SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

JOHNNY MORENO, Plaintiff, v. A. WASH AND ASSOCIATES, INC. *et al.*, Defendants.	Case No.: 2018 CA 008055 B Judge Jason Park

MEMORANDUM OF DECISION

The plaintiff commenced this action alleging that the defendants violated the District of Columbia Minimum Wage Act ("DCMWA"), D.C. Code §§ 32-1001 *et seq.*, and the District of Columbia Wage Payment and Collection Law ("DCWPCL"), D.C. Code §§ 32-1301 *et seq.*, by failing to pay him overtime wages to which he was entitled. On February 5, 2020, the Court presided over a one-day non-jury trial, during which it heard testimony from plaintiff Johnny Moreno, defendant Anthony Wash, property manager Sharon Rawlings, and administrator/consultant Catherine David. The Court also received exhibits into evidence and heard argument from the parties. The plaintiff submitted a post-trial brief on February 26, 2020, and the defendants submitted their post-trial brief on March 26, 2020.

The Court now makes its Findings of Fact and Conclusions of Law pursuant to D.C. Super. Ct. Civ. R. 52(a). Having considered the testimony of the witnesses and the evidence presented at trial, as well as the oral and written arguments of counsel, and for the reasons discussed below, the Court finds that the defendants violated the DCWPCL and the DCMWA by

failing to pay the plaintiff overtime wages to which he was entitled and that the plaintiff is entitled to damages.

FINDINGS OF FACT

Based on the testimony of the witnesses and the exhibits introduced at trial, the Court makes the following findings of fact.

I. The Nannie Helen and the Defendants

In November 2017, the plaintiff, Johnny Moreno, began working at The Nannie Helen at 4800 ("the Nannie Helen"), a complex at 4800 Nannie Helen Burroughs Avenue NE in Washington D.C. containing seventy affordable housing units, commercial retail space, and a community center. Tr. 53:19-23, 57:1-4, 137:1-138:24. The Nannie Helen was developed by defendant Anthony Wash on property he owned utilizing a tax credit program that subsidized the construction of affordable housing. Trial Tr. 137:21-138:24.

The residential portion of the Nannie Helen was owned by a limited partnership known as 4800 LP. Trial Tr. 138:10-24, 140:24-141:4. Mr. Wash served as 4800 LP's managing partner and held a two percent interest in that entity. Trial Tr. 155:24-156:3.

Although the plaintiff did not bring suit against 4800 LP, several other entities controlled by Mr. Wash were named as defendants. One such defendant is 4800 NHB Commercial Owner LLC, a single purpose vehicle solely owned by Mr. Wash that owns and leases out commercial space at the Nannie Helen. Trial Tr. 118:13-15, 137:4-138:9, 154:24-25. Also named as a defendant is AWA Holdings, LLC, a single purpose vehicle that owns a residential property elsewhere in the District; Mr. Wash is that entity's sole member. Trial Tr. 118:10-12, 135:11-136:11, 154:21-23. The final defendant is A. Wash and Associates, Inc., a company Mr. Wash founded twenty-five years ago focused primarily on electrical contracting. Trial Tr. 136:14-25.

A. Wash and Associates, Inc., which has approximately thirty employees (twenty-two of whom are electricians), is solely owned by Mr. Wash, and has its offices at 4649 Nannie Helen Burroughs Avenue NE. Trial Tr. 142:20-24, 118:4-7.

Sometime in 2017 or shortly before, 4800 LP entered into a contract with management company McCormick Baron to manage the Nannie Helen. Trial Tr. 139:3-13, 146:5-7. McCormick Baron employee Robin Cunningham served as the onsite property manager in 2017 when Mr. Moreno first began working at the property. Trial Tr. 46:23-47:1, 59:11-13. In approximately February 2018, McCormick Baron employee Sharon Rawlings took over for Ms. Cunningham as the property manager at the Nannie Helen. Trial Tr. 93:13-94:16.

II. Mr. Moreno's Hiring and Work Duties at the Nannie Helen

Mr. Moreno first began working at the Nannie Helen in November 2017 through Project Empowerment, a District of Columbia government program that connects individuals with local employers and pays their salaries for a period of time so they can obtain work experience. Trial Tr. 25:10-16, 57:1-4, 142:1-9. Accordingly, during the first several months that Mr. Moreno worked at the Nannie Helen, he was paid by the District of Columbia government. Trial Tr. 25:15-16; 142:1-11.

During this initial period, Mr. Moreno worked as a porter at the Nannie Helen. Trial Tr. 25:12-22, 142:12-15. In that role, his responsibilities included taking out the trash, taking out the dumpsters and recycling bins, cleaning and vacuuming the office, and cleaning the trash room, lobby, elevators, and the hallways of the apartment building. Trial Tr. 26:1-11; Pl.'s Ex. 3. Mr. Moreno's porter duties also included cleaning the community center associated with the Nannie Helen and cleaning the grounds in front of the building, the parking lot, and the playground area. Trial. Tr. 26:12-20; Pl.s' Ex. 3.

By June 2018, Mr. Moreno's tenure with Project Empowerment was coming to an end. Trial Tr. 34:2-36:4. Mr. Wash testified that he was told that Mr. Moreno was liked at the building but that McCormick Baron could not hire him because of its policy prohibiting the hiring of individuals with criminal backgrounds. Trial Tr. 146:19-147:1. Mr. Wash testified that he reached out to McCormick Baron management, who agreed to review that policy, and in the interim, he asked Mr. Moreno "to stay on as a contractor, until—my thinking was they would resolve their issues and then they could pick him up." Trial Tr. 147:7-11. According to Mr. Wash, Mr. Moreno was brought on as a contractor for 4800 NHB Commercial Owner LLC. Trial Tr. 156:14-17; *see also* Joint Ex. 3 (form 1099 issued by 4800 NHB Commercial Owner LLC to Mr. Moreno for his work at the Nannie Helen).

Mr. Wash hired Mr. Moreno as a purported contractor shortly before June 11, 2018, during a meeting in Mr. Wash's office. Trial Tr. 35:4-36:5. Present were Mr. Wash, Mr. Moreno, Kim Pleasant (Mr. Wash's employee),[1] and Catherine David, who performed administrative and payroll services for Mr. Wash's companies. *Id.* There is no evidence that Ms. Rawlings or anyone from McCormick Baron was present. *See id.* At the meeting, Mr. Moreno received five t-shirts, each with "4800 NHB" written on the front, to wear while at work. Trial Tr. 34:7-35:3; Pl.'s Ex. 6.[2] Mr. Moreno was not directed to go to human resources to fill out any forms at the

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[1] Although Mr. Moreno initially identified Ms. Pleasant as "Kim Flemming," the parties later agreed that the individual Mr. Moreno was referring to was Kim Pleasant. Trial Tr. 170:21-25. It was unclear which, if any, of Mr. Wash's entities Ms. Pleasant worked for, though there is no evidence that Ms. Pleasant worked for McCormick Baron.

[2] There was conflicting testimony about what role, if any, Mr. Wash played in distributing the "4800 NHB" t-shirts. According to Mr. Moreno, Mr. Wash directed Mr. Moreno to wear the t-shirts instead of his street clothes while at work. Trial Tr. 40:4-8. Mr. Wash testified that he did not recall providing the t-shirts in question to Mr. Moreno and denied ordering anyone to have the t-shirts created. Trial Tr. 151:10-21. Whatever role Mr. Wash played in this episode, the record, which includes photographs of the shirts in question, corroborates Mr. Moreno's testimony that he was, in fact, provided five t-shirts bearing the name "4800 NHB." *See* Pl.'s Ex.

time; rather, according to Mr. Moreno, Mr. Wash simply instructed Ms. Pleasant "to bring me on that following Monday, which was June 11th." Trial Tr. 88:5-14.

As Mr. Moreno's tenure with Project Empowerment came to an end, his job duties at the Nannie Helen expanded. Trial Tr. 40:13-17. From 8:00 a.m. to 4:00 p.m. each day, Mr. Moreno continued to work as a porter. Trial Tr. 43:7-9. However, from 4:00 p.m. to 12:00 a.m., Mr. Moreno worked as a concierge at the Nannie Helen. Trial Tr. 43:10-11. As a concierge, Mr. Moreno handled various tasks relating to building operations, including accepting and logging packages, monitoring surveillance cameras, making rounds, and posting building notices. Trial Tr. 40:18-41:2. According to Mr. Moreno, "I basically was like security there." Trial Tr. 41:6-7; *see also* Joint Ex. 2 (sector patrol reports prepared by Mr. Moreno while working as concierge). As a concierge, Mr. Moreno was principally stationed at the front desk, while his porter duties took him to other parts of the building. Trial Tr. 55:11-14; Pl.'s Ex. 16.

Although his two positions had different names and distinct focuses, there was no strict division between the duties he performed between 8:00 a.m. and 4:00 p.m. and those he performed from 4:00 p.m. to 12:00 a.m. Mr. Moreno credibly testified that "it was basically like I was multiple tasking the whole time . . . . At any given time I could be cleaning up and the manager could stop me and tell me I need to do something else." Trial Tr. 43:16-22.[3]

Any supplies or equipment that Mr. Moreno required to perform his work were provided to him by Ms. Rawlings. Trial Tr. 44:22-45:6, 52:10-15, 102:8-11. Mr. Moreno's hours were

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6. Mr. Moreno did not testify that he actually wore the t-shirts while working, and Ms. Rawlings testified Mr. Moreno wore his own clothes while on the job. Trial Tr. 101:11-14.

[3] Although Ms. Rawlings testified that she was not in the building during Mr. Moreno's concierge hours and therefore did not supervise Mr. Moreno in his concierge role, *see* Trial Tr. 102:17-21, Mr. Moreno credibly testified that "[s]he might stay maybe 6:00, 7:00, sometimes 8:00. And then she gone and then I'm there." Trial Tr. 83:11-12.

fixed, and he never signed a subcontract agreement. Trial Tr. 52:16-23. Mr. Moreno also attended staff meetings with other workers at the Nannie Helen. Trial Tr. 46:7-10; Pl.'s Ex. 15.

