

Act along with the Colorado Minimum Wage Order No. 28 are referenced below as the “Colorado Wage and Hour Law”):

PARTIES

2. All Plaintiffs are current or former employees of AllPhase Landscape Construction, Inc. (“All Phase Landscape” or “the Company”), as defined by 29 U.S.C. § 203(e), and Colorado state laws, and they bring this action on behalf of themselves and all other current and former All Phase Landscape hourly non-exempt employees within the state of Colorado who are similarly situated.

3. Individual and representative Plaintiff, Jose Lozoya, is a resident of the state of Colorado, over the age of eighteen (18) years. He has worked as an hourly non-exempt employee of the Company since approximately March of 2011 to the present.

4. Individual and representative Plaintiff, Antonio Maldonado, is a resident of the state of Colorado, over the age of eighteen (18) years. He has worked as an hourly non-exempt employee of the Company since approximately December of 2008 to the present.

5. Individual and representative Plaintiff, Mario Pena, is a resident of the state of Colorado, over the age of eighteen (18) years. He has worked as an hourly non-exempt employee of All Phase Landscape since approximately May of 2008 to the present.

6. Defendant, All Phase Landscape, is a Colorado corporation, with a principal office address of 16080 Smith Rd., Aurora, CO 80111.

7. Defendant, All Phase Landscape, does business within the state of Colorado.

8. Defendant, All Phase Landscape, operates, *inter alia*, in the landscape maintenance, enhancement, and construction businesses.

9. Defendant, Mark Fisher, is a corporate officer and member of the senior management team at the Company. He is being sued in his individual, as well as his corporate capacity.

10. Mr. Fisher regularly works at the Company's principal office location. He is involved on a regular basis with decision making about the operations of the Company, including the decisions concerning the pay practices challenged in this Complaint. He has personally stated to the Company's staff that the pay practices challenged in this Complaint are the pay practices that will be utilized by the Company.

11. As set out further below, Defendant, Mark Fisher, has personally retaliated against Plaintiff Jose Lozoya because of a wage and hour complaint made in or around December 2011 by Plaintiff Lozoya to the Colorado Department of Labor and Employment about the pay practices challenged in this Complaint.

12. Defendant, Lyle Fair, is a manager and / or the head account manager of the Company responsible for the supervision of all or part of the Plaintiff Class. He is being sued in his individual, as well as his corporate capacity.

13. Defendant Fair regularly works at the Company's principal office location. He is involved on a regular basis with decision making about the operations of the Company, including the decisions concerning the pay practices challenged in this Complaint. He has personally stated to the Company's staff that the pay practices challenged in this Complaint are the pay practices that will be utilized by the Company.

14. As set out further below, Defendant, Lyle Fair, has personally retaliated against Plaintiff Jose Lozoya because of a wage and hour complaint made in or around December 2011 by Plaintiff Lozoya to the Colorado Department of Labor and Employment about the pay practices challenged in this Complaint.

15. Defendant, Donald Troy Tinberg ("Troy Tinberg"), is the Chief Executive Officer of All Phase Landscape. He is being sued in his individual, as well as his corporate capacity.

16. Defendant Tinberg regularly works at the Company's principal office location. He is involved on a regular basis with decision making about the operations of the Company, including the decisions concerning the pay practices challenged in this Complaint.

17. On information and belief, Defendant, Troy Tinberg, personally knew about, approved of, or actually directed, the retaliation, as set out further below, against Plaintiff Jose Lozoya because of Plaintiff Lozoya's complaint made in or around December 2011 to the Colorado Department of Labor and Employment about the pay practices challenged in this Complaint.

JURISDICTION

18. Under 28 U.S.C. § 1331, this Court has original jurisdiction to hear this Complaint and to adjudicate the stated claims. This action is being brought under the FLSA. Each representative Plaintiff has signed a consent form to join this lawsuit, copies of which have been filed with the Court.

19. This Court has supplemental jurisdiction over the Colorado state law class action claims in this Complaint under 28 U.S.C. § 1367. Those state claims derive from the same common core of operative facts as the federal claims.

20. The Court has personal jurisdiction over All Phase Landscape because it is qualified to do business in Colorado with the Colorado Secretary of State, and does business within the state of Colorado.

