APPENDICES

APPENDIX A

PUBLISHED

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 15-1857

MARLON HALL; JOHN WOOD; ALIX PIERRE; KASHI WALKER,

Plaintiffs − Appellants,

and JOHN ALBRECHT,
Plaintiff,

v.

DIRECTV, LLC; DIRECTSAT USA, LLC,

Defendants – Appellees,

and

DIRECTV, INC.; DIRECTV HOME SERVICES; DTV HOME SERVICES II, LLC,

Defendants.

No. 15-1858

JAY LEWIS; KELTON SHAW; MANUEL GARCIA,

Plaintiffs – Appellants,

and JUNE LEFTWICH,
Plaintiff,

v.

DIRECTV, LLC; DIRECTSAT USA, LLC,

Defendants – Appellees,

and DIRECTV, INC.,

Defendant.

Appeals from the United States District Court for the District of Maryland, at Baltimore. J. Frederick Motz, Senior District Judge. (1:14-cv-02355-JFM; 1:14–cv–03261–JFM)

Argued: October 27, 2016
Decided: January 25, 2017

Before WYNN, FLOYD, and HARRIS,
Circuit Judges.

Reversed and remanded by published opinion. Judge Wynn wrote the opinion, in which Judge Floyd and Judge Harris joined.

ARGUED: Larkin E. Walsh, STUEVE SIEGEL HANSON LLP, Kansas City, Missouri, for Appellants. Colin David Dougherty, FOX ROTHSCHILD LLP, Blue Bell, Pennsylvania, for Appellees. **ON BRIEF:** George A. Hanson, Kansas City, Missouri, Ryan D. O'Dell, STUEVE SIEGEL HANSON LLP, San Diego, California, for Appellants. Nicholas T. Solosky, FOX ROTHSCHILD LLP, Washington, D.C., for Appellees.

WYNN, Circuit Judge:

The Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201 *et seq*., requires covered employers to pay their employees both a minimum wage and overtime pay, *id*. §§ 206, 207. In these consolidated cases, two groups of satellite television technicians ("Plaintiffs") allege that DIRECTV and DirectSat (collectively, "Defendants"), through a web of agreements with various affiliated and unaffiliated service providers, jointly employed Plaintiffs,[1] and therefore are

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[1] As explained in greater detail below, *infra* Part I.A., Plaintiffs each bring a claim under the FLSA against Defendant DIRECTV, with two Plaintiffs bringing a parallel claim against Defendant DirectSat. For purposes of clarity, the allegations set out in the Amended Consolidated Complaint are attributed to all Plaintiffs.

jointly and severally liable for any violations of the FLSA's substantive provisions. *See* 29 C.F.R. § 791.2(a).

The district court dismissed Plaintiffs' action on the pleadings, holding that Plaintiffs failed to adequately allege that DIRECTV and DirectSat jointly employed Plaintiffs. In so doing, the district court relied on out-of-circuit authority that we have since rejected as unduly restrictive in light of the broad reach of the FLSA. Analyzing Plaintiffs' allegations under the legal standard adopted by this Circuit and construing those allegations liberally, as we must when ruling on a motion to dismiss, *Wright v. North Carolina*, 787 F.3d 256, 263 (4th Cir. 2015), we conclude that Plaintiffs' factual allegations state a claim under the FLSA. Accordingly, we reverse.

I.

A.

Plaintiffs appeal from an order granting Defendants' motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). Accordingly, we recount the facts as alleged by Plaintiffs, accepting them as true and drawing all reasonable inferences in Plaintiffs' favor. *See E.I. du Pont de Nemours & Co. v. Kolon Indus., Inc.*, 637 F.3d 435, 440 (4th Cir. 2011).

As the nation's largest satellite television provider, DIRECTV engages thousands of technicians to install and repair satellite systems for customers throughout the country. In addition to employing some technicians directly, DIRECTV controls and manages many technicians through the DIRECTV "Provider Network." J.A. 93. According to the Amended Consolidated Complaint ("Complaint"),

this network is organized as a pyramid, with DIRECTV contracting with certain intermediary entities known as "Home Service Providers" and "Secondary Service Providers." J.A. 93–94. These intermediary entities generally contract with "a patchwork of largely captive entities"—referred to in the Complaint as "subcontractors"—which in turn contract directly with individual technicians throughout the country. J.A. 94.

Following DIRECTV's acquisition of numerous Home and Secondary Service Providers, Defendant DirectSat was one of three "independent" Home Service Providers remaining in the DIRECTV Provider Network at the time this action was initiated.[2] In this capacity, DirectSat served as a middle-manager between DIRECTV and individual technicians who contracted directly with DIRECTV, as well as between DIRECTV and various subcontractors that hired individual technicians. Specifically, DirectSat, like the other Home and Secondary Service Providers, implemented and enforced DIRECTV's hiring criteria for technicians, relayed scheduling decisions from DIRECTV to technicians using DIRECTV's centralized work-assignment system, and otherwise supervised technicians under its purview. DirectSat also maintained a "contractor file" for each of its technicians, which Plaintiffs describe as "analogous to a personnel file" and which were "regulated and audited by DIRECTV." J.A. 94–95. And, in accordance with its agreement with DIRECTV, DirectSat re-

[2] Plaintiffs allege that DIRECTV "regularly infuses these [providers] with what it labels internally as 'extraordinary advance payments' and frequently acquires providers when "litigation or other circumstances" present a potential business risk for DIRECTV. J.A. 97.

quired technicians to obtain DIRECTV equipment and attend DIRECTV-mandated trainings at DirectSat facilities.

Each Plaintiff alleges that, between 2007 and 2014, he worked as a technician for DIRECTV, an intermediary provider, a subcontractor, or some combination of those entities. Plaintiffs Lewis and Wood allege that they were employed by DirectSat, while the five remaining Plaintiffs allege that they worked for other providers not named as defendants in this action. During their respective periods of employment, Plaintiffs were each generally classified by their employer or employers as an independent contractor.[3] In all instances, each Plaintiff's principal job duty was to install and repair DIRECTV equipment.

Regardless of the identity of Plaintiffs' nominal employers, DIRECTV primarily directed and controlled Plaintiffs' work. In particular, Plaintiffs allege that DIRECTV was the "primary, if not the only" client of each of the providers who served as Plaintiffs' direct employers and was the "source of substantially all of each [p]rovider's income." J.A. 93–94. At the same time, DIRECTV dictated nearly every aspect of Plaintiffs' work through its agreements with the various providers that directly employed technicians. Among other provisions, these agreements required that all technicians—and therefore Plaintiffs—pass prescreening checks and background checks, review training materials published by DIRECTV, and become certified by the Satellite Broadcasting & Communications Association. The

[3] Plaintiff Hall was initially classified as a direct employee of a provider in August 2009, but was reclassified as an independent contractor in November 2011.

agreements likewise required technicians to purchase and wear DIRECTV shirts, carry DIRECTV identification cards, and display the DIRECTV logo on their vehicles. Those who did not satisfy DIRECTV's eligibility requirements could not carry out a technician's primary task: installing and repairing DIRECTV satellite equipment.

In addition to these eligibility requirements, DIRECTV, through its provider agreements, required technicians to receive their work assignments through a centralized system operated by DIRECTV. DIRECTV also mandated that technicians check in with DIRECTV before and after completing each assigned job, conduct installations and repairs strictly according to DIRECTV's standardized policies and procedures, and interact with DIRECTV employees to activate satellite television service during each installation. The provider agreements also authorized DIRECTV employees to exercise quality control oversight over technicians, categorizing technicians' work as either compensable or noncompensable and imposing various compensation-related penalties for unsatisfactory service. Finally, the provider agreements allowed DIRECTV to effectively terminate technicians by ceasing to assign them work orders through the company's centralized work-assignment system.

B.

Claiming that they each regularly worked in excess of forty hours per week without receiving overtime pay while serving as DIRECTV technicians, Plaintiffs initiated this action in November 2013.[4]

[4] Plaintiffs pursued their overtime and minimum wage claims, either collectively or individually, in various federal jurisdic-

Specifically, Plaintiffs alleged that Defendants qualified as their joint employers during the relevant period, such that Defendants' failure to provide overtime pay for these additional hours violated the FLSA's overtime and minimum wage requirements. In addition to their claims under the FLSA, Plaintiffs allege that Defendants violated three Maryland wage and hour statutes: (1) the Maryland Wage and Hour Law, Md. Code Ann., Lab. & Empl. §§ 3-401 *et seq*.; (2) the Maryland Wage Payment and Collection Law, Md. Code Ann., Lab. & Empl. §§ 3-501 *et seq*.; and (3) the Maryland Workplace Fraud Act, Md. Code Ann., Lab. & Empl. §§ 3-901 *et seq*.

Defendants each moved to dismiss Plaintiffs' Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). On June 30, 2015, the district court granted Defendants' motions and dismissed Plaintiffs' claims in their entirety. *See Hall v. DIRECTV*, Nos. JFM-14-2355, JFM-14-3261, 2015 WL 4064692, at *1 (D. Md. June 30, 2015).

In so doing, the district court devised and applied a two-step inquiry to determine whether Plaintiffs alleged a plausible FLSA joint employment claim. The court reasoned that the "first question that must be resolved is whether an individual worker is 'an employee'" of each putative joint employer within the meaning of the statute. *Id*. at *2. Only if Plaintiffs qualified as employees—and not independent contractors—could the court reach what it deemed the

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tions before their claims were ultimately transferred to and consolidated in the United States District Court for the District of Maryland. *Hall v. DIRECTV*, Nos. JFM-14-2355, JFM-14-3261, 2015 WL 4064692, at *1 n.2 (D. Md. June 30, 2015). In each instance in which they were previously considered, Plaintiffs' claims were dismissed without prejudice. *Id*.

second step of the inquiry: "whether an entity other than the entity with which the individual [plaintiff] had a direct relationship is a 'joint employer' of [the plaintiff]." *Id.*

The district court looked to *Schultz v. Capital International Securities Inc.*, 466 F.3d 298 (4th Cir. 2006), to determine whether a worker qualifies as an "employee" within the meaning of the FLSA. *Hall*, 2015 WL 4064692, at *2. *Schultz*, relying on *United States v. Silk*, 331 U.S. 704 (1947), applied six factors to determine whether a worker falls within the definition of an "employee" under the FLSA and, thus, benefits from the statute's protections. *Schultz*, 466 F.3d at 304–05. These factors include: "(1) the degree of control that the putative employer has over the manner in which the work is performed; (2) the worker's opportunities for profit or loss dependent on his managerial skill; (3) the worker's investment in equipment or material, or his employment of other workers; (4) the degree of skill required for the work; (5) the permanence of the working relationship; and (6) the degree to which the services rendered are an integral part of the putative employer's business." *Id.* (citing authorities).

Apparently assuming that Plaintiffs were not purely independent contractors outside of the FLSA's scope, the district court went on to consider whether DIRECTV was Plaintiffs' "joint employer" for purposes of the FLSA. *Hall*, 2015 WL 4064692, at *2. In doing so, the district court employed a four-factor test originally set forth by the Ninth Circuit in *Bonnette v. California Health and Welfare Agency*, 704 F.2d 1465, 1470 (9th Cir. 1983). *See Hall*, 2015 WL 4064692, at *2; *see also Roman v. Guapos III, Inc.*, 970 F. Supp. 2d 407, 413 (D. Md. 2013). Under

this test, the district court considered whether DIRECTV: (1) had the power to hire and fire the employee; (2) supervised and controlled employee work schedules or conditions of employment; (3) determined the rate and method of payment; and (4) maintained employment records. *Hall*, 2015 WL 4064692, at *2.

Courts applying the *Bonnette* test, including the *Bonnette* Court itself, have emphasized that no single factor is dispositive in determining whether a particular entity qualifies as a joint employer. *Bonnette*, 704 F.2d at 1470; *see also Skrzecz v. Gibson Island Corp.*, No. CIV.A. RDB-13-1796, 2014 WL 3400614, at *7 (D. Md. July 11, 2014). Nonetheless, while acknowledging that Plaintiffs "alleged facts sufficient to show that DIRECTV at least indirectly supervised [Plaintiffs'] work and directly controlled their schedules," the district court dismissed this arrangement as "not surprising" in light of DIRECTV's interest in maintaining its goodwill with consumers. *Hall*, 2015 WL 4064692, at *2. Instead, the district court observed that the "ultimate test of employment is the hiring and firing of employees and the setting of their compensation amounts." *Id.* Reasoning that Plaintiffs failed to allege that DIRECTV directly hired or fired technicians working for its providers or otherwise controlled those technicians' compensation, the district court concluded that the Complaint did not allege facts sufficient to establish that DIRECTV jointly employed Plaintiffs. *Id.*

Seeking to bolster this conclusion, the district court identified as relevant other considerations untethered to both the standard articulated in *Bonnette* and the similar standard applied by the district court itself. Specifically, the court posited that "if the enti-

ties that were part of the [DIRECTV] Provider System were undercapitalized and merely charades created by DIRECTV that followed every suggestion and payment decision made by DIRECTV, that would show, *perhaps* conclusively, DIRECTV's joint employer status." *Id.* (emphasis added). However, because "nothing . . . implie[d] that the companies in the DIRECTV Provider Network were undercapitalized or slavishly followed every suggestion made by DIRECTV in regard to the status and method of payment of the technicians with whom they had a relationship[,]" the district court concluded that Plaintiffs failed to state a claim. *Id.* Instead, the district court found that Plaintiffs' allegations "show[ed] only that DIRECTV adopted a reasonable business model that allowed for the decentralization of decision-making authority regarding the employment of technicians who install its equipment." *Id.* According to the district court, such a "reasonable business model" did not support a finding of joint employment for purposes of the FLSA. *Id.*

Having found that Plaintiffs failed to state an actionable FLSA claim against DIRECTV, the district court summarily concluded that Plaintiffs' claims under the Maryland wage and hour statutes also failed. *Id.* at *3. Specifically, the district court observed that the definitions of "employer" embraced by the Maryland wage and hour statutes were either coextensive with or narrower than that set forth under the FLSA. *Id.* As such, just as DIRECTV did not qualify as Plaintiffs' joint employer under the FLSA, the district court reasoned that the company could not be held liable as a joint employer in connection with Plaintiffs' state law claims. *Id.* This timely appeal followed.

II.

We review *de novo* the district court's dismissal of a complaint under Federal Rule of Civil Procedure 12(b)(6). *E.I. du Pont de Nemours*, 637 F.3d at 440. Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 8(a)(2). When ruling on a motion to dismiss, courts must accept as true all of the factual allegations contained in the complaint and draw all reasonable inferences in favor of the plaintiff. *E.I. du Pont de Nemours*, 637 F.3d at 440; *see also Anderson v. Found. for Advancement, Educ. & Emp't of Am. Indians*, 155 F.3d 500, 505 (4th Cir. 1998) (explaining that federal "pleading standards require the complaint be read liberally in favor of the plaintiff").

