

**UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO**

Civil Action No. 1:17-cv-1051

CRAIG SCHINDLER, Individually and on Behalf of All Others Similarly Situated,

Plaintiff,

v.

WHITING PETROLEUM CORP.,

Defendant.

COLLECTIVE ACTION COMPLAINT

I. SUMMARY

1. Plaintiff Craig Schindler (“Schindler”) brings this lawsuit to recover unpaid overtime wages and other damages under the Fair Labor Standards Act (“FLSA”) against Defendant Whiting Petroleum Corporation (“Whiting”).

2. Whiting paid Schindler, and other workers like him, the same hourly rate for all hours worked, including those in excess of 40 in a workweek.

3. Schindler brings this collective action to recover unpaid overtime and other damages.

II. JURISDICTION AND VENUE

4. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 216(b).

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 a significant portion of the facts giving rise to this lawsuit occurred in this District.

6. Whiting maintains several offices, and its headquarters, in this District.

III. THE PARTIES

7. Schindler worked exclusively for Whiting as a Rig Welder from approximately May 2015 until April 2016. Throughout his employment with Whiting, he was paid the same hourly rate for all hours worked, including those in excess of 40 in a workweek, received no overtime compensation, and was classified as an independent contractor. His consent to be a party plaintiff is attached as Exhibit A.

8. Schindler brings this action on behalf of himself and all other similarly situated workers who were classified as independent contractors and paid the same hourly rate for all hours worked, including those in excess of 40 in a workweek, and received no overtime compensation as required by the FLSA.

9. Whiting Petroleum Co. maintains its headquarters and principal place of business in Denver, Colorado. Whiting may be served with process through its registered agent: **The Corporation Company, 7700 E Arapahoe Rd., Suite 220, Centennial, CO 80290.**

IV. COVERAGE UNDER THE FLSA

10. For at least the past three years, Whiting has been an employer within the meaning of section 3(d) of the FLSA, 29 U.S.C. § 203(d).

11. For at least the past three years, Whiting has been part of an enterprise within the meaning of section 3(r) of the FLSA, 29 U.S.C. § 203(r).

12. For at least the past three years, Whiting has been part of an enterprise engaged in commerce or in the production of goods for commerce within the meaning of section 3(s)(1) of the FLSA, 29 U.S.C. § 203(s)(1), in that said enterprise has and has had employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person and in that said enterprise has had and has an annual gross volume of sales made or business done of not less

than \$500,000 (exclusive of excise taxes at the retail level which are separately stated).

13. For at least the past three years, Schindler and the Putative Class Members were engaged in commerce or in the production of goods for commerce.

V. FACTS

14. Whiting is an independent exploration and production company with an oil focused asset base. *See* <http://www.whiting.com/>.

15. Whiting operates throughout the United States, including Colorado. *See* <http://www.whiting.com/>

16. To provide services to many of its customers, Whiting contracts with certain companies to provide it with personnel to perform the necessary work.

17. Many of these individuals did work for Whiting as Rig Welders and make up the proposed Putative Class. While exact job titles and job duties may differ, these employees are subjected to the same or similar illegal pay practices for similar work. Specifically, Whiting classified all of its Rig Welders as independent contractors and paid them the same hourly rate for all hours worked, including those in excess of 40 in a workweek, with no overtime compensation.

18. For example, Schindler worked exclusively for Whiting from approximately March 2015 until April 2016 as a Rig Welder. Throughout his employment with Whiting, he was classified as an independent contractor and paid the same hourly rate for all hours worked, including those in excess of 40 in a workweek, with no overtime compensation.

19. Thus, rather than receiving time and half as required by the FLSA, Plaintiff only received “straight time” pay for overtime hours worked.

20. This “straight time for overtime” payment scheme violates the FLSA.

21. As a Rig Welder, Plaintiff’s primary job duties (and the job duties of all other Rig Welders employed by Whiting who were classified as independent contractors and paid straight time)

included reviewing blueprints in creation of welding components, welding pipes using various cutting processes, and maintaining the rig structure. Whiting typically scheduled Schindler to work 12-hour shifts, for as many as 7 days a week. Schindler worked well in excess of 40 hours each week while employed by Whiting.

22. The work Schindler performed was an essential party of Whiting's core business.

23. During Schindler's employment with Whiting while he was classified as an independent contractor, Whiting and/or the company it contracted with exercised control over all aspects of his job. Whiting did not require any substantial investment by Schindler in order for him to perform the work required of him. Whiting determined Schindler's opportunity for profit and loss. Schindler was not required to possess any unique or specialized skillset (other than that maintained by all other Rig Welders) to perform his job duties.

24. Indeed, Whiting and/or the company it contracted with controlled all of the significant or meaningful aspects of the job duties performed by Schindler.

