

UNITED STATES DISTRICT COURT  
DISTRICT OF COLORADO

SCOTT BEAN and JOSHUA FERGUSON,  
individually and on behalf of others similarly  
situated,

Plaintiffs,

vs.

COLOMEX, INC., *doing business as* “Taco Bell,”

Defendant.

Civil Case No.:

**COLLECTIVE AND CLASS ACTION COMPLAINT WITH JURY DEMAND**

Plaintiffs Scott Bean and Joshua Ferguson, individually and on behalf of all others similarly situated, by and through their attorneys, JTB Law Group LLC, hereby bring this Collective and Class Action Complaint against Defendant Colomex, Inc., doing business as “Taco Bell,” and allege of their own knowledge and conduct and upon information and belief as to all other matters, as follows:

**INTRODUCTION**

1. Plaintiffs bring this action for themselves and all other similarly situated collective members to recover unpaid overtime wages, liquidated damages, and reasonable attorneys’ fees and costs as a result of Defendant’s willful violation of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §201 *et seq.* and attendant regulations at 29 C.F.R. § 516, *et seq.*

2. Plaintiffs also bring this action for themselves and all other similarly situated class members pursuant to Fed. R. Civ. P. 23 to recover unpaid overtime wages, penalties, and reasonable attorneys’ fees and costs as a result of Defendant’s willful violation of the Colorado Wage Act, C.R.S. § 8-4-101, *et seq.* (“CWA”), Colorado Minimum Wage Order No. 34, 7

C.C.R. § 1103-1 (“CMWO”), and Defendant’s contractual obligation to pay hourly-paid employees for all hours worked.

3. Defendant operates numerous “Taco Bell” franchises in Colorado, including restaurants in Pueblo, Pueblo West, and Woodland Park.

4. Plaintiffs and the putative collective and class were employed by Defendant as hourly-paid employees at Defendant’s Taco Bell restaurants, and held positions including but not limited to Food Prep, Fryologist, Crew Member, Crew Trainer, Shift Manager, and Assistant General Manager.

5. Plaintiffs and similarly situated hourly-paid employees of Defendant were victims of Defendant’s common unlawful policies in violation of the FLSA, CWA, and CMWO, including:

- a. Requiring hourly-paid employees to perform work “off the clock” and without compensation before, during, and after their shifts;
- b. Reducing hourly-paid employees’ hours when computing payroll, thus depriving them of hourly compensation for time they had spent working while clocked into Defendant’s time-keeping system;
- c. failing to pay hourly-paid employees for short rest periods of 20 minutes or less, *see* 29 CFR § 785.18; and
- d. Failing to include hourly-paid Shift Managers’ and Assistant General Managers’ non-discretionary performance bonus compensation in the determination of their “regular rate of pay,” for purposes of calculating their hourly overtime rate.

6. As a result of Defendant’s common unlawful policies, the hourly-paid employees were not properly compensated overtime at a rate of not less than one and one-half (1.5) times their regular rate of pay for all hours they worked in excess of forty (40) per workweek, in violation of the FLSA, CWA, CMWO, and Defendant’s contractual obligation to pay

hourly-paid employees for all hours worked.

7. In addition, Defendant failed to provide hourly-paid employees with uninterrupted and “duty free” meal periods of at least a thirty minute durations when their scheduled work shifts exceeded five consecutive hours of work, or with compensated ten (10) minute rest periods for each four (4) hours or major fractions thereof, in violation of the CMWO,

8. Plaintiff SCOTT BEAN asserts his FLSA claim that Defendant failed to pay for all hours worked on behalf of a putative FLSA Collective, defined as:

*All hourly-paid employees of Defendant at any time from 3 years prior to the filing of this Complaint through the date of judgment.*

9. Plaintiff JOSHUA FERGUSON asserts his FLSA claim that Defendant failed to include non-discretionary performance bonus compensation in the calculation of overtime rates on behalf of a putative FLSA Sub-Collective, defined as:

*All hourly-paid Shift Managers and Assistant General Managers employed by at any time from 3 years prior to the filing of this Complaint through the date of judgment.*

10. Plaintiffs seek to send a Notice pursuant to 29 U.S.C. § 216(b) to all hourly-paid employees of Defendant permitting them to assert FLSA claims in this collective action by filing their individual consent forms.

11. Plaintiff SCOTT BEAN asserts his CWA, CMWO, and breach of contract claims that Defendant failed to pay for all hours worked and failure to provide meal and rest periods not only individually, but also on behalf of the putative Rule 23 Class, defined as:

*All hourly-paid employees of Defendant at any time from 3 years prior to the filing of this Complaint through the date of judgment.*

12. Plaintiff SCOTT BEAN asserts his CWA and CMWO claims that Defendant failed to include non-discretionary performance bonus compensation in the calculation of

overtime rates not only individually, but also on behalf the putative Rule 23 Subclass, defined as:

*All hourly-paid Shift Managers and Assistant General Managers employed by at any time from 3 years prior to the filing of this Complaint through the date of judgment.*

13. Defendant has willfully and intentionally committed widespread violations of the above-described statutes and corresponding regulations, in the manner described herein.

### **JURISDICTION AND VENUE**

14. This Court has subject-matter jurisdiction over Plaintiffs' FLSA claims pursuant to 28 U.S.C. § 1331 because Plaintiffs' claims raise a federal question under 29 U.S.C. § 201, *et seq.*

15. The court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. §1367 because those claims derive from a common nucleus of operative facts as Plaintiffs' federal claims.

16. The Court has personal jurisdiction over Defendant because it is incorporated and maintains a principal place of business in the State of Colorado.

17. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) and (3) because Defendant employed Plaintiffs in this district and because a substantial portion of the events that give rise to the Plaintiffs' claims occurred in this district.

### **PARTIES**

18. Defendant Colomex, Inc. is a for-profit entity created and existing under and by virtue of the laws of the State of Colorado.

19. According to the Colorado Secretary of State website, Defendant maintains a principal office at 717 N. Tejon St., Colorado Springs, CO 80903.

20. Plaintiff Scott Bean ("Bean") is a resident of the County of Pueblo and State of

Colorado.

