UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF MICHIGAN

SCOTT BURMAN and KEVIN MULDER,
for themselves individually and for those
similarly situated,

Plaintiffs,

Case No.:
Hon.

vs.

EVERKEPT, INC., a.k.a. EVERKEPT
DISPOSAL, a Michigan corporation,

Defendant.

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COMPLAINT / COLLECTIVE ACTION AND DEMAND FOR JURY TRIAL

NOW COME Plaintiffs and proposed collective action representatives, SCOTT BURMAN and KEVIN MULDER, by and through their attorneys, HARVEY KRUSE, P.C., and for their Complaint against Defendant, EVERKEPT, INC., state as follows:

PRELIMINARY STATEMENT

1. This collective action is brought to recover for damages and injury stemming from violations of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, *et. seq.* (FLSA). Plaintiffs and the representative class members are current and former Residential Pick-up Driver employees of Defendant who were denied both overtime and straight-time compensation to which they were entitled under the FLSA as a result of Everkept's improper pay calculations and/or its practices or policies of failing to pay employees for all work activities suffered or permitted. Further, both named Plaintiffs Burman and Mulder assert claims for illegal retaliatory termination pursuant to Section 215(a)(3) of the FLSA and also maintain they were wrongfully denied access to their personnel employment records in violation of the Bullard-Plawecki Employee Right To Know Act, M.C.L. 423.500, *et. seq*.

JURISDICTION AND VENUE

2. The United States District Court for the Western District of Michigan has federal question jurisdiction pursuant to 28 U.S.C. § 1331 over the individual and representative claims raised herein, which claims arise under the laws of the United States, i.e. the FLSA, 29 U.S.C. § 201, *et. seq.*, and the Portal-to-Portal Act, 29 U.S.C. § 251, *et. seq.*

3. The District Court has original jurisdiction over Plaintiffs' FLSA claims pursuant to § 16(b) of that Act, which states that "an action to recover . . . may be maintained against any employer . . . in any federal or state court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves . . . ." 29 U.S.C. § 216(b).

4. The District Court has jurisdiction pursuant to 28 U.S.C. § 1337, conferring jurisdiction of any civil action arising under any Act of Congress regulating interstate commerce. See 29 U.S.C. § 202.

5. The District Court has jurisdiction pursuant to the Declaratory Judgment statute, 28 U.S.C. § 2201.

6. The District Court has supplemental jurisdiction over the state law claim raised herein pursuant to 28 U.S.C. § 1367 because such claims do not raise novel or complex issues of state law, and because these state law claims arise from a common nucleus of operative facts with the federal claims, i.e., the claims involve the same parties, arise out of the same unlawful pay practices and retaliatory acts of Defendant, and are thus so related to the federal claims so as to form part of the same case or controversy under Article III of the United States Constitution.

7. Venue is proper in the Western District of Michigan under 28 U.S.C. § 1391(b) because Defendant resides, operates, and is located in this District, and because a substantial part of the events or omissions giving rise to the claims raised herein occurred in this District.

THE PARTIES

8. Plaintiff Kevin Mulder is a citizen of the United States and a resident of Michigan. Mr. Mulder began his employment with Defendant, Everkept, Inc., in or about January, 2012. Mr. Mulder held the job title of Residential Pick-up Driver with Defendant until his recent termination on or about December 7, 2014. His situation while in Defendant's employ is typical of a Residential Pick-up Driver employed at Everkept, Inc., and therefore is the proposed representative for Class A and Class B class members who are part of the collective action, as set forth herein.

9. Plaintiff Scott Burman is a citizen of the United States and a resident of Michigan. Mr. Burman began his employment with Defendant, Everkept, Inc., in or about July, 2010. Mr. Burman held the job title of Residential Pick-up Driver with Defendant until his recent termination on or about January 8, 2015. His situation while in Defendant's employ is typical of a Residential Pick-up Driver employed at Everkept, Inc., and therefore is a proposed representative for Class B class members who are part of the collective action, as set forth herein.

10. Defendant Everkept, Inc., also known as Everkept Disposal (hereinafter, "Everkept"), is a corporation formed pursuant to the laws of the State of Michigan, doing business in Michigan.

11. The proposed classes of Plaintiffs (hereinafter collective referred to as "class members") are current and former employees of Everkept, who are similarly situated to the representative Plaintiffs, as set forth more fully below.

