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Supreme Court No. 89534-1

(Court of Appeals No. 68528-7-I)

CAROLINA BECERRA BECERRA, JULIO CESAR MARTINEZ
MARTINEZ, ORLANDO VENTURA REYES, ALMA A. BECERRA,
and ADELENE MENDOZA SOLORIO,

Respondents/Plaintiffs,

v.

EXPERT JANITORIAL, LLC, and FRED MEYER STORES, INC.,

Petitioners/Defendants.

SUPPLEMENTAL BRIEF OF EXPERT JANITORIAL, LLC

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I. INTRODUCTION

Petitioner Expert Janitorial, LLC (“Expert”) asks this Court to reverse the Court of Appeals and reinstate the trial court’s summary judgment in favor of Expert. Consistent with *Anfinson v. FedEx Ground Package System, Inc.*, 174 Wn.2d 851 (2012), the Court should adopt the “economic reality” test the federal courts have developed for joint employment claims under the FLSA, particularly as that test has been articulated and applied by the Ninth and Second Circuits. The Court should also confirm, consistent with federal law, that joint employment claims may be decided on summary judgment even if not all of the factors point in the same direction, and that the courts should balance all of the relevant factors to determine whether the evidence fails to establish joint employment as a matter of law. Finally, using federal case law as a guide, the Court should review all of the relevant factors in this case, which weigh decisively in favor of Expert, and should affirm the judgment entered by the trial court.

II. ARGUMENT

A. **This Appeal Presents Questions of Law That the Court Reviews De Novo.**

This Court reviews summary judgment orders de novo, “performing the same inquiry as the trial court.” *Freedom Foundation v. Gregoire*, 178 Wn.2d 686, 694 (2013). In this case the material facts are

not in dispute. Rather, the case calls on the Court to decide what the legal test is for joint employment under the Washington Minimum Wage Act; which factors are relevant under that test; and how the factors apply to the facts of this case. All of these are questions of law. *See Zervas Group Architects, P.S. v. Bay View Tower LLC*, 161 Wn. App. 322, 325 (2011) (“Interpretation of a statute and its application to a particular set of facts are questions of law reviewed de novo”); *Bonnette v. Cal. Health and Welfare Agency*, 704 F.2d 1465, 1469 (9th Cir. 1983) (“the legal effect of those facts—whether appellants are employers within the meaning of the FLSA—is a question of law”).

B. The Court Should Adopt the Federal “Economic Reality” Test as Articulated by the Ninth and Second Circuits.

The parties agree that Washington courts determining whether someone is a joint employer under the MWA should use the “economic reality” test developed by the federal courts under the FLSA. *See Resps.’ Answer to Mem. of Amici at 1* (“Neither the parties nor Amici dispute” that the FLSA’s “economic reality” test should be adopted). Expert submits that the most useful and well-developed version of that test is the one articulated and refined by the Ninth Circuit in *Moreau v. Air France*, 356 F.3d 942 (9th Cir. 2004), and by the Second Circuit in a series of

cases beginning with *Zheng v. Liberty Apparel Co.*, 355 F.3d 61 (2d Cir. 2003).

Under this version of the test, courts first look at four key factors relating to whether the defendant has “formal” control over the employee plaintiffs. *Moreau*, 356 F.3d at 950-53; *Jean-Louis v. Metropolitan Cable Communications, Inc.*, 838 F. Supp. 2d 111, 122-23 (S.D.N.Y. 2011). They then consider several other factors relating to whether the defendant has “functional” control over the plaintiffs. *Id.* Finally, courts may consider other, additional factors on a case-by-case basis, provided they are “relevant” to the question of joint employment. *Id.*

This test strikes an appropriate balance between formal and functional factors, giving relatively more weight to the former, which are the widely accepted hallmarks of an employment relationship, while allowing for cases where the weight of the latter may still prove decisive. *See Jean-Louise*, 838 F. Supp. 2d at 122 (while the formal factors are “particularly relevant to the joint employment inquiry,” courts should also consider the functional factors). It also has the benefit of being the test that businesses in this State, as part of the Ninth Circuit, are already subject to under the FLSA. *See Goodman v. Boeing Co.*, 75 Wn. App. 60, 76-78 (1994) (relying on Ninth Circuit precedent in particular as guidance for interpreting RCW 49.60, which substantially parallels federal anti-

discrimination law); Resps.’ Answer to Mem. of Amici at 2 (arguing that the Court of Appeals’ Decision “has not created confusion for Washington businesses” because they are “subject to the same 9th Circuit authority relied upon by the Court of Appeals”).

