DISTRICT OF COLUMBIA COURT OF APPEALS

Appeal No. 20-CV-0077
(D.C. Super. Ct. Case No. 2018 CA 005017 B)

HENRY ZUNIGA, *et al.*,

Appellants,

v.

WHITING-TURNER CONTRACTING CO., *et al.,*

Appellees.

APPEAL FROM THE SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA

BRIEF FOR METROPOLITAN WASHINGTON EMPLOYMENT LAWYERS ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF APPELLANTS URGING REVERSAL

---

* Stephen B. Pershing
D.C. Bar No. 482580
Pershing Law PLLC
1416 E Street, N.E.
Washington, D.C. 20002
(202) 642-1431
steve@pershinglaw.us

Daniel A. Katz
D.C. Bar No. 447412
700 14th Street, N.W., Suite 400
Washington, D.C. 20005
(202) 677-7815
daniel_katz@washlaw.org

Counsel to *Amicus Curiae*

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

(A) *Parties and Amici.* All parties appearing before the Superior Court and in this Court are listed in the Appellant's Brief.

(B) *Rulings Under Review.* References to the rulings at issue appear in the Appellants' Brief.

(C) *Related Cases.* There are no related cases.

RULE 29(c) STATEMENT OF *AMICUS*

The Metropolitan Washington Employment Lawyers Association is an association. It does not have any corporate parent. It does not have any stock, and therefore no publicly held company owns 10% or more of the stock of this *amicus*.

RULE 29 (c)(3) STATEMENT OF INTEREST OF *AMICUS*

The Metropolitan Washington Employment Lawyers Association ("MWELA"), founded in 1991, is a professional association and is the local chapter of the National Employment Lawyers Association, a national organization of attorneys who specialize in employment law. MWELA conducts continuing legal education programs for its more than 300 members, including an annual day-long conference which usually features one or more judges as speakers. MWELA also participates as

amicus curiae in important cases in the District of Columbia, Maryland, and Virginia, the three jurisdictions in which its members primarily practice.

MWELA's members and their clients have an important interest in the proper interpretation of the D.C. wage theft laws and their attorney fee provisions, as well as similar fee-shifting provisions of other D.C. statutes, including the D.C. Human Rights Act, the D.C. Family and Medical Leave Act, and the D.C. Whistleblower Protection Act. The attorney fee collection issues presented in this wage theft case are likely to arise, in one form or another, in litigation under the District's other fee-shifting statutes, making it all the more important that the questions presented here be resolved clearly and correctly.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

District of Columbia

Federal

Session Laws and Legislative History

Rules of Court

Other Authorities

STATEMENT OF FACTS

Amicus adopts the appellants' statement of the case, Brief of Appellants at 4, and statement of facts, Brief of Appellants at 4-12.

In the view of *amicus,* two key facts are of signal importance to this case. First, plaintiffs' counsel undertook the asset location and debt collection efforts at issue only after the defendants, without justification, refused to pay attorney fees unless counsel released irrelevant personal identifying information on each plaintiff. Brief of Appellants at 8 (Statement of Facts) (describing the defendants' tactic, pursued during the litigation and renewed after the initial liability and damage findings, as an implicit threat to bring immigration enforcement down on them, either as retaliation or in an attempt to gain leverage over them).

Second, the trial court did not take issue with the reasonableness of the plaintiffs' supplemental fee request, or with the necessity of their collection efforts in the face of the defendants' obduracy. Instead it held, as a matter of law, that the request for collection fees should have been filed—which presupposed the fiction that it could have been filed—before the defendants announced their unacceptable precondition for paying what the court had ordered, and before the collection efforts themselves began. Brief of Appellant at 8-9 (Statement of Facts); Order of Dec. 31, 2019, at 4-5, J. Appx. at 266-267.

