

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF OKLAHOMA**

**KRIS MICHALIK, individually and on  
behalf of all others similarly situated,**

**Plaintiff**

v.

**ERICK FLOWBACK SERVICES LLC,  
NEW SOURCE ENERGY PARTNERS,  
L.P, ERICKS HOLDINGS, LLC, and  
MARK SNODGRASS,**

**Defendants.**

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CASE NO.: CIV-17-898-M

**PLAINTIFF’S ORIGINAL COMPLAINT,  
CLASS ACTION, COLLECTIVE ACTION**

1. Defendants Erick Flowback Services LLC, New Source Energy Partners, L.P., Ericks Holdings, LLC, and Mark Snodgrass (“Defendants”) required Plaintiff Kris Michalik (“Plaintiff”) to work more than forty (40) hours in a workweek as a flow tester. Plaintiff is an hourly paid employee who monitors oil and gas wells. Defendants misclassified Plaintiff as an independent contractor and as such paid him straight time for overtime hours worked. Defendants also misclassify hundreds of others flow testers across the country as independent contractors.

2. Defendants’ conduct violates the Fair Labor Standards Act, which requires non-exempt employees to be compensated for all hours in excess of forty (40) in a workweek at one and one-half times their regular rate. *See* 29 U.S.C. § 207(a). On behalf of himself and all other similarly situated employees, Plaintiff Michalik brings this action as a collective under the FLSA, 29 U.S.C. § 216(b). Members of the collective action are referred to hereinafter as the “FLSA Class Members.”

3. Defendant Erick Flowback Services LLC is headquartered in and organized under the law of Oklahoma and Defendant Snodgrass is a resident of Oklahoma.

4. Defendants dispatch their flowtester workforce to numerous states across the United States including Oklahoma, Texas, Pennsylvania, and Ohio. Plaintiff Michalik performed work for Defendants in Ohio and Pennsylvania.

5. As with the FLSA, the failure to pay overtime to overtime is illegal under the state laws of Pennsylvania and Ohio.

6. Defendants' failure to pay overtime compensation and failure to compensate Plaintiff and non-exempt employees who worked more than forty (40) hours in a workweek as flowtesters or in substantially similar positions for Defendants in Ohio at a rate equal to or in excess of Ohio's overtime rate violates the Ohio Minimum Fair Wage Standards Act ("OMFWSA"), Ohio Revised Code ("O.R.C.") § 4111.01 et seq. Plaintiff, therefore, brings a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of himself and all other non-exempt employees who worked more than forty (40) hours in a workweek as flowtesters or in substantially similar positions for Defendants in Ohio. Members of the Ohio class are hereinafter referred to as "Ohio Class Members."

7. Defendants' failure to pay overtime compensation and failure to compensate Plaintiff and all other non-exempt employees who worked more than forty (40) hours in a workweek as flowtesters or in substantially similar positions for Defendants in Pennsylvania at a rate equal to or in excess of Pennsylvania's overtime rate violates the Pennsylvania Minimum Wage Act ("PMWA"), 43 Pa. Stat. Ann. § 333.101, *et seq.* Plaintiff, therefore, brings a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of himself and all other non-exempt employees who worked more than forty (40) hours in a workweek as flowtesters or in substantially similar positions for Defendants in Pennsylvania. Members of the Pennsylvania class are hereinafter referred to "Pennsylvania Class Members."

**SUBJECT MATTER JURISDICTION AND VENUE**

8. This Court has jurisdiction over the subject matter of this action under 29 U.S.C. § 216(b), 28 U.S.C. § 1331, and 28 U.S.C. § 1332(d)(1).

9. This Court also has supplemental jurisdiction over the state law claims raised herein pursuant to 28 U.S.C. § 1367 because those claims do not raise novel or complex issues of state law and because those claims derive from a common nucleus of operative facts from which the FLSA claims stated herein derive, namely the failure of Defendants to pay overtime because they misclassified their workforce as independent contractors.

10. Venue is proper in the Western District of Oklahoma because a substantial portion of the events forming the basis of this suit occurred in this district. In particular, Defendants operate their business in this district.

**PARTIES AND PERSONAL JURISDICTION**

11. Plaintiff Michael Michalik is an individual residing in Stark County, Ohio. Plaintiff's written consent to this action is attached hereto as Exhibit "A." Plaintiff performed work for Defendants in Pennsylvania and Ohio within the last three years.