C. Under the Economic Reality Test, Joint Employment Claims May Be Resolved on Summary Judgment Based on a Balancing of All of the Relevant Factors.

The federal courts have made clear that the economic reality test “requires the balancing of multiple factors,” and that “summary judgment may still be appropriate even if not all of the factors favor” one side.

Enterprise Rent-A-Car Wage & Hour Employment Practice Litigation, 683 F.3d 462, 471 (3d Cir. 2012). A court therefore “need not decide that *every* factor weighs against joint employment” in order to grant summary judgment to the defendants. *Zheng*, 355 F.3d at 76-77 (emphasis in original). If the factors on balance establish that the defendants are not joint employers, then the “defendants are still entitled to judgment as a matter of law.” *Id.* at 76.

The Court of Appeals erred in this case by refusing to weigh the joint employment factors on summary judgment. *See* 176 Wn. App. at 727-28 (holding that Expert’s argument that the factors should be weighed “is unconvincing particularly in the context of summary judgment”). This Court should make clear that Washington courts applying the economic

reality test must weigh all of the factors, and that summary judgment is appropriate where the factors on balance fail to show that the defendant is a joint employer.

D. On Balance, the Relevant Factors Fail to Establish Joint Employment in This Case.

1. All Four “Formal” Factors Weigh in Favor of Expert.

Courts begin by considering four factors, sometimes called the *Bonnette* factors, relating to “formal” control: whether the alleged joint employer (1) had the power to hire and fire 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. *Moreau*, 356 F.3d at 946-47, 950 (citing *Bonnette*, 704 F.2d at 1470); *Carter v. Dutchess Community College*, 735 F.2d 8, 12 (2d Cir. 1984) (borrowing factors from *Bonnette*). All of these factors favor Expert.

a. Expert Did Not Hire and Fire AJ’s Janitors, Including Plaintiffs.

There is no evidence that Expert played any role in the decisions to hire and fire any of the janitors employed by All Janitorial (“AJ”), including Plaintiffs. It was up to AJ, not Expert, to recruit and hire janitors to do the work under its subcontract. CP 71-72. It is therefore undisputed that all of the Plaintiffs in this case were hired by AJ, and that

Expert had no part in those decisions. CP 95, 104, 136-37, 155, 171.

Similarly, those Plaintiffs who were fired (as opposed to quitting) admit that they were fired by AJ, not Expert. CP 122, 145-46, 160, 174-75.

Despite these facts, Plaintiffs argue there is a disputed issue as to whether Expert had “indirect” power to fire AJ’s janitors. They rely on just two pieces of evidence: (1) a single page from the deposition of AJ’s owner, Sergey Chaban, which they misleadingly quote out of context; and (2) an email exchange they did not submit to the trial court when they opposed Expert’s summary judgment motion.

Chaban testified at one point in his deposition that sometimes Fred Meyer or Expert (he did not say which) would ask him to “replace” personnel at a store, in which case he “typically” would “let them go.” CP 238. But Plaintiffs deliberately omit the next page of his testimony, which makes clear what he and Plaintiffs’ counsel were talking about:

Q. If you let someone go from Fred Meyer, did they continue working for you elsewhere?

A. If I felt like it was unfair or they did a good job, they would.

CP 671.

Thus, “letting them go” from Fred Meyer meant taking them off the Fred Meyer contract, not necessarily terminating their employment

with AJ, because Chaban could, and sometimes did, reassign them to work on AJ's other contracts with other customers. This is consistent with all of the other testimony in the record on this issue, including Chaban's, which confirms that the decision to fire janitors remained at all times with AJ, not Fred Meyer or Expert. CP 71, 95-96, 104-05, 650-55, 663-64.

The federal courts have held that a defendant's requests to remove particular employees from working on a contract do not support a finding of joint employment. *See, e.g., Godlewska v. HDA*, 916 F. Supp. 2d 246, 258 (E.D.N.Y. 2013) (defendant's directions that employer remove home attendants from patients' cases did not amount to power to fire, where defendant did not "require [employer] to fire a home attendant entirely"); *Jean-Louis*, 838 F. Supp. 2d at 125 (this factor did not favor joint employment where "it is clear that [defendant] had no power to hire or fire any [subcontractor] technician but instead had the more limited power to de-authorize a technician" from working on the contract).