To survive a motion to dismiss, Plaintiffs' factual allegations, taken as true, must "state a claim to relief that is plausible on its face." *Robertson v. Sea Pines Real Estate Co.*, 679 F.3d 278, 288 (4th Cir. 2012) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). The plausibility standard is not a probability requirement, but "asks for more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007)). Although it is true that "the complaint must contain sufficient facts to state a claim that is plausible on its face, it nevertheless need only give the defendant fair notice of what the claim is and the grounds on which it rests." *Wright*, 787 F.3d at 263 (internal quotation marks and citations omitted). Thus, we have emphasized that "a complaint is to be construed liberally so as to do substantial justice." *Id.*

Under this standard, we reverse the district court's dismissal of Plaintiffs' claims for two reasons. First, the district court applied an improper legal test for determining whether entities constitute joint employers for purposes of the FLSA. Second, the district court misapplied the plausibility standard set forth in *Twombly* and *Iqbal* by subjecting Plaintiffs to evidentiary burdens inapplicable at the pleading stage and by failing to credit key factual allegations regarding Defendants' control and oversight of Plaintiffs' work as DIRECTV technicians. As explained below, when considered under the appropriate joint employment test and the proper standard for Rule 12(b)(6) motions, Plaintiffs' factual allegations plausibly demonstrate that DIRECTV and DirectSat jointly employed Plaintiffs during the relevant period.

III.

The Department of Labor regulation implementing the FLSA distinguishes "separate and distinct employment" from "joint employment." 29 C.F.R. § 791.2(a). "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*. By contrast, "joint employment" exists when "employment by one employer is not completely disassociated from employment by the other employer(s)." *Id*. When two or more entities are found to jointly employ a particular worker, "all of the employee's work for all of the joint employers during the workweek is considered as *one employment* for purposes of the [FLSA]." *Id*. (emphasis added). Thus, for example, all hours worked by the employee on behalf of each joint employer are counted

together to determine whether the employee is entitled to overtime pay under the FLSA. *Id.*

Notwithstanding the regulation's seemingly straightforward language, courts have long struggled to articulate a coherent test for distinguishing separate employment from joint employment. As we have explained, much of this confusion stems from the Ninth Circuit's decision in *Bonnette v. California Health and Welfare Agency*, 704 F.2d 1465 (9th Cir. 1983). *Salinas v. Commercial Interiors, Inc.*, No. 15-1915, slip op. at 17–18 (argued Oct. 27, 2016). *Bonnette* drew on common-law agency principles, as well as the test used to address the distinct question of whether a particular worker is an employee or independent contractor, to adopt a multifactor test purporting to differentiate separate employment from joint employment by focusing on a putative joint employer's right to control an FLSA plaintiff's work. 704 F.2d at 1470. The court identified four nonexclusive factors to guide this inquiry: "whether the alleged 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." *Id.*

Following *Bonnette*, a number of courts, including district courts within this Circuit, have applied this four-factor test to determine whether two or more entities constitute joint employers under the FLSA. *Salinas*, No. 15-1915, slip op. at 18–19 (collecting cases). At the same time, however, several circuits (including the Ninth Circuit, itself) have liberalized the *Bonnette* test to reflect Congress's original intent for the FLSA to extend protections beyond common-law employment relationships. *Id.* at 19–20.

As a result, at the time the district court considered Defendants' motions to dismiss in this case, courts in various jurisdictions within this Circuit and throughout the country applied numerous, distinct, multifactor joint employment tests.[5] *Id.*

Perhaps reflecting this uncertain state of the law, the district court's review of Plaintiffs' joint employment allegations in this case is somewhat disjointed. As discussed above, *supra* Part I.B., the district court began its analysis by proposing an analytical framework under which it would first decide whether Plaintiffs fell within the FLSA's definition of "employee." *Hall*, 2015 WL 4064692, at *2. Apparently assuming, without analysis, that Plaintiffs were employees within the FLSA's scope, the court went on to consider whether Defendants qualified as Plaintiffs' joint employers under the statute. *Id.* Applying the four-factor *Bonnette* test, the district court concluded that Plaintiffs failed to plausibly allege that Defendants were their joint employers during the relevant period. *Id.*

The district court's analysis of Plaintiffs' joint employment claims suffers from two basic flaws. First, the district court errantly concluded that a worker must be an employee—as opposed to an independent contractor—as to *each* putative joint employer when considered separately for the entities to constitute joint employers under the FLSA. As a result of this misinterpretation, the district court in-

[5] Notably, in another FLSA action, the trial judge in this case applied a five-factor joint employment test that differed from the *Bonnette*-based test that he applied in this case, notwithstanding that the two cases were decided only a few months apart. *See Salinas*, No. 15-1915, slip op. at 9–10.

correctly treated a worker's status as an employee or independent contractor as to each putative joint employer as a threshold inquiry to be decided prior to determining whether the two entities are completely disassociated. Second, the district court improperly relied on *Bonnette* to determine whether Defendants jointly employed Plaintiffs, leading the court to ignore important, relevant aspects of Plaintiffs' employment arrangement during their respective tenures as DIRECTV technicians.[6] We discuss each of these errors in turn.

A.

First, the district court's treatment of whether Plaintiffs were employees—as opposed to independent contractors—of DIRECTV and DirectSat as a threshold question inverted the two-step inquiry we have adopted in FLSA joint employment cases.

We addressed the proper order of analysis in FLSA joint employment actions in *Schultz*. There, we established a two-step framework for determining whether a defendant may be held liable for an alleged FLSA violation under a joint employment theory. 466 F.3d at 305–09. Under this framework, we first must determine whether the defendant and one or more additional entities shared, agreed to allocate

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[6] As previously described, despite its recitation of the *Bonnette* factors, the district court's analysis turned largely on its misapprehension of Plaintiffs' allegations regarding the degree to which Defendants maintained the authority to hire and fire or otherwise set the rate of compensation for DIRECTV technicians like Plaintiffs. In this sense, even assuming that the *Bonnette*-like test applied by the district court was the appropriate joint employment test, the district court's dismissal of Plaintiffs' overtime claims was in error.

responsibility for, or otherwise codetermined the key terms and conditions of the plaintiff's work. *Id.*; *Salinas*, No. 15-1915, slip op. at 29–31. The second step of the analysis—which asks whether a worker was an employee or independent contractor for purposes of the FLSA—depends in large part upon the answer to the first step. Namely, if we determine that the defendant and another entity codetermined the key terms and conditions of the worker's employment, then we must consider whether the two entities' *combined* influence over the terms and conditions of the worker's employment render the worker an employee as opposed to an independent contractor. By contrast, if the two entities are disassociated with regard to the key terms and conditions of the worker's employment, we must consider whether the worker is an employee or independent contractor with regard to *each* putative employer separately.

In adopting this framework, we explained that the joint employment doctrine is premised on the theory that, when two or more entities jointly employ a worker, the worker's entire "employment arrangement must be viewed as 'one employment' for purposes of determining whether the [worker was an] employee[] or independent contractor[] under the FLSA." *Schultz*, 466 F.3d at 307 (quoting 29 C.F.R. § 791.2(a)). In other words, if a worker performs work for two or more entities that are "not completely disassociated" with respect to that worker's employment, 29 C.F.R. § 791.2(a), courts must aggregate the levers of influence over the key terms and conditions of the worker's employment exercised by *all* of the entities when determining whether the worker is an "employee" within the meaning of the FLSA. Accordingly, the district court in this case erred by considering whether Plaintiffs qualified as

employees "without first determining whether a joint employment relationship existed" between DIRECTV, DirectSat, and Plaintiffs' other putative joint employers.[7] *Schultz*, 466 F.3d at 309.

Focusing first on the relationship between putative joint employers is essential to accomplishing the FLSA's "remedial and humanitarian" purpose. *Purdham v. Fairfax Cty. Sch. Bd.*, 637 F.3d 421, 427 (4th Cir. 2011) (internal quotation marks omitted) (quoting *Tenn. Coal, Iron & R.R. Co. v. Muscoda Local No. 123*, 321 U.S. 590, 597 (1944)). Indeed, a worker who performs services for two or more entities that are "not completely disassociated" with respect to his work may not amount to an "employee" protected by the FLSA when his relationship to each entity is considered separately, but may come within the statutory definition of an "employee" when his relationships to all of the relevant entities are considered in the aggregate. By ignoring the relationships *between* and *among* these entities vis-à-vis the worker, the framework deployed by the district court erroneously failed to take account of a worker's *entire* employment when considering whether he or she is covered by the FLSA. This approach departs from the framework we set forth in *Schultz* and risks creating significant gaps in the broad, protective coverage Congress sought to ensure in adopting the FLSA.

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[7] *Schultz* acknowledged that in a small subset of cases this sequence of analyses may be unnecessary, 466 F.3d at 306 n.1, such as when the levers of influence over the essential terms and conditions of an individual's work exercised by putative joint employers would not give rise to an employer-employee relationship, regardless of whether the putative joint employers' levers of influence are considered in the aggregate.

Although our two-step test will, consistent with congressional intent, extend FLSA protection to individuals who are independent contractors when their work for each entity is considered separately but employees when their work is considered in the aggregate, it will not automatically render every independent contractor who performs services for two or more entities an "employee" within the FLSA's scope. Rather, under this two-step inquiry, individuals who bear true hallmarks of independent contractor status will remain outside of the FLSA's scope even if they perform work for two or more entities that are "not completely disassociated" with respect to those individuals' work. For instance, two businesses agreeing to share the services of a single handyman may not be "completely disassociated" when they arrange for the handyman to perform services on their premises at mutually acceptable times. But, if the handyman owns his own tools and provides his own materials, can choose to stop working for either or both businesses of his own accord, and is not an integral part of either business's principal purpose, he may nonetheless remain an independent contractor for purposes of the FLSA. Accordingly, the businesses, despite their incomplete disassociation, would have no obligations under the FLSA with respect to the handyman.[8]

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[8] By the same token, a business that is deemed a joint employer under the FLSA as to *some* of its workers will not automatically be required to comply with the FLSA with respect to *all* of its workers. Some workers may be independent contractors ineligible for FLSA protection even though they perform services for the defendant and at least one other entity that is "not completely disassociated" with respect to the plaintiff's work.

Through properly segregating and organizing these two distinct questions, the analytical framework we embraced in *Schultz* "leads to a proper determination of whether, as a matter of economic reality, the [plaintiffs] were dependent on the joint employers or whether they were in business for themselves." 466 F.3d at 307. By contrast, by inverting that framework, the district court in this case failed to consider whether Defendants' shared influence over Plaintiffs' day-to-day work rendered Plaintiffs economically dependent on DIRECTV and DirectSat during their respective periods of employment, such that Plaintiffs constituted "employees" under the FLSA.

B.

1.

Although the district court's inversion of the two-step *Schultz* framework alone would warrant reversal, the district court compounded its error by relying on *Bonnette* to consider the sufficiency of Plaintiffs' joint employment allegations.

We recently joined many of our sister circuits in concluding that the *Bonnette* Court's reliance on common-law agency principles ignores Congress's intent to ensure that the FLSA protects workers whose employment arrangements do not conform to the bounds of common-law agency relationships. *Salinas*, No. 15-1915, slip op. at 21. In instructing district courts not to follow *Bonnette*, we emphasized two additional concerns with existing joint employment tests. *Id.* Specifically, we explained that these tests: "(1) improperly focus on the relationship between the employee and putative joint employer, rather than on the relationship between the putative joint em-

ployers, and (2) incorrectly frame the joint employment inquiry as solely a question of an employee's 'economic dependence' on a putative joint employer." *Id*.

With this in mind, instead of adopting a previously existing test, we articulated a new standard that draws on the history and purpose of the FLSA, as well as the Department of Labor regulation that implements the statute and recognizes the existence of joint employment arrangements. *Id*. at 30–32. Under our framework, the "fundamental question" guiding the joint employment analysis is "whether two or more persons or entities are 'not completely disassociated' with respect to a worker such that the persons or entities share, agree to allocate responsibility for, or otherwise codetermine—formally or informally, directly or indirectly—the essential terms and conditions of the worker's employment." *Id*. at 31 .

To assist lower courts in determining whether the relationship between two entities gives rise to joint employment, we identified the following six, nonexhaustive factors to consider:

(1) Whether, formally or as a matter of practice, the putative joint employers jointly determine, share, or allocate the ability 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;

(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.

Id. at 31–32. Further, because the status of a particular employment relationship is highly fact-dependent, we emphasized that the absence of a single factor—or even a majority of factors—is not determinative of whether joint employment does or does not exist. *Id*. at 32–33.

Much like its misapplication of the two-step framework set forth in *Schultz*, the district court's reliance on the *Bonnette* factors in this case rendered the court's consideration of Plaintiffs' joint employment allegations fundamentally flawed and unduly

restrictive.[9] In particular, the district court's control-based analysis omitted consideration of the relationship between the putative joint employers and thus ignored important elements of coordination between Defendants, as well as many of Defendants' shared levers of influence over Plaintiffs' work as DIRECTV technicians. Because the district court applied an improper test in determining whether Plaintiffs were "separate[ly]" or "joint[ly]" employed, the court erred in granting Defendants' motions to dismiss.

2.

Beyond this initial error, we also reject the district court's assertion that an FLSA defendant, like DIRECTV, that does not directly employ a plaintiff is subject to joint employment liability only if the plaintiff's direct employer "slavishly followed *every* suggestion made by [the defendant] in regard to the status and method of payment of the [plaintiff]." *Hall*, 2015 WL 4064692, at *2 (emphasis added). As we explained previously, to determine whether "separate" or "joint" employment exists, courts must focus on whether putative joint employers "*share, agree to allocate responsibility for*, or otherwise *codetermine*" the essential terms and conditions of a worker's employment. *Salinas*, No. 15-1915, slip op. at 4 (emphasis added). Accordingly, the FLSA does not require that an entity have unchecked—or even primary—authority over all—or even most—aspects of a worker's employment for the entity to qualify as a joint

[9] Given the confused state of FLSA joint employment case law—and that this Court had not yet identified factors for courts to consider in distinguishing separate employment from joint employment at the time the district court rendered its decision—this error is more than understandable.

employer. Rather, the entity must only play a role in establishing the key terms and conditions of the worker's employment.