SUMMARY OF ARGUMENT

Wage theft—the withholding by employers of pay earned by their workers, especially low-wage workers—is alarmingly prevalent in the American workplace generally, and in the nation's capital in particular. Construction workers like the plaintiffs in this case are especially vulnerable to theft of their wages, both because many are immigrants to the United States and may fear immigration enforcement even if they have no cause to do so, and because large building projects often involve subcontractors, sub-sub-contractors, and labor brokers, making the discovery of wage theft, and the assignment of responsibility for it, a frustrating shell game for any aggrieved workers who dare to challenge their employers' behavior.

The D.C. Council assertively addressed these problems in the Wage Theft Protection Act of 2014, which amended and expanded D.C. Code § 32-1012 and § 32-1308, among other provisions of local labor law. As a result of the 2014 Act, D.C. wage theft law now has much steeper penalties and a stronger private right of action, complete with attorney fees for prevailing plaintiffs regardless of the amount of damages, in the manner of civil rights and other remedial statutes.

The text of § 32-1308, as amended in 2014, shows that the D.C. Council was also aware of another possibility: that employers' unwillingness to pay their workers could mutate, as it did in the present case, into a refusal to pay the price of non-compliance. The statute therefore explicitly provides for attorney fees to prevailing plaintiffs not only for fee litigation, but also for efforts to enforce judgments—including fee awards—and collect on them.

There is no distinction in the statute, and none should be drawn on any other basis, between court judgments awarding workers their unpaid wages and those awarding fees to counsel who made the case for that relief, the case for reasonable recompense for so doing, or the effort necessary to get recalcitrant employers to pay up. No phase of this work, especially if made necessary by a losing defendant's refusal to pay, should be inherently less compensable than any other.

Legal work to collect a wage theft judgment, or to fight a losing defendant's non-payment, would have to be donated or forgone entirely unless § 32-1308 made such efforts compensable. That is precisely what the Wage Theft Protection Act, in its detailed fee provisions, sought to prevent. Yet in this case the lower court cut off fees when only part of these plaintiffs' post-judgment work was done.

By making non-reimbursable the plaintiffs' expenditures for reasonable and necessary efforts to collect their fee award, a rule precluding the compensation sought in this appeal would reward wage thieves for failing or refusing to pay what the courts have ordered. Such an undeserved dispensation would distort the meaning of the entire D.C. Wage Act, not only its fee provisions, by making an illusory distinction between fees and other judgments in deciding which collection efforts are compensable. It would encourage employers found liable for wage theft to game their court-ordered payments, buying off clients by paying their damages while daring their lawyers to donate their labor to collect their own fees. It would risk diminishing the number of private attorneys willing to bring these important cases. And it would make fee-shifting law in the District an outlier among federal and state courts across the nation which recognize that reasonable attorney fees, including those for overcoming defendants' post-judgment resistance to relief, are an integral part of prevailing plaintiffs' recovery.

ARGUMENT

I. Wage theft has grown to epidemic levels in D.C. and the nation, and requires strong private rights and remedies to address

Employers' theft of their workers' wages, particularly the wages of low-paid workers, is now a problem of epidemic proportions. *See* Brady Meixell and Ross Eisenbrey, "An Epidemic of Wage Theft is Costing Workers Hundreds of Millions of Dollars a Year," Economic Policy Institute Issue Brief No. 385 (Sept. 11, 2014), https://files.epi.org/2014/wage-theft.pdf; Annette Bernhardt *et al.*, "Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities," National Employment Law Project *et al.* (2009) (landmark survey of unpaid wages among thousands of low-wage workers in New York, Chicago and Los Angeles), https://s27147.pcdn.co/wp-content/uploads/2015/03/BrokenLawsReport2009.pdf.

