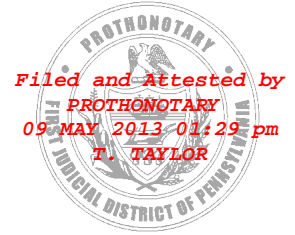


Daniel B. Huyett (Attorney I.D. No. 21385)  
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Fax: (610) 988-0801  
dbh@stevenslee.com



*Attorneys for Defendant  
RadioShack Corporation*

---

DAVID VERDERAME,	:	IN THE COURT OF COMMON PLEAS
	:	OF PHILADELPHIA COUNTY, PA
Plaintiff,	:	
	:	Case No. 130401055
v.	:	Class Action
RADIOSHACK CORPORATION,	:	
	:	Jury Trial Demanded
Defendant.	:	

---

**NOTICE TO THE PROTHONOTARY OF THE COURT OF COMMON PLEAS OF  
PHILADELPHIA COUNTY, PENNSYLVANIA OF  
DEFENDANT'S NOTICE OF REMOVAL**

TO THE PROTHONOTARY:

Please take notice that, pursuant to 28 U.S.C. § 1446(d), Defendant RadioShack Corporation hereby files a copy of the attached Notice of Removal which was filed in the United States District Court for the Eastern District of Pennsylvania on May 8, 2013.

Dated: May 9, 2013

STEVENS & LEE

By: /s/Julie E. Ravis

Daniel B. Huyett

Attorney ID No. 21385

Julie E. Ravis

Attorney ID No. 203101

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James S. McNeill (*pro hac vice* forthcoming)

McKenna Long & Aldridge LLP

4435 Eastgate Mall, Suite 400

San Diego, CA 92121

Tel: (619) 595-5445

Fax: (619) 595-5450

*Attorneys for Defendant RadioShack Corporation*

**CERTIFICATE OF SERVICE**

I, Julie E. Ravis, Esquire, certify that on this date, I served a true and correct copy of the foregoing Notice to Prothonotary of Notice of Removal and Notice to Plaintiff of Notice of Removal on the following party by first class U.S. mail, postage prepaid, addressed as follows:

Peter Winebrake  
R. Andrew Santillo  
Mark J. Gottesfeld  
Winebrake & Santillo, LLC  
715 Twining Road, Suite 211  
Dresher, PA 19025  
*(Also served via ECF)*

Paul J. Lukas  
Timothy Selander  
Nichols Kaster, PLLP  
4600 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402

*Attorneys for Plaintiff*

Dated: May 9, 2013

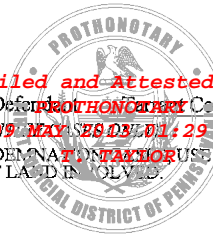
*s/Julie E. Ravis*  
Julie E. Ravis

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
DAVID VERDERAME
(b) County of Residence of First Listed Plaintiff Snyder County, PA
(c) Attorneys (Firm Name, Address, and Telephone Number)
Peter Winebrake, R. Andrew Santillo, Mark J. Gottesfeld
Winebrake & Santillo, LLC
715 Twining Road, Suite 211
Dresher, PA 19025
Telephone: (215) 884-2491

DEFENDANTS
RADIOSHACK CORPORATION
County of Residence of First Listed Defendant Northampton County, PA
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)
Daniel B. Huyett, Julie E. Ravis
Stevens & Lee, P.C.
111 North Sixth Street, P.O. Box 679
Reading, PA 19603-0679
Telephone: (610) 478-2219



Filed and Attested by
Notary Public
MAY 08 2013 01:29 pm

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State PTF DEF 1 X 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State 4 4
Incorporated and Principal Place of Business In Another State 5 X 5
Foreign Nation 6 6

Table with 5 main columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES. Each column contains a list of legal categories with checkboxes.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332(d)(2)(A)
Brief description of cause:
Alleged violations of Pennsylvania Minimum Wage Act in connection with overtime compensation

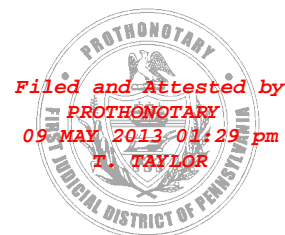
VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
DEMAND \$
CHECK YES only if demanded in complaint:
JURY DEMAND: X Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):
JUDGE
DOCKET NUMBER

DATE: 05/08/2013
SIGNATURE OF ATTORNEY OF RECORD: [Signature]

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA



DAVID VERDERAME, on behalf of himself  
and other s similarly situated,

Plaintiff,

v.

RADIOSHACK CORPORATION,

Defendant.

Civil Action No.

Class Action

JURY TRIAL DEMANDED

**DEFENDANT RADIOSHACK CORPORATION'S NOTICE OF REMOVAL**

TO THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF  
PENNSYLVANIA AND TO PLAINTIFF AND HIS COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT Defendant RADIOSHACK CORPORATION  
("RadioShack") files this Notice of Removal pursuant to 28 U.S.C. §§ 1441 and 1446, asserting  
original federal jurisdiction under 28 U.S.C. § 1332(d)(2), to effect the removal of the above-  
captioned action, which was originally commenced in the Court of Common Pleas of Philadelphia  
County, Pennsylvania. This Court has original jurisdiction over the action pursuant to the Class  
Action Fairness Act of 2005 ("CAFA") for the following reasons:

**I.**

**BACKGROUND**

1. On or about April 5, 2013, Plaintiff DAVID VERDERAME ("Plaintiff") filed a "Class  
Action Complaint" against RadioShack in the Court of Common Pleas of Philadelphia County,  
Pennsylvania, Case No. 130401055 (the "Complaint"). A true and correct copy of the Complaint is  
attached hereto as Exhibit "A".

2. Plaintiff's Complaint sets forth a class allegation that RadioShack purportedly failed to pay Plaintiff and putative class members all wages owed, including those for overtime worked.

3. Plaintiff's Complaint seeks the following relief: (1) compensatory damages; (2) injunctive relief; (3) interest; (4) costs; (5) attorneys' fees; and (6) other and "further relief as this Court may deem proper and just." Exhibit "A", Complaint at p. 8, ¶¶ A-E ("Prayer for Relief").

