

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

<p>DISTRICT OF COLUMBIA,</p> <p style="text-align:center"><i>Plaintiff,</i></p> <p style="text-align:center">v.</p> <p>KEVIN ONYONA, et al.,</p> <p style="text-align:center"><i>Defendants.</i></p>	<p>Case No.: 2023-CAB-005194</p>
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Consent Order Entered Between Plaintiff District of Columbia and Defendants Swahili Village M Street, LLC, Kevin Onyona, and Emad Shoeb

This matter comes before the Court on the joint motion of Plaintiff District of Columbia (“District”), through the Office of the Attorney General, and Defendants Swahili Village M Street, LLC (“Swahili Village”), Kevin Onyona (“Onyona”), and Emad Shoeb (“Shoeb”) (collectively, the “Settling Parties”) pursuant to SCR-Civil 68-I, for entry of this Consent Order (“Consent Order”). The District, Swahili Village, Onyona, and Shoeb agree to the relief set forth in this Consent Order, and the Court further finds that the entry of the Consent Order is in the public interest.

I. Preamble

1. The District, a municipal corporation empowered to sue and be sued, is the local government for the territory constituting the seat of the government of the United States. D.C. Code § 1-102. The Attorney General for the District of Columbia is the chief legal officer for the District of Columbia. Pursuant to D.C. Code § 32-1306, the Attorney General for the District of Columbia is authorized to bring civil actions seeking back wages, liquidated damages, civil

penalties, costs, attorneys' fees, and equitable relief under, inter alia, the District's Minimum Wage Revision Act ("MWRA"), D.C. Code § 32-1001, *et seq.*, Wage Payment and Collection Act ("WPCL"), D.C. Code § 32-1301, *et seq.*, and Sick and Safe Leave Act ("SSLA"), D.C. Code § 32-531.01, *et seq.*

2. Swahili Village is a District corporation with a business address of 1990 M Street, NW, Unit B1, Washington, DC 20036. Onyona is the founder and CEO of Swahili Village DC. Shoeb was Swahili Village's COO from 2020 to 2023.

3. On August 22, 2023, the District filed a complaint commencing the above-captioned action in the Superior Court of the District of Columbia, Civil Division, where it was assigned Case Number 2023-CAB-005194 (the "Lawsuit").

II. Covered Conduct

4. In the Lawsuit, the District alleges that Swahili Village, controlled by Onyona and Shoeb, failed to comply with the District's tipped minimum wage, paid leave, and recordkeeping requirements, and further alleges that many of Swahili Village's current and former workers are entitled to various forms of relief. Specifically, the District's complaint alleges five causes of action for: failure to pay minimum wage under D.C. Code §§ 32-1002, 32-1003, and 32-1306; failure to pay overtime under D.C. Code §§ 32-1002, 32-1003, and 32-1306; failure to provide paid sick leave under D.C. Code §§ 32-531.01, 32-531.02, and 32-1306; failure to maintain and provide workers with records related to pay and time worked under D.C. Code §§ 32-1008 and 32-1306; and failure to pay workers all wages owed and failure to provide workers with itemized wage statements under D.C. Code §§ 32-1301, 32-1302, and 32-1306 (collectively, the "Claims"). The time period at issue in the Lawsuit and covered by this settlement is January 1, 2020 to the Effective Date (the "Applicable Period").

5. Swahili Village, Onyona, and Shoeb maintain that at all times they complied with all relevant laws in the District. Swahili Village, Onyona, and Shoeb filed answers on September 18, 2023, in which they denied all material substantive and procedural allegations.

6. As set forth below, the Settling Parties have agreed to avoid further litigation and to settle and resolve the Lawsuit, as well as all existing and potential disputes, actions, lawsuits, charges, and claims that arose during, are or could have been raised in the Lawsuit for the Applicable Period, that the District has or may have against Swahili Village, Onyona, or Shoeb.

7. The “Effective Date” shall be the date upon which all of the following have occurred: this Agreement is fully executed and the Consent Order has been approved by the Court and reflected on the Court’s docket as “entered and filed” or similar words to that effect.

III. Payment Terms and Distribution

8. Swahili Village and Onyona shall be jointly and severally liable for all payment and distribution terms described in this section.