Wage theft has proliferated in the United States with the changing nature of work, the greater increase in global opportunities for capital than for labor, and the related decline in the share of American workers with collective bargaining and its contracted-for benefits. *See, e.g.,* David Cooper and Teresa Kroeger, "Employers Steal Billions from Workers' Paychecks Each Year," Economic Policy Institute, May 2017, at 1-2,

https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year/; Daniel J. Galvin, "Deterring Wage Theft: Alt-Labor, State Politics, and the Policy Determinants of Minimum Wage Compliance," 14 Amer. Pol. Sci. Ass'n Perspectives on Politics 324, 324-325 (2016), https://faculty.wcas.northwestern.edu/~djg249/galvin-wage-theft.pdf; Kate Bronfenbrenner, Director of Labor Education Research, Cornell School of Industrial and Labor Relations, "Uneasy Terrain: The Impact of Capital Mobility on Workers, Wages, and Union Organizing," paper presented to U.S. Trade Deficit Review Commission (2000), https://books.google.com/books?hl=en&lr=&id=3EBYAAAAYAAJ.

A readily available nationwide enforcement statistic gives an idea of the scope and severity of the social ill at issue. The U.S. Department of Labor's Wage and Hour Division, responsible for nationwide enforcement of the federal Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.,* has approximately 1,100 investigators responsible for 7.3 million workplaces—about 135,000 workers per investigator—making the likelihood of enforcement as to any one employer minuscule. Meixell and Eisenbrey, "Epidemic of Wage Theft," *supra*, at 2-3; Galvin, "Deterring Wage Theft," supra, at 325 & n.8. Yet even from the tiny fraction of American workplaces the Wage and Hour Division's resources allowed it to investigate, in fiscal year 2019 it recovered $322 million in wage and hour judgments, penalties

and settlements—even without treble liquidated damage remedies, which the FLSA does not accord. *See* U.S. Department of Labor, Wage and Hour Division, News Release No. 19-1883-NAT (Oct. 28, 2019), www.dol.gov/newsroom/releases/whd/whd20191028; 29 U.S.C. § 216(b) (affording back wages plus "an additional equal amount as liquidated damages").

The propensity of U.S. employers to violate state wage theft laws has a strong inverse correlation to the strength of those laws and of their enforcement, even controlling for other variables such as the political party in control of legislatures or governorships. *See* Galvin, *supra*, at 329-330 (reporting study results showing the stronger a state's laws, the lower the incidence of wage theft; making fee-shifting one criterion for assessing strength of state statutes). *See also* Tim Judson & Cristina Francisco-McGuire, "Where Theft is Legal: Mapping Wage Theft Laws in the 50 States," Progressive States Network, June 2012, at 7, www.researchgate.net/publication/326678129_Where_Theft_is_Legal_Mapping_Wage_Theft_Laws_in_the_50_States.

The District, like the nation, has a wage theft problem far larger than the capacity of public authorities alone to redress. *See, e.g.,* Jacob Meyer and Robert Greenleaf, "Enforcement of State Wage and Hour Laws: A Survey of State Regulators," National Association of Attorneys General Program, Columbia Law School, April 2011 (collecting studies of

wage theft, state regulatory powers and their enforcement), https://pdfslide.net/documents/enforcement-of-state-wage-and-hour-laws-a-survey-of-state-.html; "Where Theft is Legal," *supra*, at 24 (giving D.C. a grade of F for pre-2014 wage theft enforcement); Employment Justice Center, Lawyers' Committee for Civil Rights under Law, and Washington Lawyers' Committee for Civil Rights and Urban Affairs, Report, "Stolen Wages in the Nation's Capital," Feb. 6, 2014, www.washlaw.org/pdf/ stolen_wages_in_the_nations_capital.pdf; Committee Report on Bill No. 20-671, "Wage Theft Prevention Amendments Act of 2014," D.C. Council Committee on Business, Consumer and Regulatory Affairs, at 13 (summarizing testimony of Thomas Luparello, Interim Director, D.C. Dept. of Employment Services) ("Mr. Luparello . . . stated that the Department is aware of the increase in inciden[ts] of wage theft" under existing "antiquated statutes" and supported the "additional protections" added by the 2014 legislation), https://lims.dccouncil.us/downloads/LIMS/ 31203/Committee_Report/B20-0671-CommitteeReport1.pdf.

