

PARTIES

4. Mr. Adamson resides in Coraopolis, Pennsylvania (Allegheny County). Mr. Adamson has filed a consent to join form which is attached as *Exhibit A*.

5. Mr. White resides in Orange Springs, Florida. Mr. White has filed a consent to join form which is attached as *Exhibit B*.

6. Defendant Kirkham Solutions is a corporate entity headquartered in Indiana.

7. Defendant Comcast is a corporate entity headquartered in Pennsylvania.

FACTS

8. Kirkham Solutions is a company that provides technical support and internet installation services for customers across the country.

9. Comcast is a global media and technology company with two primary businesses, Comcast Cable and NBC Universal. Comcast is one of the nation's largest video, high-speed internet and phone providers to residential and commercial consumers.

10. Comcast contracts with "vendors" such as Kirkham Solutions to perform internet installation and repair services to its customers. Comcast manages vendors such as Kirkham Solutions from a common "Vendor Management Center." See https://pcc-contingent.comcast.com/index.php?cmp=partner_login (last visited on May 26, 2020).

11. All of the services provided by Defendant Comcast's vendors are governed by a uniform "Vendor Services Agreement with Comcast." *Id.*

12. Comcast and Kirkham Solutions jointly employ field technicians, such as Plaintiffs, to perform internet installation and repair services for Comcast's commercial clients.

13. Although Kirkham Solutions is listed as the employer that issues the either IRS 1099 form or W-2 form to Plaintiffs and other field technicians, as briefly summarized in

subparagraphs (a) – (k) below, Comcast also jointly employed Plaintiffs and other field technicians:

- (a) At the onset of their employment, Plaintiffs and other field technicians are required to undergo a Comcast background check. If the field technician clears the background check and meets Comcast's other requirements, then they are provided with a Comcast email address, security badge, and access to certain secured computer networks.
- (b) Plaintiffs and other field technicians are required to: wear a uniform bearing Comcast's "Xfinity" product name and logo; perform their work according to Comcast's policies and procedures; and perform the work when and where Comcast specifies.
- (c) Comcast maintains a great deal of control over the work performed by Plaintiffs and other field technicians. For example, the "Digital Network – Field Installation Guide" provided by Comcast states "[a]ll activities must be done in sequence." The document goes on to provide detailed instructions to the field technicians as to the scope of work to be provided, what to do upon arrival, the pre-installation activities, the installation activities, and the close out activities to be completed.
- (d) Comcast maintains strict protocols and procedures that govern their vendors and the field technicians. Examples of these protocols and procedures include: the Comcast "Expectations for Conducting Business" and the "Appointment Punctuality" policy, which requires field technicians to "[c]omit to being 15 minutes early" to each appointment.
- (e) Comcast provides Plaintiffs and other field technicians with the training necessary to carry out their job duties. For example, on September 25, 2019 Ronal Goins, Project Coordinator for Comcast, sent Mr. Adamson an email stating: "[w]e have developed a tech webinar and knowledge check in order for us to be able to confirm that the techs who are going to the field are prepare for a Pizza Hut install." See *Exhibit C*. The email then goes on to notify the technicians that they will be tested by Comcast on the content of the webinar and the minimum passing score on the test is 85%.
- (f) Comcast also reserves the right to deliver "stringent corrective action up to and including removal," see *id.*, and similar language is also reflected on the work order forms field technicians complete during each job. These work order forms are standardized forms provided by Comcast and which field technicians are required to complete at each job. See *Exhibit D*.
- (g) Each work order supplied by Comcast contained a required arrival date and time, along with behavioral guidelines, a description of the work to be

performed, special instructions from Comcast, along with a disclaimer stating: “[f]ailure of the Vendor to arrive at designated job site on or before required arrival date & time, failure to be properly equipped with appropriate tools or written documentation expressly requested or reasonably expected by Comcast or behavior contrary to professional decorum may result in cancellation of this WO, the associated PO and subsequently any compensation for the Vendor.” *Id.*

- (h) Comcast also provides field technicians with an “Install Guide,” which provided detailed instructions on how to perform their primary job duties – wireless internet installation.
- (i) All of the field technician’s work orders list “Comcast Business” as the customer.
- (j) Upon information and belief, Kirkham and Comcast determine the amount of compensation that field technicians are paid depending upon the services that they provide.
- (k) Upon information and belief, Kirkham and Comcast maintain the employment records of field technicians.

14. Mr. Adamson was employed by Defendants as a field technician in Florida and Pennsylvania from approximately June 2018 to July 2019.

15. Mr. White was employed by Defendants as a field technician in Florida from approximately February 2019 to August 2019.

16. Defendants first classified field technicians as independent contractors, but in the later stages of Plaintiffs’ employment they and other field technicians were reclassified as employees.

