

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JONATHAN MARTINEZ, et al., on behalf of)	
himself and all other similarly situated,)	
 Plaintiffs,)	
 vs.)	Case No. 16-cv-7020
)	Judge Kocoras
WIRELESS VISION, LLC, a Michigan)	Magistrate Judge Cox
limited liability company, et al.)	
 Defendants.)	

**FIRST AMENDED ANSWER OF DEFENDANTS TO PLAINTIFFS’
INITIAL COMPLAINT**

(JURY DEMAND ENDORSED HEREON)

Now come Defendants, Wireless Vision, LLC and T-Mobile Limited (tradename), Wireless Vision St. Louis, LLC, Wireless Vision Holdings, LLC, Mark Denha, Omar Ammori, and Saber Ammori and for their Answer to Plaintiffs’ Initial Complaint state as follows:

THE PARTIES AND JURISDICTION

1. With respect to paragraph 1 of the Complaint, Defendants admit that Wireless Vision Holdings, LLC operates approximately 250 retail locations in several states and that Plaintiffs claim to be employees, although only Wireless Vision, LLC is an employer, but Defendants deny the remaining allegation of paragraph 1 of the Complaint.
2. With respect to paragraph 2 of the Complaint, Defendants admit this court has jurisdiction over proper FSLA claims and that this Court may entertain supplemental jurisdiction over certain state law claims.
3. With respect to the allegations of paragraph 3 of the Complaint, Defendants are currently without knowledge or information sufficient to form a belief as to the truth of the allegations.

4. With respect to the allegations of paragraph 4 of the Complaint, Defendants admit that Plaintiffs' Complaint relies upon the cited statutes and rules; otherwise, Defendants deny the allegations.

5. With respect to the allegations of paragraph 5 of the Complaint, Defendants admit that Plaintiffs claim to be residents and citizens of Chicago, Illinois, but Defendant are currently without knowledge or information sufficient to form a belief as to the truth of those allegations. Defendants admit that Plaintiffs at one time worked for Wireless Vision, LLC at Retail Sales Associates whose jobs were primarily to sell the Company's products and services; however, Defendants deny that Plaintiff's job description is completely accurate; and, Defendants are without knowledge or information sufficient to form a belief as to the remaining allegations of the Complaint.

6. With respect to the allegations of paragraph 6 of the Complaint, Defendants admit that Wireless Vision, LLC is registered as a foreign limited liability company in Illinois and that T-Mobile, Limited is a tradename registered to Wireless Vision, LLC in Illinois; however, Defendants deny that they are T-Mobile headquartered in Germany with offices in the U.S. Further answering, Defendants admit that the Wireless Vision entities are organized in Michigan with principal place of business located at 40700 Woodward Avenue, Suite 250, Bloomfield Hills, Michigan. Further answering, Defendants are currently without knowledge or information sufficient to form a belief as to the truth of the remaining allegations, in part due to confusion over Plaintiffs' terminology, as Mark Denha and Saber Ammori have positions in the Company but it is an overstatement to attribute all management to them.

7. With respect to the allegations of paragraph 7 of the Complaint, Defendants admit that Wireless Vision St. Louis is registered to do business in Illinois but deny that it is an employer which could be responsible to Plaintiffs under the allegations of the Complaint. Further answering,

Defendants are currently without knowledge or information sufficient to form a belief as to the truth of the remaining allegations, in part due to confusion over Plaintiffs' terminology, as Mark Denha and Saber Ammori have positions in the Company but it is an overstatement to attribute all management to them.

8. With respect to the allegations of paragraph 8 of the Complaint, Defendants admit that Wireless Vision Holdings, LLC is registered to do business in Illinois but deny that it is an employer which could be responsible to Plaintiffs under the allegations of the Complaint. Further answering, Defendants are currently without knowledge or information sufficient to form a belief as to the truth of the remaining allegations, in part due to confusion over Plaintiffs' terminology, as Mark Denha and Saber Ammori have positions in the Company but it is an overstatement to attribute all management to them.

9. With respect to paragraph 9 of the Complaint, Defendants admit that Mark Denha has an interest in the Wireless Vision entities and has some management responsibility, but Defendants deny that Mark Denha had such control as to have been an employer of Plaintiffs.

