

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. _____

Sharon Mueller,

Plaintiff,

v.

Current, USA, Inc.
a Minnesota corporation,

Defendant.

COMPLAINT

COMES NOW the Plaintiff, Sharon Mueller, by and through counsel, CORNISH & DELL'OLIO, and for her Complaint against the Defendant, states as follows:

Introduction

1. This is an action for wages brought pursuant to the federal Fair Labor Standards Act (29 U.S.C. § 201 *et. seq.*) as well as the Colorado Wage Act Section 8-4-109 COLO. REV. STAT.

Parties

2. Sharon Mueller is a natural person who resides in El Paso County, Colorado. At all times relevant to the Complaint, she was employed by Current, USA, Inc., as a customer service support lead.

3. Current, USA, Inc., is a Minnesota corporation authorized to do business

in the State of Colorado.

4. At all times relevant to the Complaint the Defendant corporation was an enterprise engaged in commerce within the meaning of the federal Fair Labor Standards Act (29 U.S.C. § 203 (s)(1)) with gross sales of more than \$500,000.00 per year.

Venue

5. All acts giving rise to the cause of action occurred in the State of Colorado.

First Cause of Action (for violations of the federal Fair Labor Standards Act 29 U.S.C. § 207)

6. Paragraphs 1 through 5 are incorporated herein by reference.
7. Sharon Mueller was at all times relevant to the Complaint a nonexempt employee under the federal Fair Labor Standards Act (29 U.S.C. § 201 *et. seq.*).
8. Sharon Mueller was employed by Defendant Current, USA, Inc., and its predecessor corporation for 22 years.
9. Ms. Mueller was a salaried employee prior to 2006 and her work as a customer service support lead required more than 40 hours of work per week.
10. In 2006 Current, USA, Inc., changed Ms. Mueller's employment from salaried to hourly, nonexempt employment.
11. Ms. Mueller's job duties did not change when her job status was changed from salaried to hourly, nonexempt.
12. Ms. Mueller continued to work more than 40 hours a week with the

knowledge of her manager.

13. Current, USA, Inc., by policy, only allowed employees to submit time records for payment for work in excess of 40 hours a week during weeks when overtime was “authorized” by corporate headquarters.

14. Current, USA, Inc. managed its budget by informing midlevel managers that overtime by nonexempt supervisors like Ms. Mueller was “not authorized.”

15. Current, USA, Inc. also managed its budget by reducing the number of hours nonexempt supervisors like Ms. Mueller were allowed to submit to fewer than 40 in some weeks.

16. Current, USA, Inc. did not reduce the amount of work nonexempt supervisors like Ms. Mueller were required to perform during those weeks when they were authorized to submit 40 or fewer hours for payment.

17. Ms. Mueller was required to work in excess of 40 hours per week in order to successfully perform her job duties.

18. Ms. Mueller submitted time records understating the number of hours she worked, with the knowledge of her manager, during those weeks when overtime had not been “authorized” by corporate headquarters.

19. Ms. Mueller’s manager knew that she was working more than 40 hours per week and knew that she was required to work more than 40 hours per week to succeed in her job.

20. Ms. Mueller’s manager didn’t discipline her for working off the clock and

submitting false time records because the amount of work assigned to Ms. Mueller couldn't be completed in 40 hours per week.

21. During Sharon Mueller's employment with Current, USA, Inc. she regularly worked in excess of forty hours in a single work week.

22. The Defendant corporation failed to pay the Plaintiff for all hours worked in excess of forty in a single work week at one-and-one-half times her regular hourly rate of pay.

23. The Defendant corporation's failure to pay Sharon Mueller one and one half times her regular rate of pay for all hours worked in excess of forty hours in a single work week was in violation of the federal Fair Labor Standards Act (29 U.S.C. § 207).

24. The Defendant corporation's violations of the federal Fair Labor Standards Act were willful.

**Second Cause of Action
(Violation of the Colorado Wage Act)**

25. Paragraphs 1 through 24 are incorporated herein.

26. Plaintiff's employment was terminated by volition of the Defendant employer.

27. At the time Plaintiff's employment was terminated Defendant owed Plaintiff wages for overtime worked.

28. Plaintiff's wages or compensation for labor or service earned, vested, determinable, and unpaid at the time of her discharge were due and payable upon

discharge.

29. Plaintiff's wages or compensation for labor or service earned, vested, determinable, were not paid to her at the time of discharge or thereafter.

30. Defendant did not make all of Plaintiff's unpaid wages available and payable immediately as required by C.R.S. § 8-4-109.

31. On or about February 1, 2010 Plaintiff made a demand for payment of wages upon the Defendant.

32. As of the date of this Complaint Plaintiff has not received payment of wages that were due from the Defendant upon the termination of her employment.

Prayer for Relief

WHEREFORE, Plaintiff demands judgment against the Defendant corporation in an amount which will compensate her for all hours worked in excess of forty hours in a single work week at one-and-one-half times her regular hourly rate of pay, for liquidated damages as provided for by 29 U.S.C. 216 (b), and attorney's fees and costs as provided for by 29 U.S.C. 216 (b). In addition, Plaintiff demands judgment pursuant to the Colorado Wage Act for wages, penalties of 125% of unpaid wages pursuant to Section 8-4-109 Colo. Rev. Stat., actual costs including attorney's fees and equitable relief as the Court deems appropriate.

