

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES

MOM’S SIAM, INC.

and

Case 05–CA–321197

MADISON O’BRIEN, an Individual

and

Case 05–CA–321235

SATHAPORN KHAMMUNGKUN, an Individual

and

Case 05–CA–321263

KEVIN PANG, an Individual

and

Case 05–CA–321636

GITTIYAPORN BOONPIEM, an Individual

and

Case 05–CA–321817

RACHAEL CLARE NEWLIN, an Individual

and

Case 05–CA–323440

JOHN HENRY KAY, an Individual

and

Case 05–CA–323446

MARGARET LEE CORUM, an Individual

and

Case 05–CA–323499

TEMPEST BRITT, an Individual

and

Case 05–CA–324454

GABRIELLA ZENAIDA O’BRIANT, an Individual

*Stephanie Cotilla Eitzen and Nancy Jin, Esqs.,*  
for the General Counsel.

*Colleen Quinn and Francesca Babetski, Esqs.,*  
for the Respondent.

## DECISION

GEOFFREY CARTER, Administrative Law Judge. The General Counsel asserts in this case that Mom's Siam, Inc. (Respondent) violated Section 8(a)(1) of the National Labor Relations Act (the Act) by: in June 2023, making statements and engaging in conduct that had a reasonable tendency to interfere with, restrain, or coerce employees' protected concerted activities; on about June 25, 2023, temporarily closing its restaurant and laying off or discharging the charging parties and similarly situated employees because employees engaged in protected concerted activities; and on about July 6, 2023, refusing to reinstate the charging parties because they engaged in protected concerted activities. As explained in more detail below, I have determined that Respondent violated the Act, specifically by making unlawful statements, temporarily closing the restaurant and failing to assign work to all charging parties and similarly situated front-of-the-house employees, and discharging eight (out of nine) of the charging parties and similarly situated front-of-the-house employees.

## STATEMENT OF THE CASE

The trial in this case began on July 29, 2024, by videoconference to address procedural matters. Thereafter, the trial proceeded in person on September 9-11, 2024, in Richmond, Virginia.

The charging parties<sup>1</sup> filed the unfair labor practice charges in this case on the following dates:

Case	Filing Date	Amendment Date(s)
5-CA-321197	June 29, 2023	
5-CA-321235	June 29, 2023	December 4, 2023
5-CA-321263	June 29, 2023	December 4 and 20, 2023
5-CA-321636	July 7, 2023	August 16 and December 20, 2023
5-CA-321817	July 14, 2023	
5-CA-323440	August 8, 2023	
5-CA-323446	August 8, 2023	
5-CA-323499	August 9, 2023	
5-CA-324454	August 9, 2023	

On March 4, 2024, the General Counsel issued a consolidated complaint. In the consolidated complaint, as further amended on July 22, 2024, and during trial,<sup>2</sup> the General

<sup>1</sup> The charging parties in this case are: Madison O'Brien; Sathaporn Khammungkun; Kevin Pang; Gittiyaporn Boonpiem; Rachel Clare Newlin; John Henry Kay; Margaret Lee Corum; Tempest Britt; and Gabriella Zenaida O'Briant.

<sup>2</sup> On September 11, 2024, the General Counsel verbally amended paragraphs 3, 11, and 12 of the consolidated complaint. (Tr. 562-563.) The allegations listed below incorporate the amendments to the complaint.

Counsel alleged that Respondent violated Section 8(a)(1) of the Act by engaging in the following conduct:

- 5 (a) On about June 16, 2023, via text message, coercing employees by telling them not to discuss their wages with other employees;
- (b) On about June 21, 2023, inviting employees to quit their jobs with Respondent in response to the employees' protected concerted activities;
- 10 (c) On about June 23, 2023, in an article in the Richmond Times-Dispatch, inviting employees to quit their jobs with Respondent in response to the employees' protected concerted activities;
- 15 (d) On about June 24, 2023, via text message and orally, interrogating employees about their protected concerted activities;
- (e) On about June 24, 2023, threatening employees with layoffs and business closure in response to employees' protected concerted activities;
- 20 (f) On about June 25, 2023, threatening employees with layoffs and business closure in response to employees' protected concerted activities;
- 25 (g) On about June 25, 2023, temporarily closing Respondent's facility, laying off the charging parties and similarly situated employees, and discharging the charging parties because the charging parties engaged in protected concerted activities and to discourage employees from engaging in those or other concerted activities; and
- 30 (h) Since about July 6, 2023, refusing to recall, rehire, or reinstate the charging parties because the charging parties engaged in protected concerted activities and to discourage employees from engaging in those or other concerted activities.

