

**UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO**

Civil Case No. 1:24-cv-_____ - _____

PRESTON ADGER,

Plaintiff,

v.

TERRAQUEST, INC. and DERRICK NEHRENBURG, an individual,

Defendants.

COMPLAINT

INTRODUCTION

1. Defendants' technology startup company did not pay Plaintiff Preston Adger for about six months' worth of his work when he worked for them as a software developer.
2. To challenge this and other wage law violations, Plaintiff brings this action, by and through his attorneys, against Defendants TerraQuest, Inc. and Derrick Nehrenberg, an individual, to recover unpaid or underpaid wages and other damages under the provisions of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, *et seq.* (hereinafter "FLSA"), the Colorado Wage Claim Act, §8-4-101, *et seq.* and the Colorado Minimum Wage Act, C.R.S. §8-6-101, *et seq.*, as implemented by the Colorado Minimum Wage Order (the "Minimum Wage Orders") and then the Colorado Overtime and Minimum Pay Standards Orders ("COMPS") (collectively, "CWCA").

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of the action pursuant to 28 U.S.C. § 1331, by virtue of federal questions, 29 U.S.C. § 201 *et seq.* of the FLSA.

4. This Court also has jurisdiction over the subject matter of the action pursuant to 28 U.S.C. § 1331, by virtue of federal questions, 29 U.S.C. § 201 *et seq.* of the FLSA. This Court has supplemental jurisdiction over Plaintiff's state law claims by authority of 28 U.S.C. § 1367.
5. Venue lies with this Court pursuant to 28 U.S.C. § 1391(b) and 29 U.S.C. § 201 *et seq.* A significant portion of the events giving rise to the instant litigation occurred at the Defendants' startup business, located at 426 Belleview Ave., Crested Butte, CO 81224, and one or more of the Defendants named herein resides in this district.

PARTIES

Defendant TerraQuest, Inc.

6. Defendant TerraQuest, Inc. is a corporation doing business within Gunnison County, whose principal place of business is listed with the Colorado Department of State as 426 Belleview Ave., Crested Butte, CO 81224. Its registered agent is listed with the Colorado Department of State as Derrick Nehrenberg with an address of 812 Gothic Ave., Crested Butte, CO 81224, both with a mailing address of PO Box 994, Crested Butte, CO 81224.
7. TerraQuest, Inc., is listed in delinquent status with the Colorado Department of State.
8. At all relevant times, Defendant TerraQuest had annual gross revenues in excess of \$500,000.
9. Defendant TerraQuest provided its software ("app") technology in furtherance of its business publicly online to individuals both within and outside of the state of Colorado. Further, Defendant TerraQuest advertised its services to the entire world on the internet at www.terraquest.com.
10. At all relevant times, Defendant TerraQuest was engaged in interstate commerce and/or the production of goods for commerce, within the meaning of the FLSA, 29 U.S.C. §§

206(a) and 207(a).

11. At all times material to this action, Defendant TerraQuest was subject to the FLSA and was an “employer” of the Plaintiff, as defined by § 203(b) of the FLSA.

Defendant Derrick Nehrenberg

12. Defendant Derrick Nehrenberg, an individual, resides at 812 Gothic Ave # 4A, Crested Butte, CO 81224-8704, in Gunnison County, upon information and belief. He is a Colorado resident.
13. Defendant Nehrenberg is, and was at all relevant times, the CEO of TerraQuest.
14. Defendant Nehrenberg was the founder of TerraQuest.
15. Defendant Nehrenberg has an ownership interest in and/or is a shareholder of TerraQuest.
16. At all times material to this action, Defendant Nehrenberg actively participated in the business of TerraQuest.
17. At all times material to this action, Defendant Nehrenberg exercised substantial control over the functions of the company’s employees including Plaintiff. For example, he had the ability and authority to hire and fire employees, set rates of pay, and set employee schedules. In fact, he did hire the plaintiff, set his rate of pay, determined when and whether to pay him, and directed his day to day activities.
18. At all times material to this action, Defendant Nehrenberg was an “employer” of the Plaintiff, as defined by § 203(b) of the FLSA.

