IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 25-cv-04023-RMR-NRN

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,

Defendants.

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**ORDER ON DEFENDANTS' MOTION TO STRIKE (ECF No. 37) and RECOMMENDATION ON MOTION TO DISMISS PURSUANT TO RULE 12(b)(6) (ECF No. 39)**

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**N. REID NEUREITER**
**United States Magistrate Judge**

This matter comes before the Court on Defendants' Motion to Strike, ECF No. 37, and Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6) ("Motion to Dismiss"), ECF No. 39. Both motions were filed March 4, 2026 and referred to this Court by Judge Regina M. Rodriguez. *See* ECF Nos. 38 & 40.

Plaintiffs filed an opposition to the Motion to Strike on March 25, 2026. ECF No. 48. Plaintiffs filed their opposition to the Motion to Dismiss the same day. ECF No. 49. On April 8, 2026, Defendants filed a reply in support of the Motion to Dismiss, ECF No. 54, as well as a reply in support of the Motion to Strike, ECF No. 53. The Court granted

Plaintiffs leave to file a sur-reply, which was filed on April 27, 2026. ECF No. 61. The Court heard oral argument on both motions on April 23, 2026. ECF No. 60.

## I. BACKGROUND[1]

### a. Factual Allegations

This is a class action lawsuit brought on behalf of Plaintiffs and other Haitian individuals employed at a meat processing plant in Greeley, Colorado. Plaintiffs name as defendants JBS USA Food Company ("JBS USA") and Swift Beef Company ("Swift") (collectively "Defendants"). Plaintiffs bring claims under Title VII of the Civil Rights Act of 1964 ("Title VII"), as amended, 42 U.S.C. §§ 2000e et seq., and Title I of the Civil Rights Act of 1991, 42 U.S.C. §§ 1981 and 1981a. Plaintiffs also bring claims under various Colorado statutes, including Colo. Rev. Stat. § 8-2-104 (Obtaining Workmen by Misrepresentation Unlawful); the Colorado Wage Claim Act ("CWCA"), Colo. Rev. Stat. §§ 8-4-101, et seq.; the Colorado Minimum Wage Act ("CMWA"), Colo. Rev. Stat. §§ 8-6-101, et seq.; and their implementing regulations. *See, e.g.*, 7 Colo. Code Regs. § 1103-1. *See generally* ECF No. 31 (Amended Complaint).

Per the Amended Complaint, Plaintiffs and the putative class members are Black, of Haitian ancestry, and citizens of Haiti. Plaintiffs' native language is Haitian Creole. *Id.* at 3. They are employed, or were recruited for employment, at Defendants' Greeley, Colorado meat processing plant. It is undisputed that there is only one plant in Greeley, which is nominally operated by Swift, and which, in turn, appears to be owned by JBS USA. *See id.* 31 ¶¶ 9–13 (alleging that JBS USA and Swift are both

[1] Any citations to docketed materials are to the page number in the CM/ECF header, which sometimes differs from a document's internal pagination.

headquartered in Greeley, that JBS USA is the parent of Swift, and that Swift is a wholly-owned subsidiary of and operated by JBS USA). Plaintiffs allege that both Swift and its corporate parent, JBS USA, are Plaintiffs' employers and have named both as Defendants.

JBS USA, with its subsidiaries, is one of the largest animal protein producers in the world and the top beef producer in the United States. *Id.* ¶ 25. JBS USA (and/or its subsidiary Swift) operates the slaughterhouse and meat packing facility at its headquarters in Greeley. For clarity, the Court will use Plaintiffs' nomenclature and describe the JBS USA/Swift meat processing facility in Greeley as "JBS Greeley." The JBS Greeley plant employs approximately 4,000 workers. *Id.* at 7.

The lawsuit stems from JBS Greeley's 2023 efforts to recruit new workers. *Id.* ¶ 39. The Amended Complaint alleges that for over a decade, JBS Greeley had an intentional and strategic plan to rely heavily on refugees and other immigrants seeking humanitarian relief to fill its workforce. *Id.* ¶ 40. At some point, JBS Greeley began to work directly with refugee resettlement agencies and local service organizations to recruit immigrants with work authorization; first from Somalia, Eritrea, and the Congo, and later, Myanmar, South Sudan, and the Middle East. *Id.* ¶ 42. Plaintiffs allege that by 2020, JBS Greeley's meatpacking workforce was estimated to be 80–90 percent foreign-born. *Id.* ¶ 44. By the fall of 2023, JBS Greeley again needed new workers. JBS Greeley identified recently arrived Haitians as potential workers. The Haitians had received humanitarian parole, or Temporary Protected Status ("TPS"), an immigrant designation reserved for foreign individuals who cannot return to their home countries safely due to dangerous or extraordinary country conditions such as war, famine, or natural disaster. *Id.* ¶ 50. Plaintiffs allege that JBS Greeley viewed the Haitians as an "ideal replacement" for Muslim Somali workers with whom JBS Greeley previously had labor disputes, in part because the Somali workers required time to pray during the day. *Id*. ¶ 51.

A JBS Greeley HR supervisor, Edmond Ebah ("Ebah"), was an established recruiter for JBS Greeley. Ebah came to know Mackenson Remy ("Remy"), a Haitian resident of Colorado. *Id.* ¶¶ 53–54. Ebah told Remy that JBS Greeley had at least 60 openings in slaughtering, butchering and packaging meat. He said the job "made good money, required no English language skills, and that it was a sure thing: if the Haitians came to Greeley, they would have a job at JBS." *Id.* ¶ 57. Ebah knew that Haitian refugees did not arrive in the United States with much money, often do not speak English, and are desperate to work. Plaintiffs allege that Ebah, an experienced JBS Greeley recruiter, knew that if Remy promised them a guaranteed job with no English requirements, the Haitian refugees would agree to come to Greeley where they would be dependent on JBS Greeley for jobs and housing. *Id.* ¶ 58.

Based on his conversations with Ebah, Remy created a TikTok video, advertising jobs at JBS Greeley. Based on his conversations with Ebah, Remy included a voice-over on the video in Haitian Creole telling his viewers that JBS Greeley was hiring workers. The video made several representations:

a. With respect to the kind and character of the work, Remy said that the job was hard but paid well. He said it was not a job for lazy people or people who do not like the cold. He stressed that English was not required.

b. As to the amount and character of the compensation to be paid, Remy said the job "paid well, about $22 or $23 an hour." He also stressed that if the Haitians came, JBS Greeley would provide housing that was "really nice," and that the workers would be "well taken care of."

c. As to the sanitary or other conditions of the job, Remy said only that the job would be cold.

d. Finally, Remy stressed to Haitian immigrants that if they came to Greeley, a job at JBS Greeley was guaranteed. He encouraged anyone to text him because "if you come, you can have a job."

*Id.* ¶¶ 59–60.

It is alleged that JBS Greeley knew and approved of Remy's video. Remy filmed the video from inside JBS Greeley, based on information provided to him by a JBS Greeley recruiter. In later videos advertising the work, Remy filmed footage of the workers he recruited inside the facility. Because photography and video on the production floor at JBS Greeley are generally prohibited under JBS Greeley policy, Remy could only have filmed these videos with JBS Greeley's knowledge and permission. *Id.* ¶ 61.

It is also alleged that JBS Greeley knew the representations or promises made to the Haitian recruits were not accurate. For example, it is alleged that Remy's minimal description was misleading as to how difficult and dangerous the work would be. The promise that English was not required was also misleading because either English or Spanish was required for purposes of understanding JBS Greeley's orientation, employment policies, and safety trainings, which, in turn, were essential to performing the job accurately and safely. JBS Greeley knew at the time the representations were made that it had no supervisors who spoke Haitian Creole and had no intention of having trainings or employment materials translated into Haitian Creole prior to or even soon after hiring the Haitian workers. *Id.* ¶ 62(a).

Plaintiffs further allege that JBS Greeley knew Remy had misrepresented the amount and character of the pay, the quality of the housing, and the fact that workers would have to pay for the housing, which was in over-crowded, filthy rooms, crammed with strangers. *Id.* ¶ 62(b). The working conditions are also alleged to have been misrepresented, with JBS Greeley failing to mention conditions like extreme heat, repetitive motions, and the use of dangerous chemicals, heavy machinery, and sharp tools. *Id.* ¶ 62(c).