12. The "FLSA Class Members" are all current and former hourly-paid workers who performed work for Defendants associated with monitoring and maintaining oil and gas wells throughout the United States during the three-year period before the filing of this Complaint. The "Ohio Class Members" and "Pennsylvania Class Members" are subsets of the FLSA Class Members that performed work for Defendants in Ohio or Pennsylvania, respectively, during the three-year period before the filing of this Complaint up to the date this Court certifies the Ohio class and Pennsylvania class under Rule 23.

13. Defendant Erick Flowback Services, LLC is a domestic limited liability company doing business throughout the United States including Oklahoma, Texas, Ohio, New Mexico and Pennsylvania and other states. Defendant may be served with process through its registered agent Randy Mecklenburg at 202 North 6<sup>th</sup> Street, Kingfisher, Oklahoma 73750, or wherever he may be found.

14. Defendant New Source Energy Partners, L.P. is a foreign limited partnership doing business throughout the United States, including Oklahoma, Texas, Ohio, New Mexico, and Pennsylvania and other states. Defendant may be served with process through its registered agent, National Registered Agents, Inc. of Oklahoma, 1833 South Morgan Road, Oklahoma City, Oklahoma 73128.

15. Defendant Erick's Holdings, LLC is a foreign limited liability company doing business throughout the United States including Oklahoma, Texas, Ohio, New Mexico, and Pennsylvania and other states. Defendant may be served with process through its registered agent, the Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

16. Defendant Mark Snodgrass is an individual and the director, chief executive officer, and president of Erick Flowback Services, LLC. Defendant may be served process at 20568 US HWY 81, Kingfisher, Oklahoma 73750, or wherever he may be found.

17. This Court has personal jurisdiction over the Defendants because they are residents of and conduct business in Oklahoma.

#### **COVERAGE**

18. Whenever in this complaint it is alleged that the named Defendants committed any act or omission, it is meant that Defendants' officers, directors, vice-principals, agents, servants,

parent company, subsidiaries or employees committed such act or omission and that at the time such act or omission was committed, it was done in the routine normal course and scope of employment of Defendants' officers, directors, vice-principals, agents, servants, parent company, subsidiaries or employees.

19. At all material times, Defendants have been an employer within the meaning of 3(d) of the FLSA. 29 U.S.C. § 203(d). Additionally, under 29 C.F.R. 791.2(b)(1)(3), when the “employers are not completely disassociated with respect to the employment of particular employees, and may be deemed to share control of the employee, directly or indirectly, by reason of the fact that one employer controls, is controlled by or is under common control with the other employer,” a joint employment relationship exists. Here, Defendants Erick Flowback Services LLC, New Source Energy Partners, L.P., and Erick’s Holdings, LLC are joint employers as the term “joint employer” is defined by the Fair Labor Standards Act and interpreted by the United States Department of Labor. 29 C.F.R. 791.2(b)(1)(2).

20. At all material times, Defendants have been an employer within the meaning of the OMFWSA. O.R.C. § 4111.03(D)(2)

21. At all material times, Defendants have been an employer within the meaning of the PMWA. 43 Pa. Stat. § 333.103(g).

22. At all material times, Defendants have been an enterprise within the meaning of 3(r) of the FLSA. 29 U.S.C. § 203(r).

23. At all material times, Defendants have been an enterprise or enterprise in commerce or in the production of goods for commerce within the meaning of 3(s)(1) of the FLSA because Defendants have had and continue to have employees engaged in commerce. 29 U.S.C. § 203(s)(1).

24. Furthermore, Defendants have an annual gross business volume of not less than \$500,000.

25. At all material times, Plaintiff and Class Members were individual employees who engaged in commerce or in the production of goods for commerce as required by 29 USC § 206-207.

26. At all material times, Plaintiff and the Ohio Class Members were employees of Defendants within the meaning of the OMFWSA. O.R.C. § 4111.03(D)(3).

27. At all material times, Plaintiff and the Pennsylvania Class Members were employees of Defendants within the meaning of the PMWA. 43 Pa. Stat. § 333.103(h).