III. Supervision of Mr. Moreno's Work

One of Mr. Moreno's co-workers was an individual named Ishmail Mobley, who performed porter and concierge duties like those performed by Mr. Moreno. Trial Tr. 45:19-20, 86:10-19, 88:14-19, 99:21-100:4. Mr. Mobley was an employee of A. Wash and Associates, Inc. Trial Tr. 130:22-25. Mr. Moreno described Mr. Mobley as the "head porter" and the individual who taught Mr. Moreno how to do his job. Trial Tr. 45:19-21. He also testified that his supervisor was Tyrone Newman, a maintenance worker at the Nannie Helen. Trial Tr. 45:22-46:3, 68:9-11. The record, however, does not support the inference that Mr. Mobley or Mr. Newman was Mr. Moreno's day-to-day supervisor.

Rather, the record indicates that Mr. Moreno's day-to-day supervisor during the period in question was Ms. Rawlings. Ms. Rawlings was the on-site property manager from February 2018 onwards. Trial Tr. 93:13-94:16. Ms. Rawlings provided Mr. Moreno his schedule of daily activities. Trial Tr. 27:1-22; Pl.'s Ex. 3. Ms. Rawlings signed off on Mr. Moreno's timesheets. Trial Tr. 104:22-105:7, 119:23-120:2. Ms. Rawlings testified that she was Mr. Moreno's supervisor and that orders issued to him came through her. Trial Tr. 94:20-24, 95:18-22. Her testimony was corroborated by a disciplinary record she issued to Mr. Moreno and an employment verification letter dated September 7, 2018 that she prepared for Mr. Moreno. Joint Ex. 1; Def.'s Exs. 1, 2.[4]

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[4] The disciplinary notice that Ms. Rawlings issued to Mr. Moreno, issued September 24, 2018, was on a disciplinary notice form titled "McCormack Baron Management Disciplinary Warning Notice." Def.'s Ex. 1. Mr. Moreno was cited for "continued tardiness," "insubordination," "fail[ure] to follow instructions," and "continu[ing] to be on the phone on the clock." *Id.*

Indeed, Mr. Moreno himself acknowledged that he was supervised first by Ms. Cunningham and then by Ms. Rawlings and that Ms. Rawlings directed him in the performance of his daily duties. Trial Tr. 59:11-20, 60:6-11, 65:5-12. Mr. Moreno testified that in June 2018, Ms. Rawlings provided him with the list of porter duties admitted as Exhibit 3. Trial Tr. 27:13-17. According to Mr. Moreno, Ms. Rawlings "was the boss in the building." Trial Tr. 68:3, 69:3-4.

Although the evidence establishes that Ms. Rawlings was Mr. Moreno's principal direct supervisor, the Court did not credit every aspect of Ms. Rawlings' testimony concerning her supervisory authority. For example, Ms. Rawlings testified that she had the authority to unilaterally change Mr. Moreno's pay without consulting Mr. Wash or anyone outside of McCormick Baron. Trial Tr. 107:7-10, Yet that testimony conflicts with the entire record, which, as discussed below, clearly establishes that Mr. Moreno was consistently paid out of funds held by Mr. Wash's companies and processed by Ms. David, an employee or contractor of Mr. Wash's companies, not McCormick Baron. Although Ms. Rawlings initially testified that she "paid" Mr. Moreno, on further examination, she later conceded that her role was limited to approving Mr. Moreno's timesheets for processing by Ms. David. Trial Tr. 104:1-105:4. In these and other instances, the Court perceived an effort to downplay the role of Mr. Wash and his companies in Mr. Moreno's work.

To be sure, the evidence indicates that Mr. Wash was more removed than Ms. Rawlings or Ms. David from the daily operations of the Nannie Helen, including from Mr. Moreno's daily work. Mr. Wash did not maintain an office at the Nannie Helen; rather, his office was at 4649 Nannie Helen Burroughs Avenue at the offices of A. Wash and Associates, Inc. Trial Tr. 77:7-15. Although Mr. Moreno testified that Mr. Wash would occasionally speak to him by phone or

in person, he clarified that Mr. Wash did not provide him instructions on his daily duties. Trial Tr. 72:18-21; *see also* Trial Tr. 149:4-19.

Yet the suggestion by Ms. Rawlings that she did not involve Mr. Wash or his subordinates at all in the management of the Nannie Helen, even though he was the managing partner of the partnership that owned the building and had contracted with McCormick Baron, is belied by common sense and the record. For example, although Ms. Rawlings testified that she did not speak to Mr. Wash about building operations, Mr. Wash acknowledged that Ms. Rawlings notified him about disciplinary issues related to Mr. Moreno. Trial Tr. 167:5-11. That testimony is consistent with that of Mr. Moreno, who explained that even though Mr. Wash did not instruct him on his daily tasks, Mr. Wash "would call me and tell me to listen to what Sharon was saying and find ways of . . . us working together." Trial Tr. 72:3-8. It is also consistent with Mr. Moreno's testimony that he did meet with Mr. Wash about a disciplinary issue. Trial. Tr. 73:1-15; *see also* Trial Tr. Trial Tr. 149:24-150:1 (Mr. Wash's testimony that "Mr. Moreno had some issues that he was trying to deal with in terms of working with people and I gave him some advice."). Furthermore, it was Mr. Wash who decided to bring Mr. Moreno aboard after his tenure with Project Empowerment ended, a decision that Mr. Wash made based on positive reports he had heard about Mr. Moreno's performance and despite the McCormick Baron policy prohibiting the employment of persons with criminal backgrounds. Trial Tr. 146:19-147:1.

The evidence surrounding the employment verification letter also demonstrates the involvement of Mr. Wash and his associates in Mr. Moreno's supervision. Ms. Rawlings testified that the request that she complete an employment verification letter for Mr. Moreno came from Mr. Moreno himself and was not written at the direction of Mr. Wash. Trial Tr. 98:15-99:2. But email correspondence admitted at trial documents that the request initially came to Ms. Rawlings

from Ms. David, *see* Joint Exhibit 11, which corroborates Mr. Moreno's testimony that he first went to Ms. David to request employment verification. Trial Tr. 66:16-67:12. On September 6, 2018, at 11:19 a.m., Ms. David, writing from an email address ending in "@awashassociates.com," wrote to Ms. Rawlings and Mr. Wash that Mr. Moreno

> needs a letter today certifying his hours and pay for the past two weeks and what he will make for the rest of the year on letterhead . . . . It is my recommendation that all timesheets are signed off by Ms. Rawlings and emailed to me confirming hours worked and copies made for their records to allow for all letter of verification for project empowerment and other agencies come from the company in which they work.

Joint Ex. 11.

The e-mail is signed by Ms. David as "Administrator" of "A. Wash & Associates, Inc." *Id.* In a follow-up email sent at 4:40 p.m. the same day, Ms. David wrote to Ms. Rawlings (again copying Mr. Wash) that "Mr. Moreno is very concerned about retrieving a letter of employment verification for an apartment lease. He has called me twice today to express his concern. Please contact Mr. Moreno[] and also acknowledge email [sic] so that I am able to adequately respond to him." *Id.* This correspondence indicates that Ms. Rawlings did, in fact, communicate with Mr. Wash and his subordinates in matters regarding the Nannie Helen, as well as matters relating specifically to Mr. Moreno.

The next day, September 7, 2018, Ms. Rawlings complied with Ms. David's instruction and, using information provided by Ms. David and Mr. Moreno, prepared the employment verification letter. Joint Ex. 1; Def.'s Ex. 3; Trial Tr. 65:13-66:15. In that letter, Ms. Rawlings stated, "This letter is to verify that Johnnie Moreno is an employee of the Nannie Helen @ 4800 apartment as a porter/concierge at the pay rate of $13.25 an hour and works 80 hours per week, his total annual income is $55120.00." Joint Ex 1.

IV. Mr. Moreno's Timesheets and Payment

Although he was paid the same hourly rate for all his work at the Nannie Helen, Mr. Moreno prepared separate timesheets for his hours spent as a porter and his hours spent as a concierge. Trial Tr. 47:16-23, 55:15-21. He recorded the time he spent on his porter duties on timesheets titled, "A. Wash & Associates, Incorporated / Bi Weekly Time Sheet." Joint Ex. 6.[5] The time he spent on concierge duties was recorded on timesheets titled, "Security @ 4800 Time Sheet." Joint Ex. 5. Mr. Moreno testified that Ms. Pleasant explained to him how to complete his timesheets. Trial Tr. 50:14-51:3, 90:10-91:3.

According to Ms. David, who handled the processing of Mr. Moreno's timesheets, Mr. Moreno would ordinarily bring his timesheets to her at her office at 4649 Nannie Helen Burroughs NE. Trial Tr. 119:22-23. After receiving Mr. Moreno's timesheets, Ms. David would then transmit them to Ms. Rawlings for her sign off. Trial Tr. 104:22-105:7, 119:23-120:2.[6] Mr. Moreno picked up his checks at 4649 Nannie Helen Burroughs. Trial Tr. 77:7-9.

Ms. David testified that she is self-employed with her own company, which provides administrative and bookkeeping services for A. Wash and Associates, Inc. and AWA Holdings LLC. Trial Tr. at 115:12-24, 116:2. Ms. David is Mr. Wash's ex-wife and previously worked for A. Wash and Associates, Inc., before establishing her own company that provided services to A. Wash and Associates, Inc. and AWA Holdings LLC. Trial Tr. 117:1-3, 129:17-21.[7]

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[5] On one of the timesheets, which covered the weeks from August 15 through August 28, the words "A. Wash & Associates" are crossed out and "AWA Concierge Services" is written above that text by hand.

[6] It appears that the practice of having Ms. Rawlings approve Mr. Moreno's timesheets began after the September 6, 2018 email from Ms. David recommending that practice. *See* Joint Exs. 5, 6, and 11.