Respondent duly filed an answer denying the alleged violations in the consolidated complaint.

35 On the entire record,<sup>3</sup> including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

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<sup>3</sup> The transcript and exhibits in this case generally are accurate, but I hereby make the following corrections to the record: P. 5, l. 25: "his" should be "its"; P. 7, l. 6: "segregation" should be "sequestration"; P. 20, ll. 3-4: "The settled" should be "There are several"; P. 35, l. 14: "liner" should be "runner"; P. 52, l. 15: "liner" should be "runner"; P. 53, ll. 6-7: "This establishes" should be "Just establish it's"; P. 121, l. 4: "hear" should be "fear"; P. 150, l. 10: "tense" should be "sense"; P. 175, l. 7: "human" should be "hearing"; P. 247, l. 17: "Mount" should be "Mom's"; P. 315, l. 3: "O'Brien, O'-B-R-I-E-N" should be "O'Briant, O'-B-R-I-A-N-T"; P. 327, l. 2: "That's" should be "Not"; P. 335, l. 23: "Employer" should be "reporter"; P. 381, ll. 16-17: "did she" should be "if you" and "had to" should be "I'm happy to"; P. 447, l. 3: Ms. Eitzen was the speaker; P. 454, l. 14: "Marie" should be "Ree"; P. 470, l. 22: "him" should be "them"; P. 471, l. 16: "test" should be "text"; P. 517, l. 22: Ms. Eitzen was the speaker; P. 517, l. 24: Ms. Quinn was the speaker; and P. 660, l. 23: "There's" should be "If there's". I also hereby grant the General Counsel's unopposed motion, filed on November 18, 2024, to correct the

FINDINGS OF FACT<sup>4</sup>

## I. JURISDICTION

Respondent, a Virginia corporation with an office and place of business in Richmond, Virginia, operates a public restaurant (Mom's Siam) selling food and beverages. In the 12-month period ending on February 29, 2024, Respondent derived gross revenues in excess of \$500,000 and purchased and received goods at its Richmond, Virginia facility that were valued in excess of \$5000 and came directly from enterprises outside the Commonwealth of Virginia (including from V-Nine, Inc., located within the State of Maryland, and from other enterprises, each of which had received the goods directly from points outside the Commonwealth of Virginia). Respondent admits, and I find, that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

*A. Background*

In the greater Richmond area, Sukanya Palaart (she/her) owns or partially owns the following restaurants: Mom's Siam; Mom's Siam 2; Yaya's Cookbook; and MPM Tiki Bar. The events in this case primarily relate to Mom's Siam, which is located at 2811 W. Cary Street, Richmond, Virginia 23221. (Jt. Exh. 4 (pars. 5–6); Tr. 26–28, 65–68, 83.)

Palaart, who employees refer to as “Mom” or “Su,” only occasionally visits Mom's Siam location. In early 2023, Palaart relied on Usaporn (Ree) Vanderhoof (she/her) to serve as Mom's Siam's manager and thus be responsible for hiring, scheduling employees, assigning work to employees, and making recommendations to Palaart about these issues. Ree generally used a group chat titled “Mom's Siam” to communicate with employees about scheduling and other workplace matters. Palaart was also a member of the Mom's Siam group chat (identified in the chat as “Mom”). (Jt. Exh. 4 (pars. 7, 18–19); Tr. 28–30, 60–62, 68, 83–84, 112–114, 133, 135–137, 217, 232–234, 270–271, 316, 319, 344, 383–384, 398, 402, 434–435, 437, 484–486, 510, 514.)