**FACTUAL ALLEGATIONS APPLICABLE TO ALL COUNTS**

28. Defendants provide oil and gas well monitoring services to energy companies nationwide. Defendant New Source Energy Partners, L.P. is the former parent company for Defendant Erick Flowback Services, LLC. In December of 2015, Defendant New Source Energy Partners, L.P. sold Defendant Erick Flowback Services, LLC in full to Defendant Erick's Holdings, LLC, in December of 2015.

29. Defendants employ their workforce to monitor and maintain oil and gas wells in multiple states including Oklahoma, Texas, Ohio, and Pennsylvania.

30. Plaintiff, FLSA Class Members, Ohio Class Members, and Pennsylvania Class Members were/are employed by Defendants as flow testers. As such, their primary duties consist of monitoring oil and gas wells located throughout the United States.

31. Plaintiff, FLSA Class Members, Ohio Class Members, and Pennsylvania Class Members worked on a regular basis for Defendants at various oil and gas well locations, monitoring such oil and gas wells.

32. Plaintiff Michael Michalik worked for Defendants' benefit monitoring oil and gas wells at multiple locations in Ohio and Pennsylvania between March of 2014 to October of 2015.

33. While working for Defendants at these various locations, Plaintiff interacted with and became familiar with the way Defendants treat their other employees with respect to overtime pay and that they misclassify such workers as independent contractors. Therefore, Plaintiff has first-hand personal knowledge of the same pay violations throughout Defendants' operation at multiple geographical locations.

34. Defendants paid Plaintiff, FLSA Class Members, Ohio Class Members, and Pennsylvania Class Members on an hourly basis.

35. Defendants hired/fired, issued pay, supervised, directed, disciplined, scheduled and performed all other duties generally associated with that of an employer with regard to Plaintiff, FLSA Class Members, Ohio Class Members, and Pennsylvania Class Members.

36. In addition, Defendants instructed Plaintiff, FLSA Class Members, Ohio Class Members, and Pennsylvania Class Members about when, where, and how they were to perform their work.

37. Moreover, the following conduct further demonstrates that Defendants acted as an employer with respect to Plaintiff, FLSA Class Members, Ohio Class Members, and Pennsylvania Class Members:

- a. Defendants required Plaintiff, FLSA Class Members, Ohio Class Members, and Pennsylvania Class Members to turn in the hours they worked once a week just like normal hourly-paid employees (Defendants conveniently labeled these time sheets "invoices" to further their misclassification ruse);

- b. Defendants paid Plaintiff, FLSA Class Members, Ohio Class Members, and Pennsylvania Class Members on a non-negotiable hourly rate they unilaterally set;
- c. Defendants required Plaintiff, FLSA Class Members, Ohio Class Members, and Pennsylvania Class Members to report to their assigned well at a set time;
- d. Plaintiff, FLSA Class Members, Ohio Class Members, and Pennsylvania Class Members had no control over what well they may be assigned to;
- e. Defendants required Plaintiff, FLSA Class Members, Ohio Class Members, and Pennsylvania Class Members to request time off in advance and have that time off preapproved;
- f. Defendants issued work orders to Plaintiff, FLSA Class Members, Ohio Class Members, and Pennsylvania Class Members;
- g. Defendants provided safety training to Plaintiff, FLSA Class Members, Ohio Class Members, and Pennsylvania Class Members instructing them precisely how to perform their work;
- h. Defendants assigned Plaintiff, FLSA Class Members, Ohio Class Members, and Pennsylvania Class Members so many work hours per week (often more than 70) that, as a practical matter, they were prevented from working for any other company;
- i. Defendants controlled the amount of hours Plaintiff, FLSA Class Members, Ohio Class Members, and Pennsylvania Class Members worked;
- j. Defendants dictated the locations at which Plaintiff, FLSA Class Members, Ohio Class Members, and Pennsylvania Class Members worked;



- k. Defendants required Plaintiff, FLSA Class Members, Ohio Class Members, and Pennsylvania Class Members to work more than forty (40) hours per workweek, and typically FLSA Class Members, Ohio Class Members, and Pennsylvania Class Members worked more than seventy (70) hours per workweek;
- l. Plaintiff, FLSA Class Members, Ohio Class Members, and Pennsylvania Class Members' services were integrated into Defendants' operations;
- m. Plaintiff, FLSA Class Members, Ohio Class Members, and Pennsylvania Class Members were required to perform their work in an order set by Defendants;
- n. Plaintiff, FLSA Class Members, Ohio Class Members, and Pennsylvania Class Members worked for Defendants for long and indefinite periods of time, often years, as is common with employees;
- o. Defendants had rules that Plaintiff, FLSA Class Members, Ohio Class Members, and Pennsylvania Class Members were required to follow when performing their jobs;
- p. Defendants required Plaintiff, FLSA Class Members, Ohio Class Members, and Pennsylvania Class Members to attend company meetings; and
- q. Defendants maintained the right to discharge Plaintiff, FLSA Class Members, Ohio Class Members, and Pennsylvania Class Members at will.

