

DAVID VERDERAME,

Plaintiff,

v.

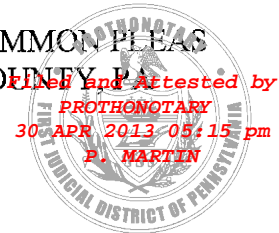
RADIOSHACK CORPORATION,

Defendant.

IN THE COURT OF COMMON PLEAS
OF PHILADELPHIA COUNTY, PA

No. 130401055

JURY TRIAL DEMANDED



NOTICE TO PLEAD

TO: DAVID VERDERAME
c/o Peter Winebrake
Winebrake & Santillo, LLC
715 Twining Road, Suite 211
Dresher, PA 19025

You are hereby notified to file a written response to the enclosed New Matter within
twenty days (20) from service hereof or a judgment may be entered against you.

Dated: April 30, 2013

STEVENS & LEE

By: s/ Julie E. Ravis

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*Attorneys for Defendant
RadioShack Corporation*

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ANSWER AND NEW MATTER OF DEFENDANT RADIOSHACK CORPORATION

Pursuant to Rule 1029 of the Pennsylvania Rules of Civil Procedure, defendant RadioShack Corporation (“RadioShack” or Defendant), by and through its attorneys, Stevens & Lee, P.C. and McKenna Long & Aldridge LLP, files its Answer and New Matter and, in support thereof, pleads as follows:

PARTIES

1. Denied. After reasonable investigation, RadioShack is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 1 related to the residence of Plaintiff, and on that basis denies the allegations.

2. Admitted in part and denied in part. Defendant admits only that Plaintiff was an employee of RadioShack. The remainder of this paragraph states a legal conclusion to which no

response is required. To the extent a response is required, Defendant specifically denies the remaining allegations of this paragraph.

3. Admitted.

4. Denied. This paragraph states a legal conclusion to which no response is required.

To the extent a response is required, Defendant specifically denies the allegations of this paragraph.

JURISDICTION AND VENUE

5. Denied. This paragraph states a legal conclusion to which no response is required.

To the extent a response is required, Defendant specifically denies all allegations of this paragraph.

6. For purposes of this Answer only, Defendant admits it regularly conducts business in Philadelphia County, has a Registered Office Address within Philadelphia County, and has store locations within Philadelphia County.

FACTS

7. Admitted.

8. Defendant admits the annual report for 2011 states it operated 287 “Company-Operated Stores, Kiosks and dealer locations” within the Commonwealth of Pennsylvania.

9. Admitted.

10. Admitted.

11. Admitted in part and denied in part. Defendant admits that employees of its stores in Pennsylvania receive overtime premium compensation for hours worked over 40 during the workweek. Defendant further admits that some of its employees in Pennsylvania are compensated

pursuant to the Fluctuating Workweek (“FWW”) standard described in 29 C.F.R. § 778.114. The remaining allegations in this paragraph are legal conclusions to which no response is required. To the extent a response is required, Defendant specifically denies all remaining allegations of this paragraph.

12. Admitted in part and denied in part. Defendant admits only that it paid overtime premium compensation to over 100 Pennsylvania Store employees during the three-year time period applicable to this lawsuit. The remaining allegations of this paragraph state legal conclusions to which no response is required. To the extent a response is required, Defendant specifically denies all remaining allegations of this paragraph.

13. Denied. This paragraph states a legal conclusion to which no response is required. To the extent a response is required, Defendant specifically denies all allegations of this paragraph.

14. Denied. This paragraph states a legal conclusion to which no response is required. To the extent a response is required, Defendant denies all allegations of this paragraph.

15. Admitted in part and denied in part. Defendant admits only that Plaintiff was employed by RadioShack from January 24, 2012 until November 6, 2012, and that Plaintiff was employed at a RadioShack retail location in Pennsdale, Pennsylvania. Defendant specifically denies that it employed Plaintiff as a store manager for the entire length of his employment with RadioShack. To the contrary, Plaintiff was employed by RadioShack as a Manager in Training from January 24, 2012 until February 17, 2012, and was employed by RadioShack as a store manager from approximately February 18, 2012 to November 6, 2012.

16. Admitted in part and denied in part. Defendant admits only that as a Store Manager Plaintiff was paid a weekly salary and when credited with over 40 hours in a single workweek, Plaintiff was paid overtime compensation. The remaining allegations of this paragraph state a legal conclusion to which no response is required. To the extent a response is required, Defendant specifically denies all remaining allegations of this paragraph.

17. Denied. This paragraph states a legal conclusion to which no response is required. To the extent a response is required, Defendant specifically denies all allegations of this paragraph. By way of further response, Defendant specifically denies any unlawful conduct and that the use of FWW was “illegal,” and Defendant further specifically denies Plaintiff, or any other employees in Pennsylvania, were underpaid for hours worked during the relevant time period.