9. Swahili Village and Onyona agree to pay, in the manner set forth below, a total of \$526,973.28 (the “Gross Settlement Value” or “GSV”). The GSV consists of (a) a “Worker Share” of \$329,358.30, which includes alleged base damages and liquidated damages to be paid to Swahili Village workers as described below, and (b) a “District Share” of \$197,614.98 to be paid to the District. Swahili Village and Onyona shall transfer the GSV in the manner set forth below. This is a non-reversionary settlement, which means that once the Agreement is final and effective, no part of the GSV shall revert to Swahili Village or Onyona. The GSV will cover all payments to Swahili Village workers, all payments of any kind whatsoever to the District, the cost of a Claims Administrator, the close of claims administration and notice, and any and all other payments or

disbursements pursuant to this Consent Order. The GSV is the maximum amount that Swahili Village and Onyona shall be required to pay for settlement of the Lawsuit,

10. The District shall appoint, at Swahili Village and Onyona's expense, a Claims Administrator. The Claims Administrator will be responsible for mailing notices and receiving and logging requests for exclusion; researching and updating addresses through skip-traces or similar means and disbursing the Worker Share and a potential reversion to the District pursuant to this Consent Order; reporting on the status of the Consent Order to the Settling Parties; preparing a declaration regarding its due diligence in the claims administration process; providing the Settling Parties with data regarding requests for exclusion; calculating and distributing settlement checks; calculating tax obligations (when applicable); remitting any and all tax obligations (when applicable) to the appropriate taxing authorities; and doing such other things as the Settling Parties may direct. All costs associated with the administration of the claims process will be paid from the Worker Share. The Settling Parties acknowledge that in the event an Eligible Worker cannot be reasonably located, funds allocated for that Eligible Worker may be used to fund the Claims Administrator's efforts to locate such Eligible Worker. Swahili Village and Onyona may spend up to \$69,451.88 of the Worker Share on the Claims Administrator, indicated on Appendix A as "Claims Administration Expenses." In the event Swahili Village and Onyona spend less than \$69,451.88 of the Worker Share on the Claims Administrator, the remaining balance shall revert to the District.

11. Payment of Worker Share: Swahili Village and Onyona shall manage the distribution of the Worker Share as follows:

a. The Claims Administrator will be responsible for establishing and maintaining a non-interest-bearing account ("Worker Share Account") for the Worker Share of the GSV. Within thirty (30) days of the creation of this account, Swahili Village and Onyona will deposit an initial lump sum payment in the total amount of \$138,170.77 ("Lump Payment")

into the Worker Share Account. Within five (5) days of the deposit, Swahili Village and Onyona shall provide the District with proof of the Lump Payment.

b. Swahili Village and Onyona will make eleven (11) monthly deposits (“Monthly Payment”) into the Account as follows: on or before the 5th day of each month for ten (10) months following the Lump Payment, Swahili Village will deposit the total amount of \$16,904.46 into the Account. On or before the 5th day of the month following the final Monthly Payment, Swahili Village and Onyona will deposit the total amount of \$22,142.93 into the Worker Share Account, bringing the deposits into the account in the total amount of \$329,358.30, at which point the Worker Share Account will be considered fully funded (“Worker Share Account Funded Date”). Within five (5) days of each Monthly Payment, Swahili Village and Onyona shall provide the District with proof of deposit.

c. Within ninety (90) days after the Effective Date, Swahili Village and Onyona will prepare and submit to the Claims Administrator and the District a ledger (the “Claims Ledger”) in Excel spreadsheet format that identifies each worker identified on Exhibit A (each an “Eligible Worker”) which will include the Eligible Worker’s (a) name; (b) available contact information, including phone, email, and address; (c) social security number and/or federal tax identification number (if available); and (d) amount owed as identified on Exhibit A (the “Claim Payment”). The District, Swahili Village, and Onyona shall meet and confer with the Claims Administrator regarding the format of said spreadsheet and shall cooperate to provide any additional information that the Claims Administrator may request that is reasonably available to Swahili Village and Onyona and reasonable and necessary for the purpose of giving the Notice, allocating and distributing the Worker Share, and otherwise administering this Agreement.

d. No later than ten (10) business days after receipt of the information described in the preceding Paragraph 11(c) of this Agreement, the Claims Administrator shall send the Notice to all Swahili Village Workers identified in the Claims Ledger via postal mail, e-mail, and text message (to the extent possible based on the spreadsheet provided by Swahili Village). The postal mailing will be sent by first-class U.S. mail. Before mailing the Notice, the Claims Administrator shall run the worker addresses through the U.S. Postal Service’s Change of Address Database. The Claims Administrator shall make such further efforts as are possible and reasonable (if any) to provide the Notice to Eligible Workers whose original Notice is returned as undeliverable, provided that all such efforts shall be completed by the sixtieth (60th) calendar day after the Notice is mailed. The Claims Administrator shall document all efforts under this subparagraph and keep such documentation for a period of four (4) years from the date the GSV is fully distributed.