When Vanderhoof was not at Mom's Siam, Respondent relied on Sarayute<sup>5</sup> to calculate tips, instruct employees, and close the store on most nights (among other duties, including working as a server). The evidentiary record does not show that Sarayute had an official title, but Sarayute's duties mirrored those of individuals who Respondent later hired to work as assistant manager. (Tr. 49, 72, 98, 117–118, 137–138, 221, 271, 294, 398–399, 401, 420, 435–

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record by substituting a complete copy of General Counsel Exh. 14 for the incomplete version that was initially included in the exhibit file.

<sup>4</sup> Although I have included several citations in this decision to highlight particular testimony or exhibits in the evidentiary record, I emphasize that my findings and conclusions are not based solely on those specific citations, but rather are based on my review and consideration of the entire record for this case.

<sup>5</sup> The evidentiary record does not include Sarayute's full name. I also note that each of the following names in the evidentiary record refer to Sarayute: Pi Yuth; Si Yuth; Yut; and Ute. (Tr. 314.)

436, 438, 511, 544–546, 639; see also Tr. 597, 607–608, 621–622, 634–635 (explaining that on about July 17, 2023, David Nguyen “replaced” Sarayute at Mom’s Siam and worked an assistant manager with the authority to instruct employees about their job duties),<sup>6</sup> 671 (Palaart testimony that Sarayute is “a very good manager”).)

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*B. December 2022–May 2023: Employee Discussions about Working Conditions*

Starting in about late 2022, Mom’s Siam employees communicated with each other to express their frustrations with various aspects of their working conditions at the restaurant and management’s failure to address problem areas that employees identified. Among other concerns, employees were dissatisfied with: hourly wage rates; tip-sharing calculations that employees thought were incorrect and/or unfair; work shift assignments, including Respondent’s tendency to assign Sarayute to work both the lunch and dinner shift for five or six days a week, which left fewer shifts available for other employees who wanted more hours; and the dishwasher behind the bar repeatedly breaking down and leaking, which caused the hardwood floor to buckle. To facilitate their communications and discuss the possibility of taking some action as a group to raise their concerns, employees used a group chat (titled “Moms No Ree”) that did not include Palaart, Vanderhoof, or Sarayute. (Tr. 115, 138–140, 143, 217, 224–225, 319, 399–401, 437–438, 506; see also R. Exh. 12 (pp. 1–2) (photographs dated May 22, 2023, showing an area where the hardwood floor at Mom’s Siam buckled).)

In early February 2023, several employees tried to deposit the checks that Respondent wrote for their tips, only to have to the checks bounce at the bank. Several employees raised this issue on the Mom’s Siam group chat, and manager Vanderhoof indicated that the problem arose because someone “stole [a] Mom’s Siam check and wrote [it] out for \$10,000.”<sup>7</sup> Vanderhoof promised to work with owner Palaart to make sure that the bank did not hold employees’ checks. As part of the thread on the Mom’s Siam chat about the bounced checks, bartender Alejandro Cruz Lemus (Aloe or Lemus; he/him) sent a message to request that someone connect him to the “union [chat].” Later, after employees sent additional messages about bounced checks, Lemus added “[t]ime to unionize” and “[t]he time to organize is now comrades.” (GC Exh. 16; Jt. Exh. 4 (par. 26); Tr. 142, 216, 400.)

In about March 2023, employees began meeting somewhat regularly, both in person and by videoconference, to discuss their concerns about working conditions at Mom’s Siam. Through those meetings and discussions, employees outlined a plan of action, drafted a demand letter, and reached out to Vanderhoof and Palaart to request a meeting. Both Vanderhoof and Palaart agreed to meet with employees on May 24, 2023. (GC Exhs. 2, 4, 6–7, 32; Tr. 86–88, 139–140, 146–149, 151–156, 217–218, 224–226, 235–236, 317–318, 345–346, 384–385, 399, 401–402, 439–442, 469–470, 485–486, 513–517; see also Tr. 143–145, 217, 319, 402, 486–487, 515 (explaining that employees formed an additional group chat, titled “Ultimate Workers

<sup>6</sup> For July 10–16, 2023, both Sarayute and Nguyen were scheduled to work at Mom’s Siam, with Nguyen working as a server. Starting on about July 17, 2023, Palaart moved Sarayute from Mom’s Siam to a position at Mom’s Siam 2, and Nguyen became assistant manager at Mom’s Siam. (Tr. 73, 621–622, 667–668, 671–672; see also GC Exh. 34 (showing that both Sarayute and Nguyen were on the schedule to work at Mom’s Siam from July 10–16, 2023).)

