

District Court, City and County of Denver, Colorado 1437 Bannock Street Denver, CO 80202	DATE FILED: September 21, 2018 10:39 AM FILING ID: 88169694B0C2F CASE NUMBER: 2018CV33524
<p>TAMMY LEYVAS, Individually, and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>SAGE DENTISTRY II, PLLC, A Colorado company,</p> <p style="text-align: center;">Defendant.</p>	COURT USE ONLY
David H. Miller, Atty Reg. 8405 Adam M. Harrison, Atty Reg. 50553 THE SAWAYA & MILLER LAW FIRM 1600 Ogden Street Denver, Colorado 80218 Telephone: (303) 839-1650 Facsimile : (720) 235-4380 DMiller@sawayalaw.com AHarrison@sawayalaw.com	Case No: Division:
INDIVIDUAL, COLLECTIVE, AND CLASS ACTION COMPLAINT	

COMES NOW the Plaintiff, Tammy Leyvas (“Plaintiff”), through the undersigned counsel from the Sawaya & Miller Law Firm, and as her Individual, Collective, and Class Action Complaint against Sage Dentistry II, PLLC (“Defendant”), states as follows:

I. NATURE OF ACTION

1. Plaintiff alleges that Defendant violated her rights, and the rights of its other nonexempt hourly employees (“Class Members”) under the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. (“FLSA”) by failing to pay them overtime compensation of one and one-half times their regular rates of pay for all hours worked in excess of 40 per week. Defendant had a policy/ practice of paying overtime only for hours worked in excess of 80 per two-week pay period.

2. Defendant also violated Article XVIII § 15 of the Colorado Constitution, the Colorado Wage Act, C.R.S. § 8-4-101 et seq., and the applicable Colorado Minimum Wage Orders, 7 C.C.R. 1103 (collectively, “Colorado Wage and Hour Law”) by: (a) failing to pay Plaintiff and Class Members overtime compensation for all hours worked in excess of 40 per week or 12 per day; (b) failing to compensate Plaintiff and Class Members for time spent traveling between Defendant’s offices during the work day; and (c) failing to provide Plaintiff and Class Members with paid rest periods mandated by Colorado Wage and Hour Law.

3. Plaintiff brings her FLSA claims individually and as a collective action under 29 U.S.C. § 216(b). Plaintiff brings her Colorado Wage and Hour Law claims as a class action pursuant to Rule 23 of the Colorado Rules of Civil Procedure.

4. Plaintiff brings this action to obtain equitable relief and monetary damages for herself and the Class consisting of all nonexempt hourly employees of Defendant during the three years prior to the filing of this Complaint. She seeks a declaratory judgment, unpaid wages, unpaid overtime compensation, statutory penalties, liquidated damages, interest, a reasonable service award, reasonable attorney’s fees and the costs of this action.

II. PARTIES

5. Plaintiff is a Colorado resident who is over the age of 18. She is represented by the Sawaya & Miller Law Firm, whose address is 1600 Ogden Street, Denver, CO 80218.

6. Defendant is a Colorado company whose registered agent resides at 2750 W. 29th Ave, Denver, CO 80211.

III. JURISDICTION AND VENUE

7. This Court has original jurisdiction over this civil action pursuant to Article 6 § 9(1) of the Colorado Constitution and C.R.S. § 13-1-124 because Plaintiff’s claims arise out of Defendant’s transaction of business within this State.

8. Venue is proper under C.R.C.P. 98(c) because Defendant resides in Denver.

IV. FACTS

9. Defendant is a Colorado company providing dental health services to members of the public. The equipment, instruments, and tools Defendant utilizes, as well as the products it sells, are items that move in interstate commerce.

10. On information and belief, Defendant’s gross business income exceeds \$500,000.00 per year.

11. Plaintiff worked for Defendant as a Dental Assistant from March 2018 to July 2018. Her rate of pay was \$27.00 per hour.

