**UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF INDIANA**

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| KYLE LANNERT,<br><br>Plaintiff,<br><br>v.<br><br>M&N CABLE, LLC,<br><br>Defendant. | Case No.: 3:19-cv-190<br><br>**CLASS & COLLECTIVE ACTION COMPLAINT**<br><br>**JURY TRIAL DEMANDED** |

Plaintiff, KYLE LANNERT ("Lannert" or "Plaintiff") by and through the undersigned attorneys, brings this Complaint against Defendant, M&N CABLE, LLC ("M&N Cable" or "Defendant"), states as follows:

## INTRODUCTION

1. This Complaint is brought by Plaintiff to recover for Defendant's willful violations of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201, *et seq.*, and other appropriate rules, regulations, statutes, and ordinances. Specifically, Defendant failed to compensate Plaintiff at the overtime premium rate for all hours worked over 40 in one workweek, as required under the FLSA.

2. M&N Cable is a for-profit Missouri limited liability company registered to do business in the State of Indiana. M&N Cable contracts with cable providers, such as Spectrum and WOW "Wild Open West" cable company, to install cable service in clients' homes. M&N Cable does not have a business website, but does post job openings on job sites such as ZipRecruiter. *See Cable Installer*, Zip Recruiter, https://www.ziprecruiter.com/c/M-&-N-Cable-LLC/Job/Cable-Installer/-in-Evansville,IN?jobid=a3acbd0c-34b655a2 (last visited August 30, 2019). M&N Cable advertises itself as an "employee oriented company." *Id.*

3. Defendant employed Plaintiff as an Installation/Services Technician ("Cable

Technician" or "Cable Installer") from August 2018 to March 12, 2019. Plaintiff's job duties included installing and repairing cable television services, internet services, and telephone services in residential homes.

4. From March 12, 2018 to January 1, 2019, Defendant represented to Plaintiff that Plaintiff worked for Defendant as a 1099 independent contractor. In fact, Plaintiff was not an independent contractor, but was an employee of Defendant. Defendant controlled all aspects of Plaintiff's employment, the performance of Plaintiff's job duties, the route and schedule for Plaintiff's workday and facilitated equipment and vehicles necessary for the performance of Plaintiff's job at all times while Plaintiff was performing work for Defendant.

5. In January of 2019 Defendant unilaterally "switched" its cable installers from 1099 independent contractors to W-2 employees.

6. Plaintiff routinely worked in excess of forty (40) hours per workweek for Defendant throughout Plaintiff's employment. Plaintiff was not compensated at the overtime premium rate of one and one-half times his standard rate of pay for any hours worked in excess of forty (40) in one workweek, as required by the FLSA.

7. Additionally, Defendant withheld the first three weeks of Plaintiff's pay plus 5-10% of each of Plaintiff's checks for the purposes of funding a "reserve account" intended to compensate Defendant in the event Defendant's equipment was not returned by Plaintiff. Defendant represented to Plaintiff that this "reserve account" would be paid to Plaintiff, less any equipment not returned, at the conclusion of Plaintiff's employment with Defendant.

8. At the conclusion of Plaintiff's employment with Defendant Plaintiff returned all of Defendant's equipment, yet was never paid the money in Plaintiff's "reserve account."

9. The U.S. Department of Labor specifically condemns an employer's non-payment

of overtime: "Unless specifically exempted, employees covered by the Act must receive overtime pay for hours worked in excess of 40 in a workweek at a rate not less than time and one-half their regular rates of pay." *See* U.S. Department of Labor, DOL Fact Sheet #23 at 1, available at https://www.dol.gov/whd/regs/compliance/whdfs23.pdf.

10. Furthermore, the U.S. Department of Labor provides guidance on which employees may be exempt from the FLSA based on the FLSA's "executive, administrative, professional and outside sales" exemptions. Plaintiff does not qualify for the administrative, executive, professional, or outside sales exemptions because he did not hire, fire, or oversee employees, his job routinely involved the performance of manual labor, his job duties did not require the performance of advanced knowledge related to science or learning, and Plaintiff's job duties did not include "making sales."

11. Under Indiana law, a deduction for "the purchase of uniforms and equipment necessary to fulfill the duties of employment" is limited to "(A) two thousand five hundred dollars ($2,500) per year; or (B) five percent (5%) of the employee's weekly disposable earnings." Ind. Code § 22-2-6-2, subd. b(14).

12. Upon information and belief, the deduction from Plaintiff's paychecks was not for the purchase of uniforms or equipment necessary to carry out the duties of a Cable Technician, but was for a "reserve account" to compensate the Defendant in the event any equipment was lost. Upon information and belief, costs incurred relevant to equipment used for each installation was billed to Defendant's customer, and was not intended to be incurred by the Cable Technician.