<sup>7</sup> There is no evidence or contention that the check was stolen by one of the Mom’s Siam employees involved in this case.

Power,” to use for their discussions about taking action to address working conditions; Vanderhoof, Palaart, and Sarayute were not a part of that group chat).)

On May 20, 2023, Vanderhoof sent a message to employees to follow up on the problems with bounced checks. In her message, Vanderhoof reported that Palaart spoke with the bank (Wells Fargo) and that Wells Fargo recommended that employees open Wells Fargo accounts to deposit or cash their checks. Four employees replied to Vanderhoof’s message to express confusion about and/or object to the proposed solution. (GC Exh. 5; Tr. 140–141, 215.)

*C. May 24, 2023: Employees Meet with Vanderhoof and Present Demand Letter*

On May 24, 2023, several employees met with manager Vanderhoof at the restaurant, including: Gittiyaporn (Erica) Boonpiem (she/her); Tempest Britt (she/her); bartender Lemus; Isabella (Bella) Eccleston (she/her); John Henry Kay (they/them); Sathaporn (Zack) Khammungkun (he/him); Rachael (Ray) Newlin (she/her); Madison (Midge) O’Brien (she/her); Gabriella (Zenny) O’Briant (she/her); and Kevin (Kai) Pang (he/they).<sup>8</sup> Owner Palaart did not attend the meeting because she needed to babysit her grandchildren. (GC Exh. 9; Tr. 31–32, 35, 89–90, 156, 159, 218, 234–236, 302, 337–338, 402–403, 443–444, 516, 518; see also Tr. 319–320 (noting that O’Briant was only present for the last 10 minutes of the May 24 meeting).)

At the meeting, employees presented Vanderhoof with a copy of their demand letter, which stated as follows:

Dear Sunisa,<sup>9</sup>

We are the hosts, food runners, servers and bartenders of Mom’s Siam and are invested in making it the best workplace possible for all of us. Mom’s Siam is a Richmond institution and a special place we are proud of and enjoy working at. We work hard to create a welcoming and hospitable atmosphere for customers and coworkers alike. Over the past couple of months there have been grievances left unaddressed which has harmed morale and communication that is so necessary in how we work together. Below are some changes that we believe would create a better and more fair workplace for all front of house staff. These changes will also help with employee commitment and retention, in turn making things more efficient for the business.

We collectively demand the following:

\$12 hourly wage for servers, \$15 hourly wage for bartenders and support staff

3rd party accountant running tip calculations & distribution

<sup>8</sup> Employees C.B, C.Si., and C.Sr. were among the other employees who attended the May 24, 2024 meeting. (Tr. 159.) In keeping with my usual practice, I only use initials to refer to employees who did not testify as witnesses during the trial.

<sup>9</sup> Employees intended to direct the letter to owner Palaart but erroneously typed in “Sunisa,” Palaart’s sister who co-owns the Mom’s Siam 2 restaurant alongside Palaart. (Tr. 31, 66, 155.)

Room for growth - \$0.50 yearly raise for all positions AND option for food runners/hosts to begin serving after 6 months

Equal and fair distribution of shifts

We ask for a response to these demands by Wednesday, May 31st

Finally, we remind you that it is against the law to retaliate in any way against the workers listed in this letter or any other worker who speaks up for their rights. This includes discharging, penalizing, disciplining or in any other manner discriminating against workers for this activity. Should any such retaliation occur, we and many others are prepared to take immediate legal and public action.

