

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

**DISTRICT OF COLUMBIA,**

**Plaintiff,**

**v.**

**SHIPT, INC.,**

**Defendant.**

**2022-CA-004909-B  
Judge Carl E. Ross  
Next Event: December 8, 2023  
Remote Initial Scheduling  
Conference**

**ORDER**

This matter comes before the Court upon Defendant Shipt, Inc.’s (“Shipt”) Motion to Dismiss. The Court has considered the pleadings, the relevant law, the representations made during the Oral Hearing on June 13, 2023, and the entire record therein, and for the following reasons, grants in part and denies in part Shipt’s Motion to Dismiss. D.C. has pled sufficient facts to assert viable claims for declaratory relief but fails to proffer sufficient facts, including the names of the individuals for whom it seeks to recover, to support its claims for damages.

**FACTUAL AND PROCEDURAL HISTORY**

Plaintiff District of Columbia (“D.C.”) commenced this case in October 2022 with a six-count Complaint against Defendant Shipt, Inc. The Complaint alleges that Shipt engages in employer misclassification to circumvent various legal obligations to its shoppers and the government. Compl. ¶¶ 1–2. Counts I through IV allege Shipt has violated the Minimum Wage Revision Act (“DCMWRA”), Wage Payment and Collection Law (“DCWPCL”), and Sick and Safe Leave Act (“SSLA”) and has, thereby, avoided paying additional compensation and providing paid leave to its shoppers. *See generally id.* Counts V and VI allege Shipt has violated the Universal Paid Leave Act and Workers’ Compensation Act and has, thereby, avoided both paying universal

paid leave taxes to the government and securing workers' compensation coverage. *See generally id.*

Shipt provides same-day delivery of groceries and other goods through its mobile app or website. *Id.* ¶ 13. D.C. alleges that Shipt is responsible for “sett[ing] the price of products sold through its website, which may vary from in-store prices, and provid[ing] an estimated delivery window and delivery updates to customers.” *Id.* ¶ 14. D.C. also alleges that customers pay Shipt directly. *Id.*

D.C. alleges that Shipt is intentionally misclassifying its shoppers as independent contractors when they should be classified as employees. *Id.* ¶ 7 Specifically, D.C. argues that Shipt exerts extensive control over its shoppers through its power to hire and fire, by dictating the means and methods of completing a shopping trip, and by supplying training materials that encourage economic dependence between the shopper and Shipt. *See id.* ¶¶ 24–51. First, D.C. alleges that Shipt retains extensive control over the hiring and firing of its shoppers. *Id.* ¶ 24. Shipt recruits prospective shoppers through advertising and requires them to complete an online application, attend a video interview, pass a criminal background check, and pass a motor vehicle report check before they are eligible for hire. *Id.* ¶¶ 15, 24. The alleged agreement signed between Shipt and its shoppers is drafted by Shipt and reserves with Shipt the power to “supervise shoppers’ work measured against specific standards and to discipline and fire them based on their performance.” *Id.* ¶ 25. D.C. further alleges that a shopper can be suspended or terminated under this agreement for:

failing to maintain a high enough customer rating; failing to maintain an on-time percentage of 90% or more for orders; failing to follow store policies or directives; claiming too many orders and failing to complete them within the requested delivery window, including orders that offer late forgiveness; repeatedly delivering wrong, missing, or damaged items on orders; inaccurately entering item information into the Shipt app, including incorrect substitutions; and more.

*Id.* ¶ 26. D.C. alleges that these guidelines are specifically dictated by Shipt. *Id.* ¶ 27.

D.C. also alleges that Shipt exerts regular control over the means and methods a shopper can use to complete an order. The Complaint also notes that Shipt prioritizes offering delivery orders to shoppers who sign up to complete orders for a particular period of time and only offers sixty seconds for a shopper to accept or decline a potential shopping trip. *Id.* ¶¶ 29–30. D.C. alleges that Shipt limits the information available to shoppers about the potential earnings and location of the delivery before a shopper accepts and that Shipt penalizes shoppers who too frequently decline orders. *Id.* ¶¶ 30–32. D.C. alleges that Shipt furnishes shoppers with Shipt branded t-shirts and closely monitors its shoppers, sometimes on a “minute-by-minute” basis. *Id.* ¶¶ 37–39. Shoppers are explicitly told that “[they] may not bring anyone with them, including another approved Shipt Shopper,” and that violating this policy could result in termination. *Id.* ¶ 50.

Finally, D.C. alleges that Shipt furnishes all training required to be a shopper and that no “prior experience or training” is required for an individual to become a shopper at Shipt. *Id.* ¶ 43. D.C. alleges that the optional training course provided by Shipt contains information on certain key metrics that are “effectively required for success” as a shopper. *Id.* ¶ 44. Shipt’s training materials allegedly direct shoppers on how to perform “every aspect of the job” including specific information on how to select produce and substitute proper items if the requested item is unavailable. *Id.* ¶ 45. D.C. alleges that Shipt exclusively controls what products can be purchased by customers and at what prices. *Id.* ¶¶ 47–48. Shoppers are prohibited from shopping for or delivering products that are not purchased through Shipt and cannot furnish a copy of the in-store receipt or make mention of in-store prices of any products to the customer. *Id.* D.C. alleges that “Shipt is a shopping and delivery company and without shoppers, there would be no Shipt.” *Id.* at 51.

Shipt filed a Motion to Dismiss on February 5, 2023, seeking dismissal of Counts I through IV. In the Motion, Shipt offers five arguments in support of dismissal. First, Shipt argues that Counts I and II, DCMWRA claims for failing to pay minimum wage and overtime, are deficient because D.C. fails to plead “any allegations” to establish that the alleged protected shoppers regularly spend more than fifty percent of their working time in the District of Columbia or that the employment is based in the District of Columbia and a substantial amount of working time is spent working in the District of Columbia, where not more than fifty percent of working time is spent in any particular state. *See Mot.* at 5.

