UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RONALD ZAPATA, on behalf of himself and others similarly situated,

Plaintiff,

v.

B. COLEMAN FLOORING INSTALLATION, LLC *et al.*,

Defendants.

Civil Action No. 18-1134 (TJK)

MEMORANDUM OPINION AND ORDER

Plaintiff Ronald Zapata brings this putative collective action individually and on behalf of all other persons similarly situated against Defendants B. Coleman Flooring Installation, LLC; Lakota Contracting, Inc. t/a NCF Interiors; and Clark Construction Group, LLC. Zapata alleges that Defendants violated the minimum wage and overtime requirements of the Fair Labor Standards Act (FLSA) and D.C. law over work that he and others performed on a construction project. He has moved to conditionally certify this suit as a collective action under § 216(b) of the FLSA and § 32-1308(a)(1)(C) of the D.C. Code. For the reasons explained below, the Court will grant the motion and conditionally certify the collective action.

I. Background

A. This Action

In May 2018, Zapata filed this case as a collective action alleging violations of the FLSA, 29 U.S.C. §§ 201, *et seq.*, the District of Columbia Minimum Wage Revision Act (DCMWRA), D.C. Code §§ 32-1001, *et seq.*, and the District of Columbia Wage Payment and Collection Law (DCWPCL), D.C. Code §§ 32-1301, *et seq.* ECF No. 1 ("Compl."). According to the

complaint, in 2017, Clark Construction Group, LLC, ("Clark Construction") operated as the general contractor on a job in the District of Columbia known as "The Wharf project." *Id.* ¶ 8. As part of that undertaking, Clark Construction hired NCF Interiors ("NCFI") as a subcontractor to perform interior finishing and flooring work. *Id.* ¶ 9. In turn, NCFI hired B. Coleman Flooring Installation, LLC, ("B. Coleman") as a lower-tier subcontractor to install tile flooring. *Id.* ¶ 10. From April to September 2017, Zapata alleges, B. Coleman employed him as a tile installer for The Wharf project. *Id.* ¶ 11. During that period, he worked about 54 hours per week. *Id.* ¶ 12. From April to late July 2017, he contends that B. Coleman failed to pay him the overtime premium rate of time and a half for work over 40 hours per week. *Id.* ¶¶ 14, 15. Then, beginning around the end of July, and continuing until September 2017, B. Coleman failed to pay him any compensation at all, although he continued to work about 54 hours per week. *Id.* ¶ 16. From around April to October 2017, B. Coleman employed fifteen to twenty other tile installers and tile-installer helpers, all of whom were subject to the same compensation practices. *Id.* ¶¶ 17–20. Eleven of those individuals (the "opt-in plaintiffs") filed forms consenting to join the suit as opt-in plaintiffs under § 216(b) of the FLSA. *See* ECF Nos. 4–14.

Since being served with the summons and complaint in July 2019, B. Coleman has, so far, failed to appear in this action. *See* ECF No. 26. Even so, Zapata alleges that, under D.C. law, Clark Construction and NCFI—as the general contractor and intermediate subcontractor, respectively—are jointly and severally liable for any wage-and-hour violations committed by B. Coleman. Compl. ¶¶ 39, 47. Both those defendants have filed counterclaims seeking indemnity and contribution from Zapata; they allege that Zapata served as a lower-tier subcontractor on The Wharf project, rather than B. Coleman's employee, and thus would be jointly liable for any damages awarded to the opt-in plaintiffs. *See* ECF Nos. 40, 47.

The Court held an Initial Status Conference on October 11, 2018. At the conference, Zapata's counsel suggested that the parties, including the opt-in plaintiffs, could go on to discovery without first moving for conditional certification under § 216(b). Rough Tr. at 17:21–19:6.[1] Following additional briefing on the issue, the Court ordered that, should Zapata elect to proceed with the case as a collective action, he had to move for conditional certification before seeking discovery. *See* ECF No. 45.

