



**Denver
Labor**

City and County of Denver

201 West Colfax Avenue, #705 • Denver, Colorado 80202
(720) 913-5039 • www.denverauditor.org/DenverLabor

Glenarm Dining Services d/b/a Diamond Cabaret
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Sent via first class mail and via e-mail to [REDACTED] and [REDACTED].

January 20, 2025

Denver Labor, Denver Auditor’s Office

Liability and Penalty Determination

Re: K.G., Glenarm Dining Services d/b/a Diamond Cabaret, and [REDACTED], an individual

I. INTRODUCTION AND SUMMARY OF DETERMINATION AND ORDER

Glenarm Dining Services owns and operates Diamond Cabaret (the “Diamond” or the “Club”), a popular strip club located in Denver, Colorado. On May 4, 2023, the Denver Labor division of the Denver Auditor’s Office (“Denver Labor” or the “Division) opened an investigation into the Diamond to investigate whether and to what extent it was committing wage theft in violation of Denver’s Minimum Wage and Civil Wage Theft Ordinances (“MWO,” “DCWTO,” and together, the “Ordinances”).

During this investigation, the Division interviewed approximately half a dozen individuals who work or have worked at the Diamond. This Determination concerns one in particular: K.G., who bartended at the Diamond for more than 12 years without any performance issues, including the last 3 under the current ownership.

Between August and December of 2024, K.G. sought to enforce the Ordinances on behalf of herself and her coworkers. She provided Denver Labor with a significant amount of evidence and information regarding the Diamond’s wage practices. This evidence included statements, photographs, and recordings, and tended to support her and her coworkers’ allegations that the Club commits frequent wage theft against its workers. She also prepared to serve as a witness for Denver Labor at a hearing. Her advocacy was consistent and posed a significant financial risk for the Club.

In early November, shortly after learning about K.G.'s protected activity, the Diamond engaged in a series of questionable, suspect, and retaliatory acts. It created a new policy, directed against K.G. and other workers speaking to Denver Labor, to threaten them against collecting evidence. In mid-November, it hired and trained a new bartender. Then, on December 12th and without warning, the Diamond fired K.G. due to "lack of work or a reduction in force." The Diamond also fired two of K.G.'s coworkers—bartenders who were her friends and had also provided information to Denver Labor. Neither of the other two bartenders were fired due to lack of work, however.

This Determination resolves two of the Division's inquiries. The first examines whether the Diamond unlawfully implemented a policy prohibiting recording in retaliation of the protected activity of K.G. and others—an issue also addressed in a companion decision, also released on this date, involving K.G.'s coworker D.D. The second inquiry addresses the Diamond's decision to fire K.G..

In both instances, the Diamond broke the law. To rectify these violations of K.G.'s civil rights, Diamond Cabaret is **ORDERED** to:

1. Pay to the City and County of Denver penalties for retaliation equal to **\$10,000**, based on \$5,000 fines for each retaliatory act committed against K.G.. D.R.M.C. § 58-4(d)(3). Because Denver Labor also finds that [REDACTED] bears individual responsibility for K.G.'s retaliatory firing, he and the Diamond are jointly and severally liable for \$5,000 of this fine.

Alternatively, the Diamond may pay K.G. \$4,500 per act of retaliation. For each unlawful act resolved in this manner, the Division will waive the \$5,000 statutory fine for retaliation.

2. Reinstate K.G. and place her in the position she would have been in had the Club never retaliated against her. See D.R.M.C. § 58-26(d); Civil Wage Theft Rule 15.9. At a minimum, the Diamond must present K.G. in writing with a plan to return her to work in her previous position, at a rate of pay at or above Denver's minimum wage. K.G. shall be entitled to the wages, benefits, and seniority that she would have earned had Diamond Cabaret not unlawfully terminated her employment. Such wages and benefits shall continue to accrue until K.G. returns to work but be reduced by any mitigation of damages obtained by K.G. since the date of this Determination.

Once the Diamond and K.G. have reached an agreement for her to return to work, and no later than 30 days from the date of this Determination, the Diamond shall share that agreement with Denver Labor, which will calculate her back pay entitlement. At a minimum, this back pay entitlement shall include the amount listed in point 3, below. Those amounts are due to K.G. immediately.

3. Pay to K.G. **\$2,014.18** as restitution for the wages and tips she would have earned had the Diamond not unlawfully fired her the day of the VIP Christmas party, which she was scheduled to work. This calculation is based records from the same event in December 2023. The Division finds that the same event from a year prior is an appropriate comparator to determine the amount of money the Diamond's illegal retaliation immediately cost K.G.. At the 2023 VIP Christmas party, K.G. worked 8.26 hours and earned \$1,859 in tips; absent her illegal termination, she would have earned approximately the same in tips, plus \$155.18 in hourly wages.

Each instance in which the Employer fails to comply with the reinstatement order by refusing to place K.G. on the weekly schedule will result in a \$1,000 fine, accruing on a weekly basis and beginning to accrue on February 3, 2025. D.R.M.C. § 58-4(d)(4) (up to \$1,000 fine for any violation of Chapter 58 without a specific penalty attached); D.R.M.C. § 58-26(d) (authorizing the Auditor to order reinstatement); D.R.M.C. § 1-13(c) (“Unless distinct and separate violations can be otherwise established, each day an offense and violation continues shall constitute a separate offense and violation.”).

