

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

**ROBERT SHERIDAN, on behalf of  
himself and similarly situated employees**

**Plaintiff,**

**v.**

**SCRANTON QUINCY AMBULANCE,  
LLC,**

**Defendant.**

**CIVIL ACTION**

**NO. 3:19-cv-00479**

**DEFENDANT'S AMENDED ANSWER AND  
AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT**

Defendant Scranton Quincy Ambulance, LLC, by and through its counsel, hereby responds to the averments contained in Plaintiff's Complaint in accordance with the numbered paragraphs thereof.

**I. ALLEGED JURISDICTION AND VENUE**

1. The averments contained in this Paragraph constitute conclusions of law to which no responsive pleading is required. It is admitted, however, that this Court has jurisdiction over this matter.

2. The averments contained in this Paragraph constitute conclusions of law to which no responsive pleading is required. It is admitted, however, that this Court has jurisdiction over this matter.

3. The averments contained in this Paragraph constitute conclusions of law to which no responsive pleading is required. It is admitted, however, that

venue is properly in the United States Court for the Middle District of Pennsylvania.

**II. PARTIES**

4. Admitted, upon information and belief.

5. The averments contained in this Paragraph constitute conclusions of law to which no responsive pleading is required.

6. Admitted in part; denied in part. It is admitted only that Defendant, a limited liability company, is headquartered in Scranton, Pennsylvania. The remaining averments of this Paragraph are denied.

7. The averments contained in this Paragraph constitute conclusions of law to which no responsive pleading is required.

**III. ALLEGED FACTS**

8. Admitted.

9. Admitted.

10. Denied.

11. Defendant is unable to admit or deny the averments contained in this Paragraph as Plaintiff's use of the phrases "often worked over 40 hours per week" and "during many weeks" is vague and unintelligible in the context of the Complaint, rendering the averments of this Paragraph unanswerable. By way of further response, Defendant is unable to admit or deny the averments contained in

this Paragraph as Plaintiff fails to identify the workweeks during which he and “other Operations Supervisors” allegedly “work[ed] over 40 hours” or were allegedly “scheduled to work 48 hours and actually work[ed] 48 hours or more.” To the extent a responsive pleading is required to this Paragraph, the averments are denied.

12. Admitted in part. Defendant is unable to admit or deny the averments contained in this Paragraph as Plaintiff’s use of the phrase “as a matter of corporate policy” is vague and unintelligible in the context of the Complaint rendering the averments of this Paragraph unanswerable. To the extent a responsive pleading is required, the averments are denied. By way of further response, it is admitted only that Plaintiff and other Operations Supervisors are not paid overtime premium compensation for hours worked over 40 in a workweek, because they are classified as exempt from federal and state overtime laws. The remaining averments of this Paragraph are denied.

#### **IV. ALLEGED CLASS/COLLECTIVE ACTION ALLEGATIONS**

13. Admitted in part; denied in part. It is admitted only that Plaintiff has attempted to state a collective action claim against Defendant for alleged violations of the Fair Labor Standards Act (“FLSA”), a Federal Rule of Civil Procedure 23 class action claim against Defendant for alleged violations of the Pennsylvania Minimum Wage Act (“PMWA”), and that he seeks certain damages. It is

specifically denied that Plaintiff has stated a claim for relief under the FLSA, the PMWA and/or that this case is appropriate for collective or class treatment. The remaining averments contained in this Paragraph are denied.

14. Defendant is unable to admit or deny the averments contained in this Paragraph as Plaintiff's use of the phrase "Plaintiff and other potential members of the collective, having worked pursuant to the common policies described herein" is vague and unintelligible in the context of the Complaint rendering the averments of this Paragraph unanswerable. To the extent a responsive pleading is required, the averments are denied. The remaining averments contained in this Paragraph constitute conclusions of law to which no responsive pleading is required.

15. Denied. It is specifically denied that this case is appropriate for "class action treatment." Moreover, the averments contained in this Paragraph constitute conclusions of law to which no responsive pleading is required.

16. Denied. By way of further response, Defendant is unable to admit or deny the averments contained in this Paragraph as Plaintiff's use of the phrase "readily ascertainable based on Defendant's standard payroll records" is vague and unintelligible in the context of the Complaint rendering the averments of this Paragraph unanswerable. To the extent a responsive pleading is required, the averments are denied. Moreover, Plaintiff's estimation of the putative class size is vague and ambiguous. Accordingly, Defendant is unable to respond to the same.

The remaining averments in the Paragraph constitute conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, it is specifically denied that this case is appropriate for collective/class action treatment.

17. The averments contained in this Paragraph constitute conclusions of law to which no responsive pleading is required. To the extent that a responsive pleading is required, the averments contained in this Paragraph are denied.

18. The averments contained in this Paragraph constitute conclusions of law to which no responsive pleading is required. To the extent that a responsive pleading is required, the averments contained in this Paragraph are denied.