For this reason, we further reject the district court's conclusion that for joint—as opposed to separate—employment to exist, a majority of factors must weigh in favor of joint employment. *Hall*, 2015 WL 4064692, at *2 (finding no joint employment under the four-factor *Bonnette* test, notwithstanding that Plaintiffs "alleged facts sufficient to show that DIRECTV at least indirectly supervised their work and directly controlled their schedules," because the remaining three factors weighed in favor of separate employment). The Department of Labor's regulation implementing the joint employment doctrine requires that the "determination of whether the employment by the employers is to be considered joint employment or separate and distinct employment for purposes of the [FLSA] depends upon *all the facts in the particular case*." 29 C.F.R. § 791.2(a) (emphasis added). To that end, the nonexclusive factors we have identified to guide the first step of the joint employment inquiry "offer[] a way to think about [whether entities are joint or separate employers,] not an algorithm." *Reyes v. Remington Hybrid Seed Co.*, 495 F.3d 403, 408 (7th Cir. 2007). Accordingly, "toting up a score is not enough." *Id.* Rather, "one factor alone"—such as DIRECTV's supervision and control of Plaintiffs' schedules—can give rise to a reasonable inference that plaintiffs will be able to develop evidence establishing "that two or more persons or entities are 'not completely disassociated' with respect to a worker's employment if the [allegations] supporting that factor demonstrate that the person or entity has a substantial role in determin-

ing the terms and conditions of a worker's employment." *Salinas*, No. 15-1915, slip op. at 32–33.

This is particularly true at the pleading stage, when plaintiffs have had no "opportunity for discovery as to payroll and taxation documents, disciplinary records, internal corporate communications, or leadership and ownership structures." *Thompson v. Real Estate Mortg. Network*, 748 F.3d 142, 145 (3d Cir. 2014); *see also Ash v. Anderson Merchandisers, LLC*, 799 F.3d 957, 961 (8th Cir. 2015) (holding that, at the pleading stage, plaintiffs relying on a joint employer theory are "not required to determine conclusively which [defendant] was their employer . . . or describe in detail the employer's corporate structure").

We likewise reject the district court's suggestion that an FLSA plaintiff may hold a defendant that does not directly employ the plaintiff liable as a joint employer only if the plaintiff alleges that his direct employer was "undercapitalized" and that the arrangement between the defendant and the direct employer was a "mere[] charade[]." *Hall*, 2015 WL 4064692, at *2. To be sure, "facts demonstrating that two entities jointly engaged in a bad faith effort to evade compliance with the FLSA . . . will provide strong evidence that the entities are 'not completely disassociated' with respect to that worker's employment." *Salinas*, No. 15-1915, slip op. at 39. But bad faith is not a precondition to liability as a joint employer. *Id.* at 39–40.

Additionally, even if allegations of bad faith were required—which they are not—Plaintiffs explicitly allege that the DIRECTV Provider Network was "*purposefully designed* to exercise the right of control over DIRECTV's technician corps while avoiding the

responsibility of complying with the requirements of the FLSA." J.A. 97 (emphasis added). Thus, the challenged employment scheme "ensure[s] [that] DIRECTV controls its technicians' work, while *deliberately disclaiming* their status as employees under state and federal employment laws." *Id.* at 101 (emphasis added). The district court improperly failed to credit these allegations of bad faith—despite the requirement that it do so in ruling on a motion to dismiss under Rule 12(b)(6)—in dismissing Plaintiffs' claim.

C.

The district court's errors notwithstanding, we may affirm the disposition of Defendants' motions to dismiss "on any grounds supported by the record, notwithstanding the reasoning of the district court." *Tankersley v. Almand*, 837 F.3d 390, 395 (4th Cir. 2016) (internal quotation marks omitted). Accordingly, to determine whether reversal is warranted in this case, we must consider whether, applying the appropriate legal standards, Plaintiffs' allegations are sufficient to state a plausible FLSA joint employment claim against Defendants.

1.

As previously explained, to determine whether Plaintiffs have alleged a plausible FLSA joint employment claim, we must first consider whether—taking Plaintiffs' allegations, and all reasonable inferences therefrom, as true—Defendants were "entirely independent" with respect to Plaintiffs' work as DIRECTV technicians, 29 C.F.R. § 791.2(a), or, instead, codetermined the essential terms and conditions of that work, *Salinas*, No. 15-1915, slip op. at 30. Analyzing this fundamental question using the

six factors set forth above to guide our inquiry, we conclude that Plaintiffs' factual allegations establish that DIRECTV, DirectSat, and other members of the DIRECTV Provider Network jointly determined the key terms and conditions of Plaintiffs' employment.

To begin with, Plaintiffs allege that DIRECTV, DirectSat, and the other Home and Secondary Service Providers instituted and operated a fissured employment scheme, governed by a web of provider agreements, that endured throughout Plaintiffs' periods of employment as DIRECTV technicians and was essential to the installation and repair of DIRECTV's own products. DIRECTV was the principal—and, in many cases, only—client of the lower-level subcontractors, and DIRECTV often infused capital into or formally "absorb[ed]" the subcontractors when necessary. J.A. 97.

Moreover, according to the Complaint, DIRECTV and DirectSat allocated, through provider agreements with one another and with subcontractors in the Provider Network, the authority to direct, control, and supervise nearly every aspect of Plaintiffs' day-to-day job duties. For example, through these contractual arrangements, DIRECTV compelled Plaintiffs to obtain their work schedules and job assignments through DIRECTV's centralized system and to follow "particularized methods and standards of installation to assure DIRECTV's equipment is installed according to the dictates of DIRECTV's policies and procedures." J.A. 96. And DIRECTV's provider agreements also allowed the company "to control nearly every facet of the technicians' work," including by requiring Plaintiffs to hold themselves out as representatives of the company, to wear DIRECTV uniforms, to carry DIRECTV identification

cards, and to display the company's logo on their vehicles when performing work for the company. J.A. 96–97.

Contrary to the district court's assertion that Plaintiffs failed to allege "facts that would show that DIRECTV has the power to hire and fire technicians [or] determine their rate and method of payment," *Hall*, 2015 WL 4064692, at *2, the Complaint is replete with allegations that DIRECTV, DirectSat, and other members of the Provider Network shared authority over hiring, firing, and compensation. Regarding hiring and firing, the Complaint alleges that "DIRECTV set forth the qualification 'hiring' criteria" for technicians, including Plaintiffs, while DirectSat and other Home and Secondary Service Providers "implemented and enforced those qualifications." J.A. 94. And although Plaintiffs' direct employers had formal firing authority, DIRECTV used its centralized work-assignment system to effectively terminate technicians by ceasing to assign them work.

DIRECTV and members of its Provider Network also shared authority over technicians' compensation. Whereas DirectSat or other subcontractors issued Plaintiffs' paychecks, DIRECTV played an integral role in setting Plaintiffs' compensation. For instance, the Complaint alleges that DIRECTV retained authority in its provider agreements to determine whether work performed by DIRECTV technicians, including Plaintiffs, was "compensable" or "noncompensable." J.A. 100. Plaintiffs characterize this compensation scheme as a "piece-rate" system, through which Plaintiffs were paid a particular rate based on the specific tasks they performed. *Id.* A piece-rate system is permissible under the FLSA on-

ly where the parties agree that all of an employee's hours, including nonproductive hours, are compensated and included in the employee's total working time and where the employer continues to comply with the statute's overtime provisions. *See* 29 C.F.R. § 778.318.

In addition to compensable work, Plaintiffs also regularly performed additional tasks that, although essential to the installation and operation of DIRECTV products, went uncompensated by either DIRECTV or its providers. This work included "assembling satellite dishes, driving to and between job assignments, reviewing and receiving schedules, calling customers to confirm installations, obtaining required supplies, assisting other technicians with installations, performing required customer educations, contacting DIRECTV to report in or activate service, working on installations that were not completed, and . . . perform[ing] additional work on installations previously completed." J.A. 103. DIRECTV also retained authority over compensation by imposing "chargebacks and/or rollbacks" on a technician's pay when DIRECTV determined, in its sole authority, that the technician provided unsatisfactory service. *Id.* at 101. By maintaining authority to determine what work would be deemed compensable and to impose chargebacks, DIRECTV retained significant authority over the manner and method by which Plaintiffs and other technicians were paid for their work.

Regarding DirectSat, Plaintiffs Lewis and Wood assert that the company—in its role as a middle-manager in the DIRECTV Provider Network—implemented DIRECTV's hiring and training criteria, relayed scheduling decisions to DIRECTV tech-

nicians, and required technicians to obtain DIRECTV equipment and attend DIRECTV-mandated trainings at its facilities. Moreover, Lewis and Wood allege that DirectSat maintained employment records for all technicians who performed work for the company, which records DIRECTV reviewed and audited.

Of course, later discovery may demonstrate that DIRECTV and DirectSat did not "share, agree to allocate responsibility for, or otherwise codetermine . . . the essential terms and conditions of" Plaintiffs' employment, *Salinas*, No. 15-1915, slip op. at 31, or that neither Lewis nor Wood was employed, either directly or indirectly, by DirectSat. At this stage of the litigation, however, Plaintiffs' allegations are sufficient to make out a plausible claim that DirectSat was "not completely disassociated" from DIRECTV and other service providers with regard to setting the essential conditions under which Plaintiffs Lewis and Wood worked in their capacities as DIRECTV technicians.

2.

Having established that Plaintiffs' allegations sufficiently demonstrate that DIRECTV and DirectSat were not completely disassociated with respect to Plaintiffs' work as DIRECTV technicians, we now turn to the second step of the joint employment inquiry. In particular, we must consider whether, from the perspective of Plaintiffs' "one employment" with DIRECTV and DirectSat (or other applicable entities within DIRECTV's tiered structure), Plaintiffs have sufficiently alleged that they were employees, as opposed to independent contractors, for purposes of the FLSA. *Schultz*, 466 F.3d at 307. Under the one-employment theory described above, we con-

sider the entire context of Plaintiffs' work on behalf of DIRECTV and DirectSat and aggregate those aspects of that work that Defendants, either jointly or individually, influenced, controlled, or determined. *Id*.

To determine whether Plaintiffs are properly classified as employees or independent contractors under the FLSA, we focus on the "'economic realities' of the relationship" between the defendants and the plaintiffs. *Id*. at 304 (quoting *Henderson v. Inter—Chem Coal Co*., 41 F.3d 567, 570 (10th Cir. 1994)). In particular, we consider whether, in performing their work as DIRECTV technicians, Plaintiffs were "economically dependent" on Defendants or, instead, were "in business for [themselves]." *Id*. at 304. To make this determination, we look to the six factors identified by the Supreme Court in *United States v. Silk*, 331 U.S. 704 (1947). These factors include: "(1) the degree of control that the putative employer[s] ha[ve] over the manner in which the work is performed; (2) the worker's opportunities for profit or loss dependent on his managerial skill; (3) the worker's investment in equipment or material, or his employment of other workers; (4) the degree of skill required for the work; (5) the permanence of the working relationship; and (6) the degree to which the services rendered are an integral part of the putative employer[s'] business." *Id*. at 304–05.

With these factors in mind, we conclude that Plaintiffs' allegations demonstrate that Plaintiffs were effectively economically dependent on Defendants while serving as DIRECTV technicians. As alleged by Plaintiffs, Defendants collectively influenced nearly every aspect of Plaintiffs' work as DIRECTV technicians. In particular, through its

agreements with lower-level providers, DIRECTV largely determined who would be hired as a DIRECTV technician and exclusively determined the manner in which technicians would be compensated for their time. Although technicians, like Plaintiffs, largely supplied their own tools, DIRECTV provided the materials to be installed for DIRECTV customers and determined whether Plaintiffs' pay for performing particular services would be deducted for any reason previously established by DIRECTV. Therefore, Plaintiffs could not increase their take-home pay through their own ingenuity or skill.

Through its required training materials and centralized work-assignment system, DIRECTV also dictated the manner in which technicians performed their work and controlled whether and when Plaintiffs could install and repair DIRECTV products. DIRECTV so extensively controlled Plaintiffs' day-to-day—indeed, hour-to-hour—work that the company not only required technicians to use equipment belonging to DIRECTV, but in fact expected technicians to hold themselves out as the company's representatives to customers by wearing DIRECTV uniforms and nametags and driving vehicles emblazoned with DIRECTV's logo. Finally, Plaintiffs' work was integral to DIRECTV's business—absent Plaintiffs' work installing and repairing DIRECTV satellite systems, DIRECTV would be unable to convey its product to consumers.

At the same time, although DirectSat apparently maintained relatively limited authority over the manner in which technicians working under its purview performed their work, Plaintiffs Lewis and Wood allege that the company was responsible for implementing and enforcing many of DIRECTV's

mandates for its technicians. As noted, this arrangement endured throughout these Plaintiffs' respective periods of employment as technicians, during which time their installation and repair activities were essential to DIRECTV's provision of satellite television service to its customers. As such, and because we consider Plaintiffs' employment for DIRECTV and DirectSat in the aggregate, these allegations amply demonstrate that Plaintiffs, like other DIRECTV technicians, were economically dependent on DIRECTV and its affiliate providers in connection with their work on the company's behalf. Accordingly, Plaintiffs have stated a plausible claim that DIRECTV—and, as to Plaintiffs Wood and Lewis, DirectSat—was their joint employer under the FLSA and that Plaintiffs were "employees" within the meaning of the FLSA.

* * *

In sum, Plaintiffs adequately allege that DIRECTV, DirectSat, and subcontractors in the DIRECTV Provider Network shared responsibility for and codetermined the essential terms and conditions of Plaintiffs' employment as technicians. Plaintiffs' allegations further establish that—when viewed from the perspective of Plaintiffs' "one employment" with DIRECTV, DirectSat, and other subcontractors in the Provider Network—Plaintiffs were economically dependent on—and therefore jointly employed by—DIRECTV and DirectSat. Accordingly, the district court erred in dismissing Plaintiffs' FLSA claims on grounds that Plaintiffs failed to adequately establish joint employment.[10]

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[10] Defendants agree that Plaintiffs' claims under the Maryland Wage and Hour Law "stand or fall on the success" of their FLSA

claims. Appellees' Br. at 37-38 (citing *Turner v. Human Genome Sci., Inc.*, 292 F. Supp. 2d 738, 744 (D. Md. 2003)). Consequently, our resolution of the FLSA joint employment question also resolves Plaintiffs' claims under this parallel Maryland statute.