II. JURISDICTION

Denver Labor is authorized and obligated to investigate, remedy, and deter wage theft against workers who work in the City and County of Denver. D.R.M.C. §§ 58-1 *et seq.* A “worker” is a human being who performs work on behalf of or for the benefit of an employer for compensation. An “employer” is any entity that employs a worker and, under Denver law, includes individuals. K.G., Diamond Cabaret, and ██████████ meet these statutory definitions. In addition to being a worker, K.G. was also an employee under Colorado law. See C.R.S. § 8-4-101(5). Employers are “strictly prohibited” from retaliating against “any person because the person has exercised in good faith” the rights protected by the Ordinances. K.G. is a “person.” In addition, the Ordinance contains a broad antiretaliation provision that prohibits any **person** from taking any retaliatory actions. This prohibition likewise encompasses individuals, even if they may not qualify as an “employer” under the Ordinance.

For the time period in question, K.G. worked at Diamond Cabaret, which is physically located at 1222 Glenarm Place in the City and County of Denver. The Diamond was her employer.

III. BACKGROUND

Diamond Cabaret is a strip club operating in Denver. It is owned and operated by Glenarm Dining Services, a registered trademark of RCI Hospitality Holdings, Inc (“RCI”). According to admissions by Diamond Cabaret and documents filed with the Denver Department of Excise and Licenses, the Diamond is wholly owned by Big Sky Hospitality, Inc. (“Big Sky”). Big Sky, in turn, is a subsidiary fully controlled by RCI. All three entities are under the ultimate control of ██████████, who is the Secretary, Treasurer, Director, and President of the Diamond; the President and sole director of Big Sky; and the President, CEO, and Chairman of RCI. The Club does not contest these facts.

What follows is a summary of key events, many of which are more fully addressed below. For narrative clarity, some of the events are presented out of chronological order.

- On May 4, 2023, Denver Labor opened an investigation into Diamond Cabaret. The purpose of this investigation was to assess the Diamond’s compliance with wage and hour laws, especially as to a) its tipped workers, and b) its entertainers. Ex. A, DL001-2.

Because the Diamond admits that it does not pay its entertainers an hourly wage at all, and charges them for the privilege of working, the potential liability in this matter is significant.

- On or about August 30, 2024, D.D., a Diamond Cabaret worker who submitted a wage complaint in May of 2024, introduced K.G. to the Division’s investigators. K.G. alleged that the Diamond routinely violated the law by forcing employees to share certain tips with managers.
- K.G., D.D., and other workers, have regularly provided Denver Labor with evidence supporting their claims. For example, K.G. sent photographs of “Gratuity Received Declaration” (GRD) forms, which the Club uses to record tip sharing between its managers and other employees. In total, K.G. and D.D. provided Denver Labor with approximately 100 GRDs. These GRDs indicate thousands of dollars in tips shared with managers.

They also provided a significant amount of detailed narrative information addressing the Diamond’s wage and hour practices. And frequently, this information was not about their own interests and experiences but addressed alleged violations of their coworkers’ rights—including entertainers.

- On September 17, 2024, the Division sent a request for information (RFI) to the Diamond. This RFI identified D.D. by name and contained specific allegations that managers at the Diamond receive 25% of tips on Diamond/Dance Dollar transactions and liquor suites. Ex. A, DL003.
- On October 1, 2024, the Diamond denied the allegations that managers receive a share of tips earned by or given to employees on two particular kinds of transactions. Ex. A, DL006.
- On October 2, 2024, the Division sent the Diamond a response challenging its narrative. Ex. A, DL009-12. This response named K.G. and D.D. as key witnesses. *Id.* at DL010. The Division shared five GRDs and wrote that they “appear to show managers receiving a share of gratuities earned by employees—an event you claim never occurs.” *Id.* It noted that Denver Labor “ha[s] approximately 75 more” GRDs, and that “D.D., [K.G.], and [J.G.] assert that managers require tip sharing on Dance Dollars or Diamond Dollars transactions and liquor suites. They assert that tipped

employees and entertainers are the ones who provide service during these transactions . . . [and that] these tips are not voluntary.” *Id.*

The Division also raised the prospect of this tip scheme nullifying the Diamond’s ability to claim the tip credit—an effect that would have raised labor costs by at least \$3.02 per hour, per tipped employee, going back years. *Id.*

- On October 23, the Diamond submitted a declaration from [REDACTED], its General Manager. Ex. A, DL013-16. [REDACTED] responded directly to the Division’s September 17, October 2, and October 21 communications. *Id.* at DL013, ¶8. The October 2 communication named K.G.. He denied K.G. and D.D.’s allegations that managers steal tips, and addressed the GRDs shared by K.G. and D.D. *Id.* at DL013-16.
- Meanwhile, on June 27, 2024, Denver Labor issued a Penalty Determination fining the Diamond \$1,000 per day for refusing to provide any records of hours worked or wages paid to entertainers. Ex. D. The Diamond appealed this Penalty Determination. In the lead-up to that Determination, and in its appeal, the Diamond and its counsel repeatedly insisted that the Club has no records whatsoever of entertainers’ work hours or wages earned. *E.g.*, Ex. C, DL159 (asserting the Club does not have entertainers’ schedules in its possession); *id.* at DL160 (“Additionally, the [Diamond] does not collect the sought-after wage and hour information.”).

These assertions were and are false. K.G. and D.D. proved the misdirection. They provided significant information to the Division about the Diamond’s internal system, ClubTrax, which entertainers are required to clock-in and clock-out on. ClubTrax tracks historical work data and can generate customizable reports of hours worked—in direct contravention to the assertions of the Diamond and its attorneys.