25. Whiting ordered the hours and locations Schindler worked, tools used, and rates of pay received.

26. Even though Schindler often worked away from Whiting's offices without the presence of a direct Whiting supervisor, Whiting still controlled all aspects of Schindler's job activities by enforcing mandatory compliance with Whiting's and/or its client's policies and procedures.

27. No real investment was required of Schindler to perform his job. More often than not, Schindler utilized equipment provided by the client to perform his job duties. Schindler did not provide the equipment he worked with on a daily basis. Whiting and/or its clients made the large capital investments in buildings, machines, equipment, tools, and supplied in the business in which Schindler worked.

28. Schindler did not incur operating expenses like rent, payroll, marketing, and insurance.

29. Schindler was economically dependent on Whiting during his employment.

30. Whiting set Schindler's rates of pay, his work schedule, and prohibited him from working other jobs for other companies while he was working on jobs for Whiting.

31. Whiting directly determined Schindler's opportunity for profit and loss. Schindler's earning opportunity was based on the number of days he Whiting scheduled him to work.

32. Very little skill, training, or initiative was required of Schindler to perform his job duties.

33. Indeed, the daily and weekly activities of the Putative Class Members were routine and largely governed by standardized plans, procedures, and checklists created by Whiting and/or the operator Whiting contracted with. Virtually every job function was pre-determined by Whiting and/or the operator Whiting contracted with, including the tools to use at a job site, the data to compile, the schedule of work, and related work duties. The Putative Class Members were prohibited from varying their job duties outside of the pre-determined parameters. Moreover, the job functions of the Putative Class Members were primarily manual labor/technical in nature, requiring little to no official training, much less a college education or other advanced degree. The Putative Class Members did not have any supervisory or management duties. Finally, for the purposes of an FLSA overtime claim, the Putative Class Members performed substantially similar job duties related to servicing oil and gas operations in the field.

34. Schindler performed routine manual and technical labor duties that were largely dictated by Whiting and/or its clients.

35. Schindler worked exclusively for Whiting from approximately March 2015 until April 2016 as an independent contractor.

36. Schindler was not employed by Whiting on a project-by-project basis.

37. In fact, while Schindler was classified as an independent contractor, he was regularly on call for Whiting and/or its clients and was expected to drop everything and work whenever needed.

38. All Whiting's Rig Welders perform the same or similar job duties and are subjected to the same or similar policies and procedures which dictate the day-to-day activities performed by each person.

39. The Putative Class Members also worked similar hours and were denied overtime as a result of the same illegal pay practice. The Putative Class Members all worked in excess of 40 hours each week and were often scheduled for 12 hour shifts for weeks at a time. Instead of paying them overtime, Whiting paid the Putative Class Members hourly plus straight time for each day worked, regardless of the number of hours worked that day (or in that workweek) with no overtime compensation. Whiting denied the Putative Class Members overtime for any and all hours worked in excess of 40 hours in a single workweek.

40. Whiting's policy of failing to pay its independent contractors, including Schindler, overtime violates the FLSA because these workers are, for all purposes, employees performing non-exempt job duties.

41. It is undisputed that the contractors are maintaining and working with oilfield machinery, performing manual labor, and working long hours out in the field.

42. Because Schindler (and Whiting's other independent contractors) was misclassified as an independent contractor by Whiting, he should receive overtime for all hours that he worked in excess of 40 hours in each workweek.

43. Whiting's "straight time for overtime" system violates the FLSA because Schindler and the other Rig Welders did not receive any pay for hours worked over 40 hours each week.

VI. FLSA VIOLATIONS

44. As set forth herein, Whiting has violated, and is violating, section 7 of the FLSA, 29 U.S.C. § 207, by employing employees in an enterprise engaged in commerce or in the production of goods for commerce within the meaning of the FLSA for workweeks longer than 40 hours without compensating such employees for their employment in excess of 40 hours per week at rates no less than 1.5 times the regular rates for which they were employed.

45. Whiting knowingly, willfully, or in reckless disregard carried out this illegal pattern or practice of failing to pay the Putative Class Members overtime compensation. Whiting's failure to pay overtime compensation to these employees was neither reasonable, nor was the decision not to pay overtime made in good faith.

46. Accordingly, Schindler and all those who are similarly situated are entitled to overtime wages under the FLSA in an amount equal to 1.5 times their rate of pay, plus liquidated damages, attorney's fees, and costs.

VII. COLLECTIVE ACTION ALLEGATIONS

47. Whiting's illegal "straight time for overtime" policy extends beyond Plaintiff.

48. It is the "straight time for overtime" payment plan that is the "policy that is alleged to violate the FLSA" in this FLSA collective action. *Bursell v. Tommy's Seafood Steakhouse*, No. CIV.A. H-06-0386, 2006 WL 3227334, at *3 (S.D. Tex. Nov. 3, 2006); *Wellman v. Grand Isle Shipyard, Inc.*, No. CIV.A. 14-831, 2014 WL 5810529, at *5 (E.D. La. Nov. 7, 2014) (certifying "straight time for overtime" claim for collective treatment).