Sincerely,

[Signed by 21 employees, including each of the employees who attended the May 24 meeting]

(GC Exh. 6; Jt. Exhs. 1, 4 (par. 20); see also Tr. 89, 155–157, 234, 385–386, 442–443.)

During the meeting, employees emphasized that they enjoyed working at Mom’s Siam and explained their rationale for each of the demands set forth in the letter. For example, bartender Lemus explained that hourly wages were a concern in part because employees, and particularly servers who were making \$2.13 per hour, were not being compensated sufficiently for their time on days when business was slow. Similarly, server Boonpiem explained that, due to the problems with bounced and inaccurate checks, employees wanted an accountant to calculate and distribute tips. Vanderhoof was surprised and sorry to hear the employees’ concerns, expressed doubt about some of the proposed changes, and indicated that she would talk to Palaart to see what could be done. (Tr. 90, 157–158, 236–237, 320, 386, 403–404, 419, 443–444, 518–519; see also Tr. 443 (noting that Sarayute was also present at the May 24 meeting).)

#### *D. Late May/Early June 2023: Developments after the May 24 Meeting*

In around late May, a few employees (Kai Pang, Zack Khammungkun, and John Henry Kay) visited another one of owner Palaart’s restaurants in hopes of seeing Palaart and giving her a copy of the May 24, 2023 demand letter. Since Palaart was not present when they visited, the employees left a copy of the demand letter with the restaurant manager. Kay subsequently (on May 31, 2023) texted Palaart to ask if Palaart received a copy of the demand letter that was dropped off, but Palaart did not respond. (Tr. 160–161, 444–445, 519–520; GC Exh. 11.)

Employees also decided to generate public support/pressure for their May 24, 2023 demand letter. To that end, employees: started an online petition to seek support for employees’ demands and for employees’ efforts to arrange a meeting with Palaart; and, in early June 2023, started a “Workers.Roar”<sup>10</sup> Instagram page to publicize their efforts “to ask management for a

<sup>10</sup> Initially, the Instagram page was titled “Workers Siam.” (Tr. 160.) For clarity, I refer to the Instagram page as the Workers.Roar Instagram page throughout this decision.

livable wage and better working conditions for current and future employees at Mom's Siam." (GC Exhs. 13, 14 (pp. 1-6); Tr. 160-164, 219, 238-239, 445, 521; see also GC Exh. 1(ss) (pars. 5-6 (Respondent's answer to the complaint, admitting that at an unspecified date and time it was made aware of the online petition and Workers.Roar Instagram page).)

As for Respondent, Palaart spoke with manager Vanderhoof after the May 24, 2023 meeting to ask what the meeting was about. When Vanderhoof explained that employees wanted more money, Palaart consulted with her accountant and then advised Vanderhoof that she (Palaart) would agree to some wage increases. Consistent with that agreement, the June 16, 2023 paychecks for several employees reflected the following changes to hourly rates: bartenders – increase from \$10 to \$14-15/hour; food runners – increase from \$10 to \$15/per hour; hosts – increase from \$10 to \$12/hour.<sup>11</sup> Respondent did not increase server hourly wages in this timeframe, and thus servers continued to earn \$2.13/hour (minimum wage). All front-of-the-house employees continued to earn a share of tips, though the share depended on the employee's role during the shift. (Tr. 34-36, 85, 105, 317, 330-331, 364, 392-393, 542-543, 662-663; Jt. Exhs. 1 (pp. 1, 4-8, 10, 15, 24, 27, 30-31, 33-34, 38, 40, 45), 4 (pars. 11, 13-14, 17); see also Jt. Exh. 1 (pp. 15, 25, 36, 40) (showing that the hourly rate for servers increased from \$2.13 to \$2.50 in servers' July 17, 2023 paychecks.)

On June 16, 2023, manager Vanderhoof sent a text message to bartender Pang about his hourly wages. Vanderhoof stated as follows:

Hi! I just want to let you know that mom is ok to up your hourly pay due to your great performance and consistency since your first day. However, I [can't] get this rate for all the bartenders yet. We will discuss more on the next meeting. Please don't tell other yet. Thanks!

