

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

**Civil Action No.:**

BENJAMIN SWEITZER and STEVE ROTHERMICH,

individually, and on behalf of all others  
similarly situated,

Plaintiffs,

v.

J.T. TIMBER FALLING, INC.,

Defendant.

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**COLLECTIVE AND CLASS ACTION COMPLAINT**

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Plaintiffs Benjamin Sweitzer and Steve Rothermich (collectively "Plaintiffs"), individually, and on behalf of all of those similarly situated, through undersigned counsel of Bachus & Schanker, LLC, make the following allegations in support of this Collective and Class Action Complaint:

**INTRODUCTION**

1. This is a federal collective and state class action brought pursuant to the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, et. seq. ("FLSA"), the Colorado Wage Act, C.R.S. §§ 8-4-101, et. seq. ("CWCA"), and Colorado common law (under theories of breach of contract, unjust enrichment, and *quantum meruit*) to recover unpaid wages and equitable relief.

2. Plaintiffs and those similarly situated worked as “Operators” and were classified under the FLSA and relevant state wage and hour statutes as non-exempt, hourly employees during the relevant periods alleged herein.

3. Defendant J.T. Timber Falling, Inc. (“Defendant” or “J.T. Timber”) improperly denied wages and compensation for hours worked by Plaintiffs and others similarly situated.

4. Upon information and belief, for at least three years prior to the filing of this action and continuing through the date of this action, J.T. Timber has devised and implemented general policies and practices to deprive Operators of compensation to which they are entitled. J.T. Timber routinely requires its hourly-paid Operators to work "off the clock" without proper payment of wages.

5. Plaintiffs, on behalf of themselves and all other similarly situated former and current hourly-paid Operators, seek unpaid overtime, unpaid regular wages, liquidated damages and/or pre-judgment interest, post-judgment interest, injunctive and equitable relief, attorney’s fees and costs, and any other just remedies permissible under the law.

6. Plaintiffs shall request that this Court authorize concurrent notice to all former and current hourly-paid Operators who were employed by J.T. Timber during the applicable time period, informing them of the pendency of this action and of their right to opt-in to this lawsuit pursuant to the FLSA, 29 U.S.C. § 216(b).

7. Plaintiffs also propose a Rule 23 class pursuant to Colorado law brought on behalf of themselves and all other former and current hourly-paid Operators who were employed in Colorado by J.T. Timber.

### **JURISDICTION AND VENUE**

8. This Court has jurisdiction over this action pursuant the FLSA, 29 U.S.C. § 216(b), federal question jurisdiction pursuant to 28 U.S.C. § 1331, and supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

9. Venue is proper under 28 U.S.C. §1391(b)(1) and § 1391(c), as the Defendant conducts business within this District, and the acts complained of occurred in this District.

### **COVERAGE**

10. At all times material hereto, Plaintiffs and all similarly-situated employees were “employees” of Defendant within the meaning of FLSA because they were individuals employed by an employer. Also, all similarly-situated employees were “employees” of Defendant within the meaning of FLSA because:

- a. the Defendant exercised control over Plaintiffs’ and all similarly-situated employees’ work schedules, work tasks, and work processes;
- b. the Plaintiffs and all similarly-situated employees had no opportunity to experience a profit or loss consistent with the characteristics of being independent businesswomen/ businessmen;
- c. the Plaintiffs and all similarly-situated employees did not invest in Defendant’s business, did not include amount of large capital expenditures, such as risk capital and capital investments, not negligible items, or labor itself;
- d. Plaintiffs and all similarly-situated employees did not transfer from place to place as particular work is offered to them; Plaintiffs worked for only one employer, Defendant, and such relationship was continuous and of indefinite duration;
- e. Plaintiffs and all similarly-situated employees did not “make any independent judgments,” and thus did not exercise their skills “in any independent manner”;

- f. Plaintiffs' and all similarly-situated employees' services were a necessary component of Defendant's business; and
- g. Plaintiffs and all similarly-situated employees did not bring their own tools or equipment to work; all tools and equipment were property of Defendant.