B. Zapata's Motion for Conditional Certification

In December 2018, Zapata moved for conditional certification under § 216(b) and D.C. Code § 32-1308(a)(1)(C)(iii). ECF No. 46. He and ten opt-in plaintiffs submitted declarations in support of the motion. *See* ECF No. 46-1 ("Pl.'s Br."), Ex. 1 ("R. Zapata Decl."); *id.*, Ex. 2 ("I. Cabrera Decl."); *id.*, Ex. 3 ("M. Cabrera Decl."); *id.*, Ex. 4 ("B. Gonzalez Decl."); *id.*, Ex. 5 ("C. Gonzalez Decl."); *id.*, Ex. 6 ("I. Gonzalez Decl."); *id.*, Ex. 7 ("M. Lopez Decl."); *id.*, Ex. 8 ("F. Perez Decl."); *id.*, Ex. 9 ("J. Suarez Decl."); *id.*, Ex. 10 ("R. Velasquez Decl."); *id.*, Ex. 11 ("A. Vicente Decl."). More specifically, the declarations support Zapata's claim that he and the putative members of the collective action are similarly situated in accordance with the FLSA and D.C. law because they all worked on The Wharf project as tile installers or tile-installer helpers for B. Coleman at some point in 2017. For example:

- All the declarants allege that they worked as either a tile installer or a tile-installer helper on The Wharf project and all but one of the declarants allege that they reported to, and received instructions from, a foreman named "Guido." R. Zapata Decl. ¶¶ 3–7; I. Cabrera Decl. ¶¶ 3–5, 7; M. Cabrera Decl. ¶¶ 3–5; B. Gonzalez Decl. ¶¶ 3–7; C. Gonzalez Decl. ¶¶ 3–7; I. Gonzalez Decl. ¶¶ 3–7; M. Lopez Decl. ¶¶ 3–6; F. Perez Decl. ¶¶ 3–6; J. Suarez Decl. ¶¶ 3–7; R. Velasquez Decl. ¶¶ 3–6; A. Vicente

[1] Citations to statements made at the October 11, 2018 Initial Status Conference are to page numbers in a "rough" transcript provided by the Court Reporter, since the final, certified transcript is not yet available.

Decl. ¶¶ 3–4. Zapata alleges that Guido worked for B. Coleman. R. Zapata Decl. ¶ 6.

- All the declarants identify, in various ways, a second individual who supervised the foreman and owned or was associated with the company for which the declarants also worked. R. Zapata Decl. ¶ 3; I. Cabrera Decl. ¶ 4; M. Cabrera Decl. ¶ 5; B. Gonzalez Decl. ¶¶ 6–7; C. Gonzalez Decl. ¶¶ 6–7; I. Gonzalez Decl. ¶¶ 6–7; M. Lopez Decl. ¶¶ 5–6; F. Perez Decl. ¶¶ 5–6; J. Suarez Decl. ¶¶ 5–6; R. Velasquez Decl. ¶¶ 5–6; A. Vicente Decl. ¶¶ 4–5. Zapata specifically alleges that this second individual was Les Coleman, the "owner of B. Coleman Flooring Installation, LLC." R. Zapata Decl. ¶ 3.

- All but one of the declarants allege that, despite regularly working over 40 hours each week, they did not receive compensation at the overtime premium rate for hours worked over 40 per week. R. Zapata Decl. ¶¶ 9–10; I. Cabrera Decl. ¶¶ 11–12; M. Cabrera Decl. ¶¶ 6–8; B. Gonzalez Decl. ¶¶ 9–10; C. Gonzalez Decl. ¶¶ 9–10; I. Gonzalez Decl. ¶¶ 9–10; M. Lopez Decl. ¶¶ 8–9; F. Perez Decl. ¶¶ 8–9; J. Suarez Decl. ¶¶ 8–9; R. Velasquez Decl. ¶¶ 8–9.

- All the declarants allege that, at some point during their employment, they stopped receiving any compensation for labor performed on The Wharf project. R. Zapata Decl. ¶¶ 9–11; I. Cabrera Decl. ¶¶ 11–13; M. Cabrera Decl. ¶¶ 6–8; B. Gonzalez Decl. ¶¶ 9–11; C. Gonzalez Decl. ¶¶ 9–11; I. Gonzalez Decl. ¶¶ 9–11; M. Lopez Decl. ¶¶ 8–10; F. Perez Decl. ¶¶ 8–10; J. Suarez Decl. ¶¶ 8–10; R. Velasquez Decl. ¶¶ 8–10; A. Vicente ¶¶ 7–8.

