

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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| JARROD PYLE, on behalf of himself and all others similarly situated |) | CASE NO. 5:17-CV-00220 |
| |) | |
| Plaintiff |) | JUDGE: SARA LIOI |
| |) | |
| vs. |) | ANSWER TO COMPLAINT AND |
| |) | AFFIRMATIVE DEFENSES |
| |) | |
| VXI GLOBAL SOLUTIONS, INC. AND VXI GLOBAL SOLUTIONS, LLC |) | |
| |) | |
| Defendants |) | |
| |) | |

I. ANSWER

Defendants VXI Global Solutions, LLC and VXI Global Solutions, Inc. (individually and collectively “VXI”), in answer to the Complaint filed by Jarrod Pyle (“Plaintiff”), admits, denies and defends as follows:

1. The allegations in paragraph 1 constitute legal conclusions or arguments that do not require a response. VXI otherwise denies the allegations in paragraph 1.
2. The allegations in paragraph 2 constitute legal conclusions or arguments that do not require a response. VXI otherwise denies the allegations in paragraph 2.
3. VXI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3, and thus denies the same.
4. The allegations in paragraph 4 constitute legal conclusions or arguments that do not require a response. VXI otherwise denies the allegations in paragraph 4.
5. VXI admits the allegations in paragraph 5.
6. VXI admits the allegations in paragraph 6.

7. The allegations in paragraph 7 do not require a response.

8. The allegations in paragraph 8 constitute legal conclusions or arguments that do not require a response. VXI otherwise denies the allegations in paragraph 8.

9. VXI admits that Plaintiff signed the “Mutual Agreement to Arbitrate” (“Arbitration Agreement”) that is attached to Plaintiff’s Complaint as Exhibit A. VXI states that the Arbitration Agreement speaks for itself, admits that the Arbitration Agreement contains the quoted language, admits that the Arbitration Agreement is silent regarding class or collective actions or arbitrations, and otherwise states that the allegations in paragraph 9 constitute legal conclusions or arguments that do not require a response.

10. VXI admits the allegations in paragraph 10.

11. VXI admits that VXI e-mailed a letter to Plaintiff dated January 26, 2017, states that the letter speaks for itself, states that the letter contained the language, “VXI is agreeable to proceeding with individual arbitration with Mr. Pyle, but cannot agree to arbitration on a class basis,” and “under Sixth Circuit law, there is no agreement to class arbitration if the arbitration agreement does not expressly authorize it.” Other than the specific admission and statement above, VXI otherwise denies the allegations in paragraph 11.

12. VXI denies the allegations in paragraph 12 (and its footnote).

13. The allegations in paragraph 13 constitute legal conclusions or arguments that do not require a response. VXI otherwise denies the allegations in paragraph 13.

14. VXI denies the allegations in paragraph 14 (and its footnote).

15. VXI denies the allegations in paragraph 15.

16. VXI admits the allegations in paragraph 16.

17. VXI admits that it employs at its call centers employees who are paid on an hourly basis and whose duties include handling sales and customer service telephone calls on behalf of VXI's customers. Except as specifically admitted, the remaining allegations in paragraph 17 are denied.

18. VXI admits the allegations in paragraph 18.

19. VXI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 19, and thus denies the same.

20. VXI admits that at the beginning of a shift, employees boot-up their computer, and access various computer systems, databases, and programs. Except as specifically admitted, the remaining allegations in paragraph 20 are denied.

21. VXI admits that employees sometimes attend meetings. Except as specifically admitted, the remaining allegations in paragraph 21 are denied.

22. VXI denies the allegations in paragraph 22.

23. VXI denies the allegations in paragraph 23.

24. VXI denies the allegations in paragraph 24.

25. VXI denies the allegations in paragraph 25.

26. VXI denies the allegations in paragraph 26.

27. In answer to paragraph 27, VXI realleges and incorporates by reference each and every answer set forth in all previous paragraphs.

28. The allegations in paragraph 28 constitute legal conclusions or arguments that do not require a response. VXI otherwise denies the allegations in paragraph 28.