11. At all times material hereto, Defendant was an "employer" within the meaning of FLSA because Defendant acted directly or indirectly in the interest of the employer in relation to an employee.

12. At all times material hereto, Defendant was an employer because it had the ability to do the following with respect to Plaintiffs and all similarly-situated employees: hire and fire, supervise work schedules and conditions of employment, determined rates and method of payment, and were obligated under the law to maintain employment records.

13. Also, at all times material hereto, Defendant was an employer because it had exclusive operational control over Plaintiffs and all similarly-situated employees, was solely responsible for the day-to-day operations, *and* had direct responsibility for the supervision of the Plaintiffs and all similarly-situated employees.

14. At all times material hereto, Defendant had two (2) or more employees.

15. At all times material hereto, Defendant was, and continues to be, an "enterprise engaged in commerce" within the meaning of FLSA.

16. Also, the annual gross revenue of Defendant was in excess of \$500,000 per annum during the relevant time periods.

17. At all times material hereto, Plaintiffs and all similarly-situated employees were "engaged in commerce" and subject to individual coverage of the FLSA.

## **PARTIES**

18. Plaintiff Benjamin Sweitzer (“Sweitzer”) was, at all material times, a resident of Rio Grande County, Colorado. Sweitzer is a former covered, non-exempt employee of J.T. Timber, as defined by the FLSA, 29 U.S.C. § 203(e). During the applicable time period, J.T. Timber employed Sweitzer as an hourly-paid Operator to work in logging operations on various job sites.

19. Plaintiff Steve Rothermich (“Rothermich”) was, at all material times, a resident of Rio Grande County, Colorado. Rothermich is a former covered, non-exempt employee of J.T. Timber, as defined by the FLSA, 29 U.S.C. § 203(e). During the applicable time period, J.T. Timber employed Rothermich as an hourly-paid Operator to work in logging operations on various job sites.

20. Defendant J.T. Timber Falling, Inc. is a corporation incorporated under the laws of the State of Colorado with its principal place of business located at 30378 County Road 16, Blanca, Colorado 81123. Upon information and belief, J.T. Timber conducts business operations primarily in the State of Colorado.

## **FACTUAL BACKGROUND AND ALLEGATIONS**

21. The preceding allegations are incorporated by reference as if fully stated herein.

22. J.T. Timber is a Colorado Sustainable Forestry Initiative certified forestry service company.

23. At all times material hereto, J.T. Timber was engaged in commerce in the field of timber logging.

24. Upon information and belief, one of J.T. Timber's largest expenses related to its logging operations is the payroll of its hourly-paid employees. To reduce this expense and maximize profits, J.T. Timber maintains a company-wide policy of not paying hourly-paid Operators proper wages for work performed before and after the time spent at the logging site, as well as other work performed "off the clock."

25. J.T. Timber employees Operators to conduct logging operations in the field at various job site locations.

26. J.T. Timber requires Operators to arrive at the shop to gather supplies, oil, gas and other items for the machines to be used throughout the day's operations.

27. As such, Plaintiffs typically arrived at the shop at 6:00 a.m. to begin the day's work.

28. Regardless of what time Plaintiffs began working for the benefit of Defendant, J.T. Timber would not pay Plaintiffs and those similarly situated until 7:00 a.m.

29. During the applicable time period, Plaintiffs and other Operators regularly worked in excess of 40 hours during a workweek.

30. Upon arriving at the shop each morning, Plaintiffs and those similarly situated routinely were required by J.T. Timber to do the following without being permitted to clock in:

- a. Assemble and collect supplies necessary to carry out required daily tasks
- b. Fuel up the trucks and equipment
- c. Attend safety meetings

31. Plaintiffs and other operators began their respective workdays at the shop and duly performed activities that were an integral and indispensable part of their employment, yet

J.T. Timber failed to properly compensate Plaintiffs and the other Operators for work performed at the required straight time and/or overtime rates, resulting in these individuals being forced to work off the clock.

