SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

Carlos Alvarenga Ramirez, *et al.*, **Plaintiffs,** **v.** **Nooshi Capitol Hill, Inc., *et al*.,** **Defendants.**	**Case No. 2019 CA 004510 B** **Judge Juliet J. McKenna** **Next Event: Mediation** **December 22, 2022**

ORDER

Pending before the Court is Defendants' Joint Motion to Dismiss the Third Amended Complaint, filed on April 12, 2022, Plaintiffs' Opposition to the Motion to Dismiss, and the Defendants reply thereto. For the reasons set forth below, the Defendants' Motion to Dismiss is denied.

Relevant Background

On July 9, 2019, Plaintiff Carlos Alvarenga Ramirez ("Plaintiff Ramirez") filed the initial complaint against the Defendants Nooshi Capitol Hill, Inc. ("Defendant Restaurant"), and Jessie Yan and Vanessa Lim, Defendant Nooshi's owners and officers ("Defendants"). *See generally* Compl. Through subsequent amendments to the complaint, Plaintiffs Jose Chicas Melendez ("Plaintiff Melendez") and Ayala Jurado ("Plaintiff Jurado"), and Defendants Mooi Kim Lim, Petch Vailikit, and Bill Tu, joined this suit.[1] The Plaintiffs are three former employees of Defendant Nooshi Capitol Hill, Inc., an Asian fusion restaurant located at 524 8th Street SE,

[1] On October 22, 2021, Plaintiffs' Second Amended Complaint added Defendants Mooi Kim Lim, Petch Vailikit, and Bill Tu, who were owners and managers of Defendant Nooshi Capitol Hill. *See generally* Second Am. Compl. On March 17, 2022, with the Defendants' consent and the Court's permission, Plaintiffs amended the complaint a third time adding Maria Ayala as a co-Plaintiff and removing Jessie Yan as a Defendant. *See generally* Third Am. Compl.

Washington, D.C., that is owned, operated, and/or managed by Defendants Vanessa Lim, Mooi Kim Lim, Petch Vailikit, and Bill Tu. *See generally* Third Am. Compl. at ¶¶ 1, 9–30. Plaintiffs allege that during their employ as kitchen laborers at the Defendant Restaurant, the Defendants failed to pay Plaintiffs for all hours worked, including overtime wages and the additional hour required when Plaintiffs worked a "split shift." *See generally id.*

According to the complaint, Plaintiff Ramirez worked at the Defendant Restaurant from approximately May 2014 through May 2019, generally six days a week, about 52.5–62 hours per week. Third Am. Compl. at ¶¶ 31, 38, 40. Plaintiff Melendez worked at the Defendant Restaurant from around October 2015 to July 2019, generally six days per week, for approximately 51.5–56.6 hours per week. Third Am. Compl. at ¶¶ 32, 38, 41. Plaintiff Jurado worked at the Defendant Restaurant from May 2019 through February 2020, five days a week, around 51 hours per week. Third Am. Compl. at ¶¶ 33, 39, 43. Throughout the Plaintiffs' employment, when they worked both the lunch and dinner shifts on the same day with a two or three-hour break in between, they were not paid for the required additional hour, at the minimum wage rate, for this split shift. Third Am. Compl. at ¶¶ 44–46. Additionally, Plaintiffs allege that on average the Defendants did not pay Plaintiffs Ramirez and Melendez for approximately 10 hours each week, many of which would have qualified for the overtime wage. Third Am. Compl. at ¶¶ 52–54.

Plaintiffs contend that the Defendants' willful failure to pay the Plaintiffs regular, minimum, and overtime wages violated the District of Columbia Minimum Wage Act Revision Act ("DCMWA"), D.C. Code § 32-1001 *et seq*. (Count I), and the District of Columbia Wage Payment and Collection Law ("DCWPCL"), D.C. Code § 32-1301 *et seq*. (Count II). Third Am. Compl. at ¶ 2.

On April 12, 2022, the Defendants filed a Joint Motion to Dismiss the Third Amended Complaint for failure to state a claim pursuant to D.C. Superior Court Rule of Civil Procedure 12(b)(6). Plaintiffs' filed their Opposition on April 25, 2022 and the Defendants submitted a Reply to the Plaintiffs' Opposition on April 28, 2022.