e. The “Notice,” which is attached as Exhibit B to this Consent Order and the Eligible Worker’s ability to claim a portion of the Worker Share in exchange for executing an agreement releasing the claims at issue in the Lawsuit. Eligible Workers shall have ninety (90) calendar days to return an executed release in exchange for their portion of the Worker Share. On the sixtieth (60th) calendar day after mailing, the Claims Administrator shall mail, email, and text message a reminder notice to all Eligible Workers identified in the

Claims Ledger who have not submitted an executed release. No further notice shall be provided.

f. The Claims Administrator shall issue payments, less any required withholdings (“Withholdings”), which amounts shall be remitted to the appropriate taxing authority, from the Worker Share to all Workers who have returned an executed release by no later than the thirtieth (30th) calendar day after the last day for Workers to return an executed release has expired, or, in the event that the Worker Share Account lacks sufficient funds, no later than thirty (30) calendar days after the Worker Share Account receives sufficient funds to pay each Eligible Worker.

g. The Claims Administrator shall maintain unclaimed portions of the Worker Share for a period of eighteen (18) months from the date of mailing of the Notice. If any Worker Share funds remain unclaimed at the end of that eighteen (18) month period, the District will, in its sole discretion, make a determination regarding whether such funds shall be redistributed by the Claims Administrator *pro rata* to Eligible Workers who executed releases and participated in the settlement, shall revert to the District, or some combination thereof. Any funds to be reverted to the District will be distributed by the Claims Administrator pursuant to written instructions provided by the District.

h. The Claims Administrator shall create and maintain a “Claims Ledger” that records: (a) each Eligible Worker’s contact information, (b) whether the Eligible Worker opted in or opted out to receive payments, and (c) payments made to and cashed by Eligible Workers. The Claims Administrator will produce the Claims Ledger to the Settling Parties along with copies of executed Notice/Release forms. The Claims Administrator shall provide the Parties with an updated version of the Claims Ledger on a quarterly basis.

i. The Claims Administrator shall pay all tax withholdings withheld from Eligible Workers to the appropriate taxing authority on a quarterly basis.

12. Payment of District Share: No later than two (2) years after the Effective Date of the Agreement, Swahili Village and Onyona shall transfer the District Share to the District. The District agrees to provide any necessary paperwork or documentation needed to facilitate the transfer (such as a form W-9, wire credentials, etc.) to Swahili Village and Onyona at least fourteen (14) calendar days prior to the distribution deadline. Swahili Village and Onyona may, at their option, elect to pay out the entire amount of the District Share prior to two years after the Effective Date of the Agreement, provided that they have first completed all Worker Share payments.

IV. Dismissal and Release

13. The Settling Parties have agreed to the terms of this Agreement to resolve the District's allegations against Swahili Village, Onyona, and Shoeb concerning the Claims. In exchange for the performance of Swahili Village, Onyona, and Shoeb under this Agreement, and upon payment of all amounts due under this Agreement and completion of the reporting requirements under this Agreement, the District hereby releases Swahili Village, Onyona, and Shoeb from any and all civil workers rights' claims of which the Attorney General knew or should have known and could have asserted in the Lawsuit, including claims under the MWRA, SSLA, and WPCL, Workplace Fraud Act (D.C. Code §§ 32-1331.01), Living Wage Act (D.C. Code §§ 2-220.01), and the Family and Medical Leave Act (D.C. Code §§ 32-501), through the Effective Date of this Settlement Agreement.

V. Additional Terms and Conditions

14. Swahili Village, Onyona, and Shoeb agree to comply with the MWRA, WPCL, and SSLA.

15. Within 30 days of the Effective Date, Swahili Village shall revise its Handbook ("Revised Handbook") to eliminate any terms inconsistent with the SSLA and MWRA and shall submit that Revised Handbook to the District for review and shall disseminate the Revised Handbook to all employees within 45 days of the Effective Date.