On September 11, 2024, the Division confronted the Diamond about these misleading claims, relying in significant part on information provided by K.G. and D.D. *See* Ex. A, DL017-18. In addition, the October 2, 2024 e-mail naming K.G. and D.D. as key witnesses addressed the Diamond’s practice of requiring entertainers to clock in and out via ClubTrax. *Id.* at DL009.

- On November 1, 2024, counsel for Denver Labor e-mailed the hearing officer assigned to the January 2025 hearing. The Division sought administrative subpoenas for K.G. and D.D. The Club’s counsel was copied on, and responded to, this communication. Ex. G, DL167-70.
- On November 6, 2024, the hearing officer issued subpoenas for K.G. and D.D. *Id.* at DL171. The Club’s counsel were aware of this fact.

- On or about November 6, the Diamond promulgated a new “No Recording” policy. The Club put up signs that read, in all caps:

NO CELL PHONE RECORDING IS ALLOWED. VIOLATING A COMPANY POLICY AGAINST RECORDING COULD LEAD TO DISCIPLINARY ACTION, INCLUDING TERMINATION.

See Exs. K (photos provided by the Diamond); Ex. L (photos provided by D.D.). The Diamond’s attorneys clarified the scope of this policy: It “applies to all individuals associated with Diamond Cabaret, including but not limited to all individuals on the premises,” and prohibits “[a]udio recordings, video recordings, and photographs.” Ex. A, DL020.

- Prior to November 6, employees would routinely use their cell phones to make recordings, including by taking photos and videos. No employee was disciplined for doing so. The Club occasionally took action to stop visitors from recording entertainers, however.
- On December 2, 2024, counsel for the Diamond wrote, regarding which individuals were responsible for promulgating the policy against cell phone recording, that ██████████ was the “on-site manager responsible for ensuring adherence to the policy during employee interactions.” *Id.*
- On December 3, 2024, K.G. confirmed that one of these new signs was placed specifically in the area where she gets dressed for her shifts.
- On December 5, 2024, the Diamond placed D.D. on administrative leave. On December 10, 2024, the Club terminated her. K.G. was vocal at work about the fact that she believed this was an illegal termination meant to warn against and silence workers like herself and D.D. from speaking out.
- On December 12, 2024, ██████████ fired K.G.. Specifically, he told her that Diamond Cabaret was not busy enough to have two people working as bartenders in the VIP area of the club. K.G. was the only bartender fired for these reasons, but was one of three bartenders—including D.D. and C.B.—who were fired after speaking with Denver Labor.
- On December 12, 2024, Denver Labor provided counsel for the Diamond with a Notice of Investigation regarding this issue. Ex. A, DL023-25
- On December 19, 2024, counsel for the Diamond responded to Denver Labor’s investigation into this issue. Ex. A, DL026-28. Notably, this response:
 - Refused to provide information about revenue, sales, attendance, or any other relevant documents to corroborate ██████████ claim that the

Diamond did not have enough business to keep two VIP area bartenders on staff. *Id.* at DL027.

- Included K.G.'s Employment Termination Form, signed only by [REDACTED]. Ex. P.
- Listed only [REDACTED] as responsible for the decision to fire K.G.. *Id.* at DL027.
- Included K.G.'s Employee File, which reflected her spotless disciplinary and performance history. Ex. Q.

The Diamond had a full and fair opportunity to respond to the allegations in this Determination concerning retaliation against K.G.. In addition to posing specific questions, the Division repeatedly invited the Club to present any evidence and arguments it wished. *E.g.*, Ex. A, DL005, 010, 024. In key instances, however, the Club instead chose to withhold evidence and information from Denver Labor.

IV. ANALYSIS

A. Applicable Laws, Rules, and Regulations

The City and County of Denver has invested meaningful time, energy, and resources into the problem of wage theft. Most significantly, it has passed the Ordinances and empowered Denver Labor, as a division of the Denver Auditor's Office, to enforce wage rights for work performed in Denver. *See generally* D.R.M.C. Chapter 58.

The goal of the Ordinances is to ensure payment of earned wages to as many workers as possible. D.R.M.C. §§ 58-14, 58-22. Wages are all amounts for labor or service performed by workers, so long as such amount is earned, vested, and determinable. D.R.M.C. § 58-23; *see also* Colo. Rev. Stat § 8-4-101(14). As most relevant here, tips/gratuities and minimum wages are all "wages" under the Ordinances.

Although the Ordinances allow for proactive investigations in the absence of a complaint, witnesses are crucial for the effective enforcement of wage rights. Information is key to wage investigations and civil rights enforcement. To that end, workers play an indispensable role in Denver Labor's process, and frequently provide information about violations and employer practices, as well as the contextual facts required to understand when, where, and how wage theft occurs.

To ensure workers are free discuss and assert their rights, the Ordinances include broad anti-retaliation protections. Under the law, nobody may take any adverse action against any person because that person has, in good faith, exercised their rights. D.R.M.C. § 58-2(b)(1). Those rights include, at a minimum:

- Asking about or raising wage rights;
- Informing any other person about an alleged wage violation;

- Filing written complaints with Denver Labor;
- Cooperating with Denver Labor in any investigations; and
- Testifying in proceedings related to wage investigations.

Id. “Adverse action” is defined broadly, and includes:

denying a job or promotion, demoting, terminating, failure to rehire after a seasonal interruption of work, threatening, penalizing, retaliating, engaging in unfair immigration-related practices, filing a false report with a government agency, changing an employee's status to a nonemployee, and any other negative change to an aspect of employment, including modification of pay, work hours, responsibilities, or other material change in the terms or conditions of a person's employment.