[7] There was no testimony clarifying when Ms. David separated from A. Wash and Associates, Inc.

Mr. Moreno received separate checks for the time recorded on the separate timesheets. Trial Tr. 50:9-13. Most of Mr. Moreno's paychecks were issued from a SunTrust bank account in the name of 4800 NHB Commercial Owner LLC and bore the signature of Mr. Wash. Joint Ex. 7. Mr. Moreno, however, was also issued paychecks from accounts in the name of AWA Holdings, LLC. Trial Tr. 118:23-25. When asked why Mr. Moreno's paychecks were issued from different accounts, Ms. David, who issued the checks, testified, "Basically, it was based on what funds were available in those accounts . . . . If there was some money available in the AW—most of the time I try to do it from 4800 Commercial, because it was guaranteed normally some money was there . . . . If it wasn't, I used AWA holdings." Trial Tr. 119:3-16.

Ms. David explained that because it was not clear for whom Mr. Moreno was working, she simply pulled money from any account that had funds. Trial Tr. 126:13-127:1. Moreover, Ms. David testified that in deciding which account to use to pay Mr. Moreno, she would consult with Mr. Wash:

> Q: If you could tell the court what is the reason you would pull money from one account and not the other?
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> A: Well, that would be—that's not a question I can answer, really, because I would always talk to Anthony Wash and I don't know what his—I don't really know his stake in those entities. I just would say I need to pay Mr. Moreno, where can I find—you know, this is what you have.
>
> Q: So you kind of—you had a feel for it, but you would consult with Mr. Wash as to where you would get the money from?
>
> A: Yes.

Trial Tr. 127:17-25. This testimony is consistent with that of Mr. Wash, who, when asked about the funds belonging to the various defendants, testified, "It's all my money." Trial Tr. 159:22-24.

For his work at the Nannie Helen in 2018, Mr. Moreno was issued two 1099 forms, one listing compensation in the amount of $20,961 from 4800 NHB Commercial Owner LLC and a

second listing compensation in the amount of $1,200 from AWA Holdings LLC. Joint Exs. 3, 4. Mr. Moreno also signed a W-9 on August 3, 2018. Def.'s Ex. 4. Ms. Rawlings provided him the W-9 form and instructed him fill it out.[8] Trial Tr. 110:12-19. Taxes were not withheld from Mr. Moreno's paychecks. Trial Tr. 120:9-16.

V. Mr. Moreno's Termination

In October 2018, Mr. Moreno was terminated from his position at the Nannie Helen. Trial Tr. 96:1-7. Mr. Moreno testified that he went to Mr. Wash's office, where Mr. Wash told him that he was severing ties with Mr. Moreno. Trial Tr. 51:23-25. Likewise, Mr. Wash testified that he informed Mr. Moreno that he was being terminated from his position at the Nannie Helen, at which time Mr. Wash offered Mr. Moreno a position as an electrical apprentice with A. Wash and Associates, Inc. Trial Tr. 169:1-16.

According to Mr. Moreno, during that meeting, Mr. Wash stated that "they [were] changing management, something he was saying. He said he had to let me go." Trial Tr. 51:25-52:1. In his answer to an interrogatory, adopted on cross-examination at trial, Mr. Moreno stated that Mr. Wash told him that "he was not being fired," but that instead "he was being let go because McCormick Barron . . . wanted to bring their own staff on board." Trial Tr. 75:8-15. Mr. Moreno subsequently clarified that when he testified that he was "fired" by Mr. Wash, what he meant was that Mr. Wash was the person who communicated the firing decision to him. Trial Tr. 75:23-76:2.

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[8] Mr. Wash testified that McCormick Baron "reimbursed" 4800 NHB Commercial Owner LLC for "concierge services." Trial Tr. 153:20-23. There is no evidence in the record clarifying the nature of any such reimbursements, including what costs were being reimbursed, whether Mr. Moreno's salary was one of those costs, and why 4800 NHB Commercial Owner LLC was being reimbursed by McCormick Baron despite the fact that McCormick Baron's contract was with 4800 LP. Trial Tr. 139:3-13, 146:5-7.

The record, however, indicates that Mr. Wash did not terminate Mr. Moreno solely because of a McCormick Baron staffing change. Ms. Rawlings testified that there were "several reasons" that Mr. Moreno was let go, one of which was that "the company itself was starting to go in a different direction as far as hiring." Trial Tr. 96:9-11. Ms. Rawlings further explained that another of those reasons was Mr. Moreno's work performance—specifically, that he "didn't like taking directives" and sometimes "could be insubordinate." Trial Tr. 96:12-21. Indeed, as noted above, Ms. Rawlings issued Mr. Moreno a disciplinary notice for insubordination and failure to follow instructions on September 24, 2017, less than a month before Mr. Wash advised Mr. Moreno he was being terminated. *See* Def.'s Ex. 1.

VI. Mr. Moreno's Unpaid Wages

Mr. Wash received his final paycheck for his work at the Nannie Helen on October 23, 2018, representing the work period from October 15 to 21. Joint Ex. 7. The paychecks he received between June 1, 2018 and October 23, 2018 were admitted as Joint Exhibit 7. Throughout his tenure at the Nannie Helen, Mr. Moreno was paid the minimum wage, Trial Tr. 55:20-24; Joint Ex. 9 at 76:1-5, which was $12.50 per hour from July 1, 2017 through June 30, 2018 and $13.25 from July 1, 2018 through the remainder of Mr. Moreno's tenure at the Nannie Helen. D.C. Code § 32-1003(a)(5)(A).

CONCLUSIONS OF LAW

I. LEGAL STANDARDS

A. Burden of Proof

"In a civil case, the burden of proof required is a fair preponderance of the evidence." *Myrick v. National Sav. & Trust Co.*, 268 A.2d 526, 527 (D.C. 1970). A preponderance of the evidence is "evidence which is of greater weight or more convincing than the evidence presented

in opposition to it; that is evidence which as a whole shows that the fact sought to be proved is more probable than not." *In re E.D.R.*, 772 A.2d 1156, 1160 (D.C. 2001) (quoting BLACK'S LAW DICTIONARY 1182). The plaintiff must prove every element of his claim by a preponderance of the evidence to carry his burden of proof. 1 Civil Jury Instructions for DC § 2.04 (2019).

B. The DCMWA and DCWPCL

The DCMWA provides that "[n]o employer shall employ any employee for a workweek that is longer than 40 hours, unless the employee receives compensation for employment in excess of 40 hours at a rate not less than 1 1/2 times the regular rate at which the employee is employed." D.C. Code § 32-1003(c). The DCWPCL requires employers to pay a discharged employee all wages due no later than the working day following the discharge. D.C. Code § 32-1303(1). Wages, for purposes of the DCWPCL, include overtime wages. D.C. Code § 32-1301(3).

The obligations of the DCMWA and the DCWPCL apply only to employer-employee relationships, and both statutes define those critical terms in a similarly broad fashion. The DCMWA defines the term "employee" as "any individual employed by an employer," D.C. Code § 32-1002(2), and defines the "employer" to include "any individual, partnership, general contractor, subcontractor, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee." *Id.* § 32-1002(3). The term "employ" is defined as "suffer or permit to work." *Id.* § 32-1002(1A). The DCWPCL provides that the term "'employer' includes every individual, partnership, firm, general contractor, subcontractor, association, corporation . . . employing any person in the District of Columbia." *Id.* § 32-1301(1B). The act defines the term "employee" as including "any person suffered or permitted to work by an employer." *Id.* § 32-1301(2).

Although the Court of Appeals has not had occasion to detail what factors a court should consider in determining whether an individual is an employee for purposes of the DCMWA, ample authority indicates that the court should look to the caselaw construing the Fair Labor Standards Act of 1938 ("FLSA"), 29 U.S.C. § 203, for guidance. The DCMWA and the FLSA contain nearly identical definitions of the terms "employer" and "employ." *Compare* 29 U.S.C. §§ 203(d), (g) *with* D.C. Code §§ 32-1002(1A), (3); *see also Corley v. United States*, 416 A.2d 713, 714 (D.C. 1980) (when local provisions are deliberately patterned after federal statutes, courts should "look to the interpretation of the federal statute for guidance in determining the construction of our own statute since it was based on the federal provision"). Courts have repeatedly observed that the DCMWA is to be construed consistently with the FLSA. *See, e.g.*, *Escamilla v. Nuyen*, 227 F. Supp. 3d 37, 52 (D.D.C. 2016) ("The DCMWA's overtime requirement is almost identical to the overtime requirement included in the FLSA. Therefore, the Court finds that liability under the FLSA for overtime wages automatically triggers the overtime violation under the DCMWA.") (citing *Williams v. W.M.A. Transit Co.*, 472 F.2d 1258, 1260-61 (D.C. Cir. 1972)); *Perez v. C.R. Calderon Constr., Inc.*, 221 F. Supp. 3d 115, 138 (D.D.C. 2016) ("The DCMWRA and the DCWPCA are construed consistently with the FLSA with respect to determining the liability of an employer."); *Del Villar v. Flynn Architectural Finishes, Inc.*, 664 F. Supp. 2d 94, 96 (D.D.C. 2009) (observing that the FLSA and DCMWA "are interpreted similarly") (collecting cases).

To determine employment status for purposes of the FLSA, courts apply an "economic reality" test that considers the following factors:

> (1) the degree of control exercised by the employer over the workers,
> (2) the workers' opportunity for profit or loss and their investment in the business,
> (3) the degree of skill and independent initiative required to perform the work,

(4) the permanence or duration of the working relationship and
(5) the extent to which the work is an integral part of the employer's business.