The email Plaintiffs rely on is an exchange between Chaban and one of Expert's managers about janitors who were terminated for theft. CP 1394-96. The Court of Appeals held that the email "creates a genuine issue of material fact as to Expert's control over firing or altering the employment conditions of the janitors." 176 Wn. App. at 725. But Plaintiffs did not submit the email to the trial court until their opposition to

Fred Meyer's summary judgment motion, which was three months *after* the trial court had granted summary judgment to Expert. *See* CP 1960-63 (May 2011 order granting summary judgment to Expert); CP 1183, 1186, 1394-96 (August 2011 declaration of Plaintiffs' counsel opposing Fred Meyer's motion for summary judgment, attaching email as Ex. 22).

The Court of Appeals erred by finding a disputed fact based on evidence Plaintiffs failed to present to the trial court at the time it was ruling on Expert's motion. RAP 9.12 ("On review of an order granting or denying a motion for summary judgment the appellate court will consider only evidence and issues called to the attention to the trial court"). The hiring and firing factor weighs in favor of Expert.

b. Expert Did Not Supervise and Control Janitor Work Schedules or Conditions of Employment.

Plaintiffs conceded below that "Expert Janitorial performed little or no supervisory role for janitors—they visited the stores about once every two weeks during the day and rarely had any contact with janitors." CP 2077. In fact, Plaintiffs have no evidence that they *ever* had contact with anyone at Expert, and admit that no one at Expert ever directed their work or told them what to do. CP 124-27, 147-48, 163-64, 176-77, 200-06. AJ's janitors were supervised by Marcos Flores, a manager for AJ, not by anyone at Expert. CP 95, 103-04, 116-17, 141-42, 156-57, 172. AJ

also trained its janitors, assigned them to specific stores, and decided which schedules they would work, all without any involvement from Expert. CP 71-72, 95, 104, 119-20, 139-40, 142, 171.

Nevertheless, Plaintiffs claim that Expert supervised and controlled janitors based on testimony by William Suen, a former manager for JMS.¹ Suen testified that when he would visit stores to make sure the Scope of Work was completed, “I would, you know, see the crew.” CP 385. But he also explained that because he was responsible for 20 Fred Meyer stores, he would typically visit a given store only about once a week, and usually did so in the daytime when the janitors were not working or were about to go off shift. CP 656-62. Like Expert’s managers who came after him, he simply was not on site with janitors often enough to supervise them, even if he had wanted to. *See* CP 70.

In addition, the federal courts have consistently held that reviewing a subcontractor’s work after it is completed to make sure that quality standards are met—which is all that Suen described doing—does not make the reviewing company a joint employer. *See, e.g., Zhao v. Bebe Stores, Inc.*, 247 F. Supp. 2d 1154, 1155 (C.D. Cal. 2003) (manufacturer that

¹ JMS was the company that had the contract with Fred Meyer until 2007, when Expert assumed the contract. CP 46, 94-95. Plaintiffs contend that Expert is JMS’s successor for purposes of the MWA, which Expert did not dispute for purposes of summary judgment. CP 1999-2000.

“actively reviewed the work product of [subcontractor’s] employees for quality control purposes” was not a joint employer).

The Court of Appeals’ failure to even mention this factor, which heavily favors Expert, was error. *See* 176 Wn. App. at 723-28 (discussing factors pertaining to Expert).

c. Expert Did Not Determine the Rate and Method of Payment for Janitors.

Plaintiffs have conceded that this factor favors Expert. CP 2028 (“plaintiffs do not contend that Expert determined the rate and method of payment”).

d. Expert Did Not Maintain Employment Records for Janitors.

Plaintiffs have conceded that this factor favors Expert, too. CP 2028 (“plaintiffs do not contend that Expert ... maintained employment records”). Where, as here, all four of the formal factors weigh in favor of the defendant, this is at least a strong indication that the defendant is *not* a joint employer, unless the “functional” factors tip the balance decisively the other way.

2. The “Functional” Factors Are Mixed and Do Not Tip the Balance in Favor Joint Employment.

Courts next consider several factors relating to “functional” control. The Ninth and Second Circuits use similar and overlapping lists of these factors, with the Second Circuit’s decision to combine some of

the factors accounting for most of the difference. *See Moreau*, 356 F.3d at 947-48, 951-52 (discussing “non-regulatory” factors); *Zheng*, 355 F.3d at 72 (listing factors relating to “functional control”). Here, the undisputed facts show that these factors are mixed, and fail to establish functional control over Plaintiffs.

a. At Least Three Factors Favor Expert.

