IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

NESLY PIERRE, LOUINE JEAN-LOUIS, CARLOS SAINT AUBIN, and MAGDALA SANTUS, on their own behalf and on behalf of all others similarly situated,

Plaintiffs,

v.

JBS USA FOOD COMPANY, and SWIFT BEEF COMPANY,

Defendant.

Case No. 1:25-cv-04023-RMR-NRN

PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

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I. INTRODUCTION

This case is about the more than 1,200 Haitian workers that Defendants JBS USA Food Company ("JBS") and Swift Beef Company ("Swift") lured to Colorado under false pretenses and employed at their Greeley meatpacking plant. Plaintiffs are four such workers. They allege Defendants exposed them and their Haitian coworkers to dangerous working conditions that were riskier, more extreme, and more unsanitary than the conditions faced by their similarly situated counterparts of other races and nationalities. And Plaintiffs allege that Defendants charged them "recruitment" and other fees that cut into their wages, were unjust, and were primarily for Defendants' benefit. These allegations are set out in detail in Plaintiffs' well-pleaded First Amended Complaint, ECF No. 31 ("FAC"), which is more than sufficient to withstand Defendants' motion to dismiss.

First, Plaintiffs state a claim under Section 1981 of the Civil Rights Act of 1866 ("Section 1981"). Plaintiffs allege Defendants subjected them and other Haitian workers to more dangerous and difficult working conditions than similarly situated coworkers, including by failing to provide Haitians meaningful safety training in a language they could understand, running production lines on which Haitians primarily worked at dangerous speeds, and withholding information on workplace rights, including the availability of bathroom breaks. Defendants do not seriously contest these allegations under Section 1981; rather, they argue that JBS is not an employer and that Plaintiffs rely upon improper group pleading. In truth, Plaintiffs alleged JBS's control over operations sufficient to satisfy the applicable single-employer and joint-employer tests, and any group pleading is sufficient to put Defendants on notice of the allegations against them.

Second, Plaintiffs state a claim under Colorado Statute Section 8-2-104 ("Section 8-2-104"), which prohibits obtaining workers through unlawful misrepresentations, or luring. Plaintiffs allege that Defendants, through their agents Edmond Ebah and Mackenson Remy, falsely represented the working and other conditions at the Greeley plant to lure Haitians to Colorado. That this case does not involve labor strikes or lockouts is of no matter because, as numerous courts have recognized, Section 8-2-104 applies outside of the strike context. For this reason, and given Colorado's statute on severability, Plaintiffs' claims are not preempted. Rather, they are alleged with sufficient particularity and both Defendants are covered by the allegations and statute.

Third, Plaintiffs state a claim under Title VII of the Civil Rights Act of 1964 ("Title VII") for disparate treatment and impact. As with Section 1981, Plaintiffs state a claim for disparate treatment against both Defendants. Plaintiffs also state a claim for disparate impact by alleging facts that show how a facially neutral policy of dangerous line speeds disparately impacted Haitians. At the pleading stage, where Defendants hold all employment data, no statistics about the level of impact are required.

Fourth, Plaintiffs state a claim under the Colorado Wage Claim Act ("CWCA"). Charging employees fees to work is illegal—even where those fees are not directly deducted from paychecks—because the fees primarily benefitted Defendants by securing a much-needed workforce and ensuring they were housed within commuting distance of the Greeley facility. Defendants' "evidence" is not truly to the contrary and, regardless, the Court should decline to take judicial notice of the same given that the data's only use is to attack the FAC. And as with all other claims, Plaintiffs sufficiently allege employer status and/or any group pleading is detailed enough to provide notice.

Fifth, for the reasons explained as to the CWCA, Plaintiffs state a claim under the Colorado Minimum Wage Act ("CMWA"). While Defendants attempt to show Plaintiffs netted more than minimum wage, accurate calculations show otherwise.

Sixth, Plaintiffs state a claim for civil theft. That the claim arises from the same allegations as the CMWA claim does not mean that the claims are duplicative and, in any event, courts permit pleading both claims, only limiting double recovery.

Finally, Plaintiffs state a claim for unjust enrichment. Defendants' retention of the recruiting and other fees is unjust. The fees resulted in profits for Defendants at Plaintiffs' detriment and, contrary to Defendants' assertion, the law does not make expectation of payment an element of the claim.

The Court should deny Defendants' Motion to Dismiss.

II. SUMMARY OF ALLEGATIONS

Plaintiffs allege that Defendants jointly operated a scheme through their agents, Remy and Ebah, by which Defendants came to employ a vulnerable Haitian workforce. FAC ¶¶ 50-114. The scheme was deployed through a TikTok video that targeted Haitian workers and resulted in more than a thousand of those workers coming to Greeley within a short period of time. *Id.* ¶¶ 58-65. In luring the workers, however, Defendants misrepresented and withheld critical information about dangerous working conditions, squalid and unsanitary housing conditions, the ability of workers to take bathroom breaks, and good wages. *Id.* ¶¶ 66-130.

Specifically, Defendants, through Remy and Ebah, charged Plaintiffs excessive fees as a condition of employment, cutting into their wages and reducing them below the minimum wage while Defendants retained both the fees and the benefit of a workforce that they exploited for profit. *Id.* ¶¶ 67-81, 91-107. Given the dangers of the meatpacking industry, job safety training is critical to prevent workplace injuries. *Id.* ¶¶ 19-24. Despite knowledge of this and of the Haitian workers' reliance on their native language, Defendants failed to train the Haitian workers in their native language but did so for other similarly situated workers. *Id.* ¶¶ 131-46. Defendants also primarily staffed the B-Shift with Haitian workers. *Id.* ¶¶ 154-58. After doing so, Defendants increased the production line speed on the B-Shift—but not other shifts—to dangerous levels. *Id.* ¶¶ 159-63. These alleged conditions increased the danger and difficulty of the job for Haitians, caused injuries, and resulted in the indignity of involuntary urination. *Id.* ¶¶ 147-53. These allegations and those detailed below support Plaintiffs' claims.

III. ARGUMENT

A complaint must contain "enough facts to state a claim to relief that is plausible on its face" to survive a motion to dismiss. *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544 (2007). Well-pleaded allegations are accepted as true and viewed in the light most favorable to the nonmoving party. *Robbins v. Wilkie*, 300 F.3d 1208, 1210 (10th Cir. 2002).

A. Plaintiffs State a Section 1981 Claim Against Both Defendants.

Defendants do not focus on the substance of Plaintiffs' Section 1981 claim. Rather, they argue that JBS is not an employer and the claims against Defendants fail because Plaintiffs rely upon "group pleading." But Plaintiffs may establish a defendant's liability under Section 1981 and Title VII by meeting a joint-employer or single-employer test.

Bristol v. Bd. of Cnty. Com'rs of Cnty. of Clear Creek, 312 F.3d 1214, 1218-20 (10th Cir. 2002); *see, e.g.*, *Sandoval v. City of Boulder, Colo.*, 388 F.3d 1312, 1322-1324 (10th Cir. 2004); *Chavez v. McDonald's Corp.*, 2020 WL 1322864, at *4 (D. Colo. Mar. 20, 2020). Plaintiffs' allegations satisfy both tests, and group pleading is not *per se* disallowed.