21. Bean was employed by Defendant as an hourly-paid employee from approximately February 2016 to February 2018 and held the positions of Crew Member and Food Prep.

22. Bean was assigned to work at Defendant's Taco Bell restaurants in Pueblo and Pueblo West, Colorado.

23. Bean's written consent to become an FLSA party plaintiff is attached hereto as **Exhibit 1**.

24. Plaintiff Joshua Ferguson ("Ferguson") is a resident of the County of Pueblo and State of Colorado.

25. Ferguson was employed by Defendant as an hourly-paid employee from approximately February 2016 to January 2018 and held the positions of Crew Member, Crew Trainer, Shift Manager, and Assistant General Manager.

26. Ferguson was assigned to work at Defendant's Taco Bell restaurant in Pueblo West, Colorado.

27. Ferguson's written consent to become an FLSA party plaintiff is attached hereto as **Exhibit 2**.

### **FACTUAL ALLEGATIONS**

28. At all relevant times, Defendant has operated and controlled an enterprise engaged in commerce as defined under the FLSA.

29. At all relevant times, Defendant has generated over \$500,000.00 in revenue per year.

30. At all relevant times, Defendant had two (2) or more employees handling, selling,

or otherwise working on goods or materials that have been moved in or produced for commerce.

31. At all relevant times, Defendant was the “employer” of Plaintiffs and other similarly situated hourly-paid employees within the meaning of 29 U.S.C. § 203(d) of the FLSA and C.R.S. § 8-4-101(6) of the CWA.

32. Defendant is covered by the CMWO because it is in the “Food and Beverage” industry.

33. Hourly-paid employees were “employees” of Defendant within the meaning of 29 U.S.C. § 203(e)(1) and § 8-4-101(5) of the CWA.

34. Defendant “suffered or permitted” Plaintiffs and other similarly situated hourly-paid employees to work and thus “employed” them within the meaning of 29 U.S.C. §203(g) of the FLSA.

35. Defendant, directly or indirectly, hired Plaintiffs and other hourly-paid employees and determined the rate and method of the payment of their wages.

36. Defendant controlled the work schedules, duties, protocols, applications, assignments and conditions of employment of Plaintiffs and other hourly-paid employees.

37. Plaintiffs and the other hourly-paid employees were not been compensated on a “salary basis” for purposes of 29 CFR § 541.602.

38. Plaintiffs and the other hourly-paid employees did not receive a guaranteed minimum weekly salary.

39. Defendant maintained a common policy of requiring Plaintiffs and other hourly-paid employees to perform work off the clock at the beginning and continuing through substantial portions of their shifts.

40. Defendant maintained a common policy of requiring Plaintiffs and other

hourly-paid employees to perform work off the clock towards the end of and after their scheduled shifts.

41. Defendant implemented this policy through their managers, who directed Plaintiffs and other hourly-paid employees to clock out at times during their shifts and continue working.

42. In some instances, hourly-paid employees completed work off the clock during their days off, for which they did not receive compensation.

43. Defendant maintained a common policy of reducing Plaintiff's and other hourly-paid employees' hours when computing payroll, thus depriving them of hourly compensation for time they had spent working while clocked into Defendants' time-keeping system.

44. Defendant maintained a common policy of failing to pay Plaintiffs and other hourly-paid employees for short rest periods of 20 minutes or less. *See* 29 CFR § 785.18.

45. Plaintiffs and other hourly-paid employees regularly worked more than forty (40) hours per workweek.

46. As a result of Defendant's common unlawful policies, hourly-paid employees were not properly compensated overtime at a rate of not less than one and one-half (1.5) times their regular rate of pay for all hours they worked in excess of forty (40) per workweek, in violation of the FLSA, CWA and CMWO.

47. As a non-exempt employee, Plaintiff and other hourly-paid employees were entitled to full compensation for all overtime hours worked at a rate of 1.5 times their "regular rate" of pay.

48. Under FLSA, the regular rate is the "keystone" to calculating the overtime rate.

*Walling v. Youngerman-Reynolds Hardwood Co.*, 325 U.S. 419 (1945). It is “the hourly rate actually paid the employee for the normal, nonovertime workweek for which he is employed.” 29 C.F.R. § 778.108.

49. No matter how an employee is paid—whether by the hour, by the piece, on a commission, or on a salary—the employee’s compensation must be converted to an equivalent hourly rate from which the overtime rate can be calculated. 29 C.F.R. § 778.109. “The regular hourly rate of pay is determined by dividing the employee’s total remuneration for employment (except statutory exclusions) in any workweek by the total number of hours actually worked by the employee in that workweek for which such compensation was paid.” *Id.*

50. 29 C.F.R. § 548.502 provides that “[e]xtra overtime compensation must be separately computed and paid on payments such as bonuses or shift differentials which are not included in the computation of the established basic rate....” *See also* 29 C.F.R. § 778.209.

51. There is a statutory presumption that remuneration in any form must be included in the regular rate calculation. The burden is on Defendant to establish that any payment should be excluded. *Madison v. Resources for Human Dev. Inc.*, 233 F.3d 187 (3rd Cir. 2000). Thus, determining the regular rate starts from the premise that all payments made to Plaintiffs for work performed are included in the base calculation unless specifically excluded by statute.

52. Once the total amount of an employee’s “regular” compensation is deduced, “the determination of the regular rate becomes a matter of mathematical computation.” *Walling v. Youngerman-Reynolds Hardwood Co.*, 325 U.S. 419, 425 (1945). The regular rate must be expressed as an hourly rate because, although any method of compensating an employee is permitted, the FLSA imposes its overtime requirements in terms of hourly wages. Thus, if necessary, an employer must convert an employee’s wages to rate per hour to determine



compliance with the statute.

53. Plaintiff Joshua Ferguson's and other hourly-paid Shift Managers' and Assistant General Managers' "total remuneration" included not only their hourly pay, but also their non-discretionary performance bonus compensation.

54. However, Defendant failed to incorporate the non-discretionary performance bonus compensation paid to Ferguson and other hourly-paid Shift Managers and Assistant General Managers into the calculations of their regular hourly rate, which caused them to receive an overtime rate that was less than one and one-half times their regular rate.

55. Hourly-paid employees have been subjected to the common pay and time-recording policies and practices of Defendant as stated herein that violated the FLSA, CWA and CMWO.

