

District Court, Denver County, Colorado 1437 Bannock Street Denver, Colorado 80202	DATE FILED: January 22, 2015 6:02 PM FILING ID: 505D7DDA1BE3A CASE NUMBER: 2015CV30176
GUILLERMO ARTEAGA-GOMEZ, Individually and on behalf of all others similarly situated, Plaintiffs, v. PRESTIGE CORPORATE RELOCATION, L.L.C., a Colorado corporation, and L. RONNELL RICHMOND, in his individual and corporate capacities, Defendants.	
David H. Miller, Atty Reg. 8405 SAWAYA & MILLER LAW FIRM 1600 Ogden Street Denver, CO 80218 Telephone : (303) 839-1650 Fax : (720) 235-4380 DMiller@sawayalaw.com	Case Number: 2015CV30176 Courtroom 209 :
FIRST AMENDED CLASS ACTION AND COLLECTIVE COMPLAINT AND JURY DEMAND	

1. Plaintiff Guillermo Arteaga-Gomez, on behalf of himself and those similarly situated, through undersigned counsel at the Sawaya & Miller Law Firm, makes the following allegations in support of this individual and class action and Collective complaint, brought pursuant to the Colorado Wage Act, C.R.S. §§ 8-4-101, *et seq.*; applicable Colorado Minimum Wage Orders, 7 C.C.R. § 1103-1; the Fair Labor Standards Act (“FLSA”) 29 U.S.C. § 201 *et seq.*; and accompanying federal regulations.

(The Colorado Wage act along with the Colorado Minimum Wage Orders are referenced below as the “Colorado Wage and Hour Law.”)

PARTIES

2. Individual and representative Plaintiff Guillermo Arteaga-Gomez is a former employee of Prestige Corporate Relocation, L.L.C. (“Prestige Relocation” or “the Company”), as defined by 29 U.S.C. § 203(e) and Colorado state laws. Plaintiff was employed as a laborer who drove a truck and physically moved furniture, equipment, boxes, and other personal property on behalf of the Company. He brings this action on behalf of himself and all other current and former laborers at the Company who are or were hourly, non-exempt employees of Prestige Relocation within the state of Colorado (“laborers” or “Plaintiff(s)”).

3. Individual and representative Plaintiff Guillermo Arteaga-Gomez is a resident of the state of Colorado over the age of eighteen (18) years. He worked as an hourly, non-exempt employee of Prestige Relocation from approximately January 2008 until his termination on or about October 6, 2014.

4. Defendant Prestige Relocation is a resident Colorado corporation with a principal office address of 221 Broadway, Denver, Colorado 80203.

5. Defendant Prestige Relocation does business within the state of Colorado.

6. Defendant Prestige Relocation operates, *inter alia*, as an office relocation service. Plaintiff moved personal property within the state of Colorado while employed by the Company.

7. Defendant L. Ronnell Richmond is the President and Principal of Prestige Relocation. He worked at Prestige Relocation’s offices at 221 Broadway and 77 Lipan Street in Denver, Colorado. Mr. Richmond personally decided and implemented the

wrongful compensation policies and practices of Defendants that Plaintiffs allege herein, and having engaged in such behavior, Defendant Richmond has made himself jointly and severally liable for all damages requested by Plaintiffs, both individually and with respect to their Class and Collective Action claims set forth in this First Amended Complaint. He is being sued in his individual as well as his corporate capacity.¹

JURISDICTION

8. Prestige Relocation's corporate offices are located at 221 Broadway, city and county of Denver, state of Colorado.

9. The events that give rise to the claims stated in this Complaint occurred within Denver County and other locations in the state of Colorado. Accordingly, venue is proper under Colo. Rev. Stat. § 8-1-111 (2012), and Colorado Rules of Civil Procedure 98(c).

10. Prestige Relocation is a covered industry with respect to minimum wage and overtime claims under all applicable Colorado Minimum Wage Orders, 7 CCR § 1103-1(1) and the provisions of the FLSA and applicable regulations.

11. This Court has jurisdiction to consider claims for money damages and equitable relief, including individual and class action claims, based on alleged violations of the Colorado Wage and Hour Law and the FLSA.

¹ Plaintiff brings both its Colorado and federal claims against Mr. Richmond. Plaintiff understands that *Leonard v. McMorris*, 63 P.3d 323, 327 (Colo.2003), ruled against such individual liability under Colorado Wage and Hour Laws but is prepared to make a non-frivolous argument to the Court about why the Court should reconsider that part of the *Leonard* decision.