13. Maintaining a "reserve account" is not a valid reason for a wage assignment or deduction. Valid reasons for wage assignments or deductions are set forth in Ind. Code § 22-2-6-2.

14. Upon information and belief, the amount deducted by Defendant from Plaintiff's paycheck exceeded the $2,500 per year or 5% per paycheck limit set forth in Ind. Code § 22-2-6-2, subd. b(14).

15. Plaintiff brings this action on behalf of himself and all other similarly situated to recover unpaid wages and overtime, liquidated damages, penalties, fees and costs, pre- and post-judgment interest, and any other remedies to which he may be entitled.

**JURISDICTION AND VENUE**

16. This Court has subject-matter jurisdiction over Plaintiff's FLSA claim pursuant to 28 U.S.C. § 1331 because Plaintiff's claims raise a federal question under 29 U.S.C. §§ 201, *et seq*.

17. Upon information and belief, Defendant's annual sales exceed $500,000 and they have more than two employees, so the FLSA applies in this case on an enterprise basis. *See* 29 U.S.C. § 203(s)(1)(A). Defendant's employees engage in interstate commerce, and therefore, they are also covered by the FLSA on an individual basis.

18. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367(a) because these claims arise from a common set of operative facts and are so related to the claims within this Court's original jurisdiction that they form a part of the same case or controversy.

19. This Court has personal jurisdiction over Defendant because Defendant conducts business within the State of Indiana, and because the acts or omissions giving rise to the causes of action in this Complaint occurred within the State of Indiana.

20. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendant employs personnel in this District and a substantial portion of the actions and omissions giving

rise to the claims pled in this Complaint substantially occurred in this District.

## PARTIES

21. Kyle Lannert ("Plaintiff") is an individual who resides in the County of Vanderburg, City of Evansville, Indiana. Plaintiff was employed by Defendant as a Cable Technician from August 2018 to March 12, 2019. Plaintiff's Consent to Sue is attached hereto as Exhibit A.

22. M&N Cable, LLC is a Missouri limited liability company registered to do business in the State of Indiana. M&N Cable can be served via its Registered Agent, Marcia Plank, at 6300 Lincoln Avenue, Evansville, Indiana, 47715.

## GENERAL ALLEGATIONS

### *A. At all times during Plaintiff's Employment with Defendant, Defendant Maintained Total Control over Plaintiff; Since his Hiring Plaintiff was Defendant's Employee*

23. Plaintiff was hired on or around August 2018 as a Cable Technician for Defendant.

24. Plaintiff's primary duties as a Cable Technician included travelling to private residences to install, upgrade, or downgrade cable television services, internet services, and phone services.

25. Defendant entirely controlled Plaintiff's route, schedule, uniform, means of transportation, means of completing his job. Furthermore, Plaintiff borrowed Defendant's equipment, and did not own his own equipment, necessary to complete the job.

26. Plaintiff had little or no opportunity for profit or loss depending upon his managerial skill; all clients were routed through and assigned by the Defendant.

27. Further, Plaintiff worked for Defendant on a full-time permanent basis at all times during his employment with Defendant, and the service performed by Plaintiff were central to

Defendant's business and were, in fact, the only services offered by Defendant.

28. At the time of Plaintiff's hiring in August of 2018, Defendant represented to Plaintiff that Plaintiff was a 1099 independent contractor. In fact, Plaintiff was not an independent contractor, but was an employee of Defendant.

29. From August 2018 to January 2019, Plaintiff performed work for Defendant as a misclassified independent contractor and was paid on a per-job basis at the rate of $25.00 to $75.00 per "job."

30. In January of 2019 Defendant unilaterally "switched" its cable installers from 1099 independent contractors to W-2 employees, without reason. From January 2019 to March 12, 2019, Plaintiff performed work for Defendant as an employee at the rate of $25.00 to $75.00 per "job."

31. Throughout Plaintiff's employment, Plaintiff regularly worked forty or more hours in one workweek and was unable to take on other paying jobs.

### *B. The Fair Labor Standards Act (FLSA) Unequivocally Establishes Plaintiff and the Class Are Employees.*

32. During the time Plaintiff was incorrectly classified as an independent contractor, Plaintiff was never paid at the overtime premium rate for all hours worked in excess of forty (40) in one workweek.

33. At all times the position of Cable Technician was, and is, non-exempt.

34. The FLSA, 29 U.S.C. § 207, requires Defendant to compensate non-exempt employees who work in excess of forty (40) hours in a workweek at a rate of one and one-half times their regular rate of pay.