56. Defendant failed to provide hourly-paid employees with uninterrupted and "duty free" meal periods of at least a thirty-minute duration when their scheduled work shifts exceeded five consecutive hours of work.

57. Defendant failed to provide hourly-paid employees with compensated ten (10) minute rest periods for each four (4) hours or major fractions thereof.

58. Defendant's wrongful acts and/or omissions/commissions, as alleged herein, were not made in good faith, or in conformity with or in reliance on any written administrative regulation, order, ruling, approval, or interpretation by the state and/or U.S. Department of Labor and/or any state department of labor, or any administrative practice or enforcement practice or enforcement policy of such departments.

59. Defendant's violations of the above-described federal and state wage and hour statutes and regulations were willful, arbitrary, unreasonable and in bad faith.

60. From April 2018 through August 2018, counsel for Plaintiffs and Defendant engaged in discussions in an effort to reach a settlement and release of Defendant's liability to Plaintiffs for unpaid overtime wages allegedly owed to Plaintiff Ferguson and Defendant's other former hourly-paid employees Mindy Journot and Noah Young.

61. In the course of these discussions, counsel for Plaintiffs and Defendant executed a written agreement tolling Plaintiffs' statute of limitations under the FLSA as of April 5, 2018 and continuing through the termination of the tolling agreement pursuant to sixty (60) days written notice by either side.

62. Despite their discussions, Plaintiffs and Defendant were unable to reach a settlement.

63. Pursuant to the parties' tolling agreement, the statute of limitations applicable to each Plaintiff Ferguson's claim should be deemed tolled as of April 5, 2018.

### **COLLECTIVE ACTION ALLEGATIONS**

64. Plaintiffs re-allege and incorporate all previous paragraphs herein.

65. Plaintiffs brings this action pursuant to Section 216(b) of the FLSA, as an opt-in representative action, for and on behalf of all hourly-paid employees who have been affected by Defendant's common policies and practices, including failure to properly pay for all hours worked and failure to include non-discretionary performance bonus compensation in the calculation of overtime rates resulting in deprivation of overtime, in violation of the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* ("FLSA") and attendant regulations at 29 C.F.R. § 516, *et seq.*

66. Plaintiff SCOTT BEAN asserts his FLSA claim that Defendant failed to pay for all hours worked on behalf of a putative FLSA Collective, defined as:

*All hourly-paid employees of Defendant at any time from 3 years prior to the filing of this Complaint through the date of judgment.*

67. Plaintiff JOSHUA FERGUSON asserts his FLSA claim that Defendant failed to include non-discretionary performance bonus compensation in the calculation of overtime rates on behalf of a putative FLSA Sub-Collective, defined as:

*All hourly-paid Shift Managers and Assistant General Managers employed by at any time from 3 years prior to the filing of this Complaint through the date of judgment.*

68. Plaintiffs bring this collective action against Defendant to recover unpaid overtime wages, liquidated damages, and reasonable attorneys' fees and costs pursuant to 29 U.S.C. § 216(b).

69. The collective action further alleges a willful violation of the FLSA and seeks an additional, third year of limitations.

70. Plaintiffs seek to send Notice to all hourly-paid employees of Defendant permitting them to assert FLSA claims in this collective action by filing their individual consent forms, as provided by 29 U.S.C. § 216(b) and supporting case law.

71. Certification of the collective action under the FLSA is appropriate because the employees described herein are "similarly situated" to Plaintiffs under 29 U.S.C. § 216(b). The FLSA Collective and Sub-collective on behalf of whom Plaintiffs bring this collective action are similarly situated because: (a) they had the same job positions and performed the same or similar job duties as one another on behalf of Defendant; (b) they were subject to the same or similar unlawful practices and policies as stated herein; and (c) their claims are based upon the same factual and legal theories.

72. The employment relationships between Defendant and every collective member are the same and differ only by name, location, and rate of pay. The key issue – whether

Defendant is liable for uncompensated overtime work – does not vary substantially among the collective members.

73. Plaintiffs anticipate that there will be no difficulty in the management of this litigation. This litigation presents claims under the FLSA, a type that have often been prosecuted on a class wide basis, and the manner of identifying the collective and providing any monetary relief to it can be effectuated from a review of Defendant’s records.

74. Plaintiffs and the putative FLSA Collective and Sub-collective members demand a trial by jury.

**RULE 23 CLASS ACTION ALLEGATIONS**

75. Plaintiffs re-allege and incorporate all previous paragraphs herein.

76. Plaintiffs also seeks to maintain this action pursuant to Fed. R. of Civ. P. 23, as an opt-out class action, for an on behalf all hourly-paid employees who have been affected by Defendant’s common policies and practices, including failure to properly pay for all hours worked, failure to include non-discretionary performance bonus compensation in the calculation of overtime rates resulting in deprivation of overtime, and failure to provide meal or rest periods, in violation of the Colorado Wage Act, C.R.S. § 8-4-101, *et seq.* (“CWA”) and Colorado Minimum Wage Order No. 34, 7 C.C.R. § 1103-1 (“CMWO”).

77. Plaintiff SCOTT BEAN asserts his CWA, CMWO, and breach of contract claims that Defendant failed to pay for all hours worked and failure to provide meal and rest periods not only individually, but also on behalf of the putative Rule 23 Class, defined as:

*All hourly-paid employees of Defendant at any time from 3 years prior to the filing of this Complaint through the date of judgment.*

78. Plaintiff JOSHUA FERGUSON asserts his CWA and CMWO claims that Defendant failed to include non-discretionary performance bonus compensation in the

calculation of overtime rates not only individually, but also on behalf the putative Rule 23

Subclass, defined as:

*All hourly-paid Shift Managers and Assistant General Managers employed by at any time from 3 years prior to the filing of this Complaint through the date of judgment.*

79. Plaintiffs bring this Rule 23 class action against Defendant to recover unpaid overtime wages, penalties, and reasonable attorneys' fees and costs pursuant to Colorado Wage Act, C.R.S. § 8-4-101, *et seq.* ("CWA") and Colorado Minimum Wage Order No. 34, 7 C.C.R. § 1103-1 ("CMWO").