BACKGROUND

12. This is an individual and Class Action Complaint brought to obtain monetary, declaratory, and injunctive relief under Colorado Rule of Civil Procedure, Rule 23, and as an FLSA individual and Collective Action, to those included in the class of individuals who are similarly situated to the representative Plaintiff and who are part of the class, described below, under Colorado Wage and Hour Law and the FLSA and applicable federal regulations.

13. This action is brought to obtain unpaid back, current, and/or future wages, overtime, liquidated damages, punitive damages, attorneys' fees, cost of litigation, pre- and post-judgment interest, tax reimbursement, and any other remedies to which the Plaintiff and those similarly situated may be entitled.

FACTUAL ALLEGATIONS FOR ALL CLAIMS

14. Prestige Relocation provides moving services to a variety of corporate clients, many of whom, upon information and belief, pay different rates for moving or moving expenses. Upon information and belief, laborers' pay rate and pay are determined by the Company based on the contract rate between Prestige Relocation and the corporate client. That rate ranges from approximately \$5 per hour to more than \$20 per hour.

15. Laborers for Prestige Relocation work variable hours, at times only working a few hours a day and at times working twenty or more hours in one continuous shift. They may work seven or more days in a row or only work three or four days a week. At times they work for only one client in a shift, and at other times they do several jobs for several different clients in one shift.

16. Plaintiff's earnings statements describe his earnings as "commission" and unlawfully fail to state the number of hours worked or the rate per hour. Additionally, Plaintiff's earnings statements from 2012 and earlier fail to state the beginning of the pay period, all as required under Colorado law.

17. Plaintiff and others similarly situated move furniture, equipment, boxes, and other personal property within the state of Colorado.

18. Plaintiff and others similarly situated regularly worked more than 12 hours per day and more than 40 hours per work week, but were not paid overtime for working more than twelve hours a day or working more than forty hours a week, as required under Colorado law.

19. Plaintiff and others similarly situated were at times not paid the applicable Colorado state minimum wage.

20. Plaintiff and others similarly situated were at times not paid one and one-half times the applicable Colorado state minimum wage for overtime requirements.

21. Because Plaintiff and others similarly situated were not sales employees, they are not exempt under Colorado wage laws and are entitled to overtime pay for any and all work done in excess of twelve hours in one day and additionally are entitled to overtime pay for any and all work done in excess of forty hours during a work week.

22. Though Plaintiff's rate of pay and hours varied, at times he worked more than twelve hours a day and at times he worked more than forty hours during a work week. During those periods he was not paid the one-and-one-half-time rate for overtime work required under Colorado Wage and Hour Law.

23. Though the FLSA allows non-sales employees to be treated as commissioned employees, accompanying regulations still requires overtime payments for such employees, including Plaintiff and those similarly situated.

24. Plaintiff and those similarly situated were not paid overtime at half their regular rate for hours worked in excess of forty hours a week, as required by federal regulations.

25. As a pattern, policy, and practice, Defendants willfully failed to properly pay laborers for their overtime and failed to pay laborers minimum wage. That pattern, policy, and practice has caused damage in the form of lost pay to the Company's laborers.

FIRST CLAIM FOR RELIEF

Violation of the Colorado Wage and Hour Law

(Individual Claim)

26. Plaintiff and the similarly situated laborers repeat and incorporate by this reference the allegations contained in paragraphs 1-25 above.

27. This claim arises from Prestige Relocation's willful violation of the Colorado Wage Act, C.R.S. § 8-4-101, *et seq.*, as implemented by the applicable Colorado Minimum Wage Order, 7 C.C.R. § 1103-1 ("Colorado Wage and Hour Law"), for failure to pay Plaintiff Arteaga-Gomez overtime pay and the minimum wage to which Plaintiff is entitled.

28. Pursuant to Colo. Rev. Stat. § 8-4-101(5) and 7 C.C.R. § 1103-1, Prestige Relocation is a corporation that employs persons in Colorado and is subject to the wage and overtime pay requirements.

29. At all times relevant, Plaintiff Arteaga-Gomez's work activities were non-exempt work under the Colorado Wage and Hour Law.

30. Plaintiff is entitled to be paid a minimum wage as set out under the applicable Colorado Minimum Wage Order for hours worked up to twelve hours a day and forty hours a week. That rate has changed over the last three (3) years pursuant to the terms of the then applicable Minimum Wage Order.