First, Plaintiffs did not perform “a specialty job on the production line.” *Moreau*, 356 F.3d at 947. Because production line work has traditionally been performed by employees, the courts subject subcontracting of such work to greater scrutiny. *Zheng*, 355 F.3d at 73 (“work on a production line occupies a special status under the FLSA”); *see also Torres-Lopez v. May*, 111 F.3d 633, 643 (9th Cir. 1997) (farmworkers’ task of picking cucumbers was analogous to a “specialty job on the production line” because “[w]hat they did constituted one small step in the sequence of steps taken by [defendant] to grow the cucumbers and prepare them for processing at the cannery”). No such scrutiny applies here, because janitorial work is not specialized and is commonly outsourced. Plaintiffs have not disputed that this factor favors Expert. *See* CP 2028-33 (not contesting this factor); Br. of Apps. at 40-46 (same).

Second, it is undisputed that Plaintiffs did not use Expert’s premises or equipment to perform the work. CP 95. This factor weighs

heavily in Expert's favor. *See Zhao*, 247 F. Supp. 2d at 1159-60 (fact that manufacturer did not provide premises or equipment were "[c]ritical factors" distinguishing case from joint employment situation).

Third, AJ's business could and did shift as a unit from one worksite to another and from one customer to another. *Moreau*, 356 F.3d at 951. It is undisputed that AJ had contracts with other management companies besides Expert, and cleaned stores for other customers besides Fred Meyer. CP 95. In fact, only about one-third of the stores AJ cleaned were Fred Meyer stores, and only about half of its revenues came from its contract with Expert. *Id.* Because AJ was a going concern with a variety of other customers and contracts, this factor favors Expert.² *See Zhao*, 247 F. Supp. 2d at 1155-56 (manufacturer was not a joint employer where subcontractor had contracts with other manufacturers).

b. At Most Three Factors Favor Plaintiffs.

Expert concedes that three factors favor Plaintiffs: in this case the subcontract with Expert passed from AJ to AAJ without material changes; Plaintiffs' work did not require significant initiative or judgment; and the work was integral to Expert's business.

² Here Plaintiffs ignore AJ and focus solely on the *other* Service Provider, All American Janitorial ("AAJ"), which in early 2010 did not have other work besides its contract with Expert. *See* Br. of Apps. at 13. But all five Plaintiffs were employed by AJ; only one of them, Reyes, also worked for AAJ after it replaced AJ. CP 2, 71, 195-98. He did so for less than three months, and has since *settled his wage claims with AAJ*. CP 197-98, 897, 1906-07. Thus, the relevant Service Provider for purposes of this factor is AJ, not AAJ.

As the federal courts have noted, however, the skill and initiative required is more useful for determining whether a worker is an employee versus an independent contractor; it says little about *whose* employee he or she is. See *Zheng*, 355 F.3d at 67-68 (skill and initiative required does “not bear directly on whether workers who are already employed by a primary employer are also employed by a second employer”). Similarly, the courts have expressed doubts about how helpful the “integral” factor is in cases such as this one which do not involve production line environments. See *Moreau*, 356 F.3d at 952 (“We question whether or not this factor translates well outside of the production line employment situation”); *Zheng*, 355 F.3d at 73 (describing this factor as “the extent to which plaintiffs performed *a line-job that is integral* to the putative joint employer’s process of production”) (emphasis added).

Thus, two of the three factors favoring Plaintiffs, while relevant, are entitled to relatively little weight.

c. The Remaining Factors Do Not Clearly Favor Either Side.

The Second Circuit has rejected using the “opportunity for profit and loss” as a joint employment factor, holding that it is more helpful for distinguishing independent contractors from employees than it is for determining whether employees have joint employers. *Zheng*, 355 F.3d at

67-68, 72 (declining to include workers' opportunity for profit or loss and investment in the business in list of functional factors, because they "do not bear directly" on the joint employer question). The Ninth Circuit has listed it as a functional factor but has interpreted it loosely. *See Moreau*, 356 F.3d at 952 (holding that employees had an opportunity for "profit or promotion" by their direct employer).