80. The Rule 23 class action further alleges a willful violation of the CWA and CMWO and seeks an additional, third year of limitations.

81. The members of the Rule 23 Class and Subclass are so numerous that joinder of all class members in this case would be impractical. Plaintiffs reasonably estimate that there are at least fifty (50) Rule 23 Class and Subclass in the State of Colorado. The Rule 23 Class and Subclass members should be easy to identify from Defendant's computer systems and electronic payroll and personnel records.

82. There is a well-defined community of interest among the members of the Rule 23 Class and Subclass and common questions of law and fact predominate in this action over any questions affecting each individual class member. These common legal and factual questions, include, but are not limited to, the following:

- a. Whether the Rule 23 Class and Subclass members were properly compensated for all work hours;
- b. Whether the Rule 23 Class and Subclass members worked more than forty (40) hours in any single workweek; and
- c. Whether the Rule 23 Class and Subclass members were properly compensated overtime wages at a rate not less than one and one-half

(1.5) times their regular rate of pay for all hours they worked in excess of forty (40) per workweek.

83. Plaintiffs' claims are typical of those of the Rule 23 Class and Subclass members in that they and all other class members suffered damages as a direct and proximate result of Defendant's common and systemic payroll policies and practices. All of the Rule 23 Class and Subclass members were subject to the same corporate practices of Defendant, as alleged herein, of failing to pay overtime wages. Any lawsuit brought by an employee of Defendant would be identical to a suit brought by any other employee for the same violations and separate litigation would cause a risk of inconsistent results.

84. Plaintiffs were employed by Defendant in the same capacity as all of the Rule 23 Class and Subclass members. All Rule 23 Class and Subclass members were treated the same or similarly by management with respect to pay or lack thereof. This treatment included, but was not limited to, failure to pay proper overtime wages. Thus, there are common questions of law and fact which are applicable to each and every one of the Rule 23 Class and Subclass members.

85. Plaintiffs will fully and adequately protect the interests of the Rule 23 Class and Subclass members and have retained counsel who are qualified and experienced in the prosecution of nationwide wage and hour class actions. Plaintiffs and their counsel do not have interests that are contrary to, or conflicting with, the interests of the Rule 23 Class and Subclass members.

86. Defendant's corporate-wide policies and practices affected all Rule 23 Class and Subclass members similarly, and Defendant benefited from the same type of unfair and/or wrongful acts as to each class member. Plaintiffs' claim arises from the same legal theories as all other class members. Therefore, this case will be more manageable and efficient as a Rule 23

class action. Plaintiffs and their counsel know of no unusual difficulties in this case.

87. Plaintiffs and the Rule 23 Class and Subclass members demand a trial by jury.

### COUNT I

**(Individual Claim Brought by Plaintiffs Bean and Ferguson)**

**Violation of the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.***

**FAILURE TO PAY WAGES FOR ALL OVERTIME HOURS WORKED**

88. Plaintiffs re-allege and incorporate all previous paragraphs herein.

89. 29 U.S.C. § 207(a)(1) provides:

[N]o employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

90. Plaintiffs regularly worked more than forty (40) hours per workweek.

91. Defendant required Plaintiffs to perform work “off the clock” and without compensation before, during, and after their shifts.

92. Defendant required Plaintiffs’ hours when computing payroll, thus depriving them of hourly compensation for time they had spent working while clocked into Defendant’s time-keeping system.

93. Defendant failed to pay Plaintiffs for short rest periods of 20 minutes or less.

94. Defendant failed to properly pay Plaintiffs overtime wages at a rate not less than one and one-half (1.5) times their regular rate of pay for all hours he worked in excess of forty (40) per workweek.

95. Defendant’s conduct and practices, described herein, were willful, intentional, unreasonably, arbitrary, and in bad faith.

96. Because Defendant willfully violated the FLSA, a three (3) year statute of limitations shall apply to such violation pursuant to 29 U.S.C. § 255(a).

97. As a result of Defendant's uniform and common policies and practices described above, Plaintiffs were illegally deprived of overtime wages earned, in such amounts to be determined at trial, and are entitled to recovery of such total unpaid amounts, liquidated damages, reasonable attorneys' fees, costs and other compensation pursuant to 29 U.S.C § 216(b).

## COUNT II

### (29 U.S.C. § 216(b) Collective Action Claim Brought by Plaintiff Bean on Behalf of the FLSA Collective)

Violation of the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*

#### **FAILURE TO PAY WAGES FOR ALL OVERTIME HOURS WORKED**

98. Plaintiffs re-allege and incorporate all previous paragraphs herein.

99. 29 U.S.C. § 207(a)(1) provides:

[N]o employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

100. Plaintiffs and the FLSA Collective members regularly worked more than forty (40) hours per workweek.

101. Defendant required Plaintiffs and members of the FLSA Collective to perform work "off the clock" and without compensation before, during, and after their shifts.

102. Defendant required Plaintiffs' and members of the FLSA Collective's hours when computing payroll, thus depriving them of hourly compensation for time they had spent working while clocked into Defendant's time-keeping system.



103. Defendant failed to pay Plaintiffs and members of the FLSA Collective for short rest periods of 20 minutes or less.

104. Defendant failed to properly pay Plaintiffs and the FLSA Collective members overtime wages at a rate not less than one and one-half (1.5) times their regular rate of pay for all hours they worked in excess of forty (40) per workweek.

105. Defendant's conduct and practices, described herein, were willful, intentional, unreasonably, arbitrary, and in bad faith.

106. Because Defendant willfully violated the FLSA, a three (3) year statute of limitations shall apply to such violation pursuant to 29 U.S.C. § 255(a).

107. As a result of Defendant's uniform and common policies and practices described above, Plaintiffs and the FLSA Collective members were illegally deprived of overtime wages earned, in such amounts to be determined at trial, and are entitled to recovery of such total unpaid amounts, liquidated damages, reasonable attorneys' fees, costs and other compensation pursuant to 29 U.S.C § 216(b).