(GC Exh. 12; see also Tr. 170-172, 218, 221-222.)

#### *E. June 21, 2023: Employees Meet with Vanderhoof and Palaart*

On June 19-20, 2023, bartender Newlin sent a message in the Mom's Siam group chat to propose a followup meeting to be held on June 21 between employees, manager Vanderhoof, and owner Palaart. Vanderhoof initially hesitated in agreeing to the proposed meeting date, stating that she was not sure if Palaart would be in town and that Palaart also wanted the meeting to occur when bartender Kay could be present. Kay, however, indicated that they wanted the meeting to proceed even though they could not attend. Vanderhoof subsequently agreed to the

<sup>11</sup> These wage increases were not uniformly applied, as employees working the same jobs were sometimes paid at different hourly rates. For example, on June 16, 2023, Kay began earning \$15 per hour as a bartender, but all other bartenders generally began earning \$14 per hour (the difference in Kay's hourly rate may have been because he was informally filling the role of bar manager, but that is not clear in the record). (Compare Jt. Exh. 4 (par. 14) with id. (pars. 11, 13, 17); see also Tr. 687-688.)

In addition, hourly rates for individual employees fluctuated in the June 2023 timeframe. The reasons for the fluctuations in hourly rates are not clear, but I note that some employees worked in multiple roles at the restaurant and thus had different pay rates (e.g., one employee might work as both a host and a server, and thus receive pay rates for both of those roles). There was not an established mechanism for employees to indicate their assigned role(s) when they clocked in for their shifts.



June 21 meeting, noting that Palaart (who was also on the chat) had changed her travel plans to be available to attend the meeting. (GC Exh. 15; Tr. 348-349, 522-523, 545-546.)

The June 21 meeting<sup>12</sup> began with Palaart briefly asking some employees to introduce themselves and indicate how many shifts they worked each week.<sup>13</sup> After the introductions, Palaart commented that she had never had so many employees at the restaurant, as previously Mom's Siam had 12-13 employees and now had close to 25 employees, which she thought was a lot for a small business. (R. Exh. 15 at 0:00-3:52 (recording of June 21 meeting); Jt. Exh. 1 (par. 21); Tr. 31-33; see also Tr. 33-34, 91, 169-170, 172, 302, 320-321, 365, 386-387, 404-405, 445-446 (noting that Boonpiem, Britt, Lemus, Eccleston, Khammungkun, Newlin, O'Brient, O'Brien, and Pang attended the June 21 meeting, along with several other employees).)

After the introductions, server O'Brien, who was unofficially facilitating the meeting, turned the discussion to the four main issues that employees were having at the restaurant and thus hoped to work out some compromise solutions. On the issue of work shift assignments, employees explained that they wanted shifts to be assigned more equitably because it was difficult to earn a livable wage without enough shifts. In particular, employees noted that Sarayute was being assigned ten shifts a week (i.e., "double shifts" of both lunch and dinner, five days a week), which limited shift assignment opportunities and caused Sarayute to be tired at work and as a result not communicate well. Palaart asked why O'Brien did not quit Mom's Siam and work at her other job (O'Brien said she did not want to quit), and expressed interest in cutting employees who were only working one shift per week because the restaurant employed too many people. Regarding Sarayute's shift assignments, Palaart said that she did not want to cut his hours because Sarayute was her person and she sponsored him. Later in the meeting, Sarayute stated that he was fine with working double shifts every day of the week. (GC Exh. 17 at 2:08-7:22 (recording of June 21 meeting); see also id. at 25:50-27:20, 35:12-36:49, 36:50-38:02; Tr. 405-407.)