4. Plaintiff's Complaint seeks to certify the following class:

All store employees who are employed or have been employed by RadioShack Corporation in the State of Pennsylvania from April 5, 2010, who have had their overtime pay calculated pursuant to the "fluctuating workweek" method.

Exhibit "A", Complaint at ¶ 18.

## II.

### TIMELINESS OF REMOVAL

5. This Notice of Removal is timely because it is filed within thirty (30) days from the date RadioShack received formal notice of the Complaint and was put on notice of the facts supporting removal of Plaintiff's class action pursuant to 28 U.S.C. § 1332(d). See 28 U.S.C. § 1446(b) (notice must be filed within 30 days after service or receipt of complaint); *Murphy Bros, Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344 (1999).

## III.

### ORIGINAL JURISDICTION – CLASS ACTION FAIRNESS ACT

6. This Court has original jurisdiction over this matter under CAFA, 28 U.S.C. § 1332(d)(2)(A). ("The district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interests and costs, and is a class action in which (A) any member of a class of plaintiffs is a citizen of a State different from any defendant[.]")

7. As provided below, this action is properly removable pursuant to 28 U.S.C. § 1441(a) because this Court has original jurisdiction over the action: (1) the aggregated amount in controversy exceeds \$5,000,000.00, exclusive of interest and costs, and (2) the action is a class action in which the named Plaintiff is a citizen of a state that is different from that of RadioShack. 28 U.S.C. §§ 1332(d)(2)(A) & (d)(6); Declaration of Toss A. Hobbs, Esq. (“Hobbs Dec.”) at ¶¶ 3-8, attached hereto as Exhibit “D”; Exhibit “A”, Complaint at ¶ 1 (“Plaintiff is an individual residing at 301 Clifford Road, Selinsgrove, Pennsylvania 17870”); *id.* at ¶ 3 (RadioShack maintains “a principal place of business at 300 RadioShack Circle, Fort Worth, Texas”). Further, the number of putative class members is greater than 100. 28 U.S.C. § 1332(d)(5)(B); Exhibit “A”, Complaint at ¶ 12 (“Upon information and belief, Defendant has utilized the fluctuating workweek method to calculate the overtime premium compensation of over 100 Pennsylvania Store employees during the three-year period applicable to this lawsuit”).

#### IV.

##### DIVERSITY OF CITIZENSHIP OF THE PARTIES

8. For diversity purposes, a person is a “citizen” of the state in which he or she is domiciled. *Swiger v. Allegheny Energy, Inc.*, 540 F.3d 179, 182 (3d Cir. 2008). A party’s residence is *prima facie* evidence of his or her domicile. *Krasnov v. Dinan*, 465 F.2d 1298, 1300 (3d Cir. 1972); *Johnson v. Roche*, CIV.A. 08-2652, 2008 WL 2993736 (E.D. Pa. Aug. 4, 2008).

9. **Plaintiff’s Citizenship:** RadioShack is informed and on that basis alleges that Plaintiff is, and at all relevant times herein was, a resident of the Commonwealth of Pennsylvania. Exhibit “A”, Complaint at ¶ 1 (“Plaintiff is an individual residing at 301 Clifford Road, Selinsgrove, Pennsylvania 17870”).

10. **RadioShack’s Citizenship:** Pursuant to 28 U.S.C. § 1332(c), “a corporation shall be deemed to be a citizen of any State in which it has been incorporated, and of the State where it has its principal place of business[.]” RadioShack is a corporation incorporated under the laws of Delaware,

and its principal place of business is Texas. Exhibit “D”, Hobbs Dec. at ¶¶ 3-4; Exhibit “A”, Complaint at ¶ 3 (RadioShack maintains “a principal place of business at 300 RadioShack Circle, Fort Worth, Texas”).

**A. Principal Place of Business – Headquarters Test**

11. The phrase “principal place of business” in 28 U.S.C. § 1332(c)(1) refers to the “place where a corporation’s officers direct, control, and coordinate the corporation’s activities.” *Hertz Corp. v. Friend*, 590 U.S. 77, 130 S.Ct. 1181, 1192 (2010). In practice, this is “normally. . . the place where the corporation maintains its headquarters – provided that the headquarters is the actual center of direction, control, and coordination, i.e., the ‘nerve center,’ and not simply an office where the corporation holds its board meetings. . . .” *Id.*

12. RadioShack’s principal place of business is Texas. Exhibit “D”, Hobbs Dec. at ¶ 4. RadioShack’s corporate headquarters are located at 300 RadioShack Circle in Fort Worth, Texas. *Id.* RadioShack’s corporate headquarters in Texas is where its officers direct, control and coordinate its activities. *Id.* RadioShack’s high-level executive management and administrative functions are performed in Texas, and most of RadioShack’s executive officers, and several of its directors, live in Texas, near the company’s corporate headquarters. *Id.* RadioShack’s Texas corporate headquarters is where primary policy decisions are made, and where day-to-day control of the business is exercised. *Id.*

13. Accordingly, under the headquarters test set forth in *Hertz Corp.*, RadioShack’s principal place of business is located in Texas, and as a result, RadioShack is not now, and was not at the time of the filing of the Complaint, a citizen of the Commonwealth of Pennsylvania within the meaning of the Acts of Congress relating to the removal of cases. Therefore, this action is properly removable pursuant to 28 U.S.C. § 1441(a) because the named Plaintiff and RadioShack are not citizens of the same State.



V.

**AMOUNT IN CONTROVERSY**

14. Under CAFA, the claims of the individual members in a class action are aggregated to determine if the amount in controversy exceeds the sum or value of \$5,000,000. 28 U.S.C. § 1332(d)(6).

15. Congress intended for federal jurisdiction to be appropriate under CAFA “if the value of the matter in litigation exceeds \$5,000,000 either from the viewpoint of the plaintiff or the viewpoint of the defendant, and regardless of the type of relief sought (e.g., damages, injunctive relief, or declaratory relief).” Senate Judiciary Committees’ Report, S.Rep. 109-14, at 49. Moreover, the Senate Judiciary Committee’s Report on the final version of CAFA makes clear that any doubts regarding the maintenance of interstate class actions in state or federal court should be resolved in favor of federal jurisdiction. *Id.* (“Overall, new section 1332(d) is intended to expand substantially federal court jurisdiction over class actions. Its provisions should be read broadly, with a strong preference that interstate class actions should be heard in a federal court if properly removed by any defendant.”)