At the same time, however, Plaintiffs concede that the definitions of "employer" included in the Maryland Workplace Fraud Act and the Maryland Wage Payment and Collection Law are "technically narrower" than the definition embraced by the FLSA. Appellants' Br. at 16 (internal quotations omitted) (quoting *Skrzecz*, 2014 WL 3400614, at *7 n.7). Because the district court errantly concluded that Plaintiffs failed to adequately allege joint employment for purposes of the FLSA, it did not address whether Defendants constitute "employers" for purposes of the Workplace Fraud Act and Wage Payment and Collection Law. *Hall*, 2015 WL 4064692, at *3. We remand those claims to the district court to reconsider whether Plaintiffs have stated a claim under the relevant state-law tests and the proper standard for reviewing motions to dismiss under Rule 12(b)(6).

We further note that, in passing upon Plaintiffs' state law claims, the district court incorrectly suggested that the Maryland Wage and Hour Law and Workplace Fraud Act share a common definition of covered "employers," while the state's Wage Payment and Collection Law employs a narrower definition of that term. *See Hall*, 2015 WL 4064692, at *3. In fact, it is the Workplace Fraud Act and Wage Payment and Collection Law that share a substantially similar definition, which diverges slightly from the definitions included in the FLSA and the analogous Wage and Hour Law. *Compare* 29 U.S.C.A. § 203(d) (FLSA, defining "employer" to include "any person acting directly or indirectly in the interest of an employer in relation to an employee . . . ") *and* Md. Code Ann., Lab. & Empl. § 3-401 (Wage and Hour Law, defining "employer" to include "a person who acts directly or indirectly in the interest of another employer with an employee"), *with* Md. Code Ann., Lab. & Empl. § 3-501(b) (Wage Payment and Collection Law, defining "employer" to include "any person who employs an individual . . . or a successor of the person") *and* Md. Code Ann., Lab. & Empl. § 3-901(c) (Workplace Fraud Act, defining "employer" to mean "any person that employs an individual . . . .").

IV.

Finally, Defendants ask, in the alternative, that we affirm the district court's dismissal of Plaintiffs' FLSA claims on the ground that Plaintiffs fail to articulate a sufficiently detailed accounting of the number of uncompensated hours they worked during their respective periods of employment to state a claim for unpaid overtime wages under the FLSA. Courts are divided as to the level of detail an FLSA overtime claimant must provide to overcome a Rule 12(b)(6) motion to dismiss. *See Butler v. DirectSat USA, LLC*, 800 F. Supp. 2d 662, 667-68 (D. Md. 2011) (summarizing differing approaches). On one hand, a number of lower courts have adopted an approach under which plaintiffs are required to provide an approximation of the number of hours for which they were inadequately compensated to state a plausible overtime claim. *See*, *e.g.*, *Jones v. Casey's Gen. Stores*, 538 F. Supp. 2d 1094, 1102-03 (S.D. Iowa 2008). Although the precise degree of specificity required under this standard is less than clear, courts have expressed well-founded skepticism of such an unduly demanding pleading standard in overtime cases. *See Butler*, 800 F. Supp. 2d at 668 (noting that, "[w]hile [the d]efendants might appreciate having [the p]laintiffs' estimate of the overtime hours worked . . . , it would be subject to change during discovery and if/when the size of the collective action grows and thus of limited value" at the pleading stage); *see also Landers v. Quality Commc'ns, Inc.*, 771 F.3d 638, 645 (9th Cir. 2014), *cert. denied*, 135 S. Ct. 1845 (2015) (observing that "most (if not all) of the detailed information concerning a plaintiff-employee's compensation and schedule is in the control of the defendants" (citing *Pruell v. Caritas Christi*, 678 F.3d 10, 15 (1st Cir. 2012))).

On the other hand, at least three other circuits have adopted a more lenient approach, requiring plaintiffs only to "sufficiently allege 40 hours of work in a given workweek as well as some uncompensated time in excess of the 40 hours." *Lundy v. Catholic Health Sys. of Long Island Inc.*, 711 F.3d 106, 114 (2d Cir. 2013); *Davis v. Abington Mem. Hosp.*, 765 F.3d 236, 241-43 (3d Cir. 2014) (adopting *Lundy* standard); *Landers*, 771 F.3d at 644-45 (same); *see also Manning v. Bos. Med. Ctr. Corp.*, 725 F.3d 34, 46-47 (1st Cir. 2013) (applying the *Lundy* standard to conclude that plaintiffs alleged sufficient facts to survive dismissal); *cf. Sec'y of Labor v. Labbe*, 319 F. App'x 761, 763 (11th Cir. 2008) (per curiam) (unpublished) (reasoning that, given the relative simplicity of FLSA overtime claims, extensive pleading is generally unnecessary and allowing claims to proceed based on allegations that defendant "repeatedly violated stated provisions of the FLSA by failing to pay covered employees minimum hourly wages and to compensate employees who worked in excess of forty hours a week at the appropriate rates").

Reviewing these decisions, we are persuaded to adopt the latter approach. Thus, to make out a plausible overtime claim, a plaintiff must provide sufficient factual allegations to support a reasonable inference that he or she worked more than forty hours in at least one workweek and that his or her employer failed to pay the requisite overtime premium for those overtime hours. Under this standard, plaintiffs seeking to overcome a motion to dismiss must do more than merely allege that they regularly worked in excess of forty hours per week without receiving overtime pay. *See Pruell*, 678 F.3d at 13; *Dejesus v. HF Mgmt. Servs., LLC*, 726 F.3d 85, 90 (2d Cir. 2013) (explaining that the "requirement that plaintiffs

must allege overtime without compensation in a 'given' workweek [is] not an invitation to provide an all-purpose pleading template alleging overtime in 'some or all workweeks'").

At the same time, however, we emphasize that the standard we today adopt does not require plaintiffs to identify a *particular* week in which they worked uncompensated overtime hours. Rather, this standard is intended "to require plaintiffs to provide some factual context that will 'nudge' their claim 'from conceivable to plausible.'" *Dejesus*, 726 F.3d at 90 (quoting *Twombly*, 550 U.S. at 570). Thus, to state a plausible FLSA overtime claim, plaintiffs "must provide sufficient detail about the length and frequency of their unpaid work to support a reasonable inference that they worked more than forty hours in a given week." *Nakahata v. N.Y.-Presbyterian Healthcare Sys., Inc.*, 723 F.3d 192, 201 (2d Cir. 2013). A plaintiff may meet this initial standard "by estimating the length of her average workweek during the applicable period and the average rate at which she was paid, the amount of overtime wages she believes she is owed, *or any other facts* that will permit the court to find plausibility." *Landers*, 771 F.3d at 645 (emphasis added) (citing *Pruell*, 678 F.3d at 14); *see also Davis*, 765 F.3d at 243 (explaining that "a plaintiff's claim that she 'typically' worked forty hours per week, worked extra hours during such a forty-hour week, and was not compensated for extra hours beyond forty hours he or she worked during one or more of *those* forty-hour weeks, would suffice" (emphasis in original)).

Applying this standard here, we conclude that Plaintiffs' allegations provide a sufficient basis to support a reasonable inference that Plaintiffs worked

uncompensated overtime hours while serving as DIRECTV technicians. The gravamen of Plaintiffs' Complaint is that, under DIRECTV's piece-rate compensation system (the terms of which Plaintiffs allege were not properly memorialized, as required by the FLSA), Plaintiffs consistently performed significant work for which they received inadequate compensation. As a result, Plaintiffs assert that, taking into account their total compensation and the number of hours they worked on behalf of Defendants, their final pay "did not reflect compensation for all hours worked and they were not properly compensated for overtime hours." J.A. 104.

As compared to a more traditional overtime claim based on an employee's standard hourly wage, Defendants' alleged piece-rate compensation system presents certain additional complexity under the FLSA. *See* 29 U.S.C. § 207(g) (setting out various methods by which an employer may comply with the statute's overtime provisions under a piece-rate compensation scheme). At this stage of the litigation, however, we need not wade into these murky waters. Instead, our consideration of the sufficiency of Plaintiffs' claims must again focus on the degree to which Plaintiffs have alleged that they worked more than forty hours in a workweek and were not properly compensated for those additional hours. *Landers*, 771 F.3d at 645 (applying the *Lundy* standard to consider overtime allegations arising out of an employer's piece-rate compensation system).

In this case, in addition to their common allegations regarding the nature and structure of the DIRECTV Provider Network, Plaintiffs each describe in some detail their regular work schedules, rates of pay, and uncompensated work time. Specifically,

each Plaintiff provides an approximation of his general workweek, with each Plaintiff alleging that he typically worked in excess (and, in some cases, well in excess) of forty hours per week. Supplementing these initial allegations, each Plaintiff further estimates the number of hours he worked in any given week, including a breakdown of the number of compensable and noncompensable hours he typically worked, as well as his average weekly pay and the amount by which this weekly compensation was typically reduced through DIRECTV-imposed penalties and unreimbursed business expenses.

This final level of granularity, coupled with Plaintiffs' common allegations regarding the types of work DIRECTV designated as compensable and noncompensable, ultimately nudges Plaintiffs' claims against Defendants from the merely conceivable to the plausible. At this initial stage, that is all that is required to overcome Defendants' motion to dismiss. *Cf. Landers* 771 F.3d at 646 (dismissing FLSA claims where the complaint lacked "any detail regarding a given workweek when [the plaintiff] worked in excess of forty hours and was not paid overtime for that given workweek and/or was not paid minimum wages"). Although Plaintiffs may ultimately be unable to substantiate their allegations through discovery, they have sufficiently alleged a plausible claim to unpaid overtime for their work on behalf of Defendants.

The district court's summary dismissal of Plaintiffs Wood and Lewis's claims against DirectSat suffers from a similar infirmity.[11] Contrary to the dis-

[11] In disposing of these claims, which are pursued only by Plaintiffs Wood and Lewis, the district court first questioned the suf-

trict court's submission that these Plaintiffs' allegations suggest that they were "paid an amount greater than that required by the FLSA," *Hall*, 2015 WL 4064692, at *3, both Lewis and Wood expressly allege that they regularly performed uncompensated overtime work for Defendants during the course of their employment as DIRECTV technicians.

Though again unsupported by any citation or other reasoning, the district court's suggestion that Plaintiffs Lewis and Wood fail to state a claim because their final pay was "greater than required under the FLSA" suggests a fundamental misapprehension of the statute's requirements. In addition to setting a federal minimum wage, the FLSA separately requires employers to pay their workers an overtime premium for hours worked in excess of forty per week. 29 U.S.C. § 207. For this reason, even assum-

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ficiency of these Plaintiffs' allegations regarding when they were employed by DirectSat and suggested, without explanation or citation, that their claims against the company "may be time-barred." *Hall*, 2015 WL 4064692, at *3. In fact, however, Wood and Lewis specifically allege that they worked as satellite technicians for DIRECTV, DirectSat, and other entities until 2011 and 2012, respectively.

In addition to DIRECTV and DirectSat, each of these Plaintiffs indicates that he worked as a DIRECTV satellite technician for at least one other entity during the relevant period, with Plaintiff Lewis indicating that he was involuntarily terminated by an entity called Commercial Wiring Incorporated in December 2012. Importantly, plaintiffs alleging joint employment under the FLSA need not "determine conclusively which [defendant] was their employer at the pleadings stage or describe in detail the employer's corporate structure." *Ash*, 799 F.3d at 961. Rather, at this preliminary stage, it is enough that both Lewis and Wood allege that they worked as DIRECTV technicians for DirectSat during the relevant period to overcome Defendants' motions to dismiss.

ing Plaintiffs Lewis and Wood each received an effective hourly wage above the minimum rate established by the FLSA, their overtime claims against Defendants are sufficiently pleaded to survive the present motions to dismiss.

V.

Under the appropriate legal standards, Plaintiffs have alleged sufficient facts to make out a plausible claim that Defendants jointly employed them as DIRECTV technicians. As such, Defendants may be held jointly and severally liable in the event that Plaintiffs performed uncompensated overtime work for Defendants during Plaintiffs' respective periods of employment. Because Plaintiffs have sufficiently pleaded (1) that DIRECTV—and, as to Plaintiffs Lewis and Wood, DirectSat—jointly employed them as satellite technicians and (2) that they are owed some amount of unpaid overtime compensation, we reverse the district court's dismissal of Plaintiffs' FLSA and Maryland state-law claims against Defendants and remand these consolidated cases for further proceedings consistent with this opinion.

REVERSED AND REMANDED

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

MARLON HALL, ET AL.
v.
DIRECTV, LLC, ET AL.

Civil No. — JFM-14-2355

JAY LEWIS, ET AL.
v.
DIRECTV, LLC, ET AL.

Civil No. JFM-14-3261

MEMORANDUM

These two consolidated actions are brought under the Fair Labor Standards Act and three Maryland statutes by seven former technicians who installed DIRECTV satellites for television service.[1] Plaintiffs apparently were either independent contractors with or employed by (the allegations in the Amended Complaint do not make the relationship clear) companies that were part of what is called the DIRECTV Provider Network. The defendants are DIRECTV, Inc. and DirectSat. Two of the plaintiffs, Jay Lewis and John Wood, allege that they were directly associated with DirectSat, which apparently

[1] Because this is not a collective action, it is not clear that seven plaintiffs should have been joined in the two actions. However, this issue has not been briefed, and because I am granting defendants' motion to dismiss on other grounds that have been briefed, I will not address the issue.

was a company in the DIRECTV Provider Network. The other companies with which plaintiffs were associated are not named as defendants. [2] DIRECTV and DirectSat have moved to dismiss. The motion will be granted.

I.