Morrison v. Int'l Programs Consortium, Inc., 253 F.3d 5, 11 (D.C. Cir. 2001) (citing *Brock v. Superior Care, Inc.*, 840 F.2d 1054, 1058-59 (2d Cir. 1988)). "No one factor standing alone is dispositive and courts are directed to look at the totality of the circumstances and consider any relevant evidence." *Id.* "[T]he final and determinative question must be whether the total[ity] of the [circumstances considered] establishes the personnel are so dependent upon the business with which they are connected that they come within the protection of the FLSA or are sufficiently independent to lie outside its ambit." *Usery v. Pilgrim Equip. Co.*, 527 F.2d 1308, 1311-12 (5th Cir. 1976).

As for the DCWPCL, the District of Columbia Court of Appeals has applied the common law of agency to determine whether an individual is an employee. *See Sanchez v. Magafan*, 892 A.2d 1130, 1134-35 (D.C. 2006) (citing *Spirides v. Reinhardt*, 613 F.2d 826, 831-32 (D.C. Cir. 1979) and *Beegle v. Restaurant Mgmt.*, 679 A.2d 480, 485 (D.C. 1996)). Under the common law framework, "the decisive test is whether the employer has the right to control and direct the [employee] in the performance of his work and the manner in which the work is to be done." *Caison v. Project Support Servs., Inc.*, 99 A.3d 243, 248 (D.C. 2014) (internal citations omitted); *see also Hickey v. Bomers*, 28 A.3d 1119, 1123 (D.C. 2011) (observing that the "right to control" does not require "the actual exercise of control or supervision").

The framework directs courts to consider the following four factors to determine whether an individual is an employee under the common law:

(1) the selection and engagement of the individual hired,
(2) the payment of wages,
(3) the power of the one who hires over the other whom he has hired, and
(4) whether the service performed by the person hired is a part of the regular business of the one who hired.

Caison, 99 A.3d at 248 (citing *Hickey*, 28 A.3d at 1123.

There is a substantial degree of overlap between the economic reality test and the common law test, and both frameworks emphasize a holistic view, rather than a narrow focus on any particular factor. *See id.* at 248; *Morrison*, 253 F.3d at 11. Furthermore, numerous courts have concluded that an individual's employment status is the same under the DCMWA and the DCWPCL. *See, e.g.*, *Medina v. Kevorkian Cleaning Co.*, 2020 U.S. Dist. LEXIS 45885, at *12 (D.D.C. March 17, 2020) (citing *Perez*, 221 F. Supp. 3d at 138). Accordingly, in determining whether an employment relationship exists between the plaintiff and the defendants for the DCMWA and the DCWPCL, the Court will consider the factors outlined under both the economic reality test and the common law test.

II. PLAINTIFF'S WORKWEEK EXCEEDED 40 HOURS PER WEEK

Before proceeding to an analysis of Mr. Moreno's employment status, the Court briefly addresses whether the plaintiff has established that he worked in excess of forty hours per week and was thus entitled to overtime wages under the DCMWA. The defendants contend that the plaintiff is not entitled to overtime wages because he worked two jobs, each for forty hours a week. They assert that the porter job Mr. Moreno worked from 8:00 a.m. to 4:00 p.m. and the concierge job he worked from 4:00 p.m. to midnight were two separate positions, for which he performed separate duties, filled out separate time sheets, and received separate paychecks.

This argument does not require extended discussion. As a threshold matter, it runs afoul of the plain language of the DCMWA, which does not define the obligation to pay overtime in terms of hours per job or duty, but states instead that an employer must pay overtime to "any employee for a workweek that is longer than 40 hours." *See* D.C. Code § 32-1003(c). Here, there

is no dispute that Mr. Moreno's workweek at the Nannie Helen exceeded 40 hours. Assuming Mr. Moreno was an employee, the statute on its face applies to him.

To read the DCMWA as permitting an employer to evade overtime requirements simply by dividing a worker's duties into separate jobs under the circumstances of this case would nullify the effect of the statute and would not be in keeping with its broad remedial purpose. *See Perez*, 221 F. Supp. 3d at 138, 140 (stating that determinations of employer or employee status under the FLSA generally apply equally under the DCMWA and that "definitions [within the FLSA] must be construed broadly to effectuate the remedial purposes of the statute"); *cf. Chao v. A-One Med. Servs., Inc.*, 346 F.3d 908, 916-18 (9th Cir. 2003) (hours that employee spent working for putatively separate employers properly aggregated for FLSA overtime purposes because separate employers were not completely disassociated with respect to the employment at issue and were controlled by the same individual). Mr. Moreno did not have separate employers for his porter and concierge positions; both jobs were performed on the same premises; his timesheets for both positions were approved by the same supervisor; his timesheets were submitted to and processed by the same personnel; the checks he received for both positions were identical and drafted from the same account; and he received combined tax forms that did not distinguish between the two positions.[9]

Accordingly, the Court finds that the plaintiff's workweek exceeded 40 hours per week for purposes of D.C. Code § 32-1003(c). There being no dispute that the plaintiff never received time-and-a-half wages, the defendants' liability under the DCMWA and DCWPCL thus hinges on whether Mr. Moreno was an employee of the defendants. Answering that question requires

[9] The defendants argue in their post-trial brief that even if Mr. Moreno was an employee in his porter role, he was an independent contractor in his concierge role and that as a result, the two forty-hour periods should not aggregate. This argument is discussed below.

two inquiries: first, whether Mr. Moreno was an employee rather than an independent contractor and, if so, second, whether he was an employee of each of the defendants. These inquiries are addressed in turn below.

III. PLAINTIFF WAS AN EMPLOYEE AND NOT AN INDEPENDENT CONTRACTOR

To determine whether Mr. Moreno was an employee or an independent contractor at the Nannie Helen for purposes of the DCMWA and DCWPCL, the Court considers the factors under the economic reality test and the common law test, some of which overlap.

A. Selection and Engagement of the Individual Hired

The Court credits Mr. Wash's testimony that when he hired Mr. Moreno, he advised Mr. Moreno that he would be an independent contractor and that he intended to hire Mr. Moreno as an independent contractor for 4800 NHB Commercial Owner LLC. Trial Tr. 147:7-11, 156:14-17. That Mr. Wash's intent was to hire Mr. Moreno as an independent contractor is corroborated by the fact that Mr. Moreno did not complete any human resources paperwork at the time he was hired, as well as the fact that he was issued forms 1099 and a W-9 for his work. Trial Tr. 88:8-17, 185:19-20; Joint Exs. 3, 4; Def.'s Ex. 4.

Despite Mr. Wash's intent, however, in critical respects, his engagement of Mr. Moreno in June 2017 signified the beginning of an employment relationship. Mr. Moreno was not hired to complete a discrete project. *See Spackman v. District of Columbia Dep't of Employment Servs.*, 590 A.2d 515, 516 (D.C. 1991). Rather, the testimony indicates that the expectation of all parties was that Mr. Moreno would perform whatever tasks were needed of him at the Nannie Helen indefinitely, continuing to perform the same duties he performed while part of Project Empowerment. Trial Tr. 43:16-22, 150:17-22. Mr. Moreno was not hired pursuant to an oral or written contract, did not hold himself out as an independent contractor, did not have his own

business, and had no other jobs at the time he worked at the Nannie Helen. Trial Tr. 52:21-24, 54:10-15; *see also Reyes v. D.C. Dep't of Employment Servs.*, 48 A.3d 159, 165 (D.C. 2012) (observing, in considering an order denying worker's compensation benefits on the grounds that the appellant was not an employee, that "[i]f the worker does not hold himself out to the public as performing an independent business service, and regularly devotes all or most of his or her independent time to the particular employer, the relationship is probably that of an employee, *regardless of other factors*") (quoting 3 Arthur Larson & Lex K. Larson, LARSON'S WORKERS' COMPENSATION LAW § 62.06[1][a] at 62-20 (2011)).

Thus, although Mr. Wash intended to hire Mr. Moreno as an independent contractor, the objective features of Mr. Moreno's engagement are consistent with the hiring of a typical hourly employee. Accordingly, the Court finds that this factor weighs in favor of finding that Mr. Moreno was an employee.

B. Permanence and Duration of the Working Relationship

For related reasons, the Court finds that the permanence and duration of the working relationship weighs in favor of finding that Mr. Moreno was an employee. Mr. Moreno was not hired for a fixed term; rather, the expectation was that Mr. Moreno would continue working at the Nanny Helen indefinitely, and there was no testimony that Mr. Wash told Mr. Moreno that his employment would be temporary when Mr. Wash hired him in June 2018.[10] Trial Tr. 57:5-8, 88:5-7. Indeed, in the September 7, 2018 employment verification letter sent by Ms. Rawlings, she described Mr. Moreno as "an employee of The Nannie Helen @ 4800 apartments as a porter/concierge" and stated that "his total annual income is $55,120," Joint Ex. 1; references to

[10] Although Mr. Wash testified that he hoped that McCormick Baron would eventually hire Mr. Moreno, there is nothing to suggest that Mr. Wash expected that Mr. Moreno would then be working anywhere other than at the Nannie Helen.

Mr. Moreno being an "employee" and his "annual salary" indicate that Mr. Moreno was viewed as a permanent employee at the building. *See id.*; *see also* Def.'s Ex. 3

Moreover, Mr. Moreno's work at the Nanny Helen was not sporadic; rather, he worked there on the same schedule every day, five days a week, and had no other employment. Trial Tr. 29:15-24, 54:10-15; *see also* Joint Exs. 5, 6. Indeed, any other employment would have been impossible given that Mr. Moreno was working at the Nanny Helen from 8:00 a.m. to midnight most days. *See Escamilla*, 227 F. Supp. 3d at 51 (finding fact that building maintenance worker worked a fixed schedule six or seven days a week, did not perform work for any other employer while working for defendants, and did not attempt to find work for any employer during this time weighed in favor of his status as an employee).