10. With respect to paragraph 10 of the Complaint, Defendants admit that Saber Ammori has an interest in the Wireless Vision entities and has some management responsibility, but Defendants deny that Saber Ammori had such control as to have been an employer of Plaintiffs.

11. With respect to paragraph 11 of the Complaint, Defendants admit that Omar Ammori has an interest in the Wireless Vision entities and has some management responsibility, but Defendants deny that Omar Ammori had such control as to have been an employer of Plaintiffs.

12. With respect to paragraph 12 of the Complaint, only Wireless Vision, LLC could have been an employer of Plaintiffs pursuant to the allegations of the Complaint, and the other entity defendants are not proper parties, therefore, the remaining allegations of paragraph 12 are denied.

13. With respect to paragraph 13 of the Complaint, only Wireless Vision, LLC could have been an employer of Plaintiffs pursuant to the allegations of the Complaint, and the other entity defendants are not proper parties, therefore, the remaining allegations of paragraph 13 are denied.

14. With respect to paragraph 14 of the Complaint, Defendants admit that the named Plaintiffs were at one time employees, but Defendants are without knowledge or information sufficient to form a belief as to whether employees, and Defendants admit the named Plaintiffs want to represent a putative class, but Defendants deny that Plaintiffs are proper class representatives and deny this case is suitable for collective treatment.

FACTS IN SUPPORT OF PLAINTIFFS' CLAIMS

15. With respect to paragraph 15 of the Complaint, Defendant, Wireless Vision, LLC, at one time employed Plaintiffs as non-exempt hourly employees; otherwise, the allegations of paragraph 15 of the Complaint are denied.

16. With respect to paragraph 16 of the Complaint, Defendants are currently without knowledge or information sufficient to form a belief as to the truth of the allegations.

17. With respect to paragraph 17 of the Complaint, Defendants admit that Plaintiffs may have worked for Wireless Vision, LLC as Retail Sales Associates and that Plaintiffs would like there to be the "Class Period", but Defendants deny any class treatment is proper in this case.

18. With respect to paragraph 18 of the Complaint, Defendants deny the allegations.

19. With respect to paragraph 19 of the Complaint, Defendants admit that Plaintiffs at one time worked for Wireless Vision, LLC as Retail Sales Associates, but Defendants are currently without knowledge or information sufficient to form a belief as to the truth of the remaining allegations due to the uncertainty over the meaning of the word "agreement" as there is no known formal written employment agreement on the subject.

20. With respect to paragraph 20 of the Complaint, Defendants deny the allegations.

21. With respect to paragraph 21 of the Complaint, Defendants deny the allegations.

22. With respect to paragraph 22 of the Complaint, Defendants deny the allegations.

Further answering, retail sales associates were paid hourly, plus commissions on individual sales of each retail sales associate.

23. With respect to paragraph 23 of the Complaint, Defendants deny the allegations.

Further answering, store managers and assist managers were paid, in part, based upon store revenue.

24. With respect to paragraph 24 of the Complaint, Defendants deny the allegations.

25. With respect to paragraph 25 of the Complaint, Defendants deny the allegations.

26. With respect to paragraph 26 of the Complaint, Defendants deny the allegations.

27. With respect to paragraph 27 of the Complaint, Defendants deny the allegations.

28. With respect to paragraph 28 of the Complaint, Defendants deny the allegations.

29. With respect to paragraph 29 of the Complaint, Defendants deny the allegations.

30. With respect to paragraph 30 of the Complaint, Defendants deny the allegations.

31. With respect to paragraph 31 of the Complaint, Defendants deny the allegations.

32. With respect to paragraph 32 of the Complaint, Defendants deny the allegations.

33. With respect to paragraph 33 of the Complaint, Defendants deny the allegations.

34. With respect to paragraph 34 of the Complaint, Defendants deny the allegations.

35. With respect to paragraph 35 of the Complaint, Plaintiffs' use of the word "some" is question begging. Defendants admit that the employer recorded all hours worked, including without limitation, through a computerized system, and otherwise, Defendants deny the allegations.