49. Whiting has paid dozens of hourly workers according to the same unlawful scheme.

50. Any differences in job duties do not detract from the fact that these hourly workers were entitled to overtime pay.

51. The workers impacted by Whiting's "straight time for overtime" scheme should be notified of this action and given the chance to join pursuant to 29 U.S.C. § 216(b). Therefore, the class is properly defined as:

All hourly employees of Whiting Petroleum Co. who were, at any point in the past 3 years, paid "straight time for overtime."

VIII. CAUSE OF ACTION

52. By failing to pay Plaintiff and those similarly situated to him overtime at one-and-one-half times their regular rates, Whiting violated the FLSA's overtime provisions.

53. Whiting owes Plaintiff and those similarly situated to him the difference between the rate actually paid and the proper overtime rate.

54. Because Whiting knew, or showed reckless disregard for whether, its pay practices violated the FLSA, Whiting owes these wages for at least the past three years.

55. Whiting is liable to Plaintiff and those similarly situated to him for an amount equal to all unpaid overtime wages as liquidated damages.

56. Plaintiff and those similarly situated to him are entitled to recover all reasonable attorneys' fees and costs incurred in this action.

IX. JURY DEMAND

57. Schindler demands a trial by jury.

X. RELIEF SOUGHT

58. WHEREFORE, Schindler prays for judgment against Whiting as follows:

- (a) For an order allowing this action to proceed as a collective action and directing notice to the class;

- (b) For an order pursuant to section 16(b) of the FLSA finding Whiting liable for unpaid back wages, and an equal amount of liquidated damages, due to Schindler and the class members;
- (c) For an order awarding Schindler and the class members the costs of this action;
- (d) For an order awarding Schindler and the class members their attorneys' fees;
- (e) For an order awarding Schindler and the class members unpaid benefits and compensation in connection with the FLSA and state law violations;
- (f) For an order awarding Schindler and the class members pre- and post-judgment interest at the highest rates allowed by law; and
- (g) For an order granting such other and further relief as may be necessary and appropriate.

Respectfully submitted,

By: /s/ Michael A. Josephson

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ATTORNEYS IN CHARGE FOR PLAINTIFFS

EXHIBIT A

CONSENT TO JOIN WAGE CLAIM

Print Name: Craig Alan Schindler

1. I hereby consent to participate in a collective action lawsuit against Whiting Petroleum to pursue my claims of unpaid overtime during the time that I worked with the company.
2. I understand that this lawsuit is brought under the Fair Labor Standards Act, and consent to be bound by the Court's decision.
3. I designate the law firm and attorneys at JOSEPHSON DUNLAP as my attorneys to prosecute my wage claims.
4. I authorize the law firm and attorneys at JOSEPHSON DUNLAP to use this consent to file my claim in a separate lawsuit, class/collective action, or arbitration against the company.

Signature: 
Craig Alan Schindler (Apr 23, 2017)

Date Signed: Apr 23, 2017

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

CRAIG SCHINDLER, individually and on behalf of all others similarly situated;

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

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

Michael A. Josephson, Josephson Dunlap Law Firm, 11 Greenway Plaza, Suite 3050, Houston, TX 77046; Tel 713-352-1100

DEFENDANTS

WHITING PETROLEUM CORP.,

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

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

Attorneys (If Known)

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

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

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

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

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

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Motor Vehicle, Personal Injury, etc.

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, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 29 U.S.C. § 216(b)
Brief description of cause: Unpaid overtime compensation

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: X Yes O No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 04/27/2017 SIGNATURE OF ATTORNEY OF RECORD /s/Michael A. Josephson

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Print

Save As...

Reset

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Colorado

CRAIG SCHINDLER, individually and on behalf of all
others similarly situated

Plaintiff(s)

v.

WHITING PETROLEUM CORP.,

Defendant(s)

Civil Action No. 1:17-cv-1051

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Whiting Petroleum Corp.,
By and through its registered agent:
The Corporation Company, 7700 E Arapahoe Rd., Suite 220, Centennial, CO 80290.

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:

Michael A. Josephson
Andrew W. Dunlap
Lindsay R. Itkin
Jessica M. Bresler
Josephson Dunlap Law Firm
11 Greenway Plaza, Suite 3050, Houston, TX 77046; Tel 713-352-1100

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. 1:17-cv-1051

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:

Print

Save As...

Reset

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Employee Misclassification Case Against Whiting Petroleum Corp. Bumped to Texas Federal Court](#)