29. VXI denies the allegations in paragraph 29.

30. VXI denies the allegations in paragraph 30.

31. Plaintiff's Prayer for Relief and subparagraphs A-E set forth requests for relief that do not require a response. VXI, however, denies that Plaintiff and the "other members of the class/collective" are entitled to the relief requested in the Complaint or to any relief whatsoever.

32. VXI denies each and every allegation not expressly admitted in this Answer.

II. AFFIRMATIVE DEFENSES

By way of further answer and defense, VXI states:

1. Arbitration. Plaintiff's claims, and the claims of the Putative Class, are subject to valid, binding Arbitration Agreements and Plaintiff, and any member of the Putative Class, should submit any claims for resolution on an individual basis under such Agreements. VXI will move to compel individual arbitration and dismiss Complaint under Plaintiff's Arbitration Agreement.

2. Failure to exhaust administrative and contractual remedies, breach of contract. The Plaintiff failed to submit his claims to individual arbitration, violated the arbitration agreement by filing suit, and failed to identify the precise amount in controversy as part of his arbitration demand, thus preventing the quick and expeditious resolution of his individual claims.

3. The Complaint fails to state a claim upon which relief may be granted.

4. The Complaint is barred, in whole or in part, by applicable statutes of limitations or limitations periods.

5. Failure to plead with sufficient facts and specificity as required by Fed. R. Civ. P. 8(a).

6. Plaintiff and the Putative Class lack standing to pursue some claims asserted herein.

7. This Court lacks subject matter jurisdiction over some or all claims.

8. The Complaint is barred, in whole or in part, by the doctrines of laches, waiver, estoppel, collateral estoppel, acquiescence, ratification, res judicata, accord and satisfaction, settlement, release, and/or unclean hands.

9. Plaintiff and the Putative Class were paid in full and in compliance with the law.

10. If Plaintiff, or any member of the Putative Class, performed work activities that they did not record as work and for which they were not paid, VXI did not permit, know of, or have reason to know of those work activities or the time spent in performing those activities. Therefore, time spent in performing such activities does not constitute “hours worked” or “employment” for which compensation is due.

11. Some or all of the time Plaintiff and the Putative Class allegedly spent performing uncompensated work, if any, does not count as “hours worked” because: (1) any activities performed were not suffered, permitted, authorized, or required; (2) they were not on duty; (3) any activities did not occur on VXI’s premises or at a prescribed work place; (4) the time was preliminary or postliminary time that is excluded from hours worked; (5) the time is de minimis time that is excluded from hours worked; (6) the time is otherwise excluded from hours worked under the FLSA; and/or (7) the alleged activities did not occur.

12. VXI acted in good faith and in good faith reliance on advice, and did not act willfully.

13. Plaintiff and the Putative Class cannot establish that this case meets the criteria for handling as a collective action.

14. If, and to the extent, the court finds that any wages are due, such wages are limited to the minimum wage and overtime. VXI intends to rely on the alternative methods for determining minimum wage compliance, the regular rate, and overtime provided under the FLSA.

15. No award of attorneys fees could be appropriate or reasonable because Plaintiff has been paid above minimum wage, has been paid all amounts due, has failed to identify or report the time or amounts he seeks or claims as due, and has failed to exhaust available contractual and administrative remedies to obtain any such amounts.

16. To the extent VXI is found liable for any unpaid wages or other amounts, VXI claims a credit or setoff for all amounts actually paid to Plaintiff and the Putative Class, all amounts advanced or paid in excess of that to which Plaintiff or the Putative Class was legally entitled, all amounts paid at premium rates that are not calculated as part of his regular rate, all time that he reported or claimed as work time that he did not in fact work, all amounts or time to which he was not entitled under the relevant wage statutes, and all other amounts or time that Plaintiff and/or the Putative Class took to which he was not entitled, if any.

17. VXI specifically reserves the right to raise additional defenses as they may become known through the course of further investigation and discovery.

DATED this 2nd day of May, 2017.

Respectfully submitted,

s/Todd L. Nunn

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