Id. at § 58-1(1). Put simply, an adverse act is any that would discourage a reasonable worker from engaging in protected activity and includes express and implied threats. Civil Wage Theft Rule 15.4.

To establish unlawful retaliation, a complainant must show, by a preponderance of the evidence, that 1) they engaged in protected activity, 2) the employer took adverse action, and 3) the adverse action was motivated by their protected activity. D.R.M.C. § 58-2(b)(3). But when an adverse action occurs within 90 days of protected activity, Denver Labor is statutorily required to presume unlawful retaliation. D.R.M.C. § 58-2(b)(3). An employer may rebut this presumption by providing clear and convincing evidence that the adverse action was taken for a lawful purpose. This is a “heightened standard,” “stronger than a mere ‘preponderance,’” and requires “evidence that is highly probable and free from serious or substantial doubt.” *L.S.S. v. S.A.P.*, 523 P.3d 1280, 1288 (Colo. App. 2022); *Destination Maternity v. Burren*, 463 P.3d 266, 271 (Colo. 2020).

Because the Club’s adverse acts occurred close in time to K.G.’s protected activity, the Diamond must provide evidence establishing that it is “highly probable” that it took its actions against K.G. for legitimate reasons. This evidence must also be free of serious doubt.

Finally, if an employer articulates a lawful purpose for its actions, the Division evaluates the totality of the circumstances to assess whether the evidence establishes that the employer’s explanation is pretextual.

B. The Diamond and [REDACTED] illegally retaliated against K.G. to punish her for her protected activity.

The Division finds that the Diamond and [REDACTED] retaliated against K.G. in two instances, and are jointly and severally liable for associated fines. First, in promulgating the No Recording policy, the Club threatened her with “DISCIPLINARY ACTION, INCLUDING TERMINATION.” The Division finds that this act was both a response to and a warning against her protected activity.

Second, the Club unlawfully terminated her on December 12, 2024.

The Club failed to meet its burden to establish by clear and convincing evidence that it undertook these actions for legitimate reasons. But as discussed below, under any

standard the evidence establishes that the Diamond's actions were unlawfully retaliatory and motivated by K.G.'s protected activity.

1. K.G. engaged in protected activity and suffered adverse actions.

Between August and December of 2024, K.G. engaged in ongoing, sustained, and increasingly consequential protected activity. She provided statements and information to assert her wage rights; submitted a significant amount of documentary evidence to the Division; and prepared to provide testimony against the Diamond at the January 2025 hearing.

Furthermore, Denver Labor finds that K.G. acted in good faith. See D.R.M.C. § 58-2(b)(1). Many of her contentions have been corroborated by other witnesses, and she has supported her claims with documentary evidence. The Division has found her statements to be accurate and credible, both standing alone and when compared to the claims of her former employer.

These activities are explicitly encompassed within the Ordinances' definition of protected activity. D.R.M.C. § 58-2(b)(1). The first prong of the retaliation standard is met here.

The Division also finds that the Club committed two adverse acts against K.G..

First, the creation of the No Recording policy was a threat meant for D.D., K.G., and other workers speaking with the Division. Specifically, shortly after K.G. engaged in protected activity, the Diamond placed a sign where K.G. regularly gets dressed for work. In fact, because K.G. was actively preparing to provide testimony against the Diamond, the Club took this action **in the midst of** protected activity.

These signs warned that recording of any kind "COULD LEAD TO DISCIPLINARY ACTION, INCLUDING TERMINATION." A reasonable worker in K.G.' position would have understood these facts as constituting a threat sufficient to deter against protected activity. See D.R.M.C. § 58-1(1) (defining "adverse action" to include "threatening"); Civil Wage Theft Rule 15.4 (adverse actions include "express or implied threats of any kind"). And in this instance, K.G. did have that interpretation.

K.G. has explained that she felt intimidated by the placement of these signs. She reasonably believed the new No Recording policy was directed towards her (and D.D.).

Second, termination is an adverse act. D.R.M.C. § 58-1(1). In this instance, [REDACTED] terminated K.G. on December 12, 2024. That day, K.G. was scheduled to work the Diamond's VIP Christmas party. This is an annual event for members of the Diamond, and is particularly lucrative for tipped workers. By firing K.G. immediately before this party, she lost a meaningful amount of money in tips.

2. The evidence establishes that K.G.'s protected activities motivated the Diamond's adverse actions. Its asserted legitimate reasons are not persuasive, but pretextual.

The evidence also establishes that K.G.'s protected activity motivated Diamond Cabaret. A complainant may establish unlawful retaliation by presenting direct or circumstantial evidence. Circumstantial evidence may include close temporal proximity and

any evidence showing that the employer's stated justification is pretextual. *Clark Cnty. Sch. Dist. v. Breeden*, 532 U.S. 268, 274 (2001); *Troupe v. May Dept. Stores Co.*, 20 F.3d 734, 736 (7th Cir. 1994).¹ Because of the timing, Denver Labor is required to presume retaliation. As the Division explained to the Diamond, it is the Club's burden to prove by clear and convincing evidence that it took adverse actions against K.G. for a lawful purpose.

Under any standard, the facts support K.G.. Furthermore, the Diamond failed to meet its burden. It claims, without any supporting evidence whatsoever, that ██████████ fired K.G. because the Diamond no longer had work for her. The Club made no attempt to support its claim. To test its position, the Division sought "records reflecting nightly sales, revenue, customer attendance overall, and customer attendance in the VIP room at Diamond Cabaret since December 12, 2023." Ex. A, DL024.