On the issue of housing, Remy had said the employer-provided housing would be "really nice," and that the workers would be taken care of. Plaintiffs allege that, in fact, at the time of the promise, JBS Greeley had secured 17 rooms at the Rainbow Motel in Greeley, even though it was recruiting for at least 60 positions, and ultimately, many more. JBS Greeley therefore knew that recruits would be compelled to share rooms with at least four other people, with one bed, no cooking facilities, and one bathroom. Moreover, JBS Greeley had no intention of actually "taking care" of the workers, instead leaving them to figure out their commute to and from work and how to acquire and pay for food during the days or weeks they waited to start work. *Id.* ¶ 62(d).

After posting the video on a TikTok channel targeted at the Haitian community in the United States, Remy began receiving direct messages from interested Haitians all over the country. When asked by Remy what he should do with hundreds of inquiries, Ebah told Remy not to worry—"Have them [100 or 200 people] just book their flight tickets to Colorado, you and I will take care of the rest." When Remy asked Ebah where they would all live, Ebah responded, "Don't worry anymore about where they are going to live, trusted [sic] me." *Id.* ¶ 63.

In December of 2023, Plaintiff Pierre was enticed to fly to Colorado from Oklahoma after seeing the TikTok video and speaking to Remy. Remy told Plaintiff Pierre that he would need to pay $220 if he wanted the job, that housing would be provided, and that the position did not require that he know English. Plaintiff Pierre understood from both the video and his conversation with Remy that the employer-provided housing would be "nice," implying it would be safe, sanitary, and sufficiently furnished and spaced for the number of residents. *Id.* ¶ 67. The other three named Plaintiffs also flew to Colorado after hearing about Remy's TikTok video and had similar understandings as Pierre. *Id.* ¶¶ 68–70.

For securing them a job, Remy was charging a recruitment fee to all Plaintiffs and putative class members. Fees ranged from $100 to $320. Plaintiffs and putative class members were told that if they paid the recruitment fees, they would be hired at JBS Greeley, be given a trip from the airport to a place to live, and be provided housing for a period of time while they became established in Colorado. *Id.* ¶¶ 73–79. Plaintiffs allege that the transportation, recruitment fees, and housing costs were business-related expenses because they were primarily for the benefit of JBS Greeley. "Although the workers obtained jobs at JBS Greeley, JBS Greeley obtained a labor pool to help its business profit and could take advantage of that cash-strapped labor pool through excess line speeds." *Id.* ¶ 81.

The first set of Haitian workers arrived in Greeley around November 2023. As the workers began to arrive, JBS Greeley secured rooms for them at the Rainbow Motel, located a mile from the JBS Greeley plant. Plaintiffs allege that the Rainbow Motel consisted of rooms each with one bed and one bathroom. There were no cooking facilities. Due to the influx of recruits, JBS Greeley placed arriving Haitian workers in these one-bed rooms with anywhere from three to eleven other Haitians, some of them strangers, and regardless of gender. Some of the rooms lacked adequate heat in the frigid winter temperatures. *Id.* ¶¶ 84–86. Many people slept on the floor. In certain cases, twelve people were using one bathroom. *Id.* ¶¶ 88–89. At its peak, the 17-room motel was housing over 100 Haitians. *Id.* ¶ 98.

Plaintiffs and the putative class were charged additional weekly fees for the crowded rooms. It is alleged that JBS Greeley was in control of whether and how much to charge workers for the accommodations. *Id.* ¶ 91. Remy used a van to take workers to and from the plant and charged a “commuting fee.” *Id.* ¶¶ 92–93.

Plaintiffs allege that while JBS Greeley knew of the challenges new recruits would face when arriving in Greeley without transportation, money, or language skills, it took no steps to intervene on behalf of the hundreds of Haitians recruits it employed to ensure that the employer-provided housing was habitable, or that the new recruits had adequate food or transportation. It left all those decisions to Ebah. *Id.* ¶ 96.

To make room for new recruits at the motel, Ebah rented houses and moved Haitian workers from the motel into them. Plaintiff Saint Aubin and the other recruits who were moved to the rental house bought blankets to sleep on the floor. There was not enough room to lay down mattresses. At times, there was no electricity or water. Recruits were charged per week to stay in these houses, which had little furniture and sometimes housed 25–30 people, and up to 40–60 people. Each resident was charged $70 or more per week, amounting to more than $11,000 per month. *Id.* ¶¶ 102–109.

Plaintiffs allege that the employer-provided housing was an essential part of the recruitment scheme and necessary to do the job, as there was no viable alternative housing within commuting distance of the JBS Greeley plant. Given its history of recruiting immigrants, JBS Greeley knew that it would be significantly challenging for the Haitian recruits, most of whom did not speak English, to secure housing by themselves. JBS Greeley also knew that, having come from all over the country, most of them would not have their own transportation. and that, having taken on the expense of traveling to Greeley, the Haitians would be "cash-strapped" and unlikely to be able to pay rent independently. The sheer number of Haitian workers being hired at JBS Greeley (dozens a week) made it unlikely that adequate alternative housing existed. *Id.* ¶ 113. Plaintiffs allege that despite the lack of living space, JBS Greeley continued to recruit and employ Haitians, and Ebah and Remy continued to collect money for rent and other services far in excess of their worth. Within a year, JBS Greeley had added approximately 1,200 workers to its plant payroll. *Id.* ¶ 114.

During their first week at JBS Greeley, each Plaintiff and putative class member received a four-day orientation designed to introduce them to the plant and train them in safety and work policies. But despite the health and safety hazards involved with the work, JBS Greeley did not conduct trainings in Haitian Creole or any language accessible to the Haitian recruits. Instead, the trainings were provided in English and Spanish. *Id.* ¶¶ 121–122. JBS Greeley training supervisors were directed to falsify records stating the Haitian workers understood the training. *Id.* ¶ 124. By contrast, JBS Greeley trained English and Spanish speaking hires in their native languages. These hires thus were able to understand and complete their own training tests. *Id.* ¶ 125.

Plaintiffs allege that this failure to properly train increased the rate of injury to Haitian workers relative to white or Hispanic workers. *Id*. ¶ 131. Many of the Haitian workers are alleged to have been injured. Injuries included injuries from the knives they were using to cut apart the cattle, musculoskeletal injuries from performing difficult and repetitive motions, chemical injuries from the products they were directed to use for cleaning, amputations, severe burns, and lacerations. *Id.* ¶ 133. Plaintiffs further allege that JBS Greeley failed to provide its Haitian workers with crucial information about their health and safety rights as related to workplace injuries and illnesses in their native language. This meant that after Haitian workers experienced an injury at work, JBS Greeley made it almost impossible for them to access the medical care and wage replacement to which they were entitled. *Id.* ¶ 136.

A litany of problems, including physical injuries, resulted from JBS Greeley's alleged failures to inform Plaintiffs and putative class members in their native language of their rights as workers and of JBS Greeley's policies. *Id.* ¶¶ 138–152.

Plaintiffs also allege that JBS Greeley had a policy of accelerating the line speed to dangerous fast speeds for the line that was made up of majority Haitian workers—the "B-Shift" line. In contrast, the "A-Shift" line, which was made up of fewer Haitian workers and more white and Mexican workers, was slower. This increase in the B-Shift line speed led to a higher risk of injury for Haitian workers, as compared to the non-Haitian workers on the A-Shift. *Id.* ¶¶ 154–163.

**b. Class Action Allegations**

Plaintiffs bring this lawsuit on their own behalf and on behalf of three subclasses. The subclasses are as follows:

- “The Recruitment Class”: “All Black Haitian workers recruited to work at JBS Greeley at any time after November 1, 2023”;
- “The Discrimination Class”: “All Black Haitian workers employed by JBS Greeley at any time after November 1, 2023”; and
- The “B-Shift Class”: “All Black Haitian workers employed at JBS Greeley and assigned to work the B-Shift on the processing line at any time after November 1, 2023.