16. The alleged amount in controversy in this class action, in the aggregate, well exceeds \$5,000,000.

17. Plaintiff alleges a putative class of all current and former RadioShack employees who worked for RadioShack in the Commonwealth of Pennsylvania at any time since April 5, 2010, and who had their overtime pay calculated pursuant to the fluctuating workweek method. Exhibit “A”, Complaint at ¶ 18. This putative class encompasses all Non-Exempt Store Managers working for RadioShack in the Commonwealth of Pennsylvania over the last three years. Exhibit “D”, Hobbs Dec. at ¶¶ 5-8.

18. The Complaint alleges RadioShack purportedly failed to pay Plaintiff and the putative class for all overtime worked. According to Plaintiff, this purported failure resulted in RadioShack

allegedly failing to pay Plaintiff and the putative class all wages owed in violation of the Pennsylvania Minimum Wage Act of 1968 (the “PMWA”), 43 P.S. §§ 333.101 *et. seq.* In addition to restitution for unpaid overtime wages, Plaintiff and the putative class seek injunctive relief and the litigation costs, fees, and attorney’s fees associated with this lawsuit.

19. Because Plaintiff and the putative class seek injunctive relief in a form enjoining RadioShack from continuing the alleged violations of the PMWA (Complaint Prayer, ¶ A), including the costs of compliance with the Plaintiff’s request for injunctive relief in the damage calculus is appropriate. *Kaufman v. Allstate New Jersey Ins. Co.*, 561 F.3d 144, 151 (3d Cir. 2009); *see also In re Corestates Trust Fee Litig.*, 39 F.3d 61, 65 (3d Cir. 1994) (when requesting injunctive relief, it is settled that the amount in controversy is measured by the value of the right sought to be protected); *Pierson v. Source Perrier, S.A.*, 848 F. Supp. 1186, 1189 (E.D. Pa. 1994) (same).

**A. Overtime Claim Exposure**

20. For non-exempt employees, under Pennsylvania’s Minimum Wage Act any work in excess of forty hours in any one workweek is compensated at a rate of no less than one and one-half times the employee’s regular rate of pay. 43 P.S. § 333.104(c). Plaintiff alleges in his First Cause of Action that he and the putative class were not paid the appropriate amount of overtime wages for alleged required work in excess of forty (40) hours in a week. *See*, Exhibit “A”, Complaint at ¶¶ 26-29.

21. As alleged, Plaintiff’s putative class includes all current and former RadioShack employees who worked for RadioShack in the Commonwealth of Pennsylvania at any time since April 5, 2010, and who had their overtime pay calculated pursuant to the fluctuating workweek method. Exhibit “A”, Complaint at ¶ 18.

**1. Non-Exempt Store Manager Exposure For Overtime Claim**

22. Segregated by annual periods within the class period alleged, the putative class of Non-Exempt Store Managers in Pennsylvania RadioShack stores worked approximately 79,210 total hours of overtime for that period of 2010 encompassed by Plaintiff's Complaint (April 2010 through December 2010) and were paid an average regular hourly rate of approximately \$12.66.<sup>1</sup> Non-Exempt Store Managers worked approximately 93,167 total hours of overtime in 2011 and were paid an average regular hourly rate of \$13.00. Non-Exempt Store Managers worked approximately 89,740 total hours of overtime in 2012 and were paid an average regular hourly rate of \$13.65. Non-Exempt Store Managers are expected to work 93,536<sup>2</sup> total hours of overtime in 2013 and are currently paid an average hourly rate of \$13.72. Exhibit "D", Hobbs Dec. at ¶¶ 5-8.

a. 2010 Non-Exempt Store Manager Exposure For Overtime Claim

23. For the relevant period of April 2010 to December 2010, RadioShack's Non-Exempt Store Managers worked a total of approximately 79,210 hours of overtime and were paid an average regular hourly rate of \$12.66.<sup>3</sup> Further, RadioShack paid a total of \$333,634.68 of overtime compensation to Non-Exempt Store Managers for the applicable alleged class period in 2010. Exhibit "D", Hobbs Dec. at ¶ 5.

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<sup>1</sup> For purposes of removal only, average hourly rates per year were calculated in a manner consistent with Plaintiff's allegations that the fluctuating workweek method may not be applied, such that the rates are calculated by dividing by 40 hours the average weekly regular compensation of putative class members.

<sup>2</sup> This figure was obtained by calculating a monthly average of overtime hours worked by RadioShack Non-Exempt Store Managers in the 36 months preceding the filing of the Complaint. For the first quarter of 2013 (January through March 2013), Non-Exempt Store Managers in Pennsylvania have worked approximately 18,490 overtime hours (i.e., hours in excess of 40 in a given week). Exhibit "D", Hobbs Dec. at ¶ 8.

<sup>3</sup> See note 1, above, on the calculation of the average regular rate for purposes of removal.

24. Based upon the average hourly overtime rate for each Non-Exempt Store Manager being \$18.99,<sup>4</sup> RadioShack would potentially be liable for approximately \$1,170,833.22 in damages in the 2010 portion of the putative class period.<sup>5</sup>

b. 2011 Non-Exempt Store Manager Exposure For Overtime Claim

25. In 2011, RadioShack's Non-Exempt Store Managers worked a total of approximately 93,167 hours of overtime and were paid an average regular hourly rate of \$13.00.<sup>6</sup> Further, RadioShack paid a total of \$423,333.14 of overtime compensation in 2011. Exhibit "D", Hobbs Dec. at ¶ 6.