19. Defendant is unable to admit or deny the averments contained in this Paragraph as Plaintiff's use of the phrase "companywide pay policies" is vague and unintelligible in the context of the Complaint rendering the averments of this Paragraph unanswerable. To the extent a responsive pleading is required, the averments are denied. The remaining averments contained in this Paragraph constitute conclusions of law to which no responsive pleading is required. To the extent that a responsive pleading is required, the averments contained in this Paragraph are denied.

20. The averments contained in this Paragraph constitute conclusions of law to which no responsive pleading is required. To the extent that a responsive pleading is required, the averments contained in this Paragraph are denied.

### **COUNT I**

21. Defendant incorporates its responses to the preceding Paragraphs as fully set forth above.

22. Admitted in part. It is admitted only that the quoted language in this Paragraph appears in 29 U.S.C. § 207(a)(1). By way of further response, 29 U.S.C. § 207(a)(1) is a provision of a statute in writing which speaks for itself. To the extent that the averments in this Paragraph related thereto are inconsistent therewith, they are denied.

23. The averments contained in this Paragraph constitute conclusions of law to which no responsive pleading is required. To the extent that a responsive pleading is required, the averments contained in this Paragraph are denied.

24. The averments contained in this Paragraph constitute conclusions of law to which no responsive pleading is required. To the extent that a responsive pleading is required, the averments contained in this Paragraph are denied.

### **COUNT II**

25. Defendant incorporates its responses to the preceding Paragraphs as fully set forth above.

26. Admitted in part. It is admitted only that the quoted language in this Paragraph appears in 43 P.S. § 333.104(c). By way of further response, 43 P.S. § 333.104(c) is a provision of a statute in writing which speaks for itself. To the extent that the averments in this Paragraph related thereto are inconsistent therewith, they are denied.

27. The averments contained in this Paragraph constitute conclusions of law to which no responsive pleading is required. To the extent that a responsive pleading is required, the averments contained in this Paragraph are denied.

**V. PLAINTIFF'S PRAYER FOR RELIEF**

The averments contained in this Paragraph constitute a request for damages to which no responsive pleading is required. It is specifically denied that any action or inaction of Defendant (or any of its employees) entitles Plaintiff, or any group or groups of individuals whom he purports to represent, the existence of which is expressly denied, to the relief requested.

**VI. PLAINTIFF'S JURY TRIAL DEMAND**

The averments contained in this Paragraph do not allege facts to which a responsive pleading is required. To the extent a responsive pleading is required, the averments are denied.

**VII. DEFENDANT'S PRAYER FOR RELIEF**

WHEREFORE, having fully answered and responded to the averments of Plaintiff's Complaint, Defendant respectfully requests that:

- (a) Plaintiff's claims be dismissed with prejudice and in their entirety;
- (b) Each and every prayer for relief contained in the Complaint be denied;
- (c) Judgment be entered in favor of Defendant;
- (d) All costs, including reasonable attorneys' fees, be awarded to Defendant and against Plaintiff pursuant to applicable laws; and
- (e) Defendant be granted such other relief as this Court may deem just and proper.

**VIII. AFFIRMATIVE DEFENSES**

Defendant states the following affirmative defenses without assuming the burden of proof on such defenses that would otherwise rest with Plaintiff.

Defendant also reserves the right to assert such additional defenses that may become applicable during the course of this litigation.

**FIRST AFFIRMATIVE DEFENSE**

Plaintiff's Complaint fails to state a claim upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

The claims of Plaintiff and any putative collective and/or class action members are barred, in whole or in part, by all applicable statutes of limitation including, but not limited to, the two and three year limitations periods contained in the FLSA or PMWA, laches, and/or any other applicable limitations period.



**THIRD AFFIRMATIVE DEFENSE**

At all material times, Plaintiffs and any putative collective and/or class action members were exempt from the overtime requirements of the FLSA and the PMWA, including, but not limited to, the professional, executive, and/or administrative exemptions.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiff's claims cannot be properly joined with the claims of any potential opt-ins or putative class members, because Plaintiff's claim(s) are not typical of those purportedly advanced by other putative collective and/or class action members.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiff lacks standing to bring claims on behalf of, and may not represent, putative collective and/or class action members, in whole or in part, with respect to the asserted collective and class action claims.

**SIXTH AFFIRMATIVE DEFENSE**

Certain opt-in plaintiffs and/or putative class members are not entitled to relief to the extent that they do not fall within the putative collective and/or class action definitions.

**SEVENTH AFFIRMATIVE DEFENSE**

The group of persons whom Plaintiff purports to represent is not sufficiently large that it would be impracticable or impossible to join additional plaintiffs or for additional plaintiffs to pursue separate actions.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff and any putative collective and/or class action members have sustained no damages or, if any, *de minimis* damages, which are not actionable under the FLSA, the PMWA, and/or any statute or law.

**NINTH AFFIRMATIVE DEFENSE**

The claims of Plaintiff and any putative collective and/or class action members for damages are barred or limited by Defendant's good faith efforts to comply with applicable law.