16. Swahili Village and Onyona shall submit an annual report to the District for a three-year period following the Effective Date that identifies all workers who performed work for Swahili Village in the twelve months preceding the report and includes; a) for all workers identified, all pay records for the covered period; b) for all workers identified, all records of any paid leave accrued or used in the covered period; c) Swahili Village's paid leave policy for the covered period, identifying when the policy was implemented and how the policy was

disseminated to Swahili Village workers; d) Swahili Village's tip-sharing policy for the covered period, identifying when the policy was implemented and how the policy was disseminated to Swahili Village workers; and e) a signed certification from Onyona attesting to his and Swahili Village's compliance with the MWRA, SSLA, and WPCL. In the event Swahili Village hires Shoeb in the three-year reporting period, Shoeb shall also sign this certification. Swahili Village and Onyona shall submit the first report to the District pursuant to Paragraph 21 of this Agreement no later than 13 calendar months after the Effective Date, its second report to the District no later than twenty-five calendar months after the Effective Date and its final report no later than thirty-seven months after the Effective Date.

17. The Settling Parties and their respective counsel of record shall proceed diligently to prepare and execute all documents, to seek the necessary Court approvals, and to do all other things reasonably necessary to conclude this Consent Order.

18. The settlement of this Lawsuit, the negotiation and execution of this Agreement, and all acts performed or documents executed pursuant to or in furtherance of this Agreement or the settlement are not, shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of Swahili Village, Onyona, or Shoeb, or of the truth of any of the factual allegations in the Lawsuit; and are not, shall not be deemed to be, and may not be used as, an admission or evidence of any fault or omission on the part of Swahili Village, Onyona, or Shoeb in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. Likewise, nothing herein shall constitute a concession by the District that its claims and allegations in the Lawsuit are not well founded.

19. The District represents that it is presently unaware of any other lawsuit or administrative proceeding which alleges any of the claims under District of Columbia law asserted by the Lawsuit.

20. This Agreement, including its exhibits, constitutes the entire agreement and understanding between the Settling Parties, and supersedes any previous agreements or understandings between the Settling Parties. No representations, warranties, or inducements have been made to any party concerning the subject matter of this Agreement and/or exhibits other than the representations, warranties, and covenants contained in such documents. This Agreement and related exhibits shall be construed each as a whole, and with reference to one another, according to their fair meaning and intent. Each of the Settling Parties represent that its counsel has participated and cooperated in the drafting and preparation of this Agreement and related exhibits; hence, in any construction to be made of this Agreement and/or exhibits, the same shall not be construed against any party on the basis that said party was the drafter.

21. This Agreement, and its terms and exhibits, may be modified only in writing signed by counsel of record for the parties designated in Paragraph 23, and will not become effective unless and until approved by the Court or otherwise as ordered by the Court.

22. This Agreement may be executed in one or more faxed or e-mailed counterparts, which may be filed with the Court. All executed counterparts, and each of them, shall be deemed to be one and the same instrument. Copies of the complete set of executed counterparts may be used for all purposes in lieu of the originals and shall have the same force and effect as the originals.

23. All notices sent pursuant to this Settlement Agreement shall be provided to the following address via first class and electronic mail, unless a different address is specified in writing by the party changing such address:

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Counsel for Kevin Onyona and Emad Shoeb

24. Except as otherwise specifically provided for herein, the above-captioned court shall retain jurisdiction to construe, interpret, and enforce this Agreement and the settlement; to supervise all notices, the administration of the settlement and this Agreement, and distribution of the GSV; and to hear and adjudicate any dispute arising from or related to the settlement and/or this Agreement.

25. If any clause, provision, or section of this Settlement Agreement shall, for any reason, be held illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability

shall not affect any other clause, provision, or section of this Settlement Agreement and this Settlement Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section, or other provision had not been contained herein.

26. To the extent that any timeframe set out in this Agreement is ambiguous, said ambiguity shall be resolved by applying the conventions contained in D.C. Code § 50-2301.06.

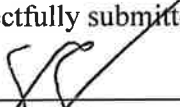
Dated: July 3, 2024

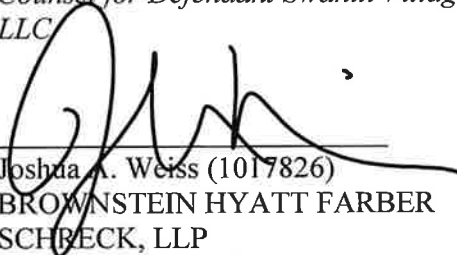
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Respectfully submitted,


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IT IS SO ORDERED, ADJUDGED, AND DECREED.

Date: _____

For service via Odyssey
All counsel of record

Associate Judge
Superior Court for the District of Columbia