GENERAL ALLEGATIONS: EVERKEPT, INC. AND ITS BUSINESS OPERATIONS

12. Defendant Everkept operates a garbage, recycling, and yard waste collection service in West Michigan, particularly in Grand Rapids and the surrounding communities, and at certain times relevant to this suit, in and around Kalamazoo.

13. Everkept operates a regional Michigan business that, upon information and belief, employed approximately 35-40 individuals who work as Residential Pick-up Drivers at any given time relevant to this lawsuit.

14. Everkept employs systemic, unlawful policies and practices of incorrectly calculating and paying overtime wages and straight-time wages to its Residential Pick-up Drivers, in weeks in which overtime work is performed, pursuant to the Company's "Variable Incentive Program," as set forth below.

15. Additionally, Everkept employs systemic, unlawful policies and practices of failing to pay its Residential Pick-up Drivers for all work required, suffered, or permitted.

16. These unlawful policies and practices serve to deprive Residential Pick-up Drivers of overtime and other compensation to which they are entitled under the FLSA.

17. Upon information and belief, these unlawful policies and pay practices of Everkept applied throughout the various company facilities or locations in the State of Michigan that existed during the timeframe encompassed by this lawsuit.

18. Everkept is an employer of the named Plaintiffs and class members within the meaning of the FLSA, 29 U.S.C. § 203(d).

19. Everkept is engaged in interstate commerce and/or is part of an "enterprise" engaged in interstate commerce or the production of goods for commerce, with gross volume of sales of not less than $500,000 whereby Everkept is an FLSA-covered employer subject to the wage provisions of 29 U.S.C. § 207. See 29 U.S.C. §§ 203(r) and (s).

GENERAL ALLEGATIONS: PAYMENT SYSTEM UTILIZED BY EVERKEPT FOR COMPENSATION OF RESIDENTIAL PICK-UP DRIVERS

20. The named Plaintiffs and class members are current and former employees of Everkept as provided by 29 U.S.C. § 203(e).

21. The named Plaintiffs and proposed class members worked as garbage and refuse collectors, commonly referred to amongst workers and management as "Residential Pick-up Drivers" who would operate Everkept's trash collection truck vehicles, make collection stops at residences or businesses with whom Everkept had contracted to pick up garbage, and empty their garbage trucks at a landfill.

22. Throughout their employment, the named Plaintiffs and class members were covered employees under the FLSA, were not any type of "executive," "administrative," "professional," or other exempt class of worker, and thus were entitled to overtime compensation for all hours worked in excess of forty (40) per week at a rate of at least one-and-one-half times their regular rate of pay, correctly calculated. 29 U.S.C. § 207(a)(1).

23. Residential Pick-up Drivers employed by Defendant are frequently required, suffered, or permitted to work in excess of forty (40) hours per week. Residential Pick-up Drivers frequently worked 45-50 hours per week.

24. Upon information and belief, beginning in or around the Fall of 2012, Defendant adopted a revised two-part compensation system for calculating the hourly pay of its Residential Pick-up Drivers.

25. An employee's total compensation under this system is comprised of two parts: (1) a "base rate" of hourly pay, which remains constant and is fixed at $12.00 per hour of regular time work, and (2) a "variable incentive" rate of hourly pay that can change each week and is purportedly determined based on the efficiency with which an employee works in a given week. See, e.g., ***Exhibit A*** (exemplar pay stub).

26. Defendant has adopted a written compensation policy that governs the variable incentive rate of pay, the "Everkept Variable Incentive Program." A copy is attached as ***Exhibit B.***

27. Per Everkept's Variable Incentive Program, a Residential Pick-up Driver earns a "bank" of compensation for completing certain tasks (i.e. for picking up each customer's trash can) within a set time; the faster or more "efficient" the Residential Pick-up Driver works, the

higher the bank. This bank is then divided by Defendant's "hours worked formula" to determine the employee's incentive hourly rate upon which compensation is made.

28. The "hours worked formula" employed by Defendant to determine the "variable incentive pay" hourly rate differs depending on whether the employee has worked more than 40 hours during the work week and thereby engaged in any overtime work.

29. In non-overtime weeks, Defendant divides the "bank" earned by the number of hours actually worked to determine that week's incentive pay hourly rate.