*Id.* ¶ 173. Plaintiffs allege that there are numerous questions of law and fact that are common to each class or subclass, which predominate over any individual issues which may exist. Common issues for the various classes are alleged to include:

- Whether JBS Greeley and its agents misrepresented the fees required to apply for or obtain employment;
- Whether JBS Greeley and its agents obtained improper or undisclosed fees for job applications, housing, and commuting;
- Whether JBS Greeley and its agents obtained business related expenses in the form of recruitment fees from Plaintiffs and the Class;
- Whether JBS Greeley improperly deducted amounts from Plaintiffs’ and the Class’s wages in the form of recruitment fees;
- Whether JBS Greeley failed to pay Plaintiffs and the Class the state minimum wage during weeks in which they incurred business-related expenses;
- Whether JBS Greeley misrepresented the terms and conditions of the work by guaranteeing that no English language skills were required;
- Whether JBS Greeley mispresented the terms and conditions of the work by promising to provide housing to Haitian recruits;
- Whether JBS Greeley failed to provide workplace safety and JBS Greeley policy training in a language spoken or understood by Black Haitian workers, while providing white and Hispanic workers, and/or other workers who were not Black Haitian, training in their native languages;
- Whether JBS Greeley failed to provide Black Haitian workers with crucial information that would have allowed them to assert their rights related to workplace safety, injuries, and JBS Greeley policies relating to

unscheduled breaks while providing workers who were not Black Haitians, including white and Hispanic workers, such information in their native languages;

- Whether JBS Greeley encouraged supervisors to routinely deny Black Haitian workers access to unscheduled breaks, even in emergency situations;

- Whether JBS Greeley imposed higher and unreasonably fast line speeds on Black Haitian workers in B shift than it imposed on workers in A shift, which was not primarily staffed with Black Haitian workers.

*Id.* ¶¶ 174–175.

Plaintiffs allege that the claims of all class members arise from the same common nucleus of facts, and the proper measure of damages can be calculated for individual class members based on a formula. *Id.* ¶ 176.

**c. Claims in this Lawsuit**

Based on the factual allegations set forth above, Plaintiffs bring the following claims:

With respect to Claim 1, Plaintiffs allege a pattern and practice of discriminatory treatment because of race, in violation of 42 U.S.C. § 1981(b).

With respect to Claim 2, Plaintiffs allege that the putative recruitment class members were brought to Colorado through false and deceptive representations in violation of Colorado's law against obtaining workmen from other states by misrepresentation, Colo. Rev. Stat. § 8-2-104.

With respect to Claim 3, on behalf of the B-Shift class members, Plaintiffs allege a pattern or practice of discriminatory treatment because of race, ethnicity, color, or national origin in violation of Title VII.

With respect to Claim 4, Plaintiffs allege that JBS Greeley violated the CWCA by passing along business-related expenses onto Plaintiffs and, as a result, improperly deducting from their wages recruitment fees and employer-provided housing costs.

With respect to Claim 5, Plaintiffs allege violations of the CMWA for the weeks in which Plaintiffs incurred business-related expenses.

With respect to Claim 6, Plaintiffs assert Defendants committed civil theft under Colo. Rev. Stat. § 18-4-405 by unlawfully requiring Plaintiffs to pay business expenses, thereby reducing their wages below the minimum wage.

Finally, with respect to Claim 7, Plaintiffs allege that JBS Greeley was unjustly enriched by having their agents, Ebah and Remy, charge unreasonable amounts for (1) overcrowded, uninhabitable housing at the Rainbow Hotel, far in excess of the value of the housing; (2) the daily commute to and from the JBS Greeley worksite; and (3) trips to the grocery store and other fees incurred by Plaintiffs.

## II. MOTION TO STRIKE

Defendants move to strike certain allegations from the Amended Complaint. *See* ECF No. 37. The Motion to Strike targets two different types of allegations: (1) redundant, immaterial, impertinent or scandalous allegations; and (2) allegations relating to the class action aspects of the case.

### a. Redundant, Immaterial, Impertinent, or Scandalous Allegations

Defendants argue that Plaintiffs' allegations violate Rule 12(f)'s prohibition on "redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). These include allegations concerning the general dangers of slaughterhouses and meatpacking, and Defendants' historic recruitment practices dating back sixteen years prior to the events of the lawsuit, including recruitment of refugees. Also challenged are paragraphs referring to the JBS Greeley plant as being a “COVID-19 hotspot” resulting in six workers’ deaths; reference to a decade-long lawsuit filed by the EEOC on behalf of Somali Muslim workers who had asserted that JBS Greeley denied them the opportunity to pray according to their religion; and one paragraph alleging that in 2022, the federal government “discovered that JBS had unlawfully been employing children in dangerous jobs during overnight shifts in Greeley and other locations.” *See* ECF No. 37 at 5–9.

As explained at oral argument, these disputed paragraphs will not be stricken. As the foremost treatise on federal civil practice makes clear, “[b]oth because striking a portion of a pleading is a drastic remedy and because it often is sought by the movant simply as a dilatory or harassing tactic, numerous judicial decisions make it clear that motions under Rule 12(f) are viewed with disfavor by the federal courts and are infrequently granted.” 5C *Wright and Miller’s Federal Practice & Procedure* § 1380 (3d ed. 2004). Indeed, Rule 12(f) motions to strike on the basis that allegations are redundant, impertinent, immaterial, or scandalous, are often considered purely cosmetic “time wasters.” *Id.* § 1382 (quotation and citation omitted). There is, therefore, “general judicial agreement, as reflected in the extensive case law on the subject” that such motions should be denied “unless the challenged allegations have no possible relation or connection to the subject matter of the controversy.” *Id.*; *see also Purzel Video GmbH v. St. Pierre*, 10 F. Supp. 3d 1158, 1168 (D. Colo. 2014) (“Striking a portion of a pleading is a drastic remedy; the federal courts generally view motions to strike with disfavor and infrequently grant such requests.”).

In this case, the Court finds that the disputed allegations do have some logical relation to the subject matter of the controversy. The extreme dangers of the beef slaughtering and packing business relate to the alleged omissions in the recruitment video and to the alleged discrimination associated with the increased line-speed for the B-Shift. JBS Greeley's history of recruiting (and allegedly mistreating) refugees lends context to the story being told about why JBS Greeley encouraged hundreds of Haitian refugees to make their way to northern Colorado. Pleadings are rarely, if ever, shown to a jury, and if the case ever gets to trial, Defendants will be able to exclude marginally relevant but unfairly prejudicial evidence under Fed. R. Evid. 403. *See Butler v. Pollard*, 482 F. Supp. 847, 852 (D. Okla. 1979) (denying motion to strike material in complaint in part because "[a]ny improper material will be removed at the time of the pretrial conference or not admitted in evidence at the trial herein").

Overall, the paragraphs that Defendants seek to strike as redundant, impertinent, or scandalous are but a few statements buried within the detailed, 237-paragraph, 51-page Amended Complaint. The Court will not flyspeck a lengthy and comprehensive class action complaint because Defendants take issue with a few sentences saying mean things about the meat industry generally or the JBS Greeley plant in particular. Defendants show no undue prejudice from these few allegations. *See Rawson v. Sears Roebuck and Co.*, 585 F. Supp. 1393, 1397 (D. Colo. 1984) (explaining that immaterial and impertinent matters in the plaintiff's briefs would not be stricken when the defendant did not demonstrate that it would be unduly prejudiced otherwise).

**b. Allegations Relating to the Class**

The second type of allegation that Defendants seek to strike relates to the class action nature of this lawsuit. *See* ECF No. 37 at 9–17. Defendants argue that the proposed classes are overbroad and not ascertainable, and that individual questions will predominate, making class certification inappropriate.

While a motion to strike redundant, scandalous, or impertinent allegations is already disfavored, a

> motion to strike class allegations under Rule 12(f) is even more disfavored because it requires a reviewing court to preemptively terminate the class aspects of litigation, solely on the basis of what is alleged in the complaint, and before plaintiffs are permitted to complete the discovery to which they would otherwise be entitled on questions relevant to class certification.

*Butler v. Specialized Loan Servicing LLC*, No. 24-cv-01087-PAB-SBP, 2025 WL 2613745, at *2 (D. Colo. Sep. 10, 2025) (quoting *Francis v. Mead Johnson & Co.*, No. 10-cv-00701-JLK, 2010 WL 3733023, at *1 (D. Colo. Sept. 16, 2010)) (internal quotation, alteration, and citation omitted).