1. Plaintiffs' allegations satisfy the single-employer test.

The single-employer test generally examines "(1) interrelation of operation; (2) common management; (3) centralized control of labor relations; and (4) common ownership and financial control." *Bristol*, 312 F.3d at 1220 (internal quotations omitted). "[T]he heart of the inquiry is whether there is an absence of an arm's-length relationship among the companies." *Knowlton v. Teltrust Phones, Inc.*, 189 F.3d 1177, 1184 (10th Cir. 1999); *see also Sandoval*, 388 F.3d at 1322 ("[W]e generally consider . . . centralized control of labor relations . . . most important.") (internal quotations omitted).

Here, Plaintiffs allege Swift is wholly owned by JBS. FAC ¶¶ 11-12. Plaintiffs allege JBS and Swift share the same headquarters. *Id.* ¶¶ 9-10. Plaintiffs allege that JBS operates Swift, and Swift operates the Greeley plant. *Id.* ¶ 13. Plaintiffs also allege that both JBS and Swift had power to control the terms and conditions of employment, determined the rate and method of pay, and maintained employment records. *Id.* at ¶¶ 14-15. In addition, Plaintiffs allege the existence of a bargaining agreement between the employees' union and JBS for workers at the Greeley plant, and Plaintiffs cite to JBS's press release regarding this agreement, which specifically refers to "JBS USA" as the "Union employer." *Id.* at ¶ 47, n.33. Plaintiffs also cite to the 2025 agreement between JBS and the United States Department of Labor, which requires changes to practices at, among others, the Greeley plant and states, "[t]he company employs more than 37,000 people at these facilities." *Id.* at ¶ 49, n.34. Plaintiffs also cite to a video posted by the "JBS USA" Facebook page regarding Ebah's story and recruiting efforts. *Id.* at ¶ 55, n.36.

In short, Plaintiffs plausibly allege centralized control of labor relations, common ownership, and interrelation of operations and management, satisfying the single-employer test. *See, e.g.*, *EEOC v. Smokin' Spuds, Inc.*, 2015 WL 1756813, at *2 (D. Colo. Apr. 14, 2015) (finding allegations that two entities used the same trade name, and that one entity owned "one hundred percent" of the other entity sufficient); *Simmons v. Harman-Kim, Inc.*, 2008 WL 2575649, at *5-6 (D. Utah June 26, 2008) (finding sufficient allegations that one defendant provided accounting and payroll services to the other, one defendant had supervisory control over managers of the other, and that there was "some common ownership and financial control between" the defendants).

And contrary to Defendants' assertions, Plaintiffs can plead allegations—even allegations of fraud—"on information and belief so long as the complaint sets forth the factual basis of the belief." *Building On Our Best LLC v. Sentinel Ins. Co. Ltd.*, 2015 WL 7014445, at *4-5 (D. Colo. Nov. 12, 2015) (citing *Scheidt v. Klein*, 956 F.2d 963, 967 (10th Cir. 1992)). Plaintiffs' allegations summarized above provide that factual basis. And they are a far cry from *Cracraft v. Utah Valley University* and *Jackson-Cobb v. Sprint United Management*, upon which Defendants rely. In *Cracraft*, the plaintiff went so far as to allege the contents of a document he signed but had not read, among other things, on "information and belief." 2020 WL 6135802 (D. Utah Oct. 19, 2020). In *Jackson-Cobb*, the "*only* factual allegation in support of" an element of plaintiff's discrimination claim was alleged on "information and belief." 173 F. Supp. 3d 1139, 1145 (D. Colo. 2016) (emphasis added). Plaintiffs have done far more, and their allegations suffice.

2. Plaintiffs' allegations satisfy the joint-employer test.

"Courts applying the joint-employer test treat independent entities as joint employers if the entities share or co-determine those matters governing the essential terms and conditions of employment." *Bristol*, 312 F.3d at 1218 (internal quotations omitted). The allegations surveyed above plead just this. *See* FAC ¶¶ 11-15, 47, 49; *see e.g., Perry v. Manocherian*, 675 F.Supp. 1417, 1426 (S.D.N.Y. 1987) (finding joint employment where defendants were headquartered in the same office, had common management, and employees performed work for both).

In contrast, plaintiffs in Defendants' cited cases failed to provide the requisite detail. *See Noriega v. Marillac Clinic, Inc.*, 2023 WL 1767274, at *4-5 (D. Colo. Feb. 3, 2023) (finding no allegations the plaintiff interacted with any employee or agent of one defendant); *Chavez,* 2020 WL 1322864, at *4 (holding that the sole allegation that a defendant had the right to control operations was insufficient); *Mason v. Miro Jewelers, Inc.*, 2020 WL 6828015, *2 (D. Colo. Mar. 17, 2020) (holding allegations insufficient where they alleged defendant was an owner but failed to explain how he had control). Here, Plaintiffs allege the roles of each Defendant in the Plaintiffs' employment relationship and the control each had to set the terms and conditions of employment. *See* FAC ¶¶ 11-15, 47, 49. Even under *Inniss v. Rocky Mountain Inventory, Inc.*, upon which Defendants rely, these allegations are sufficient.[1] 385 F. Supp. 3d 1165, 1168 (D. Colo. 2019) (holding that only three allegations and recitation of the test were sufficient to plead employer status).

At this stage, Plaintiffs' allegations satisfy the pleading requirements for the joint-employer test. *Banks v. St. Francis Health Ctr., Inc.*, 2016 WL 1298056, at *3-4 (D. Kan. Mar. 31, 2016) (finding allegations regarding overlapping abilities to supervise and discipline, set conditions of employment, and set work assignments sufficient to satisfy joint employer test); *Holloman v. Tulsa Gamma Ray, Inc.*, 2013 WL 4647736, at *3 (W.D. Okla. Aug. 29, 2013) (finding allegations that defendants "controlled his job duties, work rules, policies and procedures, and terms and conditions of employment" sufficient).

3. Group pleading is not disallowed *per se*.

"Group pleading" sometimes refers to "collective allegations against individual defendants[.]" *Carrado v. Daimler AG*, 2018 WL 4565562, at *3–4 (D. Colo. Sept. 24, 2018). "But "[g]roup pleading is not disallowed *per se*." *United States v. Sw. Orthopaedic Specialists, PLLC*, 2020 WL 5984814, at *8 (W.D. Okla. Oct. 8, 2020). Rather, "courts have allowed pleading against a collective group of defendants where it would be unfair to require Plaintiff to . . . identify which specific Defendant committed which specific act during the incident in question . . . based on the circumstances alleged." *Carrado*, 2018 WL 4565562, at *3–4 (internal quotations omitted). That is precisely the situation here.

