

DISTRICT COURT, DENVER COUNTY, COLORADO Court Address: 1437 Bannock Street, Rm 256, Denver, CO, 80202	DATE FILED: November 7, 2014 8:56 AM CASE NUMBER: 2013CV35412 <p style="text-align: center;">⚠ COURT USE ONLY ⚠</p>
Plaintiff(s) MARTIN ZARAGOZA v. Defendant(s) SWIFTS BREAKFAST HOUSE INC et al.	
Order: Amended Order of Judgment	

The motion/proposed order attached hereto: SO ORDERED.

Issue Date: 11/7/2014



ANDREW PATRICK MCCALLIN
 District Court Judge

**DISTRICT COURT, CITY AND COUNTY OF
DENVER, COLORADO**

Court Address:

1437 Bannock Street, Div. 215
Denver, Colorado 80202

**MARTIN ZARAGOZA,
Plaintiff,**

v.

**SWIFTS BREAKFAST HOUSE, Inc., a Colorado
corporation,
Defendant.**

COURT USE ONLY

David H. Miller, Atty Reg. No. 8405
Sawaya & Miller Law Firm
1600 Ogden Street
Denver, CO 80210
Telephone : (303) 839-1650
Fax : (720) 235-4380
DMiller@sawayalaw.com
Attorney for Plaintiff

Ronald A. Podboy, Atty Reg. No. 15634
675 Kalamath Street
Denver, CO 80204
Telephone : (303) 893-8931
Fax : (303) 893-6474
rpodboy@yahoo.com
Attorney for Defendant

Case Number: 13CV35412

Courtroom: 215

UNOPPOSED AMENDED ORDER OF JUDGMENT

THE COURT, upon decision of the jury on October 8, 2014, and consideration of the issues set out below, hereby enters judgment pursuant to C.R.C.P., Rule 58(a), as follows:

The jury returned its verdict in favor of the Plaintiff, Martin Zaragoza, and against Defendant, Swifts Breakfast House, Inc., on Plaintiff's wage claim under the Colorado Wage Act, C.R.S. §§ 8-4-101, *et seq.*, and applicable Colorado Minimum Wage Orders, 7 CCR 1103-1, in the amount of \$20,965.

Additionally, by way of special verdict form previously entered herein (and adopted by this reference), the jury determined that Plaintiff Zaragoza was not paid his last paycheck in a timely manner; that the Plaintiff had made a timely demand for payment of back overtime wages or compensation within 60 days of the termination of his employment with Defendant, Swifts Breakfast House, Inc.; and that the conduct of the Defendant during all applicable periods of time was "willful," as referenced within the Colorado Wage Act, C.R.S. §§ 8-4-101, *et seq.*

The following facts were among those stipulated to by the parties in the Trial Management Order (filed September 30, 2014, and adopted by this reference), and during the course of the trial, and as such constitute judicial admissions:

1. The court has personal jurisdiction over the Defendant;
2. Defendant, Swifts Breakfast House, Inc. ("Swifts") does business within Denver, Colorado;
3. Plaintiff was employed by Swifts;
4. Plaintiff is over the age of 18;
5. Plaintiff worked as an hourly employee of Swifts;
6. Swifts is a Colorado corporation with a principal office address of 930 Santa Fe Drive, Denver, CO 80204;
7. Swifts does business within the state of Colorado;
8. Swifts operates in the food and beverage business;
9. Vasilios A. Gatsiopoulous is the President of Swifts and manages the Swifts restaurant, including the decision concerning the pay practices challenged in this case;
10. Swifts is open to the public serving breakfast and lunch seven (7) days a week between the hours of 7:00 a.m. to 3:00 p.m.;
11. Swift's President, Vasilious A. Gatsiopoulous was responsible for devising and implementing employment policies regarding the payment of wages and overtime to Martin Zaragoza at the restaurant;
12. Martin Zaragoza was paid by Swifts bimonthly, on or about the 5th and 20th of the month for pay periods ending the 1st and 15th of the month;
13. Martin Zaragoza worked at Swifts more than 40 hours a week.

The following facts were established by the evidence admitted at trial and the record herein, and relate to the damages calculations set forth herein:

The complaint in this case was filed December 11, 2013;

The answer was filed January 20, 2014;

Plaintiff Martin Zaragoza worked for the Defendant Swifts from approximately August 2008 until on or about July 9, 2013, when his employment terminated;

On or around August 8, 2013, by certified letter sent to Defendant Swifts, Mr. Zaragoza made a written demand for \$21,411.56 in overtime pay and unpaid wages (Exhibit 1) ;

On or around October 3, 2013, more than fourteen (14) days after having received Mr. Zaragoza's written demand, Defendant Swifts tendered payment of Mr. Zaragoza of \$608.00 gross wages (Exhibit 3);

No further tender of overtime or unpaid wages was made by Defendant Swifts;

The trial of the matter was conducted before a jury of six (6) commencing October 6, 2014, and ending in a verdict for the Plaintiff Martin Zaragoza announced in open court on October 8, 2014;

The party for whom judgment is granted is Plaintiff Martin Zaragoza;

The party against whom judgment is granted is Defendant Swifts Breakfast House, Inc.;

Venue in this court has been considered and is proper;