12. Throughout her employment and during every week thereof, Plaintiff and the other nonexempt, hourly employees of Defendant (“Class Members”) worked more than 40 hours per week for Defendant.
13. Plaintiff worked at least 48 hours during each and every week of her employment.
14. Plaintiff and Class Members were also required to work more than 12 hours per day for Defendant.
15. Plaintiff, for example, worked an average of 13.5 hours per day on six days of each two-week pay period from March 2018 to July 2018.
16. Defendant did not pay Plaintiff one and one-half times her regular rate of pay for all of her overtime. Instead, Defendant paid Plaintiff and Class Members only their regular rates of pay for hours worked in excess of 40 that did not exceed 80 per pay period.
17. Plaintiff noticed this issue in June 2018 and approached the Regional Manager, Maya Turner, to ask why she had not been paid all of her overtime. Ms. Turner responded that employees only receive overtime compensation for hours they worked in excess of 80 during each two-week pay period.
18. Having worked at least 8 hours of overtime that were not properly compensated during each of at least 16 weeks, Plaintiff is owed at least \$1,600.00 in unpaid overtime compensation.
19. During each week, Plaintiff and Class Members were required to travel between Defendant’s offices during their workdays. They were required to clock out at one office before traveling to the other, however, so that they were not compensated for their travel time.
20. Plaintiff spent at least one hour per week performing such travel, for which she is owed her full hourly rate. In total, Defendant owes Plaintiff at least \$432.00 for unpaid travel time.
21. At no time during Plaintiff’s employment did Defendant provide Plaintiff or Class Members with paid rest breaks. Nor were Plaintiff and Class Members able to take lunch breaks on a regular basis.
22. Because Defendant did not provide paid rest periods to its employees, Plaintiff and Class Members effectively provided Defendant with unpaid labor equivalent to the hours they should have been provided with breaks. Plaintiff is owed at least \$1,188.00 for such labor.
23. Plaintiff estimates that between 9 and 13 Class Members worked for Defendant during the four months she was employed.
24. On August 3, 2018, Plaintiff sent a demand to Defendant seeking immediate payment of unpaid wages and overtime compensation for herself and the other Class Members. Defendant did not respond to Plaintiff’s demand.

COLLECTIVE ALLEGATIONS

25. Plaintiff brings Count I of this Complaint individually and as a collective action under Section 216(b) of the FLSA, 29 U.S.C. § 216(b). Plaintiff and the Class Members are “similarly situated” under the FLSA because they were all subject to Defendant’s illegal policy/ practice of paying employees their regular rates of pay for all hours worked in excess of 40 per week that did not exceed 80 in a two-week pay period.

CLASS ALLEGATIONS

26. Plaintiff brings Counts II, III and IV as a class action pursuant to Rule 23 of the Colorado Rules of Civil Procedure on behalf of all members of the following Class:

All nonexempt hourly employees of Defendant: (a) who were paid their regular rates of pay for hours worked over 40 per week or 12 per day; (b) who were required to travel between Defendant’s offices during the workday while off the clock; and/or (c) who were not provided with legally-mandated breaks at any time during the three years preceding this action.

27. This action is properly brought as a class action under Rule 23 because the proposed Class satisfies the Rule’s requirements for numerosity, commonality, typicality, and adequacy:

Numerosity

28. The Class is so numerous that joinder of all members is impracticable. During Plaintiff’s employment, Defendant employed between 9 and 13 nonexempt hourly workers. As such, Defendant likely employed dozens of Class Members during the three years that are relevant to this action.

Commonality

29. There are questions of law and fact that are common to the Class, which questions predominate over any questions affecting only individual members. These questions of law and fact include, but are not limited to:

- a. Whether Defendant had a policy or practice of paying Class Members their regular rates of pay for hours worked over 40 per week or 12 per day that did not exceed 80 per two-week pay period;
- b. Whether Defendant had a policy or practice of requiring Class Members to travel between Defendant’s offices without compensation;
- c. Whether Defendant failed to provide Class Members with paid rest periods;

- d. Whether Defendant's policies or practices violated Colorado Wage and Hour Law; and
- e. Whether, and to what extent, Class Members were harmed by Defendant's alleged violations of Colorado Wage and Hour Law.

