STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
OFFICE OF ADMINISTRATIVE HEARINGS

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| IN THE MATTER OF THE WAGE CLAIM OF MICHAEL E. SPREADBURY, | ) | Case No. 163-2019 |
| Claimant, | ) | |
| vs. | ) | |
| HELENA SCHOOL DISTRICT NO. 1, a/k/a HELENA PUBLIC SCHOOLS, | ) | |
| Respondent. | ) | |

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**AMENDED**
ORDER DENYING CLAIMANT'S MOTION FOR SUMMARY JUDGMENT;
GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT;
DISMISSING CLAIMANT'S WAGE AND HOUR CLAIM;
AND VACATING SCHEDULING ORDER

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This Amended Decision is being issued to correct any reference to Douglas J. Spreadbury. The correct party is Michael E. Spreadbury.

## I. INTRODUCTION

On November 26, 2018, Michael E. Spreadbury filed a Motion and Brief in Support of Dismissal arguing the appeal filed by Helena School District No. 1, a/k/a Helena Public Schools (School District) was untimely. Additionally, Spreadbury argues that he is entitled to judgment as a matter of law because the School District cannot set forth any facts showing that he is not owed the wages demanded in his wage claim.

On December 7, 2018, the School District filed its response arguing that its request for hearing is timely based upon the request having been timely and properly sent to the Wage and Hour Unit of the Montana Department of Labor and Industry (Wage and Hour Unit) on November 9, 2018, the last day allowed for appeal. The

School District also filed its own motion for summary judgment arguing that Spreadbury was not an "employee" during the period for which he is claiming wages and his activities on July 27, 2018 were non-compensable preparatory activities.

On December 18, 2018, Spreadbury filed an affidavit in which he contended that he was not an "at-will" employee nor a probationary employee of the School District. Spreadbury further contended that his employment pre-dated the School District's current attendance system and deactivation at the end of the academic year does not affect his employment status.

Given the condensed prehearing schedule and the general timing of the parties' respective motions, it is therefore proper to address each motion in one order.

## II. FACTS ESTABLISHED AS UNDISPUTED BASED UPON THE PLEADINGS AND ADMINISTRATIVE RECORD

1. Michael E. Spreadbury has worked as a substitute teacher for the School District since October 2013. Aff. of Michael Spreadbury, ¶1.

2. The School District requires all substitutes to have an identification badge and to complete registration paperwork. Docs. 31-32; Aff. of Stacey Collette, p. 2, ¶4. Substitute teachers who comply with this requirement are activated in the School District's attendance system as a substitute teacher of the upcoming academic year. Aff. of Stacey Collette, p. 2, ¶¶ 3,4. Substitute teachers are deactivated at the end of the academic year. *Id.* at ¶4. Substitute teachers are not eligible for substitute teaching assignments once they are deactivated from the attendance system. *Id.* at ¶12.

3. The School District gave prospective substitute teachers the opportunity to obtain their identification badge and to submit the paperwork on July 27, 2018. Docs. 31-32. The prospective substitute teachers were directed to report to the May Butler Center from 11:00 a.m. to 2:00 p.m. If they were unable to report that day, the prospective substitute teachers had the option of meeting with Human Resources at a later date to get their picture taken and to submit their paperwork. *Id.;* Aff. of Stacey Collette, p. 2, ¶5.

4. Spreadbury chose to obtain his identification badge and to submit his paperwork on July 27, 2018. Docs. 32, 35, 36; Aff. of Stacey Collette, p. 2, ¶6.

5. The School District employs regular teachers under annual contracts that run from July 1 through June 30 of the following year. Aff. of Stacey Collette, p.3, ¶11. The School District does not have a contract with its substitute teachers. *Id.* at ¶12. The School District employs substitute teachers on an as needed basis throughout the academic year. *Id.*

6. On July 30, 2018, Spreadbury filed a claim for $45.00 in unpaid wages with the Wage and Hour Unit of the Department of Labor and Industry. Docs. 35-36. Spreadbury wrote: "7/27/18 - half day pay for appearing onsite and submitting work preference forms, taking photo obtaining work ID." Doc. 36.

7. On September 24, 2018, the Wage and Hour Unit issued a determination finding the School District owed Spreadbury $47.50 in unpaid wages and imposed a penalty of $7.12. Docs. 4-6. The determination provided:

> A request for a redetermination or appeal must be received no later than October 9, 2018 in accordance with ARM 24.16.7514, 24.16.7517, 24.16.7534, and 24.16.7537. This date is not subject to negotiation or extension.

The determination then provided the mailing address to which the request should be mailed, as well as a fax number and the email address, ERDAppeal@mt.gov. Doc. 6.