Plaintiffs allege facts that identify Swift's conduct and JBS's conduct and allege the overlapping control each Defendant had over the employment relationship and their

[1] *Inniss* exclusively involved claims under the federal Fair Labor Standards Act, which applies a different employer test than the one applicable to Section 1981. *See* 385 F. Supp. 3d at 1168.

connection to the alleged conduct. *See generally* FAC ¶¶ 9-15, 47-153. Plaintiffs' allegations sufficiently distinguish Defendants' actions to "provide notice of the conduct at issue" as required by Rule 8. *Estate of Ward v. Pueblo Cnty., Colo.*, 2023 WL 4744928, at *7 (D. Colo. July 25, 2023); *see also, e.g., Flow Valve, LLC v. F. Energy Techs., Inc.*, 2014 WL 3567814, at *5 (W.D. Okla. July 18, 2014) ("[T]he alleged relationship among the defendants makes it understandable that claims would be linked by common allegations.").[2] Plaintiffs' Section 1981 claims against both Defendants stand.

B. Plaintiffs State a Claim Under Section 8-2-104.

Section 8-2-104 "makes it unlawful to induce, influence, or persuade an employee to change from one place of employment to another by means of false or deceptive representations." *Snyder v. Beam Tech., Inc.*, 2021 WL 4947295, at *16 (D. Colo. Aug. 16, 2021) (citation omitted). To state a claim, "a plaintiff must allege the existence of false or deceptive representations made by [the] defendant." *Id.* (internal quotations omitted). Here, Plaintiffs allege Defendants, through their agents' false and deceptive representations about working conditions, brought Plaintiffs and proposed class members to Colorado, thereby obtaining their labor through unlawful luring. FAC ¶¶ 191-192. As discussed herein, this is sufficient to state a claim.

[2] Defendants' cited cases are inapplicable because they involve scenarios with wholly separate corporate entities engaging in arms-length transactions. *See L5L Indus., Inc. v. Kiss Indus., LLC*, 2022 WL 704705 (D. Colo. Jan. 21, 2022); *Cayo, Inc. v. Swiss Reinsurance Am. Corp.*, 2023 WL 4744196 (D. Colo. May 2, 2023). And *Mighell v. HPG Pizza I, LLC*, upon which Defendants also rely, simply states that the allegations "come close to" group pleading. 2024 WL 5089945, at *3, n.2 (D. Colo. Dec. 12, 2024).

1. Section 8-2-104 applies here.

Defendants argue that Section 8-2-104 is limited to situations involving misrepresentations that recruit workers during strikes and lockouts. Defendants are wrong for two reasons. ***First***, the plain language of the statute is unambiguous:

> It is unlawful for any person, company, corporation, society, association, or organization of any kind doing business in this state, by itself or its agents or attorneys, to induce, influence, persuade, or engage workmen to change from one place of employment to another in this state, or to bring workmen of any class or calling into this state to work in any of the departments of labor in this state, through or by means of false or deceptive representations, false advertising, or false pretenses concerning the kind and character of the work to be done, ***or*** amount and character of the compensation to be paid for such work, ***or*** the sanitary or other conditions of the employment, ***or*** as to the existence or nonexistence of a strike or lockout pending between employer and employees, ***or*** failure to state in any advertisement, proposal, or contract for the employment that there is a strike, lockout, or other labor trouble at the place of the proposed employment, when in fact such strike, lockout, or other labor trouble then actually exists at such place, and it is deemed false advertisement and misrepresentation for the purposes of sections 8-2-104 to 8-2-107.

Colo. Rev. Stat. § 8-2-104 (emphases added). Misrepresentations or omissions regarding strikes or lockouts are just two types of conduct prohibited under the law. The others are (1) "false or deceptive representations, false advertising, or false pretenses concerning the kind and character of the work to be done," (2) "amount and character of the compensation to be paid for such work," and (3) "the sanitary or other conditions of the employment." *Id.* In other words, three of the prohibited bases have nothing to do with strikes or lockouts. Consistent with this, courts recognize that Section 8-2-104 applies beyond strikes and lockouts. *See e.g., Roberts v. Conoco, Inc.*, 717 F. Supp. 724, 724 (D. Colo. 1989) ("[Section 8-2-104] makes one liable for inducing a workman to move into Colorado by means of false or deceptive representations concerning the kind and character of the work."); *Nelson v. Gas Rsch. Inst.*, 121 P.3d 340, 343 (Colo. App. 2005); *Pittman v. Larson Distrib. Co.*, 724 P.2d 1379, 1386-87 (Colo. Ct. App. 1986); *Snyder*, 2021 WL 4947295, at *16; *Boeser v. Sharp*, 2006 WL 898126, at *3-4 (D. Colo. Mar. 31, 2006); *Pownell v. Credo Petroleum Corp.*, 2011 WL 2580765, at *3-4 (D. Colo. June 29, 2011); *Ashford v. Am. Residential Servs. LLC*, 2006 WL 83067, at *2-3 (D. Colo. Jan. 11, 2006).

Defendants also misread *Matthews v. LaBarge, Inc.*, 407 F. App'x 277 (10th Cir. 2011). As Defendants acknowledge, that case involved an Oklahoma statute, not the Colorado statute at issue here. *See id*. at 281-82. And though the Tenth Circuit stated that the Oklahoma statute "focuses on the practice of recruiting strike breakers through false inducements," the court did not go on to hold that lockouts or strikes must be at issue for the statute to apply. *Id.* Rather, the court explained:

> Thus, the misrepresentations prohibited by the statute are limited to those ***regarding employment conditions typically associated*** with labor disputes: ***the character of work to be done***, ***pay***, ***sanitary conditions***, and the existence of labor disputes. Mr. Matthews, however, was given the job for which he was hired, does not allege that he was misled with regard to his salary or the sanitary conditions at LaBarge, and alleges nothing akin to false statements of a labor dispute.

Id. (emphases added). The court then concluded that the promise of a promotion does not fall within the statute. *Id.* But the unfulfilled promise of a promotion is decidedly different from the allegations in this case, which fall within the "character of work to be done, pay, [and] sanitary conditions[.]" Colo. Rev. Stat. § 8-2-104. Moreover, the Western District of Oklahoma has rejected Defendants' reading of *Matthews. See Gray v. Venable's Welding & Roustabout, Inc.*, 2014 WL 823431, at *1 (W.D. Okla. Mar. 3, 2014)

("[T]he statute by its terms prohibits misrepresentations that do not necessarily relate to labor disputes."). And this District's opinions in *Snyder* and *Pownell* post-date *Matthews*.

__Second__, should the Court nonetheless find the statute ambiguous, legislative intent supports Plaintiffs' reading of the statute and can be inferred by the statute's title. *City of Ouray v. Olin*, 761 P.2d 784, 789 (Colo. 1988). As a court in this District has stated:

> Furthermore, the Court notes that Senate Bill 122, which eventually became § 8-2-104, was titled "[a] bill for an act prohibiting the use of deception, misrepresentation, false advertising and false pretenses and unlawful force in the procuring of employes [sic] to work in any department of labor in this State and fixing penalties, criminal and civil, for violation thereof." S.B. 122, 18th Gen. Assemb. (Colo. 1911). The title of Senate Bill 122 indicates that its purpose was to prohibit the procuring of employees generally by false representations and does not contain any indication that its scope was intended to protect only individuals who are currently employed.