31. Plaintiff is entitled to one and one-half time for all work performed over twelve hours a day and forty hours a week pursuant to the Colorado Wage and Hour Law.

32. Prestige Relocation frequently documented that Plaintiff was paid for more than twelve hours a day and/or more than forty hours a week, but he was only paid at the straight time rate.

33. Plaintiff was paid a straight-time rate for all hours documented, regardless of whether they exceeded twelve hours a day or forty hours during a work week. By failing to pay an overtime rate for all hours worked over twelve hours a day or forty hours a week, Prestige Relocation violated the Colorado Wage and Hour Law.

34. Prestige Relocation at times documented that Plaintiff was paid less than the applicable minimum wage. By failing to pay the minimum wage, the Company violated the Colorado Wage and Hour Law.

35. Plaintiff's earnings statements from 2012 and earlier fail to state the beginning of the pay period, in violation of Colo. Rev. Stat. § 8-4-103(4)(d).

36. Prestige Relocation willfully violated its legal obligations to pay at least minimum wage and a time-and-a-half rate for overtime hours worked by Plaintiff. The

Company knew and/or recklessly disregarded overtime pay and minimum wage requirements.

37. Because Prestige Relocation's actions were willful, Plaintiff's claims for relief are subject to a three-year statute of limitations, pursuant to Colo. Rev. Stat. § 8-4-122.

38. As a result of Prestige Relocation's violation of the Colorado Wage and Hour Law, Plaintiff suffered damages by failing to receive appropriate wages for all hours worked in an amount to be determined at trial and is entitled to the recovery of such amounts, liquidated damages, pre- and post-judgment interest, tax reimbursement, 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

Rule 23 Class Action Colorado State Claims for Minimum Wage and Overtime Pay

39. Plaintiff and the similarly situated laborers repeat and incorporate by this reference the allegations contained in paragraphs 1-38 above.

40. Plaintiff and those similarly situated bring their Second Claim for Relief as a class action pursuant to Rule 23(a) and (b) of the Colorado Rules of Civil Procedure. The class for Plaintiff and similarly situated individuals is defined as all current and former movers who were non-exempt employees of Prestige Relocation within the state of Colorado during the applicable statutory period.

41. This action is properly maintainable as a class action under the Colorado 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 party are typical of the claims or defenses of the class; and the representative party will fairly and adequately protect the interests of the class.

42. This action is also properly maintainable as a class action under Colorado Rule of Civil Procedure, Rule 23, 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.

43. 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 Defendant Prestige Relocation. Though the class is continually changing and expanding with turnover at the Company, the class is estimated to comprise at least thirty or more individuals.

44. There are numerous and substantial questions of law and fact common to all members of the class, including, but not limited to, the following:

- a. Whether Defendants violated the minimum wage requirements in paying Plaintiff and similarly situated laborers less than the applicable minimum wage, as required by Colorado law;
- b. Whether Defendants violated overtime pay requirements by not paying Plaintiff and similarly situated laborers time-and-a-half for hours worked over twelve hours a day and forty hours a week, as required by Colorado law; and
- c. Whether the actions of Defendants were willful.

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

46. The named representative Plaintiff will fairly and adequately protect the interests of the class, and he has retained counsel experienced and competent in litigating complex class actions.

47. The claims of the named representative Plaintiff are typical of the claims of the class. The named representative Plaintiff has the same interests and suffers from the same injury as the class members. The named representative Plaintiff and the class he seeks to represent have not been paid overtime for which they earned an overtime pay rate and have not been paid at least the minimum wage.

48. 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 Colorado Rules of Civil Procedure, Rule 23(c)(2).

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

50. The named representative Plaintiff intends 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.

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

52. Defendant willfully and intentionally engaged in a widespread pattern, policy, 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 laborers at least the minimum wage for all hours worked;
- b. Failing to properly pay laborers for all overtime worked; and
- c. Failing to properly document the beginning and end of each pay period.

53. As a result of Defendants' violations of the Colorado Wage and Hour Law, the Plaintiff and similarly situated laborers have suffered damages by failing to receive minimum wage and overtime payments in accordance with the Colorado Wage and Hour Law.

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

55. As a result of the unlawful acts of Defendants, laborers have been deprived of a lawful wage and overtime 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, tax reimbursement, 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

Violation of the FLSA and Accompanying Regulations

(Individual Claim)

56. Plaintiff and the similarly situated laborers repeat and incorporate by this reference the allegations contained in paragraphs 1-55 above.