The Diamond simply refused to produce any of this information. Ex. A, DL026-27. Crucially, however, it could have—it could have provided revenue, sales, or attendance records; it could have provided internal documents reflecting conversations about how the Diamond did not have enough work for two VIP area bartenders; it could have provided any evidence of any kind to substantiate its position. It did not. Because of that, the Club fails to meet the clear and convincing evidence standard as a matter of law. Put another way, it has not provided evidence establishing that its position is "highly probable and free from serious or substantial doubt," because it has not provided any evidence. *L.S.S.*, 523 P.3d at 1288.

The Diamond's refusal to provide these records requires Denver Labor to draw adverse inferences against it. The adverse inference rule "provides that when a party has relevant evidence within his control which he fails to produce, that failure gives rise to an inference that the evidence is unfavorable to him." *Int'l Union, UAW v. NLRB*, 459 F.2d 1329, 1336 (D.C. Cir. 1972). In Colorado, this rule "has been extended to cases involving administrative agencies." *Romero v. Colo. Dep't of Human Servs.*, 417 P.3d 914, 922 (Colo. App. 2018); *see also UAW v. NLRB*, 459 F.2d at 1336-37 (collecting cases upholding agency application of the adverse inference rule).

Here, the Diamond has historical records reflecting revenue and attendance. It does not claim otherwise. While the Club and ██████████ asserts that they fired K.G. due to declining revenue and a lack of work, they have refused to provide the very information that would rebut the statutory presumption that they fired K.G. in retaliation for her protected activity. The obvious inference is that these records do not support the position of the Club and ██████████—and that they would, in fact, be harmful to their argument.

Even setting aside the Diamond's burden, a fair evaluation of the evidence before the Division creates not only "substantial doubt" as to the Diamond's version of events, but strongly supports a conclusion—under any standard—that the Club's asserted explanations are pretextual. The Diamond fired K.G. in retaliation for her protected activity, and no other reason.

¹ Throughout this Determination, the Division cites and relies upon authority from other jurisdictions and/or regarding different statutes. The fact that a case is cited reflects that Denver Labor has reviewed it and found its logic, principles, and/or analysis to be sound and persuasive.

i. *The No Recording policy*

First, the Division finds that the Diamond promulgated the No Recording policy to threaten against the protected activity of employees like K.G. and D.D.

The Diamond makes two arguments in its defense. Neither is persuasive. Some of the Club's factual claims are simply untrue.

First, the Club asserts that this policy is not new. It claims it is a "longstanding policy" that "has been in effect for years." Ex. A, DL019. The Diamond also argues this policy has been "consistently communicated" in writing "through the longstanding posting of 'No Recording' signs." *Id.* at DL021. In support, the Diamond produced two photographs. The first, taken on or after November 18, 2024, is simply a photo of one of the signs that the Club put up in early November. The second is a portion of a "Diamond After Dark" poster, advertising the Diamond's upstairs, late-night area. This poster states "ABSOLUTELY NO PICTURES OR VIDEO TAKEN." See Ex. K; Ex. A, DL034-35 ("these photos were taken . . . in response to Denver Labor's initial November 18, 2024, Investigation Letter.").

The Diamond's claim that the policy is "longstanding" is not supported by the evidence. In fact, the Diamond contradicts its own narrative and disavows other statements it has made. For more than a year, the Diamond has insisted that there are no written policies for any employees. Now, though, the Club claims that **for years** there has been a written policy prohibiting employees from taking any photos, videos, or audio recordings of any kind while on premises. See Ex. A, DL019-21.

Both statements cannot be true. At best, the Diamond is an unreliable historical narrator. At worst, it misled and stonewalled Denver Labor by claiming no written policies exist when they do.² In either case, its bald assertion **without evidence** that the No Recording policy has been in effect for years is not credible.

Setting aside the Club's contradictory narrative, workers credibly dispute its claim. Four individuals told the Division that the Diamond only recently put the signs up about the No Recording policy. In practice, they could not recall such a policy being enforced. They could, however, recall instances of employees taking photos and videos at the Diamond, sometimes with or in front of managers, and not being disciplined. More than that, they asserted that this is and has been a regular occurrence.

In addition, the Diamond's "evidence" consists of a single photograph of the policy sign pinned to the wall of the Club's office. See Ex. K, DL182. The Diamond claims this sign has been posted "for over two years." Ex. A, DL035. D.D., however, proved this false. She provided

² This appears to be the case, since K.G.'s employee file contains written policies regarding drugs, alcohol, cash handling, and more. When confronted with the fact that written policies do exist, the Club a) still refused to provide them, including missing policies, and b) asserted, wrongly, that the Division had never sought written policies for employees. In fact, Denver Labor did so on June 15, 2023. Ex. A, DL039-040.

In summary: the Division asked for written policies; the Diamond misled it by claiming, wrongly, that there are none; the Diamond has refused, for more than a year, to provide written policies; and as a consequence, the Diamond has established that its own narrative lacks credibility.

two photographs of the same location, from June and August of 2024. Ex. O. There is no sign prohibiting recording in either photo.

These current and former workers also contrasted the new and expansive No Recording policy with a much more limited version that has prohibited taking photos and videos **of entertainers**. This more-limited policy is designed to protect the privacy of the Club's dancers. This means that at some point in the past the Diamond considered whether and to what extent to prohibit recording; decided to limit this prohibition to prevent the recording of dancers; and broadly allowed employees to take photos and videos **until just after** K.G. and D.D.'s protected activity. Even after promulgating this policy, employees continued to take photos and videos without reprisal—other than K.G. (and D.D.), who reasonably interpreted the No Recording policy as a response to their protected activity.