**COUNT III**  
**(Individual Claim Brought by Plaintiff Ferguson)**  
**Violation of the Fair Labor Standards Act, 29 U.S.C. § 201, et seq.**  
**FAILURE TO PAY OVERTIME WAGES AT THE PROPER RATE**

108. Plaintiffs re-allege and incorporate all previous paragraphs herein.

109. 29 C.F.R. § 548.502 provides that “[e]xtra overtime compensation must be separately computed and paid on payments such as bonuses or shift differentials which are not included in the computation of the established basic rate....” *See also* 29 C.F.R. § 778.209.

110. Plaintiff Ferguson worked more than forty (40) hours per workweek.

111. Plaintiff Ferguson's “total remuneration” included not only their hourly pay, but also his non-discretionary performance bonus compensation.

112. However, Defendant failed to incorporate the non-discretionary performance bonus compensation paid to Ferguson into the calculations of his regular hourly rate, which caused him to receive an overtime that was less than one and one-half times his regular rate.

113. Defendant's conduct and practices, described herein, were willful, intentional, unreasonably, arbitrary, and in bad faith.

114. Because Defendant willfully violated the FLSA, a three (3) year statute of limitations shall apply to such violation pursuant to 29 U.S.C. § 255(a).

115. As a result of Defendant's uniform and common policies and practices described above, Ferguson was illegally deprived of overtime wages earned, in such amounts to be determined at trial, and is entitled to recovery of such total unpaid amounts, liquidated damages, reasonable attorneys' fees, costs and other compensation pursuant to 29 U.S.C § 216(b).

#### **COUNT IV**

**(29 U.S.C. § 216(b) Collective Action Claim Brought by Plaintiff Ferguson on Behalf of the FLSA Sub-collective)**

**Violation of the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.***

**FAILURE TO PAY OVERTIME WAGES AT THE PROPER RATE**

116. Plaintiffs re-allege and incorporate all previous paragraphs herein.

117. Plaintiff Ferguson and other members of the FLSA Sub-collective worked more than forty (40) hours per workweek.

118. Plaintiff Ferguson's and other members of the FLSA Sub-collective's "total remuneration" included not only their hourly pay, but also their non-discretionary performance bonus compensation.

119. However, Defendant failed to incorporate the non-discretionary performance bonus compensation paid to Ferguson and other members of the FLSA Sub-collective into the calculations of their regular hourly rate, which caused them to receive an overtime rate in such

weeks that was less than one and one-half times their regular rate.

120. Defendant's conduct and practices, described herein, were willful, intentional, unreasonably, arbitrary, and in bad faith.

121. Because Defendant willfully violated the FLSA, a three (3) year statute of limitations shall apply to such violation pursuant to 29 U.S.C. § 255(a).

122. As a result of Defendant's uniform and common policies and practices described above, Plaintiffs and other members of the FLSA Sub-collective were illegally deprived of overtime wages earned, in such amounts to be determined at trial, and are entitled to recovery of such total unpaid amounts, liquidated damages, reasonable attorneys' fees, costs and other compensation pursuant to 29 U.S.C § 216(b).

#### COUNT V

**(Individual Claim Brought by Plaintiffs Bean and Ferguson)**

**(CWA, C.R.S. § 8-4-101, *et seq.* and CMWO, 7 C.C.R. § 1103-1)**

#### **FAILURE TO PAY WAGES FOR ALL OVERTIME HOURS WORKED**

123. Plaintiffs re-allege and incorporate all previous paragraphs herein.

124. Plaintiffs regularly worked more than forty (40) hours per workweek.

125. Defendant failed to properly compensate Plaintiffs for all hours worked including time spent performing pre-shift work-related activities as alleged herein.

126. Defendant failed to properly pay Plaintiffs overtime wages at a rate of not less than one and one-half (1.5) times his regular rate of pay for all hours he worked in excess of forty (40) per workweek.

127. Defendant's conduct and practices, described herein, were willful, intentional, unreasonably, arbitrary, and in bad faith.

128. Because Defendant willfully violated the CWA and CMWO, a three (3) year statute of limitations shall apply to such violation pursuant to C.R.S. § 8-4-122.

129. As a result of Defendant's uniform and common policies and practices described above, Plaintiffs were illegally deprived of overtime wages earned, in such amounts to be determined at trial, and is entitled to recovery of such total unpaid amounts, penalties, reasonable attorneys' fees, costs and other compensation pursuant to CWA and CMWO.

**COUNT VI**

**(Fed. R. Civ. P. 23 Class Action Claim Brought by Plaintiff Bean on Behalf of the Rule 23 Class)**

**Violations of CWA, C.R.S. § 8-4-101, et seq. and CMWO, 7 C.C.R. § 1103-1  
FAILURE TO PAY WAGES FOR ALL OVERTIME HOURS WORKED**

130. Plaintiffs re-allege and incorporate all previous paragraphs herein.

131. Plaintiffs and the Rule 23 Class members regularly worked more than forty (40) hours per workweek.

132. Defendant failed to properly compensate Plaintiffs and the Rule 23 Class members for all hours worked including time spent performing pre-shift work-related activities as alleged herein.

133. Defendant failed to properly pay Plaintiffs and the Rule 23 Class members overtime wages at a rate of not less than one and one-half (1.5) times their regular rate of pay for all hours they worked in excess of forty (40) per workweek.

134. Defendant's conduct and practices, described herein, were willful, intentional, unreasonably, arbitrary, and in bad faith.

135. Because Defendant willfully violated the CWA and CMWO, a three (3) year statute of limitations shall apply to such violation pursuant to C.R.S. § 8-4-122.

136. As a result of Defendant's uniform and common policies and practices described above, Plaintiffs and the Rule 23 Class members were illegally deprived of overtime wages earned, in such amounts to be determined at trial, and are entitled to recovery of such total

unpaid amounts, penalties, reasonable attorneys' fees, costs and other compensation pursuant to CWA and CWMO.

**COUNT VII**  
**(Individual Claim Brought by Plaintiff Ferguson)**  
**(CWA, C.R.S. § 8-4-101, et seq. and CMWO, 7 C.C.R. § 1103-1)**  
**FAILURE TO PAY OVERTIME WAGES AT THE PROPER RATE**

137. Plaintiffs re-allege and incorporate all previous paragraphs herein.

138. Plaintiff Ferguson worked more than forty (40) hours per workweek.

139. Plaintiff Ferguson's "total remuneration" included not only their hourly pay, but also his non-discretionary performance bonus compensation.