57. This claim arises from Prestige Relocation's willful violation of the FLSA and accompanying regulation 29 C.F.R. § 778.118 for failure to pay Plaintiff Arteaga-Gomez overtime time to which Plaintiff is entitled.

58. At all times relevant, Plaintiff Arteaga-Gomez was paid on commission under the FLSA.

59. As a commissioned employee, Plaintiff is entitled to be paid overtime as set out under 29 C.F.R § 778.118 for hours worked in excess of forty hours a week at a rate of one-half his regular rate of pay for the week for each hour in excess of forty hours per week.

60. Prestige Relocation frequently documented that Plaintiff was paid for more than forty hours a week, but he was only paid at the straight time rate.

61. Plaintiff was paid a straight-time rate for all hours documented, regardless of whether they exceeded forty hours during a work week. By failing to pay an overtime rate for all hours worked over forty hours a week, Prestige Relocation violated the FLSA and controlling federal regulations.

62. Prestige Relocation at times documented that Plaintiff was paid less than the applicable minimum wage. By failing to pay the minimum wage, the Company violated the FLSA.

63. Prestige Relocation willfully violated its legal obligations to pay at least minimum wage and overtime pay for hours exceeding forty per week worked by Plaintiff. The Company knew and/or recklessly disregarded overtime pay and minimum wage requirements under the FLSA and applicable federal regulations.

64. Because Prestige Relocation's actions were willful, Plaintiff's claims for relief are subject to a three-year state of limitations pursuant to the FLSA.

65. As a result of Prestige Relocation's violation of the FLSA and accompanying regulations, Plaintiff suffered damages by failing to receive appropriate wages for all hours worked in an amount to be determined at trial and is entitled to the recovery of such amounts, liquidated damages, pre- and post-judgment interest, tax reimbursement, 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

Violation of the FLSA and Accompanying Regulations

(Collective Claim)

66. Plaintiff and those similarly situated repeat and incorporate by this reference the allegations contained in paragraphs 1-65 above.

67. By their actions alleged above, Defendants willfully, knowingly, and/or reckless violated the FLSA and applicable federal regulations.

68. Defendants willfully, knowingly, and/or recklessly engaged in a widespread pattern, policy, and practice of violating the controlling provisions of the FLSA, as set out herein, by failing to properly pay overtime and minimum wage in accordance with, *inter alia*, §§ 206 and 207 of the FLSA and 29 C.F.R. § 778.118.

69. As a result of Defendants' violation of the FLSA, Plaintiff and those similarly situated have suffered damages by failing to receive overtime pay and minimum wage.

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

71. As a result of the unlawful acts of the Defendants, Plaintiff and those similarly situated have been deprived of legal wages for 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.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the similarly situated laborers who opt into this action pursuant to § 216(b) of the FLSA and/or are described within the Rule 23 definition of any class certified by the Court, pray for the following relief against Defendant Prestige Corporate Relocation and Defendant L. Ronnell Richmond, in his corporate and individual capacities, jointly and severally:

- A. Certification of a class and any necessary subclasses pursuant to § 216(b) of the FLSA and Rule 23, to be described as all laborers who are or were employees of Prestige Relocation in Colorado and perform or performed moving work for the Company during the applicable statutory period;
- B. Judgment against Defendants that their violations of the Colorado Wage and Hour Law were willful;
- C. Judgment against Defendants that their violations of the FLSA were willful;
- D. Judgment against Defendants as prayed for above for an amount equal to Plaintiff and the similarly situated laborers' unpaid back wages, including minimum wage and overtime rates;
- E. Penalty and liquidated damages pursuant to the Colorado Wage and Hour Law;
- F. Penalty and liquidated damages pursuant to the FLSA;
- G. An award of pre- and post-judgment interest (to the extent liquidated damages are not awarded);
- H. All legal and equitable relief available under the Colorado Wage and Hour Law and the FLSA;
- I. All available actual damages, compensatory damages, including but not limited to back pay and tax reimbursement and liquidated, penalty, and/or punitive damages;
- J. Reasonable costs and attorneys' fees, to the extent allowed by law; and
- K. 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 22nd day of January, 2015.

/s/ David H. Miller

David H. Miller

SAWAYA & MILLER LAW FIRM

1600 Ogden Street

Denver, CO 80218

Telephone: 303-839-1650

Fax: 720-235-4380

Email: DMiller@sawayalaw.com

Attorneys for Plaintiffs

Plaintiff's address:

Guillermo Arteaga-Gomez