Next Shipt argues that D.C.’s minimum wage claim for alleged failures to pay minimum wage, an additional hour for split shifts, and daily minimum wage (Count I) fails because D.C. does not include specific allegations to individualized shoppers and only identifies a “body of theoretical individuals.” *Id.* at 7–8. Further, Shipt argues that because the DCMWRA contains provisions increasing the minimum wage, D.C. must allege when the shoppers were paid in order to compare the alleged wage against the minimum wage in effect at the time. *Id.* at 8. Shipt argues that the split-shift claim is insufficient because there are no specific allegations that any particular shopper was required to work a split shift or that Shipt scheduled any shoppers to work a split shift, nor did any shopper actually work hours that could be deemed a split shift. *Id.* at 8–9. Finally, with regards to Count I, Shipt argues that D.C. cannot sustain its claim without specific allegations that a shopper was ever “instructed or required” to report to work on a schedule set by Shipt, that a shopper was given no work or less than four hours of work on any such workday, and that the shopper was not otherwise scheduled for less than four hours of work that day. *Id.* at 9. With regards to the overtime claim (Count II) Shipt argues that D.C. must specifically allege individual shoppers “actually worked in excess of 40 hours in a single workweek” where Shipt failed to pay

the necessary overtime wages. *Id.* at 9–10. Further, Shipt re-visits its argument that D.C. is required to identify individual shoppers that Shipt has wronged. *See id.* at 11.

Shipt supports its claim that Count III, alleging failure to provide paid sick leave under the SSLA, must be dismissed by stating that D.C. again fails to plead enough details to meet the pleading standard. *Id.* at 11–12. Specifically, Shipt argues that D.C. is required to specifically plead the number of shoppers Shipt employs, specific shoppers employed by Shipt, and the particular shoppers that worked in excess of ninety days – the required period before qualifying under the SSLA. *Id.* at 12.

Finally, Shipt argues that the fourth claim, Shipt’s alleged failure to pay wages duly owed under the DCWPCL, fails for two reasons. First, Shipt makes the same argument that it made in Counts I through III alleging that because D.C. fails to identify specific shoppers, the allegations do not meet the pleading standard. *Id.* at 12. Shipt argues that in the same ways Counts I through III are deficient, there are no allegations that would support any shopper having made less than minimum wage, qualifying for overtime without receiving compensation for it, or qualifying for safe leave and being denied those benefits from Shipt, all violations of the DCWPCL. *Id.* at 12–13. Shipt’s second argument in support of dismissing the DCWPCL claim is that Shipt’s alleged failure to pay for business expenses does not constitute wages and is therefore not a form of money owed that is covered by the DCWPCL. *Id.* at 13.

D.C. filed its Opposition to Shipt’s Motion to Dismiss, arguing that, at its core, the case stems from a misclassification scheme. *See* Opposition at 4–5. D.C. argues that it has proffered significant and extensive facts to satisfy the economic reality test used to determine employment classification and that Shipt systemically misclassifies its shoppers as independent contractors. *Id.* D.C. argues that this is sufficient to meet the plausibility standard. *See id.* at 7–8. D.C. further

argues that Shipt is attempting to create a heightened pleading standard which demands D.C. proffer details that speak to factual questions, which are properly reserved for resolution through discovery. *Id.* at 7–8. D.C. then argues that the case law proffered by Shipt does not suggest D.C. must plead anything more than its allegation that Shipt “employs hundreds of shoppers to deliver orders in the District” at this stage. *Id.* at 8–9. D.C. makes a similar argument in that its SSLA claim is not defeated by the fact that D.C. did not specifically state that any shoppers worked for Shipt for at least ninety days (a prerequisite to enjoying the protections of the SSLA) or make any allegations that any shoppers requested sick leave and were denied. *Id.* at 9–10.

In response to Shipt’s argument that failing to identify specific shoppers and specific instances of wrongdoing renders the Complaint deficient, D.C. points to case law asserting that its only obligation was to make clear the specific act of wrongdoing the defendant engaged in and a “descriptive” identity of those who were wronged. *Id.* at 12. D.C. argues that Shipt is sufficiently put on notice of its claim to recover unpaid travel and tool expenses, even if it incorrectly cited to the DCWPCL instead of the DCMWRA. *Id.* at 13–14.

On March 27, 2023, Shipt filed an opposed Motion to Stay Discovery while the instant Motion was pending. On May 3, 2023, the Court granted the motion in part, permitting discovery to proceed *only* on inquiries related to Counts V and VI of the Complaint. On June 13, 2023, the Court held an Oral Hearing on the instant Motion.

## **LAW**

### **I. Motion to Dismiss**

A motion to dismiss for failure to state a claim should be granted under 12(b)(6) if the pleadings do not satisfy the standard under Rule 8(a). *See generally Potomac Dev. Corp. v. D.C.*, 28 A.3d 531 (D.C. 2011); D.C. Super. Ct. Civ. R. 8(a), 12(b)(6). A pleading must contain a “short

and plain statement of the claim showing that the pleader is entitled to relief.” *See id.* at 8(a); *Ashcroft v. Iqbal*, 556 U.S. 662, 677–78 (2009) (explaining Rule 8 of the Federal Rules of Civil Procedure, which D.C. Superior Court Rule of Civil Procedure 8 closely mirrors). The Complaint must be “specific enough to give the defendant fair notice of what the [ ] claim is and the grounds upon which it rests.” *Tingling-Clemmons v. District of Columbia*, 113 A.3d 241, 245 (D.C. 2016) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)) (internal quotations omitted); *Galloway v. Chugach Gov’t Servs.*, 199 F. Supp. 3d 145, 250 (D.D.C. 2016). Courts must accept as true all factual allegations in a complaint. *Grayson v. AT&T Corp.*, 15 A.3d 219, 229 (D.C. 2011).

