

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

JOSHUA FOX , individually and on behalf of others similarly situated,]	CASE NO. _____
]	
]	
<i>Plaintiffs,</i>]	
]	
v.]	COLLECTIVE ACTION
]	
WESTERN TALK, L.C.,]	
WESTERN PAGING AND VOICEMAIL,]	
and DANIEL L. SHEPPARD,]	
]	
<i>Defendants.</i>]	JURY DEMANDED
_____]	

COMPLAINT

INTRODUCTION

1. This is a Fair Labor Standards Act (FLSA) collective action brought by Joshua Fox seeking to recover for Defendants’ unlawful refusal to pay overtime at the rate of time and one half for all hours worked over forty in a work week. Defendants employed Fox and others as Sales Associates and Sales Representatives to sell cell phones, cell phone service plans, and other cell phone products in Defendants’ retail locations. Although Defendants regularly required Fox and other Sales Associates and Sales Representatives to work more than 40 hours in a week, Defendants did not pay them overtime wages. Fox seeks unpaid overtime wages, liquidated damages, costs and attorneys’ fees, as well as declaratory relief under the Fair Labor Standards Act (FLSA), 29 U.S.C. §201 *et seq.* on behalf of himself and a class of all Sales Associates and Sales Representatives who were employed by Defendants and not paid overtime wages for hours worked more than 40 in a week.

JURISDICTION

2. Jurisdiction is conferred upon this Court by 29 U.S.C. §216(b) of the Fair Labor Standards Act, by 28 U.S.C. §1331, this action arising under laws of the United States, and by 28 U.S.C. §1337, this action arising under Acts of Congress regulating commerce.

VENUE

3. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) because Fox and the class worked for Defendants in this District, the cause of action arose in this District, Fox and other class members reside in this District, and Defendants reside in this District.

PARTIES

A. Plaintiffs

4. The named Plaintiff Fox was an employee of Defendants. Fox's Consent to Sue is attached at the back of this complaint.

5. Fox is a resident of Texas.

6. Fox was engaged in commerce while working for Defendants.

7. Fox brings this FLSA collective action on behalf of himself and a class of Sales Associates and Sales Representatives who worked more than 40 hours in a pay week for Defendants without payment of overtime at the rate of time and one-half within the three years preceding the filing of a consent to sue by such individuals pursuant to 29 U.S.C. §216(b).

8. The term "Plaintiffs" as used in this Complaint refers to Fox and any additional parties who join this action pursuant to the collective action provision of 29 U.S.C. §216(b).

B. Defendants

9. Defendant Western Paging and Voicemail (“Western Paging”) is a Texas company registered in Texas. Western Paging lists its business address as 701 North Post Oak Road, #130, Houston, TX 77024.

10. Western Paging is a private company that provides cell phone equipment, service plans, and repair services. It is an authorized preferred dealer for Sprint.

11. Upon information and belief, Western Paging grossed more than \$500,000 in the past fiscal year.

12. Western Paging operates an enterprise engaged in commerce within the meaning of the FLSA.

13. Defendant Western Talk, L.C. (“Western Talk”) is a Texas company registered in Texas. Western Talk lists its business address as 701 North Post Oak Road, #130, Houston, TX 77024.

14. Western Talk is a private company that provides cell phone equipment, service plans, and repair services. It is an authorized preferred dealer for Sprint.

15. Upon information and belief, Western Talk grossed more than \$500,000 in the past fiscal year.

16. Defendant Daniel L. Sheppard (“Sheppard”) is an owner and president of Western Paging and, upon information and belief, an owner of Western Talk. As President of Western Paging, Sheppard acted and continues to act directly and indirectly in Western Paging’s interests in relation to its employees, including the Plaintiffs, and is thus an employer of the employees within the meaning of 29 U.S.C. § 203(d).

17. Upon information and belief, Defendants operate an enterprise engaged in commerce within the meaning of the FLSA.

18. For each of the three years preceding the filing of the initial Complaint herein, Defendants have employed two or more individuals “handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce.”

FACTS

19. Fox was employed as a Sales Associate and Sales Representative by Defendants in the greater Houston area from approximately June 2011 until November 2011.

20. Defendants employed other Sales Associates and Sales Representatives during the past three years.

21. Defendants employed Plaintiffs, including Fox, to sell cell phones, cell phone service plans, and other cell phone products in Defendants’ retail locations.

22. Plaintiffs, including Fox, were generally scheduled to work five or six days per week. Although their schedules varied, Plaintiffs, including Fox, were regularly scheduled to work more than 40 hours a week.

23. Plaintiffs, including Fox, were required to be at work 15 minutes before their scheduled shift began to open the store and log into Defendants’ computer system, and were required to work past the end of their shifts to complete sales and to do the work preparatory to closing the store.

24. Fox worked approximately 45 hours a week on average for Defendants.

25. Other Plaintiffs regularly worked more than 40 hours per week for Defendants.

26. Defendants suffered or permitted Plaintiffs to work more than 40 hours in a work week for their benefit.

27. Defendants knew or should have known that Plaintiffs worked more than 40 hours in a week.

28. Defendants paid Plaintiffs a salary plus a commission, but not overtime compensation at the rate of time and one-half for all hours worked over 40 in a workweek.

29. Defendants' failure to pay Plaintiffs the overtime wages required by law was willful.

30. All actions and omissions described in this Complaint were made by Defendants directly or through their supervisory employees and agents.

**CAUSES OF ACTION
(OVERTIME)**

37. Defendants failed to pay overtime wages to the Plaintiffs in violation of the Fair Labor Standards Act, 29 U.S.C. §201 *et seq.* and its implementing regulations.

38. Defendants' failure to comply with the FLSA caused Plaintiffs to suffer loss of wages and interest thereon.

39. Defendants' failure to pay overtime wages for each hour worked over 40 per week was willful within the meaning of 29 U.S.C. §255.

WHEREFORE, Plaintiff requests that this Court enter an order:

- A. Declaring that the Defendants violated the Fair Labor Standards Act;
- B. Declaring that the Defendants' violations of overtime protections were willful;
- C. Granting judgment to the Plaintiffs for their claims of unpaid wages as secured by the Fair Labor Standards Act as well as an equal amount in liquidated damages, and awarding the Plaintiffs' costs and reasonable attorneys' fees;
- D. Granting such further relief as the Court finds just.

Dated: December 26, 2012

Respectfully submitted,

BRUCKNER BURCH PLLC

/s/ Rex Burch

By: _____

Richard J. (Rex) Burch

S.D. Tex. No. 21615

Texas Bar No. 24001807

Attorney-In-Charge for Plaintiffs

8 Greenway Plaza, Suite 1500

Houston, Texas 77046

Telephone: (713) 877-8788

Telecopier: (713) 877-8065

rburch@brucknerburch.com

Michael J.D. Sweeney

Matt Dunn

GETMAN & SWEENEY, PLLC

9 Paradies Lane

New Paltz, New York 12561

Telephone: (845) 255-9370

Fax: (845) 255-8649

msweeney@getmansweeney.com

I, Joshua Fox, hereby consent to be a plaintiff in an action under the Fair Labor Standards Act, 29 U.S.C. §201 *et seq.*, to secure any unpaid wages, minimum wages, overtime pay, liquidated damages, attorneys' fees, costs and other relief arising out of my employment with Western Talk, L.C., Western Paging and Voicemail, Daniel L. Sheppard, and any other associated parties. I authorize Getman & Sweeney, PLLC, and any associated attorneys as well as any successors or assigns, to represent me in such action.

Dated: 12-14-12.



Joshua Fox