36. With respect to paragraph 36 of the Complaint, Defendants deny the allegations.

37. With respect to paragraph 37 of the Complaint, Defendants deny the allegations.
38. With respect to paragraph 38 of the Complaint, Defendants deny the allegations.
39. With respect to paragraph 39 of the Complaint, Defendants deny the allegations.
40. With respect to paragraph 40 of the Complaint, Defendants deny the allegations.
41. With respect to paragraph 41 of the Complaint, Defendants deny the allegations.
42. With respect to paragraph 42 of the Complaint, Defendants deny the allegations.
43. With respect to paragraph 43 of the Complaint, Defendants deny the allegations.
44. With respect to paragraph 44 of the Complaint, Defendants deny the allegations.
45. With respect to paragraph 45 of the Complaint, Defendants deny the allegations.
46. With respect to paragraph 46 of the Complaint, Defendants deny the allegations.
47. With respect to paragraph 47 of the Complaint, Defendants deny the allegations.
48. With respect to paragraph 48 of the Complaint, Defendants deny the allegations.
49. With respect to paragraph 49 of the Complaint, Defendants deny the allegations.
50. With respect to paragraph 50 of the Complaint, Defendants deny the allegations.
51. With respect to paragraph 51 of the Complaint, Defendants deny the allegations.
52. With respect to paragraph 52 of the Complaint, Defendants admit that Plaintiff Saucedo may make baseless claims regarding time worked, but Defendants deny the remaining allegations.
53. With respect to paragraph 53 of the Complaint, Defendants admit that Plaintiff Martinez may make baseless claims regarding time worked, but Defendants deny the remaining allegations.
54. With respect to paragraph 54 of the Complaint, Defendants deny the allegations.
55. With respect to paragraph 55 of the Complaint, Defendant, Wireless Vision, LLC, the only possible employer of Plaintiffs, admits that it kept accurate records of hours worked.

56. With respect to paragraph 56 of the Complaint, Defendants deny the allegations.

57. With respect to paragraph 57 of the Complaint, no Plaintiffs were injured. However, Wireless Vision, LLC, the only possible employer of Plaintiffs, admits that it kept accurate records pursuant to applicable laws.

58. With respect to paragraph 58 of the Complaint, Defendants deny the allegations.

59. With respect to paragraph 59 of the Complaint, Defendants deny the allegations.

60. With respect to paragraph 60 of the Complaint, Defendants deny the allegations.

COUNT I, VIOLATION OF THE FAIR LABOR STANDARDS ACT

61. With respect to paragraph 61 of the Complaint, Defendants incorporate herein the facts and allegations contained in Paragraphs 1 through 60 hereof.

62. With respect to paragraph 62 of the Complaint, Defendants are currently without knowledge or information sufficient to form a belief as to the truth of the allegations, but Defendants deny that Plaintiffs are suitable class representatives or that this case is suitable to collective treatment.

63. With respect to paragraph 63 of the Complaint, Defendants admit that Plaintiffs would like there to be a collective class, but otherwise deny the allegations.

64. With respect to paragraph 64 of the Complaint, Defendants deny the allegations.

65. With respect to paragraph 65 of the Complaint, Defendants deny the allegations.

66. With respect to paragraph 66 of the Complaint, Defendants admit the requirements of the law, but otherwise deny the allegations.

67. With respect to paragraph 67 of the Complaint, Defendants admit the requirements of the law, but otherwise deny the allegations.

68. With respect to paragraph 68 of the Complaint, Defendants deny the allegations.

69. With respect to paragraph 69 of the Complaint, Defendants deny the allegations.

70. With respect to paragraph 70 of the Complaint, Defendants deny the allegations.

71. With respect to paragraph 71 of the Complaint, Defendants deny the allegations.

72. With respect to paragraph 72 of the Complaint, Defendants deny the allegations.

73. With respect to paragraph 73 of the Complaint, Defendants deny the allegations.

74. With respect to paragraph 74 of the Complaint, Defendants deny the allegations.

75. With respect to paragraph 75 of the Complaint, Defendant, Wireless Vision, LLC, the only possible employer, admits that it has records compliant with applicable law; otherwise, Defendants deny the allegations.

COUNT II, VIOLATION OF ILLINOIS MINIMUM WAGE LAW

76. With respect to paragraph 76 of the Complaint, Defendants incorporate herein the facts and allegations contained in Paragraphs 1 through 75 hereof.

77. With respect to paragraph 77 of the Complaint, Defendants admit that Plaintiffs would like class action treatment, but Defendants deny that Plaintiffs are suitable class representatives or that this case is suitable for collective treatment under any law or rule. Further, answering Defendants deny the remaining allegations of paragraph 77.