Although Mr. Moreno became a permanent employee in June 2018, only three months before he was terminated, that three-month period followed a seven-month period during which he was working at the Nanny Helen through Project Empowerment. Trial Tr. 56:21-57:8. Moreover, Mr. Moreno's tenure at the Nanny Helen did not expire naturally under terms set when he was brought aboard; rather, he was affirmatively let go, based, according to Mr. Wash and Ms. Rawlings, on a change in circumstances regarding McCormick Baron staffing, and according to Ms. Rawlings, in part because of ongoing disciplinary issues. Trial Tr. 96:9-21, 169:1-16. This record indicates that Mr. Moreno was working at the Nannie Helen on a permanent basis, which weighs in favor of him being considered an employee rather than independent contractor. *See Thompson v. Linda & A., Inc.*, 779 F. Supp. 2d 139, 150 (D.D.C. 2011) ("The more permanent the relationship, the more likely it is that a court will find a worker to be an employee.").

C. Payment of Wages/Worker's Opportunity for Profit or Loss and Investment in the Business

Mr. Moreno was issued 1099 forms, completed a W-9, and did not have taxes withheld, Trial Tr. 120:9-13, 185:19-22, all of which is consistent with Mr. Wash's subjective view that Mr. Moreno was an independent contractor. *See Hickey*, 28 A.3d at 1124. The Court of Appeals, however, has cautioned that the "use of a 1099 tax form does not [necessarily] undermine the conclusion that a worker is an employee and not an independent contractor." *Id.* at 1125.

Mr. Moreno was paid by the hour at a fixed hourly rate—the minimum wage. Trial Tr. 55:20-24; Joint Ex. 9 at 76:1-5. He documented his hours on timesheets that were submitted to Ms. David, who processed his timesheets and issued him a weekly paycheck. Trial Tr. 119:22-23; Joint Exs. 5-7. These payment practices are consistent with those of a traditional hourly employee rather than an independent contractor. *See Hickey*, 28 A.3d at 1125 (fact that the putative employee "was paid an hourly rate based on the hours she worked weighs at least slightly on the side of her having been an employee rather than an independent contractor").

Mr. Moreno's rate of pay and work schedule were determined by his employers. Trial Tr. 108:3-23. Accordingly, Mr. Moreno did not have the ability to increase his profits by completing his work more quickly and taking on other jobs. *See Escamilla*, 227 F. Supp. 3d at 50. Nor is there any evidence that Mr. Moreno had opportunities to invest in any business, and the record is clear that Mr. Moreno did not provide his own supplies for his work at the Nannie Helen. Trial Tr. 44:22-45:6, 52:10-15, 102:8-11.

In sum, the Court finds that the evidence on the payment and profit factors is mixed, with some evidence consistent with the plaintiff being an independent contractor, and other evidence more suggestive of the plaintiff being an employee.

D. Degree of Skill and Independent Initiative Required to do the Work

Mr. Moreno had no specialized training for the work he performed as a porter or concierge, and the duties he discharged in those roles did not require specialized training, knowledge, or expertise. There was no evidence that his work required independent initiative; rather, his responsibilities were set by Ms. Rawlings and they did not vary from week to week.

Courts have found that workers performing duties like those that Mr. Moreno handles are employees, in part because discharging those duties does not require specialized skill or training. *See, e.g., Shultz v. Hinojosa*, 432 F.2d 259, 265 (5th Cir. 1970) (finding janitor was employee and noting that "[i]f a specific individual regularly performs tasks essentially of a routine nature and that work is a phase of the normal operations of that particular business, the Act will ordinarily regard him as an employee"); *Escamilla*, 227 F. Supp. 3d at 43 (finding that plaintiff, a maintenance worker at an apartment building, was an employee for purposes of the FLSA DCMWA, and DCWPCL); *see also, e.g.*, *Safeway Stores, Inc. v. Kelly*, 448 A.2d 856, 861 (D.C. 1982) (security guard employed by independent security company as employee of Safeway where he was stationed under common law agency principles). Accordingly, the Court finds that this factor supports the notion that Mr. Moreno was an employee rather than an independent contractor.

E. Whether the Service Is an Integral Part of the Regular Business

None of defendant entities had as their primary business the operation of the Nannie Helen, so there is arguably a sense in which this factor weighs in the defendants' favor. Yet Mr. Wash was the managing partner and part owner of the entity that owned the building and that contracted with McCormick Baron to manage the building. Mr. Wash was also the sole owner of

each of the defendant entities, two of which were single purpose passive vehicles, and each of which handled aspects of Mr. Moreno's employment and the operation of the Nannie Helen.

For example, although A. Wash and Associates, Inc. was ostensibly an electrical contracting firm, Mr. Mobley, who performed the same duties as Mr. Wash at the Nannie Helen, was employed by A. Wash and Associates, Inc. Trial Tr. 86:10-19, 88:14-19, 99:21-100:4, 130:22-25. Likewise, although AWA Holdings LLC was a single purpose vehicle formed to own property on Alabama Avenue SE, its funds were used to pay Mr. Moreno's salary. Trial Tr. 119:3-16; Joint Ex. 4. The bulk of Mr. Moreno's salary was paid by 4800 NHB Commercial Owner LLC, Joint Ex. 3, an entity whose business was to own commercial space at the Nannie Helen, Trial Tr. 118:13-15, 137:4-138:9, 154:24-25. It paid his salary despite the fact that the bulk of Mr. Moreno's work was for the residential portion of the building, which was owned by 4800 LP, Trial Tr. 138:10-24, 140:24-141:4, and the fact that he was supervised by an employee of McCormick Baron, which had contracted with 4800 LP to manage the building, Trial Tr. 139:3-13, 146:5-7. As discussed in greater detail below, these defendants shared employer responsibilities with McCormick Baron, whose regular business involved managing the Nanny Helen, but which did not handle critical aspects of Mr. Moreno's employment, such as hiring, firing, payroll, and salary. *See infra* Part V.B.

In the truest sense, Mr. Moreno worked for the Nannie Helen, a building managed by McCormick Baron, owned by an entity whose general manager was Mr. Wash, and supported in part by all of the defendants. *See, e.g.*, Trial Tr. 126:14-15 (Ms. David's testimony that Mr. Moreno "worked for the building with McCormick Barron managing it" but that it was not clear for whom Mr. Moreno worked); Joint Ex. 1 ("This letter is to verify that Johnnie Moreno is an employee of The Nannie Helen @ 4800 . . . ."); Trial Tr. 130:22-131:9 (testimony from Ms.

David that Mr. Mobley, who performed porter and concierge duties at the Nannie Helen, was an employee of A. Wash & Associates, Inc.); Trial Tr. 153:15-19 (testimony from Mr. Wash that 4800 Commercial Owner LLC were used to "stabilize" 4800 LP's operation of the Nannie Helen). As a multi-unit housing community, the Nannie Helen's regular business included providing a clean and safe living environment for its residents. The work that Mr. Moreno performed—such as providing janitorial services for the interior and exterior common areas, ensuring trash removal, serving as nightly security, and making rounds—was plainly part of that regular business. *See, e.g.*, Trial Tr. 130:14 (testimony from Ms. David that the "front desk had to be secured, so we had to put somebody in that place"). In this respect, the Court finds that this factor weighs in favor of Mr. Moreno being an employee rather than an independent contractor.

F. Power of the One Who Hires Over the One Hired/Degree of Control

Like a typical employee, Mr. Moreno was provided with daily tasks that he was to accomplish each work day. Ms. Rawlings provided Mr. Moreno his schedule of daily activities, including a document detailing the "Porter Duties" he was required to complete each day of the week. Trial Tr. 27:1-22; Pl.'s Ex. 3. Mr. Moreno also attended staff meetings with other workers at the Nannie Helen. Trial Tr. 46:7-10; Pl.'s Ex. 15. Mr. Moreno was issued a disciplinary notice for "continued tardiness," "insubordination," "fai[ure] to follow instructions," and for "be[ing] on the phone on the clock." Def.'s Ex. 1. The notice, signed by Mr. Moreno and Ms. Rawlings, directed that "as of 10-1-18 employee[] will have to punch in and out by use of the time clock." *Id.* In light of these disciplinary issues, Mr. Wash personally directed Mr. Moreno specifically to follow Ms. Rawlings' directives. Trial Tr. 72:3-8, 149:24-150:1, 167:5-11. Mr. Moreno's superiors could and often did order him to stop whatever task he was performing and order him to begin another task. Trial Tr. 43:16-22. This record establishes that Mr. Moreno had little

independence in the performance of his work and, like a typical employee, was subject to the control of his superiors, who directed his daily activities.

The defendants contend that even if Mr. Moreno was an employee when he was performing his porter duties, he was an independent contractor when he was working as a concierge because he was not subjected to the same degree of supervision, as there was no supervisor physically present at the building during those hours. This argument is unpersuasive and unsupported by the record. As an initial matter, interpreting the DCMWA in a manner that allowed an employer to isolate those duties which are subject to less frequent supervision and declare the employee a contractor when performing those duties would undermine the broad remedial purposes of the statute. *See Perez*, 221 F. Supp. 3d at 138, 140. Furthermore, even if a supervisor was not present throughout Mr. Moreno's shift as a concierge, the record hardly suggests that he had a significantly higher degree of independence in this role. To the contrary, Mr. Moreno was required to complete daily sector patrol reports documenting his activities during each hour while he was on duty as a concierge. Joint Ex. 2. As Mr. Moreno explained in describing his duty to complete daily sector patrol reports,

> [it]'s basically I have to make my -- monitor my whereabouts every detail, every hour on the hour while I'm working at the desk. And I have to make sure I put a note down of everything I'm doing during that time while I'm there, even during the time I take my break or whatever occurred in the building, as well. I have to log it every day and I have to turn it in before I leave once my time is over at 12:00 midnight.

Trial Tr. 41:12-24.[11]

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[11] The concierge and porter positions were not treated as separate jobs for tax purposes. Joint Ex. 3. They were also treated as a single job in the employment verification letters prepared by Ms. Rawlings. Def.'s Exs. 1, 3. Furthermore, the record is clear that at the time Mr. Wash hired Mr. Moreno on a permanent basis, Mr. Moreno was already performing concierge duties, *see* Joint Ex. 5 (timesheets documenting that Mr. Moreno was performing concierge duties by at least June 1, 2018), indicating that he was hired to continue both functions, which he then did.