38. Furthermore, the degree of investment Plaintiff, FLSA Class Members, Ohio Class Members, and Pennsylvania Class Members made to perform their work pales in comparison to the expenses Defendants incurred. Plaintiff, FLSA Class Members, Ohio Class Members, and Pennsylvania Class Members were required to supply simple hand tools, such as wrenches or a hammer. On the other hand, Defendants provided equipment worth hundreds of thousands of

dollars including sand traps, water pumps, earth moving equipment, flowback tanks, generators, valves, gauges, pipe, light plants, generators, and flare stacks.

39. Defendants market themselves as a turnkey solution for the flowback aspect of well production. They sell or lease all the necessary industrial equipment to accomplish production at the well site. Part of the complete package they offer their customers is the services of Plaintiff and his fellow flowtesters. As such, the work of the flowtesters is integral to Defendants' business.

40. A substantial portion of Defendants' annual revenue is derived from work performed by Plaintiff, FLSA Class Members, Ohio Class Members, and Pennsylvania Class Members.

41. Despite these facts, Defendants improperly classified Plaintiff, FLSA Class Members, Ohio Class Members, and Pennsylvania Class Members as independent contractors and not employees.

42. Defendants classified their employees as independent contractors to avoid their obligations to pay employees pursuant to the FLSA as well as to reap other benefits of such illegal classification such as reduced tax liability, avoiding paying workers' compensation insurance, and other forms of insurance and to pass on Defendants' operational costs to their work force.

43. However, at all times, the flow testers and other similarly situated workers were employees of Defendants.

44. Although Plaintiff has been required to work more than forty (40) hours per workweek, and did so frequently, Plaintiff was not compensated at the FLSA, PMWA, or OMFWSA mandated time-and-a-half rate for hours in excess of forty (40) per workweek.

45. Instead, Plaintiff was paid a flat hourly rate for all hours worked, regardless of how many hours he actually worked.

46. That is, Defendants paid Plaintiff straight time for overtime hours.

47. No FLSA exemption applies to hourly-paid employees such as Plaintiff and FLSA Class Members.

48. No exemptions under the OMWFSa apply to Plaintiff or Ohio Class Members.

49. No exemptions under the PMWA apply to Plaintiff or the Pennsylvania Class Members.

50. Defendants' method of paying Plaintiff in violation of the FLSA was willful and was not based on a good faith and reasonable belief that its conduct complied with the FLSA. Indeed, Defendants' conduct is all the more egregious because it intentionally set up a paper facade that belied the true interaction and conduct of the company and its workforce. For example, Defendants insisted that its workers submit so-called "invoices," not time sheets. Defendants even created the "invoice form" their workers were required to use, which was nothing more than a time sheet. Defendants required their workers to complete other paper work which Defendants intended to, on the surface, give the impression that their workforce was composed of independent contractors, including Defendants' requirement that its workers set up a corporation or limited liability company in order to be paid. In reality, Defendants operated as an oil and gas monitoring company and sold their services through a workforce of employees.

51. That is, Defendants' misclassification was not by accident, but a well thought out scheme to reduce their labor costs. Accordingly, Defendants' violations of the FLSA were willful.

52. At all times relevant to this action, Defendant Mark Snodgrass controlled the nature, pay structure, and employment relationship of the Plaintiff and Class Members.

53. At all times relevant to this action, Defendant Snodgrass had the authority to hire and fire employees, the authority to direct and supervise the work of employees, the authority to

sign on the business's checking accounts, including payroll accounts, and the authority to make decisions regarding employee compensation and capital expenditures. Additionally, he was responsible for the day-to-day affairs of Defendant Erick Flowback Services, LLC. In particular he was responsible for determining compliance with the FLSA, OMFWSA, and PMWA.