78. With respect to paragraph 78 of the Complaint, Defendants admit that the Illinois statutes cited exist, but Defendants deny any violation thereof, and Defendants deny the remaining allegations of paragraph 78.

79. With respect to paragraph 79 of the Complaint, Defendants deny the allegations.

80. With respect to paragraph 80 of the Complaint, Defendants admit that Plaintiffs would like class action treatment, but Defendants deny that Plaintiffs are suitable class representatives or

that this case is suitable for collective treatment under any law or rule. Further, answering Defendants deny the remaining allegations of paragraph 80.

81. With respect to paragraph 81 of the Complaint, Defendants deny the allegations.

82. With respect to paragraph 82 of the Complaint, Defendants deny the allegations.

83. With respect to paragraph 83 of the Complaint, Defendants deny the allegations.

84. With respect to paragraph 84 of the Complaint, Defendants deny the allegations.

85. With respect to paragraph 85 of the Complaint, Defendants deny the allegations.

86. With respect to paragraph 86 of the Complaint, Defendants deny the allegations.

87. With respect to paragraph 87 of the Complaint, Defendants deny the allegations.

88. With respect to paragraph 88 of the Complaint, Defendants deny that the Plaintiffs are suitable class representatives and that the case is suitable for collective treatment. Assuming there were any merit to Plaintiffs allegations, which there is not, each case would require consideration of the specific facts and circumstances of each individual Plaintiff as to hours worked and the circumstances under which hours were worked and why any given employee did not record his or her hours as required and report any alleged discrepancy as required, and also, including without limitation, because each Wireless Vision store is different and managed by different managers with different approaches to employee relations.

89. With respect to paragraph 89 of the Complaint, Defendants deny the allegations.

COUNT III, VIOLATION OF ILLINOIS WAGE PAYMENT AND COLLECTION ACT

Defendants incorporate herein the facts and allegations contained in Paragraphs 1 through 89 hereof.

90. With respect to paragraph 90 of the Complaint, Defendants admit that Plaintiffs would like a collective action under the cited statutes, but Defendants deny that Plaintiffs have any right thereto.

91. The Complaint contains no paragraph 91.

92. With respect to paragraph 92 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations; however, the only possible actual employer could be Wireless Vision, LLC. Further answering, Defendants deny the remaining allegations.

93. With respect to paragraph 92 of the Complaint, Defendants are currently without knowledge or information sufficient to form a belief as to the truth of the allegations.

94. With respect to paragraph 94 of the Complaint, Defendants deny the allegations.

95. With respect to paragraph 95 of the Complaint, Defendants deny the allegations.

96. With respect to paragraph 96 of the Complaint, Defendants deny the allegations.

97. With respect to paragraph 97 of the Complaint, Defendants deny the allegations.

98. With respect to paragraph 98 of the Complaint, Defendants deny the allegations.

99. With respect to paragraph 99 of the Complaint, Defendants deny the allegations.

100. With respect to paragraph 100 of the Complaint, Defendants deny the allegations.

101. With respect to paragraph 101 of the Complaint, Defendants deny the allegations.

102. With respect to paragraph 102 of the Complaint, Defendants deny the allegations.

103. With respect to paragraph 103 of the Complaint, Defendants deny the allegations.

104. With respect to paragraph 102 of the Complaint, Defendants deny the allegations.

105. With respect to paragraph 105 of the Complaint, Defendants deny the allegations.

106. With respect to paragraph 106 of the Complaint, Defendants deny the allegations.

107. With respect to paragraph 107 of the Complaint, Defendants deny the allegations.

108. With respect to paragraph 108 of the Complaint, Defendants deny the allegations.

109. With respect to paragraph 109 of the Complaint, Defendants deny the allegations.

110. With respect to paragraph 110 of the Complaint, the only possible actual employer,

Wireless Vision, LLC, admits to having an Employee Manual that states in pertinent part:

Non-Exempt employees who, because of the demands of their position, are required to work more than 40 hours in the week, will be paid time and one half for any hours over forty except where superseded by state laws. Employees must actually work hours in excess of forty hours to be compensated at the overtime rate. (For example, if an employee worked thirty-six hours and had eight hours of PTO, that employee would be paid forty-four hours at the regular rate.) All overtime must be approved in advance by an employee's supervisor or manager.

Further, answering Defendants deny any inference that Plaintiffs were not properly paid.