8. On October 9, 2018 at 2:00 p.m., Kaylie Johnson, Legal Assistant for the Kaleva Law Office, emailed a Request for Formal Hearing to ERDAppeal@mt.gov. Aff. Of Kaylie Johnson , ¶2; Johnson Aff. Ex. 1.

9. On October 24, 2018, the Office of Administrative Hearings received the Wage and Hour Unit's Transfer Document asking the matter be set for hearing. Doc. 1.

## III. DISCUSSION

### A. Spreadbury's Notice of Perjury

On December 7, 2018, Spreadbury filed a Notice of Perjury alleging the affidavit of Stacey Collette included false statements. Specifically, Spreadbury argued that the Wage and Hour Unit already identified him as an employee and Collette's contentions to the contrary were false. The Hearing Officer reviewed Collette's affidavit and the administrative record compiled by the Wage and Hour

Unit (Docs. 1- 36) and found the statements included in Collette's affidavit to be consistent with the information included in those documents. For instance, Collette indicated substitute teachers were not required to report on July 27, 2018. *See* Aff. of Stacey Collette, p. 2, ¶5. This is consistent with the information included in Docs. 31 and 32, which included a letter and email the School District sent to the prospective school teachers prior to July 27, 2018. Both documents clearly state that arrangements can be made to submit the paperwork and to obtain an identification badge at a later date. Collette's affidavit was consistent enough with the information included in documents prepared prior to the filing of Spreadbury's wage and hour claim that it is determined to be sufficiently reliable to be relied upon by the Hearing Officer in considering the parties' respective motions.

Spreadbury also addressed two other issues in this matter. First, Spreadbury took issue with the School District's argument that its request for hearing was timely based upon an email to the Wage and Hour Unit dated October 9, 2018. Second, Spreadbury also took issue with the School District's argument that he was not an employee of the School District on July 27, 2018. Those arguments will be addressed more fully below.

B. The School District's Appeal is Timely.

A party who has received an adverse determination from a compliance specialist must request a formal hearing within 15 days of the date that the final determination or redetermination was mailed to the party. Admin. R. Mont. 24.16.7537. An item is timely if it is either postmarked or received by the department by not later than the last day of the time period. Admin. R. Mont. 24.16.7514(2),(3). The time period for requesting a redetermination or an appeal is absolute. See Admin. R. Mont. 24.16.7534 and 24.16.7537.

The School District's appeal letter is dated October 9, 2018, which was the last day allowed for appeal. Doc. 2. The letter was stamped as being received by the Employment Relations Division on October 11, 2018. An affidavit submitted by Kaylie Johnson, Legal Assistant for Kaleva Law Office, indicates that she successfully emailed the School District's request for hearing on October 9, 2018 at 2:00 p.m. *See* Aff. Of Kaylie Johnson , ¶2; Johnson Aff. Ex. 1. The evidence shows the School District filed a timely request for a hearing using a method that was acceptable to the Wage and Hour Unit. *See* Doc. 6 ("A request for a redetermination or appeal must be received no later than October 9, 2018 . . . The request should be directed to: . . . Email: ERDAppeal@mt.gov.") It is therefore determined that the appeal filed by the

School District is timely. Spreadbury's motion to dismiss based upon the timeliness of the School District's request for hearing is hereby DENIED.

C. Spreadbury was not an "employee" and time spent obtaining an ID badge and completing paperwork was not "compensable time."

Summary judgment is an appropriate method of dispute resolution in administrative proceedings where the requisites for summary judgment otherwise exist. *Matter of Peila*, 249 Mont. 272, 280-81, 815 P.2d 139, 144-45 (1991). "The judgment sought should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Rule 56(C), Mont. R. Civ. P.

In order to grant summary judgment, the moving party "must show a complete absence of any genuine issue as to all facts shown to be material in light of the substantive principle that entitles that party to a judgment as a matter of law." *Bonilla v. University of Montana*, 2005 MT 183, ¶ 11, 328 Mont. 41, 116 P.3d 823. A "material" fact is one capable of affecting the substantive outcome of the litigation. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "'Material issues of fact are identified by looking to the substantive law which governs the claim.'" *Glacier Tennis Club at the Summit v. Treweek Constr. Co.*, 2004 MT 70, ¶ 21, 320 Mont. 351, 87 P.3d 431 (overruled in part on other grounds by *Johnson v. Costco Wholesale*, 2007 MT 43, ¶ 21, 336 Mont. 105, 152 P.3d 727; quoting *Babcock Place P'ship v. Berg, Lilly, Andriolo & Tollefsen, P.C.*, 2003 MT 111, ¶ 15, 315 Mont. 364, 69 P.3d 1145); *see also Anderson*, 477 U.S. 242 at 248; *Bonilla*, ¶¶ 11, 14. A dispute is "genuine" if there is enough evidence for a reasonable trier of fact to return a verdict for the non-movant. *See Scott v. Harris*, 550 U.S. 372, 380 (2007). The inquiry is, essentially, ". . . whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson*, 477 U.S. at 251-52.