32. Despite beginning their principal activity before 7:00 a.m., J.T. Timber specifically chose to exclude said work time from any straight time or overtime calculations.

33. These duties are an integral and indispensable part of the Plaintiffs' and other frac fuel operators' principal activities for which J.T. Timber failed to provide the required compensation.

34. J.T. Timber knew that Plaintiffs and those similarly situated performed integral and indispensable functions of their jobs without compensation. J.T. Timber chose not to pay hourly wages to Operators in order to reduce J.T. Timber's expenses and maximize profits.

#### **FEDERAL COLLECTIVE ACTION ALLEGATIONS**

35. The preceding allegations are incorporated by reference as if fully stated herein.

36. This is a lawsuit brought by Plaintiffs as a collective action, on behalf of themselves and those similarly situated, pursuant to the FLSA, 29 U.S.C. § 216(b) (the "Federal Collective Group"), as follows:

All current and former hourly-paid Operators who were employed by J.T. Timber Falling, Inc. three years prior to the filing of this Complaint who were required to work off the clock before and after the scheduled times on their shifts.

37. Plaintiffs have consented in writing to be a part of this action pursuant to 29 U.S.C. § 216(b). Plaintiffs' signed consent forms are attached as **Exhibit A**.

38. Plaintiffs are similarly situated to the other members of the Federal Collective Group because they all (a) worked for J.T. Timber as Operators during the applicable

time period; (b) performed the same or similar duties; (c) had limited or no administrative responsibilities; (d) were and are not professionals within the meaning of the FLSA; and (e) were required to work off the clock without compensation. As a result, there are questions of law and fact common to the Federal Collective Group; Plaintiffs have a well-defined community of interest with the Federal Collective Group; and they are adequate representatives of the Federal Collective Group.

39. The following questions of law and fact predominate over questions that may affect individual members of the Federal Collective Group:

- a. Whether J.T. Timber failed to adequately compensate the members of the Federal Collective Group for all hours worked, as required by the FLSA;
- b. Whether the members of the Federal Collective Group have been damaged and, if so, the damages to which they are entitled; and
- c. Whether J.T. Timber willfully violated the FLSA and, if so, the liquidated damages to which members of the Federal Collective Group are entitled.

40. Notice of this action should be sent to the Federal Collective Group. Upon information and belief, there are numerous similarly-situated current and former employees of J.T. Timber who have suffered from J.T. Timber's practices who would benefit from the issuance of court-supervised notice of this lawsuit and the opportunity to join. Those similarly situated employees are known to J.T. Timber and are readily identifiable J.T. Timber's records.

#### **STATE LAW CLASS ACTION ALLEGATIONS**

41. The preceding allegations are incorporated by reference as if fully stated herein.



42. In addition to bringing this lawsuit as a collective action under the FLSA, Plaintiffs, under Rule 23 of the Federal Rules of Civil Procedure, propose a class on behalf of themselves and all persons who were employed by J.T. Timber in the State of Colorado and paid on an hourly basis (“Colorado Rule 23 class”), as follows:

All current and former hourly-paid Operators who were employed In Colorado by J.T. Timber Falling, Inc. three years prior to the filing of this Complaint who were required to work off the clock before and after the scheduled times on their shifts.

43. The Colorado Rule 23 class meets the requirements of Rule 23(a) of the Federal Rules of Civil Procedure, in that:

a. The members of the class are so numerous that joinder of all class members would be impracticable. On information and belief, there are more than forty (40) members of the proposed class.

b. There are numerous common questions of law and fact at issue. These questions include, but are not limited to, the following:

(1) whether class members are employees covered by the Colorado Wage Act C.R.S. 8-4-101, et seq., and 7 C.C.R. 1103;

(2) whether J.T. Timber is an employer covered by the Colorado Wage Act C.R.S. 8-4-101, et seq., and 7 C.C.R. 1103;

(3) whether J.T. Timber required class members to work off-the clock without payment for their work;