Plaintiffs allege that DIRECTV is their "joint employer" under the FLSA and related Maryland statutes. The grounds specified for this allegation are (1) DIRECTTV requires plaintiffs to hold themselves out as agents of DIRECTV; (2) it promulgates de-

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[2] There is a prior litigation history between the parties. In *Lang v. DIRECTV, Inc.*, Case No. 10-85 filed in the Eastern District of Louisiana, after the court denied a motion to dismiss filed by DIRECTV, six plaintiffs in this consolidated action filed opt-in notices. Discovery revealed that damages would be difficult to calculate on common proof at trial, and the parties filed a Joint Motion to Decertify the *Lang* action. The claims of the opt-in plaintiffs were dismissed without prejudice. Thereafter, four of the plaintiffs in this consolidated action filed individual claims in the Central District of California. That action was eventually transferred to the District of Maryland, and is one of the consolidated actions to which defendants' motion to dismiss is presently directed. Two of the plaintiffs in this action filed a related case, *Acfalle v. DIRECTV*, Case No. 13-8108, in the Central District of California. The claims asserted by the plaintiffs were dismissed without prejudice. Likewise, one of the plaintiffs in the present action was a plaintiff in *Arnold v. DIRECTV*, Case No. 10-CV-0352 in the Eastern District of Missouri. His claim too was dismissed without prejudice. The two plaintiffs in the *Acfalle* action and the one plaintiff in the *Arnold* action subsequently refiled their claims in this court in one of the two consolidated actions. Finally, The Judicial Panel on Multidistrict Litigation denied a motion to coordinate and transfer plaintiffs' claims to a single district. The Panel denied that motion on February 6, 2015, thus making defendant's motion to dismiss ripe for consideration.

tailed instructions for how installations are to be completed; (3) it publishes training materials that technicians are required to review; (4) it requires technicians to pass prescreening and background checks and to obtain a certification from the Satellite Broadcasting and Communications Association ("SBCA") before the technician may be assigned DIRECTV work orders; (5) it uses requirements mandated by the SBCA who control the installation of its systems; (6) it utilizes quality control personnel to review technicians' work and imposes charge backs and/or roll backs based on the reviews; (7) it requires technicians who were classified as 1099 independent contractors by companies in its Provider Network to sign "Subcontractor Agreements;" (8) it established a "piece-rate system" through its Provider Agreements that compensated plaintiffs for certain enumerated tasks deemed "productive" by DIRECTV but not compensating plaintiffs for all necessary work they performed; (9) it subjected plaintiffs to "charge backs" constituting deductions from their pay if there were issues with an installation or questions from the customer; (10) it maintained a file for each technician who performed services for it; (11) it assigned each technician a scope of work described in a work order delivered to each technician via a centralized computer software system; (12) it used a data base to coordinate the assignment of particular work orders to the technicians using each technicians unique "Tech ID No.;" (13) it required technicians to check in by telephone with DIRECTV via its dispatching system upon arriving at the job site and when the installation was complete; and (14) it mandated that technicians wear a DIRECTV uniforms.

II.

The FLSA defines "employer" to include "any person acting directly or indirectly in the interest of an employer or in relation to an employer." 29 U.S.C. §203(d).

The first question that must be resolved is whether an individual worker is "an employee" under the FLSA. The Fourth Circuit has articulated six factors that are to be considered in resolving this issue: "(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 upon his managerial skill; (3) the alleged employee's investment in equipment and materials required for his task, or his employment of workers; (4) or that his service rendered requires a special service 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." *Schultz v. Capitol Int'l Sec. Inc.*, 466 F.3d 298, 304-05 (4th Cir. 2006). After this question has been resolved, and it is determined that an individual worker is "an employee" under the FLSA, it must next be determined whether an entity other than the entity with which the individual worker had a direct relationship is a "joint employer" of that worker.

The two questions, although related, are distinct. The second question, whether an entity with whom an employee is not directly associated is a joint employer, is resolved by reference to a separate four-factor test: whether the alleged employer "(1) had the power to hire and fire the employee; (2) supervised and controlled employee work schedules or conditions of employment; (3) determined the rate and

method of payment; and (4) maintained employment records." *See Skrzecz v. Gibson Island Corp*., No. 13-1796, 2014 WL 3400614, at *7 (D. Md. July 11, 2014).

Here, plaintiffs have alleged facts sufficient to show that DIRECTV at least indirectly supervised their work and directly controlled their schedules. Given the business model that DIRECTV has adopted, this is not surprising. The goodwill of DIRECV depends upon the quality of work that technicians perform and their keeping of appointments with DIRECTV customers. Plaintiffs have not, however, alleged facts that would show that DIRECTV has the power to hire and fire technicians, determine their rate and method of payment or maintain their employment records. Although not specified in the amended complaint, it appears that these responsibilities were carried out of the companies in the DIRECTV Provider Network.

The ultimate test of employment is the hiring and firing of employees and the setting of their compensation amounts. Of course, if the entities that were part of the Network Provider System were undercapitalized and merely charades created by DIRECTV that followed every suggestion and payment decision made by DIRECTV, that would show, perhaps conclusively, DIRECTV's joint employer status. The responsibilities imposed by the FLSA cannot be avoided by an employer's abuse of corporate forms. However, the amended complaint here alleges nothing that implies that the companies in the DIRECTV Provider Network were undercapitalized or slavishly followed every suggestion made by DIRECTV in regard to the status and method of payment of the technicians with whom they had a relationship. Ab-

sent such allegations, it cannot be inferred that DIRECTV was the joint employer of the plaintiffs. Rather, the allegations show only that DIRECTV adopted a reasonable business model that allowed for the decentralization of decision-making authority regarding the employment of technicians who install its equipment

III.

Plaintiffs' claims under the Maryland Wage and Hour Law and the Workplace Fraud law fail because the definition of "employer" is virtually the same under those statutes as under the FLSA. *See Skrzecz*, 2014 WL 34000614, at * 7; *Bouthner v. Cleveland Constr., Inc.*, No. 11-244, 2011 WL 2976868, at * 7 (D. Md. July21, 2011. The definition of "employer" under the Maryland Wage Payment, and Collection is, if anything, narrower than the definition of "employer" under the FLSA, *see* Md. Code, Lab. & Empl. § 3-501, and plaintiffs' claims under that statute likewise also fail.

IV.

Lewis and Wood have failed to state any plausible claim DirectSat. It is not at all clear from their allegations when they allegedly worked for DirectSat. Thus, their claims may be time-barred. Moreover, the minimal facts they do plead indicate they were paid an amount greater than that required by the FLSA.

Date: 6/30/15 */s/ J.Frederick Motz*
J. Frederick Motz
United States District Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MARLON HALL, ET AL.
v.
DIRECTV, LLC, ET AL.

Civil No. — JFM-14-2355

JAY LEWIS, ET AL.
v.
DIRECTV, LLC, ET AL.

Civil No. JFM-14-3261

ORDER

For the reasons stated in the attached memorandum it is, this 30th day of June 2015 ORDERED

1. Defendant's motion to dismiss is granted; and

2. These actions are dismissed.

/s/ J. Frederick Motz
J. Frederick Motz
United States District Judge

APPENDIX D

FILED: March 6, 2017

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 15-1857 (L)
(1:14-cv-02355-JFM)

MARLON HALL; JOHN WOOD; ALIX PIERRE; KASHI WALKER
Plaintiffs - Appellants
and
JOHN ALBRECHT
Plaintiff
v.
DIRECTV, LLC; DIRECTSAT USA, LLC
Defendants - Appellees
and
DIRECTV, INC.; DIRECTV HOME SERVICES; DTV HOME SERVICES II, LLC
Defendants

No. 15-1858
(1:14-cv-03261-JFM)

JAY LEWIS; KELTON SHAW; MANUEL GARCIA
Plaintiffs - Appellants
and
JUNE LEFTWICH
Plaintiff

v.
DIRECTV, LLC; DIRECTSAT USA, LLC
Defendants - Appellees
and
DIRECTV, INC.
Defendant

ORDER

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk

APPENDIX E

29 U.S.C. § 203(d)

"Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.

29 U.S.C. § 203(e)(1)

[T]he term "employee" means any individual employed by an employer.

29 U.S.C. § 203(g)

"Employ" includes to suffer or permit to work.

29 U.S.C. § 207(a)(1)

[N]o 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 at which he is employed.

29 C.F.R. § 791.2

(a) 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. A determination of whether the employment by the employers is to be considered joint employment or separate and distinct employment for purposes of the act depends upon all the facts in the

particular case. If 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 employment of a particular employee, who during the same workweek performs work for more than one employer, each employer may disregard all work performed by the employee for the other employer (or employers) in determining his own responsibilities under the Act. On the other hand, if the facts establish that the employee is employed jointly by two or more employers, *i.e.*, that employment by one employer is not completely disassociated from employment by the other employer(s), all of the employee's work for all of the joint employers during the workweek is considered as one employment for purposes of the Act. In this event, all joint 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. In discharging the joint obligation each employer may, of course, take credit toward minimum wage and overtime requirements for all payments made to the employee by the other joint employer or employers.

(b) Where the employee performs work which simultaneously benefits two or more employers, or works for two or more employers at different times during the workweek, a joint employment relationship generally will be considered to exist in situations such as:

(1) Where there is an arrangement between the employers to share the employee's services, as, for example, to interchange employees;

(2) Where one employer is acting directly or indirectly in the interest of the other employer (or employers) in relation to the employee; or

(3) Where the employers are not completely disassociated with respect to the employment of a particular employee and may be deemed to share control of the employee, directly or indirectly, by reason of the fact that one employer controls, is controlled by, or is under common control with the other employer.

APPENDIX F

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

MARLON HALL, JOHN WOOD, ALIX PIERRE, KASHI WALKER,

Plaintiffs,

v.

DIRECTV, LLC and DIRECTSAT USA, LLC,

No. 1:14-cv-02355 ELH

District Judge Ellen Lipton Hollander

JAY LEWIS, KELTON SHAW, and MANUEL GARCIA,

Plaintiffs,

v.

DIRECTV, LLC and DIRECTSAT USA, LLC,

Defendants.

No. 1:14-cv-3261 ELH

District Judge Ellen Lipton Hollander

CONSOLIDATED AMENDED COMPLAINT

Plaintiffs Marlon Hall, John Wood, Alix Pierre, Kashi Walker, Jay Lewis, Kelton Shaw, and Manuel

Garcia, by and through their undersigned counsel, for their individual complaints against DIRECTV LLC, and DirectSat USA, LLC, ("Provider Defendant" or "HSP Defendant") (collectively with DIRECTV, "Defendants"); hereby state as follows:

NATURE OF SUIT

1. DIRECTV—the largest provider of satellite television services in the United States—is responsible for a far reaching "fissured employment"[1] scheme. In order to expand and service its customer base (topping more than 20 million domestic subscribers), DIRECTV has engaged tens of thousands of technicians—including each of the Plaintiffs in this case—to install and repair its satellite systems. Although DIRECTV requires these technicians to drive a DIRECTV-branded vehicle, wear a DIRECTV uniform, and perform their work according to DIRECTV's exacting policies and procedures, DIRECTV disclaims any legal relationship with these workers, tagging them instead as "independent contractors" or employees of subordinate entities (in-

[1] Fissured employment describes the practice of a large company attempting to shed its role as a direct employer and purporting to disassociate itself from the workers responsible for its products (albeit maintaining tight control over the method, manner, quantity, and quality of production). The practice of outsourcing an employer's responsibilities and obligations to subordinate entities and subcontractors is highly profitable for companies like DIRECTV, but results in stagnation of wages and benefits and causes rampant violations of wage-and-hour laws. *See e.g.*, David Weil, *The Fissured Workplace: Why Work Became So Bad for So Many and What Can Be Done to Improve It* (Harvard Univ. Press, Feb. 3, 2014); David Weil, *Enforcing Labour Standards in Fissured Workplaces: The US Experience*, 22 Econ. & Lab. Rel. Rev. 2, at 33-54 (July 2011).

cluding the named service provider Defendants). But it is the economic reality of the relationship—not DIRECTV's self-serving labels—that controls whether Plaintiffs meet the definition (among the broadest ever legislated) of an "employee" under the Fair Labor Standards Act ("FLSA").

2. Plaintiffs' claims squarely challenge this dangerous trend, and are not the first to do so. The U.S. Department of Labor ("DOL") has made a priority of investigating and exposing multi-party business arrangements that shirk compliance with the FLSA. *See* http:// wage-hour. net/post/2012/09/25 /Fissured-Industry-Enforcement-Efforts-Continue. aspx (last visited Feb. 25, 2015). The DOL's Misclassification Initiative, launched under Vice President Biden's Middle Class Task Force, is aggressively combating this pervasive issue in order to restore rights denied to individuals.[2] In September 2011, then-Secretary of Labor Hilda L. Solis announced the signing of a Memorandum of Understanding between the DOL and the Internal Revenue Service (IRS),

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[2] "The misclassification of employees as something else, such as independent contractors, presents a serious problem, as these employees often are denied access to critical benefits and protections— such as family and medical leave, overtime compensation, minimum wage pay and Unemployment Insurance—to which they are entitled. In addition, misclassification can create economic pressure for law-abiding business owners, who often struggle to compete with those who are skirting the law. Employee misclassification also generates substantial losses for state Unemployment Insurance and workers' compensation funds." *See* http://www.dol.gov/opa/media/press/whd/ WHD20120257.htm (last visited Feb. 25, 2015); *see generally*, DOL Misclassification Initiative, available at http://www.dol.gov/whd/workers/misclassification/(last visited Feb. 25, 2015).

under which the agencies combine resources and share information to reduce the incidence of misclassification of employees, to help reduce the tax gap, and to improve compliance with federal labor laws. The DOL's Wage and Hour Division is also partnering with individual states, including Maryland, whose workers are being subjected to this practice.[3]

3. The individual Plaintiffs joined herein intend to prove in this litigation that they are legally employed by DIRECTV and, where applicable, DirectSat, and are entitled to the overtime and minimum wage protections of the FLSA and related state wage-and-hour law.

JURISDICTION AND VENUE

4. The FLSA authorizes court actions by private parties to recover damages for violation of the FLSA's wage and hour provisions. Jurisdiction over Plaintiffs' individual FLSA claims is based on 29 U.S.C. § 216(b) and 28 U.S.C. § 1331. Jurisdiction over Plaintiffs' state law claims is based upon 28 U.S.C. § 1367, and, because the parties are diverse and each Plaintiff's individual claim, inclusive of attorneys' fees, exceeds $75,000, also satisfies the requirements of 28 U.S.C. § 1332.

5. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims alleged herein oc-

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[3] *See, e.g.*, DOL Misclassification Initiative, *available at* http://www.dol.gov/whd/workers/misclassification/#stateDetails (last visited Feb. 25, 2015).

curred in this judicial district and Defendants are each subject to personal jurisdiction in this district.[4]

PARTIES

6. Marlon Hall is an individual residing in Elkton, Maryland, in Cecil County.

7. John Wood is an individual residing in Mechanicsville, Maryland, in St. Mary's County.

8. Alix Pierre is an individual residing in Queens Village, New York.

9. Kashi Walker is an individual residing in Baltimore, Maryland, in Baltimore County.

10. Jay Lewis is an individual residing in Wyoming, Delaware.

11. Kelton Shaw is an individual residing in Greensboro, North Carolina.

12. Manuel Garcia is an individual residing in Rogers, Arkansas.

13. DIRECTV, Inc. is a Delaware corporation with its principal place of business in El Segundo, California. DIRECTV, Inc. does business as DIRECTV Home Services. In December 2011, DIRECTV, Inc. merged with another DIRECTV entity, DIRECTV Operations, LLC. The resulting entity is known as DIRECTV, LLC, which is a Delaware cor-

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[4] Venue is also appropriate in light of Defendants' consent to venue in this district, as evidenced by the joint motion and resulting order in *Hall v. DirecTV*, Case No. 13-08158 (C.D. Cal.), granting Defendants' Motion to Transfer Pursuant to 28 U.S.C. § 1404(a) and finding, pursuant to the parties' stipulation, that the District of Maryland was the appropriate District for this action. (Doc. 59, at 4, 10).

poration with its principal place of business in El Segundo, California.