17. As briefly summarized in paragraphs (a) – (e) below, the economic realities demonstrate that Plaintiffs and other field technicians were employees of Defendants, and not independent contractors:¹

¹ The U.S. Department of Labor (DOL) is aware of the problem of misclassification of workers as independent contractors and has addressed the matter on its website. Specifically, the DOL has stated “[m]isclassified employees often are denied access to critical benefits and protections they are entitled to by law, such as minimum wage, overtime compensation, family and medical leave,

- (a) Defendants closely monitored, directed, and controlled the day-to-day work of Plaintiffs and other field technicians.
- (b) By virtue of the fact that Plaintiffs worked on Comcast projects only, Defendants controlled their opportunity for profit or loss. Plaintiffs and other field agents did not exercise managerial duties in performing their job duties.
- (c) The work performed by Plaintiffs and other field technicians did not require specialized or advanced skills, nor did it require a specialized degree.
- (d) Plaintiffs and other field technicians typically worked full-time and exclusively as field technicians, performing cable and internet installations for Comcast's customers while wearing Comcast uniforms.
- (e) The services rendered by Plaintiffs and other field technicians are an integral part of Comcast and Kirkham's business because they are in the business of supplying consumers and businesses with cable and internet services.

18. Field technicians regularly work over 40 hours per week. For example, Mr. Adamson estimates that he worked an average of 70 hours per week during a typical week. Similarly, Mr. White estimates that he worked an average of 60 hours per week during a typical week.

19. Plaintiffs and other field technicians are paid on a piece rate basis, meaning that they are paid a set rate that does not take into account the number of hours that they worked. As a result, Plaintiff and other field technicians do not receive any overtime premium for hours worked over 40 per week.

CLASS/COLLECTIVE ACTION ALLEGATIONS

20. Plaintiffs bring their FLSA claim as a collection action pursuant to 29 U.S.C. § 216(b) and bring their PMWA claim as a class action pursuant to Federal Rule of Civil Procedure

23. The FLSA claim is brought on behalf of all field technicians employed by Defendants during

unemployment insurance, and safe workplaces. Employee misclassification generates substantial losses to the federal governments and state governments in the form of lower tax revenues, as well as to state unemployment insurance and workers' compensation funds." See, <https://www.dol.gov/agencies/whd/flsa/misclassification> (last visited May 26, 2020).

any week within the past three years. The PMWA claim is brought on behalf of all field technicians employed by Defendants in Pennsylvania during any week within the past three years.

21. Plaintiffs' FLSA claim should proceed as a collective action because they and other putative collective members, having worked pursuant to the common compensation policies described herein, are "similarly situated" as that term is defined in 29 U.S.C. § 216(b) and the associated decisional law.

22. Class action treatment of the PMWA claim is appropriate because, as alleged, all of Federal Rule of Civil Procedure 23's class action requisites are satisfied.

23. The class, upon information and belief, includes over 100 individuals, all of whom are readily ascertainable based on Defendants' payroll records and are so numerous that joinder of all class members is impracticable.

24. Mr. Adamson is a class member, his claim is typical of the claims of other class members, and he has no interests that are antagonistic to or in conflict with the interests of other class members.

25. Mr. Adamson and his lawyers will fairly and adequately represent the class members and their interests.

26. Questions of law and fact are common to all class members, because, *inter alia*, this action concerns Defendants' common compensation policies, as described herein. The legality of these policies will be determined through the application of generally applicable legal principles to common facts.

27. Class certification is appropriate under Federal Rule of Civil Procedure 23(b)(3) because common questions of law and fact predominate over questions affecting only individual class members and because a class action is superior to other available methods for the fair and

efficient adjudication of this litigation.

COUNT I
(Alleging FLSA Violations)

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

29. Plaintiffs and other field technicians were “employees” of Defendants within the meaning of 29 U.S.C. § 203(e)(1) of the FLSA.

30. The FLSA requires that employees receive overtime premium compensation “not less than one and one-half times” their regular pay rate for hours worked over 40 per week. *See* 29 U.S.C. § 207(a)(1).

31. Defendants violated the FLSA by failing to pay Plaintiffs and other field technicians overtime premium compensation for all hours worked over 40 per week.

32. In violating the FLSA, Defendants acted willfully and with reckless disregard of clearly applicable FLSA provisions and, as such, willfully violated the FLSA.

COUNT II
(Alleging PMWA Violations)

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

34. Mr. Adamson and the class members were “employees” of Defendants under the PMWA.

35. The PMWA requires that employees receive overtime premium compensation “not less than one and one-half times” the employee’s regular pay rate for hours worked over 40 per week. *See* 43 P.S. § 333.104(c).

36. Defendants violated the PMWA by failing to pay Mr. Adamson and the class members overtime premium compensation for all hours worked over 40 per week.

JURY DEMAND

Plaintiffs demand a jury trial as to all claims so triable.