Respectfully submitted this 2nd day of March, 2010.

CORNISH & DELL'OLIO

By: s/Donna Dell'Olio
Donna Dell'Olio #10887
431 N. Cascade Avenue, Suite 1
Colorado Springs, CO 80903
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Attorney for Plaintiff

Plaintiff's Address:
2103 Essex Lane
Colorado Springs, CO 80909

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<p>I. (a) PLAINTIFFS</p> <p style="text-align: center;">Sharon Mueller</p> <p>(b) County of Residence of First Listed Plaintiff <u>El Paso</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorney's (Firm Name, Address, and Telephone Number) Donna Dell'Olio, Cornish and Dell'Olio (719) 475-1204 431 N. Cascade Ave., Ste. 1, Colorado Springs, CO 80903</p>	<p>DEFENDANTS</p> <p style="text-align: center;">Current, USA, Inc., a Minnesota corporation</p> <p>County of Residence of First Listed Defendant <u>El Paso</u> (IN U.S. PLAINTIFF CASES ONLY)</p> <p style="text-align: center;">NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table style="width:100%;"> <tr> <td style="width:33%;">PTF</td> <td style="width:33%;">DEF</td> <td style="width:33%;">PTF</td> <td style="width:33%;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1 <input type="checkbox"/> 1</td> <td>Incorporated <i>or</i> Principal Place of Business In This State</td> <td><input type="checkbox"/> 4 <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2 <input type="checkbox"/> 2</td> <td>Incorporated <i>and</i> Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5 <input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3 <input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6 <input type="checkbox"/> 6</td> </tr> </table>	PTF	DEF	PTF	DEF	Citizen of This State	<input type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated <i>or</i> Principal Place of Business In This State	<input type="checkbox"/> 4 <input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated <i>and</i> Principal Place of Business In Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6														

IV. NATURE OF SUIT (Place an "X" in One Box Only)

<p>CONTRACT</p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)</p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p>	<p>TORTS</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel & Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p>	<p>PERSONAL INJURY</p> <p><input type="checkbox"/> 362 Personal Injury - Med. Malpractice</p> <p><input type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p>PERSONAL PROPERTY</p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p>FORFEITURE/PENALTY</p> <p><input type="checkbox"/> 610 Agriculture</p> <p><input type="checkbox"/> 620 Other Food & Drug</p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 630 Liquor Laws</p> <p><input type="checkbox"/> 640 R.R. & Truck</p> <p><input type="checkbox"/> 650 Airline Regs.</p> <p><input type="checkbox"/> 660 Occupational Safety/Health</p> <p><input type="checkbox"/> 690 Other</p>	<p>BANKRUPTCY</p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p>PROPERTY RIGHTS</p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p>	<p>OTHER STATUTES</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 810 Selective Service</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 875 Customer Challenge 12 USC 3410</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 892 Economic Stabilization Act</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 894 Energy Allocation Act</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>
<p>REAL PROPERTY</p> <p><input type="checkbox"/> 210 Land Condemnation</p> <p><input type="checkbox"/> 220 Foreclosure</p> <p><input type="checkbox"/> 230 Rent Lease & Ejectment</p> <p><input type="checkbox"/> 240 Torts to Land</p> <p><input type="checkbox"/> 245 Tort Product Liability</p> <p><input type="checkbox"/> 290 All Other Real Property</p>	<p>CIVIL RIGHTS</p> <p><input type="checkbox"/> 441 Voting</p> <p><input type="checkbox"/> 442 Employment</p> <p><input type="checkbox"/> 443 Housing/Accommodations</p> <p><input type="checkbox"/> 444 Welfare</p> <p><input type="checkbox"/> 445 Amer. w/Disabilities - Employment</p> <p><input type="checkbox"/> 446 Amer. w/Disabilities - Other</p> <p><input type="checkbox"/> 440 Other Civil Rights</p>	<p>PRISONER PETITIONS</p> <p><input type="checkbox"/> 510 Motions to Vacate Sentence</p> <p>Habeas Corpus:</p> <p><input type="checkbox"/> 530 General</p> <p><input type="checkbox"/> 535 Death Penalty</p> <p><input type="checkbox"/> 540 Mandamus & Other</p> <p><input type="checkbox"/> 550 Civil Rights</p> <p><input type="checkbox"/> 555 Prison Condition</p>	<p>LABOR</p> <p><input checked="" type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Mgmt. Relations</p> <p><input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Empl. Ret. Inc. Security Act</p>	<p>SOCIAL SECURITY</p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIW C/DIW W (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p>	<p>FEDERAL TAX SUITS</p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS - Third Party 26 USC 7609</p>

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify)

6 Multidistrict Litigation

7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. Sec. 201, et. seq. and Section 8-4-109 Colo. Rev. Stat.

Brief description of cause:
Unpaid wages

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

DATE: March 2, 2010

SIGNATURE OF ATTORNEY OF RECORD: 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____