

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

JOSHUA FOX, individually and on behalf of others similarly situated, §
§
§
v. § CIVIL ACTION NO. 4:12-cv-03726
§
WESTERN TALK, L.C., §
WESTERN PAGING AND VOICEMAIL, §
and **DANIEL L. SHEPPARD** §

DEFENDANTS' ORIGINAL ANSWER

Defendants WESTERN TALK, L.C. (“WT”), WESTERN PAGING AND VOICEMAIL (“WPV”) and DANIEL L. SHEPPARD (“Sheppard”)(altogether known as “Defendants”) file their Answer to Plaintiff JOSHUA FOX’s (“Fox” or “Plaintiff”) Original Complaint and would show the Court as follows:

I.
General Denial

1. Subject to any stipulations, Defendants assert a general denial of the allegations asserted by Plaintiff and respectfully requests that the Plaintiff be required to prove its charges and allegations against the Defendant by a preponderance of the evidence as is required by the Constitution and the laws of the United States of America and the State of Texas.

II.
Affirmative Defenses

2. Defendants assert that any over time worked by Plaintiff, if any, was not authorized by his Employer.

3. Defendants assert that Plaintiff intentionally failed to “clock out” of his work day violating company policy and causing Plaintiff’s records to be difficult to calculate over time with

any reasonable degree of probability.

4. Defendant Sheppard is not the Employer of Plaintiff as defined by the statute cited in paragraph 16 of Plaintiff's complaint.

5. Prior to filing suit, no demand has ever been made by Plaintiff or his counsel for damages, fees or any other recovery.

6. Defendants did not own the business until July 1, 2010.

III.
Specific Denials

7. No response is needed to the Introduction paragraph of Plaintiff's Complaint, but if requested Defendants deny the summary allegations contained therein.

i. **Jurisdiction and Venue**

8. Defendants admit paragraphs 2 of Plaintiff's Complaint, that this Court has personal jurisdiction over Defendants but denies that Fox is a representative of some class. No class has been authorized nor property sought by Fox.

9. Defendants admit that the venue allegations in paragraph 3 of Plaintiff's Complaint, but deny that causes of action for other "class members" arose in this district.

ii. **The Parties**

10. Defendants make no comment to paragraphs 4-6 of Plaintiff's Complaint.

11. Defendants make no comment to paragraph 7 of Plaintiff's Complaint other than denying that employees regularly work over time. In fact most employees work less than 40 hours a week.

12. Defendants make no comment to paragraph 8 of Plaintiff's Complaint other than

denying that Fox has complied with the provisions of 29 USC §216(b) or that Fox is a representative of any class.

13. Defendants admit the statements in paragraphs 9-10 of Plaintiff's Complaint.

14. Defendants deny the statement in paragraphs 11 of Plaintiff's Complaint.

15. Defendants admit the statements in paragraphs 12-15 of Plaintiff's Complaint.

16. Defendants admit that Sheppard is the President of WPV and WT but deny the remaining statements in paragraphs 16 of Plaintiff's Complaint.

17. Defendants admit the statements in paragraphs 17-18 of Plaintiff's Complaint.

iii. **Facts**

18. Defendants admit in part and deny in part the statements in paragraph 19 of Plaintiff's Complaint. Plaintiff was employed with Defendant WT from July 1, 2011 to November 2011 in Conroe, Texas. WT did not own the Conroe location until July 1, 2011.

19. Defendants admit in part and deny in part the statements in paragraph 20 of Plaintiff's Complaint. Defendant WT employed other sales associated during this time.

20. Defendants admit in part and deny in part the statements in paragraph 21 of Plaintiff's Complaint. Defendant WT employed Fox.

21. Defendants deny the statements in paragraphs 22-27 of Plaintiff's Complaint.

22. Defendants admit that Fox was paid a salary but deny that he worked over 40 hours a week as stated in paragraph 28 of Plaintiff's Complaint.

23. Defendants deny the statements in paragraphs 29 of Plaintiff's Complaint.

24. Defendants admit in part and deny in part the statements in paragraph 30 of Plaintiff's Complaint. Defendant WT acted via its company officers with respect to Fox.

iv. Causes of Action

25. Defendants deny the statements in paragraphs 37-39 of Plaintiff's Complaint.

26. Defendants deny all request for relief and any other allegations, claims, requests for relief stated in Plaintiff's Complaint are denied.

WHEREFORE, Defendants pray that Plaintiff's claims be denied in all things and that Defendants have all relief they seek herein.

Respectfully submitted,

/s/Nathan A. Steadman

Nathan A. Steadman

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing instrument, Defendants' Original Answer was served to Plaintiff through the following Counsel of Record on this the 29th day of January, 2013 by the electronic filing system:

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/s/Nathan A. Steadman

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