Legal Standard

To determine whether a complaint survives a motion to dismiss for failure to state a claim under D.C. Superior Court Civil Rule 12(b)(6), the Court must conduct a two-pronged inquiry, examining whether the complaint includes well-pled factual allegations and whether such allegations plausibly entitle the plaintiff to relief. *See Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 544 (D.C. 2011) (*citing Ashcroft v. Iqbal*, 556 U.S. 662, 677–78 (2009)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (quoting *Iqbal*, 556 U.S. at 678). The applicable standard of review requires the trial court to "accept[ ] the [factual] allegations in the complaint as true and view[ ] all facts and draw[ ] all reasonable inferences in favor of the plaintiff." *Tingling-Clemmons v. District of Columbia*, 133 A.3d 241, 245, (D.C. 2016) (citing *Hillbroom v. PricewaterhouseCoopers LLP*, 17 A.3d 566, 572 (D.C. 2011)). While a court "must accept as true all of the allegations contained in a complaint," "threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice" to survive a motion to dismiss. *Iqbal*, 556 U.S. at 678.

A complaint should be dismissed under Rule 12(b)(6) if it does not satisfy the Rule 8(a) pleading standard. "The pleading standard Rule 8 announces does not require detailed factual allegations, but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *See Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 543–44 (D.C. 2011). To survive a motion to dismiss, a complaint must be "specific enough to give the defendant fair

notice of what the claim is and the grounds upon which it rests." *Tingling-Clemons*, 133 A.3d at 245.

"The district courts . . . are split, regarding how this pleading requirement applies to claims arising under FLSA [Fair Labor Standards Act]," the federal equivalent to the DCMWA. *Galloway v. Chugach Gov't Servs.*, 199 F. Supp. 3d 145, 149 (D.D.C 2016) (citing *Landers v. Quality Comms., Inc.*, 771 F.3d 638, 641 (9th Cir. 2014). Some courts have held that a plaintiff must state "with varying degrees of detail the actual or approximate overtime hours worked and the circumstances surrounding the alleged violation," while other courts only require that the plaintiff allege that he or she worked more than 40 hours per week, and was not compensated properly for that overtime. *Galloway*, 199 F. Supp. 3d at 149–50 (citations omitted). Given that the D.C. Act was modeled after the FLSA, cases interpreting the federal statute serve as persuasive authority. *Williams v. W.M.A. Transit Co*., 472 F.2d 1258, 1261 (D.C. Cir. 1972); *Toler v. United States*, 198 A.3d 767, 773 (D.C. App. 2018).

Analysis

The DCMWA requires that an employer pay each employee for an extra hour at the minimum wage for every day an employee is required to work a split shift. *See* 7 DCMR § 906.1; *see also generally* D.C. Code § 32-1003(a) (providing the required minimum wage pay scale per year).[2] A "split shift" occurs when an employee's scheduled shift includes a break that exceeds one hour. 7 DCMR § 999.2.

Section 32-1003(c) of the DCMWA also provides that an employer must pay any non-exempt employee, who works more than 40 hours in one work week, at rate not less than one-

[2] D.C. Code § 32-1003, provides that ". . . the minimum hourly wage required to be paid to an employee by an employer shall be as of: (i) July 1, 2016: $11.50; (ii) July 1, 2017: $12.50; (iii) July 1, 2018: $13.25; (iv) July 1, 2019: $14.00; and (v) July 1, 2020: $15.00."

and-one-half times the employee's regular rate. D.C. Code § 32-1003(c). To plead an overtime compensation claim, a plaintiff must allege that (1) the defendant employed the plaintiff; (2) the defendant is a business covered by the [Act] or the plaintiff is otherwise covered by the [Act]; (3) the plaintiff actually worked in excess of a 40-hour work week; and (4) the defendant failed to pay the plaintiff overtime wages as required by law. *Driscoll v. George Washington Univ.*, 42 F. Supp. 3d 52, 58 (D.D.C. 2012) (citations omitted) (defining the elements of an FLSA overtime claim); *see also Galloway v. Chugach Gov't Servs.*, 199 F. Supp. 3d 145, 148 (D.D.C. 2016) (noting that the DCMWA and FLSA are "virtually identical").

Pursuant to the DC Wage Payment and Collection Law, when an employee quits or resigns, an employer is required to pay an all unpaid wages "upon the next regular payday or within 7 days from the date of quitting or resigning, whichever is earlier." D.C. Code § 32-1303(2). The DCWPCL further provides that an employer is required to pay an employee who is discharged no later than the next working day following the discharge. D.C. Code § 32-1303(1).