Snyder v. Beam Techs., Inc., 2023 WL 4136668, at *11 (D. Colo. June 22, 2023), *aff'd,* 147 F.4th 1246 (10th Cir. 2025). The title does not contain any language limiting the text of the statute or its scope to situations involving strikes or lockouts.

Defendants point to the marginal note printed in the session law when the statute passed, but nothing in that note indicates that misrepresentations are restricted to those involving strikes or lockouts. *See* ECF No. 39-1 at 5. Defendants also point to fourteen nonlegislative sources, which "do not have as much probative value as official statements to clarify legislative intent." *See Singer*, Sutherland Statutory Construction § 48:11 (7th ed. 2025) (citing, *inter alia*, *Mitchell v. Rayl*, 8 Kan. App. 2d 690, 665 P.2d 1117 (1983) and *Hulcher v. Com.*, 39 Va. App. 601, 575 S.E.2d 579 (2003) for the proposition that a newspaper article is not proof of legislative intent). And Defendants point to the rule of lenity, which "applies only in cases where there is a grievous ambiguity, which is certainly not the case here[.]" *United States v. Molina*, 484 F. App'x 276, 284–85 (10th Cir. 2012) (cleaned up). Even Defendants' cited authority says as much. *See, e.g.*, *Calkins v. Albi*, 431 P.2d 17, 22 (Colo. 1967) (applying the rule of lenity to resolve ambiguity); *Crandon v. United States*, 494 U.S. 152, 158 (1990) (applying the rule of lenity to resolve an issue upon which the statute is silent); *Cartwright v. State Bd. Of Accountancy*, 796 P.2d 51, 53 (Colo. Ct. App. 1990) (declining to extend a statute to reach issues not addressed in the text). In any event, Plaintiffs' allegations and interpretation of Section 8-2-104 comport with the unambiguous statutory text and the statute's legislative intent.

2. Federal labor law does not preempt Section 8-2-104.

"*Machinists* preemption" applies "if the court finds that the absence of federal regulation is indicative of a congressional determination to leave the challenged conduct available, and that to allow the states to regulate the conduct would be to upset the balance of power between labor and management[.]" *Peabody Galion v. Dollar*, 666 F.2d 1309, 1314-16 (10th Cir. 1981). But Section 8-2-104 is not limited to labor disputes, strikes, lockouts, or union activity and, thus, it is not preempted by the NLRA. *See Peabody Galion*, 666 F.2d at 1316 ("The conduct at issue in this case … is not subject to either protection or prohibition … because it has nothing . . . to do with union organization or collective bargaining."). Still, Defendants assert that Section 8-2-104 is not severable. However, Colorado statute provides:

> If any provision of a statute is found by a court of competent jurisdiction to be unconstitutional, the remaining provisions of the statute are valid, unless it appears to the court that the valid provisions of the statute are so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed the legislature would have enacted the valid provisions without the void one; or unless the court

> determines that the valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

Colo. Rev. Stat. § 2-4-204. "This general severability clause applies to a legislative act which does not contain a specific severability provision[,]" like Section 8-2-104 here. *Hejira Corp. v. MacFarlane*, 660 F.2d 1356, 1362 (10th Cir. 1981). So even if the portion of Section 8-2-104 pertaining to strikes and lockouts were actually preempted, it could be severed from the remainder of the section, allowing Plaintiffs' claims to move forward.

3. Plaintiffs' allegations are particular and the misrepresentations at issue are covered by the statute and support a claim for relief.

Defendants next argue that (1) Plaintiffs have not pled their claims with particularity; (2) the misrepresentations are not covered by the statute; and (3) the misrepresentations do not support a claim for relief. Again, the opposite is true.

First, Plaintiffs allegations are sufficiently particular. They allege the time, place and contents of the misrepresentation and the identity of the person making the misrepresentation. *See* FAC ¶¶ 59-62 (as to the limited time period during which recruitment occurred), *id.* (as to the content of the misrepresentation, e.g., English not required, wage deductions, and available housing conditions), *id.* (as to Remy and Ebah making misrepresentations), *id.* ¶¶ 66-70 (as to the TikTok video and Plaintiffs viewing it while outside Colorado). Still, Defendants claim Plaintiffs are not sufficiently particular about who made the misrepresentations. But Plaintiffs allege that Remy and Ebah acted as agents of Defendants and recruited workers to Greeley on behalf of Defendants. *Id.* ¶¶ 54-58. They allege Remy created a TikTok video advertising jobs at Greeley in Haitian Creole and making the misrepresentations described above. *Id.* ¶¶ 59-62. They allege

Remy misrepresented the available housing conditions because Defendants only secured a certain amount of available housing, but that many more workers were responding to Remy's advertisement. *Id.* ¶¶ 62-63. And they allege that Remy and Ebah encouraged more Haitian workers to come to Greeley because their jobs and housing would be taken care of, despite far more workers responding to the advertisement than the initial number of available jobs or rooms. *Id.* ¶¶ 62-65. That there may be additional agents who participated in Defendants' scheme does not take away from the particularity of Plaintiffs' allegations about Remy or Ebah. Likewise with respect to Defendants' concern over the phrase "inter alia." And though Defendants cite *Swimwear Sol., Inc. v. Orlando Bathing Suit, LLC*, on this point, that case involved a motion for a more definite statement under Rule 12(e). 309 F. Supp. 3d 1022, 1047 (D. Kan. 2018). Such a motion is appropriate where a pleading is "so vague or ambiguous that the party cannot reasonably prepare a response." Fed. R. Civ. P. 12(e). That is hardly the case here where Plaintiffs have devoted dozens of paragraphs to what Defendants' agents said, Plaintiffs' reliance on those statements, how those statements were false with respect to pay, employer-provided housing, and working conditions, including sanitary issues. FAC ¶¶ 54-72.

<u>Second</u>, the misrepresentations at issue are covered by the statute. Defendants are wrong that the statute does not cover omissions. Section 8-2-104 is read consistently with common law fraud. *See Nelson,* 121 P.3d at 344. And common law fraud "may be committed by the suppression of truth as well as by the suggestion of falsehood . . . Failure to disclose a material fact with intention to mislead or defraud is equivalent to a fraudulent concealment of the fact, and stands no better than the affirmation of a material misrepresentation." *Kirzhner v. Silverstein*, 2011 WL 4382560, at *3 (D. Colo. Sept. 20, 2011) (quoting *In re Cisneros,* 430 P.2d 86, 89 (Colo.1967)) (alteration omitted).