140. However, Defendant failed to incorporate the non-discretionary performance bonus compensation paid to Ferguson into the calculations of his regular hourly rate, which caused him to receive an overtime that was less than one and one-half times his regular rate.

141. Defendant's conduct and practices, described herein, were willful, intentional, unreasonably, arbitrary, and in bad faith.

142. Because Defendant willfully violated the CWA and CMWO, a three (3) year statute of limitations shall apply to such violation pursuant to C.R.S. § 8-4-122.

143. As a result of Defendant's uniform and common policies and practices described above, Plaintiff Ferguson was illegally deprived of overtime wages earned, in such amounts to be determined at trial, and is entitled to recovery of such total unpaid amounts, penalties, reasonable attorneys' fees, costs and other compensation pursuant to CWA and CWMO.

**COUNT VIII**  
**(Fed. R. Civ. P. 23 Class Action Claim Brought by Plaintiff Ferguson on Behalf of the Rule 23 Subclass)**  
**Violations of CWA, C.R.S. § 8-4-101, et seq. and CMWO, 7 C.C.R. § 1103-1**  
**FAILURE TO PAY OVERTIME WAGES AT THE PROPER RATE**

144. Plaintiffs re-allege and incorporate all previous paragraphs herein.

145. Plaintiff Ferguson and the Rule 23 Subclass members regularly worked more than forty (40) hours per workweek.

146. Plaintiff Ferguson's and other members of the Rule 23 Subclass's "total remuneration" included not only their hourly pay, but also their non-discretionary performance bonus compensation.

147. However, Defendant failed to incorporate the non-discretionary performance bonus compensation paid to Ferguson and other members of the Rule 23 Subclass into the calculations of their regular hourly rate, which caused them to receive an overtime rate in such weeks that was less than one and one-half times their regular rate.

148. Defendant's conduct and practices, described herein, were willful, intentional, unreasonably, arbitrary, and in bad faith.

149. Because Defendant willfully violated the CWA and CMWO, a three (3) year statute of limitations shall apply to such violation pursuant to C.R.S. § 8-4-122.

150. As a result of Defendant's uniform and common policies and practices described above, Plaintiff Ferguson and the Rule 23 Subclass members were illegally deprived of overtime wages earned, in such amounts to be determined at trial, and are entitled to recovery of such total unpaid amounts, penalties, reasonable attorneys' fees, costs and other compensation pursuant to CWA and CWMO.

**COUNT IX**  
**(Individual Claim Brought by Plaintiffs Bean and Ferguson)**  
**Violations of CMWO, 7 C.C.R. § 1103-1**  
**FAILURE TO PROVIDE MEAL AND REST PERIODS**

151. Plaintiffs re-allege and incorporate all previous paragraphs herein.

152. Section 7 of the CMWO provides:

Employees shall be entitled to an uninterrupted and "duty free"

meal period of at least a thirty minute duration when the scheduled work shift exceeds five consecutive hours of work. The employees must be completely relieved of all duties and permitted to pursue personal activities to qualify as a non-work, uncompensated period of time. When the nature of the business activity or other circumstances exist that makes an uninterrupted meal period impractical, the employee shall be permitted to consume an “on-duty” meal while performing duties. Employees shall be permitted to fully consume a meal of choice "on the job" and be fully compensated for the "on-duty" meal period without any loss of time or compensation.

153. Section 8 of the CMWO provides:

Every employer shall authorize and permit rest periods, which, insofar as practicable, shall be in the middle of each four (4) hour work period. A compensated ten (10) minute rest period for each four (4) hours or major fractions thereof shall be permitted for all employees. Such rest periods shall not be deducted from the employee's wages. It is not necessary that the employee leave the premises for said rest period.

154. Defendant failed to provide Plaintiffs with uninterrupted and “duty free” meal periods of at least a thirty minute durations when their scheduled work shifts exceeded five consecutive hours of work.

155. Defendant failed to provide Plaintiffs with compensated ten (10) minute rest periods for each four (4) hours or major fractions thereof.

156. Defendant’s conduct and practices, described herein, were willful, intentional, unreasonably, arbitrary, and in bad faith.

157. Because Defendant willfully violated the CMWO, a three (3) year statute of limitations shall apply to such violation pursuant to C.R.S. § 8-4-122.

**COUNT X**  
**(Fed. R. Civ. P. 23 Class Action Claim Brought by Plaintiff Bean on Behalf of the Rule 23**  
**Class)**  
**Violations of CMWO, 7 C.C.R. § 1103-1**  
**FAILURE TO PROVIDE MEAL AND REST PERIODS**

158. Plaintiffs re-allege and incorporate all previous paragraphs herein.

159. Defendant failed to provide Plaintiff Bean and other Rule 23 Class members with uninterrupted and “duty free” meal periods of at least a thirty minute durations when their scheduled work shift exceeded five consecutive hours of work.

160. Defendant failed to provide Plaintiff Bean and other Rule 23 Class members with compensated ten (10) minute rest periods for each four (4) hours or major fractions thereof.

161. Defendant’s conduct and practices, described herein, were willful, intentional, unreasonably, arbitrary, and in bad faith.

162. Because Defendant willfully violated the CMWO, a three (3) year statute of limitations shall apply to such violation pursuant to C.R.S. § 8-4-122.

**Count XI**  
**(Individual Claims Brought by Plaintiffs Bean and Ferguson)**  
**Breach of Contract**  
**FAILURE TO PAY WAGES FOR ALL HOURS WORKED**

163. Plaintiffs re-allege and incorporate all previous paragraphs herein and further alleges as follows.

164. At all times relevant to this action, Defendant had a contract with Plaintiffs to pay them for each hour they worked at a pre-established (contractual) regularly hourly rate.

165. Plaintiffs’ contractual hourly rate is identified in paystubs and other records that Defendant prepares as part of its regular business activities.

166. Plaintiffs performed under the contract by doing their jobs and carrying out the pre-shift, mid-shift, and post-shift activities that Defendant required or accepted.

167. By not paying Plaintiffs a the agreed upon hourly wage for the pre-shift, mid-shift, and post-shift activities, Defendant systematically breached its contracts with Plaintiffs.