30. In overtime weeks, Defendant applies its own **2:1 ratio** for all hours in excess of 40 prior to dividing the "bank" by the number of hours worked to determine the incentive pay hourly rate. That is, Defendant doubles the number of overtime hours before calculating the person's hourly rate, but then only pays the worker for the number of hours actually worked. By way of example for determining the incentive pay hourly rate in an overtime week, an employee who works **42 hours** has his total "bank" divided by **44 hours** to determine his hourly pay. See ***Exhibit B***.

31. Defendant's improper pay practice for weeks in which overtime is worked results in an artificial reduction in the employee's hourly wage. This occurs by Defendant's policy of arbitrarily increasing the denominator used to divide the employee's weekly "bank" by a 2:1 ratio for overtime hours. The following chart is illustrative of this practice; assume an employee who has a weekly "bank" of $500 and that any overtime (OT) is paid at the standard rate of time-and-a-half:

VARIABLE INCENTIVE PAY			
	Incentive Hourly Rate	**Pay based on Hours Worked**	**Total Incentive Compensation**
Everkept *No Overtime* Computation Method	$500 / 40 (hours worked) = $12.50 per hour	ST: $12.50/hr. x 40 hrs. = OT: N/A	$500.00
***Everkept Overtime* Computation Method for 42 hours**	$500 / 44 (hours *formula*) = $11.36 per hour	ST: $11.36/hr. x 40 hrs. = OT: $17.04/hr. x 2 hrs. =	$454.55 $ 34.08 + **$488.63**
***Proper Overtime* Computation Method for 42 hours**	$500 / 42 (hours worked) = $11.90 per hour	ST: $11.90/hr. x 40 hrs. = OT: $17.85/hr. x 2 hrs. =	$476.00 $ 35.70 + **$511.70**

32. By lowering the hourly rate applicable to all of the employee's hours, Defendant illegally reduces an employee's hourly rate and thus total compensation.

33. The 2:1 ratio employed by Defendant in weeks where overtime is earned artificially inflates the number of hours worked only for the purpose of determining the hourly rate, but not when actually compensating employees for hours worked.

34. Defendant's method of calculating its employees' hourly pay in weeks in which overtime is paid adversely effects the employee's pay for both overtime and straight-time.

35. The "hours worked formula" applied by Defendant for weeks in which an employee earns overtime pay artificially suppresses a worker's hourly rate for no other reason than the fact that the worker engaged in overtime work, contrary to the clear mandates of the FLSA.

36. Since the adoption of its new incentive pay program, Defendant has not paid and has refused to pay employees proper straight-time and overtime wages in all weeks where an employee engages in any overtime work.

37. Upon information and belief, Defendant continues to use this illegal system at present, resulting in a continuing and recurring harm to class members who are current employees of Defendant.

GENERAL ALLEGATIONS:
EVERKEPT'S FAILURE TO PAY COMPENSATION FOR WORK REQUIRED, SUFFERED, OR PERMITTED

38. As an employer subject to the wage provisions of the FLSA, Defendant is required to pay Residential Pick-up Drivers for all hours for all hours worked, including hours suffered or permitted to be worked, and is further required to pay Residential Pick-Up Drivers at a rate of at least one-and-one-half times their regular rate of pay, correctly calculated, for all hours in excess of forty (40) per week. 29 U.S.C. § 207(a)(1).

39. Residential Pick-up Drivers employed by Defendant are frequently required, suffered, or permitted to work 45-50 hours per week, but are not compensated for a significant portion of this time.

40. Defendant has improper policies and practices of failing to pay employees for time required, suffered, or permitted to be worked for various compensable work activities.

41. Pursuant to Defendant's policies and practices, Defendant routinely violated the FLSA by knowingly requiring, encouraging, and/or permitting workers to engage in compensable work before they clocked-in and after they clocked-out, without compensation, including but not limited to: performing pre-shift work in preparation of the employee's daily route, obtaining and logging onto the employee's tablet regarding the day's route, inspection of the employee's vehicle; and performing post-shift work, including vehicle inspection and preparation for subsequent work days.

42. Defendant was aware that its Residential Pick-up Drivers were working off-the-clock, and in fact enticed them to work off-the-clock as a guise to improve a Residential Pick-up Driver's level of "efficiency" under its Variable Incentive Program.

43. Pursuant to Defendant's policies and practices, Defendant routinely violated the FLSA by knowingly requiring, encouraging, and/or permitting workers to attend 2-4 work meetings per year, without compensation.