What is more, the misrepresentations or omissions at issue concern the kind and character of work to be done, sanitary or other conditions, and compensation. *See* FAC ¶¶ 131-46 (discussing working conditions that exposed Plaintiffs to greater risk and injuries), *id.* ¶¶ 99-107, 117-120 (discussing fees that reduced wages below the minimum wage and were primarily for Defendants' benefit), *id.* ¶¶ 147-52 (discussing lack of bathroom breaks and unavoidable urination while working); *id.* ¶¶ 84-91 (discussing cramped and squalid employer-provided housing that was necessary to the job).[3]

Heldenbrand v. Multipoint Wireless, which Defendants cite, is not contrary. 2012 WL 5198479 (D. Nev. Oct. 18, 2012). There, the court explained that working during the day vs. working during the night does not relate to the character of work, but "comfortably fits within 'other conditions of . . . . employment,'" which is also part of the statute. *Id.* at *3, n.2; Colo. Rev. Stat. 8-2-104. And unlike *Lincoln v. Sears Roebuck and Co.*, Plaintiffs' compensation allegations are not about a "benefits package," but are about charging workers fees that reduced their wages below the minimum required or were otherwise prohibited by law. *Compare Lincoln*, 2002 WL 31108204, *5 (D. Minn. Sept. 17, 2002) with FAC ¶¶ 99-107, 117-120 and *Boeser v. Sharp*, 2006 WL 898126, at *4 (D. Colo. Mar. 31, 2006) (denying motion to dismiss where plaintiff alleged defendant represented that plaintiff would be eligible for a certain bonus structure, yet changed that bonus structure

[3] *See infra* Pt. III.D.2.

after plaintiff's hire). And the housing conditions were so severe that "JBS hired outside counsel to investigate." FAC ¶¶ 111. In this context, Ebah's and Remy's representations about housing and knowledge of the conditions are hardly "vague and general" "[e]xpressions of opinion" as in Defendants' cited case of *McCoy v. S. Energy Homes, Inc.*, 2012 WL 1409533, at *14 (S.D.W. Va. Apr. 23, 2012)

Third, Defendants claim that Plaintiffs have not alleged the requisite intent. But intent can be alleged generally. *Kirzhner*, 2011 WL 4382560, at *4. Regardless, Plaintiffs allege with specificity that Remy and Ebah knew they were charging fees for the employer's benefit, knew that they did not have housing to hold the number of people they were recruiting, and knew what working in the plant was like, including the importance of safety training. FAC ¶¶ 67-81. Plaintiffs allege that Remy and Ebah knew how to take advantage of a potential Haitian workforce. *Id.* ¶¶ 56-65. In other words, Remy and Ebah—Defendants' agents—"had no intention at the time of the representations of following through on their many and various false promises." *Young*, 2018 WL 3382928, at *3 (denying motion to dismiss).

4. JBS is a proper Defendant under Section 8-2-104.

For this claim, too, Defendants argue JBS is not a proper Defendant. But Section 8-2-104 does not require an employment relationship. Rather, Section 8-2-104 makes it unlawful for "any person, company, [or] corporation . . . of any kind doing business in this state, by itself or ***its agents***" to make misrepresentations regarding future work. Colo. Rev. Stat. § 8-2-104 (emphasis added). And here Plaintiffs allege that Ebah and Remy were both operating as agents of Swift and JBS. *See generally* FAC ¶¶ 53-65. Plaintiffs allege (1) Ebah was an HR supervisor for Defendants at the Greeley plant, which was operated by Swift; (2) that Ebah and Remy communicated with each other regarding the recruitment efforts; (3) that Remy was authorized to take recruitment videos from inside the plant; (4) that Remy and Ebah communicated on multiple occasions regarding recruitment and employment efforts, as well as the ability to provide housing for the workers; and (5) that Defendants were involved in failing to provide adequate housing. *See id.* ¶¶ 13, 53-65. This is sufficient to keep both Defendants in this case. *See, e.g.*, *Young*, 2018 WL 3382928, at *3-4 (denying motion to dismiss based upon representations made by the defendant's recruiters and executives). And again, Plaintiffs' allegations are not improper group pleadings because they identify the various misrepresentations with enough detail to put Defendants on notice of the claims against them. *See Estate of Ward*, 2023 WL 4744928, at *7 (D. Colo. July 25, 2023); *see* Fed. R. Civ. P. 8.

C. Plaintiffs State a Claim Under Title VII.

Plaintiffs' Title VII claims allege both disparate treatment and disparate impact. FAC ¶ 197. As to disparate treatment, like Plaintiffs' Section 1981 claim, Defendants only argue that the claim should be dismissed for improper group pleading. For the reasons discussed above, Defendants' arguments fail. *See supra* Pt. III.A.

As to disparate impact, a plaintiff must show the existence of a facially neutral policy that has a disparate impact on a protected group. *See Hunt v. Central Consol. School Dist.*, 951 F. Supp. 2d 1136, 1183 (D.N.M. 2013). While a plaintiff must allege facts demonstrating a causal connection between the action and the disparity, *Frappied v. Affinity Gaming Black Hawk, LLC*, 966 F.3d 1038, 1054 (10th Cir. 2020), statistical evidence is not required at the pleading stage. *See Schmitt v. Kaiser Found. Health Plan of Washington*, 965 F.3d 945, 959, n.8 (9th Cir. 2020) ("statistical accuracy" prior to discovery is difficult when statistics reside "exclusively" with the defendant); *see also Muhammad v. Vectrus Sys. Corp.*, 2024 WL 1073216, at *5 (D. Colo. Mar. 12, 2024) (dismissing claim where "Plaintiff has pleaded no statistical data ***or evidence***[.]"). But it is a logical and reasonable inference at this stage that running dangerous line speeds on the line made up of predominately Haitian workers will disparately impact Haitian workers. *See Lynch v. Freeman*, 817 F.2d 380, 387 (6th Cir. 1987).

Here, Plaintiffs allege that JBS overwhelmingly assigned Haitian workers to the B Shift and that the plurality of workers on the B Shift were Haitian, with only a single Haitian worker on the A Shift. FAC ¶¶ 155-157. Plaintiffs allege that, even though the type of work performed on the A and B Shifts was the same, Defendants implemented a policy of substantially higher processing line speeds for the B Shift than the A Shift soon after many Haitian workers were placed on the B Shift. *Id.* at ¶¶ 157-63 ("the vast majority of Haitian workers assigned to Line Shifts are assigned to the B Shift, and a plurality of workers on the B Shift, between 35-40%, are Haitian."). The higher line speeds were unsafe and imposed a much higher safety risk for the workers on the B Shift, yet Defendants failed to take any steps to align the speeds of the two shifts in response to complaints. *Id.* at ¶¶ 163-72. These allegations sufficiently identify a plausible connection between Defendants' conduct and the disparate impact on Haitian workers on the B Shift. *See, e.g.*, *Frappied*, 966 F.3d at 1054-55 (finding allegations that approximately half of the workers laid off were 40 or older was sufficient); *Bevins v. First Nat'l Bank of Omaha*, 2020

WL 9257255, at *5 (D. Colo. July 27, 2020) (finding allegations that older workers were denied assistance and overtime, while younger workers received both, sufficient).