The Defendants first argue that the Plaintiffs' third amended complaint lacks the requisite amount of detail to sufficiently plead an overtime compensation claim (Count I) and to provide the Defendants with "fair notice." Reply to Opp. at 2. Specifically, Defendants contend that the Plaintiffs "must show the amount and extent of [their] overtime work as a matter of just and reasonable inference." Mot. to Dismiss at 3 (citing *Davis v. Abington Mem'l Hosp.,* 765 F.3d 236, 241 (3d Cir. 2014) (citation omitted)); *see also Anderson v. Blockbuster, Inc*., No. 10-158, 2010 WL 1797249 *2–3 (E.D.Cal. May 4, 2010) (stating that conclusory allegations that plaintiffs consistently worked in excess of forty hours a week was insufficient without alleging the approximate number of hours worked each week for which overtime wages were not received).

The Defendants apply this same argument in seeking dismissal of Plaintiffs' other claims for unpaid wages under the DCWPCL (Count II) and unpaid split shift wages under the DCMWA (Count I). Mot. to Dismiss at 6. Defendants contend that the lack of factual details provided in the complaint, such as how often each Plaintiff worked a split shift or, when, how often and what type of other hours the Defendants failed to pay, render the Plaintiffs' allegations completely conclusory because "no facts are pleaded by which [the defendants] can determine what is alleged to be wrong, when it occurred, or how often it occurred." Mot. to Dismiss at 7.

The undersigned concurs with the conclusion reached by the D.C. District Court that "[n]othing in Rule 8(a) or in any Supreme Court or D.C. Circuit precedent imposes special pleading requirements" in these cases, therefore there is "no reason to treat an FLSA claim in a manner different from any garden-variety claim." *Galloway v. Chugach Gov't Servs.*, 199 F. Supp. 3d 145, 150 (D.D.C 2016) (FSLA claims, analogous to a DCMWA claim, do not require a more heightened pleading standard).

Here, the Plaintiffs' third amended complaint is sufficiently detailed in that it includes the time-frames and pay wages for each Plaintiff during their employment at the Defendant Restaurant, as well as the typical number of hours a day and days of the week that each Plaintiff worked. Third Am. Compl. at ¶¶ 31–54. The complaint states that when the Plaintiffs worked the lunch and dinner shifts in the same day, with a two or three-hour break in between, they were not paid for one additional hour at the minimum wage rate for this split shift, and that on average the Defendants failed to pay Plaintiffs Ramirez and Melendez for approximately 10 hours each week, many of which would have been overtime hours subject to a higher wage. Third Am. Compl. at ¶¶ 44–46, 52–54. Lastly, the complaint includes the alleged amount of unpaid wages

and monies owed to each individual Plaintiff pursuant to their DCMWA and DCWPCL claims. *Id.* at ¶¶ 55–57.

While the Court recognizes that Defendants would prefer more detailed or additional information, at this stage in the litigation the facts set forth in the third amended complaint are sufficient to put the Defendants on notice about the nature of the Plaintiffs' claims. "Any uncertainties or ambiguities involving the sufficiency of the complaint must be resolved in favor of the pleader, and generally, the complaint must not be dismissed because the court doubts that plaintiff will prevail." *Washkoviak v. Student Loan Mktg. Ass'n*, 900 A. 2d 168, 177 (D.C. App. 2006). Therefore, given all the facts and allegations pled in the complaint, and all inferences therefrom, viewed in the Plaintiff's favor, the Court finds that the Plaintiffs have pled sufficient facts to meet the plausibility standard and thus survive the Defendants' Motion to Dismiss.

WHEREFORE, it is this 26th day of May, 2022 hereby

ORDERED that the Defendants' Motion to Dismiss is **DENIED**; and it is

FURTHER ORDERED that given the March 17, 2022 Order extending the Scheduling Order at the joint request of the parties, the status hearing scheduled for May 27, 2022 at 10:00 a.m. is **VACATED**; and it is

FURTHER ORDERED that Multi-Door Mediation is set for December 22, 2022.

IT IS SO ORDERED.

Juliet J. McKenna
Associate Judge

Copies to: Counsel of Record via CaseFileXpress