To succeed on a motion to strike class allegations, the defendant has the burden to show that, based on the face of plaintiff's complaint, it will be "*impossible* to certify the classes alleged by the plaintiffs regardless of the facts the plaintiffs may be able to prove." *Id.* (citation and quotations marks omitted) (emphasis in original). As this Court previously held in a different case, to strike class allegations from a putative class action complaint, the moving defendant has the burden to "show conclusively that plaintiffs will be unable to establish facts that would make class treatment appropriate." *Ramsay v. Frontier, Inc.,* No. 19-cv-03544-CMA-NRN, 2020 WL 4557545, at *24 (D. Colo. July 30, 2020), *report and recommendation adopted*, 2021 WL 651021 (D. Colo. Feb. 19, 2021). Thus, it is only the very rare case that would justify striking of class allegations before any discovery and without any opportunity via a motion for class certification to formally test the class allegations. *See Cholakyan v. Mercedes-Benz USA, LLC*, 796 F. Supp. 2d 1220, 1245 (C.D. Cal. 2011) (collecting cases) (striking class allegations "is in fact rare . . . in advance of a motion for class certification.").

Such a rare case, and one on which Defendants rely, is *Ramsay v. Frontier*. In that case, the named plaintiffs were two women who had been sexually assaulted by their seatmates on two different Frontier airline flights. The lawsuit was brought as a class action under Rule 23 and challenged Frontier's policies regarding in-flight sexual assaults, seeking injunctive relief requiring Frontier to establish policies to prevent such assaults. The lawsuit also sought compensation for the physical and emotional injuries suffered by the two named plaintiffs. The complaint was brought on behalf of a nationwide class of *all* air passengers who had flown Frontier over a three-year period—not just passengers who may have been sexually assaulted—meaning a class made up of potentially millions of Frontier passengers, including men, women and children, the vast majority of whom had not been assaulted.

Frontier sought dismissal of the injunctive claims on preemption and other grounds and also sought to strike the class allegations. After the Court dismissed the injunctive claims, it concluded that, in light of the limited personal injury claims remaining in the case, there would be no conceivable way that the plaintiffs could succeed on certifying a class of *all* Frontier passengers, including millions who had not been sexually assaulted. The class allegations were therefore stricken. In other words, the defendant had shown "conclusively that plaintiffs [would be] unable to establish facts that would make class treatment appropriate." *Ramsey*, 2020 WL 4557545 at *24.

At this point, the instant case stands in contrast to the facts of *Ramsey.* First, according to Plaintiffs' counsel's representations at oral argument, the proposed classes are much smaller: approximately 1,100 Black Haitian workers, all of whom are alleged to have suffered discrete injuries, such as discrimination, wage theft, or being fraudulently induced to pay recruitment fees and come to Colorado. This is a far cry from two allegedly assaulted women seeking to represent millions of Frontier airlines passengers, the vast majority of whom, it was conceded, suffered no physical injury at all. Second, the claims for injunctive relief in *Ramsey* had been dismissed, so the notion that two women whose only remaining claims were personal injury claims could fairly represent millions of *uninjured* passengers was an obvious impossibility. No such impossibility is apparent from the pleadings in this case. Plaintiffs allege they were enticed to come to Colorado based on misrepresentations by JBS Greeley's agents in violation of Colorado law. They further allege that, as Black Haitians, they were placed on a B-Shift line that moved dangerously quickly compared to the line predominantly staffed by white and Hispanic workers. They also claim they were inappropriately charged fees for lodging and transportation that primarily served to benefit JBS Greeley. The groups that suffered these alleged wrongs are not indisputably unascertainable.

Defendants take particular issue with the proposed "Recruitment Class" of Black Haitians, defined as those who were recruited to come to Colorado, whether they ended up taking a job with JBS Greeley or not. Defendants argue this proposed class is overbroad and unascertainable because whether someone was "recruited" or not is necessarily an individualized and subjective inquiry. Plaintiffs respond that the class is limited to those who ended up paying a recruitment fee, which can be easily ascertained. Whether that is so remains to be seen. However, it is not beyond the realm of possibility and therefore is not a basis for striking the allegations.

Defendants also challenge the proposed "Discrimination Class" as containing conflicts between Black Haitian workers on the processing line and Black Haitian supervisors, managers, or HR personnel who participated in the alleged discriminatory decision-making. *See* ECF No. 53 at 9–10. But at this stage in the case, there is no information to suggest whether there were any such management personnel, and if so, how many, and whether they could be appropriately excluded from the class.

In short, the Court finds that this back and forth about the different proposed classes and the class definitions is the kind of debate more appropriate on a motion for class certification, rather than on a Rule 12(f) motion to strike. The class allegations are not so inadequate that they should be stricken from the get-go. To the extent that one of the class definitions may be overbroad (such as the proposed "Recruitment" or "Discrimination" classes), the classes can be appropriately narrowed or adjusted after some fact discovery in connection with a motion for class certification. In sum, Defendants have not met their high burden, at this early stage, of showing "conclusively that plaintiffs will be unable to establish facts that would make class treatment appropriate." *Ramsey*, 2020 WL 4557545, at *24.[2]

[2] In support of this conclusion, the Court notes that many of the cases cited by Defendants in their Motion to Strike were decided not on a Rule 12(f) motion to strike, but later, at the class certification stage, or at least after some discovery. *See, e.g., In re HomeAdvisor, Inc. Litig.*, 345 F.R.D. 208 (D. Colo. 2024) (deciding whether to certify class of plaintiffs on a motion for class certification after extensive discovery); *Lester v. Percudani*, 217 F.R.D. 345 (M.D. Pa. 2003) (denying plaintiff's motion for class certification for failure to satisfy predominance and superiority requirements, after consideration of the allegations of the complaint and supplemental discovery undertaken with court approval); *Zuniga v. Bernalillo Cnty.*, 319 F.R.D. 640 (D.N.M.

For all the above reasons, it is hereby **ORDERED** that the Motion to Strike (ECF No. 37) is **DENIED**.

## III. MOTION TO DISMISS

Defendants make numerous arguments that all of Plaintiffs' claims should be dismissed under Rule 12(b). *See generally* ECF No. 39.

First, Defendants argue that Plaintiffs' third through sixth claims against JBS USA must be dismissed because the complaint lacks non-conclusory allegations that JBS USA was Plaintiffs' employer. *See* ECF No. 39 at 2–5. Defendants argue that while Swift, JBS USA's subsidiary, may have been a statutory employer, Plaintiffs' allegations that JBS USA is a joint employer along with Swift are conclusory and fail to support a claim for relief. *Id*. at 5. And, even if Plaintiffs could hold JBS USA liable under a joint employer theory, Defendants argue that Plaintiffs first, second, and seventh claim fails because the Amended Complaint fails to allege with specificity which specific Defendant did what, supposedly violating the rule against "group pleading."

Defendants also move to dismiss Plaintiffs' claims of misrepresentation under Colo. Rev. Stat. § 8-2-104, which prohibits inducing workmen to change from their place of employment to Colorado by means of false or deceptive representations. Defendants claim that because this section was intended to deter companies from bringing in strike breakers, its use is limited to those types of conditions and does not apply to the kinds of misrepresentations and work situations asserted in this case.

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2016) (denying motion for class certification of plaintiffs' gender discrimination claims for lack of commonality, typicality, adequacy, and predominance requirements, relying on deposition testimony and other evidence).

Defendants also challenge Plaintiffs' claim under the CWCA that they were charged for services that primarily benefited the employer.

**a. Legal Standards**

Under Rule 12(b)(6), a court may dismiss a complaint for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). In deciding a motion under Rule 12(b)(6), the court must "accept as true all well-pleaded factual allegations . . . and view these allegations in the light most favorable to the plaintiff." *Casanova v. Ulibarri*, 595 F.3d 1120, 1124 (10th Cir. 2010) (quoting *Smith v. United States*, 561 F.3d 1090, 1098 (10th Cir. 2009)).