Accordingly, the Court finds that Mr. Moreno had little independence in discharging his daily duties as porter and concierge and was subject to a high degree of supervisor control in both roles. This critical factor thus weighs in favor of the plaintiff being an employee rather than an independent contractor for purposes of the DCMWA and DCWPCL.

G. Summary

While there is evidence falling on both sides of this analysis, in assessing the factors under the economic reality test as well as the common law inquiry, the Court finds that the weight of the evidence squarely supports the view that Mr. Moreno was an employee and not an independent contractor during his time working at the Nanny Helen. He was hired not to complete a discrete task or for a definite period, but to continue indefinitely the work he had been performing at the Nanny Helen through Project Empowerment. His work had no fixed end date and his tenure concluded not because it expired by its own terms, but because he was affirmatively let go due to staffing and disciplinary issues. Mr. Moreno was paid like any other hourly employee and his rate of pay and work schedule were fixed and determined by his employer. Mr. Moreno possessed no specialized training or experience, and the porter and concierge work he performed did not require any. The work that Mr. Moreno performed was integral to the operation of the Nannie Helen. And, critically, Mr. Moreno was directed and supervised in the performance of his daily tasks in a manner far more consistent with an employee than an independent contractor. Accordingly, the Court finds that Mr. Moreno was an employee and not an independent contractor for purposes of the DCMWA and the DCWPCL.

IV. PLAINTIFF WAS AN EMPLOYEE OF THE DEFENDANTS

Having determined that Mr. Moreno was an employee, the Court now addresses which, if any, of the defendants were Mr. Moreno's employers.

A. Joint Employer Doctrine

As discussed above, the DCMWA defines the term "employer" broadly, to include "any individual, partnership, general contractor, subcontractor, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee." D.C. Code § 32-1002(3). The DCWPCL similarly provides that the term "'employer' includes every individual, partnership, firm, general contractor, subcontractor, association, corporation . . . employing any person in the District of Columbia." *Id.* § 32-1301(1B). Both statutes define an employee as one suffered or permitted to work by an employer. *Id.* §§ 32-1002(1A), 32-1301(1A).

As noted above, these statutory definitions derive from the FLSA, which contains nearly identical definitions of "employer" and "employ." *Compare* 29 U.S.C. §§ 203(d), (g) *with* D.C. Code §§ *Id.* § 32-1002(1A), (3). As the Fourth Circuit Court of Appeals recently observed in discussing the scope of the statutory definitions in the FLSA, the "suffer or permit to work" definition found in the FLSA—and adopted into the DCMWA and the DCWPCL—"derived from state child-labor laws, which imposed liability not only on businesses that directly employed children but also on businesses that used middlemen to illegally hire and supervise children." *Salinas v. Commercial Interiors, Inc.*, 848 F.3d 125, 133 (4th Cir. 2017) (internal quotation marks and citations omitted). "[T]he 'striking breadth' of these definitions brings within the FLSA's ambit workers 'who might not qualify as [employees] under a strict application of traditional agency law principles' or under other federal statutes." *Id.* (quoting *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 326 (1992)); *accord Tony & Susan Alamo Foundation v. Secretary of Labor*, 471 U.S. 290, 296 (1985) ("The Court has consistently construed the Act liberally to apply to the furthest reaches consistent with congressional

direction, recognizing that broad coverage is essential to accomplish the goal of outlawing from interstate commerce goods produced under conditions that fall below minimum standards of decency.") (internal citations and quotation marks omitted).

As the court in *Salinas* observed, the breadth of these definitions means that more than one person or entity may qualify as an employer under the principle of "joint employment":

> Although the FLSA does not expressly reference "joint employment," the Department of Labor's first set of regulations implementing the statute—which remain in force—recognize that "[a] single individual may stand in the relation of an employee to two or more employers at the same time under the Fair Labor Standards Act of 1938, since there is nothing in the act which prevents an individual employed by one employer from also entering into an employment relationship with a different employer." 29 C.F.R. § 791.2(a).
>
> To that end, the regulations distinguish "separate and distinct employment" and "joint employment." Separate employment exists when "all the relevant facts establish that two or more employers are acting *entirely independently* of each other and are completely disassociated with respect to the" individual's employment. *Id.* (emphasis added). Separate employers may "disregard all work performed by the employee for the other employer" when determining their obligations under the FLSA. *Id.* By contrast, joint employment exists when "the facts establish . . . that employment by one employer is *not completely disassociated* from employment by the other employer[]." *Id.* (emphasis added).

Id. at 133-34.

"[J]oint employers are responsible, both individually and jointly, for compliance with all of the applicable provisions of the act, including the overtime provisions, with respect to the entire employment for the particular workweek." *Id.* at 134 (citing 29 C.F.R. § 791.2(a)). The joint employment doctrine "(1) treats a worker's employment by joint employers as 'one employment' for purposes of determining compliance with the FLSA's wage and hour requirements and (2) holds joint employers jointly and severally liable for any violations of the FLSA." *Id.*

Although the Court of Appeals has yet to address the issue, there is every indication that the joint employer doctrine applies with equal force in the context of the DCMWA and DCWPCL. The statutes were modeled on the FLSA, and courts have repeatedly held that a putative employer's liability is identical under the FLSA, DCMWA, and the DCWPCL. *See, e.g.*, *Perez*, 221 F. Supp. 3d at 138. Indeed, the definitions of "employer" found in the DCMWA and DCWPCL plainly contemplate that more than one person may qualify as an employer under either statute. *See* D.C. Code § 32-1002(3) (defining employer as "any individual, partnership, firm . . . ."); *id.* § 32-1301(1B). The Court thus concludes that the defendants may be liable for violations of the DCMWA and the DCWPCL if they were joint employers of Mr. Moreno.

As one federal district court in this jurisdiction has noted, the different federal courts of appeals have developed somewhat different multi-factor tests for determining whether putative employers qualify as joint employers. *Harris v. Medical Transp. Mgmt.*, 300 F. Supp. 3d 234, 241-43 (D.D.C. 2018) (surveying the "dizzying world of multi-factor tests that attempt to distill the concept of 'joint employment'" across the different circuits). Among the earliest iterations of such a test was articulated by the Ninth Circuit in which the court, relying on common law agency principles, directed the courts to consider whether the putative employer (1) had the power to hire and fire the employees, (2) supervised and controlled employee work schedules or conditions of employment, (3) determined the rate and method of payment, and (4) maintained employment records. *Bonnette v. California Health & Welfare Agency*, 704 F.2d 1465, 1469-70 (9th Cir. 1983).

In the following years, several circuits have modified and liberalized the *Bonnette* test, noting "the four-factor test cannot be reconciled with the 'suffer or permit' language in the statute, which necessarily reaches beyond traditional agency law." *Ling Nan Zheng v. Liberty*

Apparel Co., 355 F.3d 61, 69 (2d Cir. 2003) (citing *Darden*, 503 U.S. at 326)) (identifying six additional factors beyond those articulated in *Bonnette* to determine joint employer status); *see also Layton v. DHL Express (USA), Inc.*, 686 F.3d 1172, 1176-77 (11th Cir. 2012) (articulating an eight-factor test); *In re Enterprise Rent-A-Car Wage & Hour Emp't Practices Litig.*, 683 F.3d 462, 468-70 (3d Cir. 2012) (modifying *Bonnette* and emphasizing that court should not "blindly apply" articulate factors and look to any indicia of significant control). Indeed, the Ninth Circuit has itself modified the *Bonnette* test to include thirteen nonexclusive factors derived from different sources. *Torres-Lopez v. May*, 111 F.3d 633, 639-41 (9th Cir. 1997).[12]

The most recent federal appellate court to announce such a test is the Fourth Circuit in *Salinas*, in which the Court held that courts should consider the following six factors in determining whether putative defendants are joint employers:

> (1) Whether, formally or as a matter of practice, the putative joint employers jointly determine, share, or allocate the power to direct, control, or supervise the worker, whether by direct or indirect means;
>
> (2) Whether, formally or as a matter of practice, the putative joint employers jointly determine, share, or allocate the power to—directly or indirectly—hire or fire the worker or modify the terms or conditions of the worker's employment;
>
> (3) The degree of permanency and duration of the relationship between the putative joint employers;

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[12] On January 16, 2020, the U.S. Department of Labor issued a final rule modifying its prior joint employer regulation. *See* 85 Fed. Reg. 2820 (Jan. 16, 2020). The rule, which took effect March 16, 2020, established a four-factor test based on *Bonnette* to determine whether a putative employer qualifies as a joint employer. Seventeen states and the District of Columbia have filed suit challenging the rule under the Administrative Procedures Act. *See New York v. Scalia*, 2020 U.S. Dist. LEXIS 96486, at *3 (S.D.N.Y. June 1, 2020). There is currently no indication that this rule, enacted just three months ago, subject to ongoing litigation, and which generated thousands of comments from diverse interest groups, reflects the D.C. Council's intent with respect to the DCMWA. *See* D.C. Code § 32-1003 (last modified Dec. 13, 2018, D.C. Law 22-196, §§ 2, 6(b), 65 DCR 12049). Accordingly, the Court declines to rely on it in construing the contours of joint employer liability under the DCMWA and DCWPCL.

(4) Whether, through shared management or a direct or indirect ownership interest, one putative joint employer controls, is controlled by, or is under common control with the other putative joint employer;

(5) Whether the work is performed on a premises owned or controlled by one or more of the putative joint employers, independently or in connection with one another; and

(6) Whether, formally or as a matter of practice, the putative joint employers jointly determine, share, or allocate responsibility over functions ordinarily carried out by an employer, such as handling payroll; providing workers' compensation insurance; paying payroll taxes; or providing the facilities, equipment, tools, or materials necessary to complete the work.