Even ██████████, a manager at the Club, disagrees with the Diamond's story. On December 5, she e-mailed ██████████ about D.D. See Ex. A, DL041-42; *id.* at DL038 (the Club's attorney acknowledging that the e-mail at DL041-42 came from ██████████). In this message, she discussed an event that occurred on November 16, and identified the timeline by writing that this event happened "[s]hortly after all staff and signage were notified and posted" about the No Recording policy. When notified that ██████████ e-mail contradicted its claims, the Diamond impeached her credibility, writing that her statement "was based on her own account of events, and could have been a typo or mistake." *Id.* at DL038. In context, this is not persuasive because a) the Club discredits its own manager, b) ██████████ statement accords with the recollections of every witness who spoke to the Division, and c) common sense dictates that if this policy were truly "longstanding," a manager would have known.

Second, the Club claims that there has been "ongoing enforcement" of the policy. There is no support for this claim and significant evidence against it. To test the Club's position, Denver Labor sought evidence reflecting any enforcement actions whatsoever of the No Recording policy since November 18, 2021. Ex. A, DL030 The Diamond could not provide a single concrete example.³ *Id.*

In fact, Denver Labor provided the Diamond with two photographs that violate the policy as described by the Club. The first was pulled from a video posted on Instagram by ██████████ in December 2023. It showed her coworker posing with a large amount of money in

³ The Diamond claimed, without explanation, that "Denver Labor has no authority" to obtain this information. But in determining whether there has been unlawful retaliation, the existence or non-existence of comparators is relevant, as is past practice. These details are necessary to determine whether and to what extent the Club treated K.G. differently than other employees.

Nevertheless, the Diamond insists that managers have enforced the policy through "verbal warnings," and that there are no records of those warnings. Even accepting the Club's narrative, its actions still support a retaliatory intent. If, as the Diamond claims, it spent two years enforcing the policy through only verbal warnings, its decision to suddenly threaten employees with termination would be a significant escalation. It would still indicate an unlawful threat designed to chill protected activity. The **only** intervening event was the protected activity of K.G., D.D., and others.

But Denver Labor does not credit the Diamond's version of events because it is not credible.

the Club's office, which is not open to patrons, and the caption "We're rounding down tonight." Neither ██████████ nor her coworker were disciplined. Ex. A, DL031. The second photograph, from September of 2024, included ██████████ in it. ██████████ did not take any action against any individual taking that photo, nor was he disciplined for his failure to enforce the policy. *Id.* at DL031-32.

The Club has failed to meet its burden to prove by clear and convincing evidence that it promulgated the policy for legitimate, non-retaliatory reasons. To the extent it has presented evidence, that evidence is defined by substantial doubt. The Diamond's positions are contradicted by the facts, its own past assertions, and the written statement of one of its managers.

Even under a less stringent standard, the evidence would still strongly support retaliation on this point. The Diamond promulgated the No Recording policy shortly after learning that employees had provided photographs and a video to the Division as part of its investigation—approximately one month after receiving GRDs provided by and allegations from K.G. and D.D. Close temporal proximity between protected activity and adverse acts is evidence of an employer's retaliatory intent. *Clark Cnty. Sch. Dist. v. Breeden*, 532 U.S. 268, 274 (2001); *Troupe*, 20 F.3d at 736. The Tenth Circuit has explained that a "retaliation plaintiff may rely solely on temporal proximity to show causation," especially where the adverse action occurs "mere days" after protected activity. *Foster v. Mountain Coal Co.*, 830 F.3d 1178, 1191 (10th Cir. 2016).

In its defense, Diamond Cabaret claims that it could not have enacted the recording policy in retaliation because it did not know about K.G.'s protected activity. On December 19, 2024, its attorney wrote:

No one at Diamond Cabaret, including ██████████, had any knowledge of the subpoena issued to K.G. or her intent to testify, nor of her involvement with Denver Labor. Any claim of retaliation is baseless and without merit. K.G. worked only sporadically, a few days per month, and Diamond Cabaret made a legitimate business decision to terminate her employment in accordance with its rights under at-will employment law. As unequivocally stated, the Company was not aware of her involvement with Denver Labor at the time of her termination.

Ex. A, DL028.

Again, the Diamond shows little care for the facts or its own narrative. The Club was fully aware of the photographs of GRDs that K.G. and D.D. provided Denver Labor, as well as their allegations of wage theft. ██████████ submitted a sworn declaration on October 23, 2024 that specifically referenced Denver Labor's October 2 e-mail. Ex. A, DL013. This e-mail included five GRDs, described them, identified K.G. and D.D. by name, and described their allegations. ██████████ also directly responded to the allegations that the GRDs reflect unlawful tip stealing by managers. *Id.* at DL013-16. Additionally, counsel for the Diamond were notified of K.G.'s intent to testify on November 1, 2024. Ex. G.

Finally, the Diamond's motivation for stopping photo and video recordings is clear. The evidence shared by K.G. and D.D. has been extremely harmful to the Diamond's legal

position and proves that it has made false statements to the Division. Initially, the Club denied that managers receive a share of tips related to employees' work. See Ex. A, DL008 ("Managers do not participate in tip pools [with employees]," and contesting the claim that managers receive 25% of tips on two kinds of transactions). But after being confronted with the GRDs, the Diamond had to backtrack and instead argue that while this practice occurs, it is lawful. *Id.* at DL047-48.