26. Based upon the average hourly overtime rate for each Non-Exempt Store Manager being \$19.50,<sup>7</sup> RadioShack would potentially be liable for approximately \$1,393,423.36 in damages for the 2011 portion of the putative class period.<sup>8</sup>

c. 2012 Non-Exempt Store Manager Exposure For Overtime Claim

27. In 2012, RadioShack's Non-Exempt Store Managers worked a total of approximately 89,740 hours of overtime and were paid an average hourly rate of \$13.65.<sup>9</sup> Further,

<sup>4</sup> The average regular hourly rate of \$12.66 (calculated in a manner consistent with Plaintiff's allegations such that the average regular weekly compensation paid Non-Exempt Store Managers is divided by 40 hours) multiplied by 1.5 = \$18.99, representing the average hourly overtime rate per Non-Exempt Store Manager for 2010.

<sup>5</sup> The \$18.99 average hourly overtime rate x 79,210 total hours of overtime = \$1,504,197.90 gross total overtime. Because RadioShack paid out \$333,364.68 in overtime compensation in 2010, the potential total exposure for 2010 = \$1,504,197.90 - \$333,364.68 = \$1,170,833.22.

<sup>6</sup> See note 1, above, on the calculation of the average regular rate for purposes of removal.

<sup>7</sup> The average regular hourly rate of \$13.00 (calculated in a manner consistent with Plaintiff's allegations such that the average regular weekly compensation paid Non-Exempt Store Managers is divided by 40 hours) multiplied by 1.5 = \$19.50, representing the average hourly overtime rate per Non-Exempt Store Manager for 2011.

<sup>8</sup> \$19.50 average hourly overtime rate x 93,167 total hours of overtime = \$1,816,756.50 gross total overtime. Because RadioShack paid out \$423,333.14 in overtime compensation in 2011, the potential total exposure for 2011 is \$1,816,756.50 - \$423,333.14 = \$1,393,423.36.

<sup>9</sup> See note 1, above, on the calculation of the average regular rate for purposes of removal.

RadioShack paid a total of \$432,775.04 of overtime compensation in 2012. Exhibit "D", Hobbs Dec. at ¶ 7.

28. Based upon the average hourly overtime rate for each Non-Exempt Store Manager being \$20.48,<sup>10</sup> RadioShack would potentially be liable for approximately \$1,405,100.16 in damages for the 2012 portion of the putative class period.<sup>11</sup>

d. 2013 Non-Exempt Store Manager Exposure For Overtime Claim

29. In 2013, it is expected that RadioShack's Non-Exempt Store Managers will work a total of approximately 93,536 hours of overtime<sup>12</sup> and, based upon compensation rates for the first quarter of 2013, are currently paid an average hourly regular rate of \$13.72.<sup>13</sup> Exhibit "D", Hobbs Dec. at ¶ 8.

30. Based upon the average hourly overtime rate for each Non-Exempt Store Manager being \$20.58,<sup>14</sup> RadioShack would potentially be liable for approximately \$1,831,643.11 in damages and/or costs of an injunction.<sup>15</sup>

<sup>10</sup> The average regular hourly rate of \$13.65 (calculated in a manner consistent with Plaintiff's allegations such that the average regular weekly compensation paid Non-Exempt Store Managers is divided by 40 hours) multiplied by 1.5 = \$20.48, representing the average hourly overtime rate per Non-Exempt Store Manager for 2012.

<sup>11</sup> \$20.48 average hourly overtime rate x 89,740 total hours of overtime = \$1,837,875.20 gross total overtime. Because RadioShack paid out \$432,775.04 in overtime compensation in 2012, the potential total exposure for 2012 is \$1,837,875.20 - \$432,775.04 = \$1,405,100.16.

<sup>12</sup> Plaintiff is seeking both injunctive relief and damages, and thus it is appropriate to calculate the prospective amount of overtime liability for the entire year 2013. Projected overtime hours of putative class members for 2013 was approximated by calculating the average monthly amount of overtime hours worked by Non-Exempt Store Managers and multiplying that result by 12 (total overtime hours for putative class for 36 months preceding filing of complaint (280,609) divided by 36 months equals an average of 7,794 overtime hours per month, multiplied by 12 months equals approximately 93,536 overtime hours projected for 2013).

<sup>13</sup> See note 1, above, on the calculation of the average regular rate for purposes of removal.

<sup>14</sup> The hourly rate of \$13.72 multiplied by 1.5 equaling \$20.58 represents the average hourly overtime rate of Non-Exempt Store Managers in 2013.

<sup>15</sup> The estimated net overtime premium exposure for 2013 potentially required as a result of Plaintiff's prayer for damages and injunctive relief in 2013 is \$1,831,643.11 based upon the

**B. Overall Potential Exposure**

31. Based upon the foregoing, RadioShack has demonstrated by a preponderance of evidence that RadioShack's potential exposure in this case exceeds the requisite \$5,000,000. *See*, ¶¶ 14-30 *infra*; *Morgan v. Gay*, 471 F.3d 469, 473 (3d Cir. 2006) (“[u]nder CAFA, the party seeking to remove the case to federal court bears the burden to establish that the amount in controversy requirement is satisfied”).

Year	Potential Overtime Premium Damages/Costs
2010	\$1,170,563.22
2011	\$1,393,423.36
2012	\$1,405,100.16
2013	\$1,831,643.11
Total at Issue (minimum)	\$5,800,729.85

32. RadioShack's estimates are based upon a review of RadioShack's business records, the claims alleged by Plaintiff as a whole, the actual and estimated overtime hours worked by putative class members, and the average regular hourly rate of pay for RadioShack's Pennsylvania Non-Exempt Store Managers.

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calculation: \$20.58 average hourly overtime rate x 93,536 estimated overtime hours for 2013 = \$1,924,970.88 gross estimated total overtime premium for 2013 – \$93,327.77 in overtime premiums paid putative class members in the first quarter of 2013 (Exhibit “D”, Hobbs Dec. at ¶ 8) = \$1,831,643.11.

33. Accordingly, because the aforementioned calculations far exceed the \$5,000,000 CAFA statutory limit, the amount in controversy requirement for proper removal has been satisfied.

## VI.

### NUMEROSITY

34. Plaintiff does not allege the exact number of putative class members. However, Plaintiff alleges that RadioShack's disputed compensation plan was utilized to compensate over 100 putative class members. Exhibit "A", Complaint at ¶ 12. Thus it must be assumed that the number of potential class members exceeds 100 people.