A plaintiff who wishes to survive a motion to dismiss under D.C. Superior Court Rule of Civil Procedure 12(b)(6) must provide “enough facts to state a claim to relief that is plausible on its face.” *See Twombly*, 550 U.S. at 570 (plaintiffs must “[nudge] their claims across the line from conceivable to plausible”); *Mazza v. Housecraft LLC*, 18 A.3d 786, 791 (D.C. 2011) (holding that *Twombly* and *Iqbal* apply in this jurisdiction because D.C. Super. Ct. R. Civ. P. 8(a) is identical to its federal counterpart). Whether a complaint states a plausible claim for relief is a context-specific task that obliges the court to draw on its “judicial experience and common sense.” *Potomac Dev. Corp.*, 28 A.3d at 545 (citing *Iqbal*, 556 U.S. at 678). The “plausibility” pleading standard does not require “detailed factual allegations” at the initial litigation stage of filing the complaint, but “it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *See Iqbal*, 556 U.S. at 678. Pleadings that offer “labels and conclusions” or “a formulaic recitation of the elements of a cause of action” are not sufficient. *Id.* A claim is plausible on its face “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.*

### **A. Pleading Requirements in Wage Disputes**

The DCMWRA is modeled after the federal Fair Labor Standards Act (“FLSA”). *See Ramirez v. Nooshi Capitol Hill, inc.*, No. 4510-B 2022 D.C. Super. LEXIS 12 at \*5 (May 26, 2022) (citing *Williams v. W.M.A. Transit Co.*, 472 F.2d 1258, 1261 (D.C. Cir. 1972)); *see generally* D.C. Code §§ 32-1002–1015. “[The D.C.] Court [of Appeals] is not bound by federal courts interpreting federal law, but [it] generally consider[s] applicable federal court precedent as persuasive authority when interpreting a local provision that is substantially patterned on a federal statute.” *Toler v. United States*, 198 A.3d 767, 773 (D.C. 2018) (quoting *Fraternal Order of Police, Metro. Police Dep’t Labor Comm. v. District of Columbia*, 52 A.3d 822, 829 (D.C. 2012)). Indeed, the D.C. Court of Appeals has looked to interpretations of the FLSA when evaluating claims brought under the DCWPCL. *See Steinke v. P5Sols., Inc.*, 282 A.3d 1076, 1084 (D.C. 2022) (“[B]ecause of the similarity between the employer-liability provisions of the DCWPCL and those of the federal Fair Labor Standards Act [], our sister federal courts have looked to the FLSA test for ‘employee’ status to assist in such a determination under the DCWPCL.”). Whether an individual is an employee within the meaning of the FLSA is a legal question. *Id.* at 1085 (citing *Morrison v. Int’l Program Consortium, Inc.*, 253 F.3d 5, 10 n.3 (D.C. Cir. 2001)) (noting that the *Morrison* Court acknowledged the possibility of there being underlying questions of fact that need to be resolved by the fact finder when concluding that the ultimate decision regarding a worker’s status as an employee is a question of law).

The pleading requirements in FLSA cases do not give rise to a heightened standard, nor does it require a similar particularity to a claim alleging fraud, which requires providing “notice of the ‘who, what, when, where, and how’” of the alleged wrongdoing. *See Galloway*, 199 F. Supp. 3d at 150 (comparing the pleading standards for FLSA cases with the heightened pleading standard

for actions alleging fraud by Federal Rule of Civil Procedure 9(b)). A claim under the FLSA should not be treated in a manner different from any other claim. *Id.* (applying the pleading standard from Rule 8(a) of the Federal Rules of Civil Procedure). “The district courts are split, regarding how this pleading requirement applies to claims arising under FLSA. . . . 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.” *Ramirez*, 2022 D.C. Super. LEXIS at \*4–5 (internal quotations and citations omitted).

## **II. Declaratory Relief**

“The Declaratory Judgment Act permits a court to determine the legal rights and relations of parties, ‘when there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.’” *3984 Penn, LLC v. Quasar Prop. Mgmt. & Real Estate, LLC*, No. 2022-CA-200-B 2022 D.C. Super LEXIS 4 at \*6, (April 21, 2022) (quoting *Glenn v. Fay*, 222 F. Supp. 3d 31, 36 (D.D.C. 2016)); *see also* D.C. Super. Ct. R. Civ. P. 57 Comment (noting that the rule is nearly identical to its federal counterpart).

A court cannot grant declaratory relief unless there is an actual controversy. *See Maryland Casualty Co. v. Pacific Coal & Oil Co.*, 312 U.S. 270, 272–73 (1941) (emphasizing that the distinction between a hypothetical or abstract question and an actual controversy contemplated by the Declaratory Judgment Act is a case specific inquiry). However, declaratory relief may not be appropriate “where an action, breach or damage has already occurred and there is no future uncertainty to resolve by the courts.” *3984 Penn*, 2022 D.C. Super LEXIS at \*6 (dismissing the

plaintiff's count for declaratory judgment because the contractual relationship no longer existed between the parties and as a result, there was no longer an issue of immediacy). Declaratory judgment can be a proper form of relief when the judgment will serve a useful purpose in clarifying the legal relations at issue and/or the judgment will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding. *See Glenn*, 222 F. Supp. 3d at 36.