"The party opposing summary judgment must come forward with evidence of a substantial nature; mere denial, speculation, or conclusory statements are not sufficient." *McGinnis v. Hand*, 1999 MT 9, ¶ 18, 293 Mont. 72, 972 P.2d 1126 (citing *Klock v. Town of Cascade*, 284 Mont. 167, 174, 943 P.2d 1262 (1997)). The "party opposing summary judgment must direct [the court's] attention to specific, triable facts." *S. Cal. Gas Co. v. City of Santa Ana*, 336 F.3d 885, 889 (9th Cir. 2003). A court is "'not required to comb through the record to find some reason to deny a motion for summary judgment. . . .'" *Carmen v. San Francisco Unified Sch.*

*Dist.*, 237 F.3d 1026, 1029 (9th Cir. 2001) (quoting *Forsberg v. Pac. Nw. Bell Tel. Co.*, 840 F.2d 1409, 1418 (9th Cir. 1988)). Summary judgment is proper if the opposing party fails to present a genuine issue of material fact of a substantial nature, not fanciful, frivolous, gauzy, or merely suspicious. *Cheyenne W. Bank v. Young v. Zastrow* (1978), 179 Mont. 492, 587 P.2d 401; ***see also*** *Kimble Properties, Inc. v. State* (1988), 231 Mont. 54, 750 P.2d 1095. A tribunal reviews the evidence in the light most favorable to the non-moving party, drawing all reasonable inferences in that party's favor and without making findings of fact, weighing the evidence, choosing one disputed fact over another, or assessing the credibility of witnesses. *Fasch v. M.K. Weeden Const., Inc.*, 2011 MT 258, ¶¶ 16-17, 362 Mont. 256, 262 P.3d 1117.

1. Spreadbury's Motion for Summary Judgment

Spreadbury argues the School District has failed to state a case that would justify its request for a hearing in this matter. Spreadbury additionally argues that he is entitled to judgment as a matter of law because the School District has failed to prove he is not entitled to the wages that he seeks. Spreadbury has failed to show a complete absence of any genuine issue as to all material facts that would entitle him to judgment as a matter of law. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 332 (1986)(Stevens, J., concurring)(A conclusory statement that the nonmoving party has no evidence is insufficient grounds for the granting of a party's motion for summary judgment). Spreadbury's argument that he is entitled to summary judgment on the grounds the School District "cannot prove any facts presented in the aforementioned or within discovery to prove wages are not due to Claimant in the aforementioned" is not persuasive. Therefore, Spreadbury's motion for summary judgment is DENIED.

2. The School District's Motion for Summary Judgment

The School District argues in its own motion for summary judgment that Spreadbury was not an "employee" at the time he reported at the May Butler Center to obtain his identification badge and to complete paperwork necessary for him to qualify as a substitute teacher for the upcoming school year.

Montana law requires the payment of wages for "wages earned by the employee" for work performed. Mont. Code Ann. § 39-3-204. "Wages" are defined as "any money due an employee from the employer . . .for services rendered by them. . .". Mont. Code Ann. § 39-3-201(6)(a). An employee "includes any person works for another for hire . . .". Mont. Code Ann. § 39-3-201(4). To employ means "to permit or suffer to work." Mont. Code Ann. § 39-3-201(3).

In essence, the issue is whether the time Spreadbury spent obtaining his identification badge and completing paperwork necessary for him to be eligible to serve as a substitute teacher for the School District during the 2018-2019 academic year is compensable time.

The Supreme Court addressed a similar issue in *Walling v. Portland Terminal Co.*, 330 U.S. 148 (1947). In *Walling*, the Court considered whether the time a trainee spent attending a railroad training program, which was necessary for the trainee to be placed on a list of brakemen to be called when the railroad required his services, was compensable time under the Fair Labor Standards Act (FLSA). The Court held the FLSA did not cover trainees as the work done by them during the training program did not provide the railroad with an "immediate advantage." *Id.* at 152. The Court noted the FLSA's definitions of "employ" and "employee," which are substantially similar to the definitions used in the Montana Wage and Hour Act, were not broad enough ". . . to make a person whose work serves only his own interest an employee of another person who gives him aid and instruction." *Id.*