RELIEF REQUESTED

WHEREFORE, Plaintiffs, on behalf of themselves and other members of the class/collective, seek the following relief:

- a. An Order certifying this case as a collective action in accordance with 29 U.S.C. § 216(b) with respect to the FLSA claim (Count I);
- b. An Order certifying this action as a class action with respect to the PMWA claim (Count II);
- c. Unpaid overtime wages and prejudgment interest;
- d. Liquidated damages to the fullest extent permitted under the FLSA;
- e. Litigation costs, expenses, and attorneys' fees; and
- f. Such other and further relief as the Court deems just and proper.

Dated: May 27, 2020

/s/ Mark J. Gottesfeld
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Exhibit A

Exhibit B

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DUSTIN ADAMSON and DAVID WHITE,
individually, and on behalf of others similarly
situated,

Plaintiffs,

v.

KIRKHAM SOLUTIONS, INC. and
COMCAST CABLE COMMUNICATIONS
MANAGEMENT, LLC,

Defendants.

CASE NO.

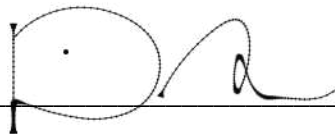
CONSENT TO JOIN

I work or worked for Kirkham Solutions, Inc. ("Kirkham") and Comcast Cable Communications Management, LLC ("Comcast") as a Field Technician and worked uncompensated overtime.

I choose to participate in the above-captioned lawsuit, to recover unpaid overtime wages under the federal Fair Labor Standards Act ("FLSA"), 29 U.S.C. §216(b), and other relief under federal law.

I choose to be represented in this action by the named plaintiffs and Sommers Schwartz, P.C. and Winebrake & Santillo ("Plaintiffs' Counsel"). I agree to be bound by their decisions in the litigation and by any adjudication of this action by a court, whether it is favorable or unfavorable. I understand that reasonable costs expended by Plaintiffs' Counsel on my behalf will be deducted from any settlement or judgment amount on a pro-rata basis among all other plaintiffs. I understand that Plaintiffs' Counsel will petition the Court to award them attorneys' fees from any settlement or judgment.

Signature:



Print Name:

David M. White

Date:

5/20/2020

Exhibit C

----- Forwarded message -----

From: **Goins, Ronald** <Ronald_Goins@comcast.com>

Date: Wed, Sep 25, 2019 at 1:49 PM

Subject: Pizza Hut Webinar & Knowledge Check * Webinar for 9/26/2019*

To: dustin.adamson82@gmail.com <dustin.adamson82@gmail.com>

Cc: Minnier, Rachelle <Rachelle_Minnier@comcast.com>, Craig, Kerith <Kerith_Craig@comcast.com>

Hi there tech partners,

We have developed a tech webinar and knowledge check in order for us to be able to confirm that the techs who are going to the field are prepared for a Pizza Hut install. We will hold our next webinar at 2:00 pm Eastern Time this Thursday. If you have any techs who haven't attended, let's ensure that they are signed up for this conference.

Form for tech info to be captured <https://app.smartsheet.com/b/form/0ab98536d3e041418c24642f14f5fc90>

Please fill out the link above for which techs you want us to invite and who you are socializing this information to. As a result we will keep that information for when the tech completes the knowledge check and passes the test. The test score we are expecting is 85%. The test is open book based on the install guide. We will be requesting that each team member takes the knowledge check before going to another site next week. If the scores are subpar, we will review the scores and make recommendation to the tech companies based on our findings.

Training WebEx: https://icollaborate.webex.com/meet/kerith_craig

Conference: (224)225-1234 conference bridge 5132927235

POST Webinar Knowledge Checklink: <https://www.classmarker.com/online-test/start/?quiz=byf5cb8886c13e3d>

Here is the updated list of your technicians we are aware are completing or have been scheduled to complete Pizza Hut installs. Please ensure that all technicians are attending the webinar and completing the knowledge check before arriving onsite. Although this is not mandatory yet, we are trying to ensure the best customer experience. Attached is meeting invite for the webinar and the knowledge check link is below. Please use the install guide 3.7 as the knowledge check is in direct reference to that one. The install guide 3.9 has the same information but in a different format. If you have any questions feel free to reach out to me personally.