Plaintiff Preston Adger

19. Plaintiff Preston Adger is a resident of Fort Collins, Colorado.
20. Plaintiff worked as a Software Developer for TerraQuest from May 1, 2019, to March 5, 2022.

21. In performing his work, Plaintiff regularly worked in interstate commerce. Specifically, he regularly and recurrently used the internet, email, and the phone in order to perform his duties. As a software developer he would regularly access and store information from online servers hosted in states outside of Colorado. He also regularly used “cloud based” software in conducting his various work tasks.
22. The non-payments at issue in this case were from months in 2021 through early March, 2022.
23. Shortly after Plaintiff, through counsel, issued Defendants a Colorado wage demand letter, Defendants signed a tolling agreement on November 22, 2022, stating in relevant part that “No statute of limitations or statute of repose on any claim under the FLSA or CWCA shall run against Employee and the same shall be tolled during the period of time while this Agreement is in effect” which was defined as being from November 21, 2022 through “fourteen (14) days after either party gives written notice of cancellation to the other” which occurred on July 26, 2024, making the end of tolling being August 9, 2024. Thus, the claims were told between November 22, 2022 and August 9, 2024, which is a period of almost two years.
24. At all times material to this action, Plaintiff was an “employee” within the meaning of 29 U.S.C. § 203(e) and 7 C.C.R. 1103-1(2).
25. Plaintiff’s primary supervisor was Derrick Nehrenberg.
26. While in this position, Plaintiff’s compensation arrangement with TerraQuest was that he was to be paid on a salary basis. His annual rate of pay was originally \$65,000, but in July 2021 he received a raise to \$90,000.
27. One time in 2020 Defendants let the Plaintiff know that they would not be able to pay him

for a couple of months, but then did pay him back for those late payments. About three months later this happened again, but again he was eventually paid. Then it happened a third time; he was not paid for five months, but then was paid for two of those months, leaving a net balance of three months at his old salary rate, and then he was not paid for his final three months at his higher salary rate.

28. In all Plaintiff is owed \$38,750.00 in unpaid wages ((((\$65,000/12) x 3 months)) + ((\$90,000/12) x 3 months)).

LEGAL CLAIMS

As And For A First Cause of Action: FAIR LABOR STANDARDS ACT (FLSA) VIOLATIONS

29. Plaintiff realleges and incorporates by reference each allegation contained in the paragraphs above, and by reference repleads and incorporates them as though fully set forth here.

Failure to Pay Minimum Wage

30. Defendants failed to pay Plaintiff the minimum wage for all hours worked, in violation of the FLSA.

31. Specifically, Defendants did not pay Plaintiff at all, for approximately six months, thus Plaintiff received less than minimum wage for that period of time worked.

Willful & Not Based on Good Faith & Entitlement to Damages

32. Defendants had no good faith basis for believing that their pay practices as alleged above were in compliance with the law.

33. At all relevant times, Defendants knew of the FLSA's requirements. In wholly failing to pay Plaintiff for an extended period of time, Defendants knowingly violated the mandates of the FLSA.

34. The foregoing conduct constitutes a “willful” violation of the FLSA, 29 U.S.C. § 255(a).
35. As a result of the violations by Defendants of the FLSA, the Plaintiff is entitled to all damages available under the FLSA which include, but are not limited to, all unpaid minimum wages, liquidated damages, attorney fees, costs, and interest, as set forth in the FLSA, more specifically 29 U.S.C. § 216(b).

**As And For A Second Cause of Action:
COLORADO WAGE ACT VIOLATIONS**

36. Plaintiff realleges and incorporates by reference each allegation contained in the paragraphs above, and by reference repleads and incorporates them as though fully set forth here.
37. The Defendants were Plaintiff’s “employers” as that term is defined by the COMPS. 7 C.C.R. 1103-1(1.6).
38. Plaintiff was Defendants’ “employee” as that term is defined by the Wage Orders / COMPS because he performed labor for the benefit of Defendants in which Defendants commanded when, where, and how much labor or services would be performed. 7 C.C.R. 1103-1(2).