21. The Court has personal jurisdiction over the individually and corporately named Defendants because each such Defendant resides and works within the State of Colorado at All Phase Landscape, at the Company's principal office address of 16080 Smith Rd., Aurora, CO 80111.

22. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because Defendants operate out of a facility in Aurora, Colorado, and all of the events giving rise to the Plaintiffs' claims have occurred and presently are occurring in this district.

BACKGROUND

23. This is a Collective and Class Action Complaint ("Complaint") brought to obtain monetary, declaratory, and injunctive relief on behalf of those, under the FLSA, who consent to representation, and under Rule 23, to those included in the class of individuals who are similarly situated to the representative Plaintiffs, and who are part of the below-described class under the Colorado Wage and Hour Law.

24. Plaintiffs bring this action on behalf of themselves and other similarly situated employees who consent to representation, pursuant to 29 U.S.C. § 216(b) to address Defendants' violations of the FLSA. Additionally, they bring this action on behalf of themselves and other similarly situated employees pursuant to Federal Rule of Civil Procedure, Rule 23, to address the Defendants' violations of the Colorado Wage and Hour Law.

25. This action is brought to obtain unpaid back, current and / or future wages, overtime, reimbursement for improper wage and / or pay deductions, liquidated damages, emotional distress, punitive damages, attorneys' fees, costs of litigation, pre-judgment interest, and any other remedies to which the Plaintiffs and those similarly situated may be entitled.

26. Plaintiffs and the similarly situated individuals were, or are, employees of All Phase Landscape. They travel or travelled from an All Phase Landscape facility, or from their residences, to perform landscape maintenance, enhancement or construction work at locations outside of an All Phase Landscape facility.

FACTUAL ALLEGATIONS FOR ALL CLAIMS

27. Defendants' actions, as alleged throughout this Complaint, have been willfully taken.

Failure To Pay For Straight Or Minimum Wage Time

“Windshield Time Policy”

28. Defendants required and currently require Plaintiffs and the similarly situated individuals to perform unpaid work at the beginning and end of each of their work days.

29. Until approximately the beginning of April, 2012, Defendants required the Plaintiffs and the similarly situated individuals to report to work at a set time, but did not start compensating them for their work time until at least 15 minutes subsequent to their start time at the Company's facility.

30. At the end of each work day, the Company did not compensate the Plaintiffs and the similarly situated individuals for at least 15 minutes of work time before they arrived back at the Company's facility.

31. The Company called this policy, which was uniformly applied to the Plaintiffs and the similarly situated individuals, “Windshield Time.” This “Windshield Times Policy” violated the FLSA and Colorado Wage and Hour Law by failing to compensate the Plaintiffs and the similarly situated individuals for at least thirty (30) minutes a day of work time performed by the Plaintiffs and the similarly situated individuals.

32. In or prior to December, 2011, Plaintiff, Lozoya, complained about this unlawful employment practice and policy to the Defendants and management at All Phase Landscape, but they refused to change such unlawful employment practice.

33. In or about December, 2011, Plaintiff Lozoya made a complaint about this unlawful employment practice and policy to the Colorado Department of Labor and Employment.

34. Defendants subsequently became aware of that complaint in late 2011 or early 2012.

“Subsequent Policy”

35. Thereafter, Defendants changed their “Windshield Time” policy for Plaintiffs and the similarly situated individuals who worked out of the Aurora, Colorado facility to a policy that also was not in compliance with the FLSA or the Colorado Wage and Hour Law.

36. This revised policy also failed to properly compensate the Plaintiffs and the similarly situated individuals for their work time for which they should have received compensation. This revised policy (“Subsequent Policy”) has been uniformly applied to and enforced against the Plaintiffs and the similarly situated individuals since the beginning of April, 2012, by the Defendants at the Company’s Aurora facility.

37. On information and belief, Defendants have regularly applied the Subsequent Policy to other non-exempt hourly similarly situated employees who have not been working out of the Company’s Aurora facility, but who have been ordered to appear at various worksites in Colorado during the applicable statute of limitations period.