- All but two of the declarants allege that they discussed their workplace conditions with each other and through these discussions discovered that they were subject to the same compensation practices. R. Zapata Decl. ¶ 13; I. Cabrera Decl. ¶ 15; B. Gonzalez Decl. ¶ 13; C. Gonzalez Decl. ¶ 13; I. Gonzalez Decl. ¶ 13; M. Lopez Decl. ¶ 12; F. Perez Decl. ¶ 12; R. Velasquez Decl. ¶ 12; A. Vicente Decl. ¶ 10.

II. Legal Standard

The FLSA requires that employers pay their workers the minimum wage, as well as an overtime premium of time and a half for all hours worked over 40 in a week.[2] 29 U.S.C.

[2] The DCMWRA and DCWPCL likewise require employers to pay employees all wages earned, including overtime premium wages for hours worked over 40 in a workweek. *See* D.C. Code §§ 32-1003; 32-1301–02.

§ 207(a)(1). Under § 216(b) of the FLSA, employees may bring a civil action for a violation of these requirements on their own or on behalf of "other employees similarly situated" as part of a collective action. A collective action is a "unique cause of action . . . not subject to the numerosity, commonality, and typicality rules of a class action under Rule 23." *Hunter v. Sprint Corp.*, 346 F. Supp. 2d 113, 117 (D.D.C. 2004). Unlike a Rule 23 opt-out class action, other employees may only join a collective action as an opt-in plaintiff, or "party plaintiff," by filing "consent in writing to become such a party." 29 U.S.C. § 216(b).

"District courts enjoy 'considerable discretion' to decide whether and how collective actions should proceed and to fashion procedures for 'joining similarly situated employees in a manner that is both orderly and sensible.'" *Galloway v. Chugach Gov't Servs., Inc.*, 263 F. Supp. 3d 151, 155 (D.D.C. 2017) (quoting *Dinkel v. MedStar Health, Inc.*, 880 F. Supp. 2d 49, 52 (D.D.C. 2012)). "Courts in this Circuit and others have settled on a two-stage inquiry for determining when a collective action is appropriate." *Dinkel*, 880 F. Supp. 2d at 52. First, at the "conditional certification" stage, "plaintiffs must merely propose a class of 'potential opt-in plaintiffs who *may be* similarly situated to the named plaintiffs with respect to whether a FLSA violation has occurred.'" *Stephens v. Farmers Rest. Grp.*, 291 F. Supp. 3d 95, 105 (D.D.C. 2018) (quoting *Ayala v. Tito Contractors*, 12 F. Supp. 3d 167, 170 (D.D.C. 2014)). "At the second stage, defendants may move at the close of discovery to 'decertify the conditional class if the record establishes that the plaintiffs are not, in fact, similarly situated.'" *Vasquez v. Grunley Constr. Co.*, No. 15-2106 (GMH), 2016 WL 1559131, at *2 (D.D.C. April 18, 2016) (quoting *Ayala*, 12 F. Supp. 3d at 170).

At the conditional certification stage, the plaintiff need only make a "modest factual showing sufficient to demonstrate that [named] and potential plaintiffs together were victims of a

common policy or plan that violated the law." *Ayala*, 12 F. Supp. 3d at 170 (alteration in original) (quoting *Castillo v. P&R Enters., Inc.*, 517 F. Supp. 2d 440, 445 (D.D.C. 2007)). Under this standard, the "bar for a plaintiff . . . is not high," *id.*, and "may be satisfied based on pleadings and affidavits," *Blount v. U.S. Sec. Assocs.*, 945 F. Supp. 2d 88, 93 (D.D.C. 2013). "But 'pure speculation' is not sufficient." *Stephens*, 291 F. Supp. 3d at 105 (quoting *Ayala*, 12 F. Supp. 3d at 170). "Courts have denied conditional certification, or certified a class narrower than the one proposed, where plaintiffs have failed 'to produce any evidence that there was a common practice' covering the entire proposed class." *Id.* (quoting *Dinkel*, 880 F. Supp. 2d at 55). In considering a motion for conditional certification, "district courts should . . . refrain from resolving factual disputes and deciding matters going to the merits." *Dinkel*, 880 F. Supp. 2d at 53. By contrast, "[d]uring the second stage, a court's inquiry is typically more searching." *Ayala*, 12 F. Supp. 3d at 170.