Defendants' cited cases simply do not fit because, there, the allegations did not point to a specific group of workers subject to adverse action because of a challenged policy. *See, e.g.*, *Muhammad v. Vectrus Sys. Corp.*, 2024 WL 1073216, at *5 (where the only allegations of disparate impact were against the plaintiff himself, i.e., a "sample size of one"); *Grider v. City & Cnty. Of Denver*, 2011 WL 721279, at *4 (D. Colo. Feb. 23, 2011) (where plaintiffs did not allege that the behavior affected anyone other than the plaintiffs). At any rate, questions over the degree of impact should be resolved after discovery.

D. Plaintiffs State a Claim Under the Colorado Wage Claim Act.

The Colorado Wage Claim Act ("CWCA") prohibits employers from making "a deduction from the wages or compensation of an employee" except under limited circumstances. C.R.S. § 8-4-105(1). Plaintiffs allege that Defendants violated the CWCA by charging Plaintiffs and proposed class members recruitment fees and employer-provided housing costs. FAC ¶ 207. Defendants' three arguments in response all fail.

1. Unreimbursed business expenses are recoverable under the CWCA.

The CWCA is a remedial statute that must "be liberally construed to carry out its purpose" of protecting employees. *Nieto v. Clark's Mkt., Inc.*, 488 P.3d 1140, 1147 (Co. 2021). Deducting business expenses from employees' wages states a claim under the CWCA. *303 Beauty Bar LLC v. Div. of Lab. Standards & Stat.*, 568 P.3d 43, 46 (Colo. Ct App. 2025); *see* C.R.S. § 8-4-105(1). Critically, actual deductions are not required under the CWCA. As Colorado' Division of Labor Standards and Statics has explained:

> Employees can't be required to pay, without reimbursement, for [costs] primarily for employer benefit or convenience, because there is no legal difference between deducting a cost directly from wages and shifting a cost, which they could not deduct, for the employee to bear.

Interp. Notice & Formal Op. ("INFO") #16 at 3.[4] Even if an employer authorizes an employee to make a work-related expenditure and makes no promise of reimbursement, an employer may still not require employees to pay costs that primarily benefit the employer. *Id.* at 4;[5] *see e.g., Martins v. Auberge Resorts Aspen, Inc.*, No. 2025-cv-30152 at 7-9 (Pitkin Cnty. Dist. Ct., Colo. March 6, 2026) (denying motion to dismiss where employees alleged employer failed to reimburse them for visa and travel expenses); *Ruhrkraut v. Commonspirit Mountain Region*, No. 25-cv-30327 at 6-7 (Denver Cnty. Dist. Ct., Colo. May 23, 2025) (denying motion to dismiss where employee alleged employer attempted deductions through a collection letter despite making no paycheck deduction).[6]

Defendants' reliance on *Smith v. Mini Mart, Inc.,* 2018 WL 10932965, *4 (D. Colo. Mar. 26, 2018) and Colorado Overtime and Minimum Pay Standards Order ("COMPS Order") #39 are unavailing. *Smith* is neither controlling nor persuasive, and predates *Martins*, *Ruhrkraut*, and INFO #16. The cited portion of the COMPS Order #39 addresses

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[4] INFOs are available at: https://cdle.colorado.gov/dlss/labor-laws-rules-resources/labor-law-guidance-education (accessed Mar. 23, 2026).

[5] Defendants contend INFO #16 solely applies to workers participating in government-created work visa programs. While INFO #16 specifically identifies recruiter costs for foreign workers as an example of business expenses primarily for the benefit of the employer, it does not limit costs to those arising from foreign-recruited visa programs. INFO #16 at 5–6. Moreover, the INFO emphasizes that *any* deductions from employee pay are unlawful unless they fall within certain exceptions. *See id.* 3-5. The only potentially applicable exception pertains to written agreements, but Plaintiffs' allegations do not suggest any written agreement to pay fees. FAC ¶ 73.

[6] *Martins* and *Ruhrkraut* are attached hereto as Exhibits 1 and 2.

the different issue of what should be included in the regular rate for the purposes of determining overtime compensation. 7 C.C.R. 1103-1, § 1.8.1-.2; *see Hamilton v. Amazon.com Servs. LLC*, 555 P.3d 620, 626 (Colo. 2024).

2. The fees in question are primarily for Defendants' benefit.

Plaintiffs allege that recruitment fees were a condition of employment, which primarily benefited Defendants because having workers pay those fees resulted in Defendants obtaining workers to fill production needs and did not enable the workers to obtain employment elsewhere. FAC ¶ 50-52, 64, 73, 81. As for employer-provided housing, it is primarily for the benefit of the employer unless the employee freely chooses to accept it and acceptance is not necessary to do the job. INFO #16 at 3. Employer-provided housing is necessary if the job is at a location the employee could not realistically commute to. *Id.* Here, Plaintiffs amply allege that Defendants provided housing that was necessary to the job because workers could not otherwise realistically commute to the plant. FAC ¶ 113. They allege "Ebah knew that refugees like the Haitians . . . are desperate to work. He knew that if Remy promised them a guaranteed job with no English requirements, the Haitians would come to Greeley where they would be dependent on JBS for a job and housing." *Id.* ¶ 58. And they allege that the Haitian workers were new to the country with few resources and would need employer-provided housing while they established themselves in Colorado. *Id.* ¶ 58, 73. Working for Defendants would have been impossible without employer-provided housing given the workers' limited ability to speak English, lack of financial resources and transportation, and inability to find alternative housing amid the sudden influx of Haitian workers in Greeley. *Id.* ¶ 113.

Yet, Defendants still urge dismissal by pointing to Census and housing data that are not part of Plaintiffs' allegations. According to Defendants, the non-record data makes it implausible that no viable non-employer housing existed within commuting distance. The Court should not take judicial notice of the Census and housing data. "The court's function on a Rule 12(b)(6) motion is not to weigh potential evidence that the parties might present at trial, but to assess whether the plaintiff's complaint alone is legally sufficient to state a claim for which relief may be granted.'" *Fuqua v. Santa Fe Cnty. Sheriff's Off.*, 157 F.4th 1288, 1299 (10th Cir. 2025) (citation omitted). It follows that courts should not take judicial notice when the party requesting it seeks to use extrinsic evidence to undermine and attack the veracity of the complaint. *Id.* (citation omitted). Courts also have discretion to decline to take judicial notice when the substance of the exhibits is irrelevant and not central to the claim. *Vreeland v. Huss*, 2021 WL 1171670, at *5 (D. Colo. Mar. 29, 2021). Here, where Defendants use the Census and housing data solely to attack the veracity of Plaintiffs' allegations, judicial notice would be improper. *Fuqua*, 157 F.4th at 1299. Judicial notice is also improper because the data is primarily generalized population data with no direct impact on housing availability. *See* ECF No. 39 at 23-24 (citing U.S. Census Bureau; HUD PD&R Housing Market Profile for Greeley).[7] Indeed, most of this data pertains to other cities, without any information showing that those cities are within commuting distance of the plant. *Id.* To the extent the data references housing, it identifies the number of apartment units created in 2023 without addressing whether those units

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[7] Available online at www.census.gov/quickfacts/fact/table/windsortowncolorado,fort collinscitycolorado,lovelandcitycolorado/PST045224 and www.huduser.gov/portal/periodicals/USHMC/reg/GreeleyCO-HMP-January2024.pdf (accessed Mar. 24, 2026).

are within commuting distance or available at an affordable cost. *Id.* The data is irrelevant.