Here, the individual Plaintiffs were employees, not independent contractors, so they did not have an opportunity for profit and loss. But it is undisputed that they were part of a business—AJ—that did have an opportunity for profit and loss depending on how well it was managed. CP 69, 101-02. AJ's ability to turn a profit or incur losses shows it was an independent business, not a sham subcontractor, which supports the conclusion that Expert was not a joint employer. On balance, to the limited extent this factor is relevant, it does not strongly favor either side.

The last functional factor, the "permanence" of the working relationship, is also better suited for separating employees from independent contractors. *See Layton v. DHL Express (USA) Inc.*, 686 F.3d 1172, 1176 (11th Cir. 2012) ("permanency and exclusivity of employment" is "irrelevant" to joint employment analysis). In any event, it is not satisfied here, because the "longevity of the working relationship varied" from employee to employee. *Moreau*, 356 F.3d at 952. Plaintiffs

worked for AJ for varying lengths of time ranging from just 10 weeks to 18 months; two of them were fired but later rehired by AJ, indicating a relationship that was far from stable or secure; and some of them had lengthy gaps in their employment when they returned many months later. CP 191-99, 876-77, 896-98; *see also* CP 134-35. As a result, this factor does not favor either side.³ *See Moreau*, 356 F.3d at 952 (where length of employment varied and employees “turned over rather frequently,” this factor “does not weigh heavily in either direction”).

Because the functional factors are mixed, with most of those that favor Plaintiffs entitled to little weight, Plaintiffs’ only hope is to point to other “relevant” factors that decisively shift the balance their way.

3. The Additional Factors Advocated by Plaintiffs Are Not Relevant to Joint Employment.

Courts may consider “additional facts” beyond the formal and functional factors as part of the totality of the circumstances. *Moreau*, 356 F.3d at 952. This is not, however, a license to apply whatever additional factors a party asserts in an attempt to support its position. A proposed factor must still be *relevant* to the question of whether the defendant is a

³ Relying on a dictionary definition, the Court of Appeals held that “permanent” means employment in which it is “*possible*” for the worker to stay in the position “indefinitely.” 176 Wn. App. at 725, 727 (emphasis in original). But that is not how the Ninth Circuit, which looks at actual time in the job, interprets this term for purposes of joint employment. *See Moreau*, 356 F.3d at 952. Nor do there appear to be any decisions by any other federal courts supporting the Court of Appeals’ interpretation of this factor.

joint employer. *Id.* at 952 (courts must consider “all relevant factors”); *Zheng*, 355 F.3d at 71-72 (“The court is also free to consider any other factors it deems relevant to its assessment of the economic realities”). And it is up to the courts to determine what is relevant.

The additional “factors” proposed by Plaintiffs do not meet this test. Plaintiffs claim that Expert knew or should have known about AJ’s wage and hour violations. This fact is disputed, but is not material. No federal court has held that knowledge of whether the actual employer is complying with the law is relevant to the joint employment question.⁴ It becomes relevant only *after* a court rules that an entity is an employer, to determine whether that employer has “suffered or permitted” an employee to do the work. *See, e.g., Lindow v. U.S.*, 738 F.2d 1057, 1060-61 (9th Cir. 1984) (“an *employer* who knows or should have known that an employee is or was working overtime” is obligated to pay overtime) (emphasis added). Plaintiffs have failed to address Expert’s cases on this issue or to point to any contrary authority.

Plaintiffs also claim that Expert did not pay AJ enough money for it to pay its janitors in compliance with the MWA. But Plaintiff’s own expert—who reviewed AJ’s records and considered its “actual labor

⁴ This is because logically, a third party’s knowledge of how a company pays its workers does not make it any more likely that the third party also employs the workers.

costs,” overhead, and other costs of doing business—conspicuously did *not* say that Expert’s payments were too low to enable compliance.⁵ CP 567-68 (concluding only that “there is little or no room to reduce labor hours as a way to make the contract *more* profitable,” and that “the payment[s] offered by Expert are *unlikely* to attract 2nd tier subcontractors whose business practice has built into it regular compliance with classification and wage and hour laws”) (emphases added).

More important, the contract price is not relevant to the joint employer analysis. The vast majority of federal joint employment cases do not consider the contract price, or even suggest it is relevant. Neither did the Court of Appeals in this case. *See* 176 Wn. App. at 723-28. As Expert has shown in its prior briefing, the handful of cases Plaintiffs have found that mention this issue do so in dicta, or outside the joint employer context, or both, and none of them are Ninth or Second Circuit decisions. *See* Br. of Resp. Expert at 36-39. Declaring the contract price to be a relevant factor would create a joint employment test under the MWA that substantially diverges from the one developed by the federal courts.