14. Defendant DirectSat USA, LLC ("DirectSat") is a Delaware limited liability company with its principal place of business in King of Prussia, Pennsylvania.

15. All Plaintiffs performed work for DIRECTV and, where applicable, DirectSat, in Maryland.

16. All Defendants do business or have done business in Maryland.

COMMON FACTUAL ALLEGATIONS

DIRECTV's Fissured Employment Scheme: The Provider Network

17. At all relevant times, Plaintiffs worked as satellite television installation technicians. Plaintiffs' principal job duty as technicians was to install and repair DIRECTV satellite television service.

18. DIRECTV controls and manages its nationwide corps of service technicians in two ways: (1) by directly employing service technicians ("W-2 Employees"); and (2) through an employment network of service providers (the "Provider Network") consisting of Home Service Providers, including DirectSat ("HSPs"), Secondary Service Providers ("Secondary Providers"), subcontractors, and service technicians.

19. DIRECTV operates its Provider Network nationwide from its headquarters in El Segundo, California.

20. Upon information and belief, at all relevant times, DIRECTV was the primary, if not the only, client of the HSPs and Secondary Providers (HSPs and Secondary Providers are collectively referred to

herein as "Providers") and was the source of substantially all of each Provider's income.

21. During the relevant time period, and as alleged in more detail *infra*, many HSPs were subsumed by DIRECTV through a series of mergers and acquisitions.

22. By design, the Provider Network is organized and operated as a top-down structure: DIRECTV sits atop the Provider Network, controlling the employment network through contracts with HSPs and Secondary Providers; the HSPs and Secondary Providers, in turn, enter contracts with a patchwork of largely captive entities that DIRECTV generally refers to as subcontractors; and the subcontractors enter contracts with the technicians who install the satellite television equipment. In some instances, the HSPs or Secondary Providers contract directly with the technicians.

23. DirectSat performed similar, middle-management functions between DIRECTV and those technicians described below as being employed by it under the FLSA. In this role, DirectSat worked directly in the interest of DIRECTV by passing along scheduling from DIRECTV and providing supervision of the respective technicians. That is, DIRECTV set forth the qualification "hiring" criteria for the employees and contractors of DirectSat. DirectSat then implemented and enforced those qualifications. Similarly, DIRECTV set the requirements for how the technicians were to perform their work. In turn, DirectSat monitored and enforced compliance with those requirements.

24. DirectSat maintained, among other documents, a contractor file for each technician working

under its control, albeit as a misclassified 1099 subcontractor or "independent contractor" (though, these technicians were actually "employees" under the FLSA). The contents of these contractor files were regulated and audited by DIRECTV. These contractor files are analogous to a personnel file.

25. DirectSat had the power to enter into and terminate contracts with the 1099 technicians working under its control. In this way, DirectSat had the power to hire and fire those technicians.

26. DirectSat maintained warehouses and other facilities where the 1099 technicians working under their control had to go to pick up certain equipment and receive certain trainings. The equipment belonged to DIRECTV and the trainings were required by DIRECTV.

27. No matter how employed, whether directly or as part of the Provider Network, each DIRECTV technician must install DIRECTV's satellite television equipment according to the same policies, procedures, practices, and performance standards as required by DIRECTV.

28. For those technicians who work as part of the Provider Network, DIRECTV's policies, procedures, practices, performance standards, and payment method requirements are described, mandated, and imposed through the Provider Agreements, Secondary Provider Agreements, and Services Provider Agreements.

29. DIRECTV obligates the Providers to ensure that the technicians perform their work as specified by the Provider Agreements, and, accordingly, the Subcontractor Agreements and Technician Agree-

ments incorporate the provisions of the Provider Agreements.

30. The Provider Agreements enable DIRECTV to control nearly every facet of the technician's work, down to the "DIRECTV" shirts they are required to wear and the "DIRECTV" ID card they must show customers.

31. DIRECTV assigns each technician a scope of work described in a Work Order that DIRECTV itself delivers to each technician via a centralized computer software system that DIRECTV controls. DIRECTV mandates particularized methods and standards of installation to assure DIRECTV's equipment is installed according to the dictates of DIRECTV's policies and procedures. As a consequence, each technician's essential job duties are virtually identical no matter where performed and no matter which intermediary the technician is ostensibly working for.

32. Plaintiffs typically started their workdays after receiving daily work schedules assigned through DIRECTV's dispatching systems. DIRECTV used a database program known as SIEBEL to coordinate the assignment of particular work orders to technicians using each technician's unique "Tech ID Number."

33. Each technician's unique "Tech ID Number" connects them to a HSP. The HSP serves as a middle-man between DIRECTV and either the W-2 technician or the subcontractor and 1099 technician.

34. After receiving their daily work schedules, Plaintiffs typically called the customer contact for each of their assigned jobs to confirm the timeframe within which the technician expected to arrive at the

customer's home. Plaintiffs then traveled to their first assigned job and thereafter continued to complete the jobs assigned by DIRECTV in the prescribed order on the daily work schedule. Upon arriving at each job site, Plaintiffs were required to check-in by telephone with DIRECTV via its dispatching system. At the end of an assigned job, Plaintiffs were required to report to DIRECTV that the installation was complete and, thereafter, worked directly with DIRECTV employees to activate the customer's service.

35. When performing DIRECTV's work, Plaintiffs were required to purchase and wear a uniform with DIRECTV insignia on it. Additionally, Plaintiffs were required to display DIRECTV insignia on vehicles driven to customers' homes for installations.

36. Although DIRECTV controls nearly every aspect of the technicians' work, Defendants insist that the technicians are not their employees, claiming that in some instances they are "independent contractors."

37. Plaintiffs will show that the Provider Network is purposefully designed to exercise the right of control over DIRECTV's technician corps while avoiding the responsibility of complying with the requirements of the FLSA.

DIRECTV's Workforce Consolidation: Acquisition of Providers by Defendants

38. DIRECTV's control over its purportedly independent provider partners is integral to its fissured employment scheme. So much so that DIRECTV regularly infuses these partners with what it labels internally as "extraordinary advance payments" in order to keep their dependent operations

afloat while feigning an outward appearance of independence. When litigation or other circumstances make the "independent" relationship a negative for DIRECTV, DIRECTV simply absorbs these entities by acquisition.

39. The absorption by DIRECTV is seamless, simply a resetting of titles without the functional modifications that normally accompany an arm's length acquisition. To date, there are only three "independent" HSPs still in operation—including the named Provider Defendant, DirectSat. Since DIRECTV developed its HSP Network, DIRECTV or one of these three remaining HSPs has purchased at least thirteen prior HSPs.[5] Below is a description of the prior HSPs for which the Plaintiffs technicians worked and how those HSPs were ultimately acquired by DIRECTV.

AeroSat/DTV Home Services II, LLC

40. Upon information and belief, AeroSat was acquired by DTV Home Services II, LLC in late 2008, which was then acquired by DIRECTV in March 2009. DIRECTV ultimately acquired all of AeroSat's facilities. After the acquisition, DIRECTV conducted business out of AeroSat's locations, and personnel from AeroSat worked for DIRECTV. Many of AeroSat's employees were hired by DIRECTV.

41. Upon information and belief, working conditions for installation technicians who worked for

[5] These include AeroSat, Bruister, Bluegrass Satellite and Security, ConnecTV, Directech NE, Directech SW, DTV Home Services II, LLC, Halsted Communications, Ironwood Communications, JP&D Digital Satellite, Michigan Microtech, Mountain Satellite and Security, and Skylink.

AeroSat remained substantially the same after DTV Home Services II, LLC, and then DIRECTV, acquired AeroSat. Likewise, technicians, including Plaintiffs, had substantially the same job(s) after DTV Home Services II, LLC, and then DIRECTV, acquired AeroSat. There were no broad changes to job functions, job titles, job responsibilities, and/or supervisors, and technicians' pay remained the same.

The Economic Reality: DIRECTV Employs the Technicians Through Its Provider Network

42. DIRECTV exerts significant control over the Providers and Plaintiffs regarding the essential terms and conditions of Plaintiffs' employment.

43. DIRECTV, along with DirectSat, are and were at all times relevant herein, in the business of, among other things, providing satellite television service to businesses and consumers. Installation and repair of satellite dishes, receivers, and related equipment is an integral part of DIRECTV's business.

44. An "employer" includes "any person acting directly or indirectly in the interest of an employer in relation to an employee," 29 U.S.C. § 203(d), and an employee may be employed by more than one employer at the same time. Employment status for purposes of wage and hour law is defined by the real economic relationship between the employer(s) and the employees. Here, through its Provider Network, DIRECTV establishes, defined, and controls the economic relationship between DIRECTV and its technicians. Among other indicia of employment described herein, DIRECTV controls the details of Plaintiffs' day-to-day work and the piece rate com-

pensation method by which technicians are paid for their work.

45. Through the Providers, DIRECTV exercises significant control over Plaintiffs' daily work lives, including, but not limited to, control over what work Plaintiffs performed, where that work was performed, when that work was performed, and how that work was performed.

46. Through the Providers, DIRECTV also determined whether Plaintiffs' work merited compensation. Among other controls, DIRECTV defined Plaintiffs' compensable and non-compensable work and imposed "rollbacks" and "chargebacks," thereby setting Plaintiffs' rate of pay on a piece-rate basis tailored to achieve its business purposes. Through the Provider Network DIRECTV utilized its Providers' payroll and paycheck systems to administer its piece-rate compensation scheme, including issuing paychecks to Plaintiffs.

47. DIRECTV required Plaintiffs to hold themselves out as agents of DIRECTV.

48. DIRECTV promulgates detailed instructions for how installations are to be completed. Plaintiffs received these instructions and performed the work as DIRECTV required. By requiring that Plaintiffs comply with DIRECTV's instructions, Plaintiffs were forbidden to exercise meaningful discretion in how they performed installations.

49. DIRECTV publishes training materials that technicians such as Plaintiffs are required to review.

50. DIRECTV requires that all technicians pass pre-screening and background checks, and obtain a certification from the Satellite Broadcasting &

Communications Association ("SBCA") before that technician may be assigned DIRECTV work orders. This requirement allows DIRECTV to mandate certain training for all technicians.

51. DIRECTV uses these requirements to control who is hired to install its systems.

52. DIRECTV utilizes a network of quality control personnel and field managers to oversee the work performed by Plaintiffs.

53. As described in detail above, DIRECTV, through its SIEBEL system, assigns detailed work schedules to Plaintiffs. Through this system, DIRECTV and the Providers effectively control who continues to perform their work, and can effectively terminate any technician by simply ceasing to issue work to those technicians.

54. DIRECTV and Providers' quality control personnel reviewed Plaintiffs' work, and imposed chargebacks and/or rollbacks based on those reviews.

55. Upon information and belief, DIRECTV required, through its Provider Network, technicians who were classified as 1099 independent contractors to sign "Subcontractor Agreements."

56. Defendants are each engaged in interstate commerce and, upon information and belief, Defendants each gross more than Five Hundred Thousand Dollars in revenue per year.

57. Defendants' policies and practices accomplish two, interrelated purposes: they ensure DIRECTV controls its technicians' work, while deliberately disclaiming their status as employees under state and federal employment laws.

58. By imposing its policies and practices—and to mask the economic realities of its employment relationship with Plaintiffs—DIRECTV willfully fails to maintain time records and other employment documentation, thereby saving payroll and other costs. And by imposing its policies and practices to avoid the reach of state and federal employment laws, DIRECTV willfully fails to pay minimum wage and overtime compensation to Plaintiffs.

59. Through the Provider Network, DIRECTV imposed its policies and practices uniformly, which created an economic reality driven by its control over Plaintiffs and their work, sufficient to establish that DIRECTV, and where applicable, DirectSat, are Plaintiffs' employers subject to liability under the FLSA and state law.

The Piece-Rate System: DIRECTV's Unlawful Payment Scheme

60. As with other aspects of Plaintiffs' work, DIRECTV effectively controlled Plaintiffs' pay through the common policies and practices mandated in its Provider Agreements.

61. Every Plaintiff was paid pursuant to the piece-rate payment scheme that is utilized throughout DIRECTV's network.

62. The FLSA permits employers to pay on a piece-rate basis as long as the employer pays for all hours worked, including non-productive hours, and pays a premium for hours worked over forty in a week, based on the employee's regular rate. See 29 U.S.C. § 207(a)(g); 29 C.F.R. 778.318(a).

63. The employer and employee may agree that the piece-rate pay includes pay for productive and

nonproductive hours, but where there is no agreement, the FLSA is not satisfied. *See* 29 U.S.C. § 207(g) (employer's method for calculating the overtime premium must be made "pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work."); 29 C.F.R. 778.318(c) (where it is "understood by the parties that other compensation received by the employee is intended to cover pay for such hours" . . . . "[I]f that is the agreement of the parties, the regular rate of the piece worker will be the rate determined by dividing the total piece work earnings by the total hours worked (productive and nonproductive) in the workweek.")

64. There was no contract, memorandum, or other document between Plaintiffs and Defendants properly memorializing or explaining this pay system.

65. Under this system, Plaintiffs were not paid for all hours they worked for Defendants. Rather, they were paid on a per-task (a/k/a piece rate) basis for satisfactorily completing a DIRECTV-approved satellite installation.

66. The piece-rate system only pays technicians for certain enumerated "productive" tasks—tasks that DIRECTV listed on a standardized rate card—but fails to compensate technicians for all necessary work they perform.

67. In addition to the certain tasks DIRECTV designated as compensable, Plaintiffs performed other work each week during the relevant time period for Defendants, such as assembling satellite dishes, driving to and between job assignments, reviewing and receiving schedules, calling customers to confirm

installations, obtaining required supplies, assisting other technicians with installations, performing required customer educations, contacting DIRECTV to report in or activate service, working on installations that were not completed, and working on "rollback" installations where Plaintiffs had to return and perform additional work on installations previously completed.

68. Plaintiffs were not paid for these integral and indispensable tasks that were necessary to their principal activity of installing and repairing DIRECTV satellite television service.

69. Although Plaintiffs worked more than forty hours per week, as set forth in more detail below, they were not compensated for these "nonproductive" tasks. Accordingly, to the extent W-2 technician Plaintiffs' pay was translated to a "regular rate" (as required by the FLSA for calculating overtime due to piece-workers), Plaintiffs' regular rate did not reflect compensation for all hours worked and they were not properly compensated for overtime hours.