Under D.C.'s modernized wage theft laws, the Public Advocacy Division of the Attorney General's Office has increased its anti-wage theft efforts, most recently under independent investigatory and enforcement powers conferred by a 2017 amendment to the Wage Theft Protection Act.

See D.C. Act 22-33 (effective 2017) (amending D.C. Code § 32-1306(a) to give Attorney General independent investigatory, subpoena and other powers), https://code.dccouncil.us/dc/council/acts/22-33.html; D.C. Attorney General's Office Press Release, "Attorney General Racine to Enforce Workers' Rights Laws Against Abusive Employers," Oct. 24, 2017, https://oag.dc.gov/release/attorney-general-racine-enforce-workers-rights. Other states have been making similar efforts. *See* Terri Gerstein and Marni von Wilpert, "State attorneys general can play key roles in protecting workers' rights," Economic Policy Institute Report, May 7, 2018, www.epi.org/publication/state-attorneys-general-can-play-key-roles-in-protecting-workers-rights/; Cooper and Kroeger (2017), *supra*, at 2-5.

However, these official enforcement efforts can address only a small fraction of the problem within the District's borders. *See* "Stolen Wages in the Nation's Capital," *supra*, at 1 ("Lack of effective deterrents, as well as woefully inadequate enforcement of D.C.'s wage and hour laws, make it painfully easy for an employer to commit wage theft and face no repercussions.").

Thus, as the D.C. Council understood, private suits by aggrieved employees are critical to reducing the incidence of wage theft in this jurisdiction, and to obtaining relief for the theft that does occur. D.C. Code § 32-1308(b)(1) (conferring private right of action; requiring court to award

prevailing plaintiffs "reasonable attorney fees and costs," including fees for fee litigation and for enforcement of judgments, including fee awards); § 32-1308(b)(2) (requiring supplemental fee award, at then-current hourly rates, for work done to collect fees that "remain unpaid at the time of any . . . supplemental review"); Washington Lawyers' Committee for Civil Rights and Urban Affairs, Testimony Supporting Bill 20-671, "Wage Theft Prevention Act of 2014" (testimony of Matthew Handley, Director of Litigation), www.washlaw.org/pdf/ wage_theft_mhandley.pdf.[1]

[1] Modern remedial statutes across the nation, especially those protecting individual rights, often have fee-shifting provisions for this very reason. D.C. Code § 32-1308(b)(1); *see also, e.g.,* D.C. Code § 1–615.54(a)(1)(G) (fee provision of D.C. Whistleblower Protection Act); D.C. Code § 2-1402.13(a)(1)(E) (fee provision of D.C. Human Rights Act); D.C. Code § 16-5504(a) (fee provision of "SLAPP" statute); D.C. Code § 32-509(b)(7), § 32-510(c) (fee provision of D.C. Family and Medical Leave Act); D.C. Code § 32-1530(a) (fee provision of workers' compensation statute); 42 U.S.C. § 1988(b) (fees in federal civil rights actions under 42 U.S.C. § 1983); 42 U.S.C. § 2000e-5(k) (fees under Title VII of the Civil Rights Act of 1964); Henry Cohen, "Awards of Attorney Fees by Federal Courts and Federal Agencies," Congressional Research Service Report No. 94-970 (2008), at 1 (counting some 200 fee-shifting provisions under federal law), https://fas.org/sgp/crs/misc/94-970.pdf; Note, "State Attorney Fee Shifting Statutes: Are We Quietly Repealing the American Rule?", 47 Law and Contemp. Probs. 321 (1984) (listing 1,974 state-level fee-shifting statutes in effect as of 1984 in the 50 states and D.C. combined), https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=3759&context=lcp.