NEXT WEBINAR: Tomorrow at 2:00 PM ET. (Occurs every Thursday at this time)

Webinar:

Tech First and Last Name	Tech Company	Tech Email Address	Tech Phone Number	Webinar Date Scheduled	Webinar Date
Dustin Adamson	Spectra Broadband Inc	dustin.adamson82@gn	850-972-9120	00/00/0000	Did not a

Knowledge Check:

David Sperling

Project Coordinator, Field Services Operations

Comcast Business Enterprise Solutions

513-836-6774 (M) | 800-506-9609 x 363-5056(O)

COMCAST
BUSINESS

Exhibit D

COMCAST BUSINESS

**WORK
ORDER**

WORK ORDER ISSUE DATE 8/3/2019

 WORK ORDER: 787920
 PROJECT NAME: Appendix 1 - NetMedX

REQUIRED ARRIVAL DATE & TIME 08/03/2019 05:00 PM

 REFERENCE PO# 787920
 TICKET #: 06261679

JOB SITE INFORMATION	CUSTOMER INFORMATION
Client Name Taco Bell Site Name 34672 Work Location ABTB Louisville LLC - PPP1153852-5 Site Number TB#034672 Address 1604 North Dixie Hwy City, State, Zip Elizabethtown KY 42701	Company Name Comcast Business Address 4400 Port Union Road City, State, Zip West Chester, OH 45011 Point of Contact Jeremy Seals (800) 506-9609 Cell: Project Manager Matt Walsh 800-506-9609 option 7 Cell: Facsimile 513-860-2105
CERTIFIED PARTNER INFORMATION	BEHAVIORAL GUIDELINES WHILE ON SITE
Company Name Spectra Broadband Inc Address 625 25th St City, State, Zip Ogden UT 84401 US Telephone, Facsimile 801-827-0007 / 385-260-1352 (Cell) Point of Contact Spectra Dispatch	1. Smile and be friendly, courteous and helpful 2. Be properly groomed 3. Be on time and only in authorized areas of the site 4. Answer questions in a mature, direct and thoughtful manner 5. Complete the assigned tasks in the most expeditious manner possible 6. Report any new opportunities that may arise directly to Comcast 7. Please do not discuss price or attempt to compete with Comcast

DESCRIPTION OF WORK REQUESTED

NATURE OF THE ACTIVITY	Scope of Work: - Scope of Work: Work with Comcast NOC to replace site's switch. Please ensure all unused equipment is delivered to FedEx/UPS and return label tracking numbers are recorded to your Project Coordinator upon completion. Needed Equipment: Laptop (Win7-Win10.), USB flash drive, AC adapter for laptop, Cisco-style console cable (DB9 to RJ45,) USB to serial adapter, cabling and cabling tools, cable tester/certifier, USB network adapter, Spare patch cables, and a general toolkit
SPECIAL INSTRUCTIONS (additional detail may be attached herewith)	Please call Jeremy Seals with Comcast upon arrival on site and before departure at 513-668-4262 --If you are unable to reach Jeremy please call the DISPATCH DIRECT line at 513-335-0256 to find out who will be tracking your site -- Photos and Work Order form must be submitted FROM SITE after completion of work and emailed to Jeremy_Seals@Contingent.com for PO to be processed for payment.
WORKMANSHIP AND STANDARDS	Unless Comcast specifically states otherwise in writing, all work will be completed to accepted BICSI, NEC, ANSI/TIA/EIA best practices, codes and standards.
DELIVERABLES	1. After Work 2. Work Order 3. Equipment Cabinet/Rack 4. Before Work

MATERIAL & OTHER ITEMS USED - PLEASE COMPLETE***

LINE ITEM	ITEM DESCRIPTION	QTY	EST UNIT PRICE	EST TOTAL PRICE	PURPOSE
001					
002					

SCHEDULE AND RELEASE INFORMATION - PLEASE COMPLETE***

 ARRIVAL DATE _____ ARRIVAL TIME _____ DEPART DATE _____ DEPART TIME _____ CNS RELEASE NUMBE _____
 TECHNICIAN/ENGINEER NAME _____ MOBILE TELEPHONE NUMBER _____
 TECHNICIAN/ENGINEER SIGNATURE _____ DATE _____

SITE CONTACT CERTIFICATION & QUESTIONNAIRE

THANK YOU FOR TAKING A MOMENT TO TELL US HOW WE DID Job completed satisfactorily? Yes No Professional/courteous? Yes No Would you like us to follow up regarding this job? Yes No	Undersigned authorized representative certifies that the above work has been completed and that, in the course of performing such work, no damage has occurred to subject property or any of its contents. AUTHORIZED SITE CONTACT NAME _____ AUTHORIZED SITE CONTACT SIGNATURE _____ DATE _____ ADDITIONAL COMMENTS _____
--	---

PRIOR TO DEPARTURE PLEASE FAX COMPLETED AND SIGNED WORK ORDERS TO 513-860-2105

8/3/2019

Failure of the Vendor to arrive at designated job site on or before required arrival date & time, failure to be properly equipped with appropriate tools or written documentation expressly requested or reasonably expected by Comcast or behavior contrary to professional decorum may result in the cancellation of this WO, the associated PO and subsequently any compensation for the Vendor

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Former Field Technicians Claim Kirkham Solutions, Comcast Owe Unpaid Overtime Wages](#)