The Diamond has also maintained that there are no records whatsoever reflecting hours worked by entertainers. It has claimed that it does not track hours worked by entertainers and has no information about their schedules. See Ex. C. These statements are not and were never true. K.G. (and D.D., among others) proved it.

The evidence mandates only one conclusion: the Club's asserted legitimate, non-retaliatory reasons for its actions are pretext, contradicted by the weight of the evidence and the Diamond's own narrative arc. The catalyst for the policy was protected activity by K.G. and D.D., and the Diamond created the policy to threaten against further cooperation with Denver Labor.

ii. K.G.'s termination.

The evidence also establishes that K.G.'s protected activity motivated the Diamond to fire her. Once again, because of the timing of these events, Denver Labor is required to presume unlawful retaliation. D.R.M.C. § 58-2(b)(3). The Club has not met its burden to rebut this presumption by clear and convincing evidence that it fired K.G. for lawful reasons.

Even setting aside the Diamond's burden, the evidence strongly supports a finding of retaliation. The timing of events is highly suspicious and supports pretext. There is significant evidence that [REDACTED] was motivated to get rid of K.G., whose actions pose a threat to his continued ability to unlawfully retain tips. Furthermore, the Diamond and its representatives have earned skepticism, having repeatedly made false statements of fact to the Division. This pattern of misdirection, paired with the Diamond's failure to provide **any** documentation or supporting evidence for its position, supports pretext. It provided no explanation as to why K.G., who worked for the Diamond for over 12 years and who had not a single notation of poor performance in her employee file, was selected for termination rather than any other bartender who had not engaged in protected activity.

a. The timing of events supports pretext.

A retaliation claimant may establish her case by pointing to close temporal proximity between protected activity and adverse acts. Where two such events occur close in time, that fact deserves significant weight, and raises a powerful inference of pretext. *E.g., Foster*, 830 F.3d at 1191.

The Club fired K.G. on December 12, 2024. Denver Labor first disclosed that K.G. had provided the Division with information regarding the Clubs on October 2, 2024. Since then, the protected activity of K.G. and others only continued—as the Diamond was well aware. On November 6, an administrative hearing officer issued a subpoena for K.G. to testify against

the Club on January 23, 2025. That hearing will decide the merits of a \$1,000 per day fine that the Division imposed against the Diamond for unlawfully withholding work-related information. Because of her role at the Club, K.G. has highly relevant information. Underscoring this fact, the Diamond tried—and failed—to exclude K.G.’ testimony.

In addition, actual and potential sanctions related to this protected activity only escalated. On November 25, 2024, Denver Labor issued a determination regarding wage theft and retaliation against a former worker named J.G. Ex. I. That determination, for the first time, found unlawful the very practice K.G. and D.D. have challenged: managers retaining a portion of tips for work performed by frontline employees. It drove home the possible financial consequences of the Club’s business practices. Again, while the Club initially denied these very practices, the GRDs and statements that K.G. shared with Denver Labor proved the Club’s misdirection and required it to reverse course.

That the Diamond fired K.G. so close in time to (and again, **in the midst of**) protected activity is persuasive evidence of unlawful retaliation, especially when paired with other relevant facts. K.G. was not the only bartender fired that week. [REDACTED] and the Club also terminated D.D. and C.B., both of whom were friends with K.G. and had also provided information to Denver Labor. Notably, in a companion determination, the Division found that the Diamond illegally retaliated against D.D. And after the Club placed D.D. on administrative leave, K.G. spoke up at work against this termination.

- b. The Diamond and [REDACTED] failed to substantiate their stated reason for firing K.G.. Denver Labor infers no reduction in force was necessary, and that their explanation is pretext.

As explained, Denver Labor also draws adverse inferences against the Club and [REDACTED]. Again, they simply refuse to provide evidence of sales and attendance, which would support the claim regarding the need for a reduction in force. The logical inference is that the Diamond and [REDACTED] cannot justify the decision to fire K.G., and that that explanation is mere cover for the real reason: K.G. engaged in protected activity around her and her coworkers’ wage rights.

- c. The Diamond and [REDACTED] have repeatedly made false statements to the Division, and do so in this investigation as well. They are not credible.

During the Division’s various investigations into the Diamond, the Club, [REDACTED], and the Diamond’s representatives have repeatedly made inaccurate factual claims. In doing so, they have earned limited credibility and established that even their basic statements of fact require scrutiny. For example:

- The Diamond has asserted that it does not collect information regarding hours worked by its entertainers. K.G., D.D., and others have provided statements and documentary evidence proving this false.
- The Diamond has asserted that there are no written policies for employees. It now claims the opposite regarding its No Recording policy. In addition, K.G.’ employee

file is replete with written policies.

- The Diamond claimed that managers do not participate in tip pools with employees. K.G.' GRDs proved this false, among other persuasive pieces of evidence.
- The Diamond claimed that managers do not receive a percentage of tips on certain types of transactions. Again, K.G. (and others) proved this false.
- During the investigation regarding allegations that the Club committed wage theft against J.G. and retaliated against her, ██████████ asserted that 1) J.G. had abandoned her job, 2) J.G. had never spoken to him about her wage theft concerns, and 3) J.G. never attempted to return to her job. J.G. and D.D. proved these statements false.