As this Court has opined, private suits in the public interest will not be brought—no matter how compelling their merits—if the attorneys bringing them are not reasonably compensated for all phases of litigation, from investigation to collection. *Tenants of 710 Jefferson St. v. D.C. Rental Hous. Comm'n*, 123 A.3d 170, 186 (D.C. 2015) ("The fact that a statute provides for attorney's fees to the prevailing party . . . implies a legislative determination that the subject of successful litigation is infused with a public interest and that usual market forces are insufficient to supply the necessary incentives to counsel. [. . .] Attorney's fee awards that compensate counsel for taking on cases under fee-shifting statutes should suffice to attract not simply any counsel, but *competent* counsel.") (emphasis in original); *see also, e.g., General Fed'n of Women's Clubs v. Iron Gate Inn, Inc.*, 537 A.2d 1123, 1129-30 (D.C. 1988) (collateral civil contempt proceeding in commercial landlord-tenant case) (holding fees generally recoverable for fee litigation over frivolous motion).

II. D.C. wage theft law explicitly provides for multiple fee and cost requests and should be construed as written

The D.C. wage theft statute's attorney fees provisions are quite specific on the question presented in this appeal, namely whether attorney fees are to be awarded for enforcement or collection work that follows an order finding wage theft liability, imposing statutory damages, and

awarding costs and fees. D.C. Code § 32-1308(b)(1) specifically provides that, "in any proceeding to enforce such a judgment, the court shall award to each attorney for the employee an additional judgment for costs, including attorney's fees . . . updated to account for the current market hourly rates for attorney's services." It is hard to imagine clearer language requiring that fees be awarded for enforcement of judgments in these cases, including fee awards themselves. In a remedial statute like this one, even less clear terms than these would be entitled to the same construction. *See O'Rourke v. D.C. Police & Firefighters' Retirement Board*, 46 A.3d 378, 389 (D.C. 2012) ("remedial legislation is typically given liberal construction by the courts to effectuate its humanitarian purposes").

No principled distinction exists, in D.C. caselaw or in fee-shifting caselaw generally, between fees for establishing the amount of compensable costs and fees, and fees for collecting them once ordered. *See, e.g., In re S. California Sunbelt Developers, Inc.*, 608 F.3d 456, 463 (9th Cir. 2010) ("it would be inconsistent to dilute a fees award by refusing to compensate attorneys for the time they reasonably spent in establishing their rightful claim to the fee."); *Stochastic Decisions, Inc. v. DiDomenico*, 995 F.2d 1158, 1167 (2d Cir. 1993) (upholding district court's award of attorneys' fees expended to defeat defendant's obstruction of collection of adverse

RICO judgments); *Sadur v. Ellison*, 553 A.2d 651, 652 (D.C. 1989) (in dispute over separation agreement, upholding principle that fees should be available for collecting amounts remaining unpaid even absent a statutory mandate); *Smith v. Smith*, 445 A.2d 666 (D.C. 1982) (same).

In short, there is no doubt in the cases that a prevailing plaintiff's presumptive entitlement to fees extends to fees incurred in attempting to collect the judgment. Even garnishment efforts—precisely the undertaking at issue here—have specifically been held compensable. In *Vukadinovich v. McCarthy*, 59 F.3d 58, 60-61 (7th Cir. 1995), Judge Posner held that garnishment efforts are compensable because the "purpose [of fee-shifting] would be thwarted if by refusing to pay the fee award the [defendant] could impose unreimbursable expenses on the [plaintiff]."