Zapata also moves for conditional certification under the DCMWA and DCWPCL, under which an employee may maintain "a collective action pursuant to the procedures of the Fair Labor Standards act."[3] D.C. Code § 32-1308(a)(1)(C)(iii); *see Stephens*, 344 F. Supp. 3d at 106. Under the DCMWA, "similarly situated employees" are those who "[a]re or were employed by the same employer . . . at some point during the applicable statute of limitations period[,] . . . [a]llege one or more violations that raise similar questions as to liability[,] . . . [and] seek similar forms of relief." D.C. Code § 32-1308(a)(2). Several courts in this Circuit have assumed, in conditionally certifying a collective action, that there "is no material difference"

[3] Claims brought under the DCWPCL may be pursued collectively in accordance with § 32-1308 of the DCMWA. D.C. Code § 32-1012(a).

between this standard and that of the FLSA. *See Stephens*, 344 F. Supp. 3d at 106; *see also Meyer v. Panera Bread Co.*, 344 F. Supp. 3d 193, 208 (D.D.C. 2018).

III. Analysis

A. Conditional Certification

In considering whether putative collective action members are similarly situated, courts in this Circuit have looked to "three factors that bear on the commonality of the claims: '(1) whether [putative collective action members] all worked in the same corporate department, division and location; (2) whether they all advanced similar claims; and (3) whether they sought substantially the same form of relief.'" *Encinas v. J.J. Drywall Corp.*, 265 F.R.D. 3, 6 (D.D.C. 2010) (citing *Hunter*, 346 F. Supp. 2d at 119). In consideration of these factors, the Court finds that Zapata has met the low bar for conditional certification at this stage.

As to the first factor—specifically, whether Zapata and the opt-in plaintiffs shared the same employer—the submitted declarations meet the threshold of a modest factual showing in favor of conditional certification. All but one of the declarants allege that, during their work on The Wharf project, they were supervised at the job site by a foreman named "Guido." *See* R. Zapata Decl. ¶ 4; I. Cabrera Decl. ¶ 4; M. Cabrera Decl. ¶ 4; B. Gonzalez Decl. ¶ 4; C. Gonzalez Decl. ¶ 4; I. Gonzalez Decl. ¶ 4; M. Lopez Decl. ¶ 4; F. Perez Decl. ¶ 4; J. Suarez Decl. ¶ 4; R. Velasquez Decl. ¶ 4. And Zapata, as well as eight of the ten opt-in plaintiffs, alleges that Guido paid him and the other workers twice a month. R. Zapata Decl. ¶ 7; I. Cabrera Decl. ¶ 8; M. Cabrera Decl. ¶ 5; B. Gonzalez Decl. ¶ 8; C. Gonzalez Decl. ¶ 8; I. Gonzalez Decl. ¶ 8; M. Lopez Decl. ¶ 7; F. Perez Decl. ¶ 7; R. Velasquez Decl. ¶ 7. Zapata alleges that both he and Guido worked for B. Coleman. R. Zapata Decl. ¶¶ 3, 6. Many of the opt-in plaintiffs allege, based on their experience working on The Wharf project, that they worked for the same company

as Guido. I. Cabrera Decl. ¶ 4; M. Cabrera Decl. ¶ 5; B. Gonzalez Decl. ¶ 7; C. Gonzalez Decl. ¶ 7; I. Gonzalez Decl. ¶ 7; J. Suarez Decl. ¶ 7.

