

District Court, Arapahoe County, Colorado Arapahoe County Justice Center 7325 S. Potomac Street Centennial, CO. 80112	DATE FILED: July 31, 2013 3:47 PM FILING ID: E91214669302E
<p>PETER SCIFO, Plaintiff,</p> <p>v.</p> <p>Denver Drywall Company, a Colorado corporation, doing business as Denver Drywall Company; and          Bruce Miller in his individual and corporate capacity, Gregg Miller in his individual and corporate capacity          Defendants.</p>	<p>COURT USE ONLY</p>
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 <a href="mailto:DMiller@sawyalaw.com">DMiller@sawyalaw.com</a> <a href="mailto:Lpagett@sawyalaw.com">Lpagett@sawyalaw.com</a>	Case Number:  Division :
<b>COMPLAINT AND JURY DEMAND</b>	

Plaintiff, Peter Scifo, through undersigned counsel at the Sawaya & Miller Law Firm, makes the following allegations in support of this Complaint:

**INTRODUCTION**

1. Plaintiff brings this action pursuant to the federal Fair Labor Standards Act of 1938, 29 U.S.C. § 201, *et seq.*, (“FLSA”), and state breach of contract law claims.

## PARTIES

2. Peter Scifo is a former employee of Denver Drywall Company, as defined by Colorado State laws and 29 U.S.C. § 203(e).

3. Mr. Scifo is a resident of Arapahoe County in the state of Colorado and is over the age of eighteen (18) years.

4. He worked as an hourly non-exempt employee of Denver Drywall Company from approximately September 17, 2012 to April 18, 2013.

5. Defendant, Denver Drywall Company (“DDC or “the Company”) is a Colorado corporation with a principal office address of 3251 S. Zuni St., Englewood, CO 80110-1965.

6. Defendant Denver Drywall Company does business within the state of Colorado.

7. Defendant, Denver Drywall Company operates, *inter alia*, in the commercial drywall contracting business.

8. Defendant Bruce Miller is a corporate officer and the president of the Company. He is being sued in his individual capacity as a “joint employer” in the FLSA-related claims in this action.

9. Defendant, Gregg Miller, is a corporate officer and vice president of the Company. He is being sued in his individual capacity, as a “joint employer” in the FLSA-related claims in this action.

10. Mr. Bruce Miller regularly works at the Company’s principal office location. He is a senior officer or director of the Company who was 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.

11. Mr. Gregg Miller regularly works at the Company's principal office location. He is a senior officer or director of the Company who was 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.

### **JURISDICTION AND VENUE**

12. The Court is vested with jurisdiction over the defendants because the defendant DDC is a Colorado corporation doing business within the state of Colorado, and whose headquarters are within Arapahoe County.

13. Defendant Bruce Miller is a resident of the state of Colorado who conducts the business of the corporate defendant, and took the acts complained of herein, within Arapahoe County.

14. Defendant Gregg Miller is a resident of the state of Colorado who conducts the business of the corporate defendant, and took the acts complained of herein, within Arapahoe County.

15. At all times relevant to this action, Defendants have located their business in Arapahoe 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).

16. This action is being brought under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §201, *et seq.* and Colorado contract and common law. A private party may bring an action for damages for violations of the FLSA. *See*, 29 U.S.C. § 201, *et seq.*

### **GENERAL ALLEGATIONS**

17. Denver Drywall Company is a commercial drywall contractor providing commercial drywall services, including interior framing, drop ceilings, insulation and finishing, and painting to businesses in Colorado.

18. Peter Scifo was hired by DDC as a paint estimator to develop their paint and wall covering division.
19. Mr. Scifo began his employment with DDC on or about September 17, 2012.
20. Mr. Scifo's was an hourly employee whose pay was determined by the number of hours he worked. If he did not come into work on a particular day his pay would be docked by the hours missed.
21. Mr. Scifo was never paid for any hours worked over forty (40) hour in one week.
22. Mr. Scifo's duties never included the management of more than 2 full time employees, with the ability to make hiring and/or firing decisions. They did not include the individual authority to make discretionary administrative decisions of substance directly affecting DDC's business operations or practices. He had no advanced or professional degree relating to his job, and he never made over \$100,000 in wages per year.
23. As a non-exempt employee Mr. Scifo was always entitled to overtime pay for any and all work done in excess of 40 hours during a work week.
24. Mr. Scifo's regular rate of pay was \$36.05 per hour. Despite working a total of 139 hours overtime during the months that Mr. Scifo was employed at DDC, he was not paid for those hours at the time and a half rate of \$54.07 per overtime hour.
25. From the time Mr. Scifo started employment, under the law he was always a non-exempt employee, pursuant the federal Fair Labor Standards Act ("FLSA"), 29 U.S.C. 201, *et seq.*
26. Under DDC's written employment policies that applied as contractual obligations of the Company to Mr. Scifo, Mr. Scifo was entitled to five (5) paid days of vacation pay after six (6) months of employment.