**TENTH AFFIRMATIVE DEFENSE**

If any alleged failure to pay the overtime wages of Plaintiff and any putative collective and/or class action members was unlawful, none of Defendant's alleged actions or omissions constitute a willful violation of the FLSA, the PMWA, or any other statute or law.

**ELEVENTH AFFIRMATIVE DEFENSE**

The claims of Plaintiff and/or any putative collective and/or class action members are barred, in whole or in part, by exclusions, exceptions, credits, or offsets permissible under the FLSA and/or the PMWA.

**TWELFTH AFFIRMATIVE DEFENSE**

To the extent Plaintiff or any putative collective and/or class action member has signed a release and/or waiver encompassing claims alleged in the Complaint, their claims are barred by that release and/or waiver.

**THIRTEENTH AFFIRMATIVE DEFENSE**

The conduct of Plaintiff or any putative collective and/or class action member contributed and/or caused any harm that they allegedly suffered.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Plaintiff and any putative collective and/or class action members may not maintain the action as described in the Complaint as a collective or class action because the Complaint fails to state facts sufficient to establish an ascertainable class.

**FIFTEENTH AFFIRMATIVE DEFENSE**

A collective and/or class action is not superior to other available methods for the fair and efficient adjudication of the controversy.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Plaintiff is not similarly situated to any other putative collective and/or class action members and, therefore, is an inadequate collective and/or class representative.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

Plaintiff has failed to allege sufficient facts to support an assertion that any putative collective action members are subject to a common practice, policy, or plan of Defendant that violates the FLSA. Accordingly, conditional certification of the putative collective action is inappropriate.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

Plaintiff and any putative collective and/or class action members do not share a sufficient commonality of issues, either legal or factual, to warrant certification of a class and/or collective action. The alleged collective and/or class is not so numerous that joinder of all members is impracticable. Common issues of law and fact, if any, do not predominate over individual issues. Accordingly, the types of claims alleged by Plaintiff on behalf of themselves and the group of persons whom he purports to represent are matters in which individual questions predominate and, accordingly, are not appropriate for collective and/or class treatment.

**NINETEENTH AFFIRMATIVE DEFENSE**

Upon information and belief, Plaintiff and any putative collective and/or class action members failed to mitigate their damages, if any.

**TWENTIETH AFFIRMATIVE DEFENSE**

Plaintiff and any putative collective and/or class action members have received payment in full for any wages due and owing.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

The Complaint fails to state a claim for liquidated damages.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

Some or all of the claims asserted in the Complaint are unsuitable for collective treatment because the prosecution of separate actions by members of the groups of persons Plaintiff purports to represent would create a risk of adjudications with respect to proposed collective action members which would as a practical matter be dispositive of the interests of the other proposed collective action members not parties to the adjudications, or substantially impair or impede their ability to protect their interests.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

The certification and trial of this case as a collective action would violate Defendant's rights under the Fifth and Seventh Amendments to the United States Constitution, as well as the Pennsylvania Constitution.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

Plaintiff and the groups he purports to represent may not recover liquidated damages and/or prejudgment interest because such relief would amount to a “double recovery.”

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

Neither Plaintiff nor members of the alleged group(s) which he purports to represent may recover liquidated damages, because neither Defendant nor any of its officers, directors, managers, or agents committed any oppressive, willful, wanton, fraudulent, or malicious act or authorized or ratified any such act with respect to Plaintiff or any alleged group member, and because Plaintiff has failed to plead facts sufficient to support recovery of such damages.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

The claims of Plaintiff and any putative collective action members are barred, in whole or in part, by the two year statute of limitation contained in the FLSA because Plaintiff and any putative collective action members cannot demonstrate that Defendant’s conduct was willful such that it knew or showed reckless disregard that any of its alleged conduct violated the FLSA.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

Claims made on behalf of Plaintiff and/or any putative collective and/or class action members are or may be barred, in whole or in part, by estoppel, waiver, consent, and/or unclean hands.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

Payments to Plaintiff and any putative collective and/or class action members were made in good faith and in conformity with and in reliance on an administrative regulation, order, ruling, approval, interpretation, administrative practice, and/or enforcement policy of the United States Department of Labor and/or the Pennsylvania Department of Labor and Industry.

Defendant reserves the right to assert additional defenses as they may become known through the course of discovery.

WHEREFORE, Defendant respectfully requests judgment in its favor and against Plaintiff and request that it be awarded costs and attorneys' fees incurred in the defense of this action.

Respectfully submitted,

**POST & SCHELL, P.C.**

Dated: June 2, 2019

By: /s/ David E. Renner

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*Counsel to Defendant*



**CERTIFICATE OF SERVICE**

I hereby certify that the forgoing Amended Answer with Affirmative Defenses has been electronically filed with the Court and is available for viewing and downloading from the ECF System and thereby has been served upon the following counsel of record, electronically:

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**POST & SCHELL, P.C.**

Dated: June 2, 2019

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