For the same reasons, courts have held that fee-shifting includes interest where payment of fees is delayed. *Fleming v. Kane County*, 898 F.2d 553, 563 (7th Cir. 1990) (affirming that plaintiffs' counsel should be compensated for delay in receiving fee award under 42 U.S.C. § 1988; rejecting argument that attorneys waived their right to interest on the award by not including it in their original fee petition); *Spain v. Mountanos*, 690 F.2d 742, 748 (9th Cir. 1982) (upholding award of interest on unpaid attorneys' fees under 42 U.S.C. § 1988, as "it would be anomalous to permit

the [defendant] in effect to reduce the award by withholding payment for a considerable time."); *Newport News Shipbuilding v. Brown*, 376 F.3d 245, 250 (4th Cir. 2004) (upholding award of fees for collection of penalties for payment delays as "an integral part" of fee entitlement under workers' compensation statute, since without that legal work an employer "with a tendency to skirt the rules[] would have less incentive to pay . . . on time").

III. Supplemental fee petitions after enforcement or collection efforts are not precluded by the 14-day post-judgment motion deadline of Rule 54(d)

The language of D.C. Code § 32-1308(b)(1), requiring additional fee awards for collection or enforcement work, "updated" to then-current hourly rates, specifically contemplates that time will have passed, perhaps weeks or months, since the initial fee award. That conclusion is only reinforced by the language of § 32-1308(b)(2), which states that "if any fees remain unpaid to the attorney at the time of any subsequent . . . supplementation . . . of the fee award, the court shall update the award," and by the identical language of § 32-1308.01(m)(2) for proceedings before an administrative judge.

All three of these Wage Theft Protection Act provisions would be incoherent if read to make subsequent fee requests justiciable only if submitted at the time of an original request. It follows that the lower

court's refusal here to entertain a supplemental fee request for enforcement of a prior award, despite a showing that the work was necessary and the fees reasonable, was a basic misunderstanding of § 32-1308.

Even if the court's concern was for uniformity in administration of D.C. Super. Ct. Civ. R. 54(d)(2)(B), the procedural rule governing initial fee petitions, that Rule expressly defers to any other law that provides for a different timetable, *id.* ("unless a statute . . . provides otherwise"), and should pose no bar to the normal operation of § 32-1308 in the event of post-judgment enforcement or collection proceedings. Even fee motions not brought under fee-shifting statutes need not all be filed within 14 days in order to be considered. In *District of Columbia v. Jackson*, 878 A.2d 489, 492 & n.3 (D.C. 2005), this Court held:

> While Rule 54(d)(2)(B) provides that the request for fees must be filed within fourteen days of the entry of judgment, the rule specifically allows for extensions by order of the court and provides procedures by which the trial court may, once the request has been made, postpone ruling on a fee request until after the merits of the case have been fully reviewed on appeal.

Id. at (citing D.C. Super. Ct. Civ. R. 54(d)(2)(B); Fed. R. Civ. P. 54, advisory committee note). *See also Washington v. Johnson*, 953 A.2d 1064, 1082 (D.C.

2008) (noting that Rule 54(d)(2)(B) gives trial courts discretion to adjust timetables for attorney fee petitions).

Court decisions in a variety of contexts give plentiful reassurance that supplemental fee requests are readily entertained in other areas of the law, whether or not they provide for statutory fee-shifting, and regardless of the supposed constraint of Rule 54(d)(2)(B). *See, e.g.*, *Smith v. Smith*, 445 A.2d 666, 669 (D.C. 1982) (fees for post-divorce collection in the Family Court Division) ("a court can . . . award attorney's fees which result from the time spent attempting to collect alimony after alimony has been granted"); *Summers v. Howard University*, No. 1:98-cv-02692, 2006 WL 751316, at *5 (D.D.C. Mar. 20, 2006) (rejecting "contention that plaintiffs are barred from collecting reasonable fees . . . because of the timing of their submission requesting supplemental fees.")

To correct the trial court's erroneous application of Rule 54(d)(2)(B) would affirm rather than alter existing law, and would avoid future misunderstandings on the point, not only under fee-shifting provisions but for any case where fee requests are justifiably supplemented. To leave the mistake uncorrected, however, would introduce doubt, confusion, and the potential for inconsistent outcomes on fee issues across the entire landscape of D.C. law, and in particular would mar the Wage Theft

Protection Act's otherwise clear, consistent and comprehensible statutory scheme for redress unless lower court judges choose on their own to ignore a respected colleague's ruling.