35. Because diversity of citizenship exists, ¶¶ 8-13, *infra*, the amount in controversy exceeds \$5,000,000, ¶¶ 14-33, *infra*, and the number of potential class members exceeds 100, ¶ 34, *infra*, this Court has original jurisdiction of this action pursuant to 28 U.S.C. § 1332(d)(2). This action is therefore a proper one for removal to this Court pursuant to 28 U.S.C. § 1441(a).

## VII.

### NOTICE OF REMOVAL

36. This Notice of Removal will be promptly served on Plaintiff and filed with Clerk of the Philadelphia County Court of Common Pleas.

37. In compliance with 28 U.S.C. § 1446(a), true and correct copies of all "process, pleadings, and orders" on file in the state court action are attached hereto as the following exhibits:

Exhibit "A": Class Action Complaint;

Exhibit "B": Civil Case Cover Sheet; and

Exhibit "C": Answer with New Matter.

WHEREFORE, RadioShack requests that the above action pending before the Philadelphia County Court of Common Pleas be removed to the United States District Court for the Eastern District of Pennsylvania.

Dated: May 8, 2013

STEVENS & LEE, P.C.

By:  \_\_\_\_\_

Daniel B. Huyett

Attorney I.D. No. 21385

111 North Sixth Street, P. O. Box 679

Reading, PA 19603-0679

Tel: (610) 478-2219

Fax: (610) 988-0801

dbh@stevenslee.com

*Counsel for Defendant RadioShack Corporation*

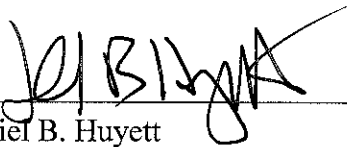


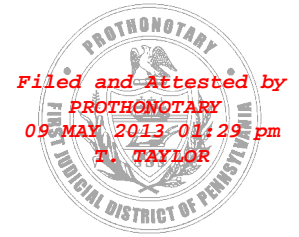
**CERTIFICATE OF COUNSEL**

I, Daniel B. Huyett, certify that on this date, I served a true and correct copy of the foregoing **DEFENDANT RADIOSHACK CORPORATION'S NOTICE OF REMOVAL** upon the following counsel of record and/or parties by depositing the same in the United States mail, postage prepaid, addressed as follows:

Peter Winebrake, Esq.  
R. Andrew Santillo, Esq.  
Mark J. Gottesfeld, Esq.  
WINEBRAKE & SANTILLO, LLC  
715 Twining Road, Suite 211  
Dresher, PA 19025  
Tel: (215) 884) 2491

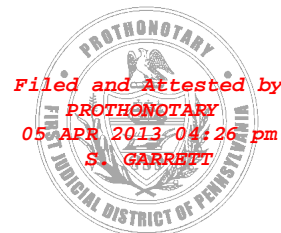
Dated: May 8, 2013

  
\_\_\_\_\_  
Daniel B. Huyett



# EXHIBIT A

Peter Winebrake, Esq. (Attorney ID No. 80496)  
R. Andrew Santillo, Esq. (Attorney ID No. 93041)  
Mark J. Gottesfeld, Esq. (Attorney ID No. 307752)  
WINEBRAKE & SANTILLO, LLC  
715 Twining Road, Suite 211  
Dresher, PA 19025  
Phone: (215) 884-2491



*Counsel for Plaintiffs and the Putative Class (Additional Counsel Listed on Signature Page)*

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DAVID VERDERAME,	:	PHILADELPHIA COUNTY
	:	COURT OF COMMON PLEAS
Plaintiff,	:	
v.	:	CLASS ACTION
	:	
RADIOSHACK CORPORATION,	:	NON-JURY TRIAL
	:	
Defendant.	:	

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**COMPLAINT -- CLASS ACTION**  
**10 — Contract: Other**

**NOTICE**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after the complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

PHILADELPHIA BAR ASSOCIATION  
Lawyer Referral and Information Service  
1101 Market Street, 11th Floor  
Philadelphia, Pennsylvania 19107  
(215) 238-1701

**AVISO**

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notification. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notification. Ademas, la corte puede decidira favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATA-MENTE SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

ASSOCIACION DE LICENCIADOS DE  
FILADELFIA  
Servicio De Referencia E Informacion Legal  
1101 Market Street, 11th Floor  
Filadelfia, Pennsylvania 19107  
(215) 238-1701

Plaintiff David Verderame (“Plaintiff”) brings this class action lawsuit against Defendant RadioShack Corporation (“Defendant”), seeking all available relief under the Pennsylvania Minimum Wage Act of 1968 (“PMWA”), 43 P.S. §§333.101, *et seq.* The following allegations are based on personal knowledge as to Plaintiff’s own conduct and are made on information and belief as to the acts of others.

**PARTIES**

1. Plaintiff is an individual residing at 301 Clifford Road, Selinsgrove, Pennsylvania 17870.
2. Plaintiff is an employee covered by the PMWA and entitled to its protections.
3. Defendant is a company registered to do business in the Commonwealth of Pennsylvania and maintaining a principal place of business at 300 RadioShack Circle, Fort Worth, Texas 76102. According to the Pennsylvania Department of State Corporation database, Defendant has a Registered Office Address at 123 South Broad Street, Philadelphia, Pennsylvania 19109.
4. Defendant is an employer covered by the PMWA and required to comply with its overtime pay mandates.

**JURISDICTION AND VENUE**

5. This Court has personal jurisdiction over Defendant.
6. Venue in this Court is proper under Pennsylvania Rules of Civil Procedure 1006 and 2179 because Defendant regularly conducts business in Philadelphia County, has a Registered Office Address within Philadelphia County, and has store locations within Philadelphia County.

**FACTS**

7. According to its most recent Annual Report, Defendant “primarily engage[s] in the retail sale of consumer electronics goods and services through [its] RadioShack store chain.”

8. As of December 31, 2011, Defendant, according to its most recent Annual Report, operated 288 “Company-Operated Stores, Kiosks and Dealer Locations” within the Commonwealth of Pennsylvania. These locations shall be referred to herein as “the Pennsylvania Stores.”