44. Pursuant to Defendant's policies and practices, Defendant routinely violated the FLSA by making unlawful deductions from workers' compensation or refusing to pay compensation earned, based on alleged violations of company policy, often without prior notice, in order to avoid or adjust for paying employees full compensation owed, including overtime compensation.

45. Defendant has long-standing practices of improperly withholding compensation and making improper deductions to employees' earned compensation for arbitrary reasons and as part of an effort to avoid or adjust for paying earned overtime compensation.

GENERAL ALLEGATIONS: COLLECTIVE ACTION

46. The Plaintiffs' FLSA claims are maintainable as a collective action under 29 U.S.C. § 216.

47. The "improper wage calculation" class members ("Class A") of this collective action are defined as:

> Class A: All current and former employees of Defendant who are now, or were during some or all of the last three years, employed as a Residential Pick-up Driver (inclusive of trash, recycle, and/or yard waste Drivers), and were compensated under the "variable incentive program," who worked at any time since the adoption of this program in excess of 40 hours per week.

48. The "unpaid time" class members ("Class B") of this collective action are defined as:

> Class B: All current and former employees of Defendant who are now, or were during some or all of the last three years, employed as a Residential Pick-up Driver (inclusive of trash, recycle, and/or yard waste Drivers), and

were made to work off-the-clock, attend unpaid work meetings, or otherwise were not paid for all of their work activities suffered or permitted by Defendant.

49. Upon information and belief, class members for both subcategories include approximately 35 similarly situated current employees, as well as an additional unknown number of former employees of Everkept.

50. Named Plaintiff Kevin Mulder is similarly situated to the members of Class A and Class B, and therefore will represent the class members of Class A and Class B as to the collective action claims asserted.

51. Named Plaintiff Scott Burman is similarly situated to the members of Class B and therefore will represent the class members of Class B as to the collective action claims asserted. Upon information and belief, Mr. Burman was one of only a few long-term employees who infrequently worked overtime and thus was not switched onto the revised Variable Incentive Program as were most Residential Pick-up Drivers who are members of Class A.

52. The class members and their respective named Plaintiff class representatives are similarly situated within the meaning of 29 U.S.C. § 216 in that they were subjected to the same improper practices, common policy, and/or plans to violate the federal wage laws.

53. The named Plaintiffs will fairly and adequately represent the interests of the class members of their associated class(es) because they are similarly situated to the class members, and because their claims are common to, concurrent with, and typical of the claims of the class members to this lawsuit.

54. There are no conflicts of interest between the named Plaintiffs and either class of opt-in plaintiffs.

55. Class Counsel, Dale R. Burmeister, is qualified and able to litigate the class members' claims. Class Counsel has experience in collective action litigation involving the prosecution and defense of class action and other representative litigation of various sorts, including violations of the FLSA and state labor laws. Class Counsel will further be assisted in this matter by attorneys in his law firm of Harvey Kruse, P.C, who likewise carry with them knowledge and experience in such matters.

56. A collective action is maintainable in this case as to the FLSA claims under 29 U.S.C. § 216(b).

COUNT I: FLSA COLLECTIVE ACTION – UNPAID OVERTIME AND STRAIGHT-TIME WAGES AND FAILURE TO MAINTAIN RECORDS

57. Plaintiffs re-allege and incorporate paragraphs 1 - 56 above, as if fully stated herein.

58. The overtime wage provisions set forth in the FLSA, 29 U.S.C. § 201, *et. seq.*, and the supporting federal regulations, apply to Defendant and operate in favor of Plaintiffs and the class members.

59. Plaintiffs and class members were entitled to overtime compensation of 1 ½ times their properly calculated hourly rate for all hours worked in excess of 40 hours per week. See 29 U.S.C. § 207(a).

60. Defendant has engaged in a pattern, policy, and practice of violating the FLSA by failing to properly calculate and pay the proper wages to Plaintiff Mulder and the Class A class members for all hours worked in weeks where the employee worked in excess of 40 hours in the work week.

61. Defendant's "hours worked formula" employed during weeks when an employee works overtime has the actual and intended effect of improperly **reducing** the employee's hourly "variable incentive" pay rate used to compute **both the employee's straight-time and overtime compensation earned**.

62. Defendant knowingly and intentionally selected an artificial 2:1 ratio applicable to overtime hours used to calculate an employee's hourly rate for weeks involving overtime hours worked for its own gain and to the detriment of Plaintiff Mulder and Class A class members.