Typicality

30. The claims of Plaintiff are typical of the claims and defenses of the Class, and the defenses Defendant will raise to such claims are likely to be the same as to all Class Members. Like all Class Members, Plaintiff worked more than 40 hours per week and 12 hours per day, traveled between Defendant's offices without compensation, and worked without breaks throughout her employment. Defendant is likely to assert similar defenses and legal theories in response to Plaintiff's claims as those of all other Class Members.

Adequacy

31. Plaintiff will fairly and adequately protect the interests of the Class. She has retained the Sawaya & Miller Law Firm, counsel that is experienced in class action litigation and wage and hour law. Plaintiff and her counsel are free from any conflicts of interest that might prevent them from pursuing this action on behalf of the Class. Moreover, Plaintiff and her counsel have adequate resources to assure that the interests of the Class will not be harmed.

Superiority of Class Action

32. Additionally, the prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for the party opposing the Class, or adjudications with respect to individual members of the Class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interest.

33. Defendant has acted or refused to act on grounds generally applicable to the Class by failing to pay overtime compensation, requiring Class Members to travel without compensation, and preventing all Class Members from taking paid rest breaks. As such, final injunctive relief or corresponding declaratory relief with respect to the Class as a whole would be appropriate.

34. On information and belief, no member of the Class has expressed any interest in controlling the prosecution of a separate action and no litigation concerning the subject matter of this action has been commenced by any other member of the Class.

COUNT I:

**FAILURE TO PAY OVERTIME COMPENSATION IN
VIOLATION OF THE FAIR LABOR STANDARDS ACT**

29 U.S.C. §§ 207, 216

35. Plaintiff incorporates the allegations in each of the foregoing paragraphs as though fully set forth herein.

36. At all times relevant to this Complaint, Plaintiff and Class Members were “employees” protected by the overtime provisions of the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. (“FLSA”). 29 U.S.C. § 203(e).

37. At all times relevant to this Complaint, Defendant was an “employer” and an “enterprise engaged in commerce,” covered by the FLSA. 29 U.S.C. § 203(d), (s). All of the dental equipment and tools used and products sold by Defendant are items that moved in interstate commerce.

38. Under the FLSA, Defendant was required to pay Plaintiff and Class Members overtime compensation of one and one-half times their regular rates of pay for all hours worked in excess of 40 per week. 29 U.S.C. § 207.

39. During each and every week of Plaintiff’s employment, Plaintiff and Class Members worked more than 40 hours per week.

40. Defendant failed to pay Plaintiff and Class Members overtime compensation for the hours they worked in excess of 40 per week based on its policy of paying overtime compensation only for hours worked in excess of 80 per two-week pay period.

41. At all times relevant to this Complaint, Defendant was aware of the requirements of the FLSA, and nevertheless failed to properly pay overtime compensation to Plaintiff and Class Members. Defendant’s violations of the FLSA were therefore willful.

COUNT II:

**FAILURE TO PAY OVERTIME COMPENSATION IN
VIOLATION OF COLORADO WAGE AND HOUR LAW**

COLO. CONST. ART. XVIII § 15

C.R.S. §8-4-101 et seq.

7 C.C.R. 1103-1:4

42. Plaintiff incorporates the allegations in each of the foregoing paragraphs as though fully set forth herein.

43. At all times relevant hereto, Plaintiff and Class Members were “employees” protected by Colorado Wage and Hour Law. C.R.S. § 8-4-101(5); 7 C.C.R. § 1103-1:2.

44. At all times relevant hereto, Defendant was an “employer,” covered by Colorado Wage and Hour Law. C.R.S. § 8-4-101(6); 7 C.C.R. 1103-1:2.

45. Under Colorado Wage and Hour Law, Defendant was required to pay Plaintiff and Class Members one and one-half times their regular rates of pay for all of the hours they worked in excess of 40 per week or 12 per day. 7 C.C.R. 1103-1:4.

46. During each and every week of Plaintiff’s employment, Plaintiff worked and Class Members worked more than 40 hours per week. They also worked more than 12 hours per day on one more days of each pay period. Defendant nevertheless failed to pay them overtime compensation for the hours they worked in excess of 40 per week or 12 per day that did not exceed 80 per pay period.

47. On August 3, 2018, Plaintiff sent a demand to Defendant pursuant to C.R.S. § 8-4-109 seeking immediate payment of the overtime compensation due to her and the Class Members. Defendant failed to respond or to pay Plaintiff’s demand.