Even if the Court were to take judicial notice, the data would not refute the plausibility that the housing options in Greeley were unable to accommodate the sudden influx of hundreds of workers with few financial resources to the community. In fact, Plaintiffs allege Defendants themselves could not find enough housing to accommodate the workers, resorting to placing 100 workers in a 17-room motel and up to 60 workers into one house. FAC ¶¶ 98, 109. If Defendants disagree, that is a matter for discovery.

Defendants further argue that Plaintiffs Pierre and Jean-Louis only stayed at the hotel for two weeks and were therefore able to secure non-employer provided housing within commuting distance. FAC ¶¶ 98-100. But that allegation does not undermine the plausibility of Plaintiffs' claim. It is reasonable to infer that Plaintiffs initially needed to rely on employer-provided housing to work for Defendants while they adjusted to Colorado. At this stage, Plaintiffs have stated a CWCA claim.

3. JBS is a proper Defendant for Plaintiffs' wage claims.

Both the CWCA and the CMWA define an employer as "any person acting directly or indirectly in the interest of an employer in relation to an employee." *Whitus v. Venegas,* 2023 WL 2266554, at *8 (D. Colo. Feb. 28, 2023). Courts construe the term "employer" expansively. *Id.*; *see also* H.B. 19-1267 (Colo. 2019) (amending CWCA so that employer has the same meaning as under the FLSA). To be an employer, a defendant must have "sufficient operational control over an employing business, including its employment policies or upper management." INFO #11. Whether a defendant has sufficient operational control depends on the totality of the circumstances, with a focus on the factors set out above, *see supra* Pt. III.A, and in *Inniss*, 385 F. Supp. 3d at 1168: (1) the power to hire and fire; (2) the extent of supervision or control over work schedules or conditions; (3) determining the rate and method of payment; and (4) maintaining employee records. *See also* INFO #11A at 1. Courts in this district decline to dismiss claims based on employer status where the complaint alleges even "thin" facts. *Inniss*, 385 F. Supp. 3d at 1168-69. Here, as discussed above, Plaintiffs' allegations surpass this standard. See supra Pt. III.A.1, 2; *Fuentes v. Compadres, Inc.*, 2018 WL 1444209, at *6 (D. Colo. Mar. 23, 2018) (finding allegations that defendant "has exercised substantial control over the functions of the company's employees . . . he also hired workers, set their rates of pay . . . , and oversaw other 'day to day' [] operations" sufficient).[8] JBS is a proper Defendant.

E. Plaintiffs State a Claim Under the Colorado Minimum Wage Act.

The CMWA requires that all employees be paid the applicable state or local minimum wage. C.R.S. § 8-6-106; COMPS Order # 39, 7 CCR 1103-1, R. 3.1. When an employer shifts business expenses to an employee, and the costs of those expenses bring the employee's wages below the hourly minimum, that is a violation of the CMWA. *See Koral v. Inflated Dough, Inc.*, 2014 WL 4904400, at *4 (D. Colo. Sept. 29, 2014). Here, Plaintiffs allege that the fees discussed above caused their net wages to fall below the minimum wage. FAC ¶¶ 67-81, 91-107.

In response, Defendants make the same unsuccessful arguments they made as

[8] Defendants cite two cases analyzing the CWCA and CMWA: *Innis* and *Mason*. Both are distinguishable. *See supra* Pt. III.A. 2.

to deductions and business expenses. *See supra* Pt. III.D.1, 2; *see also Arriaga v. Fla. Pac. Farms, L.L.C.,* 305 F.3d 1228, 1242 (11th Cir. 2002) (holding, under FLSA, employers had to reimburse workers' transportation costs to comply with minimum wage requirements, explaining that those costs were an inherent consequence of the employer's decision to recruit foreign workers); *see* INFO #16 at 3 (citing *Arriaga*).

Defendants also contest whether Plaintiffs sufficiently allege that the deductions brought their wages below the minimum and advance incorrect calculations. The correct calculations and references to Plaintiffs' allegations demonstrate that Plaintiffs have stated CMWA claims: ***Plaintiffs Saint Aubin and Pierre*** began working for Defendants during the last week of December 2023 and were therefore entitled to a minimum wage of $13.65 per hour, meaning that their pay needed to fall below $477.75 and $409.50 respectively to state a CMWA claim. FAC ¶¶ 116-18. ***Plaintiff Saint Aubin*** paid between $300-400 for a flight to Colorado and $100 in recruitment fees. *Id.* ¶ 73. During his first week of work, he worked approximately 25 hours and was paid approximately $23.75 per hour, totaling approximately $831.25 in his paycheck. *Id.* ¶ 117. So when considering that he incurred at least $400 of unreimbursed business expenses through flights and recruitment fees, his total wages for his first workweek were only $431.25 or approximately $12.32 per hour, less than Colorado's minimum wage of more than $13 per hour in 2023. 7 C.C.R. 1103-14 (2023). ***Plaintiff Pierre*** paid approximately $275 for a flight to Colorado and $220 in recruitment fees. FAC ¶ 76. In his first paycheck, Pierre was only paid $23.75 per hour for 30 hours working, demonstrating Defendants only paid him approximately $712.50 total. *Id.* ¶ 118. By not reimbursing Plaintiff Pierre for his flights and recruitment costs, his total wages were only approximately $217.50 or $7.25 per hour, well below the minimum wage. ***Plaintiffs Jean-Louis and Santus*** began work in March 2024 and thus were owed $14.42 per hour under the CMWA, meaning that their pay needed to fall below $540.74 and $521.72 respectively to state a plausible CMWA claim. **Plaintiff Jean-Louis** paid approximately $387 for a flight to Colorado and $320 in recruitment fees. *Id.* ¶ 77. Defendants only paid Plaintiff Jean-Louis $23.50 per hour for 37.5 hours, totaling approximately $881.25. *Id.* ¶ 119. So by failing to reimburse him for travel and recruitment fees, Defendants only paid him $174.25, or $4.64 per hour for his work week, well below the minimum wage. ***Plaintiff Santus*** paid around $300 for a flight to Colorado and $150 in recruitment fees, totaling $450 in business expenses that Defendants needed to reimburse. *Id.* ¶ 79. Yet, Defendants' only paid Santus $23.25 for 36.18 hours, totaling approximately $841.18 in her paycheck. *Id.* ¶ 120. Consequently, Defendants only compensated her $391.18, or $10.81 per hour for her first week, bringing her wages below minimum wage. ***For all of the Plaintiffs***, the FAC sufficiently pleads facts supporting a reasonable inference that they paid their recruitment fees before their first workweek: "Plaintiffs were told that ***if*** they paid the recruitment fees, they would be hired at JBS[.]" *Id.* ¶ 73 (emphasis added). That is, Plaintiffs could be hired only after paying, and therefore necessarily paid before the first workweek. In addition, when listing the amounts each Plaintiff paid, Plaintiffs allege they borrowed money to cover the fees and were only able to repay those loans after starting the job. *Id.* ¶¶ 75-79. The reasonable inference is that Plaintiffs paid the fees before the first workweek since one cannot repay money that has not yet been spent.