63. Defendant fully appreciated the negative and punitive effects that employing the 2:1 ratio that it designed would have on its employees earnings, as stated in Defendant's own written policy: "Overtime hours are calculated in the 'hours worked formula' using a 2 to 1 ratio on all OT in the incentive calculation, so your gross pay and hourly rate will be best optimized at 40 hours." ***Exhibit B***.

64. The 2:1 ratio employed by Defendant is artificial, has no basis in fact or law, and is contrary to the FLSA.

65. By employing the artificial 2:1 ratio for overtime hours in its "hours worked" formula, Defendant illegally deprived employees of **regular / straight-time compensation** that was earned by the employees and to which they are entitled under the FLSA each and every week in which an employee had any overtime work.

66. By employing the artificial 2:1 ratio for overtime hours in its "hours worked" formula, Defendant illegally deprived employees of **overtime compensation** that was earned by the employees and to which they are entitled under the FLSA each and every week in which an employee had any overtime work.

67. Defendant's "hours worked formula" used in weeks in which an employee worked overtime violates the FLSA's mandates for determining the "regular rate" of pay for an employee, which requires that the rate of pay be determined based on the number of "actual hours" worked by the employee. See 29 U.S.C. § 207(a); 29 C.F.R. 778.109; 29 C.F.R. 778.112; see also *Walling v. Youngerman-Reynolds Hardwood Co.*, 325 U.S. 419, 424 (1945).

68. Defendant's "hours worked formula" used in weeks in which an employee worked overtime violates the FLSA's requirement that, when determining overtime compensation due, all hours worked by an employee in a particular workweek must be counted and paid, including the fact that full payment for all straight-time hours worked serves as a prerequisite to the proper payment of overtime. See 29 C.F.R. 778.315.

69. Defendant's "hours worked formula" used in weeks in which an employee worked overtime violates the FLSA's prohibition against reducing or manipulating an employee's rate of pay or number of hours worked as a consequence of working overtime. See 29 C.F.R. 778.316; 29 C.F.R. 778.500; *Youngerman-Reynolds*, 325 U.S. at 423-24.

70. Defendant's "hours worked formula" used in weeks in which an employee worked overtime is contrary to the Congressional intent and purpose of enacting the FLSA: to regulate labor conditions to ensure a minimum standard of living necessary for the health, efficiency, and general well-being of workers, 29 U.S.C. § 202, and in particular, to compensate employees for the burden of a workweek in excess of 40 hours. See 29 U.S.C. § 207(a); *Walling v. Helmerich & Payne, Inc.*, 323 U.S. 37, 40 (1944).

71. Defendant's failure to pay Plaintiff Mulder and Class A class members the overtime and/or other wages owed to them under the FLSA is deliberate and willful.

72. Defendant did not act in good faith in failing to pay Plaintiff Mulder and Class A class members the overtime and other wages owed them under the FLSA, and did not have reasonable grounds to believe that its conduct in so doing was in accordance with the law.

73. To the extent Defendant failed to maintain, keep, and preserve wage and time records as required by 29 U.S.C. § 211(c), including records regarding how variable incentive pay was calculated for each Plaintiff and class member, it has deprived Plaintiffs and class members the records that would most easily assist in proving the amount of additional compensation due them.

74. Pursuant to 29 U.S.C. § 216, Plaintiff Mulder and Class A class members are entitled to recover for unpaid straight-time compensation, unpaid overtime compensation, and any other unpaid wages, plus an equal amount as liquidated damages, and the reasonable attorneys' fees and costs of this suit.

WHEREFORE, Plaintiff Kevin Mulder demands judgment against Defendant Everkept in favor of himself and Class A class members for the following relief:

(a) Certification pursuant to 29 U.S.C. § 216(b) and Court-approved notice to prospective opt-in class members;

(b) A declaration from this Court as to the unlawful pay practices and policies discussed herein and an order restraining Defendant from engaging in the aforementioned pay violations;

(c) A determination of a violation of the FLSA and failure to pay overtime and straight-time compensation as required by 29 U.S.C. § 207(a)(1), and an award of the value of Plaintiffs' and class members' unpaid wages and other employee benefits over the last 2 years pursuant to 29 U.S.C. § 255;

(d) A determination of a willful violation and an award of the value of Plaintiffs' and class members' unpaid wages and other employee benefits over the last 3 years pursuant to 29 U.S.C. § 255;

(e) An award of an equal amount of liquidated damages as provided under 29 U.S.C. § 216 of the FLSA;

(f) An award of attorneys' fees and costs pursuant to 29 U.S.C. § 216 of the FLSA, and/or other applicable law;

(g) An award of pre- and post-judgment interest;

(h) An award of such additional relief as this Court may deem appropriate.