### **III. Minimum Wage Revision Act**

The DCMWRA codifies numerous employee rights related to wages for employees in the District of Columbia. *See generally* D.C. Code §§ 32-1002–1015. Among these rights are a right to a minimum wage, right to overtime compensation at a rate of 1.5 times an employee's wage for any hours in excess of forty hours during a work week, right to an additional hour of work if an employee works a split shift, and right to a minimum compensation of four hours on any day where an employee regularly scheduled for a shift of four hours or longer reports to work and either receives no work or less than four hours of work. *See* §§ 32-1003(a), -1003(c), -1010(a)(1); D.C. Code Mun. Reg. §§ 7-906, -907. A person is considered employed in D.C. when either "[t]he person regularly spends more than 50% of their working time in the District of Columbia" or "[t]he person's employment is based in the District of Columbia and the person regularly spends a substantial amount of their working time in the District of Columbia and not more than 50% of their working time in any particular state." *See* D.C. Code § 32-1003(b). Under the DCMWRA it is unlawful for any employer to "[v]iolate any of the provisions of this subchapter or any of the provisions of any regulation issued under this subchapter." D.C. Code § 32-1010(a)(1).

### **IV. Sick and Safe Leave Act**

The SSLA mandates that "[a]n employer with 100 or more employees shall provide for each employee not less than one hour of paid leave for every 37 hours worked, not to exceed 7 days per calendar year," "[a]n employer with at least 25, but not more than 99, employees shall

provide for each employee not less than one hour of paid leave for every 43 hours worked, not to exceed 5 days per calendar year,” and “[a]n employer with 24 or fewer employees shall provide not less than one hour of paid leave for every 87 hours worked, not to exceed 3 days per calendar year.” D.C. Code § 32-531.02. An employer who willfully violates the SSLA is subjected to “a civil penalty for each affected employee” in the amount of \$1,000 for the first offense, \$1,500 for the second offense, and \$2,000 for the third offense and each offense thereafter. § 32-531.12(c).

## **V. Wage Payment and Collection Law**

The DCWPCL requires an employer to pay “all wages earned” to its employees on regular paydays occurring at least twice during every calendar month. D.C. Code § 32-1302. The DCWPCL also explicitly enumerates the D.C. Office of the Attorney General’s right to bring a civil action against an employer violating the DCWPCL, DCMWRA, or the SSLA and seek “restitution, [] injunctive, compensatory, or other authorized relief for any individual or for the public at large.” § 32-1306.

## **VI. Definition of Employee under D.C. Wage and Hour Laws**

### **A. Under the DCMWRA**

Under the DCMWRA, an employee “includes any individual employed by an employer” with the exception of certain volunteer work, specific positions within a religious organization, or casual babysitters. *See* D.C. Code § 32-1002(2). The term employer “includes the District of Columbia government, or 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, but shall not include the United States government.” D.C. Code § 32-1002(3). Additionally, the term employ “includes to suffer or permit to work.” D.C. Code § 32-1002(1A). Because the DCMWRA is modeled after the federal

FLSA, the Court of Appeals permits the use of applicable federal court precedents as persuasive authority. *See Toler*, 198 A.3d at 773.

Courts use an “economic reality” test to determine whether an individual is engaged in an employer-employee relationship. *Moreno v. A. Wash & Assocs.*, No. 2018-CA-8055-B 2020 D.C. Super. LEXIS 19 at \*21–22 (June 18, 2020). The test is made up of the following six factors: (1) the nature and degree of the alleged employer’s control as to the manner in which the work is to be performed; (2) the alleged employee’s opportunity for profit or loss depending on his managerial skill; (3) the alleged employee’s investment in equipment or materials required for his task, or his employment of workers; (4) whether the service rendered requires a special skill; (5) the degree of permanency and duration of the working relationship; and (6) the extent to which the service rendered is an integral part of the alleged employer’s business. *Steinke*, 282 A.3d 1076, 1084–1085 (citing *Morrison*, 253 F.3d at 11; *Sec’y of Labor v. Lauritzen*, 835 F.2d 1529, 1534–35 (7th Cir. 1987)). “No one factor standing alone is dispositive and courts are directed to look at the totality of the circumstances and consider any relevant evidence.” *Morrison*, 253 F.3d at 11. “The final and determinative question must be whether the totality 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.” *Id.* (quoting *Usery v. Pilgrim Equip. Co.*, 527 F.2d 1308, 1311–12 (5th Cir. 1976)).

## **B. Under the SSLA**

The SSLA defines an employee as “any individual employed by an employer” excluding certain volunteers, individuals in various positions within a religious organization, casual babysitters, students, healthcare workers that opt into a premium pay program, or substitute teachers and aids employed by D.C. Public Schools for thirty or fewer consecutive workdays. D.C. Code § 32-531.01(2). An employer is defined as a “legal entity . . . who directly or indirectly . . .

employs or exercises control over the wages, hours, or working conditions of an employee.” D.C. Code § 32-531.01(3)(A).

### **C. Under DCWPCL**

Like the DCMWRA, the DCWPCL does not provide a clear definition for an employer-employee relationship. Under the statute, an employer “includes every individual, partnership, firm, general contractor, subcontractor, association, corporation . . . employing any person in the District of Columbia,” and an employee is “any person suffered or permitted to work by an employer.” D.C. Code § 32-1301(1B)–(2). An independent contractor is not considered an employee for purposes of the DCWPCL. *Steinke*, 282 A.3d at 1083 (citing *Sanchez v. Magafan*, 892 A.2d 1130, 1134 (D.C. 2006)). The District of Columbia Court of Appeals has not prescribed a statute-specific test to distinguish an independent contractor from an employee under the DCWPCL. *See Steinke*, 282 A.3d at 1084. Instead, the Court of Appeals relies on the same “economic reality” test from the FLSA, which is also used to interpret the DCMWRA. *Id.* at 1084–85 (citing *Thompson v. Linda & A., Inc.*, 779 F. Supp. 2d 139, 146 (D.D.C. 2011); then citing *Ventura v. Bebo Foods Inc.*, 738 F. Supp. 2d 1, 5 n.2 (D.D.C. 2010); and then citing *Donovan v. DialAmerica Marketing, Inc.*, 757 F.2d 1376, 1382 (3d Cir. 1985)).

## **ANALYSIS**

### **I. The District of Columbia has adequately stated a claim for declaratory and injunctive relief under the Minimum Wage Revision Act, the Sick and Safe Leave Act, and the Wage Payment and Collection Law.**

The District of Columbia has pled sufficient facts to state a claim for declaratory relief under the Minimum Wage Revision Act, the Sick and Safe Leave Act, and the Wage Payment and Collection Law. Here, D.C. is alleging that Shipt has purposefully misclassified its shoppers as independent contractors in an attempt to avoid paying and providing certain legal rights and benefits to them. Compl. ¶ 1. One of the reliefs sought in the suit is a declaratory judgment that

“Defendant Shipt’s worker misclassification scheme as alleged [therein] is unlawful and that Defendant Shipt’s shoppers are its employees as defined by the DCMWRA, SSLA, DCWPCL. . .” *Id.* ¶ 18.

The District of Columbia has proffered sufficient facts to demonstrate all three requirements for declaratory relief. First, D.C. has pled facts to demonstrate a substantial controversy exists under all three statutes (DCMWRA, SSLA, and DCWPCL). All three statutes provide a number of employment rights to individuals in an employer-employee relationship. *See generally* D.C. Code §§ 32-1002(2), -531.01, -1501. Shipt currently classifies its “shopper workforce” as independent contractors, which do not receive protections and legal rights under the DCMWRA, SSLA, and DCWPCL. Compl. ¶ 7. In support of its allegation that Shipt’s shoppers are actually employees, D.C. proffers lengthy factual allegations regarding Shipt’s power to hire and fire shoppers, its control and supervision over the ways shoppers obtain and complete orders, and the ultimate economic dependence shoppers have on Shipt. *See* Compl. ¶¶ 22–51. Denial of extensive employment rights under all three of these statutes hinges on the misclassification of shoppers as non-employees and is a sufficient controversy.

**A. D.C. proffers significant facts in support of its claim that Shipt’s shoppers fall under the definition of employees under the DCMWRA and DCWPCL.**

D.C. has proffered significant facts to demonstrate a substantial controversy sufficient to obtain declaratory judgment regarding whether Shipt’s shoppers are, by definition, employees under the DCMWRA and DCWPCL. First, D.C. lays out extensive factual allegations demonstrating how Shipt controls its shoppers in all aspects of order fulfillment. Shoppers are only able to obtain orders through sixty-second offers on its app and Shipt penalizes its shoppers that do not sign up in advance to be available for delivery orders during a particular shift and shoppers who decline to take orders too often. Compl. §§ 28–30. Further, Shipt includes detailed allegations

about strict guidelines shoppers must adhere to including periodic drug testing, frequent “check-ins” with Shipt to inform Shipt of where a shopper is in the shopping process, and prohibitions on bringing along another individual on shopping trips. *Id.* ¶¶ 34, 39, 50. A shopper’s failure to comply with Shipt’s performance standards subjects them to disciplinary action. *Id.* at 37.

The second factor is a consideration of a worker’s opportunity for profit or loss depending on their managerial skill. D.C. alleges that shoppers are economically dependent on Shipt and lack individual opportunities for profit and loss. *Id.* ¶ 49. While the Court is limited to considering only the facts proffered by D.C. in its complaint, the facts suggest that shoppers do not have any investment in Shipt as a business, further suggesting that shoppers are employees of Shipt instead of independent contractors. *See Brock v. Superior Care, Inc.*, 840 F.2d 1056, 1059–60 (2d. Cir. 1988) (affirming the trial court’s decision that the nurse’s lack of opportunity for profit or loss and negligible investment in the business weighs heavily in favor of the conclusion that the nurses are employees).

The third factor considered is the alleged employee’s investment in equipment or materials required to complete their tasks, and their employment of any workers. D.C. alleges that Shipt expressly forbids a shopper from obtaining help with completing their trips, and supplies shoppers with branded clothing that they are encouraged to wear while completing shops. *See Compl.* ¶¶ 35, 50. In contrast, D.C. acknowledges that shoppers are presently required to provide the equipment needed to complete orders – their own vehicle, gas, and smart phone. *See id.* ¶ 90. While requiring shoppers to pay for their own equipment does generally lean towards a classification as an independent contractor, D.C. argues that these expenses are being wrongfully burdened on the shoppers in Count IV of the Complaint. *See id.* ¶¶ 86–93. (alleging that Shipt is violating the DCWPCL by failing to reimburse these costs). In any event, the competing facts

highlight the substantial controversy between parties having adverse legal interests and underline the Court’s ability to issue a declaratory judgment.

D.C. also proffers sufficient facts to establish that Shipt’s shoppers do not require much skill or independent initiative to perform the deliveries. In support of this, D.C. alleges that Shipt does not require shoppers to have “any prior experience or training at all” and instead provides all necessary training, including “detailed instructions for how to complete deliveries and how to communicate with Shipt customers about their orders.” *See* Compl. ¶¶ 43–45. These trainings are “effectively required for success” as a shopper. *Id.* ¶ 44.

Importantly, Shipt is also alleged to have extensive control over a shopper’s ability to continue the working relationship. *See id.* ¶¶ 24–42. After completing an in-depth hiring process, shoppers are subject to a variety of conditions and standards, where Shipt maintains control to discipline through de-activation of their shopper profile temporarily, or permanent termination from being a shopper through Shipt. *Id.* ¶¶ 24–27, 30, 36–37, 40–41, 50.

Finally, D.C. argues that “shoppers are Shipt’s business. Shipt is a shopping and delivery company and without shoppers, there would be no Shipt.” *Id.* ¶ 51. These extensive pleadings regarding the nature of work Shipt’s shoppers perform are more than sufficient to demonstrate a current controversy exists as to whether Shipt’s shoppers are employees under the DCMWRA.

**B. D.C. proffers sufficient facts to suggest Shipt’s shoppers fall under the definition of employee under the Safe and Sick Leave Act.**

The Sick and Safe Leave Act defines an employee as “any individual employed by an employer” where an employer is defined as a “legal entity . . . who directly or indirectly . . . employs or exercises control over the wages, hours, or working conditions of an employee.” D.C. Code §§ 32-531.01(2), -531.01(3)(A). Like its DCMWRA and DCWPCL claims, D.C. proffers significant facts in its Complaint that support a current controversy exists as to whether Shipt’s

shoppers are employees under the SSLA. With regards to Shipt's control over its shoppers' wages, D.C. alleges Shipt's shoppers are only able to accept work through the Shipt app. Compl. ¶ 17. Shoppers are only provided a potential earnings range when prompted to accept or decline a delivery, and the shopper has no idea of their final earnings until the order is delivered and the customer leaves a tip. *Id.* ¶¶ 17, 20. D.C. alleges that Shipt uses an algorithm to determine the earnings for a shopping trip and shoppers are not afforded any opportunity to negotiate a different rate. *Id.* at 20. Further, Shipt allegedly controls the means of how its shoppers are paid, using a direct deposit once a week based on the total number of deliveries a shopper provides. *Id.* Shoppers wanting pay for deliveries already completed before the weekly pay day must pay an additional fee. *Id.*

D.C. also alleges that Shipt exerts extensive control over the hours its shoppers may work. D.C. describes the delivery assignment process as being preferential to shoppers who sign up in advance for a delivery shift for which they will be available to accept orders. *Id.* ¶ 16. D.C. alleges that shoppers are given preferential treatment when they sign up in advance for these shifts, and a shopper who has not signed up for an available window is "unlikely to be able to obtain work during that window." *Id.* ¶ 29.

Finally, D.C. proffers facts supporting that Shipt controls the working conditions of its shoppers. Shipt maintains strict guidelines over its shoppers' conduct during a delivery. D.C. alleges that this includes surveilling a shopper's location and speed while driving, providing uniforms including "Shipt" branded t-shirts for shoppers to wear while completing orders, requiring consistent and near constant communication with Shipt about the status of a delivery, and explicit restrictions on completing orders with the assistance of another individual, including

another shopper. *Id.* ¶¶ 35, 38–40, 50. The extensive pleadings underline that there is a substantial controversy regarding whether shoppers are employees of Shipt under the SSLA.

D.C. has also proffered sufficient facts to determine that the parties have adverse legal interests, and there is sufficient immediacy and reality to warrant declaratory judgment. The District of Columbia and Shipt are parties with adverse legal interests, as D.C. is seeking a classification of Shipt’s shoppers as employees, subjecting Shipt to additional legal obligations under the DCMWRA, SSLA, and WPCL.

D.C. has also established the sufficient immediacy and reality of its claims to warrant declaratory judgment. Shipt allegedly continues to employ “hundreds” of shoppers in the District of Columbia and is a wholly owned subsidiary of Target Corporation, which owns and operates retail stores in the District of Columbia. *Id.* ¶¶ 12–13, 21. D.C.’s allegations that the misclassification allows Shipt to avoid providing basic employment rights and protections to its shoppers are both immediate and ongoing. D.C. accordingly has pled a sufficient claim for declaratory relief to overcome a motion to dismiss brought under Rule 12(b)(6).

Finally, if the District of Columbia is successful in obtaining declaratory relief, in connection with its allegation of a worker misclassification scheme, then it may be entitled to injunctive relief enjoining Shipt from continuing to misclassify its workforce.

**II. The District of Columbia fails to plead sufficient facts to recover damages for alleged violations under the Minimum Wage Revision Act, Sick and Safe Leave Act, and the Wage Payment and Collection Law.**

D.C. fails to plead sufficient facts to recover damages for alleged violations under the DCMWRA, SSLA, and DCWPCL. While the detailed allegations that Shipt has engaged in a misclassification scheme may be sufficient to raise a viable claim for declaratory relief, courts have been careful to distinguish those claims from the pleading requirements necessary to obtain monetary relief on behalf of allegedly aggrieved individuals. At a minimum, D.C. must identify

the individuals whom the District attempts to obtain liquidated damages, compensatory damages, punitive damages, and statutory penalties on behalf of by name. In that D.C. fails to plead sufficient facts to recover damages for the alleged violations those claims for damages must be dismissed. *See Twombly*, 550 U.S. at 570.

**A. The District of Columbia must identify individuals by name in order to recover damages on their behalf.**

Pleading a misclassification scheme, without more, is not sufficient to recover damages for alleged violations of applicable wage and hour laws. While courts have determined that pleading a misclassification scheme, similar to the one pled by D.C., may be sufficient to obtain declaratory relief, those courts have been careful to distinguish those cases from the pleading requirements necessary to obtain individualized relief. *See Acosta v. Jani-King of Oklahoma, Inc.*, 905 F.3d 1156, 1159-61 (10th Cir. 2018) (“Lastly, as the Secretary argues, the individual identities of the Janitorial Cleaners are not necessary at the pleading stage because the complaint is not seeking any individualized relief.”); *Healey v. Uber Techs., Inc.*, No. 2084CV01519-BLS1 2021 Mass. Super. LEXIS 28, \*10-11 (Mass. Super. Ct. March 25, 2021) (“The Attorney General may therefore seek a declaratory judgment without having to allege or show that any drivers have suffered actual injury from being misclassified. . . .These allegations, together with the rest of the complaint, are sufficient to state a claim for the requested declaratory relief, even if they would not provide sufficient detail to state a claim for non-payment of wages or for criminal or civil penalties under the independent contractor statute.”).

At a minimum D.C. must identify the specific individuals for whom it attempts to recover damages. While D.C. cites a number of wage and hour cases in support of the general proposition that its pleadings need not be detailed, in each of those cases the defendant had notice of the identity of the individuals for whom they allegedly failed to comply with applicable D.C. wage

and hour laws. Indeed, dismissing D.C.’s claims for individual relief for its failure to identify the individuals for whom it is seeking to obtain relief on behalf of is consistent with other court rulings. *See United States v. Philip Morris, Inc.*, 153 F. Supp. 2d 32, 38-39 (D.D.C. 2001) (the Government’s “ability to succeed on the merits is wholly dependent on its meeting the substantive requirements of state law, *i.e.*, showing the existence of persons injured by a tortfeasor as mandated by state tort law. Otherwise, the Government would have no ‘shoes’ to ‘step into,’ and therefore no MCRA action to maintain. As the existence of legally injured persons is a prerequisite for and an essential element of the Government’s MCRA claim, it must be pleaded in the complaint. Given that the Government has not identified in its complaint the injured persons on whose behalf it seeks to recover under MCRA, the Court concludes that the MCRA Count was properly dismissed in its entirety.”). In that D.C. fails to identify the specific individuals for whom it seeks individual relief, its claims for damages must be dismissed.

**B. The District of Columbia has failed to plead other facts necessary for relief.**

D.C. has also failed to plead other facts that are necessary to recover under the applicable wage and hour laws. The DCMWRA only applies to persons who are “employed in the District of Columbia.” Under D.C. law individuals are employed in the District of Columbia if (1) “[t]he person regularly spends more than 50% of their working time in the District of Columbia”; or (2) “[t]he person’s employment is based in the District of Columbia and the person regularly spends a substantial amount of their working time in the District of Columbia and not more than 50% of their working time in any particular state.” D.C. Code § 32-1003(b); *Valdez v. Ve-H2 Gen. Servs. LLC*, No. GJH-21-2893 2022 U.S. Dist. LEXIS 16975 at \*14 (D. Md. Sept. 19, 2022) (“Although there is a dearth of case law interpreting the DCMWRA, it ‘has, since its enactment, been confined explicitly to individuals working principally within the District.’ And this provision of the DCMWRA ‘limiting its reach to employees working primarily in the District appears among

that statute’s substantive requirements.” (quoting *Lincoln-Odumu v. Med. Fac. Assocs., Inc.*, No. CV 15-1306 (BAH), 2016 U.S. Dist. LEXIS 88659 at \*7-8 (D.D.C. July 8, 2016))).

While the Complaint makes the general allegation that Shipt employed shoppers who were employees under the DCMWRA such general allegations are not specific enough to establish that the individuals fall under the protection of the DCMWRA. See Compl. ¶¶ 72, 80. Accordingly, the District of Columbia’s claim for relief is insufficient. See *Valdez*, 2022 U.S. Dist. LEXIS 16975 at \*17-18 (dismissing the plaintiff’s case for failing to provide details demonstrating that his work met the DCMWRA’s definition of employed in the District of Columbia); cf *Mehta v. Syngenta Corp.*, 1:19-cv-3011-RCL 2020 U.S. Dist. LEXIS 79637 at \*10–12 (D.D.C. May 6, 2020) (evaluating D.C. Mun. Regs. Tit. 7 § 3299 and determining that the plaintiff sufficiently alleged that she was an employee as defined by D.C. law).

**C. Shipt’s remaining arguments regarding the District of Columbia’s alleged pleading deficiencies are without merit.**

Shipt’s remaining arguments regarding the District of Columbia’s alleged pleading deficiencies are without merit.

**a. D.C. is not required to proffer additional details regarding specific dates, hours worked, or wages owed to raise a viable claim for relief.**

Contrary to Shipt’s argument, D.C. is not required to proffer additional details regarding specific dates, hours worked, or wages owed to raise a viable claim for relief. While D.C. must, at a minimum, identify the individuals for whom it seeks relief, the additional details regarding the specific dates each individual worked, the hours each individual worked, and the specific amount of wages owed are not necessary for the District to present a short and plain statement entitling it to relief. See *Ctr. for Inquiry, Inc. v. Walmart, Inc.*, 283 A.3d 109, 117 (D.C. 2022) (“At the pleading stage, a plaintiff’s burden ‘is not onerous.’” (quoting *Poola v. Howard Univ.*, 147 A.3d 267, 276 (D.C. 2016))); see also *Twombly*, 550 U.S. at 545, 555 (The plausibility standard only

requires a plaintiff to put forth enough facts “to raise a reasonable expectation that discovery will reveal evidence” and be “specific enough to give the defendant fair notice of what the [ ] claim is and the grounds upon which it rests.”). Indeed, similar arguments have been rejected by other courts. See *Driscoll v. George Washington Univ.*, 42 F. Supp. 3d 52, 58-59, (D.D.C. 2012) (“Where a complaint alleges, as Driscoll’s proposed second amended complaint does, that overtime hours were worked but overtime wages were not received, it sufficiently ‘state[s] a claim to relief that is plausible on its face.’ An allegation of a specific number of hours adds nothing as far as the plausibility standard is concerned, for there is no *de minimis* exception or other threshold applicable to a FLSA overtime claim. Furthermore, requiring Driscoll to allege the number of overtime hours he worked without compensation could be pointless when that figure may be subject to amendment after discovery and could also be contested at trial. The Court therefore concludes that Driscoll’s First Cause of Action will not be dismissed.”); *Galloway v. Chugach Gov’t Servs.*, 199 F. Supp. 3d 145, 150, (D.D.C. 2016) (“There is no *de minimis* exception to the FLSA, and thus a failure to identify the full extent of the violation does not render a claim implausible. And, although it might aid an FLSA defendant to know the actual number of overtime hours that the plaintiff claims to have worked, that information is not necessary to put the defendant on notice about the nature of the plaintiff’s claim.”).