9. At least three of Defendant’s Pennsylvania Stores are located within Philadelphia County.

10. Defendant employs hundreds of individuals at the Pennsylvania Stores.

11. Most Pennsylvania Store employees receive overtime premium compensation for hours worked over 40 during the workweek. Some of these overtime-eligible employees are paid on a salary basis and have their overtime premium compensation calculated pursuant to the “fluctuating workweek” methodology described at 29 C.F.R. § 778.114 when they work over 40 hours in a single workweek.

12. Upon information and belief, Defendant has utilized the fluctuating workweek method to calculate the overtime premium compensation of over 100 Pennsylvania Store employees during the three-year time period applicable to this lawsuit.

13. The PMWA requires that employees receive overtime compensation “not less than one and one-half times” the employee’s regular pay rate for all hours worked over 40 in a workweek. *See* 43 P.S. § 333.104(c). However, under the “fluctuating workweek” methodology, salaried employees do not receive overtime premium compensation in the full time-and-one-half amount required by the PMWA. Instead, under the fluctuating workweek

method, employees receive for each credited overtime hour an extra payment equaling *one-half* of the rate arrived at by dividing the employee's weekly salary by the total number of hours worked during the week. *See* 29 U.S.C. § 778.114; *Foster v. Kraft Foods Global, Inc.*, 285 F.R.D. 343, 344-45 (W.D. Pa. 2012) (discussing fluctuating workweek method).

14. The fluctuating workweek method of overtime compensation is impermissible under the PMWA. *See, e.g., Foster*, 285 F.R.D., at 348.

15. From approximately January 24, 2012 until approximately November 6, 2012, Plaintiff was employed by Defendant as a Store Manager and assigned to its retail store locations in Pennsdale, Pennsylvania.

16. As Store Manager, Plaintiff received a weekly salary and when credited by Defendant with working over 40 hours in a single workweek, he was paid overtime compensation pursuant to the fluctuating workweek method.

17. Through Defendant's illegal use of the fluctuating workweek methodology of overtime compensation, Plaintiffs and other class members throughout the three-year period relevant to this lawsuit have been underpaid for hours credited by Defendant and worked over 40 in a workweek.

#### **CLASS ACTION ALLEGATIONS**

18. Plaintiff brings this action on behalf of himself and as a class action on behalf of all Pennsylvania Store employees who, during any workweek since April 5, 2010, had their overtime pay calculated pursuant to the fluctuating workweek method.

19. This action may be properly maintained as a class action pursuant to Pennsylvania Rules of Civil Procedure 1702, 1708, and 1709.

20. The Class is so numerous that joinder of all individual members is impracticable,

and the class members are objectively ascertainable based on payroll data maintained or controlled by Defendant.

21. Defendant's conduct with respect to Plaintiff and the class raises questions of law or fact that are common to the entire class. In particular, during the relevant class period, Defendant's maintained the common practice of calculating overtime premium pay under the "fluctuating workweek" methodology, as described herein. The facts and evidence pertaining to this companywide practice are common to the class.

22. Plaintiff's claims and Defendant's corresponding defenses are typical of the claims or defenses applicable to the entire class because, *inter alia*, all claims are based on the same legal theories and remedies. Furthermore, Plaintiff's assertion that Defendant's use of the fluctuating workweek violates the PMWA is sufficiently aligned with the interests of the class as a whole so that pursuit of Plaintiff's own interests will benefit the class as a whole.

23. Plaintiff will fairly and adequately assert and protect the interests of the class because, *inter alia*, (a) Plaintiff is represented by experienced class action counsel who is well-prepared to vigorously and competently litigate this action on behalf of the class; (b) Plaintiff and his counsel are free of any conflicts of interest that prevent them from pursuing this action on behalf of the class; and (c) Plaintiff and his counsel have adequate financial resources to assure that the interests of the class will not be harmed.

24. A class action provides a fair and efficient method for adjudication of the controversy because, *inter alia*,

(a) The previously mentioned common questions of law and fact predominate over any questions affecting Plaintiff or any individual class member;

(b) All class members are easily identifiable through Defendant's records and computer files, and no foreseeable difficulties in the management of this action as a class action exists;

(c) The monetary damages sought on behalf of the class are readily calculated and attributable to class members;

(d) The injunctive relief sought on behalf of the class is easily administered and enforceable;

(e) Maintenance of the instant litigation as a class action protects against the risks of inconsistent or varying adjudications that might result if individual class members were to commence independent actions in various courthouses throughout the Commonwealth;

(f) Plaintiff is not aware of any other private civil actions commenced by or against the class members concerning the issues raised in this action;

(g) Because Defendant conducts a substantial amount of business in Philadelphia County, this Court is an appropriate forum for the litigation of the claims of the entire class;

(h) The complexities of the issues and the expense of litigating the separate claims of individual class members weigh in favor of class certification. For example, in the instant action, Plaintiff will seek and present evidence concerning, *inter alia*, Defendant's common timekeeping, compensation, and payroll practices. The gathering and presentation of such evidence in multiple proceedings would be inefficient, redundant, and unjustifiably expensive. The class action device, when compared to multiple proceedings, presents far fewer



management difficulties and provides the benefits of unitary adjudication, economies of scale, and comprehensive supervision by a single court.

Concentrating this litigation in one forum promotes judicial economy and efficiency and promotes parity among the claims of individual class members as well as judicial consistency. Thus, the conduct of this action as a class action conserves the resources of the parties and the court system, protects the rights of each class member, and meets all due process requirements as to fairness to Defendant. Adequate notice of this class action can be provided to class members by hand distribution and/or direct mail; and

(i) Because the damages sustained by individual class members are relatively small compared to the resources of Defendant and the costs of individual litigation, it is impracticable and unrealistic for individual class members to independently pursue litigation against Defendant in order to vindicate their rights.

### **COUNT I**

25. All previous paragraphs are incorporated as though fully set forth herein.

26. Defendant is an employer covered by the PMWA's mandates, and Plaintiff and other class members are employees entitled to the PMWA's protections.