(4) whether J.T. Timber acted pursuant to a systematic practice in requiring off-the-clock work;

(5) whether J.T. Timber failed to pay class members the full amount of wages due under the Colorado Wage Act C.R.S. 8-4-101, et seq., and 7 C.C.R. 1103;

(6) whether J.T. Timber failed to pay wages in the manner prescribed by the Colorado Wage Act C.R.S. 8-4-101, et seq., and 7 C.C.R. 1103;

(7) whether J.T. Timber withheld or diverted wages from class members in violation of the Colorado Wage Act C.R.S. 8- 4-101, et seq., and 7 C.C.R. 1103;

(8) whether J.T. Timber, failed to furnish class members with an accurate statement of all deductions made from their wages in accordance with the Colorado Wage Act C.R.S. 8-4-101, et seq., and 7 C.C.R. 1103;

(9) whether J.T. Timber failed to pay class members for all hours worked as required by the Colorado Wage Act C.R.S. 8-4- 101, et seq., and 7 C.C.R. 1103;

(10) whether J.T. Timber failed to pay the appropriate rate of wages to class members under the Colorado Wage Act C.R.S. 8-4-101, et seq., and 7 C.C.R. 1103;

(11) whether J.T. Timber failed to make, keep, record, report, maintain and/or preserve complete, accurate, appropriate records of hours worked by and wages paid to class members under the Colorado Wage Act C.R.S. 8-4-101, et seq., and 7 C.C.R. 1103;

(12) whether J.T. Timber was unjustly enriched by the conduct alleged by class members and, if so, whether class members may recover under the theory of unjust enrichment;

(13) whether class members are entitled to recover for quantum meruit;

(14) whether J.T. Timber's actions were in good faith or, conversely, whether they were willful and in reckless disregard for class members' rights;

(15) whether class members were deprived of wages and suffered other economic injury as a result of J.T. Timber's actions;

(16) whether J.T. Timber's actions were taken pursuant to a systematic, corporate-wide policy or practice; and

(17) whether class members are entitled to damages, liquidated damages, interest, attorney's fees and costs, injunctive relief, and/or any other relief.

c. Plaintiffs' claims are typical of the claims of all other class members.

Plaintiffs' claims arise under the same acts and conduct as the claims of other class members. Plaintiffs also bring the same claims, under the same legal authority, and seek the same relief, as all other class members.

d. Plaintiffs will fully and adequately represent the interests of the class.

Plaintiffs have retained counsel who are knowledgeable and experienced in prosecuting class actions. There are no known conflicts with class members that would render Plaintiffs or their counsel inadequate.

44. The Rule 23 class meets the requirements of Rule 23(b)(2) of the Federal Rules of Civil Procedure, in that J.T. Timber has acted, or refused to act, on grounds that apply generally to the class as a whole. As alleged herein, all of J.T. Timber's hourly paid Operators are subjected to the same treatment by J.T. Timber, in that they are all required to work off-the-clock without payment, or face retaliation by J.T. Timber.

45. The Rule 23 class also meets the requirements of Rule 23(b)(3) of the Federal Rules of Civil Procedure, in that the common questions of law or fact predominate over questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. Specifically, the benefits of class treatment outweigh class members' interests in individually controlling the prosecution of separate actions; Plaintiffs are aware of no other litigation concerning the controversy that has already been brought by other class members; the efficiencies

to be gained make it desirable to concentrate litigation of the claims in one forum; and there are no particular aspects of the claims that would make a class action unmanageable.