In *Saini v. Motion Recruitment Partners*, LLC, 2017 U.S. Dist. LEXIS 31627, the court addressed whether time spent by a job applicant, who received a job offer through a temporary staffing agency that was ultimately cancelled by the prospective client company, was an employee of the temporary staffing agency during the interview process mandated by the client company. The court held the applicant's time spent during the interview process included pre-employment activities that did not qualify as work because they were not "necessarily or primarily" for the benefit of the staffing agency, which did not receive an "immediate advantage" from the applicant's time. *Id.* at *16. The pre-employment activities were determined to have primarily benefitted the applicant in that the applicant could have potentially obtained gainful employment. Further, the pre-employment activities were not mandatory as they were only "incidental assistance" provided by the staffing agency to help the applicant find employment.

In *Saini*, the district court also considered whether the job applicant was the temporary staffing service's employee during the client company's interview process. The court held the job applicant was not an employee due to the lack of any express or implied agreement for compensation. The court noted the FLSA's definition of "employee" did not cover individuals whose work serves only their own interests - even if they are assisted by someone else during the process. *Id.* at *11-12. The court went on to find the job applicant was not an employee of the temporary staffing service because it received no "immediate advantage" from his work. *Id.* at *13 (quoting *Walling*, 330 U.S. at 152). The court held that completing paperwork

necessary for prospective employment "did not automatically create an employment relationship . . .". *Id.* at *14.

Spreadbury's activities on July 27, 2018 did not provide an "immediate advantage" to the School District. Rather, Spreadbury's activities primarily benefitted him in that completion of those activities would qualify him to potentially work as a substitute teacher for the School District. Aff. of Stacy Collette, p. 2, ¶3. The School District did not mandate Spreadbury's appearance at the May Butler Center on July 27, 2018. Doc. 32; Aff. of Stacy Collette, p. 2, ¶ 9. Spreadbury was free to complete the necessary paperwork and obtain his ID badge at any time convenient to his schedule. Doc. 38; Aff. of Stacy Collette, p. 2. ¶9. Further, Spreadbury would not even have been eligible to work for the School District as a substitute teacher, which is on an as-needed basis, until he was activated in the School District's attendance system. Aff. of Stacy Collette, p. 2, ¶10. Therefore, Spreadbury was not an "employee" and the time he spent obtaining his identification badge and completing pre-employment paperwork was not compensable time.

Of particular note is the School District's argument that Spreadbury could not have been an employee when completing pre-employment requirements because, as a substitute teacher, his primary duties is to assume of a classroom as assigned by the school district and cover the absence of a regular teacher. Given that the academic year had not yet started and there is no evidence that Spreadbury was actually performing any duties normally required of a substitute teacher when school is in session, his argument that he was an employee on July 27, 2018 is unavailing.

Assuming for the sake of argument that Spreadbury was considered an employee whose time spent at the May Butler Center on July 27, 2018 was compensable time, the time spent was *de minimis* and not compensable. In *Dole v. Flint Eng'g & Const. Co.*, 914 F.2d 262 (9th Cir. 1990), the district court held:

> Employees cannot recover for otherwise compensable tasks under the FLSA where the time spent performing those tasks is *de minimis*. To determine whether time spent is *de minimis*, 'we will consider (1) the practical administrative difficulty of recording the additional time; (2) the aggregate amount of compensable time; and (3) the regularity of the additional work'.

*Id*. (internal citations omitted).

In this case, Spreadbury is claiming he is entitled to a half-day of wages in the amount of $47.50. It is not believable that the School District required Spreadbury to spend four hours completing paperwork and obtaining an identification badge. At best, Spreadbury may have been required to spend several minutes completing those activities, which he could have completed at any time thereafter depending on his personal schedule. Any time Spreadbury may have spent that day for the benefit of the School District was *de minimis*. Therefore, the School District's motion for summary judgment is hereby GRANTED.

## IV. ORDER

IT IS THEREFORE ORDERED that the School District's motion for summary judgment is hereby GRANTED. Spreadbury's wage and hour claim is hereby DISMISSED in its entirety. The Scheduling Order issued on November 8, 2018 is hereby VACATED.

DATED this 27th day of December, 2018.

DEPARTMENT OF LABOR & INDUSTRY
OFFICE OF ADMINISTRATIVE HEARINGS

By: /s/ CAROLINE A. HOLIEN
CAROLINE A. HOLIEN
Hearing Officer

NOTICE: You are entitled to judicial review of this final agency decision in accordance with Mont. Code Ann. § 39-3-216(4), by filing a petition for judicial review in an appropriate district court within 30 days of the date of mailing of the hearing officer's decision. *See also* Mont. Code Ann. § 2-4-702.