168. Plaintiffs’ remedies under the FLSA are inadequate in this case to the extent



Defendant paid them more than the federally mandated minimum wage of \$7.25 per hour but less than 40 hours per week (i.e., pure “gap time” claims).

169. Defendant also breached its duty of good faith and fair dealing by failing to keep track of the time Plaintiffs spent performing pre-shift, mid-shift, and post-shift activities, which are a fundamental part of an “employer’s job.”

170. As a direct and proximate result of Defendant’s breaches of the contracts alleged herein, Plaintiffs have been damaged, in an amount to be determined at trial.

**Count XII**  
**(Fed. R. Civ. P. 23 Class Action Claim Brought by Plaintiff Bean on Behalf of the Rule 23 Class)**  
**Breach of Contract**  
**FAILURE TO PAY WAGES FOR ALL HOURS WORKED**

171. Plaintiffs re-allege and incorporate all previous paragraphs herein and further alleges as follows.

172. At all times relevant to this action, Defendant had a contract with Plaintiffs and every other Rule 23 Class member to pay each employee for each hour they worked at a pre-established (contractual) regularly hourly rate.

173. Each Rule 23 Class member’s contractual hourly rate is identified in paystubs and other records that Defendant prepares as part of its regular business activities.

174. Plaintiffs and other Rule 23 Class members performed under the contract by doing their jobs and carrying out the pre-shift, mid-shift, and post-shift activities that Defendant required or accepted.

175. By not paying Plaintiffs and other Rule 23 Class members the agreed upon hourly wage for the pre-shift, mid-shift, and post-shift activities, Defendant systematically breached its contracts with Plaintiffs and other Rule 23 Class members.

176. Plaintiffs' and the Rule 23 Class members' remedies under the FLSA are inadequate in this case to the extent Defendant paid them more than the federally mandated minimum wage of \$7.25 per hour but less than 40 hours per week (i.e., pure "gap time" claims).

177. Defendant also breached its duty of good faith and fair dealing by failing to keep track of the time Plaintiffs and other Rule 23 Class members spent performing pre-shift, mid-shift, and post-shift activities, which are a fundamental part of an "employer's job."

178. As a direct and proximate result of Defendant's breaches of the contracts alleged herein, Plaintiffs and other Rule 23 Class members have been damaged, in an amount to be determined at trial.

### **RELIEF REQUESTED**

WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief against Defendant:

- (A) A declaratory judgment that Defendant's wage practices alleged herein violate the overtime provisions of the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, and attendant regulations at 29 C.F.R. § 516, *et seq.*;
- (B) A declaratory judgment that Defendant's wage practices alleged herein violate the Colorado Wage Act, C.R.S. § 8-4-101, *et seq.* and Colorado Minimum Wage Order No. 34, 7 C.C.R. § 1103-1;
- (C) A declaratory judgment that Defendant breached its contracts with Plaintiffs and the members of the Rule 23 Class and Subclass by failing to pay them for each hour they worked at a pre-established (contractual) regularly hourly rate;
- (D) An Order for injunctive relief ordering Defendant to comply with the FLSA, CWA and CMWO and end all of the illegal wage practices alleged herein;

- (E) Certifying this case as a collective action in accordance with 29 U.S.C. § 216(b) with respect to the FLSA claims set forth herein;
- (F) Certifying this action as a class action pursuant to Fed R. Civ. P. 23 with respect to the CWA and CMWO claims set forth herein;
- (G) Ordering Defendant to disclose in computer format, or in print if no computer readable format is available, the names, addresses, e-mail addresses, telephone numbers, dates of birth, job titles, dates of employment and locations of employment of all members of the FLSA Collective, FLSA Sub-Collective, Rule 23 Class, and Rule 23 Subclass;
- (H) Authorizing Plaintiffs' counsel to send notice(s) of this action to all members of the FLSA Collective, FLSA Sub-Collective, Rule 23 Class, and Rule 23 Subclass, including the publishing of notice in a manner that is reasonably calculated to apprise the FLSA collective members of their rights by law to join and participate in this lawsuit;
- (I) Designating Plaintiff Bean as the representative of the FLSA Collective and Rule 23 Class in this action;
- (J) Designating Plaintiff Ferguson as the representative of the FLSA Sub-collective and Rule 23 Subclass in this action;
- (K) Designating the undersigned counsel as counsel for the FLSA Collective, FLSA Sub-collective, Rule 23 Class, and Rule 23 Subclass in this action;
- (L) Judgment for damages for all unpaid overtime compensation and liquidated damages to which Plaintiffs and the members of the FLSA Collective and FLSA Sub-collective are lawfully entitled under the FLSA, 29 U.S.C. § 201, *et seq.*, and attendant regulations at 29 C.F.R. § 516, *et seq.*;
- (M) Judgment for damages for all unpaid overtime compensation and penalties to which

Plaintiffs and the members of the Rule 23 Class and Rule 23 Subclass are lawfully entitled under the Colorado Wage Act, C.R.S. § 8-4-101, *et seq.* and Colorado Minimum Wage Order No. 34, 7 C.C.R. § 1103-1;

- (N) Judgment for damages for all contractually-owed hourly wages to which Plaintiffs and the members of the Rule 23 Class and Rule 23 Subclass are lawfully entitled under Colorado common law;
- (O) An incentive award for the Plaintiff Bean for serving as representative of the FLSA Collective and Rule 23 Class in this action;
- (P) An incentive award for the Plaintiff Ferguson for serving as representative of the FLSA Sub-collective and Rule 23 Subclass in this action;
- (Q) Awarding reasonable attorneys' fees and costs incurred by Plaintiffs in this action as provided by the FLSA, CWA and CMWO; and
- (R) Judgment for any and all civil penalties to which Plaintiffs and the members of the FLSA Collective, FLSA Sub-Collective, Rule 23 Class, and Rule 23 Subclass may be entitled; and
- (S) Such other and further relief as to this Court may deem necessary, just and proper.

### **JURY DEMAND**

Plaintiffs, individually and on behalf of all other members of the FLSA Collective, FLSA Sub-collective, Rule 23 Class, and Rule 23 Subclass, by and through their attorneys, hereby demand a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure and the court rules and statutes made and provided with respect to the above entitled claims.