35. Contrary to the above statutory enactment, Defendant failed to pay its Cable Technicians overtime pay at a rate of one and one-half times their regular rate for hours worked in excess of forty (40) hours during a workweek.

36. Defendant willfully violated the FLSA by knowingly and willfully failing to compensate Plaintiff at the minimum wage rate, and failing to compensate Plaintiff for overtime for the hours they worked in excess of forty (40) hours per week according to the terms of the FLSA, 29 U.S.C. § 201, *et seq*.

37. At all times relevant to this action, Defendant was an "employer" under the FLSA, 29 U.S.C. § 203(d), subject to the provisions of 29 U.S.C. § 201, *et seq*.

38. Defendant is engaged in interstate commerce or in the production of goods for commerce, as defined by the FLSA.

39. At all times relevant to this action, Plaintiff was an "employee" of Defendant within the meaning of the FLSA, 29 U.S.C. § 203(e)(1).

40. Plaintiff either (1) engaged in commerce; or (2) engaged in the production of goods for commerce; or (3) employed in an enterprise engaged in commerce or in the production of goods for commerce.

41. At all times relevant to this action, Defendant "suffered or permitted" Plaintiff to work and thus "employed" him within the meaning of the FLSA, 29 U.S.C. § 203(g).

42. The violations of the FLSA, 29, U.S.C. §§ 206 and 207, committed by Defendant and alleged in this Complaint present common questions of law and fact.

43. The FLSA provides that:

> No employer shall employ any of his employees . . . for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.
>
> 29 U.S.C. § 207(a)(1).

44. At all times relevant to this Complaint, Defendant suffered or permitted Plaintiff to routinely perform work in excess of forty (40) hours per week without compensating Plaintiff at

the federally-required overtime rate of one and one-half times his standard rate of pay.

45. Defendant knew or should have known that, under the FLSA, Plaintiff should have been paid overtime "at a rate not less than one and one-half times the regular rate" at which he was employed for all compensable hours worked in excess of forty (40) hours. 29 U.S.C. § 207(a)(1).

46. Despite this, Defendant failed to pay Plaintiff at the overtime premium rate of one and one-half times his regular rate for all work performed by Plaintiff in excess of forty (40) hours per week.

47. Defendant willfully, or in reckless disregard, engaged, adopted and then adhered to its policy and practice of withholding overtime pay from Plaintiff. This policy resulted in Plaintiff not being paid correctly, in violation of the FLSA.

### *C. Defendant Systematically and Routinely Violated Indiana State Law by Unlawfully Withholding its Employees' First Three Weeks' Pay and Deducting 5-10% of its Employees' Checks for Purposes of Creating a "Reserve account"*

48. Furthermore, at the beginning of Plaintiff's employment Defendant withheld three weeks of Plaintiff's pay for the purpose of creating a "reserve account" which would be used to compensate Defendant if Plaintiff failed to return Defendant's equipment. Plaintiff was told that Defendant would return the withheld pay upon the conclusion of Plaintiff's employment if Plaintiff returned all equipment to Defendant. At the conclusion of Plaintiff's employment Plaintiff returned all equipment to Defendant, yet Defendant never remitted payment to Plaintiff for Plaintiff's first three weeks of pay.

49. Throughout Plaintiff's employment with Defendant, Defendant additionally withheld 5 to 10% from Plaintiff's paycheck also for the stated purpose of adding to the "reserve account" which would be used to compensate Defendant if Plaintiff failed to return Defendant's equipment. Plaintiff was told that Defendant would return the withheld pay upon the conclusion

of Plaintiff's employment if Plaintiff returned all equipment to Defendant. At the conclusion of Plaintiff's employment Plaintiff returned all equipment to Defendant, yet Defendant never remitted payment to Plaintiff for the 5-10% that was withheld by Defendant from each of Plaintiff's paychecks.

50. Indiana's Labor and Safety Code provides that an assignment of wages by an employee is valid only where: "(1) The assignment is: (A) in writing; (B) signed by the employee personally; (C) by its terms revocable at any time; and (D) agreed to in writing by the employer." Ind. Code § 22-2-6-2, subd. a(1). Plaintiff does not recall signing a document authorizing assignment of his wages at any point while employed with Defendant.

51. Indiana's Code enumerates specific instances where a wage assignment may be made. None of the enumerated instances include the establishment of, or contribution to, a "reserve account" or fund for the purposes of compensating the employer for potentially lost, unreturned, or damaged equipment.

