

District Court, Douglas County, Colorado Douglas County District Court 4000 Justice Way, Ste 209 Castle Rock, CO 80109	
HOLLY MCWILLIAMS, LETICIA LAMBERTY, JEAN CLAUDE KAUFMAN, REBECCA NESTER, Plaintiffs, v. M.J. WULLSCHLEGER & ASSOCIATES, P.C. D/B/A CHERISHED COMPANION ANIMAL CLINIC, a Colorado corporation, and DONAND WULLSCHLEGER in his individual capacity, Defendants.	COURT USE ONLY
David H. Miller, Atty Reg. 8405 Leslie Krueger-Pagett, Atty Reg. 34624 Sawaya & Miller Law Firm 1600 Ogden Street Denver, CO 80218 Telephone : (303) 839-1650 Fax : (720) 235-4380 DMiller@sawyalaw.com Lpagett@sawyalaw.com	Case Number: Division :
COMPLAINT AND JURY DEMAND	

Plaintiffs, Holly McWilliams, Leticia Lamberty, Jean Claude Kaufman, and Rebecca Nester, through undersigned counsel at the Sawaya & Miller Law Firm, makes the following allegations in support of this Complaint:

INTRODUCTION

1. Plaintiffs bring this action pursuant to the federal Fair Labor Standards Act of 1938, 29 U.S.C. § 201, *et seq.*, (“FLSA”), the Colorado State Wage and Hour Act, C.R.S. §§ 8-4-101, *et. seq.*, the Colorado Minimum Wage Order 28, 7 CCR 1103-1 (collectively “CWA”) and common law.

PARTIES

2. Holly McWilliams is a resident of Douglas County in the state of Colorado and is over the age of eighteen (18) years.

3. Plaintiffs Holly McWilliams is a former employee of Cherished Companion Animal Clinic, as defined by Colorado State laws and 29 U.S.C. § 203(e).

4. Holly McWilliams worked as an hourly non-exempt employee of Cherished Companion Animal Clinic from approximately December, 2005 until August, 2012.

5. Leticia Lamberty is a resident of Douglas County in the state of Colorado and is over the age of eighteen (18) years.

6. Leticia Lamberty is a former employee of Cherished Companion Animal Clinic, as defined by Colorado State laws and 29 U.S.C. § 203(e).

7. Leticia Lamberty worked as an hourly non-exempt employee of Cherished Companion Animal Clinic from approximately from January, 2010 until December, 2012.

8. Jean Claude Kaufman is a resident of Arapahoe County in the state of Colorado and is over the age of eighteen (18) years.

9. Jean Claude Kaufman is a former employee of Cherished Companion Animal Clinic, as defined by Colorado State laws and 29 U.S.C. § 203(e).

10. Jean Claude Kaufman worked as an hourly non-exempt employee of Cherished Companion Animal Clinic from approximately from October, 2010 until November 2012.
11. Rebecca Nester is a resident of Douglas County in the state of Colorado and is over the age of eighteen (18) years.
12. Rebecca Nester is a former employee of Cherished Companion Animal Clinic, as defined by Colorado State laws and 29 U.S.C. § 203(e).
13. Rebecca Nester worked as an hourly non-exempt employee of Cherished Companion Animal Clinic from approximately from September, 2011 until September, 2012.
14. Defendant, M.J. Wullschleger & Associates, P.C. d/b/a as Cherished Companion Animal Clinic (“Cherished Companion” or “Clinic”) is a Colorado corporation with a principal office address of 281 Metzler Dr, Castle Rock, CO 80108.
15. Defendant Cherished Companion does business within the state of Colorado.
16. Defendant, Cherished Companion operates, *inter alia*, in the small animal veterinarian business.
17. Defendant Donald Wullshleger is being sued in his individual capacity.
18. Mr. Wullshleger regularly works at the Clinic’s principal office location. He is a manager of Cherished Companion who is involved on a regular basis with decision making about the operations of the Clinic, including the decisions concerning the pay practices challenged in this Complaint.

JURISDICTION AND VENUE

19. The Court is vested with jurisdiction over the defendants because the defendant CHERISHED COMPANION is a Colorado corporation doing business within the state of Colorado, and whose headquarters are within Douglas County.

20. Defendant Donald Wullschleger is a resident of the state of Colorado who conducts the business of the corporate defendant, and took the acts complained of herein, within Douglas County.

21. At all times relevant to this action, Defendants have located their business in Douglas County and conducted business here. Accordingly, venue is proper under Colo. Rev. Stat. § 8-1-111 (2012), and Colorado Rules of Civil Procedure 98 (c).