27. The PMWA requires that employees receive overtime compensation "not less than one and one-half times" the employee's regular rate of pay for all hours worked over 40 in a workweek. *See* 43 P.S. § 333.104(c).

28. As described herein, Defendant violated the PMWA by calculating the overtime premium compensation due to Plaintiff and the class members when credited with working over

40 hours in a single workweek based on the fluctuating workweek method, even though such method is not permitted under the PMWA. *See, e.g., Foster*, 285 F.R.D., at 348.

29. As a result of Defendant's illegal conduct, Plaintiff and the class members have received overtime payments that are significantly less than the payments they would have received in the absence of the fluctuating workweek method.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, on behalf of himself and the class, seeks the following relief:

- A. An injunction prohibiting Defendant from engaging in future PMWA violations;
- B. Unpaid overtime wages to the fullest extent permitted under the law;
- C. Prejudgment interest to the fullest extent permitted under the law;
- D. Litigation costs, expenses, and attorney's fees to the fullest extent permitted under the law; and
- E. Such other and further relief as this Court deems just and proper.

Date: April 5, 2013

/s/ R. Andrew Santillo  
Peter Winebrake (PA Attorney No. 80496)  
R. Andrew Santillo (PA Attorney No. 93041)  
Mark J. Gottesfeld (PA Attorney No. 307752)  
WINEBRAKE & SANTILLO, LLC  
715 Twining Road, Suite 211  
Dresher, PA 19025  
Phone: (215) 884-2491

Paul J. Lukas, Esq.\*  
Timothy Selander, Esq.\*  
NICHOLS KASTER, PLLP  
4600 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402  
Phone: (612) 256-3200

*\*pro hac vice* admission anticipated

*Attorneys for Plaintiff*

VERIFICATION

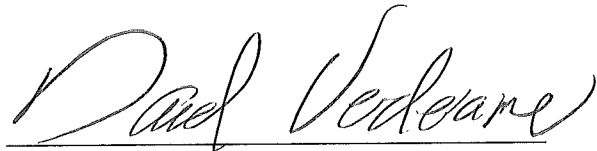
I, DAVID VERDERAME, hereby state:

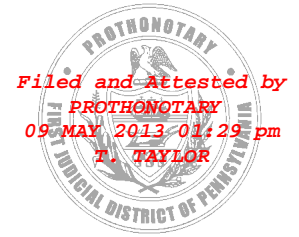
1. I am a plaintiff in this action;
2. I verify that the statements made in the foregoing document, entitled "COMPLAINT – CLASS ACTION," are true and correct to the best of my knowledge information and belief; and
3. I understand that the statements in the document are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Dated: \_\_\_\_\_

4/4/13

Signature





# EXHIBIT B

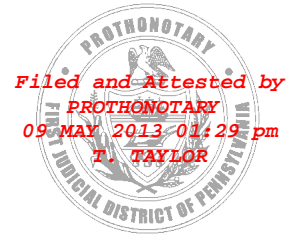
Court of Common Pleas of Philadelphia County  
Trial Division  
**Civil Cover Sheet**

For Prothonotary Use Only (Docket Number)
<b>APRIL 2013</b>
<b>001055</b>
E-Filed Number: 1304012199

PLAINTIFF'S NAME DAVID VERDERAME		DEFENDANT'S NAME RADIOSHACK CORPORATION	
PLAINTIFF'S ADDRESS 301 CLIFFORD ROAD SELINGROVE PA 17870		DEFENDANT'S ADDRESS 300 RADIOSHACK CIRCLE FORT WORTH TX 76102	
PLAINTIFF'S NAME		DEFENDANT'S NAME	
PLAINTIFF'S ADDRESS		DEFENDANT'S ADDRESS	
PLAINTIFF'S NAME		DEFENDANT'S NAME	
PLAINTIFF'S ADDRESS		DEFENDANT'S ADDRESS	
TOTAL NUMBER OF PLAINTIFFS 1	TOTAL NUMBER OF DEFENDANTS 1	COMMENCEMENT OF ACTION <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Petition Action <input type="checkbox"/> Notice of Appeal <input type="checkbox"/> Writ of Summons <input type="checkbox"/> Transfer From Other Jurisdictions	
AMOUNT IN CONTROVERSY <input type="checkbox"/> \$50,000.00 or less <input checked="" type="checkbox"/> More than \$50,000.00	COURT PROGRAMS <input type="checkbox"/> Arbitration <input type="checkbox"/> Mass Tort <input type="checkbox"/> Commerce <input type="checkbox"/> Settlement <input type="checkbox"/> Jury <input type="checkbox"/> Savings Action <input type="checkbox"/> Minor Court Appeal <input type="checkbox"/> Minors <input type="checkbox"/> Non-Jury <input type="checkbox"/> Petition <input type="checkbox"/> Statutory Appeals <input type="checkbox"/> W/D/Survival <input checked="" type="checkbox"/> Other: CLASS ACTION		
CASE TYPE AND CODE C1 - CLASS ACTION			
STATUTORY BASIS FOR CAUSE OF ACTION			
RELATED PENDING CASES (LIST BY CASE CAPTION AND DOCKET NUMBER)		<b>FILED PRO PROTHY APR 05 2013 S. GARRETT</b>	
		IS CASE SUBJECT TO COORDINATION ORDER? YES    NO	
TO THE PROTHONOTARY: Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant: <u>DAVID VERDERAME</u> Papers may be served at the address set forth below.			
NAME OF PLAINTIFF'S/PETITIONER'S/APPELLANT'S ATTORNEY R. ANDREW SANTILLO		ADDRESS WINEBRAKE & SANTILLO, LLC TWINING OFFICE CENTER 715 TWINING ROAD, SUITE 211 DRESHER PA 19025	
PHONE NUMBER (215) 884-2491	FAX NUMBER (215) 884-2492		
SUPREME COURT IDENTIFICATION NO. 93041		E-MAIL ADDRESS asantillo@winebrakelaw.com	
SIGNATURE OF FILING ATTORNEY OR PARTY R. ANDREW SANTILLO		DATE SUBMITTED Friday, April 05, 2013, 04:26 pm	

FINAL COPY (Approved by the Prothonotary Clerk)

Case ID: 130401055



# EXHIBIT C

DAVID VERDERAME,

Plaintiff,

v.