54. As such, pursuant to 29 U.S.C. § 203(d), O.R.C. § 4111.03(D)(2) , and 43 Pa. Stat. § 333.103(g), Defendant Snodgrass acted directly or indirectly in the interest of Plaintiff's and Class Member's employment as their employer, which makes him individually liable under the FLSA, the OMFWSA, and the PMWA.

**VIOLATION OF 29 U.S.C. § 207**  
**FAILURE TO PAY OVERTIME UNDER THE FLSA**  
**(COLLECTIVE ACTION)**

55. Plaintiff incorporates all allegations contained in the foregoing paragraphs.

56. Defendant's practice of failing to pay Plaintiff time-and-a-half rate for hours in excess of forty (40) per workweek violates the FLSA. 29 U.S.C. § 207.

57. None of the exemptions provided by the FLSA regulating the duty of employers to pay overtime at a rate not less than one and one-half times the regular rate at which its employees are employed are applicable to Defendant or Plaintiff.

**COLLECTIVE ACTION ALLEGATIONS**

58. Plaintiff has actual knowledge that FLSA Class Members have also been denied overtime pay for hours worked over forty (40) hours per workweek as a result of Defendants' misclassification of its employees.

59. Plaintiff's knowledge is based on his personal work experience and through communications with other workers of Defendants while performing work throughout multiple locations for Defendants in Ohio and Pennsylvania.

60. Other hourly paid workers similarly situated to the Plaintiff work for Defendants throughout the United States, but are not paid overtime at the rate of one and one-half their regular rate when those hours exceeded forty (40) hours per workweek.

61. Although Defendants permitted and/or required FLSA Class Members to work in excess of forty (40) hours per workweek, Defendants have denied them full compensation for their hours worked over forty (40).

62. Defendants have classified and continue to classify FLSA Class Members as independent contractors.

63. FLSA Class Members perform or have performed the same or similar work as Plaintiff and were misclassified as independent contractors by Defendants.

64. FLSA Class Members are not exempt from receiving overtime pay under the FLSA.

65. As such, FLSA Class Members are similar to Plaintiff in terms of relevant job duties, pay structure, misclassification as independent contractors and/or the denial of overtime pay.

66. Defendants' failure to pay overtime compensation at the rate required by the FLSA results from generally applicable policies or practices, and does not depend on the personal circumstances of FLSA Class Members.

67. The experiences of Plaintiff, with respect to his pay, hours, and duties are typical of the experiences of FLSA Class Members.

68. The specific job titles or precise job responsibilities of each FLSA Class Member does not prevent collective treatment.

69. All FLSA Class Members, irrespective of their particular job requirements, are entitled to overtime compensation for hours worked in excess of forty (40) during a workweek.

70. Although the exact amount of damages may vary among FLSA Class Members, the damages for FLSA Class Members can be easily calculated by a simple formula. The claims of all FLSA Class Members arise from a common nucleus of facts. Liability is based on a systematic course of wrongful conduct by Defendants that caused harm to all FLSA Class Members.

71. As such, the class of similarly situated Plaintiffs for the FLSA Class is properly defined as follows:

All current and former workers classified as independent contractors (or other than employees) who performed work for Defendants associated with monitoring and maintaining oil and gas wells throughout the United States during the three-year period before the filing of this Complaint up to the date the court authorizes notice.

**COUNT TWO: VIOLATION OF THE OHIO MINIMUM FAIR WAGE STANDARDS ACT, O.R.C. § 4111.01, et seq.**

72. Plaintiff incorporates by reference the allegations in the preceding paragraphs.

73. At all relevant times, Defendants have been, and continue to be, an “employer” within the meaning of the OMFWSA. At all relevant times, Defendants have employed and continue to employ, “employees,” including the Ohio Class Members and Plaintiff, within the meaning the OMFWSA.

74. The OMFWSA requires payment of one and one-half times the employee’s regular rate for each hour worked per week over 40 hours. O.R.C. § 4111.03.

75. In denying compensation at the requisite Ohio overtime rate, Defendants violated the OMFWSA.

76. As a direct and proximate result of Defendants’ unlawful conduct, Plaintiff and the Ohio Class Members have suffered and will continue to suffer a loss of income and other damages.

Plaintiff and the Ohio Class Members are entitled to liquidated damages, attorneys' fees, and costs incurred in connection with this claim.