Salinas, 848 F.3d at 141-42; *see also id.* at 135-40 (observing that "even if two entities do not independently constitute employers under the *Bonnette* test, their combined influence over the terms and conditions of a worker's employment may give rise to liability under the FLSA if the entities are 'not completely disassociated' with regard to the worker's employment").

B. Defendants as Joint Employers

The defendants argue that if anyone employed Mr. Moreno, it was McCormick Baron, whose employees directly supervised Mr. Moreno. Indeed, the record is replete with evidence that McCormick Baron was an employer of the defendant, from Ms. Rawlings' testimony that she viewed Mr. Moreno as a McCormick Baron employee, to the evidence that Ms. Rawlings directed Mr. Moreno's daily activities. *See, e.g.*, Trial Tr. 27:1-22, 104:7-105:7, 119:23-120:2.

Yet, as the above legal principles make clear, even a determination that McCormick Baron was Mr. Moreno's employer would not end the inquiry. Rather, the Court will assess whether, under the totality of circumstances, defendants A. Wash and Associates, Inc., AWA Holdings LLC, 4800 NHB Commercial Owner LLC, and Mr. Wash qualify as joint employers considering the factors outlined in *Salinas*.

1. Whether, formally or as a matter of practice, the putative joint employers jointly determine, share, or allocate the power to direct, control, or supervise the worker, whether by direct or indirect means

Although the evidence establishes that Ms. Rawlings was a direct supervisor of Mr. Moreno and had the authority to control his daily activities, the defendants also maintained supervisory authority over Mr. Moreno, if indirectly. For example, it was Mr. Wash who decided to hire Mr. Moreno and placed him under Ms. Rawlings' direct supervision based on positive reports he had received about Mr. Moreno's work performance. Trial Tr. 146:19-147:1, 156:14-17. Mr. Wash was also notified about disciplinary issues related to Mr. Moreno, and met with Mr. Moreno to discuss those issues, directing him to listen to Ms. Rawlings and find ways to work with her. Trial Tr. 72:3-8, 149:24-150:1, 167:5-11. While Ms. Rawlings shared Mr. Moreno's disciplinary issues with Mr. Wash, there is no evidence that she shared the same with her superiors at McCormick Baron. Mr. Wash further approved payments to Mr. Moreno from accounts in the name of his companies, 4800 NHB Commercial Owner LLC and AWA Holdings, LLC. Trial Tr. 127:4-24, 133:7-10.

Mr. Moreno worked alongside and performed the same duties as Mr. Mobley, who was an employee of A. Wash and Associates, Inc. Trial Tr. 45:19-20, 86:10-19, 88:14-19, 99:21-100:4, 130:22-25. And when Mr. Moreno needed to obtain an employment verification letter, he contacted Ms. David, who was an A. Wash and Associates, Inc. administrator or consultant retained by that company and AWA Holdings LLC, to request employment verification. Trial Tr. 66:16-67:12. Ms. David directed Ms. Rawlings to prepare an employment verification letter for Mr. Moreno, a directive that Ms. Rawlings carried out the following day. Joint Exs. 1, 11. In the same email, Ms. David modified the procedure for approving Mr. Moreno's and Mr. Mobley's

timesheets, a procedure that Ms. Rawlings then followed by approving Mr. Moreno's timesheets. Joint Ex. 11.

In sum, the record establishes that daily supervisory authority over Mr. Moreno resided with Ms. Rawlings, a McCormick Baron employee. Yet the record also indicates that Ms. Rawlings was integrated into the management structure of the defendants with respect to Mr. Moreno, supervising him after they placed him under her authority, following their instructions regarding employment and timesheet verification, and relating disciplinary issues to them. Mr. Wash, the owner of A. Wash and Associates, Inc., 4800 NHB Commercial LLC, and AWA Holdings LLC, shared at least indirect authority over Mr. Moreno, and all three corporate defendants were involved in the employment relationship. This evidence supports a finding that all four defendants were his joint employers.

2. Whether, formally or as a matter of practice, the putative joint employers jointly determine, share, or allocate the power to—directly or indirectly—hire or fire the worker or modify the terms or conditions of the worker's employment

Mr. Wash hired Mr. Moreno, purportedly as a contractor for 4800 NHB Commercial Owner LLC. Trial Tr. 146:19-147:1, 156:14-17; *see also* Pl.'s Ex. 6 (photograph of t-shirts bearing the name "4800 NHB" provided to Mr. Moreno at the time he was hired). In fact, Mr. Wash testified that he personally brought Mr. Moreno aboard precisely because McCormick Baron refused to hire him. Trial Tr. 146:19-147:11. No one from McCormick Baron attended the June 2018 meeting in Mr. Wash's office during which Mr. Moreno was brought onboard, and there is no evidence that anyone from McCormick Baron played any role in the decision to hire Mr. Moreno. *See* Trial Tr. 35:4-36:5. Nonetheless, Mr. Wash hired Mr. Moreno, from which point he worked primarily under Ms. Rawlings' daily supervision. Trial Tr. 59:11-20, 60:6-11, 65:5-12.

Likewise, no one from McCormick Baron was present at the October 2018 meeting in Mr. Wash's office in which Mr. Wash advised Mr. Moreno that he was being let go. Trial Tr. 51:23-25. The record indicates that the termination decision was made by Mr. Wash, influenced in part by staffing changes at McCormick Baron and disciplinary issues which Ms. Rawlings had raised with him. Trial Tr. 75:8-15, 96:12-21, 179:5-20. That Mr. Wash terminated Mr. Moreno based on staffing changes at McCormick Baron and issues between Mr. Moreno and a McCormick Baron employee underscores the degree to which McCormick Baron and Mr. Wash shared authority over Mr. Moreno.

Given that the work that Mr. Moreno performed was not for Mr. Wash personally and that he exercised his hiring authority on behalf of one of the defendant entities, Trial Tr. 77:2-6, 78:1-79:14, it appears that Mr. Wash also exercised his authority to terminate Mr. Moreno on behalf of the other defendants, for whom he acted as the managing partner or sole owner, and all of whom played some role in Mr. Moreno's employment. This factor thus weighs in favor of the defendants being considered joint employers of Mr. Moreno.

3. The degree of permanency and duration of the relationship between the putative joint employers

As an initial matter, the relationships between the defendants have a high degree of permanency. Mr. Wash is the sole owner of 4800 NHB Commercial Owner LLC, AWA Holdings LLC, and A. Wash and Associates, Inc. Trial Tr. 135:11-136:25, 137:4-138:9, 142:20-24, 154:21-155:10. 4800 NHB Commercial Owner LLC owned the commercial space at the Nannie Helen, Trial Tr. 118:13-15, 137:4-138:9, 154:24-25, while the building itself, including the residential portion of the property, was owned by 4800 LP, whose managing partner was Mr. Wash, Trial Tr. 138:10-24, 140:24-141:4, 155:24-156:3. As discussed in greater detail below, there was no strict division between the defendant entities and Mr. Wash used the funds from

different entities as he deemed necessary to support one another. The defendants are fundamentally bound together.

The defendants' relationship with McCormick Baron, though less intertwined than their relationships with one another, was hardly fleeting. There is every indication that McCormick Baron was retained to provide management services on an ongoing basis indefinitely. Indeed, as of February 2020, Ms. Rawlings was still the property manager at the Nanny Helen. Trial Tr. 93:15-20. There was no testimony at trial that the relationship between McCormick Baron and the defendants was approaching its end.

Accordingly, the permanence and duration of the relationships between the defendants themselves and with McCormick Baron weighs in favor of finding that the defendants were joint employers.

4. Whether, through shared management or a direct or indirect ownership interest, one putative joint employer controls, is controlled by, or is under common control with the other putative joint employer

Mr. Wash is the sole owner of each of the other defendants named in this action, and as such exercised a significant degree of control over these entities. Mr. Wash authorized Ms. David's use of funds from 4800 NHB Commercial Owner LLC and AWA Holdings LLC to pay Mr. Moreno, Trial Tr. 127:18-128:6, despite the fact that the latter entity's purported business had nothing to do with the Nannie Helen, Trial Tr. 135:11-136:11. Although the building itself was owned by 4800 LP, of which Mr. Wash was managing partner, Mr. Wash used funds from 4800 NHB Commercial Owner LLC to "stabilize" 4800 LP. Trial Tr. 153:16-18. As Mr. Wash acknowledged when asked about his co-defendants' assets, "It's all my money." Trial Tr. 159:24.

The fact that Mr. Wash controlled all three of the corporate defendants supports a finding that they are joint employers. Moreover, Mr. Wash's operational control over these entities supports his personal liability for any overtime violations, even if the work Mr. Moreno performed was for the co-defendant entities and not Mr. Wash personally. *See, e.g.*, *Perez*, 221 F. Supp. 3d at 143-44 ("The individual defendants . . . deny that they were the plaintiffs' employers under the FLSA and the District of Columbia labor laws. Nevertheless, '[t]he overwhelming weight of authority is that a corporate officer with operational control of a corporation's covered enterprise is an employer along with the corporation, jointly and severally liable under the FLSA for unpaid wages.") (citing *Ruffin v. New Destination*, 800 F. Supp. 2d 262, 269 (D.D.C. 2011)). The fact that defendant Wash owned and controlled all the corporate defendants who played aa role in Mr. Moreno's employment weighs in favor of finding joint employment.

Although McCormick Baron was not owned by Mr. Wash, the fact that they were engaged in an ongoing business relationship supports a finding of a joint employer relationship. Indeed, the record indicates that management of the Nannie Helen represents Ms. Rawlings' sole employment. *See Salinas*, 848 F.3d at 147 (longstanding business relationship, in which the putative employer relies on the other for a large amount of its business, supports of a finding of joint employment). Mr. Wash testified that McCormick Baron "reimbursed" 4800 NHB Commercial Owner LLC for "concierge services," Trial Tr. 153:20-23, despite the fact that McCormick Baron's contract was with 4800 LP. Trial Tr. 139:3-13, 146:5-7, illustrating the extent to which McCormick Baron was interwoven with Mr. Wash's companies vis-à-vis the operation of the Nannie Helen. These facts weigh in favor of finding that the defendants were joint employers with McCormick Baron.