CLASS ACTION ALLEGATIONS

18. Admitted in part and denied in part. Defendant admits Plaintiff filed this action on behalf of himself and as a class action on behalf of all Pennsylvania employees who, during any workweek since April 5, 2010, had their overtime pay calculated pursuant to the FWW standard. The remaining allegations in this paragraph are specifically denied. To the contrary, Defendant specifically denies there are any employees similarly situated to Plaintiff, or that any employees are entitled to any back overtime compensation. Defendant further specifically denies any unlawful conduct.

19. Denied. This paragraph states a legal conclusion to which no response is required. To the extent a response is required, Defendant specifically denies this action may be properly maintained as a class action.

20. Denied. This paragraph states a legal conclusion to which no response is required. To the extent a response is required, Defendant specifically denies the allegations of this paragraph. By way of further response, after reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 related to the numerosity or size of the alleged class, and on that basis denies the allegations. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 related to whether the alleged class members are ascertainable, and on that basis denies the allegations.

21. Admitted in part and denied in part. Defendant admits only that certain employees in Pennsylvania received overtime premium pay. Defendant specifically denies all remaining allegations of this paragraph. By way of further response, Defendant specifically denies there are questions of law or fact common to the alleged class. Defendant further specifically denies any unlawful conduct.

22. Denied. The allegations in this paragraph are legal conclusions to which no response is required. To the extent a response is required, Defendant specifically denies all allegations of this paragraph. By way of further response, Defendant specifically denies the claims of Plaintiff are typical of the claims of other members of the alleged class or that all claims are based on the same legal theories and remedies. Defendant further specifically denies that its defenses with respect to Plaintiff's claims are typical of the defenses it would assert against the alleged class members. Defendant further specifically denies Plaintiff's claims are sufficiently aligned with the interests of the alleged class that pursuit of Plaintiff's own interests will benefit the class as a whole.

23. Denied. The allegations in this paragraph are legal conclusions to which no response is required. To the extent a response is required, Defendant specifically denies all allegations of this paragraph. By way of further response, Defendant specifically denies Plaintiff will fairly and adequately assert and protect the interests of the alleged class. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23 related to the experience of Plaintiff's counsel, any conflicts between Plaintiff and the alleged class, or the financial resources of Plaintiff and his counsel, and on that basis denies the allegations.

24. Denied. The allegations in this paragraph, including in subparagraphs (a) through (i), are legal conclusions to which no response is required. By way of further response, Defendant specifically denies a class action provides a fair and efficient method for adjudication of the controversy.

(a) Denied. Defendant specifically denies common questions of law and fact predominate over questions affecting Plaintiff or any individual class member;

(b) Denied. Defendant specifically denies all class members are easily identifiable, and Defendant specifically denies that there are no foreseeable difficulties in the management of this action as a class action;

(c) Denied. Defendant specifically denies the monetary damages sought on behalf of the alleged class are readily calculated and attributable to class members;

(d) Denied. Defendant specifically denies the injunctive relief sought on behalf of the alleged class is easily administered and enforceable;

(e) Denied. Defendant specifically denies maintenance of the instant litigation as a class action protects against the risk of inconsistent or varying adjudications;

(f) Denied. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24(f) related to Plaintiff's knowledge of other private civil actions commenced by or against the class members concerning the issues raised in this action, and on that basis denies the allegations;

(g) Admitted in part and denied in part. Defendant admits only that it does business in Philadelphia County. Defendant specifically denies this Court is the appropriate forum for the litigation of claims of the entire class;

(h) Denied. Defendant specifically denies the complexity of the issues and the expense of litigating the separate claims of individual class members weigh in favor of class certification. Defendant specifically denies all remaining allegations of this paragraph;

(i) Denied. Defendant specifically denies it is impracticable and unrealistic for individual class members to independently pursue litigation against Defendant. Defendant specifically denies all remaining allegations of this paragraph.

COUNT I

25. Defendant hereby incorporates paragraphs 1-24 of its Answer, and by this reference incorporates each and every denial of an allegation therein as if set forth herein.

26. Admitted in part and denied in part. Defendant admits only that Plaintiff was an employee of RadioShack. The remainder of this paragraph states legal conclusions to which no

response is required. To the extent a response is required, Defendant denies all remaining allegations of this paragraph.

27. Denied. This paragraph states a legal conclusion to which no response is required. To the extent a response is required, Defendant denies all allegations of this paragraph.

28. Admitted in part and denied in part. Defendant admits only that it paid overtime premium compensation to the Plaintiff. The remainder of this paragraph states legal conclusions to which no response is required. To the extent a response is required, Defendant specifically denies the remaining allegations of this paragraph.

29. Denied. The allegations of this paragraph state legal conclusions to which no response is required. To the extent a response is required, Defendant specifically denies the allegations of this paragraph.