27. Mr. Scifo did not take a vacation within the year he was employed at the Company, and did not receive vacation pay for five (5) days of pay.

28. Under DDC's written employment policies that applied as contractual obligations of the Company to Mr. Scifo, Mr. Scifo was entitled to cell phone reimbursement of \$50 a month during his employment.

29. Mr. Scifo did not receive reimbursement for the use of his personal cell phone for the month of February, March, and April, 2013.

30. Under DDC's written employment policies that applied as contractual obligations of the Company to Mr. Scifo, Mr. Scifo was entitled to be provided automobile expenses/mileage of \$120.00.

31. Mr. Scifo did not receive reimbursement for the expenses/mileage of his personal automobile for the week of April 15-19, 2013.

## **CLAIMS FOR RELIEF**

### **FIRST CLAIM FOR RELIEF**

(Violation of the Fair Labor Standards Act)

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

33. Defendants violated the FLSA and denied plaintiff overtime wages by failing to pay him for his overtime hours worked. When during the beginning period of employment, Mr. Scifo worked less than 40 hours during a work week, according to the Defendants, the Defendants docked Mr. Scifo his pay for the hours under 40 hours during the week, and treated him as an hourly employee who was paid by the hour for up to 40 hours of work per week

34. At all relevant times Mr. Scifo was entitled to the rights, benefits and protections provided under the FLSA because he was an individual employee who was 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.

35. 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.

36. Mr. Scifo's regular rate of pay was \$36.05 per hour, or \$54.07 per overtime hour. Mr. Scifo submitted his weekly hours of work to DDC which amounts were accepted by the DDC. Mr. Scifo frequently worked over 40 hours per week until his employment was terminated by Defendants, but was not paid for any of his 139 overtime hours recorded. Mr. Scifo is owed the following amount for overtime worked but not paid by the Defendants: \$7,515.75 for 139 overtime hours.

37. 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 Mr. Scifo for liquidated damages in an equal amount to the overtime owed of an additional \$7,515.75, plus Plaintiff's attorney's fees, costs and expenses of this litigation.

## **SECOND CLAIM FOR RELIEF**

(Breach of Contract)

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

39. Under DDC's own written employment policies and state contract law, Mr. Scifo is additionally owed for 5 days of vacation pay, for a total of \$1,442.30.

40. Under DDC's written employment policies and state contract law, Mr. Scifo is owed for cell phone reimbursement of \$150 for the months of February, March, and April, 2013.

41. Under DDC's written employment policies and state contract law, Mr. Scifo is owed for automobile expenses/mileage of \$120.00 for the week of April 15-19, 2013.

**THIRD CLAIM FOR RELIEF**

(Breach of Contract)

42. Plaintiffs reassert and incorporate all of the allegations set forth above.
43. DDC agreed to employ Mr. Scifo and Mr. Scifo agreed to work for DDC, from approximately September 17, 2012 through September 16, 2013, under an Employment Agreement and Business Plan approved and entered into by Defendant(s) and Plaintiff.
44. This one (1) year employment agreement was acknowledged frequently between the parties.
45. There was consideration for such agreement.
46. Mr. Scifo has a claim under state employment and contract law for the balance due on his full one (1) year term of promised employment.
47. DDC terminated Mr. Scifo's employment on April 18, 2013 when they suspended the development of the Paint and Special Projects Division.
48. DDC agreed to employ and pay Mr. Scifo for 12 months in order to develop the Paint and Special Projects Division.
49. Mr. Scifo had 21 weeks of employment remaining, and DDC is liable to Plaintiff for the amount owed for wages for such remaining weeks in the amount at or around \$30, 288.51

**REQUESTED RELIEF**

WHEREFORE, Plaintiff prays for judgment against the Defendants and for the following relief:

- A. An order finding defendants liable to plaintiff 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 that the Defendants' violations of the FLSA was willful;
- C. An order awarding plaintiff liquidated damages under the FLSA;
- D. An order awarding plaintiff pre- and post-judgment interest at the highest rates allowed by law;
- E. An order finding that the defendants breached their express and/or implied contract with Plaintiff to reimburse him for cell phone, travel and vacation pay, and to pay him for his lost future wages, as stated above and as may be proven at trial;
- F. An order providing plaintiff all legal and equitable relief available under the FLSA and other applicable state laws;
- G. An order awarding plaintiff his attorneys' fees, along with his costs and expenses of suit;
- H. 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;
- I. An order granting such other and further relief as the Court deems fair and equitable;
- J. 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 31<sup>st</sup> day of July, 2013



s/ David H. Miller  
David H. Miller  
Leslie Krueger-Pagett

Attorneys for Plaintiffs