38. Under the Subsequent Policy, Defendants stated that they would inform the Plaintiffs and the similarly situated individuals about the work location outside the Aurora facility for the following day, and the Plaintiffs and the similarly situated individuals could report for work at that work location at a set time. Alternatively, if the Plaintiffs regularly worked out of an All Phase Landscape facility, they could report to that facility at a set time and be transported to the day’s work location in Company transportation. In either case, however, the Defendants do not compensate the Plaintiffs and the similarly situated individuals until the Company transportation arrives at the work location and / or the work time begins at the day’s work site.

39. This Subsequent Policy fails to compensate the Plaintiffs for all their time worked at the beginning or the end of each work day, in violation of the FLSA and Colorado Wage and Hour Law.

“Time Restriction Policy”

40. Defendants established and have enforced another uniform compensation and pay policy whereby they refuse to pay the Plaintiffs and the similarly situated individuals for actual work performed by the Plaintiffs and the similarly situated individuals that exceeds the amount of time the Defendants decide to allocate for the particular work being performed.

41. Pursuant to this policy (“Time Restriction Policy”) Defendants have regularly mis-recorded and / or falsified the time records of the Plaintiffs and the similarly situated individuals so that the amount of time recorded and compensated to the Plaintiffs and similarly situated individuals under-records the actual number of hours worked.

42. Defendants do not maintain an accurate account of time records for the Plaintiffs and the similarly situated individuals. Instead, they have a practice and policy under which supervisory staff records a gross total of hours, and / or parts of hours, to be credited to the Plaintiffs which does not accurately reflect the actual time worked by the Plaintiffs and the similarly situated individuals.

43. Those hours are calculated to match contract bids or estimates for expected work time for a client job, rather than actual time worked by the Plaintiffs and the similarly situated individuals.

44. Defendants do not accurately record the actual number of hours worked by the Plaintiffs and the similarly situated individuals, but rather under-record them, and do not pay the Plaintiffs and the similarly situated individuals for all their time worked.

45. In this way, the Defendants fail to meet the requirements of the FLSA and 29 C.F.R. part 516, and Colorado Wage Order 28, Sec. 12, to keep proper and accurate records relating to the hours worked, the pay, and the compensation for the Plaintiffs and the similarly situated individuals.

46. For example, if All Phase Landscape has entered into a contract for services with a third party client and estimated that it will take four (4) hours of work a week for five (5) employees to provide the contracted service, but it actually takes five (5) hours during a particular week for the five (5) employees to provide the service, Defendants will falsely record four (4) hours of work for the employees, and it will compensate the five (5) employees for only four (4) hours each for having provided the service, even though each of the five (5) employees actually worked for five (5) hours of time to provide the service.

47. This Time Restriction Policy is and has been in violation of the FLSA and Colorado Wage and Hour Law. It does not compensate the Plaintiffs and similarly situated individuals for all their time worked.

“Reimbursement Policy”

48. Defendants, additionally, have adopted and enforced a uniform worker equipment and damage reimbursement policy (“Reimbursement Policy”), in violation of both the FLSA and Colorado Wage and Hour Law.

49. Under this Reimbursement Policy, Defendants unlawfully charge back to the Plaintiffs and the similarly situated individuals, and deduct from their hourly pay, charges for equipment, materials, and other property damaged during the employees’ work.

50. These deductions violate the FLSA, to the extent that the application of this Policy reduces the hourly pay to the Plaintiffs and similarly situated individuals to pay below the mandated minimum hourly wage.

51. This Policy violates the Colorado Wage and Hour Law by making improper deductions under the controlling state law.

52. Defendants’ unlawful employment policies and practices described above have resulted in their failure to pay for all the hours of straight time and / or minimum wage, worked by the Plaintiffs and similarly situated individuals.

Failure To Pay For Overtime

53. During the work weeks when the Plaintiffs and similarly situated individuals work more than 40 hours per week, Defendants' unlawful employment policies and practices described above have resulted in their failure to pay for all the overtime hours worked by the Plaintiffs and similarly situated individuals.

54. Additionally, Plaintiffs and similarly situated individuals on certain work days during the applicable statute of limitation period have worked more than twelve (12) hours during a continuous work day.