A plaintiff may not rely on mere labels or conclusions, "and a formulaic recitation of the elements of a cause of action will not do." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Rather, "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *see also Robbins v. Oklahoma*, 519 F.3d 1242, 1247 (10th Cir. 2008) (explaining that plausibility refers "to the scope of the allegations in a complaint," and that the allegations must be sufficient to nudge a plaintiff's claim(s) "across the line from conceivable to plausible."). The court must ultimately "determine whether the complaint sufficiently alleges facts supporting all the elements necessary to establish an entitlement to relief under the legal theory proposed." *Forest Guardians v. Forsgren*, 478 F.3d 1149, 1160 (10th Cir. 2007). Typically, the Court will not look beyond the allegations of the complaint when deciding a 12(b) motion to dismiss.

**b. Plaintiffs Properly State Claims Against Both JBS USA and Swift.**

Defendants insist that Plaintiffs have failed to plausibly plead any claims against JBS USA because "only an employer" may be held liable under Title VII, the CWCA, and the CMWA. ECF No. 39 at 2. Defendants argue that allegations that JBS USA acted as an employer or joint employer are conclusory "threadbare recitals," without any substantive evidentiary basis. *Id.* And, even if Plaintiffs could plausibly have alleged that JBS USA and Swift were joint employers, JBS USA argues that Plaintiffs' first claim for alleged violations of 42 U.S.C. § 1981 fails because there are no well-pled allegations as to what JBS USA did versus what Swift did—the "group pleading" argument.

In Defendants' view, the Amended Complaint constitutes improper "group pleading" where there are collective allegations against individual defendants, without making clear exactly who did what to whom, so that there is no fair notice of the claims against each defendant. *Id.* at 5. In support of their view that Swift, and only Swift, is Plaintiffs' employer, Defendants attached as an exhibit to their reply in support of their Motion to Dismiss the 2021–2025 collective bargaining agreement between Swift and the union which represents the slaughterhouse workers, United Food and Commercial Worker, Local No. 7. *See* ECF No. 54-1.

Plaintiffs respond that they have adequately alleged that JBS USA, with Swift, *jointly* operated the scheme by which Defendants' agents, Remy and Ebah, acted to lure a vulnerable Haitian workforce to Colorado. Plaintiffs argue that they can establish liability under Section 1981 and Title VII by meeting either a joint-employer or single-employer test. ECF No. 49 at 7-8 (citing *Bristol v. Bd. of Cnty. Comm'rs of Cnty. of Clear Creek*, 312 F.3d 1213, 1218–20 (10th Cir. 2002); *Sandoval v. City of Boulder, Colo.*, 388 F.3d 1312, 1322–1324 (10th Cir. 2004); *Chavez v. McDonald's Corp.*, No. 19-cv-00164-PAB-SKC, 2020 WL 1322864, at *4 (D. Colo. Mar. 20, 2020)). Per Plaintiffs, their allegations are more than enough to meet either test at this early stage of the litigation. These allegations include, among others, that:

- Swift is wholly owned by JBS USA. ECF No. 31 ¶¶ 11–12.
- JBS USA and Swift share the same headquarters. *Id.* ¶¶ 9–10.
- JBS USA operates Swift, and Swift operates the Greeley plant. *Id.* ¶ 13.
- Both JBS USA and Swift had power to control the terms and conditions of employment, determine the rate and method of pay, and maintain employment records. *Id.* ¶¶ 14–15.
- A bargaining agreement between the employees' union and JBS USA for workers at the Greeley plant, and JBS USA's press release regarding this agreement, specifically refers to "JBS USA" as the "Union employer." *Id*. ¶ 47 n.33.
- In 2025, JBS USA entered into an agreement with the United States Department of Labor, which required changes to practices at, among others, the Greeley Plant, and states, "[t]he company employs more than 37,000 people at these facilities." *Id.* ¶ 49 n.34.
- JBS USA posted a video to its Facebook page regarding Ebah's story and the recruitment process. *Id.* ¶ 55 n.36.

Moreover, in response to Defendants' exhibit containing the collective bargaining agreement, Plaintiffs attached to their sur-reply two letters from JBS USA's HR

Coordinator confirming that Plaintiff Saint Aubin and Plaintiff Pierre are "currently employed by JBS USA in Greeley, CO." *See* ECF No. 61-1.

There are two primary tests used to determine whether an entity can qualify as an "employer" in connection with civil rights or labor laws: the joint-employer test and the single-employer test. *Bristol*, 312 F.3d at 1218. "The joint-employer test acknowledges that the two entities are separate, but looks to whether they co-determine the essential terms and conditions of employment." *Id.* Alternatively, "a plaintiff who is the employee of one entity may seek to hold another entity liable by arguing that the two entities effectively constitute a single employer." *Id.* "Although these two tests are sometimes confused, they differ in that the single-employer test asks whether two nominally separate entities should in fact be treated as an integrated enterprise, while the joint-employer test assumes that the alleged employers are separate entities." *Id.*

Under the joint-employer test, a court will treat independent entities as joint employers if the entities "'share or co-determine those matters governing the essential terms and conditions of employment.'" *Id.* (quoting *Virgo v. Riviera Beach Assocs., Ltd.*, 30 F.3d 1350, 1360 (11th Cir. 1994)). In other words, courts look to whether both entities "exercise significant control" over the same employees. *Id.* (citation and quotation marks omitted). One important (if not the most important) indicator of control over the terms and conditions of employment is the "right to terminate it under certain circumstances." *Id.* at 1219.

By contrast, the single-employer test involves the weighing of four factors: "(1) interrelation of operations; (2) common management; (3) centralized control of labor relations; and (4) common ownership and financial control." *Id*. at 1220 (quoting

*E.E.O.C. v. Wooster Brush Co. Emps. Relief Ass'n*, 727 F.2d 566, 571 (6th Cir. 1984)). Of these, the third factor—centralized control of labor relations—is considered to be the most important. *Id.* Thus, the extent to which JBS USA can be said to control the labor relations of Swift's employees is highly determinative under the single employer test. *Id.*; *see also Sandoval*, 388 F.3d at 1322 (listing the four factors to consider in deciding whether two nominally separate entities constitute an "integrated enterprise" and considering the third factor—"centralized control of labor relation"—to be the most important).

At this early stage of the case, based on the allegations, the Court concludes that Plaintiffs have sufficiently pled the liability of both Swift and JBS USA as Plaintiffs' employers, whether as "joint employers" or as a "single employer."

On a motion to dismiss, all factual allegations are presumed true and viewed in the light most favorable to the non-moving party. Plaintiffs have alleged all the necessary elements to establish that JBS USA and Swift either are joint employers of Plaintiffs or should be treated as a single employer based on the centralized control of labor operations. Supporting the allegation that JBS USA is Plaintiffs' employer, at least for purposes of the motion to dismiss, is the video posted on JBS USA's Facebook page, referenced in the Amended Complaint at footnote 36, where JBS USA is boasting about Ebah, "our team member from Greeley, Colorado," who says in the video that he works at the "JBS plant in Greeley, in Colorado," and found "a better future for his family at JBS." In the video, Ebah explains that he "started in slaughter," but he "applied to HR" because he speaks seven languages and can "help people come to work for JBS." The video has a text image stating, "*Edmond has helped from than 30 people find a new life path with JBS USA*." *See* ECF No. 31 at 13–14 (emphasis added).

The Court also notes that many of the cases cited by Defendants were decided at the summary judgment stage, not on the complaint alone. *See Florez v. Holly Corp.*, 154 F. App'x 707 (10th Cir. 2005).