48. Because Defendant was aware of the requirements of Colorado Wage and Hour Law, and nevertheless failed to pay Plaintiff and Class Members overtime compensation, Defendant’s violations of Colorado Wage and Hour Law were willful.

COUNT III:

**FAILURE TO PAY WAGES DUE IN
VIOLATION OF COLORADO WAGE AND HOUR LAW**

**COLO. CONST. ART. XVIII § 15
C.R.S. §8-4-101 et seq.
7 C.C.R. 1103-1:4**

49. Plaintiff incorporates the allegations in each of the foregoing paragraphs as though fully set forth herein.

50. Under Colorado Wage and Hour Law, Defendant was required to pay Plaintiff and Class Members their hourly rates for all of the hours they worked on regular pay periods not to exceed 30 days. C.R.S. § 8-4-103.

51. Throughout Plaintiff’s employment, Defendant caused Plaintiff and Class Members to travel between its offices while they were off the clock.

52. Defendant did not pay Plaintiff and Class Members for their travel time.

53. On August 3, 2018, Plaintiff sent a demand to Defendant pursuant to C.R.S. § 8-4-109 seeking immediate payment of the wages due to her and the Class Members. Defendant failed to respond or to pay Plaintiff's demand.

54. Because Defendant was aware of the requirements of Colorado Wage and Hour Law, and nevertheless failed to pay Plaintiff and Class Members overtime compensation, Defendant's violations of Colorado Wage and Hour Law were willful.

COUNT IV:

**FAILURE TO PROVIDE PAID REST BREAKS IN
VIOLATION OF COLORADO WAGE AND HOUR LAW**

**COLO. CONST. ART. XVIII § 15
C.R.S. §8-4-101 et seq.
7 C.C.R. 1103-1:4**

55. Plaintiff incorporates the allegations in each of the foregoing paragraphs as though fully set forth herein.

56. Under Colorado Wage and Hour Law, Defendant was required to provide Plaintiff and Class Members with paid 10-minute rest periods for every four hours, or major fractions thereof, that they worked. 7 C.C.R. 1103-1:8.

57. Defendant did not provide Plaintiff or Class Members with paid 10-minute rest periods. As such, Plaintiff and Class Members effectively provided Defendant with additional labor without additional compensation during each shift.

58. Defendant's violations of Colorado Wage and Hour Law were willful.

V. PRAYER FOR RELIEF

WHEREFORE, the Plaintiff respectfully requests that the Court enter judgment against the Defendant and in addition:

- A. Conditionally certify the claims in Count I as a collective action under 29 U.S.C. § 216(b) and authorize notice of this action to be sent to all nonexempt hourly employees who worked for Defendant within three years of the filing of this action;
- B. At the earliest possible time, certify the claims in Counts II, III, and IV as a class action under C.R.C.P. 23 for a Class consisting of all nonexempt hourly employees of Defendant: (a) who were paid their regular rates of pay for hours worked over 40 per week or 12 per day; (b) who were required to travel between Defendant's offices during the workday while off the clock; and/or (c) who were not provided with legally-mandated breaks during the three years preceding this action;

- C. Enter an order declaring Defendant's policies and practices described herein to be illegal;
- D. Award Plaintiff and Class Members:
- i. All unpaid wages;
 - ii. All unpaid overtime compensation;
 - iii. Reimbursement for rest periods not provided;
 - iv. Statutory penalties under C.R.S. § 8-4-109(1)(b);
 - v. Statutory penalties under C.R.S. § 8-4-109(c) for willful violations of Colorado Wage and Hour Law;
 - vi. Liquidated damages under 29 U.S.C. § 216(b);
 - vii. Pre-judgment interest on all back wages and back pay;
 - viii. Post-judgment interest from the date of the judgment until payment is made;
- E. Allow Plaintiff to obtain a reasonable service award;
- F. Order Defendant to compensate Plaintiff for her reasonable attorney's fees and the costs of this action, and
- G. Award any other and further relief that may be equitable and just.

Respectfully submitted,

/s/ Adam M. Harrison

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