55. Defendants, however, as a matter of their regular and wrongful employment compensation policies and practices, fail to pay the Plaintiffs and similarly situated individuals at their overtime rate for all time worked over twelve (12) hours during a continuous work day.

56. The Defendants' conduct with respect to their failure to properly pay Plaintiffs and the similarly situated individuals for their overtime has been willful and has caused significant damages to the Plaintiffs and the similarly situated individuals.

Retaliation Claims

57. In or around December of 2011, Plaintiff Lozoya made a complaint to the Colorado Department of Labor and Employment about one or more of the Defendants' unlawful employment policies and / or practices described above ("DOL Complaint").

58. The fact that Plaintiff Lozoya made the DOL Complaint became known to the Defendants at the end of 2011 or the beginning of 2012. Plaintiff Lozoya was subjected to retaliation by the Defendants because he made the DOL Complaint.

59. Defendants Tinberg, Fisher and Fair were Plaintiff Lozoya's superiors and / or supervisors at All Phase Landscape.

60. In March 2012, Plaintiff Lozoya received a complimentary and positive employment evaluation and was told by supervisory staff that he would be promoted and given a raise at All Phase Landscape.

61. However, because of Plaintiff Lozoya's filing of the DOL Complaint, Defendants Tinberg, Fisher and Fair made a decision, and / or joined in a decision to delay that pay raise and a promotion that had been recommended for Plaintiff Lozoya.

62. At the end of March or the beginning of April, 2012, after having received a positive and complimentary review by his supervisor, described above, Plaintiff Lozoya was told by Defendant Fair that if he wanted to get a raise and a promotion he would have to withdraw his DOL Complaint and settle his claims for the amount the Defendants were offering him to pay for back wages, which amount was insufficient to compensate him for all hours worked.

63. Within a day or two of Defendant Fair making those comments, Defendant Fisher stated to Plaintiff Lozoya that he was not going to promote someone who was

costing the Company money, and that he (Lozoya) would have to withdraw his DOL Complaint to get the referenced raise and promotion.

64. On information and belief, Defendant Tinberg, knew of and / or approved of these retaliatory statements by Defendants Fair and Fisher.

65. Additionally, because of Plaintiff Lozoya's complaint, Defendants Tinberg, Fisher and Fair established and / or approved of the change of the above-described Windshield Policy to the above-described Subsequent Policy for All Phase Landscape hourly non-exempt employees who worked out of the Aurora facility.

66. The Subsequent Policy, as described, resulted in creating an unlawful compensation policy or practice that reduced the Plaintiffs' and similarly situated individuals' compensation more than the unlawful Windshield Policy.

67. On or about the beginning of April 2012, Defendants conducted a meeting of their hourly, non-exempt employees at the Aurora facility. In response to concerns by their employees about the Subsequent Policy, the Defendants stated, or approved that the following response by the Company be given to such employee concerns: If you do not like the new policy, you can blame Jose Lozoya.

68. Because of Defendants' retaliation, Plaintiff Lozoya has suffered humiliation, alienation from other workers, and emotional distress within the workplace, as well as lost wages.

69. Subsequent to the filing of Plaintiff Lozoya's complaint with the DOL, and the Defendants' knowledge of that complaint, the Defendants have further attempted to violate the rights of the Plaintiffs and similarly situated individuals by calling the Plaintiffs and similarly situated individuals into private meetings with one or more of them and attempting to unduly influence the Plaintiffs and similarly situated individuals to waive their rights to proper payment for all their time worked under the FLSA and the Colorado Wage and Hour Law.

The Individually Named Defendants Are Personally Liable

70. The Individually Named Defendants, Tinberg, Fisher and Fair ("Individually Named Defendants"), are individually, and jointly and severally liable to the Plaintiffs and the similarly situated individuals for any and all remedies, damages and / or other relief sought in this Complaint.

71. The Individually Named Defendants established, approved, and / or implemented the wrongful compensation policies and / or practices imposed on the Plaintiffs and the similarly situated individuals.