Defendant denies that Plaintiff has any meritorious claims which would entitle him to relief. Defendant further denies that Plaintiff can properly pursue a class action on the allegations stated in the Complaint. Accordingly, Defendant denies Plaintiffs' prayer for relief and all of its subparts.

WHEREFORE, Defendant prays as follows:

1. That Plaintiff take nothing by the Complaint;
2. That the Complaint be dismissed with prejudice, or alternatively that judgment enter in favor of Defendant;
3. That Defendant be awarded costs of suit and attorneys' fees; and
4. For any other and further relief as the Court may deem just and proper.

NEW MATTER

Pursuant to Rule 1030 of the Pennsylvania Rules of Civil Procedure, Defendant RadioShack Corporation hereby asserts New Matter against Plaintiff as follows:

30. Defendant incorporates by reference its responses to paragraphs 1 through 29 of the Answer and New Matter as if fully contained herein.

31. Each and every claim alleged in the Complaint fails to state facts sufficient to constitute a cause of action, and/or fails to state a claim against Defendant as a matter of law.

32. Plaintiff's claims are barred, or recovery reduced, by the doctrine of laches due to Plaintiff's unreasonable and inexcusable delay in commencing this action, to the detriment of Defendant.

33. Plaintiff failed, neglected and/or refused to mitigate alleged injuries and damages.

34. Plaintiff and any purportedly "similarly situated" employees are and/or were exempt from overtime under 29 U.S.C. § 213, 29 CFR § 541 et seq. (including but not limited to § 541.100, 29 C.F.R. § 541.1, 29 C.F.R. § 541.102, 29 C.F.R. § 541.103, 29 C.F.R. § 541.113 and/or 29 C.F.R. § 541.119), 34 Pa. Code §§ 231.81 and 231.83, and as such were not entitled to receive overtime compensation.

35. Plaintiff and any purportedly "similarly situated" employees' claims under Pennsylvania state law are preempted by applicable federal statutes and regulations.

36. Plaintiff's claims are barred, or recovery reduced, by the doctrine of estoppel.

37. Plaintiff's claims are barred, or recovery reduced, by the doctrine of unclean hands or *in pari delicto*.

38. Plaintiff's claims are barred, or recovery reduced, by the doctrine of waiver.

39. Defendant is excused from any and all liability under the facts alleged in the Complaint because at all times Defendant acted in good faith, conducted all material transactions in good faith, and had reasonable grounds for believing that its conduct was in compliance with the law.

40. Defendant correctly, legally and rightfully paid overtime compensation to Plaintiff, and anyone else Plaintiff alleges would make up the subject class, pursuant to a Fluctuating Workweek compensation plan as defined and authorized by 29 C.F.R. § 778.114.

41. Defendant correctly, legally and rightfully paid overtime compensation to Plaintiff, and anyone else Plaintiffs allege would make up the subject class, pursuant to the method approved by the United States Supreme Court in *Overnight Motor Transp. Co., Inc. v. Missel*, 316 U.S. 572 (1942).

42. Plaintiff's claims are barred to the extent that they are outside the applicable statutes of limitations periods.

43. Defendant presently has insufficient knowledge or information as to whether it may have additional, yet unasserted, affirmative defenses. Defendant therefore reserves the right to assert additional affirmative defenses in the event discovery or further proceedings indicate such defenses would be appropriate.

WHEREFORE, Defendant prays as follows:

1. That Plaintiff takes nothing by the Complaint;
2. That the Complaint be dismissed with prejudice, or alternatively that judgment enter in favor of Defendant;
3. That Defendant be awarded costs of suit and attorneys' fees; and

4. For any other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 1007.1 of the Pennsylvania Rules of Civil Procedure, Defendant RadioShack Corporation hereby demands a jury trial.

Dated: April 30, 2013

STEVENS & LEE

By: s/ Julie E. Ravis

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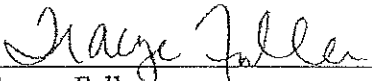
Fax: (619) 595-5450

Attorneys for Defendant RadioShack Corporation

VERIFICATION

I, Tracye Fuller, verify that I am authorized to make this verification on behalf of RadioShack Corporation ("RadioShack"), defendant in foregoing action; that the statements set forth in the attached Answer to Complaint with New Matter are based upon facts of which I have personal knowledge, have obtained from RadioShack's business records, or upon information furnished me by counsel or by other employees of RadioShack; that the language of the document is that of counsel and not my own; and that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Date: April 29, 2013



Tracye Fuller
Litigation Paralegal
RadioShack Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this date, I served the foregoing Answer with New Matter upon the following counsel of record via the Court's electronic filing system, addressed as follows:

Peter Winebrake
R. Andrew Santillo
Mark J. Gottesfeld
Winebrake & Santillo, LLC
715 Twining Road, Suite 211
Dresher, PA 19025

Dated: April 30, 2013

s/ Julie E. Ravis

Julie E. Ravis