COUNT II: FLSA COLLECTIVE ACTION – WAGE AND HOUR VIOLATIONS AND FAILURE TO MAINTAIN RECORDS

75. Plaintiffs re-allege and incorporate paragraphs 1 - 74 above, as if fully stated herein.

76. The overtime wage provisions set forth in the FLSA, 29 U.S.C. § 201, *et. seq.*, and the supporting federal regulations, apply to Defendant and operate in favor of Plaintiffs and the class members.

77. Pursuant to Defendant's policies and practices, Defendant routinely violated the FLSA as follows:

a. **Off-the-Clock Work**: Defendant knowingly required, encouraged, and/or permitted workers to work before they clocked-in and after they clocked-out, without compensation;

b. **Unpaid Meeting Attendance**: Defendant required, encouraged, and/or permitted workers to attend work meetings, without compensation;

c. **Unlawful Deductions**: Defendant made unlawful deductions from workers' compensation or refused to pay compensation earned, based on alleged violations of company policy, often without prior notice, in order to avoid paying employees full compensation owed, including overtime compensation;

d. **Any other wage and hour FLSA violations as may be uncovered during discovery in this action.**

78. Defendant has not paid, and refuses to pay, Plaintiffs and Class B class members regular time and overtime compensation at a rate of one and one-half times their correctly calculated regular rate of pay for all hours worked in excess of 40 per week in violation of 29 U.S.C. §207(a)(1). See, e.g., 29 C.F.R. 778.315; 29 C.F.R. 785.11 – 785.13; 29 C.F.R. 785.27.

79. Defendant has not paid, and refuses to pay, Plaintiffs and Class B class members proper regular and overtime compensation by illegally deducting or reducing pay, contrary to the FLSA's mandates that straight-time compensation and overtime compensation must be fully paid for hours worked and cannot be reduced or manipulated as a consequence of working overtime. See, e.g., 29 C.F.R. 778.315; 29 C.F.R. 778.316.

80. Defendant was aware that Residential Pick-up Drivers were working off-the-clock.

81. Defendant's actions were knowing and willful, designed to deprive its employees of compensation that Defendant either knew or should have known was due.

82. Defendant's failure to pay Plaintiffs and Class B class members the overtime and/or other wages owed to them under the FLSA is deliberate and willful.

83. Defendant did not act in good faith in failing to pay Plaintiffs and Class B class members the overtime and other wages owed them under the FLSA, and did not have reasonable grounds to believe that its conduct in so doing was in accordance with the law.

84. To the extent Defendant failed to maintain, keep and preserve wage and time records as required by 29 U.S.C. § 211(c), it has deprived Plaintiffs and class members the records that would most easily assist in proving the amount of additional compensation due them.

85. Pursuant to 29 U.S.C. § 216, Plaintiffs and Class B class members are entitled to recover for unpaid straight-time compensation, unpaid overtime compensation, and any other unpaid wages, plus an equal amount as liquidated damages, and the reasonable attorneys' fees and costs of this suit.

WHEREFORE, Plaintiffs Scott Burman and Kevin Mulder demand judgment against Defendant Everkept in favor of themselves and Class B class members for the following relief:

(a) Certification pursuant to 29 U.S.C. § 216(b) and Court-approved notice to prospective opt-in class members;

(b) A declaration from this Court as to the unlawful pay practices and policies discussed herein and an order restraining Defendant from engaging in the aforementioned pay violations;

(c) A determination of a violation of the FLSA and failure to pay overtime and straight-time compensation as required by 29 U.S.C. § 207(a)(1), and an award of the value of Plaintiffs' and class members' unpaid wages and other employee benefits over the last 2 years pursuant to 29 U.S.C. § 255;

(d) A determination of a willful violation and an award of the value of Plaintiffs' and class members' unpaid wages and other employee benefits over the last 3 years pursuant to 29 U.S.C. § 255;

(e) An award of an equal amount of liquidated damages as provided under 29 U.S.C. § 216 of the FLSA;

(f) An award of attorneys' fees and costs pursuant to 29 U.S.C. § 216 of the FLSA, and/or other applicable law;

(g) An award of pre- and post-judgment interest;

(h) An award of such additional relief as this Court may deem appropriate.