22. This action is being brought under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §201, *et seq.* and the Colorado Wage Act C.R.S. §§ 8-4-1-1, *et. seq.* and Colorado Minimum Wage Order 28, 7 CCR 1103-1 (collectively “CWA”) and common law.

23. Defendant Cherished Companion Animal Clinic is subject to the provisions of the CWA in that it provides both retail and service as well as health and medical services pursuant to 7 CCR 1103-1, § 1.

BACKGROUND AND FACTUAL ALLEGATIONS
FOR ALL CLAIMS

24. Cherished Companion is a small animal clinic providing veterinarian services primarily to cats and dogs in Colorado.

25. All of the Plaintiffs worked as veterinarian technicians.

26. All of the Plaintiffs were non-exempt hourly employees whose pay was determined by the number of hours they worked.

27. The Plaintiffs were often not paid for hours worked over forty (40) hours in one week pursuant the federal Fair Labor Standards Act (“FLSA”), 29 U.S.C. 201, *et seq.* As non-exempt employees the Plaintiffs were always entitled to overtime pay for any and all work done in excess of 40 hours during a work week.

28. All Plaintiffs were not given 10 minute breaks for every four hours of work performed.
29. Employees who remained on the premises were not allowed a duty free meal break at least two (2) times a week of 60 minutes duration.
30. The Plaintiffs were required to attend one hour “lunch and learn” presentations approximately six or more times a year during their unpaid lunch hour. They were not compensated for those hours worked.
31. Mr. Wullschleger created a study guide called the “red book”. The Plaintiffs were required to study and take tests from the “red book”. Every employee was required to take the tests in order to be considered for promotion. The tests were taken at the work site and lasted for approximately one to one-half hours. Study for the tests took two to four hours per test. Plaintiffs were not compensated for the hours taking the test on site, nor for the off-the-clock hours spent studying for the test.
32. Cherished Companions sold plaster “paw prints” to customers. Plaintiffs McWilliams and Nester spent off-the-clock hours painting “paw prints” to be sold to customers, at the instruction and / or request of Defendant Wullschleger. They were not compensated for the work or the materials they purchased to paint the paw prints. Ms. McWilliams spent approximately forty (40) hours and Ms. Nester spent approximately twenty (20) hours painting paw prints.
33. Plaintiff Lamberty spent approximately 115 hours off-the-clock developing the Cherished Companion website. She was not paid for that time worked.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Violation of the Fair Labor Standards Act)

34. Plaintiffs reassert and incorporate all of the allegations set forth above.

35. Defendants violated the FLSA and denied Plaintiffs McWilliams, and Lamberty, overtime wages by failing to pay them for the overtime rate for hours worked. During the 80 hour pay period Plaintiffs McWilliams, and Lamberty, would work 36 hours one week and 44 hours the next week. During the weeks that Plaintiffs McWilliams, and Lamberty, worked 44 hours during the week, they were paid straight time for the additional four hours per week, not time and one-half. They are owed an additional half-time pay for all hour worked over 40 hours per week.

36. Defendants violated the FLSA and denied Plaintiffs Kaufman and Nester overtime wages by failing to pay them for their overtime hours worked. Plaintiffs Kaufman and Nester were not always paid for overtime hours over forty (40) hours per week.

37. At all relevant times Plaintiffs were entitled to the rights, benefits and protections provided under the FLSA because they were individual employees who were employed by an enterprise engaged in commerce or in the production of goods for commerce within the meaning of 29 U.S.C. §§206 and 207.

38. Defendants are subject to the FLSA because it is an enterprise engaged in commerce or in the production of goods for commerce within the meaning of 29 U.S.C. §§ 203(r) and (s)(1). Defendants are engaged in the interstate conduct of business, and do and have done more than \$500,000 in business in each of the years at issue in this lawsuit.

39. Defendants' failure to pay for overtime hours recorded and worked but not paid was willful within the meaning of the FLSA, and accordingly, Defendants are liable to Plaintiffs for liquidated damages in an equal amount to the overtime owed, plus Plaintiff's attorney's fees, costs and expenses of this litigation.

SECOND CLAIM FOR RELIEF

(Violation of the Colorado Wage and Hour Law)

40. All Plaintiffs, by this reference, incorporate the allegations set out in paragraphs 1-42, as if they were set out fully here.