52. Furthermore, while Indiana's Code authorizes deductions for "[t]he purchase of uniforms and equipment necessary to fulfill the duties of employment," here the equipment was never purchased—in fact it was merely borrowed from the employer—and *even if* it were purchased Defendant exceeded the deduction limits set forth in the Code of "the lesser of: (A) two thousand five hundred dollars ($2,500) per year; or (B) five percent (5%) of the employee's weekly disposable earnings . . . ." Ind. Code § 22-2-6-2, subd. 2(14).

53. Defendant violated Ind. Code § 22-2-6-2 several times by taking its employee's first paychecks, in addition to 5-10% from each paycheck thereafter.

54. Section 3 of Indiana Code § 22-2-8-3 provides that "[i]t is hereby the duty of the commissioner of labor to enforce the provisions of this chapter by the processes of the courts . . .

and, upon his failure so to do, any citizen of the state is hereby authorized to do the same in the name of the state." Ind. Code § 22-2-8-3.

55. A true and correct letter from the Indiana Department of Labor authorizing Plaintiff to sue is attached hereto as Exhibit B.

## COLLECTIVE ACTION ALLEGATIONS

56. Plaintiff, Kyle Lannert, brings this action pursuant to the FLSA, 29 U.S.C. § 216(b) on his own behalf and on behalf of:

> All current and former Cable Technicians or other similar job titles who performed work for Defendant M&N Cable, LLC, in excess of forty (40) hours per week at any time from September 9, 2016 until the present.

57. Plaintiff does not bring this action on behalf of any executive, administrative, or professional employees exempt from coverage under the FLSA.

58. The position of Cable Technician, and other similar positions, are not exempt from the FLSA.

59. With respect to the claims set forth in this action, a collective action under the FLSA is appropriate because, under 29 U.S.C. § 216(b), the Cable Technicians described are "similarly situated" to Plaintiff. The class of employees on behalf of whom Plaintiff brings this collective action are similarly situated because (a) they have been or are employed in the same or similar positions; (b) they were or are subject to the same or similar unlawful practices, policy, or plan; and (c) their claims are based upon the same legal theories.

60. Plaintiff estimates that the collective Class, including both current and former Cable Technicians over the relevant period, will include several thousand members. The precise number of collective Class members should be readily available from a review of Defendant's records, and

from input received from the collective class members as part of the notice and "opt-in" process provided by 29 U.S.C. § 216(b).

61. Plaintiff's and the Class's entitlement to overtime pay, except for amount, is identical and depends on one uniform factual question: Did Defendant exercise control over the manner in which its Cable Technicians worked?

62. Similarly, the classification status of Plaintiff and the Class involves an identical legal question: Did Defendant's Cable Technicians act as independent contractors and not employees, such that Defendant owes them a minimum wage, overtime, and record-keeping obligations under the FLSA?

63. Plaintiff shares the same interests as the Class in that the outcome of this action will determine whether they are either independent contractors or employees under the FLSA. Because the facts in this case are similar, if not altogether identical, the factual assessment and legal standards lend himself to a collective action.

## CLASS ACTION ALLEGATIONS

64. Plaintiff, KYLE LANNERT, brings this action pursuant to Fed. R. Civ. P. 23 on behalf of a putative state law Class defined to include:

> All current and former Cable Technicians or other similar job titles who performed work for Defendant M&N Cable, LLC at any time from September 9, 2016 until the present.

Plaintiff reserves the right to amend the putative class definition as necessary.

65. Plaintiff shares the same interests as the putative Class and will be entitled under Indiana state law to unpaid minimum wages and overtime compensation, attorneys' fees, and costs and lost interest owed to them under nearly identical factual and legal standards as the remainder of the putative Class.

66. The putative Class meets the numerosity requirement of Rule 23(a)(1) because, during the relevant period, Defendants employed hundreds of Cable Technicians throughout Indiana who were all subjected to Defendant's policy of (1) misclassifying its Cable Technicians as independent contractors; (2) failing to compensate its Cable Technicians at the state-mandated overtime premium rate of one and one-half times their standard rate of pay for all hours worked in excess of forty (40) in one workweek; (3) permanently withholding paychecks in violation of Ind. Code § 22-2-6-2, and (4) permanently withholding 5-10% of each Cable Technician's paycheck, in violation of Ind. Code § 22-2-6-2. The precise number of class members should be readily available from a review of Defendants' records, and from input received from the collective class members as part of the notice and "opt-in" process.

