the allegations in Paragraph 4 of the Complaint.

5. Defendant admits the allegations in Paragraph 5 of the Complaint.

6. Paragraph 6 of the Complaint contains a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 6 of the Complaint and refers all questions of law to this Court.

7. Defendant admits the allegations in Paragraph 7 of the Complaint.

8. Defendant admits the allegations in Paragraph 8 of the Complaint.

9. Defendant admits that it employed Plaintiff and other Auto Damage Adjusters but denies the allegation that any employees are similarly situated to Plaintiff. The remainder of Paragraph 9 contains a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 9 of the Complaint and refers all questions of law to this Court.

### FACTS

10. Defendant admits the allegations in Paragraph 10 of the Complaint.

11. Defendant denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 11 of the Complaint.

12. Defendant denies the allegations in Paragraph 12 of the Complaint.

13. Defendant denies the allegations in Paragraph 13 of the Complaint. Defendant further expressly denies that Plaintiff's claims are appropriate for treatment as a class or collective action.

14. Defendant denies the allegations in Paragraph 14 of the Complaint.

15. Defendant denies the allegations in Paragraph 15 of the Complaint. Defendant further expressly denies that Plaintiff's claims are appropriate for treatment as a class or collective action.

16. Defendant denies the allegations in Paragraph 16 of the Complaint.

17. Defendant denies the allegations in Paragraph 17 of the Complaint.

18. Defendant denies the allegations in Paragraph 18 of the Complaint.

19. Defendant denies the allegations in Paragraph 19 of the Complaint.

20. Defendant denies the allegations in Paragraph 20 of the Complaint.

21. Defendant denies the allegations in Paragraph 21 of the Complaint.

22. Defendant denies the allegations in Paragraph 22 of the Complaint.

23. Defendant denies the allegations in Paragraph 23 of the Complaint, except admits that it was required to keep track of Plaintiff's hours.

24. Defendant denies the allegations in Paragraph 24 of the Complaint.

25. Defendant denies the allegations in Paragraph 25 of the Complaint, except admits that salaried employees were entitled to overtime pay under the fluctuating workweek method of computing overtime.

26. Defendant denies the allegations in Paragraph 26 of the Complaint.

**FLSA COLLECTIVE ACTION ALLEGATIONS**

27. Paragraph 27 of the Complaint contains a characterization of Plaintiff's claims to which no response is required. To the extent a response is required, Defendant denies the allegations of Paragraph 27 and expressly denies that Plaintiff's claims are appropriate for treatment as a collective action.

28. Paragraph 28 of the Complaint contains a characterization of Plaintiff's claims to which no response is required. To the extent a response is required, Defendant denies the allegations of Paragraph 28 and expressly denies that Plaintiff's claims are appropriate for treatment as a collective action.

29. Defendant denies the allegations of Paragraph 29, and expressly denies that Plaintiff's claims are appropriate for treatment as a collective action.

30. Paragraph 30 of the Complaint contains a characterization of Plaintiff's claims and relief sought, to which no response is required. To the extent a response is required, Defendant denies the allegations of Paragraph 30 and expressly denies that Plaintiff's claims are appropriate for treatment as a collective action.

**MWA CLASS ACTION ALLEGATIONS**

31. Paragraph 31 of the Complaint contains a characterization of Plaintiff's claims and relief sought, to which no response is required. To the extent a response is required, Defendant denies the allegations of Paragraph 31 and expressly denies that Plaintiff's claims are appropriate for treatment as a class action.

32. Defendant denies the allegations of Paragraph 32, and expressly denies that Plaintiff's claims are appropriate for treatment as a class action.

33. Paragraph 33 of the Complaint contains a characterization of Plaintiff's claims and relief sought, to which no response is required. To the extent a response is required, Defendant denies the allegations of Paragraph 33 and expressly denies that Plaintiff's claims are appropriate for treatment as a class action.

34. Defendant denies the allegations in Paragraph 34 of the Complaint, and expressly denies that Plaintiff's claims are appropriate for treatment as a class action.

35. Defendant denies the allegations in Paragraph 35 of the Complaint, and expressly denies that Plaintiff's claims are appropriate for treatment as a class action.

36. Defendant denies the allegations in Paragraph 36 of the Complaint, and expressly denies that Plaintiff's claims are appropriate for treatment as a class action.

37. Defendant denies the allegations in Paragraph 37 of the Complaint, and expressly denies that Plaintiff's claims are appropriate for treatment as a class action.

38. Defendant denies the allegations in Paragraph 38 of the Complaint, and expressly denies that Plaintiff's claims are appropriate for treatment as a class action.

39. Defendant denies the allegations in Paragraph 39 of the Complaint, and expressly denies that Plaintiff's claims are appropriate for treatment as a class action.

40. Defendant denies the allegations in Paragraph 40 of the Complaint.

41. Defendant is without sufficient information to admit or deny the allegations in Paragraph 41.

42. Defendant denies the allegations in Paragraph 42 of the Complaint, and expressly denies that Plaintiff's claims are appropriate for treatment as a class action.