Failure to Pay Minimum Wage

(Violation of the C.R.S. § 8-6-101 *et seq.*; Colorado Min. Wage Order 31, 7 C.C.R. § 1103-1)

39. The Defendants failed to pay Plaintiff at a rate at or above the applicable minimum wage rate for all hours worked in the workweek.
40. Specifically, as indicated above, Defendants did not pay Plaintiff at all, for approximately six months, thus Plaintiff received less than minimum wage for that period of time worked.

Failure to Pay Wages When Due

(Violation of the C.R.S. § 8-6-103)

41. The Defendants failed to pay Plaintiff all his earned wages for approximately six months of relevant work, when due.

42. Specifically, Defendants were to pay Plaintiff on a monthly basis, however as indicated above Plaintiff received no pay and as such was not paid when such wages were due.

Failure to Pay All Earned Wages
(Violation of the C.R.S. § 8-6-109)

43. Plaintiff has been separated from employment with Defendants.

44. Defendants have failed to pay Plaintiff all his wages and compensation earned during Plaintiff's employment.

Failure to Pay Wages In Response to Wage Demand
(Violation of the C.R.S. § 8-6-109)

45. Plaintiff, through counsel, issued a Demand for Payment of Wages notice dated October 28, 2022.

46. Plaintiff, through counsel, issued a second copy of his Demand for Payment of Wages dated November 20, 2023.

47. Plaintiff, through counsel, issued a third Demand for Payment of Wages dated December 8, 2023.

48. Defendant has not tendered any payment in response to these demands.

49. More than 14 days has elapsed since October 28, 2022.

50. Defendants' failure to pay Plaintiff's owed wages in response to the wage demand was willful.

51. Therefore, Defendant owes plaintiff statutory penalties in the amounts set forth in C.R.S. § 8-4-109.

Damages

52. Plaintiff is entitled to recover in this civil action the unpaid balance of the full amount of unpaid wages, and underpaid minimum wages that are owed and appropriate penalties,

together with reasonable attorney fees and court costs. C.R.S. § 8-6-118; 7 C.C.R § 1103-1(18).

**As And For A Third Cause of Action:
CONVERSION/THEFT OF SERVICES**

53. Plaintiff realleges and incorporates by reference each allegation contained in the paragraphs above, and by reference repleads and incorporates them as though fully set forth here.

54. Pursuant to COMPS #36, § 8.4, failure to pay an employee less than the minimum wage and willful refusal to pay wages or compensation, or false denial of the amount of a wage claim, or the validity thereof, or that the same is due, with intent to secure for himself, any discount upon such indebtedness or any underpayment of such indebtedness or with intent to annoy, harass, oppress, hinder, coerce, delay, or defraud the person to whom such indebtedness is constitute theft under C.R.S. § 18-4-401.

55. By failing to pay the Plaintiff all of his wages or compensation, Defendants have committed theft of services.

56. Pursuant to CRS § 18-4-405, Defendants are liable to the Plaintiff for three times the amount of the actual damages sustained in addition to costs of the action and reasonable attorney fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

- (A) Award Plaintiff unpaid and underpaid wages due under the FLSA the CWCA;
- (B) Award Plaintiff liquidated damages in the amount of his unpaid FLSA wages pursuant to 29 U.S.C. § 216(b);
- (C) Award Plaintiff statutory damages as provided for the CWCA;

- (D) Award Plaintiff interest;
- (E) Award Plaintiff the costs of this action together with reasonable attorneys' fees; and
- (F) Award such other and further relief as this Court deems necessary and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury on all questions of fact raised by the complaint.

Respectfully submitted, this 12th day of **August, 2024**.

ANDERSONDODSON, P.C.

s/ Penn Dodson

Penn A. Dodson

penn@andersondodson.com

CO Bar Reg No. 54677

11 Broadway, Suite 615

New York, NY 10004

(212) 961-7639 tel.

Attorney for Plaintiff

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 NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or 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 and 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 |

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

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

AP Docket

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE