UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RUTH MELANIE CASTRO, *et al.*,	)	
Plaintiffs,	)	
v.	)	**Civil Action No. 21-282 (FYP)**
TIERNO CARE HOME HEALTH AGENCY, INC., *et al.*,	)	
Defendants.	)	

MEMORANDUM OPINION

Plaintiffs Ruth Castro and Carolina Sanchez, individually and on behalf of others similarly situated, bring this action against defendants Tierno Care Home Health Agency, Inc. ("Tierno Care"), J&S Health Care, LLC ("J&S"), Professional Healthcare Resources of Washington DC, Inc. ("PHR"), Sonia Colbert,[1] and Jose Dolores Cruz Romero,[2] seeking unpaid wages and lost overtime pay. *See* ECF No. 6 (Am. Compl.). The Amended Complaint alleges violations of (1) the Federal Fair Labor Standards Act ("FLSA"); (2) the D.C. Minimum Wage Act; and the (3) D.C. Wage Payment and Wage Collection Law. *Id.*, ¶¶ 65–85. Before this Court is Defendant PHR's Motion to Dismiss Count I of the Amended Complaint; Plaintiffs' Opposition; and Defendant's Reply.[3] PHR argues that Plaintiffs fail to state a claim under the FLSA because they fail to sufficiently allege that PHR is a joint employer with Tierno Care and

[1] Sonia Colbert owns and operates Tierno Care. *See* Am. Compl., ¶ 5.
[2] Jose Delores Cruz Romeo owns and operates J&S. *See* Am. Compl., ¶ 7.
[3] Defendants Tierno Care, J&S, Colbert, and Romero filed a joint answer to the Amended Complaint. *See* ECF No. 13 (Ans. to Am. Compl.).

J&S. *See* ECF No. 8 at 4 (Def. Mot.). The Court has considered the papers and the relevant law. For the following reasons, Defendant PHR's Motion to Dismiss is denied.

BACKGROUND

Plaintiffs Ruth Castro and Carolina Sanchez both worked as home health care aides for Tierno Care. *See* Am. Compl., ¶¶ 17–18. PHR contracted with Tierno Care to supply home healthcare workers to its patients. *Id.*, ¶ 19. Plaintiffs received their paychecks from both Tierno Care and J&S. *Id.*, ¶ 28. Both Ms. Castro and Ms. Sanchez regularly worked more than forty hours per week. *Id.*, ¶¶ 22–24. Plaintiffs allege that throughout their employment, Defendants failed to pay them at 1.5 times their regular rate for their overtime hours, as required by law. *Id.*, ¶ 26.

Plaintiffs allege that Tierno Care, J&S, and PHR are joint employers. *Id.*, ¶ 40. According to Plaintiffs, Tierno Care and J&S coordinated with PHR regarding patient care; PHR managed Plaintiffs' time sheets; and PHR closely monitored Plaintiffs' work. *Id.* Plaintiffs also note that they recorded their time and documented their care on official PHR paperwork. *Id.*, ¶ 20. It is further alleged that PHR exercised a high degree of control over Tierno Care and J&S and controlled the way patients were cared for. *Id.*, ¶ 43. Along with Tierno Care and J&S, PHR allegedly had the power to hire, fire, and suspend Plaintiffs; to supervise Plaintiffs' work duties; to set and control Plaintiffs' work schedule; to set and determine Plaintiffs' rate and method of pay; and to control day-to-day operations. *Id.*, ¶ 44.

LEGAL STANDARD

To survive a motion to dismiss under Rule 12(b)(6), a complaint must "state a claim upon which relief can be granted." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 552 (2007). Although "detailed factual allegations" are not necessary to withstand a Rule 12(b)(6)

motion, *id.* at 555, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570).

When considering a motion to dismiss, a court must construe a complaint liberally in the plaintiff's favor, "treat[ing] the complaint's factual allegations as true" and granting "plaintiff the benefit of all inferences that can be derived from the facts alleged." *Sparrow v. United Air Lines, Inc.*, 216 F.3d 1111, 1113 (D.C. Cir. 2000) (internal citations and quotation marks omitted); *see also Kowal v. MCI Commc'ns Corp*., 16 F.3d 1271, 1276 (D.C. Cir. 1994). Although a plaintiff may survive a Rule 12(b)(6) motion even if "'recovery is very remote and unlikely,'" the facts alleged in the complaint "must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555–56 (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974)).

ANALYSIS

Defendant PHR argues that Plaintiffs fail to allege that PHR is a joint employer under the FLSA because they provide no factual support for their allegations. *See* Def. Mot. at 4–5. Under the FLSA, "no employer shall employ any of his employees . . . for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate[.]" *See* 29 U.S.C. § 207(a)(1). An employer "includes any person acting directly or indirectly in the interest of an employer in relation to an employee[.]" *Id.* at § 203(d). The "FLSA contemplates the existence of joint employer relationships", where an employee is employed by multiple entities. *See Ivanov v. Sunset Pools Management Inc.*, 567 F. Supp. 2d 189, 194 (D.D.C. 2008). While the D.C. Circuit has not specified a test for determining whether a joint employer relationship exists, some factors that other circuits consider include: the nature and degree of control employers have

over their workers; the degree of supervision; the power to determine pay; and the right to hire, fire or modify employment conditions. *See Layton v. DHL Exp. (USA) Inc.*, 686 F.3d 1172, 1176–78 (11th Cir. 2012); *see also Zheng v. Liberty Apparel Co. Inc.*, 355 F.3d 61, 72 (2d. Cir. 2003) (listing six non-exclusive factors including the degree of supervision exercised); *Salinas v. Commercial Interiors, Inc.*, 848 F.3d 125, 141–42 (4th Cir. 2017) (developing a six-factor test including whether employers have the power to direct, control, or supervise the workers).

Here, Plaintiffs were paid by Tierno Care and J&S, but PHR contracted with Tierno Care and J&S to secure Plaintiffs' services for patients under PHR's care. *See* Am. Compl., ¶¶ 19–28. Plaintiffs allege that PHR "[h]ad the power to hire, fire, suspend, and otherwise discipline Plaintiffs;" "[s]et and determined . . . Plaintiffs' rate and method of pay;" and "[s]et and controlled Plaintiffs' work schedule[.]" *Id.*, ¶ 44. Plaintiffs also contend that they "note their time and document their care on official [PHR] Paperwork", *id.*, ¶ 20, and that PHR "manage[s] Plaintiffs' time sheets . . . and closely monitor[s] Plaintiffs' work[.]" *Id.*, ¶ 40. Defendant PHR asserts that these allegations are insufficient because the original Complaint alleged these same facts only against Tierno Care and J&S, and Plaintiffs provide no factual support for the addition of PHR. *See* Def. Mot. at 5.

The Court finds *Harris v. Medical Transportation Management, Inc.* highly instructive. 300 F. Supp. 3d 234 (D.D.C. 2018). There, the court considered a motion to dismiss from a non-employer transportation company, which allegedly had only indirect authority over the employees in question. *Id.* at 237–38. The plaintiffs in *Harris* worked as drivers for companies that contracted with the defendant to provide transportation services. *Id.* at 238. Even though the defendant was not their "direct" employer, plaintiffs contended that the defendant

transportation company was a joint employer because it allegedly had the authority to hire and fire employees, control their daily responsibilities, and control the payment of wages. *Id.* at 238.

In denying the motion to dismiss, the court in *Harris* reasoned that there was no need to choose a specific test to determine joint-employer status at such an early phase in the litigation; that the question is highly fact intensive; and that it should be very difficult to secure dismissal before discovery. *Id.* at 243. The Court noted that an FLSA claim premised on joint employment should only be dismissed "when the plaintiff fail[s] to allege *any* facts that would support the inference that the defendant had any control over the employment relationship." *Id.* (alteration in original). Here, as in *Harris*, we are at an early phase of the litigation, and Plaintiffs have alleged facts that would support a finding of a joint-employer relationship. *See generally* Am. Compl. These allegations are more specific than Defendant admits, particularly regarding the control over the hours worked and the work schedule. *See id.*, ¶ 40. Thus, the Court finds that Plaintiffs have alleged sufficient facts to survive a motion to dismiss.

CONCLUSION

For the foregoing reasons, the Court will deny Defendant PHR's Motion to Dismiss Count I of the Amended Complaint. A separate Order will issue this day.

Florence Y. Pan
United States District Judge

Date: October 22, 2021