72. The Individually Named Defendants were the employers and / or the joint employers, along with All Phase Landscape of the Plaintiffs and the similarly situated individuals for one or more of the following reasons:

- a) Defendant Tinberg was had the ultimate control over the Company's day-to-day business operations;

- b) Defendant Tinberg had control over the nature and structure of the employment relationship between All Phase Landscape and the Plaintiffs and the similarly situated individuals;
- c) Defendants Tinberg, Fair and Fisher actively participated in the creation and / or implementation of the unlawful employment policies and / or practices that led to the violations of the FLSA and the Colorado Wage and Hour Law alleged in this Complaint.

FIRST CLAIM FOR RELIEF

Failure To Pay For All Hours Worked In Violation Of The FLSA

73. Plaintiffs and the similarly situated individuals repeat and incorporate by this reference the allegations contained in paragraphs 1-72 above.

74. By their actions alleged above, Defendants willfully, knowingly, and / or recklessly violated the FLSA provisions and corresponding controlling federal regulations.

75. Defendants willfully, knowingly, and / or recklessly engaged in a widespread pattern and practice of violating the controlling provisions of the FLSA, as set out herein, by failing to properly pay compensation for all hours worked, including but not limited to waiting time, travel time, and other work time to the Plaintiffs and those similarly situated, in accordance with the FLSA.

76. As a result of Defendants' violation of the FLSA, the Plaintiffs and those similarly situated employees have suffered damages by failing to receive wages for all hours worked in accordance with the FLSA.

77. Defendants have not made a good faith effort to comply with the FLSA with respect to the compensation of the Plaintiffs and those similarly situated employees.

78. As a result of the unlawful acts of Defendants, the Plaintiffs and those similarly situated employees have been deprived of their wages for all hours worked in an amount to be determined at trial, and are entitled to the recovery of such amounts, liquidated damages, pre- and post-judgment interest, attorneys' fees, costs, and other compensation and legal remedies, and additionally, such declaratory and injunctive or other equitable relief, as the law allows.

SECOND CLAIM FOR RELIEF

Failure To Pay Overtime Compensation In Violation Of The FLSA

79. Plaintiffs and the similarly situated individuals repeat and incorporate by this reference the allegations contained in paragraphs 1-72 above.

80. By their actions alleged above, Defendants willfully, knowingly, and / or recklessly violated the FLSA provisions and corresponding controlling federal regulations.

81. Defendants willfully and intentionally engaged in a widespread pattern and practice of violating the controlling provisions of the FLSA, as set out herein, by failing to properly pay overtime compensation to the Plaintiffs and the similarly situated individuals for all hours worked, in accordance with §§ 203, 206 and 207, *inter alia*, of the FLSA.

82. As a result of Defendants' violation of the FLSA, the Plaintiffs and those similarly situated employees have suffered damages by failing to receive wages for all overtime hours worked in accordance with §§ 203, 206 and 207, *inter alia*, of the FLSA.

83. Defendants have not made a good faith effort to comply with the FLSA with respect to its compensation of the Plaintiffs and those similarly situated employees.

84. As a result of the unlawful acts of Defendants, the Plaintiffs and those similarly situated employees have been deprived of their wages for all hours worked in an amount to be determined at trial, and are entitled to the recovery of such amounts, liquidated damages, pre- and post-judgment interest, attorneys' fees, costs, and other compensation and legal remedies, and additionally, such declaratory and injunctive or other equitable relief, as the law allows.

THIRD CLAIM FOR RELIEF

Rule 23 Class Action Colorado State Claims For Wages, Overtime and Improper Deductions

85. Plaintiffs and the similarly situated individuals repeat and incorporate by this reference the allegations contained in paragraphs 1-72 above.

86. Plaintiffs and those similarly situated bring their Third Claim for Relief as a class action pursuant to Rule 23 (a) and (b) of the Federal rules of Civil Procedure. The Class for the Plaintiffs and the similarly situated individuals is defined as all hourly non-exempt employees of All Phase Landscape in Colorado who perform or performed work not only inside the physical boundaries of the Company's Aurora, Colorado, facility, during (the applicable statutory period).

87. This action is properly maintainable as a class action under the Federal Rules of Civil Procedure, Rule 23, because the class is so numerous that joinder of all members is impracticable; there are questions of law or fact common to the class; the claims or defenses of the representative parties are typical of the claims or defenses of the class; and the representative parties will fairly and adequately protect the interests of the class.