77. Having violated the OMFWSA, Defendants are liable to Plaintiff and Ohio Class Members pursuant to O.R.C. § 4111.10 for the full amount of their unpaid overtime and for costs and reasonable attorneys' fees. Additionally, Defendants are liable to Plaintiff and Ohio Class Members for an amount equal to twice their unpaid wages. O.R.C. § 4111.14(J).

**COUNT THREE: VIOLATION OF THE PENNSYLVANIA MINIMUM WAGE ACT, 43 PA. STAT § 333.101, et seq.**

78. Plaintiff incorporates by reference the allegations in the preceding paragraphs.

79. At all relevant times, Defendants have been, and continues to be, an "employer" within the meaning of the PMWA. At all relevant times, Defendants have employed and continue to employ, "employees," including the Pennsylvania Class Members and Plaintiff, within the meaning the PMWA.

80. The PMWA requires payment of one and one-half times the employee's regular rate for each hour worked per week over 40 hours. 43 Pa. Stat. § 333.104(c).

81. In denying compensation at the requisite Pennsylvania overtime rate, Defendants violated the PMWA.

82. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff and the Pennsylvania Class Members have suffered and will continue to suffer a loss of income and other damages. Plaintiff and the Pennsylvania Class Members are entitled to recover their unpaid overtime, attorneys' fees and costs. 43 Pa. Stat. § 333.113.

**RULE 23 CLASS ACTION ALLEGATIONS**

83. Plaintiff incorporates by reference the allegations in the preceding paragraphs.

84. Plaintiff brings his overtime claims arising under the OMFWS and PMWA as a Rule 23 class action on behalf of the following classes:

**Ohio Class:** All current and former workers that performed work associated with monitoring oil or gas wells for Defendants in Ohio who were paid for at least one week as an independent contractor (or other than as an employee) during the three-year period before the filing of this Complaint up to the present.

**Pennsylvania Class:** All current and former workers that performed work associated with monitoring oil or gas wells for Defendants in Pennsylvania who were paid for at least one week as an independent contractor (or other than as an employee) during the three-year period before the filing of this Complaint up to the present.

85. Although Plaintiff does not know the precise number of members of the proposed classes, Plaintiff believes there are more than 100 individuals that fit into each class.

86. The members of the classes are so numerous that their individual joinder is impractical.

87. The identity of the members of the Ohio and Pennsylvania Classes is readily discernible from Defendants' records.

88. Plaintiff and the proposed Ohio and Pennsylvania Classes on one hand, and Defendants on the other, have a commonality of interest in the subject matter and remedy sought, namely back wages plus penalties, interest, attorneys' fees and the cost of this lawsuit.

89. Common questions of law and fact exist to all members of the class. These questions predominate over the questions affecting individual class members. These common legal and factual questions include, but are not limited, to the following:

- a) Whether Plaintiff and the Pennsylvania or Ohio Class Members worked hours in excess of forty per work week;



- b) Whether Plaintiff and Pennsylvania or Ohio Class Members were denied overtime pay at a rate not less than one and one half times their regular rate as proscribed by Pennsylvania or Ohio law, as the case may be;
- c) Whether Defendants failed to properly classify Plaintiff and Pennsylvania or Ohio Class Members as employees under Pennsylvania or Ohio law, as the case may be; and
- d) The calculation of damages.

90. These and other common questions of law and fact, which are common to the members of the classes, predominate over any individual questions affecting only individual members of the class.

91. Plaintiff's claims are typical of the claims of the class because Plaintiff was not paid overtime wages in accordance with Pennsylvania or Ohio law and because Defendants classified him as an independent contractor, just as was done with respect to the Pennsylvania and Ohio Class Members.

92. Plaintiff is an adequate representative of the class because his interests do not conflict with the interests of the classes that he seeks to represent. Plaintiff has retained competent counsel, highly experienced in complex class action litigation, and they intend to prosecute this action vigorously. The interests of the classes will be fairly and adequately protected by Plaintiff and his counsel.