**FIRST CLAIM FOR RELIEF**

Violation of the Fair Labor Standards Act  
29 USC. §201, et. seq.  
(Plaintiffs and the Federal Collective Group)

46. The preceding allegations are incorporated by reference as if fully stated herein.
47. As an “enterprise engaged in commerce” within the meaning of 29 U.S.C. § 203(a), J.T. Timber is subject to the requirements of the FLSA.
48. All of J.T. Timber’s hourly-paid Operators are considered “non-exempt” from the maximum hour requirements of the FLSA, 29 U.S.C. § 213(a)(1).
49. The FLSA requires that minimum compensation of \$7.25 per hour be paid to non-exempt employees. 29 U.S.C. § 207.
50. The FLSA requires that overtime compensation be paid to non-exempt employees who work more than forty (40) hours in one week. 29 U.S.C. § 207.
51. As described in the preceding paragraphs, Plaintiffs and the Federal Collective Group routinely worked in excess of forty (40) hours in a workweek without receiving overtime compensation for their overtime hours worked.
52. The FLSA requires employers to keep accurate records of the wages, hours, and other terms of employment for each of their employees, including but not limited to the employee’s total hours worked each day and each week; the employee’s total daily or weekly earnings; the employee’s total daily or weekly regular wages; and the employee’s total daily or weekly overtime wages.

53. By requiring hourly employees to work off the clock, J.T. Timber willfully, knowingly and/or recklessly violated the minimum and overtime compensation provisions of the FLSA.

54. By failing to keep accurate records of the time its employees worked, J.T. Timber willfully, knowingly and/or recklessly violated the FLSA's recordkeeping provisions.

55. As a result of J.T. Timber's unlawful conduct, Plaintiffs and all other similarly situated persons within the Federal Collective Group have suffered injury, in that they have been deprived of overtime and regular compensation.

56. Plaintiffs and all other similar-situated persons within the Federal Collective Group are entitled to damages in an amount to be determined at trial.

**SECOND CLAIM FOR RELIEF**

Violation of the Colorado Wage Act and Failure to Maintain Records  
C.R.S. § 8-4-101 et. seq.  
(Plaintiffs and the Colorado Rule 23 Class)

57. The preceding allegations are incorporated by reference as if fully stated herein.

58. J.T. Timber violated the Colorado Wage Act. C.R.S. § 8-4-101 et. seq.

59. J.T. Timber is in the commercial support service industry. 7 C.C.R. §1103-1:2(B).

60. J.T. Timber is required under Colorado law to pay Plaintiffs and the Colorado Rule 23 class for their time worked. 7 C.C.R. § 1103-1:4.

61. J.T. Timber is required under Colorado law to pay Plaintiffs and the Colorado Rule 23 class overtime for all hours work over 12 in a workday and all hours worked over 40 in a work week. 7 C.C.R. § 1103-1:4.

62. J.T. Timber is required under Colorado law to maintain accurate daily records of all hours worked by its employees, including Plaintiffs and the Colorado Rule 23 class. 7 C.C.R. § 1103-1:12.

63. J.T. Timber failed to properly pay Plaintiffs and the Colorado Rule 23 class straight time for all hours worked.

64. J.T. Timber failed to pay Plaintiffs and the Colorado Rule 23 class Colorado's Minimum Wage for all hours worked.

65. J.T. Timber failed to pay the Plaintiffs and the Colorado Rule 23 class overtime for all hours worked over 12 in a day and 40 in a week.

66. Plaintiffs and the Colorado Rule 23 class have been damaged in an amount permitted under the law to be determined at trial.

67. As a direct and proximate result of J.T. Timber's failure and refusal to pay for off-the-clock work in violation of the Colorado Wage Act, Plaintiffs and the Colorado Rule 23 class have been deprived of their rightfully earned wages, including regular time and overtime pay, and any other compensation of which they were deprived, and are entitled to recover from J.T. Timber all such unpaid wages and compensation, penalties, attorney's fees and costs, prejudgment interest, and all other appropriate relief.

**THIRD CLAIM FOR RELIEF**

Breach of Contract

(Plaintiffs and the Colorado Rule 23 Class)

68. The preceding allegations are incorporated by reference as if fully stated herein.

69. J.T. Timber, for its benefit, entered into employment contracts, express or implied, with Plaintiffs and the Colorado Rule 23 class under which J.T. Timber promised to pay

wages to Plaintiffs and the Colorado Rule 23 class at certain hourly rates (whether a regular rate of pay for 40 or fewer hours worked in a work-week or one-and-one-half times their regular rate of pay for any hours worked in excess of 40 hours per week) for all work, without exception, performed by Plaintiffs and the Colorado Rule 23 class.