Furthermore, Plaintiffs provided two letters, written and signed by JBS USA's HR coordinator, confirming that two of the name plaintiffs are "employed by" JBS USA. *See* ECF No. 61-1. The Court recognizes that because these documents were not attached to the Amended Complaint, they technically may not be considered on a motion to dismiss. But, upon seeing the letters, the Court issued an Order to Show Cause why defense counsel should not be sanctioned for even making the argument *on a motion to dismiss* that Plaintiffs have failed to adequately allege that JBS USA is Plaintiffs' employer. *See* ECF No. 63 (issued May 12, 2026). Defendants filed a detailed response to the Order to Show Cause and attached six exhibits. ECF No. 64 (filed May 15, 2025). In their response, Defendants explain their position that "JBS USA Food Company" has never employed Plaintiffs, any of the putative class members, or Edmond Ebah. *See id.* Instead, Defendants state that references to "JBS USA" are really part of a branding exercise, so that when Ebah appears on a "JBS USA" labeled video where the text-over explains that he works for "JBS USA" and is bringing Haitians to Greeley, he, and the video, which appears on the "JBS USA" Facebook page, are really referring to Swift. The regular use of the terms "JBS USA" on videos and in HR department letters are intended to "help create one unified 'JBS brand' in the mind of the public." ECF No. 64 at 7.

If the JBS entities, including Swift and JBS USA Food Company are using "JBS USA" to help create a "unified brand" in the mind of the public, including on verification of employment documents and social media videos, then it should come as no surprise when the "JBS USA Food Company" parent ends up being named as a defendant for the alleged employment misconduct of its "JBS USA" branded subsidiaries. Indeed, Defendants concede that the use of the terms "'JBS' and 'JBS USA'" in the parties' briefing as shorthand terms for JBS USA Food Company has, in hindsight, created unintentional "confusion." ECF No. 64 at 8. However, this "confusion" appears to be an intentional part Defendants' brand marketing strategy.

On this point, it is enough to say the following: the Court is not converting Defendants' Motion to Dismiss to a motion for summary judgment on the question of whether JBS USA is a proper defendant, and will make its recommendation purely on the allegations of the Amended Complaint.[3] Reading the allegations of the Amended Complaint in the light most favorable to the non-moving party, the Court concludes that Plaintiffs have adequately alleged claims against both Swift and JBS USA. Whether the subsidiary, the parent, or both are the true employers can be addressed at the summary judgment stage or, even better, by stipulation.[4]

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[3] The evidentiary material submitted in response to the Order to Show Cause is considered only for the purpose of deciding the question raised by the Order to Show Cause. On that point, the Court now agrees that Defendants have a good-faith basis for maintaining that JBS USA Food Company is not an employer of Plaintiffs or putative class members and is not a proper defendant in this case. Whether Defendants had a valid basis for asserting so on a motion to dismiss is less clear. Nevertheless, the Order to Show Cause will be discharged.

[4] In the response to the Order to Show Cause, Defendants' counsel explain that they regularly procure stipulations from opposing counsel in cases involving the JBS Greeley plant as to who should be the proper defendant. They further state that counsel were engaged in procuring such a stipulation with Plaintiffs in this case at the time the

**c. Plaintiffs' Claims Should not be Dismissed Due to "Group Pleading."**

Defendants argue that Plaintiffs' claim for alleged violations of Section 1981 relies on improper "group pleading" with respect to JBS USA. ECF No. 39 at 5. They also argue that claims against JBS USA for violations of Colo. Rev. Stat. § 8-2-104 and for unjust enrichment also fail for allegedly improper group pleading. *Id.* at 6.

The term "group pleading" has "been used to describe collective allegations against individual defendants . . . ." *Carrado v. Daimler AG*, No. 17-cv-3080-WJM-SKC, 2018 WL 4565562, at *3 (D. Colo. Sept. 24, 2018). "Group pleading violates Rule 8 when a plaintiff fails to distinguish among multiple defendants, including on claims that could not apply to certain defendants." *Id.* (citing *Snyder v. ACORD Corp.*, No. 1:14-cv-01736-JLK, 2016 WL 192270, at *3 (D. Colo. Jan. 15, 2016), *aff'd*, 684 F. App'x 710 (10th Cir. 2017) (repeatedly referencing 113 defendants as a group when only a small minority engaged in certain conduct violated Rule 8)). However, courts have allowed pleading against a collective group of defendants where it would be unfair to require the plaintiff to "identify which specific [d]efendant committed which specific act during the incident in question . . . based on the circumstances alleged . . . ." *Bark v. Chacon*, No. 10-cv-01570-WYD-MJW, 2011 WL 1884691, at *5 (D. Colo. May 18, 2011).

In *Bark*, a plaintiff sued a number of police officers, all of whom were alleged to have been present at the incident and to have acted in concert. The court denied the motion to dismiss filed by the individual defendants, who argued that the complaint

Order to Show Cause was issued. *See* ECF No. 12. That begs the question of why Defendants even bothered to attempt to dismiss on this point at all. The attorney time, client money, and court effort expended on this question was entirely pointless. Just because one technically *could* file a motion to dismiss (without getting sanctioned), does not mean that one *should*.

violated the rule against "group pleading." The court found it unfair to require the plaintiff to identify—without discovery—which specific defendant committed which act. *Id.*

Similarly, in *Carrado,* plaintiffs brought a wrongful death and survival action against both Mercedes-Benz USA and its parent, Daimler AG. The two defendants filed motions to dismiss, in part on the grounds of improper group pleading. 2018 WL 4565562, at *3. While recognizing that the *Carrado* plaintiffs had not distinguished between the specific acts of the parent and the subsidiary, the court found the complaint, by describing the conduct and the claims at issue, provided both Mecedes-Benz USA and Daimler AG with adequate notice. *Id.* at *4. That one defendant was a wholly or partially owned subsidiary of the other made it *more* reasonable for the plaintiffs to allege common allegations against the two entities. *Id.*

Similarly, here, Swift and JBS USA have a subsidiary-parent relationship. There is no risk here of "mistakenly grouping allegations against unrelated entities." *Id*. Both Defendants have adequate notice of what acts were allegedly committed and will be able to formulate coherent answers either admitting or denying the conduct. Accordingly, Defendants' motion to dismiss for impermissible collective or group pleading should be denied. The Court notes that while the allegations against JBS USA are adequate for the purposes of the pleading stage, "by the summary judgment stage, Plaintiffs will have had the benefit of discovery and must be able to distinguish between [JBS USA Food Company and Swift]." *Id.*

**d. Plaintiffs State a Plausible Claim Under Title VII.**

Defendants move to dismiss Plaintiffs' third claim, which asserts both Title VII disparate treatment and disparate impact claims based on the increased line speed on the B-Shift line, which is primarily staffed by Black Haitians, and which poses an increased risk of injury. ECF No. 31 ¶¶ 196–201.

Defendants' first argument is that the Title VII claims should be dismissed because the claims again rely on group pleading. ECF No. 39 at 19. For the reasons stated above, the Court is not persuaded the Plaintiffs have improperly used group pleading and declines to recommend dismissal of the claims on this basis.

"Title VII forbids not only intentional discrimination based on disparate treatment but also 'practices that are fair in form, but discriminatory in operation,' most often referred to as 'disparate impact' discrimination." *Tabor v. Hilti, Inc.*, 703 F.3d 1206, 1220 (10th Cir. 2013) (quoting *Lewis v. City of Chicago*, 560 U.S. 205 (2010)). More specifically, disparate impact cases "involve employment practices that are facially neutral in their treatment of different groups but that in fact fall more harshly on one group than another and cannot be justified by business necessity." *Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324, 335 n.15 (1977).

Defendants contend that Plaintiffs have failed to allege any additional facts which would be required to make the disparate impact or treatment theories of recovery plausible. ECF No. 39 at 19. Plaintiffs allege that increasing line speeds on JBS's B-Shift subjects workers on that line to a higher risk of injury, and the impact is discriminatory because a significant number of Black Haitian employees work on the B-Shift, and very few on the A-Shift. Defendants insist that "'[t]hese allegations are entirely conclusory; they lack specificity and amount to little more than a legal conclusion masquerading as fact.'" *Id.* at 20 (quoting *Muhammad v. Vectrus Sys. Corp.*, No. 23-cv-02186-SKC-MDB, 2024 WL 1073216, at *5 (D. Colo. Mar. 12, 2024)). It is true that "[a] plaintiff purporting to assert a disparate impact claim faces a formidable pleading burden." *Grider v. City & Cnty. of Denver*, No. 10-cv-00722-MSK-MJW, 2011 WL 721279, at *4 (D. Colo. Feb. 23, 2011). To establish a prima facie case of disparate impact discrimination, a plaintiff must show that "'a specific policy caused a significant disparate effect on a protected group.'" *Cinnamon Hills Youth Crisis Ctr., Inc. v. Saint George City*, 685 F.3d 917, 922 (10th Cir. 2012) (quoting *Reinhart v. Lincoln Cnty.*, 482 F.3d 1225, 1229 (10th Cir. 2007)).