93. The class action applying Pennsylvania and Ohio state law is superior to other available means of fair and efficient adjudication of the state law claims of Plaintiff and the Class Members. The injuries suffered by each individual class member are relatively small in comparison to the burden and expense of individual prosecution of a complex and extensive litigation necessitated by Defendants' conduct. It would be virtually impossible for members of

the class individually to redress effectively the wrongs done to them; even if the members of the class could afford such individual litigation, the court system could not. Individualized litigation presents the possibility for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties and to the court system presented by the complex, legal and factual issues of the case. By contrast, the class action presents far fewer logistical issues and provides the benefits of a single adjudication, economy of scale and comprehensive supervision by a single court.

94. The operative question in this case is whether the workers in question were independent contractors or employees. The economic realities test is used to determine employee status under the FLSA, the OMFWSA, and the PMWA therefore evidence common to all classes will be determinative to all classes.

#### **DAMAGES SOUGHT**

95. Plaintiff and the FLSA Class Members are entitled to recover their unpaid overtime compensation. 29 U.S.C. §§ 207, 216.

96. Plaintiff and the Ohio Class Members are entitled to recover their unpaid overtime compensation. O.R.C. § 4111.10.

97. Plaintiff and the Pennsylvania Class Members are entitled to recover their unpaid overtime compensation. 43 Pa. Stat. § 333.113.

98. Plaintiff and the FLSA Class Members are entitled to an amount equal to all of their unpaid wages as liquidated damages. 29 U.S.C. § 216(b).

99. Plaintiff and the Ohio Class Members are entitled to an amount equal to twice their unpaid wages as liquidated damages. O.R.C. § 4114.14(J).

100. Plaintiffs and the FLSA Class Members are entitled to recover attorney's fees and costs. 29 U.S.C. § 216(b).

101. Plaintiff and the Ohio Class Members are entitled to recover attorney's fees and costs. O.R.C. § 4111.10.

102. Plaintiff and the Pennsylvania Class Members are entitled to recover attorney's fees and costs. 43. Pa. Stat § 333.113.

**PRAYER**

103. For these reasons, Plaintiff, on behalf of himself and the FLSA Class Members, Ohio Class Members, Pennsylvania Class Members respectfully request that judgment be entered in their favor awarding them the following:

- a. Overtime compensation for all hours worked over forty in a workweek at the applicable time-and-a-half rate;
- b. Liquidated damages in an amount equal to their unpaid overtime as allowed under the FLSA and twice the amount of their unpaid overtime for all work performed in Ohio;
- c. Reasonable attorney's fees, costs, and expenses of this action as provided by the FLSA, PMWA, and OMFWSA; and
- d. Such other and further relief to which Plaintiff and Class Members may be entitled, at law or in equity.

Respectfully submitted,

HAMMONS, GOWENS, HURST & ASSOCIATES

By: /s/ Amber L. Hurst

Amber L. Hurst

OBA # 21231

HAMMONS, GOWENS, HURST & ASSOCIATES

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Houston, TX 77006

Telephone: (713) 523-0001

Facsimile: (713) 523-1116

CONSENT FORM FOR  
WAGE CLAIM

Printed Name: Kris Michalik

1. I consent and agree to pursue my claims of unpaid overtime and/or minimum wage through a lawsuit filed against my current/former employer.
2. I understand that this lawsuit maybe brought under the Fair Labor Standards Act and/or all applicable state laws. I hereby consent, agree and opt-in to become a plaintiff in any such action and be bound by any judgment by the Court or any court approved settlement of such action.
3. I intend to pursue my claim individually, unless and until the court certifies this case as a collective or class action. If necessary, I agree to serve as the class representative if the court approves.
4. In the event the case is certified and then decertified, I authorize Plaintiffs' counsel to use this Consent Form to re-file my claims in a separate or related action against my employer.

(Signature) 

(Date Signed) 08/11/2016

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

Kris Michalik, Individually, and On behalf of All Others Similarly Situated,

(b) County of Residence of First Listed Plaintiff Stark County (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Galvin B. Kennedy; Kennedy Hodges, L.L.P., 4409 Montrose Blvd. #200, Houston, TX 77006. Tel: 713-523-0001

DEFENDANTS

Erick Flowback Services LLC, New Source Energy Partners, L.P, Ericks Holdings, LLC, and Mark Snodgrass.

County of Residence of First Listed Defendant Kingfisher County (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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 - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 29 U.S.C. Sec. 201 et seq. Brief description of cause: Violation of the FLSA for unpaid wages.

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: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 08/22/2017 SIGNATURE OF ATTORNEY OF RECORD Galvin B. Kennedy

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