Finally, Defendants' arguments that JBS is not a proper Defendant under the CMWA are dispensed with above. *Supra* Pt. III.A, D.3.

F. Plaintiffs State a Claim for Civil Theft.

Plaintiffs allege that Defendants' failure to pay minimum wage constitutes civil theft pursuant to C.R.S. § 18-4-405. FAC ¶ 227. Defendants argue against this by rehashing their arguments about the CMWA, which fails for the reasons discussed above. *Supra* Pt. III.D. Defendants also argue that Plaintiffs cannot pursue a civil theft claim solely based on violations of the CMWA. But Plaintiffs' CMWA and civil theft claims involve distinct elements, burdens of proof, and potential remedies. Regardless, pleading multiple theories for the same injury is not only permitted, but "encouraged." *T-Bone Constr. Inc. v. BGE LLC*, 2023 WL 12051467, at *5 (Colo. App. Nov. 2, 2023) (citation omittted).

Defendants' reliance on *Kimes v. Alshawy* and *Conejo v. Malwitz* is misplaced. Those cases address only the prohibition on "receiv[ing] double compensation for the same wrongdoing," not any bar on pleading parallel claims. *Kimes*, 2024 WL 2864147, at *6 (D. Colo. May 20, 2024); *Conejo,* 2025 WL 3516444, at *4 (D. Colo. Oct. 24, 2025). *See also Hemmann Mgmt. Servs. v. Mediacell, Inc.*, 176 P.3d 856, 860 (Colo. App. 2007) (a party may advance multiple theories of recovery, "even if the party will not be permitted to recover under each of those theories.") (citation omitted). Indeed, *Kimes* confirms that a plaintiff may pursue both claims and elect the remedy that affords the greater recovery. 2024 WL 2864147, at *6 (denying damages for civil theft claim because plaintiff "will already be receiving a CWA award, and the CWA punitive damages award exceeds the requested punitive damages under section 18-4-405.") (citation omitted).[9]

G. Plaintiffs State a Claim for Unjust Enrichment.

Plaintiffs allege that Defendants were unjustly enriched by the fees collected through their agents. FAC ¶¶ 230-37. On this claim, Defendants challenge only whether retention of the fees at Plaintiffs' expense was unjust. Plaintiffs sufficiently allege it was. Specifically, Plaintiffs allege that Defendants were unjustly enriched through the fee scheme because it incentivized the recruitment of Haitian workers, allowing Defendants to expand their workforce and increase profits. *Id.* ¶¶ 231–37. The benefit is Plaintiffs' labor, which generated profits for Defendants. *Id.* Thus, the measure of restitution is not the difference between the fees paid and their market value, but an amount to "undo the benefit to [Defendants] that comes at the unfair detriment of [Plaintiffs]."*Ciancio v. Adams Indus. Dev. Grp., LLC*, 2024 WL 3897997, at *2 (Colo. App. June 20, 2024).[10]

Whether there was an expectation of payment is irrelevant. *Ninth Dist. Prod. Credit Ass'n v. Ed Duggan, Inc.,* 821 P.2d 788, 799-800 & n.19 (Colo. 1991); *Luttgen v. Fischer*, 107 P.3d 1152, 1157 (Colo. App. 2005); *see also Menocal v. GEO Grp., Inc.*, 882 F.3d 905, 923–24 (10th Cir. 2018). Here, too, Defendants' reliance on *Smith* is unavailing. 2018 WL 10932965, at *4 & n.8 (reciting Colorado's definition of unjust enrichment without including any requirement of an expectation while noting that Wyoming law does

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[9] Defendants' suggestion that the legislature did not intend CMWA violations to support civil theft claims is belied by both the language of the CMWA and case law. *See Commissiong v. Ctr. at Lincoln, LLC*, 2025 WL 902898, at *3 (D. Colo. Mar. 25, 2025).

[10] Regardless, Plaintiffs have alleged how the fees were excessive and unjust. Plaintiffs allege that Remy and Ebah were charging some 40 - 60 Haitians between $70 and $250 a week to reside in a two-bedroom house, amounting to nearly $11,000 a month. FAC ¶¶ 104-07. This is unreasonable even in the most expensive cities.

incorporate that requirement).[11] At best for Defendants, expectations may be relevant, but such an inquiry is fact-bound and inappropriate now. *See, e.g.*, *Melat*, 287 P.3d 847; *Cahey v. Int'l Bus. Machines Corp.*, 2021 WL 5384526, at *16 (D. Colo. Nov. 18, 2021).[12]

IV. CONCLUSION

Plaintiffs respectfully request that the Court deny Defendants' motion in full.[13]

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Respectfully submitted,

NICHOLS KASTER, PLLP

/s/ Anna P. Prakash
Matthew H. Morgan
Anna P. Prakash
Joshua R. O'Neill
4700 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
Telephone: (612) 256-3200
Facsimile: (612) 215-6870
morgan@nka.com
aprakash@nka.com
joneill@nka.com

FARMSTAND
Amal Bouhabib

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[11] *Smith* and Defendants cite *Melat, Pressman & Higbie, L.L.P. v. Hannon Law Firm*, 287 P.3d 842 (Colo. 2012). But *Melat* concerned the specific circumstance of the timing of accrual of a withdrawing attorney's quantum meruit claim against co-counsel following a favorable settlement or judgment that generated attorney's fees and did not purport to establish a categorical expectation-of-payment requirement. *Id.* at 847–49.

[12] Defendants claim that Plaintiffs improperly group plead their common law claims in the same manner as Plaintiffs' other claims. Plaintiffs' allegations sufficiently identify Defendants' conduct to put them on notice of the allegations. *See supra* Pt. III.A.3.

[13] To the extent the Court disagrees, dismissal should be without prejudice. This is not a "fourteen-year-long dispute" as in Defendants' cited case of *Crocs, Inc. v. Effervescent, Inc.*, 2021 WL 949331, at *1 (D. Colo. Mar. 11, 2021). And though the Court has discretion, *see e.g., Oldham v. Brennan*, 2016 WL 7375328, *7 (D. Colo. Dec. 20, 2016), leave to amend is freely given when justice so requires. *See* Fed. R. Civ. P. 15(a)(2).

Hannah Wolf
712 H St NE Suite 2534
Washington, D.C. 2002
(202) 595-8816
amal@farmstand.org
hannah@farmstand.org

TOWARDS JUSTICE
Juno Turner
Toree Lindblad
P.O. Box 371689, PMB 44465
Denver, CO 80237-5680
(720) 441-2236
juno@towardsjustice.org
toree@towardsjustice.org