70. J.T. Timber made this promise to pay such wages for all work performed by Plaintiffs and the Colorado Rule 23 class on many occasions, including, but not limited to, at the time of Plaintiffs' and the Colorado Rule 23 class's dates of hire and throughout the tenure of their employment at J.T. Timber.

71. Plaintiffs and the Colorado Rule 23 class accepted J.T. Timber's offer to compensate them at such certain hourly rates for all work performed each time that Plaintiffs and the Colorado Rule 23 class performed their jobs, duties, and work for J.T. Timber's benefit.

72. J.T. Timber failed to fulfill its promises and breached its contracts with Plaintiffs and the Colorado Rule 23 class by having Plaintiffs and the Colorado Rule 23 class perform some of their work off the clock and then refusing or otherwise failing to pay Plaintiffs and the Colorado Rule 23 class for that off-the-clock work.

73. There were no conditions precedent, if any, that Plaintiffs and the Colorado Rule 23 class failed to perform before being entitled to the promised payment of wages for all work performed by Plaintiffs and the Colorado Rule 23 class for J.T. Timber's benefit.

74. As a direct and proximate result of J.T. Timber's conduct, Plaintiffs and the Colorado Rule 23 class have suffered injury, and are entitled to damages for J.T. Timber's

breach of contract, including payment of all unpaid wages for the work they performed off the clock, interest, and other relief, in an amount to be determined at trial.

**FOURTH CLAIM FOR RELIEF**  
Unjust Enrichment  
(Plaintiffs and the Colorado Rule 23 Class)

75. The preceding allegations are incorporated by reference as if fully stated herein.
76. Plaintiffs and the Colorado Rule 23 class, conferred upon J.T. Timber a benefit by performing unpaid work off-the-clock for J.T. Timber, as demanded and required by J.T. Timber.
77. J.T. Timber received this benefit of work performed by Plaintiffs and the Colorado Rule 23 class without paying them for this work.
78. J.T. Timber's retention of this benefit of work performed without paying for the work is unjust.
79. Through its various sham formal, written (and other) policies uniformly, but falsely, expressing to all of its hourly paid employees that such employees are to be paid for all hours worked, and in performing their work for J.T. Timber, Plaintiffs and the Colorado Rule 23 class, uniformly expected remuneration, in the form of wages at the appropriate rate, from the J.T. Timber for all of their work performed for J.T. Timber.
80. By demanding and requiring Plaintiffs and the Colorado Rule 23 class to work off-the-clock in transgression of, and by refusing and failing to pay them for all work performed in accordance with J.T. Timber's uniform expressed policies, J.T. Timber significantly reduced its payroll and labor costs, diverted those savings to other company



functions and priorities, and increased its profits to its own benefit and to the detriment of Plaintiffs and the Colorado Rule 23 class.

81. J.T. Timber's acceptance and retention of the benefit of Plaintiffs' and the Colorado Rule 23 class's off-the-clock work without paying for it, and the resultant savings by refusing and failing to pay for such work, by saving and avoiding payroll and labor costs, by diverting those savings to other company functions and priorities, and by enjoying the increased profits that J.T. Timber received as a result of its failure and refusal to pay them for all work performed, is inequitable and contrary to the fundamental principles of justice, equity, and good conscience, and, as such, Plaintiffs and the Colorado Rule 23 class may recover under the unjust enrichment doctrine.

82. As a direct and proximate result of J.T. Timber's actions, defendant has reaped unfair benefits and illegal profits at the expense of Plaintiffs and the Colorado Rule 23 class. J.T. Timber should be made to account for, and restore to Plaintiffs and the Colorado Rule 23 class, the monies that were wrongly reaped by Defendant at Plaintiffs' and the Colorado Rule 23 class's expense.