But here, Defendants' near incessant cry of "not plausible" rings hollow. Plaintiffs have alleged that the B-Shift line runs significantly faster than the A-Shift. This makes working on the line during the B-Shift more dangerous. Plaintiffs also allege that the B-Shift is primarily made up of Black Haitians, while the A-Shift is almost exclusively made up of white and Hispanic workers. This means that Black Haitians are disproportionately subject to an increased risk of injury on the comparatively dangerously fast B-Shift line. While Plaintiffs do not provide statistical models showing this increased risk and its disproportionate impact on the Black Haitian workers, they plausibly allege that a "specific identifiable employment practice or policy caused a significant disparate impact on a protected group." *Bullington v. United Air Lines, Inc.*, 186 F.3d 1301, 1312 (10th Cir. 1999) (quotation marks and citation omitted). That is enough at the pleading stage.

**e. Plaintiffs State a Claim Under the CWCA.**

Plaintiff's fourth claim alleges Defendants violated the CWCA by passing along business-related expenses—specifically, "employer-provided housing costs" and "recruitment fees"—to Plaintiffs. *See* ECF No. 31 ¶ 207. Per the Amended Complaint, this constitutes improper deductions that violate the CWCA.

Defendants argue that Plaintiffs have failed to properly plead a violation of the CWCA for two reasons. Conceding that "business expenses" may be recoverable under the CWCA when the employer deducts from employees' pay the cost of employer-provided items incurred primarily for the employer's benefit, Defendants first argue that there were no actual *deductions* from employee pay in this instance, so there cannot have been a violation. ECF No. 39 at 22.

Second, Defendants assert that the Amended Complaint lacks non-conclusory allegations showing that employer-provided housing costs and recruitment fees were primarily for Defendants' benefit. Defendants cite the Colorado Division of Labor and Employment Interpretive Notice & Formal Opinion #16 (hereinafter referred to as "INFO #16"), explaining that housing costs are primarily for an employer's benefit only when "(i) the employer requires use of the housing or acceptance of the housing is a condition of employment, or (ii) the job is at a location the employee could not realistically commute to, like a resort that is not commuting distance from non-employer housing." *Id.* at 22–23. Defendants argue that Plaintiffs' allegations that employer-provided housing was necessary to do the job, as there was no viable alternative non-employer housing within commuting distance of JBS Greeley, is both "entirely conclusory" and contrary to evidence of which the Court can take judicial notice—namely, population data or evidence regarding towns or cities within commuting distance of the JBS Greeley plant (such as Loveland, Fort Collins, and Windsor). ECF No. 39 at 23.

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 (Colo. June 14, 2021) (quotation marks and citation omitted). 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. App. Feb. 20, 2025); Colo. Rev. Stat. § 8-4-105(1). Moreover, the Court agrees with Plaintiffs that actual *deductions* from a paycheck are not required to state a claim under the CWCA. Shifting to the employee a cost that should be borne by the employer is effectively the same thing:

> 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.

INFO #16. Here, Plaintiffs have alleged that the housing costs and reimbursement expenses were primarily for the benefit of Defendants. Plaintiffs have plausibly alleged that, given the circumstances of the arriving Haitian immigrant workers (i.e. limited English-language skills, lack of financial resources, lack of transportation, etc.), working for Defendants would have been impossible without employer-provided housing. ECF No. 31 ¶ 113. Indeed, it is alleged that workers were induced by promises by Defendants' agents that they would be provided housing. These are plausible claims.

Moreover, Defendants' response that the Court should take judicial notice of statistical or population data about housing alternatives within commuting distance to the JBS Greeley plant violates the principle that, with limited exceptions, in deciding a Rule 12(b)(6) motion, the Court should focus only on the allegations in the pleading. *See Cuervo v. Sorenson*, 112 F.4th 1307, 1312 (10th Cir. 2024) ("Generally, a court may consider only the contents of a complaint when ruling on a motion to dismiss."). Moreover, the Court will not take judicial notice of population or other data that does not end the dispute but, at best, supports an argument that it would have been *possible* for

Plaintiffs to find alternative housing within commuting distance of the JBS Greeley plant. This is a factual question that cannot and should not be decided on a motion to dismiss.

**f. Plaintiffs Adequately State a Claim Under the CMWA.**

Defendants move to dismiss Plaintiffs' claim under the CMWA. Plaintiffs allege that by shifting business expenses (housing, transportation, and recruitment costs) to its Haitian employees, employees' wages were reduced below the hourly minimum wage in violation of the CMWA.

Defendants argue two things. First, they reargue that housing, travel expenses, and recruitment fees were not business-related expenses that needed to be reimbursed. *See* ECF No. 39 at 25. Second, they argue that Plaintiffs have not pled the math with the precision necessary to state a claim. Citing *Wass v. NPC International, Inc.*, 688 F. Supp. 2d 1282, 1288 (D. Kan. 2010), Defendants note that a defendant is not in violation of the minimum wage laws merely by failing to reimburse an employee for expenses. Rather such failure must be in an amount great enough to bring the plaintiffs' wages for a particular time period below the legal minimums. ECF No. 39 at 26. In *Wass*, a motion to dismiss a minimum wage claim was granted because the plaintiffs failed to plead the specific amounts of their wages, reimbursements, and expenses. 688 F.Supp.2d at 1283.

In contrast, Plaintiffs in their response do go through the math that Defendants claim to be missing. Citing to the Amended Complaint, Plaintiffs describe each Plaintiff's starting weekly pay, what they were entitled to as a minimum wage, the amount of the unreimbursed expenses incurred, and what the result was in terms of the actual pay per hour, which allegedly varied from $10.81 per hour, down to $4.64 per hour for the first week. *See* ECF No. 49 at 30. The Court agrees with Plaintiffs that one could reasonably infer that each Plaintiff paid the transportation costs and recruitment fees before the first workweek, making plausible the allegation that their first weeks' pay fell below the Colorado-mandated minimum wage. Thus, Plaintiffs have adequately pled a violation of the CMWA.

The Court also rejects Defendants' argument that Plaintiffs claim for civil theft should be dismissed—notwithstanding the fact that the civil theft claims are based on the same violations of the CMWA. *See* ECF No. 39 at 28. *See Commissiong v. Ctr. at Lincoln, LLC*, No. 23-cv-02834-PAB-KAS, 2025 WL 902898, at n.3 (D. Colo. Mar. 25, 2025) (denying motion to dismiss civil theft claim brought along with a Colorado Minimum Wage Act, noting that "a victim of wage theft now appears to have two options to recover stolen wages, a claim of civil theft under § 18-4-405 or a claim under § 8-6-118 of the CMWA").

**g. Plaintiffs Adequately State a Claim Under Colo. Rev. Stat. § 8-2-104.**

Plaintiffs assert a claim under Colo. Rev. Stat. § 8-2-104, alleging that Defendants, through their agents, lured Plaintiffs and putative class members to Colorado through false and deceptive representations. Defendants' argument for dismissal is that this statute applies only in the context of labor unrest or labor strikes. That is incorrect. While some portions of the statute do refer to labor strikes or unrest, the language of the statute is not so limited. The statute's text covers misrepresentations to laborers outside of the labor dispute context. It declares illegal the making of all false representations made to lure workers to Colorado:

> It is unlawful for any . . . company . . . of any kind doing business in this state, by itself or its agents . . . to induce . . . 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 and other conditions of the employment . . . .

Colo. Rev. Stat. § 8-2-104. The Colorado Court of Appeals has interpreted the statute to authorize a claim for statutory fraud. *See Pittman v. Larson Distrib. Co.*, 724 P.2d 1379, 1386 (Colo. App. 1986); s*ee also Snyder v. Beam Techs., Inc.*, No. 20-cv-03255-NYW, 2021 WL 4947295, at *16 (D. Colo. Aug. 16, 2021) (explaining that this statute "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") (citation and quotation marks omitted). Therefore, as a matter of the text, Defendants are incorrect and Plaintiffs have properly stated a claim under Colo. Rev. Stat. § 8-2-104.