All the opt-in plaintiffs also state that they either observed or were aware of another individual who supervised and provided instructions to the foreman, described alternatively as "Les," "the African American man," or "the Black Man." I. Cabrera Decl. ¶ 4; M. Cabrera Decl. ¶ 5; B. Gonzalez Decl. ¶¶ 6–7; C. Gonzalez Decl. ¶¶ 6–7; I. Gonzalez Decl. ¶¶ 6–7; M. Lopez Decl. ¶¶ 5–6; F. Perez Decl. ¶¶ 5–6; J. Suarez Decl. ¶ 5–6; R. Velasquez Decl. ¶¶ 5–6; A. Vicente Decl. ¶¶ 4–5. Zapata alleges that this second individual was Les Coleman, the "owner of B. Coleman Flooring Installation, LLC." R. Zapata Decl. ¶¶ 3, 6. He also alleges that Guido had told him that Coleman was ultimately responsible for their pay. *Id.* ¶ 7. Many of the opt-in plaintiffs also allege that Coleman was responsible for their pay. *See* I. Cabrera Decl. ¶¶ 5, 8; M. Cabrera Decl. ¶ 5; B. Gonzalez Decl. ¶¶ 7–8; C. Gonzalez Decl. ¶¶ 7–8; I. Gonzalez Decl. ¶¶ 7–8; M. Lopez Decl. ¶¶ 6–7; F. Perez Decl. ¶¶ 6–7; R. Velasquez Decl. ¶¶ 6–7. Moreover, many of the opt-in plaintiffs allege, based on their experience working on The Wharf project, that they worked for the same company as Coleman. I. Cabrera Decl. ¶ 5; M. Cabrera Decl. ¶ 5; B. Gonzalez Decl. ¶ 7; C. Gonzalez Decl. ¶ 7; I. Gonzalez Decl. ¶ 7; J. Suarez Decl. ¶ 7.

Finally, almost all the declarants describe how, during their employment, they spoke with each other about their employer's compensation practices, including its failure to pay wages at the overtime premium. R. Zapata Decl. ¶¶ 12–13; I. Cabrera Decl. ¶¶ 14–15; M. Cabrera Decl. ¶ 9; B. Gonzalez Decl. ¶¶ 12–13; C. Gonzalez Decl. ¶¶ 12–13; I. Gonzalez Decl. ¶¶ 12–13; M. Lopez Decl. ¶¶ 11–12; F. Perez Decl. ¶¶ 11–12; J. Suarez Decl. ¶ 11; R. Velasquez Decl. ¶¶ 11–12; A. Vicente Decl. ¶¶ 9–10.

Based on the above allegations, Zapata argues that he and all putative members of the collective action were employed by "Defendant B. Coleman and the man identified as its owner" and were "victims of a common policy or plan by B. Coleman that violated the FLSA and [D.C. law]." Pl.'s Br. at 10.

Although the opt-in plaintiffs' apparent lack of knowledge about the name of their employer gives the Court pause, the allegations in the declarations establish the "modest factual showing" necessary for conditional certification. *Ayala*, 12 F. Supp. 3d at 170. All that is needed to meet this standard "is *some* evidence, *beyond pure speculation*, of a factual nexus between the manner in which the employer's alleged policy affected a plaintiff and the manner in which it affected other employees." *Galloway*, 263 F. Supp. 3d at 156 (emphases in original) (quoting *Ayala*, 12 F. Supp. 3d at 170). Taken together, these declarations provide sufficient evidence, beyond pure speculation, that Zapata and the putative collective action members were all employed by B. Coleman on the Wharf project in 2017.

The second two factors also weigh in favor of granting conditional certification. All the declarants allege that they worked on the Wharf project as tile installers or tile-installer helpers and that, during their employment, they were subject to the same improper compensation practices. *See* R. Zapata Decl. ¶¶ 9–11; I. Cabrera Decl. ¶¶ 11–13; M. Cabrera Decl. ¶¶ 6–8; B. Gonzalez Decl. ¶¶ 9–11; C. Gonzalez Decl. ¶¶ 9–11; I. Gonzalez Decl. ¶¶ 9–11; M. Lopez Decl. ¶¶ 8–10; F. Perez Decl. ¶¶ 8–10; J. Suarez Decl. ¶¶ 8–10; R. Velasquez Decl. ¶¶ 8–10; A. Vicente ¶¶ 7–8. The declarations thus provide a factual basis for the Court to conclude that Zapata and putative opt-in plaintiffs have substantially similar legal claims and, were the Court to grant certification, would seek the same form of relief.