**FIFTH CLAIM FOR RELIEF**

In the Alternative, *Quantum Meruit*  
(Plaintiffs and the Colorado Rule 23 Class)

83. The preceding allegations are incorporated by reference as if fully stated herein.

84. Plaintiffs and the Colorado Rule 23 class performed work for J.T. Timber off-the-clock for which J.T. Timber refused and failed to pay.

85. J.T. Timber accepted this work performed by Plaintiffs and the Colorado Rule 23 class.

86. Through its various sham formal, written (and other) policies uniformly, but falsely, expressing to all of its hourly-paid employees that such employees are to be paid for all hours worked, and in performing their work for J.T. Timber, Plaintiffs and the Colorado Rule 23 class uniformly expected to be compensated by J.T. Timber for the reasonable value of all of Plaintiffs' and the Colorado Rule 23 class's work performed for J.T. Timber.

87. As a direct and proximate result of J.T. Timber's improper failure and refusal to pay for off-the-clock work, Plaintiffs and the Colorado Rule 23 class are entitled to the reasonable value of all of their work performed for J.T. Timber and shall so demonstrate this reasonable value through discovery and at the trial of this matter.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request the following relief on behalf of themselves and those similarly situated:

- (a) certification of this case as a collective action under the FLSA;
- (b) certification of a Colorado class under Rule 23;
- (c) an order preliminarily and permanently enjoining J.T. Timber from engaging in the above-described conduct;
- (c) an award of the value of Plaintiffs' unpaid wages, and the unpaid wages of all other current and former hourly-paid J.T. Timber employees included in this action;
- (d) an award of liquidated damages under the FLSA for Plaintiffs and for all other current and former hourly-paid J.T. Timber employees included in this action;

- (e) an award of reasonable attorney's fees, expenses, expert fees, and all other costs incurred in this action;
- (f) an award of pre- and post-judgment interest;
- (g) any other relief permissible under the laws alleged; and
- (h) any and all other relief that the Court deems proper.

**JURY DEMAND**

Plaintiffs request a trial to a jury on all issues so triable.

Dated: October 23, 2017.

Respectfully Submitted,

/s/Andrew C. Quisenberry

Sara A. Green, Esq.

Andrew C. Quisenberry, Esq.

BACHUS & SCHANKER, LLC

1899 Wynkoop Street, Suite 700

Denver, CO 80202

Telephone: 303.893.9800

Facsimile: 303.893.9900

Sara.green@coloradolaw.net

Andrew.quisenberry@coloradolaw.net

*Attorneys for Plaintiffs*

# **EXHIBIT A**

**CONSENT TO JOIN**

**Consent to become a Party Plaintiff pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 216(b)**

- I currently work or did work as a non-exempt hourly operator for J.T. Timber Falling, Inc. at the following location(s), in the following position(s), over the following approximate dates:

Address, City, State	Position	Dates
30378 CR 16 Blanca, CO	operator	1/1999 - 5/2017

- There were/have been times when J.T. Timber Falling, Inc. failed to pay me straight time and overtime wages.
- I consent to join the FLSA action pursuant to 29 U.S.C. § 216(b) titled *Benjamin Sweitzer and Steve Rothermich, individually and on behalf of others similarly situated, v. J.T. Timber Falling, Inc.*, filed concurrently herewith in the United States District Court for the District of Colorado, as a Party Plaintiff to recover unpaid regular and/or overtime wages and all other damages allowed under the FLSA.
- I have chosen to be represented in this matter by Bachus & Schanker, LLC.