70. Defendants did not pay Plaintiffs' wages free and clear. Rather, Plaintiffs were subjected to "chargebacks" wherein Defendants would deduct amounts from Plaintiffs' pay if there were issues with an installation, or questions from the customer, generally up to 90 days after the customer's service was activated. The chargeback would occur for a variety of reasons, many of which were out of Plaintiffs' control, including, for example, faulty equipment, improper installation, customer calls regarding how to operate their remote control, or a customer's failure to give greater than a 95% satisfaction rating for the services provided by the technician.

71. In addition to chargebacks, independent contractor Plaintiffs were also required to purchase supplies necessary to perform installations, such as screws, poles, concrete, and cables; and independent contractor Plaintiffs were also required to provide all maintenance and purchase all the gas used in the vehicle they drove between DIRECTV customers' homes. Nor were these independent contractors paid an overtime premium for work done beyond 40 hours in a workweek.

72. These required business expenses were incurred for DIRECTV's financial benefit and reduced the wages of these technicians.

73. Plaintiffs, in virtually every workweek, worked more than 40 hours per week for DIRECTV, as alleged in more detail below.

74. Plaintiffs were not paid the overtime premium required by applicable law for work done beyond 40 hours in a given workweek.

75. The policy and practice of imposing "chargebacks," failing to compensate Plaintiffs for all hours worked, and failing to reimburse Plaintiffs' necessary business expenses resulted in Plaintiffs routinely working more than forty hours in a work week while being denied overtime pay and being subjected to an effective wage rate below that required by applicable law.

76. Plaintiffs intend to prove that DIRECTV's piece-rate pay system fails to comply with applicable law, and constitutes an effort to deliberately deny Plaintiffs earned wages and overtime compensation in violation of the FLSA.

LITIGATION HISTORY

Lang v. DIRECTV

77. Six Plaintiffs in this case—Marlon Hall, John Wood, Alix Pierre, Kashi Walker, Jay Lewis and Kelton Shaw—previously opted in to a conditionally certified FLSA action pending in the Eastern District of Louisiana styled *Lang v. DIRECTV, et al.*, No. 10-1085-NJB. The *Lang* case was pending as a collective action until the court, on September 3, 2013, granted the parties' joint motion decertifying the class, dismissed the opt-in plaintiffs' claims without prejudice to pursue the individual claims raised herein, and ordered the statute of limitations for each opt-in plaintiff to continue to be tolled for 60 days from the date of the order. *Lang v. DIRECTV*, Case No. 10-1085-NJB (E.D. La.) (Docs. 466, 466-1).

Hall v. DIRECTV

78. Within the 60 days granted by the *Lang* court, Marlon Hall, John Wood, Alix Pierre, and Kashi Walker filed an action in the Central District of California on November 1, 2013. *Hall v. DirecTV*, Case No. 13-08158. On July 22, 2014, the court entered an order granting Defendants' Motion to Transfer Pursuant to 28 U.S.C. § 1404(a) and denying as moot Defendants' Motion to Sever Claims of Plaintiffs and Motion to Sever Defendants, finding, pursuant to the parties' stipulation, that the District of Maryland was the appropriate District for this action. (Doc. 59). *Hall v. DIRECTV* was transferred to this court, and an amended complaint was filed on October 17, 2014 (Doc. 80).

Acfalle v. DIRECTV

79. Within the 60 days granted by the *Lang* court, Plaintiffs Jay Lewis and Kelton Shaw filed an action in the Central District of California on November 1, 2013. *Acfalle v. DirecTV*, Case No. 13-8108 ABC (Ex) (Doc. 1) (amended on December 23, 2013, by Doc. 9). On July 22, 2014, the court "dropped" 277 plaintiffs with FLSA-only claims, dismissing them without prejudice to refile their claims closer to their home states or "where they performed their work." (Doc. 71, at 5, 8.) The court tolled the statute of limitations for 90 days to permit Plaintiffs to refile their claims. (Doc. 71, at 8.)

80. Within the 90 days granted by the *Acfalle* court, Plaintiffs Jay Lewis and Kelton Shaw filed the instant Complaint in *Lewis v. DirecTV*, No. ELH-14-03261, joining their individual claims against Defendants.

Arnold v. DIRECTV

81. Plaintiff Manuel Garcia previously filed a consent to become a party plaintiff in *Arnold v. DIRECTV*, No. 10-0352-JAR, a collective action pending in the Eastern District of Missouri. Pursuant to a Proposed Case Management Plan and Order (Docs. 200, 216), the court dismissed the claims of certain opt-in plaintiffs who did not fit into a subclass, (Doc. 220), including Manuel Garcia, without prejudice to pursuing the individual claims raised herein, and ordered the statute of limitations for each opt-in plaintiff to continue to be tolled for 90 days from the date of the order. *Arnold v. DIRECTV*, Case No. 10-0325-JAR (E.D. Mo.) (Doc. 221, Notice of Voluntary Decertification; Doc. 244, Order).

82. Within the 90 days granted by the *Arnold* court, Plaintiff Manuel Garcia joined his individual claims in this court, in the case originally styled *Lewis v. DirecTV*, ELH-14-03261, first filed October 20, 2014.

PLAINTIFFS' CLAIMS

Marlon Hall

83. Plaintiff Marlon Hall is an individual residing in the state of Maryland. For a period, between August 2009 and November 2011, Marlon Hall was treated as a W-2 technician for MasTec and DIRECTV; for another period, between November 2011 and June 2013, he was treated as an independent contractor. For all of his time working as a technician, under the FLSA he was employed by DIRECTV.

84. In virtually every workweek between approximately August 2009 and June 2013, Marlon Hall routinely worked more than 40 hours per week as a technician for DIRECTV, MasTec, Lux Communication, and Frisco Communication in the state of Maryland, and was unlawfully deprived of overtime compensation.[6]

85. In fact, Marlon Hall spent approximately 50 to 100 hours per week performing tasks for the benefit of Defendants. Of those 50 to 100 hours, 5 to 60 were spent working for DIRECTV's benefit on tasks not assigned a piece rate and which were thus unpaid.

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[6] Exceptions to a typical workweek might include days in which work was not performed, i.e., due to weather, a holiday, illness, or otherwise. Specifically, Marlon Hall has a gap in his DIRECTV employment from about April 2012 to March 2013.

86. Defendants' employment policies and practices detailed herein (i.e., imposing "chargebacks" in varying amounts but often ranging between $40 and $150 per week, failing to compensate Marlon Hall for all hours worked, and failing to reimburse Marlon Hall's necessary business expenses averaging $2283 to $2483 per month[7]) resulted in further unlawful reduction of Marlon Hall's compensation.

87. Marlon Hall does not have all the documents or records possessed by Defendants that bear on his damages. Based on his recollection, Marlon Hall estimates that, in a given workweek, he would work 65 hours, 33 of which were unpaid; he would be subject to chargebacks of $95 per week; and would be paid $300 per week, which would be reduced by unreimbursed business expenses of $596 per week.

88. Marlon Hall brings claims against DIRECTV.

John Wood

89. Plaintiff John Wood is an individual residing in the state of Maryland. Although John Wood was treated as an independent contractor, under the FLSA he was employed by DIRECTV and DirectSat.

90. In virtually every workweek between approximately 2005 and September 2011, John Wood worked more than 40 hours per week as a technician for DIRECTV, DirectSat, JEDI Communications, and

[7] Exception to chargebacks and unreimbursed business expenses for the workweeks Marlon Hall worked as a W-2 technician for DIRECTV and MasTec.

JNT Solutions in the state of Maryland and was unlawfully deprived of overtime compensation.[8]

91. In fact, John Wood spent approximately 70 hours per week performing tasks for the benefit of Defendants. Of those 70 hours per week, about 30 to 35 hours were spent working for Defendants' benefit on tasks not assigned a piece rate and which were thus unpaid.

92. Defendants' employment policies and practices detailed herein (*i.e.*, imposing "chargebacks" of varying amounts but often $23 per week, failing to compensate John Wood for all hours worked, and failing to reimburse John Wood's necessary business expenses averaging $528 to $760 per month) resulted in further unlawful reduction of John Wood's compensation.

93. John Wood does not have all the documents or records possessed by Defendants that bear on his damages. Based on his recollection, John Wood estimates that, in a given workweek, he would work 70 hours, 33 hours of which were unpaid; he would be subject to chargebacks of $23 per week; and would be paid $900 per week, which would be reduced by unreimbursed business expenses of $161 per week.

94. John Wood brings claims against DIRECTV and DirectSat.

Alix Pierre

95. Plaintiff Alix Pierre is an individual residing in the state of New York. Although Alix Pierre

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[8] Exceptions to a typical workweek might include days in which work was not performed, i.e., due to weather, a holiday, illness, or otherwise.

was treated as an independent contractor, under the FLSA he was employed by DIRECTV.

96. In virtually every workweek between approximately June 2009 and September 2010, Alix Pierre worked more than 40 hours per week as a technician for DIRECTV, AeroSat, DTV Home Services II, LLC, and L&B Satellite/Yeros Home Services in the state of Maryland, and was unlawfully deprived of overtime compensation.[9]

97. In fact, Alix Pierre spent approximately 80 to 100 hours per week performing tasks for the benefit of Defendants. Of those 80 to 100 hours per week, about 36 to 48 hours were spent working for DIRECTV's benefit on tasks not assigned a piece rate and which were thus unpaid.

98. Defendants' employment policies and practices detailed herein (*i.e.*, imposing "chargebacks" of varying amounts but often $40 to $100 per week, failing to compensate Alix Pierre for all hours worked, and failing to reimburse Alix Pierre's necessary business expenses averaging $800 per month) resulted in further unlawful reduction of Alix Pierre's compensation.

99. Alix Pierre does not have all the documents or records possessed by Defendants that bear on his damages. Based on his recollection, Alix Pierre estimates that, in a given workweek, he would work 90 hours, 42 hours of which were unpaid; he would be subject to chargebacks of $70 per week; and would be

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[9] Exceptions to a typical workweek might include days in which work was not performed, i.e., due to weather, a holiday, illness, or otherwise.

paid $650 per week, which would be reduced by unreimbursed business expenses of $200 per week.

100. Alix Pierre brings claims against DIRECTV.

Kashi Walker

101. Plaintiff Kashi Walker is an individual residing in the state of Maryland. Although Kashi Walker was treated as an independent contractor, under the FLSA he was employed by DIRECTV.

102. In virtually every workweek between approximately 2007 and December 2010, Kashi Walker worked more than 40 hours per week as a technician for DIRECTV, MasTec, and DTech Inc. in the state of Maryland, and was unlawfully deprived of overtime compensation.[10]

103. In fact, Kashi Walker spent approximately 60 hours per week performing tasks for the benefit of Defendants. Of those 60 hours per week, about 25 hours were spent working for DIRECTV's benefit on tasks not assigned a piece rate and which were thus unpaid.

104. Defendants' employment policies and practices detailed herein (*i.e.*, imposing "chargebacks" of varying amounts but often $50 to $75 per week, failing to compensate Kashi Walker for all hours worked, and failing to reimburse Kashi Walker's necessary business expenses averaging $1248 to $3600 per month) resulted in further unlawful reduction of Kashi Walker's compensation.

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[10] Exceptions to a typical workweek might include days in which work was not performed, i.e., due to weather, a holiday, illness, or otherwise.

105. Kashi Walker does not have all the documents or records possessed by Defendants that bear on his damages. Based on his recollection, Kashi Walker estimates that, in a given workweek, he would work 60 hours, 25 hours of which were unpaid; he would be subject to chargebacks of $63 per week; and would be paid $850 per week, which would be reduced by unreimbursed business expenses of $606 per week.

106. Kashi Walker brings claims against DIRECTV.

Jay Lewis

107. Plaintiff Jay Lewis is an individual residing in the state of Maryland. Although Jay Lewis was treated as an independent contractor, under the FLSA he was employed by DIRECTV and DirectSat.

108. In virtually every workweek between approximately 2007 and December 2012, Jay Lewis worked more than 40 hours per week as a technician for DIRECTV, DirectSat, and Commercial Wiring Incorporated in the states of Maryland and Delaware, and was unlawfully deprived of overtime compensation.[11]

109. In fact, Jay Lewis spent approximately 50 hours per week performing tasks for the benefit of Defendants. Of those 50 hours per week, about 12 hours were spent working for Defendant's benefit on tasks not assigned a piece rate and which were thus unpaid.

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[11] Exceptions to a typical workweek might include days in which work was not performed, i.e., due to weather, a holiday, illness, or otherwise.

110. On December 27, 2012, Jay Lewis was involuntarily discharged from his position with Commercial Wiring Incorporated.

111. Defendants' employment policies and practices detailed herein (*i.e.*, imposing "chargebacks" of varying amounts but often $100 per week, failing to compensate Jay Lewis for all hours worked, and failing to reimburse Jay Lewis' necessary business expenses averaging $744 per month) resulted in further unlawful reduction of Jay Lewis' compensation.

112. Jay Lewis does not have all the documents or records possessed by Defendants that bear on his damages. Based on his recollection, Jay Lewis estimates that, in a given workweek, he would work 50 hours, 12 hours of which were unpaid; he would be subject to chargebacks of $100per week; and would be paid $700 per week, which would be reduced by unreimbursed business expenses of $186 per week.

113. Jay Lewis brings claims against DIRECTV and DirectSat.

Kelton Shaw

114. Plaintiff Kelton Shaw is an individual residing in the state of North Carolina. Although Kelton Shaw was treated as an independent contractor, under the FLSA he was employed by DIRECTV.

115. In virtually every workweek between approximately March 2009 and May 2011, Kelton Shaw worked more than 40 hours per week as a technician for DIRECTV, DTV Home Services II, LLC, and DTech Inc. in the states of Maryland and New Mexi-

co and was unlawfully deprived of overtime compensation.[12]

116. In fact, Kelton Shaw spent approximately 50 hours per week performing tasks for the benefit of Defendants. Of those 50 hours per week, about 25 hours were spent working for Defendant's benefit on tasks not assigned a piece rate and which were thus unpaid.

117. Defendants' employment policies and practices detailed herein (*i.e.*, imposing "chargebacks" of varying amounts but often $70 per week, failing to compensate Kelton Shaw for all hours worked, and failing to reimburse Kelton Shaw's necessary business expenses averaging $704 to $774 per month) resulted in further unlawful reduction of Kelton Shaw's compensation.

118. Kelton Shaw does not have all the documents or records possessed by Defendants that bear on his damages. Based on his recollection, Kelton Shaw estimates that, in a given workweek, he would work 50 hours, 25 hours of which were unpaid; he would be subject to chargebacks of $70 per week; and would be paid 600 per week, which would be reduced by unreimbursed business expenses of $185 per week.