It would also have negative and far-reaching consequences for Washington businesses. To avoid potential joint employer liability,

⁵ Plaintiffs’ expert also acknowledged that Expert’s use of subcontractors is lawful, despite Plaintiffs’ attacks on Expert’s “business model.” CP 562 (“It is not illegal to use 2nd tier subcontractors or use a business model based on use of 2nd tier subcontractors”).

companies considering subcontracting would have to conduct what amounts to an audit of contractors' operations, finances, and employment practices.⁶ This would be at odds with one of the principal purposes of subcontracting, which is to get work done for an agreed price while leaving it to the contractor to worry about the particulars of how the work is performed and how it manages its employees and business. It would also effectively make all companies responsible for their contractors' wage and hour compliance, *before* any determination that they are joint employers, which is the reverse of how the joint employment test is supposed to work.

Finally, whether a subcontracting arrangement is a "subterfuge or sham" is one of the underlying questions the joint employment factors are intended to help answer; it is not a factor in and of itself. *See, e.g., Zheng*, 355 F.3d at 72 (whether employees are part of a business that can shift as a unit to different customers "is relevant because a subcontractor that seeks business from a variety of contractors is less likely to be part of a subterfuge arrangement"). The Court of Appeals' holding to the contrary was error. 176 Wn. App. at 718-19.

⁶ Whether a contractor's bid is "high enough" to enable MWA compliance depends on many factors that are rarely known by the company letting the contract, including the contractor's rent and overhead costs; how much it pays its employees, managers, and owners; how it plans to staff the job and to schedule its employees; its ability to limit overtime; equipment maintenance and replacement costs; its debt, taxes, and other payment obligations; and whether and to what extent it has other sources of revenue.

4. The Trial Court Correctly Held as a Matter of Law That Expert Was Not Plaintiffs' Employer.

Plaintiffs' summary of the Court of Appeals' Decision illustrates how weak their evidence of joint employment is:

[D]iscussing Expert, the Court of Appeals found either disputed or conceded issues of fact regarding at least six factors, *e.g.*, (1) “the janitors’ work was an integral part of its janitorial business,” (2) that the work “required little initiative, judgment or foresight,” (3) that “the janitors had little opportunity for profit or loss,” (4) that “the plaintiffs’ work was permanent;” (5) that the contract passed “from one subcontractor to another without material changes;[”] and (6) Expert had indirect power to fire janitors.

Resps.’ Answer to Expert’s Pet. for Rev. at 14-15 (quoting from 176 Wn. App. at 723-25).

Factors (1) through (4) are entitled to relatively little weight, because they are better suited to production line work or determining whether workers are independent contractors. The evidence relating to factors (3) and (4) does not strongly favor either side. And for the reasons discussed above, factor (6)—the only formal factor the Court of Appeals held even arguably favors Plaintiffs—actually favors Expert. These factors do not come close to overcoming the many substantial factors weighing against joint employment, including all four of the formal factors and at least three of the functional factors.

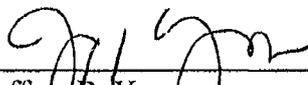
The trial court correctly granted summary judgment to Expert because on balance, the relevant factors favoring Expert substantially outweigh those favoring Plaintiffs. *See Zhao*, 247 F. Supp. 2d at 1159 (“While both sides can find support for their respective position with reference to the factors set forth in the controlling case law, the Court concludes, on balance, that [defendant] is not a joint employer”); *Moreau*, 356 F.3d at 953 (“While the district court’s focus on the four *Bonnette* factors appears a bit narrow ... we conclude [after reviewing all relevant factors] that [defendant] should not be treated as a joint employer ... and therefore affirm the district court’s grant of summary judgment”).

III. CONCLUSION

Expert respectfully asks the Court to reverse the Court of Appeals and to affirm the trial court’s summary judgment in favor of Expert.

RESPECTFULLY SUBMITTED this 7th day of March, 2014.

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CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury under the laws of the State of Washington that on this date the above and foregoing SUPPLEMENTAL BRIEF OF EXPERT JANITORIAL, LLC was filed with the Washington Supreme Court, and copies were served on:

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Dated this 7th day of March, 2014.



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Dear Clerk:

Please see attached Supplemental Brief for filing with the Court.

Thank you, Valerie

Becerra, et al. v. Expert Janitorial, et al.

Supreme Court No. 89534-1

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