Moreover, numerous courts in Colorado, including this Court, have recognized that this statute can apply outside of the labor unrest context, to any false representations about compensation or conditions of employment used to lure workers to Colorado. *See Synder*, 2021 WL 4947295, at *20 (denying motion to dismiss claim under Colo. Rev. Stat. § 8-2-104 where employee was falsely told that if he moved to Colorado he would be employed in a management capacity, oversee a regional sales team and, eventually a national sales team); *see also* Young v. Kiewit Corp., No. 17-cv-01251-WYD-MEH, 2018 WL 3382928, at *4 (D. Colo. Jan. 25, 2018) (denying motion to dismiss statutory fraud claim under § 8-2-104 in case involving executive at a mining company who claimed he had been falsely promised a guaranteed job until retirement, the opportunity to purchase millions of dollars in the defendant's stock, and a promotion to the "President" of mining operations). Defendants cite no Colorado state case that interprets this statute as applying only to misrepresentations regarding strikes or labor unrest.

In support of their position, Defendants rely largely on an unpublished Tenth Circuit opinion, *Matthews v. LaBarge, Inc.*, 407 F. App'x 277 (10th Cir. 2011), interpreting a near-identical Oklahoma statute, in a case appealed by a pro se plaintiff. *Matthews* involved an employee who was induced to move to Oklahoma after he was offered a position as director of operations. The offer allegedly included a promise of promotion to vice president of operations once the current vice president retired. The plaintiff discovered a series of statutory and regulatory violations at the company and when he reported them to his superiors, he was fired. Among other claims, Mr. Matthews brought suit for fraudulent hiring, saying that the defendant violated Oklahoma's version of Colo. Rev. Stat. § 8-2-104 when it induced him to relocate to Oklahoma with the false promise of being promoted to vice president of operations. The Tenth Circuit affirmed dismissal of this claim on the alternative grounds that the alleged representation "concerning promotion" was not the type of employer conduct governed by the statute. The Tenth Circuit stated that Mr. Matthews "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.* at 282 (emphasis added). Defendants dwell on one sentence from the *Matthews* opinion in support of their argument, to wit: "The statute on its face focuses on the practice of recruiting strike breakers through false inducements." ECF No. 39 at 7–8 (quoting *Matthews,* 407 F. App'x. at 281). As noted above, while the Colorado statute does mention misrepresentations about labor strikes or unrest, it is not similarly limited. And while Plaintiffs in this case do not complain of misrepresentations in a strike context, they do allege false statements by Defendants with respect to their compensation and sanitary conditions. In fact, Plaintiffs allege precisely the kind of false statements, misrepresentations, and omissions about compensation, available transportation and lodging, and unsanitary conditions of living and working, that one very well might see in a labor dispute. Unlike *Matthews,* this is not a case about a corporate executive not receiving a promotion. This is about fraudulent promises about compensation, unsanitary living conditions, and unfair transportation and lodging arrangements for hourly workers. Plaintiffs have adequately pled a claim under Colo. Rev. Stat. § 8-2-104.

Defendants also argue that the Colorado statute is preempted by federal labor law, citing the Supreme Court's decision in *Lodge 76, International Association of Machinists & Aerospace Workers, AFL-CIO v. Wisconsin Employment Relations Commission*, 427 U.S. 132 (1976), and an opinion from the Michigan Court of Appeals in *International Union, United Automobile, Aerospace & Agricultural Implement Workers of America v. C.M. Smillie Co.*, 362 N.W.2d 780 (Mich. Ct. App. 1984). *See* ECF No. 39 at 11. But this argument relies on the notion that the Colorado statute only applies in the strike or labor lockout context. Here, it is not being applied in the labor lockout or strike context. It is a relatively simply statute creating an action for statutory fraud when an employer entices a potential employee to move to a state by making misrepresentations. Defendants cite no Colorado or Tenth Circuit case suggesting that this statute (or any similar statute) is invalid on federal preemption grounds. This Court will not be the first to do so.

As to the notion that Plaintiffs have not alleged the fraudulent or false statements with sufficient particularity, *see* ECF No. 39 at 15, the Court disagrees. The Amended Complaint alleges what was said and by whom, and describes the effect the false statements had—encouraging dozens of Haitian immigrants to move to Colorado under false pretenses. This is sufficient under Rule 9(b) to give Defendants adequate notice of the misconduct alleged. *See* 5A *Wright and Miller's Federal Practice & Procedure* § 1298 (4th ed. 2018) (explaining that "[p]erhaps the most basic consideration for a federal court in making a judgment as to the sufficiency of a pleading for purposes of Rule 9(b) is the determination of how much detail is necessary to give adequate notice to an adverse party and to enable that party to prepare a responsive pleading").

**h. Plaintiffs Adequately State a Claim for Unjust Enrichment.**

Plaintiff's seventh claim for relief is for unjust enrichment. Unjust enrichment is a "claim in quasi-contract for money damages based upon principles of restitution." *DCB Const. Co. v. Cent. City Dev. Co.*, 965 P.2d 115, 118 (Colo. 1998). To state a claim for unjust enrichment in Colorado, a plaintiff must show that, "(1) at plaintiff's expense[,] (2) defendant received a benefit (3) under circumstances that would make it unjust for defendant to retain the benefit without paying." *Robinson v. Colo. State Lottery Div.*, 179 P.3d 998, 1007 (Colo. 2008).

In support of their claim, Plaintiffs allege that Defendants were unjustly enriched via the actions of their agents, Ebah and Remy, who charged Plaintiffs unreasonable amounts for (1) overcrowded, uninhabitable housing at the Rainbow Hotel, far in excess of the value of the housing; (2) the daily commute to and from the JBS Greeley worksite; and (3) trips to the grocery store and other fees incurred by Plaintiffs. Plaintiffs allege that these unjust charges resulted in significant profits for Defendants at Plaintiffs' expense. *See* ECF No. 31 at 50.

Defendants argue at length that Plaintiffs' allegations are "implausible" because Plaintiffs fail to allege the exact amounts they paid in fees to Remy and Ebah, and because Plaintiffs do not indicate a basis for their expectation that they would be reimbursed for the fees paid. *See* ECF No. 39 at 30.

The Court is not persuaded. As noted previously, in their response, Plaintiffs, citing to the Amended Complaint, describe in detail each Plaintiff's weekly pay, what they were entitled to, and the amount of the unreimbursed fees paid. Further, in the Amended Complaint, Plaintiffs provide adequate explanations for why the charges were in excess of the value of the services provided. *See, e.g.*, ECF No. 31 ¶¶ 231–232 (explaining that Plaintiffs were overcharged for transportation fees which "far exceeded the cost of any mileage required to make the 2-mile roundtrip commute to work or to get groceries, resulting in significant profit for Remy."). Thus, Plaintiffs have adequately pled a claim for unjust enrichment for the purposes of a motion to dismiss.

## IV. CONCLUSION

For the foregoing reasons, it is hereby **ORDERED** that Defendants' Motion to Strike, ECF No. 37, is **DENIED**.

It is further **RECOMMENDED** that Defendants' Motion to Dismiss, ECF No. 39, be **DENIED**.

**NOTICE: Pursuant to 28 U.S.C. § 636(b)(1)(c) and Fed. R. Civ. P. 72(b)(2), the parties have fourteen (14) days after service of this recommendation to serve**

**and file specific written objections to the above recommendation with the District Judge assigned to the case. A party may respond to another party's objections within fourteen (14) days after being served with a copy. The District Judge need not consider frivolous, conclusive, or general objections. A party's failure to file and serve such written, specific objections waives *de novo* review of the recommendation by the District Judge, *Thomas v. Arn*, 474 U.S. 140, 148–53 (1985), and also waives appellate review of both factual and legal questions. *Makin v. Colo. Dep't of Corr.*, 183 F.3d 1205, 1210 (10th Cir. 1999); *Talley v. Hesse*, 91 F.3d 1411, 1412–13 (10th Cir. 1996).**

Dated at Denver, Colorado this 12th Day of June 2026.

N. Reid Neureiter

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United States Magistrate Judge