67. The putative class meets the commonality requirement of Rule 23(a)(2) because, during the relevant period, Defendants engaged in a common course of conduct that violated the legal rights of Plaintiff and the Class. Any individual questions that Plaintiff's claims present will be far less central to this litigation than the numerous material questions of law and fact common to the Class, including but not limited to:

a. Whether Defendants exercised control over the day-to-day activity of Cable Technicians;

b. The manner Defendants used to determine that its Cable Technicians were, in fact, independent contractors;

c. Whether Indiana state law requires Defendants to pay a minimum wage and overtime wages to Plaintiff and the putative class members who delivered goods to Defendants' clients;

d. Whether Indiana state law authorizes the paycheck deductions taken by Defendant from its Cable Technicians' paychecks;

e. Whether Defendants should be required to pay compensatory damages, attorneys' fees, and costs and interest for violating Indiana state law.

68. The status of all individuals similarly situated to Plaintiff raises an identical legal question: Whether Defendants' Cable Technicians acted as independent contractors and not employees to whom Defendants would owe a minimum wage, overtime, and record-keeping obligations under Indiana state law.

69. The putative Class meets the typicality requirement of Rule 23(a)(3) because Plaintiff and the putative class members were all employed by Defendants pursuant to a purported contract and performed transportation services without receiving a minimum wage or overtime wages owed for that work.

70. The Class meets the fair and adequate protection requirement of Rule 23(a)(4) because there is no apparent conflict of interest between Plaintiff and the putative class members, and because Plaintiff's attorneys have successfully prosecuted many complex class actions, including wage and hour class and collective actions, and will adequately represent the interests of Plaintiff and the putative Class members.

71. The putative Class meets the predominance requirement of Rule 23(b)(3), because issues common to the Class predominate over any questions affecting only individual members, including but not limited to:

a. whether Defendants, through their employment policies and practices, exercised control over the manner in which the Class worked;

b. whether Defendants' Cable Technicians are improperly classified as independent contractors; and

c. whether Defendants calculated the Cable Technicians' compensation under the same formula in the same way.

72. The Class meets the superiority requirement of Rule 23(b)(3) because allowing the parties to resolve this controversy through a class action would permit a large number of similarly-situated persons to prosecute common claims in a single forum simultaneously, efficiently, and

without the unnecessary duplication of evidence, effort, or expense that numerous individual actions would engender.

73. Given the material similarity of the Class members' claims, even if each Class member could afford to litigate a separate claim, this Court should not countenance or require the filing of thousands of identical actions. Individual litigation of the legal and factual issues raised by Defendants' conduct would cause unavoidable delay, a significant duplication of efforts, and an extreme waste of resources. Alternatively, proceeding by way of a class action would permit the efficient supervision of the putative class' claims, create significant economies of scale for the Court and the parties and result in a binding, uniform adjudication on all issues.

74. This class action can be efficiently and effectively managed by sending the same FLSA opt-in notice to all employees similarly situated and adding for the Indiana Cable Technicians within that group a separate opt-out notice pertaining to their rights under the Indiana state law.

**COUNT I**
**VIOLATION OF THE FAIR LABOR STANDARDS ACT,**
**29 U.S.C. §§ 201, *et seq.*, FAILURE TO PAY OVERTIME WAGES**

75. Plaintiff repeats and realleges all preceding paragraphs as if set forth fully herein.

76. At all times relevant to this action, Defendant was an "employer" under the FLSA, 29 U.S.C. § 203(d), subject to the provisions of 29 U.S.C. §§ 201, *et seq*.

77. At all times relevant to this action, Plaintiff was an "employee" of Defendant within the meaning of the FLSA, 29 U.S.C. § 203(e)(1).

78. Upon information and belief, Defendant's annual sales exceed $500,000 and it has more than two employees, thus the FLSA applies in this case on an enterprise basis. *See* 29 U.S.C. § 203(s)(1)(A).

79. Plaintiff was either (1) engaged in commerce; or (2) engaged in the production of

goods for commerce; or (3) employed in an enterprise engaged in commerce or in the production of goods for commerce and therefore, he is also covered by the FLSA on an individual basis.

80. The position of Cable Technician is not exempt from the FLSA.

81. At all times relevant to this action, Defendant "suffered or permitted" Plaintiff to work and thus "employed" him within the meaning of the FLSA, 29 U.S.C. § 203(g).

82. The FLSA requires an employer to pay employees the federally-mandated overtime premium rate of one and a half times their regular rate of pay for every hour worked in excess of forty (40) hours per workweek. 29 U.S.C. § 207.

83. Defendant violated the FLSA by failing to pay Plaintiff the federally-mandated overtime premium for all hours worked in excess of forty (40) hours per workweek.