COUNT III: FLSA INDIVIDUAL ACTION *AS TO KEVIN MULDER* – RETALIATORY TERMINATION

86. Plaintiff Mulder re-alleges and incorporates paragraphs 1 – 85 above, as if fully stated herein.

87. Following the adoption of Everkept's new compensation policies, Plaintiff Mulder made verbal and/or written complaints to Defendant concerning its pay practices, including certain pay deductions and unpaid time.

88. Following initial complaints made by Plaintiff Mulder, Defendant withheld compensation owing to Mr. Mulder without notice or factual support for alleged violations of company policy, in retaliation for Mr. Mulder's assertions of his legal rights.

89. Mr. Mulder was well known to be the most vocal and outspoken Everkept employee with regard to challenging Defendant's pay practices.

90. Defendant terminated Mr. Mulder from his employment with Everkept on or about December 7, 2014.

91. Complaints made by Plaintiff Mulder to Defendant regarding its compensation practices, including illegal or otherwise improper reductions in compensation or deductions in pay, constitute protected activities under the FLSA, 29 U.S.C. § 215(a)(3).

92. In response to Plaintiff Mulder asserting his legal rights under federal law, Defendant retaliated against him by altering the terms and conditions of his employment, making further improper deductions from his pay, and ultimately terminating his employment.

93. Defendant retaliated against Plaintiff Mulder, as alleged herein, in order to harass and intimidate him, and to otherwise interfere with his attempts to vindicate his rights under the FLSA.

94. A reasonable employee would have found each retaliatory act described herein to be materially adverse. Each retaliatory act alleged herein could dissuade a reasonable employee from making or supporting a complaint about wage and hour violations.

95. Upon information and belief, Defendant has used the illegal termination of Mr. Mulder as an intimidation tactic against other Everkept employees to prevent them from questioning Defendant's compensation practices by discussing the terminations openly in one or more meeting settings with current employees.

96. By engaging in the retaliatory acts alleged herein, Defendant retaliated against Plaintiff Mulder and penalized him in violation of the FLSA, 29 U.S.C. § 215(a)(3).

97. Plaintiff Mulder has suffered damages, including but not limited to lost wages, loss of accrued employment benefits, lost benefits, and emotional distress damages as a result of Defendant's retaliation.

98. Plaintiff Mulder is entitled to equitable relief, monetary relief including but not limited to compensatory and other damages, liquidated damages, reasonable attorneys' fees and costs, punitive damages, and any other relief that the Court deems appropriate. See 29 U.S.C. § 216(b).

WHEREFORE, Plaintiff Kevin Mulder demands judgment in his favor against Defendant Everkept and an award of compensatory and equitable damages commensurate with the harm that Plaintiff Mulder has suffered and the protections afforded by the FLSA.

COUNT IV: FLSA INDIVIDUAL ACTION *AS TO SCOTT BURMAN* – RETALIATORY TERMINATION

99. Plaintiff Burman re-alleges and incorporates paragraphs 1 - 98 above, as if fully stated herein.

100. Following the adoption of Everkept's new compensation policies, Plaintiff Scott Burman made verbal and/or written complaints to Defendant concerning its pay practices, including certain pay deductions and unpaid time.

101. Defendant terminated Mr. Burman from his employment with Everkept on or about January 8, 2015.

102. Complaints made by Plaintiff Burman to Defendant regarding its compensation practices, including illegal or otherwise improper reductions in compensation or deductions in pay, constitute protected activities under the FLSA, 29 U.S.C. § 215(a)(3).

103. In response to Plaintiff Burman asserting his legal rights under federal law, Defendant retaliated against him by altering the terms and conditions of his employment, making further improper deductions from his pay, and ultimately terminating his employment.

104. Defendant retaliated against Plaintiff Burman, as alleged herein, in order to harass and intimidate him, and to otherwise interfere with his attempts to vindicate his rights under the FLSA.

105. A reasonable employee would have found each retaliatory act described herein to be materially adverse. Each retaliatory act alleged herein could dissuade a reasonable employee from making or supporting a complaint about wage and hour violations.