88. This action is also properly maintainable as a class action under the Federal Rule of Civil Procedure, Rule 23(b) because questions of law or facts common to the members of the class predominate over any questions affecting only individual

members; and because a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

89. The members of the class identified above are so numerous that joinder of all members is impracticable. The exact number of the class is unknown, but may be determined from the records maintained by Defendants, and according to the Defendants, at any one time may amount to over 100 people (<http://www.allphaselandscape.net/aboutus.html> April, 17, 2012).

90. There are numerous and substantial questions of law and fact common to all of the member of the Class, including, but not limited to the following:

- a) Whether Defendants violated the minimum wage, straight time wages, overtime requirements by not paying the Plaintiffs and the similarly situated individuals for the time they spent performing off-the-clock work at the beginning and end of their work day;
- b) Whether Defendants violated the minimum wage, straight time wages, and overtime requirements by not paying the Plaintiffs and the similarly situated individuals for their travel or other work time during the work day; by failing to keep accurate records of time worked; and by making improper deductions under the controlling state law; and
- c) Whether the actions of the Defendants were willful.

91. Defendants are expected to raise common defenses to this class action, including denial that their actions violated the law.

92. The named representative Plaintiffs will fairly and adequately protect the interests of the Class and they have retained counsel experienced and competent in the litigation of complex class actions.

93. The claims of the named representative Plaintiffs are typical of the claims of the Class. The named representative Plaintiffs have the same interest and suffer from the same injury as the Class members. The named representative Plaintiffs and the Class they seek to represent are and were not paid for the time they spend and spent performing the uncompensated work before, after and during their work shifts.

94. Upon information and belief, no other member of the Class has an interest in individually controlling the prosecution of his or her claim(s), especially in light of the relatively small value of each claim and the difficulties involved in bringing individual litigation against one's employer. However, if any such class member should become known, he or she can "opt out" of this action upon receipt of the class action notice pursuant to the Federal Rules of Civil Procedure, Rule 23(c)(2)(B).

95. The Court has the resources and abilities to effectively manage this class action.

96. The named representative Plaintiffs intend to send notice to all members of the Class to the extent required by Rule 23. The names and addresses of the Class are available from the Defendants.

97. By their actions alleged above, Defendants willfully, knowingly, and / or recklessly violated the Colorado Wage and Hour Law provisions and corresponding controlling Colorado regulations.

98. Defendants willfully and intentionally engaged in a widespread pattern and practice of violating the controlling provisions of the Colorado Wage and Hour Law, and corresponding controlling Colorado regulations, as set out above, by:

- a) failing to properly pay compensation for all hours worked;
- b) failing to properly pay compensation for all overtime worked; and
- c) making improper deductions from the wages of the Plaintiffs and the similarly situated individuals.

99. As a result of Defendants' violation of the Colorado Wage and Hour Law, the Plaintiffs and those similarly situated employees have suffered damages by failing to receive wages, overtime and payment for all hours worked in accordance with the Colorado Wage and Hour Law.

100. Defendants have not made a good faith effort to comply with the Colorado Wage and Hour Law with respect to its compensation of the Plaintiffs and those similarly situated employees.

101. As a result of the unlawful acts of Defendants, the Plaintiffs and those similarly situated employees have been deprived of their wages, overtime and payments for all hours worked in an amount to be determined at trial, and are entitled to the recovery of such amounts, liquidated damages, pre- and post-judgment interest, attorneys' fees, costs, and other compensation and legal remedies, and additionally such declaratory and injunctive or other equitable relief, as the law allows.

FOURTH CLAIM FOR RELIEF

Individual Liability Of The Individually Named Defendants

Tinberg, Fisher And Fair

102. Plaintiffs and the similarly situated individuals repeat and incorporate by this reference the allegations contained in paragraphs 1-72 above.

103. The Individually Named Defendants have not made a good faith effort to comply with the FLSA and the Colorado Wage and Hour Law with respect to their compensation of the Plaintiffs and the similarly situated individuals.