43. Defendant denies the allegations in Paragraph 43 of the Complaint, and expressly denies that Plaintiff's claims are appropriate for treatment as a class action.

44. Defendant denies the allegations in Paragraph 44 of the Complaint, and expressly denies that Plaintiff's claims are appropriate for treatment as a class action.

**COUNT I**  
**VIOLATION OF THE FLSA OVERTIME COMPENSATION MANDATE**

45. Defendant repeats, realleges, and incorporates herein all of its responses set forth in Paragraphs 1 through 44 above.

46. Defendant denies the allegations in Paragraph 46, and expressly denies that Plaintiff's claims are appropriate for treatment as a collective action.

47. Defendant denies the allegations in Paragraph 47, and expressly denies that Plaintiff's claims are appropriate for treatment as a collective action.

48. Defendant denies the allegations in Paragraph 48, and expressly denies that Plaintiff's claims are appropriate for treatment as a collective action.

49. Defendant denies the allegations in Paragraph 49.

50. The allegations in Paragraph 50 constitute requested relief and accordingly, Defendant is not required to respond. However, Defendant denies that Plaintiff or any other employee identified in the Complaint is entitled to any of the relief requested.

**COUNT II**  
**VIOLATION OF THE MASSACHUSETTS WAGE ACT**

51. Defendant repeats, realleges, and incorporates herein all of its responses set forth in Paragraphs 1 through 50 above.

52. Defendant admits that it employed Plaintiff and other Auto Damage Adjusters but denies the allegation that any employees are entitled to any additional compensation, and Defendant expressly denies that Plaintiff's claims are appropriate for treatment as a class action.

53. Defendant denies the allegations in Paragraph 53, and expressly denies that Plaintiff's claims are appropriate for treatment as a class action.

54. Defendant denies the allegations in Paragraph 54, and expressly denies that Plaintiff's claims are appropriate for treatment as a class action.

55. The allegations in Paragraph 55 constitute requested relief and accordingly, Defendant is not required to respond. However, Defendant denies that Plaintiff or any other employee identified in the Complaint is entitled to any of the relief requested.

#### **RELIEF SOUGHT**

Defendant is not required to admit or deny the statements in the "Relief Sought." Defendant denies, however, that Plaintiff, or any other employee identified in the Complaint, is entitled to any of the relief requested in the Complaint.

Except as expressly admitted above, Defendant denies both generally and specifically each and every allegation contained in Plaintiff's Complaint.

#### **JURY DEMAND**

Defendant admits that Plaintiff has demanded a trial by jury on all issues so triable.

#### **DEFENSES TO FIRST AMENDED COMPLAINT**

WHEREFORE, having answered in full, Defendant states below the following defenses:

**AFFIRMATIVE DEFENSES TO COMPLAINT**

WHEREFORE, having answered in full, Defendant states below the following affirmative defenses:

**FIRST AFFIRMATIVE DEFENSE**

The Complaint fails to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

The claims asserted are barred, in whole or in part, by the statute of limitations.

**THIRD AFFIRMATIVE DEFENSE**

Plaintiff was exempt from the minimum wage and overtime requirements of the Fair Labor Standards Act and Massachusetts law under the Administrative Exemption.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by the doctrine of unclean hands because he claims that he concealed his actual hours of work to cover performance and productivity deficiencies.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiff is estopped from claiming overtime because of his concealment of his overtime.

**SIXTH AFFIRMATIVE DEFENSE**

Claims concerning preliminary and postliminary activities are barred by 29 U.S.C. § 254.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by the doctrine of laches.



**EIGHTH AFFIRMATIVE DEFENSE**

Defendant acted in good faith and had reasonable grounds for believing that the act or omission complained of was not a violation of the Fair Labor Standards Act or Massachusetts law.

**NINTH AFFIRMATIVE DEFENSE**

Because Plaintiff reported his own time to Defendant, he is estopped from claiming additional work time. Further, Defendant did not suffer or permit such activities by Plaintiff or putative class members as alleged.

**TENTH AFFIRMATIVE DEFENSE**

Any uncompensated time was *de minimis*.

**ELEVENTH AFFIRMATIVE DEFENSE**

Claims by Plaintiff and any employees who worked at home during the COVID-19 pandemic are barred by the fact that they entered into reasonable agreements with Defendant regarding compensation to be paid for the work expected to be performed pursuant to 29 C.F.R. § 785.23.

**RESERVATION OF RIGHTS**

Defendant reserves the right to plead other defenses as they become known to Defendant during the litigation of this case.

Dated: December 6, 2021

Respectfully submitted,

/s/ Andrea L. Martin

Andrea L. Martin (BBO 666117)

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**CERTIFICATE OF SERVICE**

I, Andrea Martin, hereby certify that a copy of the foregoing document, filed through the CM/ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies shall be served by first class mail postage prepaid on all counsel of record who are not served through the CM/ECF system on December 6, 2021.

/s/Andrea L. Martin  
Andrea L. Martin

*Counsel for Defendant*