111. With respect to paragraph 111 of the Complaint, the only possible actual employer, Wireless Vision, LLC, advised all employees that wage laws will be followed, and all employees are properly paid, and employees are not advised to perform any work off the clock or to fail to record hours.

112. With respect to paragraph 112 of the Complaint, the allegation is question begging and assumes incorrectly that Plaintiffs are required to perform compensable off-the-clock work, and it must therefore be denied. Further answering, Defendants reiterate the only possible actual employer, Wireless Vision, LLC, and it advised all employees that wage laws will be followed, and its employees are properly paid, and its employees are not advised to perform any work off the clock or to fail to record hours.

113. With respect to paragraph 113 of the Complaint, Defendants deny the allegations.

114. With respect to paragraph 114 of the Complaint, Defendants deny the allegations.

115. With respect to paragraph 115 of the Complaint, Defendants admit the contents of the cited statute.

116. With respect to paragraph 116 of the Complaint, Defendants admit the contents of the cited statute.

117. With respect to paragraph 117 of the Complaint, Defendants admit the contents of the cited statute.

118. With respect to paragraph 118 of the Complaint, Defendants admit the contents of the cited statute.

119. With respect to paragraph 119 of the Complaint, Defendants deny the allegations.

120. With respect to paragraph 120 of the Complaint, Defendants deny the allegations.

121. With respect to paragraph 121 of the Complaint, Defendants deny the allegations.

Defendants deny each and every other allegation of the Complaint not heretofore admitted to be true.

AFFIRMATIVE DEFENSES

1. The Complaint, as to some or all claims, fails to state claims upon which relief can be granted.

2. Some or all of Plaintiff(s)' claims are barred by the applicable statutes of limitations.

3. Plaintiffs and any alleged similarly situated employees were paid all of the wages and overtime wages to which they were entitled by virtue of employment with Wireless Vision.

4. Regardless of Plaintiffs' job titles, neither are a proper class or collective action representatives for purposes of the FLSA and/or Illinois wage payment statutes or any alleged violations thereof, including without limitation, because neither is similarly situated to other employees.

5. Plaintiffs and any alleged similarly situated employees are not the victims of any single decision, policy, or plan that rightly allows for class or collective action.

6. Plaintiffs and any alleged similarly situated employees lack numerosity, commonality, typicality, and adequate representation in order to rightly function as a class or collective action.

7. Plaintiffs and any alleged similarly situated employees were not required to work “off-the-clock” or to fail to record hours worked in any circumstance.

8. If Plaintiffs or any alleged similarly situated employees engaged in any work activities that could be deemed to be compensable and for which they were not paid, it was not required by the employer, not known to the employer, and constituted a negligent/willful dereliction of duties for which the employer is not responsible.

9. Plaintiffs and any alleged similarly situated employees made no reports of non-payment or underpayment of wages or failure to pay overtime.

10. To the extent Plaintiffs’ Complaint alleges any claim for wrongful termination or retaliation, there was no retaliation, and Plaintiffs were employment was terminated for just cause and completely within the bounds of the law due to poor job performance.

11. Plaintiffs’ damages, if any, were caused by Plaintiffs’ own acts or omissions.

12. Plaintiffs have no records of the actual hours they worked for the employer.

13. Plaintiff(s) has failed to mitigate his damages, if any, including without limitation, by reporting any alleged FLSA issues or violations to the Human Resources Department of Defendant.

14. Plaintiffs are not similarly situated to other employees, so as to be a proper class or collective action representatives.

15. Defendants have at all times relevant hereto acted in good faith toward Plaintiffs and any alleged similarly situated employees.

16. Defendants have not willfully failed to do anything required of it under the FLSA and/or the Illinois wage payment statutes.

WHEREFORE, Defendants demand that the Complaint be dismissed in its entirety and that it be granted such further relief as the Court shall deem just and equitable, including reimbursement for its costs and attorney fees.

Respectfully submitted,

/s/ J. S. Streb

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JURY DEMAND

Defendants hereby demand a trial by jury of at least eight (8) on all issues so triable.

Respectfully submitted,

/s/ J. S. Streb

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing First Amended Answer To Plaintiffs' Initial Complaint was served upon all counsel of record via the Clerk's electronic filing system, and/or by regular U.S. Mail, postage prepaid, on this 18th day of August, 2016.

Respectfully submitted,

/s/ J. S. Streb

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