104. By their actions alleged above, the Individual Named Defendants Tinberg, Fisher and Fair, intentionally, willfully, knowingly, and / or recklessly violated the

controlling provisions of the FLSA and Colorado Wage and Hour Law provisions, and corresponding controlling federal and / or Colorado regulations.

105. The Individually Named Defendants willfully and intentionally engaged in a widespread pattern and practice of violating the controlling provisions of the FLSA and the Colorado Wage and Hour Law, and corresponding controlling federal and Colorado regulations, as set out above, by:

- a) failing to properly pay compensation for all hours worked;
- b) failing to properly pay compensation for all overtime worked; and
- c) making improper deductions from the wages of the Plaintiffs and the similarly situated individuals; and
- d) retaliating against Plaintiff Lozoya for his wage and hour complaint concerning the Defendants' compensation policies and practices.

106. As a result of the Individually Named Defendants' violations of the FLSA and the Colorado Wage and Hour Law, and the corresponding regulations of the FLSA and the Colorado Wage and Hour Law, the Plaintiffs and the similarly situated employees have suffered damages by failing to receive payment for all hours worked as wages, overtime and have been the subject of improper deductions.

107. As a result of the unlawful acts of Individually Named Defendants, Plaintiffs and those similarly situated employees have been deprived of their wages,

overtime and payments for all hours worked in an amount to be determined at trial, and are entitled to the recovery of such amounts, liquidated damages, pre- and post-judgment interest, attorneys' fees, costs, and other compensation and legal remedies, and also including such declaratory and injunctive or other equitable relief, as the law allows.

FIFTH CLAIM FOR RELIEF

Retaliation Against Plaintiff Lozoya

108. Plaintiffs and the similarly situated individuals repeat and incorporate by this reference the allegations contained in paragraphs 1-72 above.

109. By their actions alleged above, Defendants intentionally, willfully, knowingly, and / or recklessly violated the controlling provisions of the FLSA and the Colorado Wage and Hour Law, along with the controlling regulations associated with such laws, prohibiting retaliation for the making of a complaint concerning wage and hour issues in the workplace.

110. Plaintiff Lozoya has lost wages because of the wrongful retaliation by the Defendants, including the individually named Defendants.

111. As a result of Defendants' violation of the anti-retaliation provisions of the FLSA and the Colorado Wage and Hour Law, and their associated regulations, Plaintiff Lozoya has suffered damages in the nature of pain and suffering and emotional distress, and is entitled to the recovery of actual, compensatory and punitive damages,

as well as pre- and post-judgment interest, attorneys' fees, costs, and such other compensation and legal remedies, and also including such declaratory and injunctive or other equitable relief, as the law allows.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, and the similarly situated individuals ("Plaintiffs"), who will opt into this action pursuant to § 216(b) of the FLSA and / or who are described within the Rule 23 definition of any class certified by the Court, pray for the following monetary relief in such amounts as will be proven at trial, along with such other relief, as set out below:

- A. Certification of a class and any necessary subclasses pursuant to § 216(b) of the FLSA, and Rule 23, to be described as all hourly non-exempt employees of All Phase Landscape in Colorado who perform or performed work not only inside the physical boundaries of the Company's Aurora, Colorado, facility, during (the applicable statutory period);
- B. Judgment against Defendants that their violations of the FLSA and the Colorado Wage and Hour Law were willful.
- C. Judgment against Defendants for an amount equal to Plaintiffs' and the similarly situated individuals' unpaid back wages, including minimum, straight and overtime rates;
- D. An amount equal to unpaid back wages as liquidated damages pursuant to the FLSA;

- E. An award of prejudgment interest (to the extent liquidated damages are not awarded);
- F. A penalty assessed against Defendants under the Colorado Wage and Hour Law for each violation of the law and for each violation of the accurate record keeping requirements of the law;
- G. All legal and equitable relief available under the FLSA and the Colorado Wage and Hour Law;
- H. All available actual damages, compensatory damages, and punitive damages;
- I. Costs and attorneys' fees, to the extent allowed by law; and
- J. Such further relief as the Court deems equitable and just.

JURY DEMAND

Plaintiffs demand that this matter be tried to a jury.

Respectfully submitted, this 18th day of April, 2012.

s/ David H. Miller

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