For these reasons, the Court holds that Zapata has sufficiently alleged that he and the putative plaintiffs are similarly situated with respect to B. Coleman's allegedly improper compensation practices.

Defendants argue that conditional certification is inappropriate here for two reasons. First, they contend that Zapata "was not an employee of Defendant B. Coleman" and thus "is not 'similarly situated' to the proposed class." ECF No. 48 ("Defs.' Opp'n") at 1. In support of this claim, Defendants submit a sworn declaration from a field manager at NCFI alleging that Zapata "was a [third-tier] subcontractor hired by Coleman on the Wharf project" and that he hired "a group of 8 to 12 tile installers, who worked for him as part of his subcontracting company." Defs.' Opp'n at 5 (citing ECF No. 48-1 ¶ 5). Zapata, as noted earlier, alleges that he "was not a subcontractor . . . but an employee of B. Coleman Flooring Installation, LLC." R. Zapata Decl. ¶ 3.

The Court may not, however, resolve these conflicting representations at this time. In deciding a motion for conditional certification, "the Court does not resolve factual disputes, decide substantive issues going to the ultimate merits or make credibility determinations." *Camara v. Mastro's Rests. LLC*, 340 F. Supp. 3d 46, 58 (D.D.C. 2018) (quoting *Summa v. Hofstra Univ.*, 715 F. Supp. 2d 378, 384 (E.D.N.Y. 2010)). Indeed, "[t]he court's limited role at this stage is simply to determine whether the plaintiff has sufficiently alleged that he and other employees were victims of a common compensation policy that violated the FLSA," and thus "if the plaintiff's allegations are sufficient on their face to support conditional certification, a defendant may not defeat the plaintiff's motion by presenting conflicting factual assertions." *Jeong Woo Kim v. 511 E. 5th Street, LLC*, 985 F. Supp. 2d 439, 446 (S.D.N.Y. 2013). Zapata's factual allegations are sufficient on their face to support conditional certification, and so the

evidence Defendants submit to the contrary is of no moment. *See Meyer*, 344 F. Supp. 3d at 200. Of course, Defendants will be able to make their case at the second stage of the certification process, when they may "move to decertify the class based on the evidentiary record developed during the discovery period." *Blount*, 945 F. Supp. 2d at 93.

Second, Defendants argue that the Court should not conditionally certify the collective because the declarations submitted by the opt-in plaintiffs "merely parrot[] one another in a cut and paste fashion" and lack particular details, such as the full name of the foreman they allege to have supervised their work.[4] Defs.' Opp'n at 13–14. But courts in this Circuit have granted conditional certification by relying on declarations that "are very similar to each other," *Meyer*, 344 F. Supp. 3d at 201, and are "short on detail," especially at the pre-discovery stage, *Galloway*, 263 F. Supp. 3d at 156. And Defendants, for their part, cite no authority to the contrary.

[4] In their opposition to Zapata's motion, Defendants also argue that, based on analysis undertaken by an independent handwriting consultant, seven of the ten opt-in plaintiff declarants submitted declarations with forged signatures. Defs.' Opp'n at 12–14. But Defendants then moved to withdraw that analysis and have therefore waived any argument relying on it. ECF No. 52-1 ¶ 2. Because the Court will grant that unopposed motion, it need not consider those arguments here. In the same filing, Defendants also moved for leave to file a surreply. *See* ECF No. 52. "[W]hen the nonmovant is deprived of the opportunity to contest matters raised for the first time in the movant's reply, the non-movant may seek the district court's leave to file a surreply." *Crummey v. Social Sec. Admin.*, 794 F. Supp. 2d 46, 62 (D.D.C. 2011)). However, surreplies are generally disfavored and the determination of whether to grant or deny leave is entrusted to the sound discretion of the district court." *Id.* (internal citations omitted). Defendants argue that Zapata raised three arguments for the first time in the reply: (1) that "the threshold issue of whether Zapata is an employee or not requires a 'merits determination' that is not before the Court" at the conditional certification stage; (2) that it would be premature for the Court to evaluate Zapata's credibility; and that (3) Zapata and the opt-in plaintiffs "are merely exercising their rights to unpaid wages . . . as the legislature intended." ECF No. 52-1 ¶¶ 14–17. But the first two arguments were raised in Zapata's original motion, and thus Defendants were not deprived of an opportunity to respond to them. *See* Pl.'s Br. at 6–10. And the third argument responds to issues raised in Defendants' opposition brief. *See* Defs.' Opp'n at 14–15. Because Zapata's response "does not expand the scope of the issues presented" by Defendants, further briefing on this issue is unnecessary. *See Crummey*, 794 F. Supp. 2d at 63. For these reasons, the Court will deny Defendants' motion.