119. Kelton Shaw brings claims against DIRECTV.

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[12] Exceptions to a typical workweek might include days in which work was not performed, i.e., due to weather, a holiday, illness, or otherwise.

Manuel Garcia

120. Plaintiff Manuel Garcia is an individual residing in the state of Arkansas. Although Manuel Garcia was treated as an independent contractor, under the FLSA he was employed by DIRECTV.

121. In virtually every workweek between approximately March 2012 and January 2014, Manuel Garcia worked more than 40 hours per week as a technician for DIRECTV, Endeavor Communications, South Atlantic Satellite, Inc., and 7-Fold Technologies LLC in the states of Maryland and Delaware, and was unlawfully deprived of overtime compensation.[13]

122. In fact, Manuel Garcia spent approximately 50 hours per week performing tasks for the benefit of Defendants. Of those 50 hours per week, about 10 to 20 hours were spent working for DIRECTV's benefit on tasks not assigned a piece rate and which were thus unpaid.

123. Defendants' employment policies and practices detailed herein (*i.e.*, imposing "chargebacks" of varying amounts but often $50 to $75 per week, failing to compensate Manuel Garcia for all hours worked, and failing to reimburse Manuel Garcia's necessary business expenses) resulted in further unlawful reduction of Manuel Garcia's compensation.

124. Manuel Garcia does not have all the documents or records possessed by Defendants that bear on his damages. Based on his recollection, Manuel Garcia estimates that, in a given workweek, he

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[13] Exceptions to a typical workweek might include days in which work was not performed, i.e., due to weather, a holiday, illness, or otherwise.

would work 50 hours, 15 hours of which were unpaid; he would be subject to chargebacks of $63 per week; and would be paid $950 per week, which would be reduced by unreimbursed business expenses.

125. Manuel Garcia brings claims against DIRECTV.

COUNT I

Violation of the Fair Labor Standards Act of 1938

By each Plaintiff individually against Plaintiffs' previously identified Defendant(s)

126. Plaintiffs re-allege all allegations set forth above.

127. At all times material herein, Plaintiffs have been entitled to the rights, protections, and benefits provided under the FLSA, 29 U.S.C. §§ 201, *et seq*.

128. The FLSA regulates, among other things, the payment of overtime pay by employers whose employees are engaged in interstate commerce, or engaged in the production of goods for commerce, or employed in an enterprise engaged in commerce or in the production of goods for commerce. 29 U.S.C. § 207(a)(1).

129. The FLSA also regulates, among other things, the payment of minimum wage by employers whose employees are engaged in interstate commerce, or engaged in the production of goods for commerce, or employed in an enterprise engaged in commerce or in the production of goods for commerce. 29 U.S.C. § 206(a).

130. Defendants are subject to the minimum wage and overtime pay requirements of the FLSA

because they are enterprises engaged in interstate commerce and their employees are engaged in commerce.

131. Defendants violated the FLSA by failing to pay all minimum wage and overtime wages due to Plaintiffs, failing to properly calculate Plaintiffs' regular rate of pay for determining the overtime premium pay owed, and improperly deducting money from Plaintiffs' pay.

132. As to defendant DIRECTV, Plaintiffs are entitled to damages equal to the mandated minimum wage and overtime premium pay within the three years preceding (1) the filing their consent to join forms in the *Lang* or *Arnold* litigation, plus periods of equitable tolling,[14] because DIRECTV acted willfully and knew or showed reckless disregard in their violation of the FLSA.

133. Plaintiffs with claims against DirectSat are entitled to damages equal to the mandated minimum wage and overtime premium pay within the three years preceding the filing their original complaints in these consolidated actions, *i.e.*, November 1, 2013[15] or the filing of the original *Lewis* complaint, *i.e.*, Oc-

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[14] Former *Arnold* Plaintiff Manuel Garcia is entitled to an additional six months of tolling on his claims against DIRECTV per the law of the case. The *Arnold* court ordered a period of tolling on the running of the opt-ins' limitations period during a discovery stay while DIRECTV's motion to dismiss was pending. (*Arnold* Docs. 46, 49). The period of tolling was 180 days, which, added to the applicable three year period gives former *Arnold* Plaintiffs' claims against DIRECTV a three-and-a-half year lookback from the date each opt-in joined that action.

[15] Plaintiffs John Wood and Jay Lewis.

tober 17, 2014[16] plus periods of equitable tolling, because DirectSat acted willfully and knew or showed reckless disregard in its violation of the FLSA.

134. Pursuant to Defendants' policies and practices, Defendants willfully violated the FLSA by refusing and failing to pay Plaintiffs overtime and minimum wages. In the course of perpetrating these unlawful practices, Defendants willfully failed to keep accurate records of all hours worked by, compensation paid to, and expenses incurred by Plaintiffs.

135. Defendants' unlawful conduct was willful because, among other reasons described herein, DIRECTV and other members of the Provider Network (including DirectSat) knew, or should have known, that the fissured employment scheme utilized a piece-rate system(s) that unlawfully denied Plaintiffs minimum wage, overtime wage, and other employment benefits. Those systems have been challenged in numerous lawsuits around the country in which DIRECTV and DirectSat, as well as other HSP members of DIRECTV's Provider Network, have all been defendants. Indeed DIRECTV is currently a defendant in a lawsuit brought the U.S. Department of Labor in the United States District Court for the Western District of Washington challenging its (1) status as an employer of technicians like the plaintiffs herein and (2) the piece-rate compensation system. The system being challenged in that case is essentially identical to the system(s) being challenged in this case.

136. Defendants have acted neither in good faith nor with reasonable grounds to believe that their ac-

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[16] Plaintiff Manuel Garcia.

tions and omissions were not a violation of the FLSA. As a result thereof, Plaintiffs are each entitled to recover an award of liquidated damages in an amount equal to the amount of unpaid wages as described by Section 16(b) of the FLSA, codified at 29 U.S.C. § 216(b). Alternatively, should the Court find Defendants acted in good faith in failing to pay Plaintiffs minimum wage and overtime compensation, Plaintiffs are each entitled to an award of prejudgment interest at the applicable legal rate.

137. As a result of these violations of the FLSA's minimum wage and overtime pay provisions, compensation has been unlawfully withheld from Plaintiffs by Defendants. Accordingly, pursuant to 29 U.S.C. § 216(b), Defendants are liable for the unpaid minimum wages and overtime premium pay along with an additional amount as liquidated damages, pre-judgment and post-judgment interest, reasonable attorneys' fees, and costs of this action.

138. Plaintiffs request relief as described below and as permitted by law.

COUNT II

Violation of Maryland Minimum Wage and Overtime Act

(Md. Code Ann. § 3-401 *et seq*.)

By Plaintiffs Marlon Hall, John Wood, Jay Lewis, Kelton Shaw, and Manuel Garcia, individually against each Plaintiffs' previously identified Defendant(s)

139. Plaintiffs re-allege the allegations set forth above.

140. Plaintiffs were "employees," and Defendants were "employers" pursuant to Md. Code Ann., Labor & Employ. § 3-501 and § 3-502.

141. Defendants violated Maryland law, in relevant part, by failing to pay overtime premium pay to Plaintiffs as required by Maryland Labor and Employment Code §§ 3-415, 420.

142. Defendants violated Maryland law, in relevant part, by willfully failing to compensate Plaintiffs for all wages earned and all hours worked at least at the minimum wage in violation of Maryland Labor and Employment Code § 3-413.

143. As alleged herein, Plaintiffs were paid piece-rate for very limited and specific tasks that they completed for Defendants. They were not compensated for other tasks completed for Defendants' benefit. Moreover, Plaintiffs were not compensated for all time worked during the continuous workday.

144. Plaintiffs have been damaged by Defendants' willful failure to compensate them as required by law. Pursuant to Maryland Labor and Employment Code § 3-427, Plaintiffs are entitled to payment for the difference between the wages paid to them and the wages required by statute for a period of up to three years prior to the date Plaintiffs first filed their claims against Defendants, plus interest, attorneys' fees, and costs in amounts to be proved at trial.

145. Plaintiffs request relief as described below and as permitted by law.

COUNT III

Violation of Maryland Wage Payment and Collection Law

(Md. Code Ann. § 3-501 *et seq*.)

By Plaintiffs Marlon Hall, John Wood, Jay Lewis, Kelton Shaw, and Manuel Garcia individually against each Plaintiff's previously identified Defendant(s)

146. Plaintiffs re-allege the allegations set forth above.

147. Under Maryland law, Plaintiffs are entitled to timely payment of all wages earned and unpaid, by the next payday following termination of employment.

148. Defendants willfully violated their obligations under Maryland law by failing to pay Plaintiffs all wages earned and unpaid by the next payday following termination.

149. Defendants' failure to pay was not the result of a bona fide dispute under the Maryland statute.

150. As a direct and proximate cause of Defendants' actions, Plaintiffs have suffered damages.

151. Pursuant to Maryland Labor and Employment Code § 3-507.2(b), Plaintiffs are entitled to recover three times the amount of unpaid wages for a period of up to three years and two weeks prior to the date Plaintiffs first filed their claims against Defendants, plus interest, attorneys' fees, and costs in amounts to be proved at trial.

152. Plaintiffs request relief as described below and as permitted by law.

COUNT IV

Unlawful Wage Deductions (Chargebacks)

(Md. Code Ann. § 3-503)

By Plaintiffs Marlon Hall, John Wood, Jay Lewis, Kelton Shaw, and Manuel Garcia individually against each Plaintiffs' previously identified Defendant(s))

153. Plaintiffs re-allege the allegations set forth above.

154. Under Maryland Labor and Employment Code § 3-503, it is unlawful for any employer to make a deduction from an employee's wages unless it is ordered by a court, expressly authorized in writing by the employee, allowed by the Commissioner or otherwise in accord with the law.

155. As alleged herein, Defendants regularly and impermissibly collected "chargebacks" from Plaintiffs' pay.

156. Defendants' failure to pay was not the result of a bona fide dispute under the Maryland statute.

157. As a direct and proximate cause of Defendants' actions, Plaintiffs have suffered damages.

158. Pursuant to Maryland Labor and Employment Code § 3-507.2(b), Plaintiffs are entitled to recover three times the amount of unpaid wages for a period of up to three years and two weeks prior to the date Plaintiffs first filed their claims against Defendants, plus interest, attorneys' fees, and costs in amounts to be proved at trial.

159. Plaintiffs request relief as described below and as permitted by law.

COUNT V

Failure to Provide Wage Statements

(Md. Code Ann. § 3-504)

By Plaintiffs Marlon Hall, John Wood, Kashi Walker, Jay Lewis, Kelton Shaw, and Manuel Garcia individually against each Plaintiffs' previously identified Defendant(s)

160. Plaintiffs re-allege the allegations set forth above.

161. Under Maryland Labor and Employment Code § 3-504, Defendants are required to provide itemized statements when they pay wages showing gross earnings and deductions along with other information.

162. Under Maryland Labor and Employment Code § 3-914, Defendants are required to retain certain records regarding their employees and independent contractors, including rate of pay, amount of pay, "hours that each employee or independent contractor works each day and each workweek" and, "for all individuals who are not classified as employees, evidence that each individual is an exempt person or an independent contractor or its employee."

163. Maryland Labor and Employment Code §§ 3-914 mandates Defendants provide each individual classified as an independent contractor with written notice of the classification upon hiring, and the Commissioner may assess a civil penalty of not more than $50 per day for each day the employer fails to provide the notice.

164. Defendants willfully violated their obligations under Maryland Labor and Employment Code by failing to retain or to provide Plaintiffs with timely and accurate wage statements.

165. As a direct and proximate result, Plaintiffs have suffered damages. Among other things, Defendants' failure led plaintiffs to believe that they were being paid for all hours and jobs actually worked; Defendants' wage statement failures prevented and will prevent Plaintiffs from determining the true amounts of wages owed to them; and caused Plaintiffs and will cause them extra work and effort to determine their true wages and the identity of their employer(s).

166. Plaintiffs request relief as described below and as permitted by law.

COUNT VI

Workplace Fraud – Willful Misclassification

(Md. Code Ann. §§ 3-903 3-904, 3-911)

By Plaintiffs Marlon Hall, John Wood, Jay Lewis, Kelton Shaw, and Manuel Garcia individually against each Plaintiffs' previously identified Defendant(s)

167. Plaintiffs re-allege the allegations set forth above.

168. Under Maryland Labor and Employment Code § 3-903 and 904, Defendants are prohibited from misclassifying an individual's employment status.

169. Plaintiffs performed work for remuneration paid by Defendants under the control and direction

of DIRECTV through the Provider Defendants as alleged herein.

170. Plaintiffs' services were never outside the usual course of services that Defendants provide. Plaintiffs were never engaged in any independently established trade, occupation, profession, or business in connection with their work for Defendants. Plaintiffs were never sole proprietors or part of a partnership in connection with their work for Defendants. Defendants nonetheless knowingly improperly treated Plaintiffs as independent contractors and as a result, Defendants paid Plaintiffs straight pay in the form of cash without taking the required payroll deductions or making the required contributions on their behalf for their work.

171. As a direct and proximate result, Plaintiffs have suffered damages.

172. Defendants are liable for civil penalties, restitution, and specific compliance pursuant to Maryland Labor and Employment Code §§ 3-907, 908, and 909. Pursuant to Maryland Labor and Employment Code § 3-911, Plaintiffs are entitled to restitution, treble damages, interest, attorneys' fees, and costs in amounts to be proved at trial.

173. Plaintiffs request relief as described below and as permitted by law.

WHEREFORE, Plaintiffs demand a jury trial as to all issues so triable, and request the Court enter judgment for Plaintiffs individually and:

a. Award damages for unpaid minimum wages and unpaid overtime wages under 29 U.S.C. § 216(b) and Maryland Labor and Employment Code § 3-401 *et seq*.;

b. Award treble damages for unpaid wages under Maryland Labor and Employment Code § 3-507.2(b);

c. Award restitution pursuant to Maryland Labor and Employment Code § 3-901 *et seq*., and Maryland common law;

d. Impose civil penalties as provided in Maryland Labor and Employment Code § 3-901 *et seq*.;

e. Award liquidated damages under 29 U.S.C. § 216(b) and Maryland Labor and Employment Code §§ 3-401, 3-501, 3-901 *et seq*.;

f. Award reasonable attorneys' fees under the Maryland Labor and Employment Code and Fair Labor Standards Act;

g. Award pre-judgment interest;

h. Award costs of suit under 29 U.S.C. § 216(b) and Maryland Labor and Employment Code §§ 3-401, 3-501, 3-901 et seq.; and

i. Grant any further relief that the Court may deem just and equitable. Dated: March 20, 2015

Respectfully submitted,

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