41. All Plaintiffs' work activities for Cherished Companion was non-exempt work under the Colorado Wage and Hour Law; and for any and all time worked by all Plaintiffs, all Plaintiffs are entitled to pay at their straight time rates for work up to 40 hours of work per work week, and at time-and-a-half for all of work performed over 40 hours per work week.
42. Cherished Companion has not paid all Plaintiffs for all of their time worked under the Colorado Wage and Hour Law because it does not pay Plaintiffs for the of off-the-clock instructional time during work hours.
43. Cherished Companion has not paid Plaintiffs for all of their time worked under the Colorado Wage and Hour Law because it does not provide Plaintiffs with 10 minute duty-free paid rest breaks for each four hours of work Plaintiffs performed.
44. Under applicable Colorado Wage and Hour Law, all Plaintiffs were entitled to a paid 10 minute duty-free rest period for each four hour period worked during their shift.
45. Under applicable Colorado Wage and Hour Law, all Plaintiffs were entitled to a duty free thirty (30) minute meal break after performing five (5) hours of work. Cherished Companion regularly failed to provide such required meal break(s) during at least two (2) work shifts per work week and automatically deducted one (1) hour of pay from the plaintiffs, even when they worked through their meal break.
46. Cherished Companion is subject to the wage and overtime payment requirements of the Colorado Wage and Hour Law because it is a corporation that employs persons in Colorado. Colo. Rev. Stat. §8-4-101(5); 7 CCR 1103-1, §1.
47. Cherished Companion had policies and practices that resulted in the Plaintiffs not being paid the agreed upon rate of pay and overtime for all time worked including work activities performed during their meal break, prior to or after their work shift, or on their day off, and for state law mandated rest breaks, which were uniformly denied to Plaintiffs.
48. These policies and practices were uniformly applied to all Plaintiffs.

49. By implementing and enforcing these policies and practices, Cherished Companion failed to pay the Plaintiffs for all hours worked at the agreed upon rate and overtime rate as required by the Colorado Wage Act, Colo. Rev. Stat. §§8-4-101, *et seq.* and 8-6-115, Colorado Minimum Wage Orders, 7 CCR 1103-1.
50. These policies and practices also resulted in Cherished Companion failing to fully and accurately record the hours worked by the Plaintiffs in violation of Colo. Rev. Stat. §8-4-103(4).
51. Cherished Companion willfully violated its legal obligations to pay for all straight and overtime hours worked by the Plaintiffs because it knew and/or recklessly disregarded that the Plaintiffs were not paid at the regular rate of pay for work performed, or the overtime rate for work performed over 40 hours a week; and that it neither granted nor paid for a 10 minute rest break for the Plaintiffs for every 4 hours of work.
52. Because Cherished Companion's actions were willful, Plaintiffs' claims for relief are subject to a three-year statute of limitations, pursuant to Colo. Rev. Stat. §8-4-122.
53. Cherished Companion failed to act in good faith or with reasonable grounds to believe that its acts or omissions were not a violation of the Colorado Wage and Hour Law, and as a result, Plaintiffs are entitled to penalties under the law.
54. As a result of Cherished Companion's violation of the Colorado Wage and Hour Law, all Plaintiffs have suffered damages by failing to receive appropriate wages for all hours worked, in an amount to be determined at trial, and are entitled to the recovery of such amounts, liquidated damages, penalties, pre- and post-judgment interest, their reasonable attorneys' fees, costs, and such other compensation and legal remedies, and additionally, such declaratory and injunctive or other equitable relief, as the law allows.

REQUESTED RELIEF

WHEREFORE, Plaintiffs pray for judgment against the Defendants and for the following relief:

- A. An order finding defendants liable to plaintiffs for unlawfully failing to pay overtime pursuant to section 216(b) of the FLSA in the amount described above and to be proven at trial.
- B. An order finding defendants liable to plaintiffs for unlawfully failing to pay for their regular work time, as well as their overtime, worked under the CWA, as described above.
- C. An order finding that the Defendants' violations of the FLSA and the Colorado Wage and Hour Law were willful;
- D. An order awarding plaintiffs liquidated damages under the FLSA;
- E. 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;
- F. An order awarding plaintiffs pre- and post-judgment interest at the highest rates allowed by law;
- G. An order providing plaintiffs all legal and equitable relief available under the FLSA, the Colorado Wage and Hour Law and other applicable state laws;
- H. An order awarding plaintiffs their attorneys' fees, along with his costs and expenses of suit;
- I. An order awarding plaintiffs all available actual damages, compensatory, liquidated and punitive damages as alleged above and as may be proven at trial and as permitted by law;

J. An order granting such other and further relief as the Court deems fair and equitable;

K. That the Court award such other and further relief as it deems necessary and proper.

VII. JURY DEMAND

Plaintiff requests that this matter be tried to a jury.

Respectfully submitted this 5th day of December, 2013

s/ David H. Miller

David H. Miller

Leslie Krueger-Pagett

Attorneys for Plaintiffs