Accordingly, D.C.’s allegations that “[s]hoppers were and continue to be paid sub-minimum hourly wages, which are further depressed after factoring in unpaid time spent training and being engaged to wait for Shipt’s benefit,” Complaint at ¶¶ 71, 73; that “Shipt has violated and continues to violate the MWRA by failing to pay shoppers one additional hour at the minimum wage whenever shoppers work a split shift,” *Id.* at ¶¶ 74-75; and that Shipt fails to pay its shoppers for “at least four hours of work when [shoppers] are regularly scheduled for four hours of work a

day and report to work, but are given less than four hours of work,” *Id.* at ¶¶ 76-77 may be sufficient if coupled with additional information regarding the identity of the individuals for whom D.C. seeks to recover. Defendant’s argument that D.C. must plead specifics as to when, where, and the amount in unpaid wages that were duly owed or denied to shoppers is without merit.

**b. D.C. is not required to proffer additional details regarding sick leave to raise a viable claim for relief under the Sick and Safe Leave Act.**

Likewise, D.C. is not required to proffer additional details regarding the sick leave of the individuals for whom it attempts to recover to raise a viable claim for relief under the Sick and Safe Leave Act. Under the SSLA, Shipt is required to provide paid sick leave for qualifying employees with a specific rate of accrual dependent on how many employees Shipt employs. *See* D.C. Code § 32-531.02. The minimum amount required under the act (for an employer with twenty-four or fewer employees) is “one hour of paid leave for every eighty-seven hours worked, not to exceed three days.” D.C. Code § 32-531.02(3). Shipt argues that the District of Columbia must plead more detailed allegations regarding the class of individual affected to sustain its claim. In the instant case, however, D.C. has pled that Shipt failed to pay any sick leave and similar to the overtime allegations, the District’s failure to allege the specific amount of sick leave each individual shopper may be entitled to does not prove fatal because those amounts may change in discovery, requiring repeated amendments to the Complaint. *See Driscoll*, 42 F. Supp. 3d at 58-59. Accordingly, D.C. is not required to proffer additional details regarding sick leave to raise a viable claim.

For the foregoing reasons, the Court grants in part and denies in part Shipt’s Motion to Dismiss.

**ACCORDINGLY**, it is by the Court this 30th day of August 2023, hereby

**ORDERED** that Defendant's Motion to Dismiss is **GRANTED IN PART** with regards to Plaintiff's Claims for monetary damages in Counts I, II, III, and IV; and it is further

**ORDERED** that Plaintiff's Claims for monetary damages in Counts I, II, III, and IV are **DISMISSED without prejudice**; and it is further

**ORDERED** that Defendant's Motion to Dismiss is **DENIED IN PART** with regards to declaratory relief in Counts I, II, III, and IV; and it is further

**ORDERED** that Plaintiff is granted leave to file an amended Complaint on or before Monday, October 16, 2023; and it is further

**ORDERED** that Defendant may file a response to the amended Complaint on or before Thursday, November 16, 2023; and it is further

**ORDERED** that the remote initial scheduling conference on Friday, September 1, 2023, be continued until Friday, December 8, 2023 at 10:00 a.m. in Virtual Courtroom 200.

**SO ORDERED.**

  
**Judge Carl E. Ross**

**Copies to Parties.**

**Instructions for Remote Hearings Before Judge Carl E. Ross**  
**Courtroom 200**

Parties and counsel may access Virtual Courtroom 200 in the following ways:

- (1) Going to the WebEx website at <https://dccourts.webex.com/meet/ctb200> or going to <https://dccourts.webex.com> and, under “Join a Meeting,” entering Meeting ID number 179 813 6225; or
- (2) Downloading the WebEx Meetings app, opening the app, selecting Join Meeting, and entering <https://dccourts.webex.com/meet/ctb200>; or
- (3) Calling 1-844-992-4726 or 202-860-2110 and entering Meeting ID number 179 813 6225 #, then # again.

Parties having trouble connecting to their remote hearing may contact chambers at [JudgeCRossChambers@dcsc.gov](mailto:JudgeCRossChambers@dcsc.gov). Staff will be monitoring the e-mail closely during hearings. **Failure to appear at a proceeding, including remote proceedings, may result in dismissal of a case or entry of default.**

**PLEASE NOTE: Counsel is required to appear via WebEx video and log in so that their name appears on screen, absent extenuating circumstances that make it necessary for them to appear via telephone, or unless telephonic appearance is approved by Chambers prior to the hearing. All other parties are highly encouraged, but not required, to appear via WebEx video and identify themselves by name.**

When entering the virtual courtroom (by dialing in on a phone, or signing in through the website or app), the party should not attempt to speak because another hearing may be underway. Each party should be automatically muted by the courtroom clerk when you first arrive. If you are using the WebEx website or the app, you may check in with the courtroom clerk using the “chat” function. If you are on a telephone, you should wait for your case to be called.