106. Upon information and belief, Defendant has used the illegal termination of Mr. Burman as an intimidation tactic against other Everkept employees to prevent them from questioning Defendant's compensation practices by discussing the terminations openly in one or more meeting settings with current employees.

107. By engaging in the retaliatory acts alleged herein, Defendant retaliated against Plaintiff Burman and penalized him in violation of the FLSA, 29 U.S.C. § 215(a)(3).

108. Plaintiff Burman has suffered damages, including but not limited to lost wages, loss of accrued employment benefits, lost benefits, and emotional distress damages as a result of Defendant's retaliation.

109. Plaintiff Burman is entitled to equitable relief, monetary relief including but not limited to compensatory and other damages, liquidated damages, reasonable attorneys' fees and costs, punitive damages, and any other relief that the Court deems appropriate. See 29 U.S.C. § 216(b).

WHEREFORE, Plaintiff Scott Burman demand judgment in his favor against Defendant Everkept and an award of compensatory and equitable damages commensurate with the harm that Plaintiff Burman has suffered and the protections afforded by the FLSA.

COUNT V: BULLARD-PLAWECKI EMPLOYEE RIGHT TO KNOW ACT
***AS TO MULDER AND BURMAN* – DENIAL OF ACCESS TO PERSONNEL RECORD**

110. Plaintiffs Mulder and Burman re-allege and incorporate paragraphs 1 - 109 above, as if fully stated herein.

111. The Bullard-Plawecki Employee Right to Know Act, M.C.L. 423.500, *et. seq.* requires an employer to provide its employee an opportunity for the employee to review his personnel record upon request. M.C.L. 423.503.

112. The Bullard-Plawecki Employee Right to Know Act requires an employer to provide to the employee, upon request, a copy of the information or part of the information contained in an employee's personnel record. M.C.L. 423.504.

113. In or about December, 2014, Plaintiff Kevin Mulder formally requested access to review his employee records / personnel file, or for a copy of his employee records / personnel file.

114. Defendant denied Plaintiff Mulder's request and refused to allow Plaintiff Mulder to review his employee records / personnel file.

115. Defendant denied Plaintiff Mulder access to or review of his personnel records in further retaliation against Plaintiff Mulder and as an attempt to prevent Plaintiff Mulder from effectively asserting his rights under federal law.

116. Defendant's decision to deny Plaintiff Mulder access to his personnel records was a willful and knowing violation of the Bullard-Plawecki Employee Right to Know Act.

117. In or about January, 2015, Plaintiff Scott Burman formally requested access to review his employee records / personnel file, or for a copy of his employee records / personnel file.

118. Defendant denied Plaintiff Burman's request and refused to allow Plaintiff Burman to review his employee records / personnel file.

119. Defendant denied Plaintiff Burman access to or review of his personnel records in further retaliation against Plaintiff Burman and as an attempt to prevent Plaintiff Burman from effectively asserting his rights under federal law.

120. Defendant's decision to deny Plaintiff Burman access to his personnel records was a willful and knowing violation of the Bullard-Plawecki Employee Right to Know Act.

121. Pursuant to M.C.L. 423.511, Plaintiffs each are entitled to recover damages in the form of actual damages, costs, additional money damages in the amount of $200.00, and an award of reasonable attorney's fees as a result of this violation.

WHEREFORE, Plaintiffs Kevin Mulder and Scott Burman demand judgment in their favor against Defendant Everkept and for the following relief:

(a) A determination of a violation of the Bullard-Plawecki Employee Right to Know Act for depriving Plaintiffs of their rightful access to their personnel records, and an award of actual damages plus costs pursuant to M.C.L. 423.511(a).

(b) A determination of a willful and knowing violation of the Bullard-Plawecki Employee Right to Know Act for depriving Plaintiffs of their rightful access to their personnel records, and an award of $200.00 plus costs, reasonable attorney's fees, and actual damages pursuant to M.C.L. 423.511(b).

Respectfully Submitted,

HARVEY KRUSE, P.C.

By: /s/ Dale R. Burmesiter

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Dated: June 5, 2015

TRIAL BY JURY

Pursuant to FED. R. CIV. PRO. 38(b), Plaintiffs demand a trial by jury on their and class members' claims against Defendant, Everkept Inc.

Respectfully Submitted,

HARVEY KRUSE, P.C.

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Dated: June 5, 2015