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

A. Failure to timely pay last paycheck: \$760.00

Both under C.R.S. § 8-4-109 (1)(a) and (1)(b), Defendant Swifts failed to timely pay Plaintiff Martin Zaragoza's final paycheck. Mr. Zaragoza made a timely and proper demand for such payment pursuant to C.R.S. § 8-4-109 (3)(a). Pursuant to the jury's finding in the special verdict form, Defendant Swifts did not, within fourteen (14) days thereafter, make a legal tender of any monies due Mr. Zaragoza under C.R.S. § 8-4-109 (3)(a.5). While under C.R.S. § 8-4-109 (3)(b), Defendant Swifts paid Mr. Zaragoza \$608.00 on or around October 3, 2013, Defendant Swifts is liable and judgment hereby enters in favor of Plaintiff Martin Zaragoza and against Defendant Swifts for a penalty calculated under C.R.S. § 8-4-109 (b) of 125% of \$608 in the amount of \$760.00.

B. Unpaid overtime and back wages: \$20,965.00

The jury reached a special verdict in favor of Plaintiff Martin Zaragoza and against Defendant Swifts Breakfast House, Inc. in the above amount for unpaid overtime and back wages. Accordingly, Defendant Swifts is liable and judgment will hereby enter in favor of Plaintiff Martin Zaragoza and against Defendant Swifts in the amount of \$20,965.00.

C. Penalty payments for which Defendant Swifts is liable: \$24,161.25

Pursuant to the jury's special verdict form finding that the behavior of Defendant Swifts was "willful" within the meaning of the C.R.S. § 8-4-101, *et seq.*, the Court, pursuant to C.R.S. § 8-4-109 (3)(b) and (c), calculates Plaintiff's penalty damages award at: 125% of the first \$7,500 of the damage award of \$20,965.00, for a subtotal of penalty damages of \$9,375.00; plus 50% of the remaining \$13,465.00 (\$20,965 - \$7,500), for a subtotal of \$6,732.50, and for a combined subtotal of penalty damages amounting to \$16,107.50 (\$9,375 + \$6,732.50). Additionally, based on the jury's finding that Defendant Swifts' behavior was "willful," Defendant Swifts is liable to Plaintiff Zaragoza for an additional 50% penalty applied to the penalty damages of \$16,107.50, which amounts to an additional \$8,053.75; for a total of all penalty payments of \$24,161.25. Accordingly, Swifts is liable and judgment hereby enters in favor of Plaintiff Martin Zaragoza and against Defendant Swifts for a total penalty calculated under C.R.S. § 8-4-109 (b) and (c) of \$24,161.25.

D. Prejudgment Interest: \$1,677.20 (plus \$4.60 from July 9, 2014 until and including November 5, 2014, in the amount of \$575.00) .

Pursuant to the terms of C.R.S. § 5-12-101 and -102, under a Colorado Wage Act claim and the facts herein, an employee is entitled to an award of prejudgment interest calculated from the effective date of his termination from the company until the date of final judgment. *Remote Switch Systems, Inc. v. Delangis*, 126 P.3d 269, 274 (Colo. Ct. App. 2005). The amount of prejudgment interest owed to Plaintiff Martin Zaragoza by Defendant Swifts is 8% per year under the above referenced statute and case law. The Court calculates the prejudgment interest as commencing July 9, 2013, on the back overtime and wages due in the amount of \$20,965.00, for an annual prejudgment interest amount of \$1,677.20; plus all such daily interest that accumulates from July 9, 2014, until November 5, 2014, at the rate of \$4.60 per day (\$1,677.20 divided by 365 days). Accordingly, Swifts is liable and judgment hereby enters in favor of Plaintiff Martin Zaragoza and against Defendant Swifts for a total prejudgment interest of \$1,677.20, plus such daily interest as will accumulate from July 9, 2014, until and including November 5, 2014, at the daily rate of \$4.60, which equals \$575.00.

WHEREFORE IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

Judgment hereby enters in favor of Plaintiff Martin Zaragoza and against Defendant Swifts Breakfast House, Inc. in the amount of:

\$ 760.00 Failure to timely pay last paycheck;
\$ 20,965.00 Unpaid overtime and back wages;
\$ 24,161.25 Penalty payments;
\$ 1,677.20 Prejudgment interest from July 9, 2013 – July 8, 2014

\$ 47,563.45 subtotal; plus such prejudgment interest as accrues from July 9, 2014 until the date of this Order of Judgment, set out below at the rate of \$4.60 per day, which equals:

\$ 575.00 125 days at \$4.60 per day from July 9, 2014, to and including November 5, 2014.

\$ 48,138.45 Equals the amount of the total judgment herein.

The amount set out above, \$48,138.45, constitutes a final judgment against Defendant Swifts Breakfast House, Inc., and in favor of Plaintiff Martin Zaragoza who is determined to be a prevailing party under the applicable law.

Additionally, Plaintiff Martin Zaragoza as a prevailing party is entitled to an award of his reasonable costs and attorneys fees under C.R.S. § 8-4-110, and pursuant to C.R.C.P. Rules 54(d) and 121 §1-22(1) and (2), and C.R.S. § 13-16-104.

The Court will retain jurisdiction of this matter to permit the Plaintiff the opportunity to supplement this judgment by the filing of a motion for costs and attorney's fees within 21 days of the date of entry of the Unopposed Amended Order of Judgment herein.

DATED this ____ day of _____, 2014.

BY THE COURT:

Andrew P. McCallin
District Court Judge