And here, the Club claims that "██████████ was unaware of any protected complaints by K.G. before she was laid off." Ex. A, DL027; *see also id.* at DL028 ("As unequivocally stated, the Company was not aware of her involvement with Denver Labor at the time of her termination."). Even separated from the broader context of the Diamond's dishonesty, this assertion is not credible. The Division used K.G.' name on October 2 and explained that she (and D.D. and J.G.)

assert that managers require tip sharing on Dance Dollars or Diamond Dollars transactions and liquor suites. They assert that tipped employees are the ones who provide service during these transactions by taking food and drink orders, checking on customers and entertainers, entertaining customers, keeping time, and more. They state these tips are not voluntary. Typically, managers take 25%, although [they] sometimes take more.

Ex. A, DL010. In his October 23 affidavit, ██████████ stated he was responding to this e-mail. He then did so. It is not believable that he "was unaware of any protected complaints by K.G." and "was not aware of her involvement with Denver Labor."

If past is prologue, the claim that K.G. was merely laid off is pretext. Factual claims from ██████████, the Diamond, and the Club's representatives have repeatedly been false. Their assertions in general deserve little credence. "This is but common sense: if a person is shown to be a liar in an outrageous manner or is shown to have lied about a number of issues, the inference that the person is non-credible, and should not be believed as to other issues, is a reasonable one." *Tyler v. RE/MAX Mountain States, Inc.*, 232 F.3d 808, 814 (10th Cir. 2000) (quoting *Chapman v. Al Transp.*, 229 F.3d 1012, 1050 (11th Cir. 2000)).

- d. ██████████ and the Diamond had substantial motivation to silence and get rid of K.G..

Finally, ██████████ and other authority figures had a clear motive to get rid of K.G.. The evidence she has provided the Division is substantial. If K.G., D.D., and other workers' allegations bear out, the Diamond faces significant liability under the Ordinances. Denver

and Colorado's elected leaders have established meaningful sanctions for wage theft, including the application of treble damages, mandatory 12% annual interest, and fines of up to \$25,000 per violation. *See generally* D.R.M.C. §§ 58-16(d), 58-26.

These are not just threats to the Diamond as an employer, but to ██████████ as an individual. K.G. has accused the Diamond of illegally taking tips and diverting them to managers. If this system ceases, ██████████ and other managers stand to lose a significant portion of their income.

██████████ was motivated to silence employees and get rid of K.G. and other workers for speaking up. ██████████ made the decision to terminate K.G.. Despite given the opportunity, the Diamond did not provide anything to corroborate ██████████ claim that he fired her because of lack of work. These facts strongly support pretext.

C. The Diamond and ██████████ are jointly and severally liable for their retaliation against K.G.

The Division finds that the Diamond and ██████████ are jointly and severally liable for the acts of retaliation described in this. The Ordinances prohibit any **person** from taking any retaliatory actions against any person who has in good faith engaged in protected activity. D.R.M.C. § 58-2(b); Civil Wage Theft Rule 15.1. A person, in turn, includes “an individual” and, when it relates to fines imposed against businesses, “include[s] the . . . members or agents who are responsible for any violation.” D.R.M.C. § 1-2(12).

██████████ is a “person.” He is also responsible for K.G.’ illegal firing. As the General Manager of the Diamond, he has ultimate authority over the Club’s policies, procedures, and day-to-day operations. In general, he has the final say over whether a person gets hired or fired; and in this case, he was the key decisionmaker who chose to fire K.G..

In his defense, ██████████ asserts very little. Instead, his response a) fails to overcome his burden of proof, and b) tends to support that he fired K.G. in retaliation for her protected activity. He does not deny that he told K.G. that the Diamond was not busy enough for two VIP bartenders on a Saturday, but he does admit that he did not review a single business or financial record before firing her. In other words, there is no objective evidence whatsoever supporting the justification he gave K.G.. In addition, ██████████ response is sparse to the point that it appears to be a deliberate withholding of relevant information. For example, after instructing ██████████ to “respond to each of the below with specific examples and as much detail as possible,” Denver Labor posed the following prompt:

Did you consult with any individuals prior to firing K.G. beforehand? If so, identify those individuals by name, title, and company; provide any documentation of the conversation; and provide a narrative explanation of the details of the conversation.

██████████ and his employer ignored most of this request, writing only that he “verbally consulted with my Regional Manager, but ultimately it was my decision to terminate K.G..” This refusal to provide fulsome responses supports that K.G.’ termination was not legitimate.

That decision was retaliatory. As it belonged to [REDACTED], so too does liability.

V. CONCLUSION

After considering all available evidence and applicable law, Denver Labor finds that the Diamond committed two acts of retaliation against K.G. in an effort to silence her and threaten other workers against protected activity. In addition, [REDACTED] is jointly and severally liable with the Club for her unlawful firing.

The Diamond and [REDACTED] shall fully comply with the requirements detailed in **Part II**. Alternatively, K.G. and the Diamond and/or [REDACTED] may settle this dispute **within 14 days** and present that full settlement agreement to the investigator of this matter, at which time Denver Labor will close this case. Absent Denver Labor receiving a copy of an executed settlement agreement, it will take further action to enforce this Determination.

Unless Diamond Cabaret appeals this Determination pursuant to D.R.M.C. § 58-5 and Denver Labor's Rules of Procedure for Hearings and Appeals, it shall be final.⁴

January 20, 2024

Denver Labor

Denver Auditor's Office

Sent via e-mail to the parties' representatives this same date, and via first-class mail to the Club's representatives on January 21, 2025.

⁴ This Determination does not resolve any other ongoing investigations Denver Labor is or might be conducting into Diamond Cabaret regarding other allegations of retaliation or wage theft. Additionally, this Determination does not conclude that K.G. did not experience minimum wage or other violations other than those specifically addressed in this determination.