Date 10/9/2017

Signature: Benjamin Otto Sweitzer III

Print Full Name: Benjamin Otto Sweitzer III

**CONSENT TO JOIN**

**Consent to become a Party Plaintiff pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 216(b)**

- I currently work or did work as a non-exempt hourly operator for J.T. Timber Falling, Inc. at the following location(s), in the following position(s), over the following approximate dates:

Address, City, State	Position	Dates
30378 CR 16 Blanca, CO	Operator	1/2015 - 4/2017

- There were/have been times when J.T. Timber Falling, Inc. failed to pay me straight time and overtime wages.
- I consent to join the FLSA action pursuant to 29 U.S.C. § 216(b) titled *Benjamin Sweitzer and Steve Rothermich, individually and on behalf of others similarly situated, v. J.T. Timber Falling, Inc.*, filed concurrently herewith in the United States District Court for the District of Colorado, as a Party Plaintiff to recover unpaid regular and/or overtime wages and all other damages allowed under the FLSA.
- I have chosen to be represented in this matter by Bachus & Schanker, LLC.

Date 10/9/17

Signature: Steve Rothermich

Print Full Name: Steve Rothermich

# 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> Benjamin Sweitzer and Steve Rothermich</p> <p><b>(b)</b> County of Residence of First Listed Plaintiff <u>Rio Grande</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p><b>(c)</b> Attorneys <i>(Firm Name, Address, and Telephone Number)</i> Andrew C. Quisenberry, Esq. Bachus &amp; Schanker, LLC 1899 Wynkoop Street, Suite 700, Denver, CO 80202 Telephone - 303-893-9800</p>	<p><b>DEFENDANTS</b> J.T. Timber Falling Inc.</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</p> <p><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</p> <p><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%; border-collapse: collapse;"> <thead> <tr> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DEF</th> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DEF</th> </tr> </thead> <tbody> <tr> <td>Citizen of This State</td> <td style="text-align: center;">1</td> <td style="text-align: center;">1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;">4</td> <td style="text-align: center;">4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;">2</td> <td style="text-align: center;">2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;">5</td> <td style="text-align: center;">5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;">3</td> <td style="text-align: center;">3</td> <td>Foreign Nation</td> <td style="text-align: center;">6</td> <td style="text-align: center;">6</td> </tr> </tbody> </table>		PTF	DEF		PTF	DEF	Citizen of This State	1	1	Incorporated or Principal Place of Business In This State	4	4	Citizen of Another State	2	2	Incorporated and Principal Place of Business In Another State	5	5	Citizen or Subject of a Foreign Country	3	3	Foreign Nation	6	6
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Citizen or Subject of a Foreign Country	3	3	Foreign Nation	6	6																				

**IV. NATURE OF SUIT** *(Place an "X" in One Box Only)* [Click here for: Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<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 - Medical 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 <p><b>PERSONAL PROPERTY</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	<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"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<p><b>REAL PROPERTY</b></p> <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>CIVIL RIGHTS</b></p> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<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>LABOR</b></p> <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <p><b>IMMIGRATION</b></p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<p><b>PROPERTY RIGHTS</b></p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <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>FEDERAL 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 - Transfer  
  8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:  
 Fair Labor Standards Act 29 U.S.C § 201, et. seq., the Colorado Wage Act, C.R.S. §§ 8-4-101, et. seq.

Brief description of cause:  AP Docket Wage and Hour

**VII. REQUESTED IN COMPLAINT:**

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

CHECK YES only if demanded in complaint:  
**JURY DEMAND:**     Yes     No

**VIII. RELATED CASE(S) IF ANY** *(See instructions):*

JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE \_\_\_\_\_ SIGNATURE OF ATTORNEY OF RECORD \_\_\_\_\_

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

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

UNITED STATES DISTRICT COURT

for the

Benjamin Sweitzer and Steve Rothermich

Plaintiff(s)

v.

Civil Action No.

J.T. Timber Falling, Inc.

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Kim James Trumble, Registered Agent for Defendant J.T. Timber Falling, Inc.
3365 Hartgrove Rd.
Fort Garland, CO 81133

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:

Andrew C. Quisenberry, Esq.
Bachus & Schanker, LLC
1899 Wynkoop Street
Suite 700
Denver, CO 80202

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: [Lawsuit Against J.T. Timber Falling Claims Operators Are Owed Unpaid Wages](#)

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