Moreover, Defendants marshal these arguments in support of their claims that Zapata, unlike the opt-in plaintiffs, "contracted directly with Coleman" and "alone was paid by Coleman." Defs.' Opp'n at 14. But as explained above, the Court's task, at this stage, does not include resolving conflicting claims about the relationships between B. Coleman, Zapata, and the opt-in plaintiffs. For purposes of the instant motion, the allegations in the sworn declarations are sufficient to make out the purported collective. *See* R. Zapata Decl. ¶ 3.

For all the above reasons, the Court finds that Zapata has made a modest factual showing sufficient to show that he and the opt-in plaintiffs were victims of a common policy or plan that violated the law, so that the Court may certify a collective action under § 216(b) of the FLSA and § 32-1308 of the DCMWA. As a result, the case may now "proceed[] as a representative action through discovery." *Blount*, 945 F. Supp. 2d at 93.

B. Notice

The benefits of proceeding in a collective action "depend on employees receiving accurate and timely notice . . . so that they can make informed decisions about whether to participate." *Hoffmann-La Roche Inc. v. Sperling*, 493 U.S. 165, 170 (1989). For this reason, Courts "routinely order the production of names and addresses [for potential opt-in plaintiffs] in collective actions." *Blount*, 945 F. Supp. 2d at 97.

In his proposed order, Zapata requests that the Court order B. Coleman to produce to him "an Excel spreadsheet listing the name, last known address, and last known phone number of every individual falling within the collective." ECF No. 46-3 ¶ 3. Because the Court will conditionally certify the collective action, it is appropriate that the parties identify relevant contact information for potential opt-in plaintiffs. That said, B. Coleman—the defendant most likely to have that information—has yet to appear, and, as Zapata has noted, it is unclear whether

Clark Construction or NCFI "would be able to produce a list of individuals employed by B. Coleman at The Wharf." ECF No. 41 at 4. Moreover, Zapata's counsel has represented that sending notice to members of the collective would "serve no practical purpose" because he does not expect that other members are likely to join the action. *Id.* at 3–4. Given these considerations, the Court will order that the parties meet and confer to determine whether providing notice to currently-unidentified members of the collective is necessary, and if so, how the parties propose to identify, and provide notice to, those members.

IV. Conclusion and Order

For the reasons set forth above, it is hereby **ORDERED** that:

1. Plaintiff's Motion for Conditional Certification (ECF No. 46) is **GRANTED**;
2. Defendants' Motion for Leave to Withdraw Handwriting Expert is **GRANTED** (ECF No. 52) and Motion to File Surreply (ECF No. 52) is **DENIED**;
3. The Court conditionally certifies as a collective all persons who, during any time in 2017, worked as tile installers or tile installer helpers for Defendant B. Coleman at The Wharf project;
4. Within 14 days of this Order, the parties shall meet, confer, and submit to the Court a revised joint report pursuant to FRCP 26(f) and Local Rule 16.3; and
5. Within 21 days of this Order, the parties shall meet, confer, and submit to the Court a joint status report setting forth their positions on whether providing notice

to currently-unidentified members of the collective is necessary, and if so, how the parties propose to identify, and provide notice to, those members.

SO ORDERED.

/s/ Timothy J. Kelly
TIMOTHY J. KELLY
United States District Judge

Date: June 6, 2019