84. Upon information and belief, Defendant has policies and practices of evading overtime pay for its Cable Technicians for all compensable time worked.

85. Upon information and belief, Defendant's violations of the FLSA were knowing and willful.

86. By failing to compensate Plaintiff at a rate not less than one and one-half times his regular rate of pay for Plaintiff's work performed in excess of forty hours in a workweek, Defendant has violated the FLSA, 29 U.S.C. §§ 201, *et seq*., including 29 U.S.C. §§ 207(a)(1) and 215(a).

87. The FLSA, 29 U.S.C. § 216(b), provides that as a remedy for a violation of the Act, an employee is entitled to his or her unpaid overtime wages plus an additional equal amount in liquidated damages, costs, and reasonable attorneys' fees.

**COUNT II**
**VIOLATION OF THE FAIR LABOR STANDARDS ACT,**
**29 U.S.C. §§ 201, *et seq*., FAILURE TO PAY MINIMUM WAGE**

88. Plaintiff repeats and realleges all preceding paragraphs as if set forth fully herein.

89. At all times relevant to this action, Defendant was an "employer" under the FLSA, 29 U.S.C. § 203(d), subject to the provisions of 29 U.S.C. §§ 201, *et seq*.

90. At all times relevant to this action, Plaintiff was an "employee" of Defendant within the meaning of the FLSA, 29 U.S.C. § 203(e)(1).

91. Upon information and belief, Defendant's annual sales exceed $500,000 and it has more than two employees, thus the FLSA applies in this case on an enterprise basis. *See* 29 U.S.C. § 203(s)(1)(A).

92. Plaintiff was either (1) engaged in commerce; or (2) engaged in the production of goods for commerce; or (3) employed in an enterprise engaged in commerce or in the production of goods for commerce and therefore, he is also covered by the FLSA on an individual basis.

93. The position of Cable Technician is not exempt from the FLSA.

94. At all times relevant to this action, Defendant "suffered or permitted" Plaintiff to work and thus "employed" him within the meaning of the FLSA, 29 U.S.C. § 203(g).

95. The FLSA required an employer to pay employees the federally-mandated minimum wage rate of $7.25 per hour at all times relevant. 29 U.S.C. § 206.

96. Defendant violated the FLSA by failing to pay Plaintiff the federally-mandated minimum wage rate of $7.25 per hour.

97. Upon information and belief, Defendant has policies and practices of withholding initial paychecks for its Cable Technicians for the purposes of maintaining "reserve accounts" to compensate Defendant in the event for unreturned equipment. These policies cause Cable Technicians to not be paid at all, or to be paid below the federally-mandated minimum wage rate, for work performed for Defendant.

98. Upon information and belief, Defendant's violations of the FLSA were knowing

and willful.

99. The FLSA, 29 U.S.C. § 216(b), provides that as a remedy for a violation of the Act, an employee is entitled to his or her unpaid overtime wages plus an additional equal amount in liquidated damages, costs, and reasonable attorneys' fees.

**COUNT III**
**VIOLATION OF IND. CODE § 22-2-2-4**
**FAILURE TO PAY OVERTIME WAGES**

100. Plaintiff repeats and realleges all preceding paragraphs as if set forth fully herein.

101. Indiana Code § 22-2-2-4, subd. g, provides:

> Except as otherwise provided in this section, no employer shall employ any employee for a work week longer than forty (40) hours unless the employee receives compensation for employment in excess of forty (40) hours at a rate not less than one and one-half (1.5) times the regular rate at which the employee is employed.

102. At all relevant times to this action Defendant was an "employer" for purposes of Ind. Code § 22-2-2-4. *See* Ind. Code § 22-2-2-3.

103. At all relevant times to this action Plaintiff was an "employee" for the purposes of Ind. Code § 22-2-2-4. *See* Ind. Code. § 22-2-2-3.

104. The position of Cable Technician is not exempt from the overtime provision set forth in Ind. Code. § 22-2-2-4, subd. g.

105. During the course of Plaintiff's employment Plaintiff has performed work for Defendant in excess of forty (40) hours per week without being paid at the overtime premium rate set forth in Ind. Code § 22-2-2-4, subd. g., for all hours worked over forty (40) in one workweek.

106. Defendant violated Ind. Code. § 22-2-2-4, subd. g, by failing to pay Plaintiff the state-mandated overtime premium for all hours worked in excess of forty (40) hours per workweek.

107. Upon information and belief, Defendant has policies and practices of evading overtime pay for its Cable Technicians for all compensable time worked.