IV. The possibility of improper motives of employers should not be ignored

The collection work for which fees are sought in this appeal was undertaken only because, after the initial fee award, the defendants announced they would refuse to pay it unless plaintiffs' counsel first divulged their clients' current home addresses, something they had not previously been required to do. Brief of Appellants at 8 (Statement of Facts). This insistence, though never explained, seems to have had several possible motivations, all unsavory: to troll for a basis on which the defendant employers might intimidate or retaliate against the plaintiffs outside the litigation; to chill other workers' wage theft complaints with threats of similar forced disclosures; or to drive a wedge between plaintiffs' counsel and their clients by forcing counsel to choose between their clients' interests and their own fees.

It is unclear whether the lower court sensed any of these possible ulterior motives, but its ruling effectively condoned all of them, even though it would have had discretion to take them into account. *Cf. Iron Gate*, 537 A.2d at 1129 (trial court's citing of evidence that party pressing

baseless contempt charge was trying to harass its litigation opponent into dropping a certain counterclaim). If the ruling appealed from is upheld, rewarding the ethically dubious tactic on display here, it could excite a hornet's nest of sharp practices by unscrupulous employers, who may be expected to take all possible advantage of plaintiffs and their counsel even after the court has adjudged them to have stolen their workers' wages. This Court need not countenance, and should certainly not incentivize, that kind of subversion of the letter and spirit of D.C.'s wage theft laws.

CONCLUSION

The reality grasped by the D.C. Council, in enacting the wage theft statute that governs this appeal, is that plaintiffs with small claims will have difficulty finding qualified counsel unless there is a reasonable assurance that, if they prevail, their attorneys will be awarded fees and will have an economically viable mechanism to collect them. The D.C. Wage Theft Protection Act was designed to afford both of those remedies, and to make equally compensable the legal work done to further either of them. The lower court's contrary reading of the Wage Theft Protection Act as yielding to Rule 54(d)(2)(B) on fee petition deadlines, when in fact the Rule's language directs the opposite, misconstrues the plain text of the

Act and the Rule alike, maligns the purpose of D.C. wage theft law, and calls urgently for correction on appeal.

For the foregoing reasons, amicus MWELA respectfully urges this Court to reverse the trial court's refusal to entertain the plaintiffs' supplemental fee petition, and to remand for an award of reasonable fees for the collection work performed.

Respectfully submitted,

Stephen B. Pershing
D.C. Bar No. 482580
Pershing Law PLLC
1416 E Street, N.E.
Washington, D.C. 20002
(202) 642-1431
steve@pershinglaw.us

/s/ Daniel A. Katz
Daniel A. Katz
D.C. Bar No. 447412
700 14th Street, N.W., Suite 400
Washington, D.C. 20005
(202) 677-7815
daniel_katz@washlaw.org

Counsel to *Amicus Curiae*
Metropolitan Washington Employment Lawyers' Association

July 13, 2020

^ ^ ^

CERTIFICATE OF SERVICE

I certify that on this 13th day of July, 2020, the foregoing *amicus curiae* brief was filed with the Court's electronic filing system, through which it was transmitted by electronic mail to counsel for the parties, as follows:

Matthew B. Kaplan
The Kaplan Law Firm
1100 N. Glebe Road, Suite 1010
Arlington, VA 22201
mbkaplan@thekaplanlawfirm.com

Matthew K. Handley
Handley Farah & Anderson PLLC
777 6th Street, N.W., 11th Floor
Washington, D.C. 20001
(202) 559-2411
mhandley@hfajustice.com

Aindrea M. Conroy
Ethridge, Quinn, Kemp, McAuliffe,
Rowan & Hartinger
33 Wood Lane
Rockville, MD 20850
amc@eqlawyers.com

_____