Regarding hourly wages, bartender Pang noted that he did not receive a raise for two years even though the cost of living was getting higher, but he expressed appreciation for Mom's Siam making changes to wages after employees raised concerns. After Palaart described the wage increases that Mom's Siam recently implemented, Palaart expressed concern about paying higher rates when (for example) the bar was only bringing in limited sales. O'Brien explained that employees often did not earn enough on slow days at the restaurant when tips were limited and servers were only earning \$2.13 per hour. As a solution, employees (through O'Brien and Pang) proposed that Mom's Siam agree to a minimum payout for slow shifts to ensure that all employees at least earned the equivalent of \$12-15 per hour. Palaart responded by saying "find

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<sup>12</sup> The evidentiary record includes two video recordings of the June 21 meeting. The recordings generally overlap, though Respondent Exh. 15 starts and ends a few minutes earlier than General Counsel Exh. 17. I have reviewed both recordings of the June 21 meeting and note that the description of the meeting in this section is a summary and not a transcription of the entire meeting.

<sup>13</sup> Palaart specifically asked the following employees how long they had been working at Mom's Siam and how many shifts they worked each week and received the following responses regarding shifts per week: E. (3-4 days per week); K. (3-4 days per week); Tempest Britt (4-5 days per week); Bella Eccleston (3-4 days per week); Ray Newlin (1 day per week); Midge O'Brien (was not asked about work shifts, but later in the meeting said she worked 2 days per week); and Kai Pang (2 days per week). (R. Exh. 15 at 0:00-3:24; see also GC Exh. 17 at 2:55-3:03.)

somewhere else to work,” saying that she did not like having problems like this (i.e., problems that resulted from having a lot of employees), and again expressed interest in cutting the staff down from 25 to 12 people. Towards the end of the discussion about hourly wages, Palaart said “You not happy, right? Then find another job. Yes, find another job.” (GC Exh. 17 at 11:08–16:11, 16:40–16:55, 18:46–20:15; see also id. at 15:45–15:47 (“find somewhere else to work” remark), 20:05–20:10 (“find another job” remark); Tr. 40, 71, 92, 180–182, 387, 409, 665, 674–675.)

On the topic of payroll, employees raised concerns about paychecks being late, incorrect, or bouncing when employees tried to deposit them. Palaart initially told employees that they should talk to the bank, and when employees pointed out that the problem was with Mom’s Siam’s account, Palaart said “that means that Mom’s Siam doesn’t have money then, so why you ask more?” When an employee replied “because we need money to live,” Palaart answered “Well, you know, find a decent job and you make more money.” That prompted employees to assert that Mom’s Siam should be a decent job, and Palaart to reiterate “Yes, go find a decent job, don’t complain ok, don’t complain.” (GC Exh. 17 at 29:04–30:07; Tr. 183.) Employees subsequently explained that their tip paychecks frequently were incorrect, bounced, and/or were put on hold by the bank. Palaart attributed the mistakes to the payroll company that Mom’s Siam used, but employees replied that the tip paychecks were calculated in-house and asserted that Sarayute made errors when he calculated employees’ shares of the tip pool while he was tired. Palaart proposed that she would take over writing the tip checks. (GC Exh. 17 at 30:59–32:40, 33:54–34:15, 38:22–39:24.)

At one point during the meeting, Palaart asked who wrote the May 24 demand letter. Employees answered that they all wrote the letter. Palaart then pointed out that employees directed the letter to “Sunisa” instead of to her. O’Brien apologized for that error, noting that employees had trouble figuring out how to contact Palaart. (GC Exh. 17 at 32:40–33:48; Tr. 409–410; see also GC Exh. 6.)

Towards the end of the meeting, employees questioned whether Palaart was willing to compromise on a lot of the issues that employees raised in the meeting. Palaart said “no” and reiterated her interest in cutting the staff from 25 to 12 employees. Palaart added that if employees were not happy then they could sit down and talk about it.<sup>14</sup> (GC Exh. 17 at 44:24–45:10; Tr. 410.)

#### *F. June 22–24, 2023: Employees Plan to Have a Rally*

Following the June 21 meeting, employees decided that they would hold a rally to build public support for their workplace demands. (Tr. 187, 276, 351–352, 387, 410–411, 452.) Accordingly, on June 22, employees issued the following press release:

<sup>14</sup> After the meeting, bartender Khammungskun spoke to Palaart and Vanderhoof about the possibility of revamping the restaurant’s website. Palaart expressed interest in the website proposal and also in Khammungskun working more often at the restaurant, but ultimately those proposals fell by the wayside because Khammungskun and Palaart lost communication with each other. (Tr. 70–71, 451–452, 470, 480, 658–659.)