108. Upon information and belief, Defendant's violations of Ind. Code. § 22-2-2-4, subd. g, were knowing, willful, and/or in bad faith.

109. By failing to compensate Plaintiff at a rate not less than one and one-half times his regular rate of pay for Plaintiff's work performed in excess of forty hours in a workweek, Defendant has violated Ind. Code. § 22-2-2-4, subd. g.

110. Pursuant to Ind. Code § 22-2-5-2, Plaintiff is also owed liquidated damages in an amount equal to double the amount of wages due, as well as costs and reasonable attorney's fees.

111. The Commissioner of the Indiana Department of Labor, by and through the Indiana Attorney General, has authorized Plaintiff to pursue his claim for unpaid wages pursuant to Indiana statute. A true and correct copy of the authorization letter is attached hereto as Exhibit B.

**COUNT III**
**VIOLATION OF IND. CODE § 22-2-2-4**
**FAILURE TO PAY MINIMUM WAGE**

112. Plaintiff repeats and realleges all preceding paragraphs as if set forth fully herein.

113. Upon information and belief, Defendant maintained a policy for all of its Cable Technicians and other similar job titles whereby it took one or more of its Cable Technicians' paychecks for purposes of establishing a "reserve account" meant to compensate Defendant in the event Defendant's equipment items used by its Cable Technicians for the purposes of performing their jobs were not returned.

114. For work performed that was due to be paid on Plaintiff's first three weeks of pay, Plaintiff received $0.00. Plaintiff was never paid his first three weeks of pay.

115. Indiana Code § 22-2-2-4, subd. c, provides:

> [E]very employer employing at least two (2) employees during a work week shall, in any work week in which the employer is subject to this chapter, pay each of the employees in any work week beginning or after June 30, 2007, wages of not less than the minimum wage payable under the federal Fair Labor Standards Act of 1938 . . . .

Ind. Code. § 22-2-2-4, subd. c.

116. At all relevant times to this action Defendant was an "employer" for purposes of Ind. Code § 22-2-2-4. *See* Ind. Code § 22-2-2-3.

117. At all relevant times to this action Plaintiff was an "employee" for the purposes of Ind. Code § 22-2-2-4. *See* Ind. Code. § 22-2-2-3.

118. The position of Cable Technician is not exempt from the overtime provision set forth in Ind. Code. § 22-2-2-4, subd. g.

119. During the course of Plaintiff's employment Plaintiff has performed work for Defendant in which he was paid $0.00 per hour, and thus failed to be paid at the $7.25 per hour minimum wage payable under the federal Fair Labor Standards Act of 1938.

120. Defendant violated Ind. Code. § 22-2-2-4, subd. c, by failing to pay Plaintiff minimum wage for the work Plaintiff performed that was due to be paid on his first three weeks of pay.

121. Upon information and belief, Defendant's violations of Ind. Code. § 22-2-2-4, subd. c, were knowing, willful, and/or in bad faith.

122. Pursuant to Ind. Code § 22-2-5-2, Plaintiff is also owed liquidated damages in an amount equal to double the amount of wages due, as well as costs and reasonable attorney's fees.

123. The Commissioner of the Indiana Department of Labor, by and through the Indiana Attorney General, has authorized Plaintiff to pursue his claim for unpaid wages pursuant to Indiana statute. A true and correct copy of the authorization letter is attached hereto as Exhibit B.

**COUNT IV**
**VIOLATION OF IND. CODE § 22-2-2-4**
**UNLAWFUL WAGE DEDUCTIONS**

124. Plaintiff repeats and realleges all preceding paragraphs as if set forth fully herein.

125. Upon information and belief, Defendant maintained a policy for all of its Cable Technicians and other similar job titles whereby it took one or more of its Cable Technicians' paychecks for purposes of establishing a "reserve account" meant to compensate Defendant in the event Defendant's equipment items used by its Cable Technicians for the purposes of performing their jobs were not returned.

126. Defendant also withheld 5-10% of each check due to its Cable Technicians for the purpose, it claimed, of maintaining this "reserve account."

127. Defendant represented to its Cable Technicians that their initial paychecks and all other withheld funds would be paid at the time the Cable Technician ceased working for Defendant, less any money deducted by Defendant for equipment that was not returned.

128. Defendant withheld Plaintiff's first three weeks of pay and 5-10% of each of Plaintiff's paychecks for the purposes of establishing and maintaining a "reserve account" for Plaintiff. Upon Plaintiff's conclusion of his employment with Defendant, Plaintiff returned all of Defendant's equipment. Despite the fact that Plaintiff did not owe Defendants money for missing equipment, Defendant failed to remit payment to Plaintiff for Plaintiff's first three weeks of pay and failed to remit payment to Plaintiff for the 5-10% of Plaintiff's wages that Defendant deducted from each of Plaintiff's checks.