RESPECTFULLY SUBMITTED,

Dated: September 18, 2018

By: /s Jason T. Brown

Jason T. Brown

Nicholas R. Conlon

**JTB LAW GROUP, LLC**

155 2nd St., Suite 4

Jersey City, NJ 07302

T: (877) 561-0000

F: (855) 582-5297

jtb@jtblawgroup.com

nicholasconlon@jtblawgroup.com

*Attorneys for Plaintiff*

# **EXHIBIT**

# **A**

UNITED STATES DISTRICT COURT  
DISTRICT OF COLORADO

SCOTT BEAN and JOSHUA FERGUSON,  
individually and on behalf of others similarly  
situated,

Plaintiffs,

vs.

COLOMEX, INC., *doing business as* "Taco  
Bell,"

Defendant.

Civil Case No.:

**CONSENT TO SUE**

I hereby consent to be a Plaintiff in the Fair Labor Standards Act case captioned above. I hereby consent to the bringing of any claims I may have under the Fair Labor Standards Act (for unpaid minimum wages, overtime, liquidated damages, attorney's fees, costs and other relief) and applicable state wage and hour law against the Defendant(s). I further consent to bringing these claims on a collective and/or class basis with other current/former employees of Defendant(s), to be represented by JTB Law Group LLC, and to be bound by any settlement of this action or adjudication by the Court.

Signed: Scott Bean Dated: 09/17/2018

Name: Scott Bean

# **EXHIBIT**

# **B**



UNITED STATES DISTRICT COURT  
DISTRICT OF COLORADO

SCOTT BEAN and JOSHUA FERGUSON,  
individually and on behalf of others similarly  
situated,

Plaintiffs,

vs.

COLOMEX, INC., *doing business as* "Taco  
Bell,"

Defendant.

Civil Case No.:

**CONSENT TO SUE**

I hereby consent to be a Plaintiff in the Fair Labor Standards Act case captioned above. I hereby consent to the bringing of any claims I may have under the Fair Labor Standards Act (for unpaid minimum wages, overtime, liquidated damages, attorney's fees, costs and other relief) and applicable state wage and hour law against the Defendant(s). I further consent to bringing these claims on a collective and/or class basis with other current/former employees of Defendant(s), to be represented by JTB Law Group LLC, and to be bound by any settlement of this action or adjudication by the Court.

**Signed:**



**Dated:**

09/05/2018

**Name:**

Joshua Ferguson

### CIVIL COVER SHEET

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

<p><b>I. (a) PLAINTIFFS</b> SCOTT BEAN and JOSHUA FERGUSON, individually and on behalf of others similarly</p> <p><b>(b)</b> County of Residence of First Listed Plaintiff <u>Pueblo County, Colorado</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p><b>(c)</b> Attorneys <i>(Firm Name, Address, and Telephone Number)</i> Jason T. Brown; Nicholas R. Conlon JTB Law Group, LLC 155 2nd Street, Suite 4, Jersey City, NJ 07302 / T: (877) 561-0000</p>	<p><b>DEFENDANTS</b> COLOMEX, INC., doing business as "Taco Bell,"</p> <p>County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i></p>
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<p><b>II. BASIS OF JURISDICTION</b> <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff      <input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 2 U.S. Government Defendant      <input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i> <i>(For Diversity Cases Only)</i></p> <table style="width: 100%;"> <tr> <td style="width: 30%;">Citizen of This State</td> <td style="width: 10%;">PTF <input type="checkbox"/> 1</td> <td style="width: 10%;">DEF <input type="checkbox"/> 1</td> <td style="width: 30%;">Incorporated or Principal Place of Business In This State</td> <td style="width: 10%;">PTF <input type="checkbox"/> 4</td> <td style="width: 10%;">DEF <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td>PTF <input type="checkbox"/> 2</td> <td>DEF <input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td>PTF <input type="checkbox"/> 5</td> <td>DEF <input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td>PTF <input type="checkbox"/> 3</td> <td>DEF <input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td>PTF <input type="checkbox"/> 6</td> <td>DEF <input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4	Citizen of Another State	PTF <input type="checkbox"/> 2	DEF <input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	PTF <input type="checkbox"/> 5	DEF <input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	PTF <input type="checkbox"/> 3	DEF <input type="checkbox"/> 3	Foreign Nation	PTF <input type="checkbox"/> 6	DEF <input type="checkbox"/> 6
Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4														
Citizen of Another State	PTF <input type="checkbox"/> 2	DEF <input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	PTF <input type="checkbox"/> 5	DEF <input type="checkbox"/> 5														
Citizen or Subject of a Foreign Country	PTF <input type="checkbox"/> 3	DEF <input type="checkbox"/> 3	Foreign Nation	PTF <input type="checkbox"/> 6	DEF <input type="checkbox"/> 6														

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

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

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

1 Original Proceeding     2 Removed from State Court     3 Remanded from Appellate Court     4 Reinstated or Reopened     5 Transferred from another district *(specify)*     6 Multidistrict Litigation     7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*  
 29 U.S.C. § 216(b)

Brief description of cause:  AP Docket  
 Violation of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §201 et seq.

**VII. REQUESTED IN COMPLAINT:**     CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23    DEMAND \$ \_\_\_\_\_    CHECK YES only if demanded in complaint: JURY DEMAND:  Yes     No

DATE: 09/18/2018    SIGNATURE OF ATTORNEY OF RECORD:

**FOR OFFICE USE ONLY**

RECEIPT # _____	AMOUNT _____	APPLYING IFP _____	JUDGE _____	MAG. JUDGE _____
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AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Colorado

SCOTT BEAN and JOSHUA FERGUSON,
individually and on behalf of others similarly
situated,

Plaintiff(s)

v.

COLOMEX, INC., doing business as "Taco Bell,"

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Colomex, Inc.
717 N. Tejon St.
Colorado Springs, CO 80903

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Jason T. Brown
JTB LAW GROUP, LLC
155 2nd Street, Suite 4
Jersey City, NJ 07302

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the summons unexecuted because \_\_\_\_\_; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Former Taco Bell Employees Accuse Colorado Franchise Operator of Wage and Hour Violations](#)

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