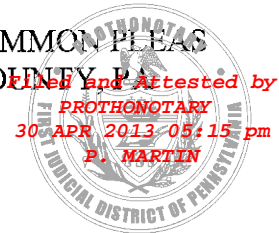
RADIOSHACK CORPORATION,

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

Daniel B. Huyett  
Attorney ID No. No. 21385  
Julie E. Ravis  
Attorney ID No. 203101  
111 North Sixth Street, P.O. Box 679  
Reading, PA 19603-0679  
Tel: (610) 478-2219 / (610) 478-2077  
Fax: (610) 988-0801 / (610) 371-7747  
dbh@stevenslee.com / jera@stevenslee.com

*Attorneys for Defendant RadioShack Corporation*

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dbh@stevenslee.com

*Attorneys for Defendant  
RadioShack Corporation*

DAVID VERDERAME,	:	IN THE COURT OF COMMON PLEAS
	:	OF PHILADELPHIA COUNTY, PA
Plaintiff,	:	
	:	No. 130401055
v.	:	
	:	JURY TRIAL DEMANDED
RADIOSHACK CORPORATION,	:	
	:	
Defendant.	:	
	:	

**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

Daniel B. Huyett

Attorney ID No. 21385

Julie E. Ravis

Attorney ID No. 203101

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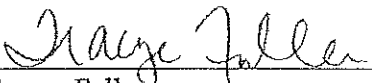
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*Attorneys for Defendant RadioShack Corporation*

VERIFICATION

I, Tracie 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

  
\_\_\_\_\_  
Tracie Fuller  
Litigation Paralegal  
RadioShack Corporation

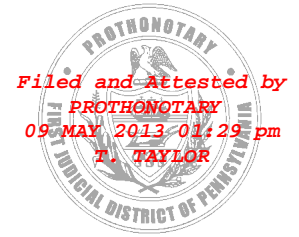
**CERTIFICATE OF SERVICE**

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



# EXHIBIT D

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

DAVID VERDERAME, on behalf of himself  
and other s similarly situated,

Plaintiff,

v.

RADIOSHACK CORPORATION,

Defendant.

Civil Action No.

**DECLARATION OF TOSS A. HOBBS IN SUPPORT OF DEFENDANT  
RADIOSHACK CORPORATION'S NOTICE OF REMOVAL**

I, TOSS A. HOBBS, declare and state:

1. I am the Director, Litigation for Defendant RadioShack Corporation (“RadioShack”), and have been employed in that position since 2012. Prior to that, I was a Senior Litigation Attorney. I was employed in that position since 1984. In my position, I am familiar with and have personal knowledge of RadioShack’s organization and its business and legal operations. As such, I have personal knowledge of the matters stated herein and, if called and sworn as a witness, I could and would competently testify as set forth herein.

2. In addition to having personal knowledge, as part of my normal business responsibilities, I also have reviewed business records concerning the organization of RadioShack and its day-to-day operations. The information compiled below is based on my personal knowledge, as well as records I have reviewed that are maintained in the ordinary course of RadioShack’s regularly conducted business activities, where the information included in those documents is recorded at or near the time of the acts, events or conditions indicated, by employees who are responsible for recording those acts, events or conditions.

3. RadioShack is a Delaware corporation, organized under the laws of the State of Delaware, and was so organized as of the date the Complaint was filed (April 5, 2013).

4. RadioShack’s principal place of business is located in the State of Texas. RadioShack operates its corporate headquarters out of offices located at 300 RadioShack Circle in Fort Worth, Texas. All of the company’s high-level executive and administrative operations are managed from this location, including board meetings, company-wide policy decisions and day-to-day control of the company’s business operations. Most of RadioShack’s executive officers and several of its directors live in Texas, near the company’s corporate headquarters.

5. For the period of April 2010 to December 2010, RadioShack’s Non-Exempt Store Managers in Pennsylvania stores worked a total of 79,210.88 hours of overtime and were paid an average hourly rate of \$12.66, as such rate is calculated from their regular weekly compensation

divided by 40 hours. Further, RadioShack paid its Non-Exempt Store Managers in Pennsylvania stores a total of \$333,634.68 of overtime compensation for the months of April 2010 to December 2010.

6. In 2011, RadioShack's Non-Exempt Store Managers in Pennsylvania stores worked a total of 93,167.02 hours of overtime and were paid an average hourly rate of \$13.00, as such rate is calculated from their regular weekly compensation divided by 40 hours. Further, RadioShack paid its Non-Exempt Store Managers in Pennsylvania stores a total of \$423,333.14 of overtime compensation in 2011.

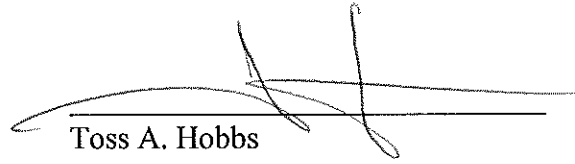
7. In 2012, RadioShack's Non-Exempt Store Managers in Pennsylvania stores worked a total of 89,740.75 hours of overtime and were paid an average hourly rate of \$13.65, as such rate is calculated from their regular weekly compensation divided by 40 hours. Further, RadioShack paid its Non-Exempt Store Managers in Pennsylvania stores a total of \$432,775.04 of overtime compensation in 2012.

8. In 2013, it is expected that RadioShack's Non-Exempt Store Managers in Pennsylvania stores will work a total of 93,536 hours of overtime, as calculated based upon the monthly average of overtime hours worked by RadioShack Non-Exempt Store Managers in the 36 months preceding the filing of the Complaint (7,794). For the first quarter of 2013 (January through March 2013), Non-Exempt Store Managers in Pennsylvania have worked approximately 18,490 overtime, and are currently paid an average hourly rate of \$13.72, as such rate is calculated from their regular weekly compensation divided by 40 hours. RadioShack has already paid overtime premium compensation to putative class members of \$93,327.77 for the months of January 2013 through March 2013.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.



Executed this 7<sup>th</sup> day of May, 2013, at Fort Worth, Texas.

  
Toss A. Hobbs