129. Indiana Code § 22-2-6-2, subd. g, provides:

> Any assignment of the wages of an employee is valid only if all of the following conditions are satisfied: (1) The assignment is: (A) in writing; (B) signed by the employee personally; (C) by its terms revocable at any time by the employee upon written notice to the employer; and (D) agreed to in writing by the employer.

Ind. Code. § 22-2-6-2, subd. 2(a).

130. Ind. Code § 22-2-6-2 limits the amount an employer can deduct from an employee's paycheck to "the lesser of: (1) two thousand five hundred dollars ($2,500) per year; or (2) five

percent (5%) of the employee's weekly disposable earnings . . . ." Ind. Code. § 22-2-6-2, subd. d.

131. Further, Ind. Code § 22-2-6-2, subd. b, enumerates the instances where a wage assignment may be made. Such a "reserve account" meant to compensate an employer for equipment is not an enumerated item.

132. At all relevant times to this action Defendant was an "employer" for purposes of Ind. Code § 22-2-2-4. *See* Ind. Code § 22-2-2-3.

133. At all relevant times to this action Plaintiff was an "employee" for the purposes of Ind. Code § 22-2-2-4. *See* Ind. Code. § 22-2-2-3.

134. Upon information and belief, Defendant's withholding of any monies from Plaintiff's paycheck was not for an authorized purposed under Indiana's Labor and Safety Code § 22-2-6-2, was not made in writing signed by the employee as required under Code § 22-2-6-2, and was in excess of the limits established by Code § 22-2-6-2.

135. Pursuant to Ind. Code § 22-2-5-2, Plaintiff is also owed liquidated damages in an amount equal to double the amount of wages due, as well as costs and reasonable attorney's fees.

136. The Commissioner of the Indiana Department of Labor, by and through the Indiana Attorney General, has authorized Plaintiff to pursue his claim for unpaid wages pursuant to Indiana statute. A true and correct copy of the authorization letter is attached hereto as Exhibit B.

## REQUEST FOR RELIEF

**WHEREFORE**, Plaintiff requests the following relief:

a. Certifying this case as a collective action in accordance with 29 U.S.C. § 216(b) with respect to the FLSA claims set forth above;

b. Ordering Defendant to disclose in computer format, or in print if no computer readable format is available, the names and addresses of all those individuals who are similarly situated, and permitting Plaintiff to send notice of this action to all of those similarly situated individuals including the publishing of notice in a manner that is reasonable calculated to apprise the potential class members of their rights

under this litigation;

c. Designating the Named Plaintiff to act as the Class Representative on behalf of all similarly situated individuals;

d. Declaring that Defendant misclassified Plaintiff and Class Members;

e. Declaring that Defendant violated its obligations under the FLSA;

f. Declaring that Defendant willfully violated the FLSA and its attendant regulations as set forth above;

g. Declaring that Defendant violated its obligations under Indiana's Labor and Safety Code with respect to Plaintiff's owed overtime pay;

h. Declaring that Defendant violated its obligations under Indiana's Labor and Safety Code with respect to Plaintiff's owed minimum wages;

i. Declaring that Defendant violated its obligations under Indiana's Labor and Safety Code with respect to Defendant's unlawful wage deductions;

j. Granting judgment in favor of Plaintiff and against Defendant and awarding the amount of unpaid overtime wages calculated at the rate of one and one-half (1.5) times the Plaintiff's regular rate multiplied by all hours that Plaintiff worked in excess of the prescribed number of hours per week for the past three years;

k. Granting judgment in favor of Plaintiff and against Defendant and awarding the amount of withheld pay from the paychecks of Plaintiff and the Class for the past three years;

l. Awarding liquidated damages to Plaintiff, in an amount equal to the amount of unpaid wages found owing to Plaintiff; and awarding Plaintiff and the Class members all other available compensatory damages available by law;

m. Awarding reasonable attorneys' fees and costs incurred by Plaintiff in filing this action as provided by statute;

n. Awarding pre- and post-judgment interest to Plaintiff on these damages;

o. Awarding all legal and equitable relief to Plaintiff under the FLSA; and

p. Such further relief as this court deems appropriate.

## JURY DEMAND

Plaintiff demands a trial by jury of all claims asserted in this Complaint.

Dated: September 10, 2019

Respectfully submitted,

HOVDE DASSOW & DEETS, LLC

By: *s/Robert T. Dassow*

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