5. Whether the work is performed on premises owned or controlled by one or more of the putative joint employers, independently or in connection with one another

Throughout the period at issue, Mr. Moreno worked on premises controlled, at least indirectly, by Mr. Wash. The Nannie Helen where Mr. Moreno worked was owned by 4800 LP, which is partly owned by Mr. Wash, who also serves as that entity's managing partner. Trial Tr. 155:24-156:3. The commercial space at the Nannie Helen is owned by defendant 4800 NHB Commercial Owner LLC, whose sole member is Mr. Wash. Trial Tr. 154:21-25, 155:11-14. The record also indicates that 4800 NHB Commercial Owner LLC owned the community center where Mr. Moreno was responsible for performing janitorial services. Trial Tr. 43:25-44:2, 137:21-138:2; Pl.'s Ex. 3. The disciplinary notice issued to Mr. Moreno on September 24, 2018 lists his "site location" as "NHB LLC." Def.'s Ex. 1. Mr. Wash, the managing partner of 4800 LP, and 4800 NHB Commercial Owner LLC exercised ownership over Mr. Moreno's worksite.

Although McCormick Baron did not own the worksite, it exercised control over the building as its property manager. By all accounts, the highest supervisor onsite at the Nannie Helen was McCormick Baron employee Sharon Rawlings. As Mr. Moreno put it, Ms. Rawlings "was the boss in the building." Trial Tr. 68:3, 69:3-4. Accordingly, Mr. Wash, 4800 NHB Commercial Owner LLC, and McCormick Baron shared control of the work premises in connection with one another. This factor weighs in favor of finding them joint employers.

6. Whether, formally or as a matter of practice, the putative joint employers jointly determine, share, or allocate responsibility over functions ordinarily carried out by an employer, such as handling payroll; providing workers' compensation insurance; paying payroll taxes; or providing the facilities, equipment, tools, or materials necessary to complete the work

The record in this case demonstrates that the defendants shared many of the functions ordinarily carried out by an employer. Mr. Moreno submitted his timesheets, half of which were titled "A. Wash & Associates, Incorporated / Bi Weekly Time Sheet," Joint Ex. 6, to Ms. David,

who was either an employee of A. Wash and Associates, Inc. or a consultant working on behalf of that defendant and AWA Holdings LLC. Trial Tr. 105:20-23, 106:9-13, 115:12-23. AWA Holdings LLC and 4800 NHB Commercial Owner LLC provided the funds that paid Mr. Moreno and issued 1099 forms to him for the work he performed in 2017. Trial Tr. 119:3-16, 185:19-25; Joint Exs. 3-4. Ms. David maintained records of those timesheets and Mr. Moreno's pay, which she transmitted on one occasion to Ms. Rawlings, so that she could verify Mr. Moreno's pay. Joint Ex. 11. Ms. Rawlings, who worked for McCormick Baron, provided the supplies that Mr. Moreno used at his job and distributed a W-9 form to Mr. Moreno on behalf of 4800 NHB Commercial Owner LLC and AWA Holdings LLC. Trial Tr. 110:11-24.

McCormick Baron provided the day to day supervision and supplied Mr. Moreno's equipment, but relied on the corporate defendants, controlled by Mr. Wash, to process timesheets, issue payroll, maintain payment records, and issue required tax forms to Mr. Moreno. Thus, each of the defendants and McCormick Baron shared responsibility over functions ordinarily carried out by an employer. This factor weighs in favor of finding that all of the defendants were joint employers of Mr. Moreno.

7. Summary

The evidence at trial established that all of the defendants were intertwined with one another and shared responsibilities with one another and with McCormick Baron vis-à-vis Mr. Moreno's employment. Mr. Wash personally made the decision to hire Mr. Moreno, personally communicated to Mr. Moreno that he was being let go, had final approval over which funds were used to pay Mr. Moreno, and had ownership interest and management authority over the entities that owned the premises on which Mr. Moreno worked, 4800 LP and 4800 NHB Commercial Owner LLC. 4800 NHB Commercial Owner LLC and AWA Holdings LLC paid Mr. Moreno's

salary. Ms. David, who was either an employee of A. Wash and Associates, Inc. or a consultant working for A. Wash and Associates, Inc. and AWA Holdings LLC, processed Mr. Moreno's timesheet and issued his paychecks.

Far from being completely disassociated from one another, the defendants were so interwoven that the witnesses themselves could not identify who worked for whom. Ms. Rawlings, for example, testified that she was not sure who Ms. David worked for, despite the fact that they interacted regularly. Trial Tr. 105:20-106:13. Likewise, Ms. David, when asked who Mr. Moreno worked for, testified:

> I knew that we wanted to keep him working. And so it was as if we were just pulling from an account. He was working for the building 4800 with McCormick Barron managing it. But as far as who we could really say that he worked for, it just was—it wasn't very clear to me.

Trial Tr. 126:12-17.

The reason it was not clear was that all the defendants served as his employer in different respects. To find that these defendants, as a group, can evade responsibility for paying overtime to a man working sometimes 80 hours a week at the minimum wage simply by distributing these employer duties among themselves and with McCormick Baron is not consistent with the broad language and remedial purposes of the DCMWA and the DCPWCL. The Court therefore finds by a preponderance of the evidence that each of the defendants was a joint employer of Mr. Moreno and that each is therefore joint and severally liable for Mr. Moreno's unpaid overtime under the DCMWA and the DCWPCL.

VII. CALCULATION OF DAMAGES

The DCMWA provides that if an employer fails to pay required overtime, "any employer who pays any employee less than the wage to which that employee is entitled under this subchapter shall be liable to that employee in the amount of the unpaid wages, statutory

penalties, and *an additional amount* as liquidated damages equal to treble the amount of unpaid wages." D.C. Code § 32-1012(b)(1) (emphasis added). The DCWPCL provides that an employer who fails to pay wages as required shall pay as liquidated damages to the employee "10 per centum of the unpaid wages for each working day which such failure shall continue after the day upon which payment is hereunder required, or an amount equal to treble the unpaid wages, whichever is smaller." *Id.* § 32-1303(4).[13] Both the DCMWA and DCWPCL provide for the award of reasonable attorney's fees and costs. D.C. Code §§ 32-1012(b), 1308(b)(1)).

In cases like this one in which the plaintiff has established violations of both the DCMWA and DCWPCA, the plaintiff is entitled to single award equal to the amount of unpaid overtime and the highest amount of liquidated damages permitted under either statute. *See Perez*, 221 F. Supp. 3d at 139. Here, both statutes state the plaintiff is entitled to damages in the amount of unpaid overtime wages as well as liquidated damages in the amount of three times those unpaid overtime wages. D.C. Code §§ 32-1012(b)(1), 1303(4).

The plaintiff contends that to determine the hours that Mr. Moreno worked each work, and thus the number of hours for which he was entitled to overtime, the Court may divide Mr. Moreno's weekly pay by the applicable minimum wage. Although the defendants maintain that Mr. Moreno is not entitled to any overtime compensation, they do not dispute that the methodology proposed by the plaintiff would yield the amount of overtime compensation to which he would be entitled. Trial Tr. 171:6-17.

The plaintiff calculates unpaid overtime for the periods he worked from June 11 to October 21, 2018, as well as the periods from May 21 to June 10, 2018. While the evidence presented at trial established that Mr. Moreno was an employee of the defendants from June 11

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[13] Because the plaintiff was terminated in October 2018, the treble damages yields a smaller liquidated damages amount than the alternative 10 percent per day measure.

onward, there was little evidence presented regarding Mr. Moreno's work between May 21 and June 10. *See* Trial Tr. 57:5-8 (Mr. Moreno's testimony that he did not become a permanent employee until June 11, 2018). In the Court's view, the plaintiff failed to establish that his employment with the defendants began before June 11, and thus calculates overtime and awards damages beginning on June 11, 2018.

For the three-week period from June 11 to July 1, 2018 when the minimum wage was $12.50 per hour, Mr. Moreno received three checks totaling $2,568, representing 204 hours worked. *See* Joint Ex. 7. Under the DCMWA, he should have been paid overtime for 64 hours, meaning that he was not paid $525 in overtime wages for that period. For the sixteen-week period from July 2 to October 21, 2018, when the minimum wage was $13.25 per hour, Mr. Moreno received sixteen checks totaling $14,943, representing 1,127 hours worked. Under the DCMWA, he should have been paid overtime for 487 hours, meaning that he was not paid $3,226 in overtime wages for that period.

Thus, the total amount of overtime wages he was not paid for the entire period from June 11 to October 21, 2018 is $3,751. The plaintiff is entitled to that amount, as well as three times that amount ($11,254) as liquidated damages, for a total damages amount of $15,005.

CONCLUSION

For the foregoing reasons, it is this 17th day of June, 2020, hereby

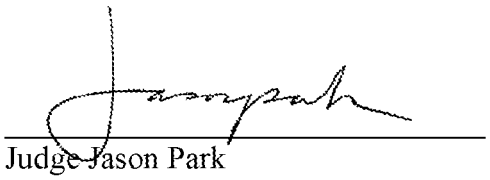
ORDERED that the defendants are jointly and severally liable to the plaintiff in the amount of $15,005; and it is further

ORDERED that the status hearing set for 2:00 p.m. this day is **VACATED**; and it is further

ORDERED that plaintiff's counsel shall meet and confer remotely with defense counsel regarding any request by the plaintiff for reasonable attorney's fees and costs; and it is further

ORDERED that if the parties are unable to agree on the amount of reasonable attorney's fees and costs to which the plaintiff is entitled under the DCMWA and DCWPCL, the plaintiff shall submit a fee petition on or before July 2, 2020 and the defendants shall submit their objections, if any, to the fee petition on or before July 13, 2020.

SO ORDERED.



Judge Jason Park
Superior Court of the District of Columbia

Copies to counsel of record via CaseFileXpress