**Restaurant Workers at Moms Siam in Carytown Organize for More Voice in the Workplace** – Rally planned for Sunday June 25 in Carytown

5 The front of house employees at Moms Siam in Carytown have come together to ask the owner for changes in the workplace. . . . Meetings with management in the past about issues that have been brought up over and over again have led to no resolution. Over the last three months, workers have come together to draft up a list of demands around four main points – an increase in wage, fair scheduling practices, room for growth and raises to maintain retention, and a different accounting system to make sure that workers are  
10 paid correctly and on time.

15 For months, [employees] requested a meeting with the owner but [were] never granted the opportunity to communicate directly. . . . Finally, the workers were able to meet with the owner and management on Wednesday, June 21. While some of the demands have been met halfway (an increase in bartenders and support staff hourly wage, agreement to a \$0.50 raise every six months), the owner remains steadfast on not compromising on other issues. Additionally, the owner made it very clear that she wants to cut the front of the house staff down by half, citing the reason that she wants less part-time employees and more full-time employees. However, there [has] been a majority of part-time  
20 employees for over the past two years and it has not been an issue for her until now. During the meeting she repeatedly told workers to find somewhere else to work if they are not happy there. This is despite [employees] asserting that they genuinely care about their workplace, want to continue working there, and want the business to do well.

25 In response to the owner’s disrespectful tone in the meeting on Wednesday, [employees] will be holding a rally outside of Moms Siam in Carytown[.] The rally will take place on Sunday, June 25, at 1 pm[.] [Employees urge] the owner to not fire any employees or otherwise illegally retaliate against workers for organizing. [Employees] also request[]  
30 another meeting with the owner and management . . . to continue negotiating in good faith in hopes of finding a resolution that is satisfactory for all parties.

(GC Exh. 19 (emphasis in original); see also GC Exh. 14 (p. 7) (employees’ Instagram post about the June 21 meeting); Tr. 187–189, 452–453.)

35 By June 24, 2023, employees were distributing flyers in the Carytown neighborhood about their efforts to secure better working conditions at Mom’s Siam. Also on June 24, the Richmond Times-Dispatch published an article about Mom’s Siam employees’ efforts to organize. Bartenders Pang and Newlin, and food runner Britt, were quoted in the Richmond Times-Dispatch article, with each expressing their support for the effort to organize at Mom’s  
40 Siam.<sup>15</sup> (GC Exhs. 18, 20; Tr. 189–191, 258, 352–353, 387–388, 411–412; see also GC Exhs. 14

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<sup>15</sup> The Richmond Times-Dispatch article also included the following quotes that were attributed to Palaart: “I’ve had Mom’s Siam for 23 years. Never had a problem. Now all of a sudden, they’re posting to Instagram. It’s not good for my business.”; “They don’t want to work too much. Nobody wants to work more than three days.”; and “If they don’t like it, why not work somewhere else? Or work more (hours here)?” (GC Exh. 20.) I give no weight to these quotes because: the General Counsel did not secure an admission from Palaart that she made the statements attributed to her in the article; no other witness with first-hand knowledge testified that Palaart made the statements to the newspaper reporter as

(p. 8) (June 24 Instagram post announcing the upcoming rally), 30 (Instagram post by Richmond Times-Dispatch about organizing efforts at Mom's Siam and the rally scheduled for June 25).)

*G. June 24–25, 2023: Vanderhoof Contacts Employees about Rally Plans*

By June 24, 2023, manager Vanderhoof was aware that Mom's Siam employees planned to have a rally. Vanderhoof thereafter communicated with employees as follows:

June 24: Vanderhoof texted bartender Khammungkun two screenshots of an Instagram post by the Richmond Times-Dispatch about the rally, and then texted Khammungkun to ask "Do you know about this?" Khammungkun replied that he saw the post that morning. (GC Exhs. 29–30; Tr. 453–456.)

June 24: Server Boonpiem erroneously sent the Mom's Siam group chat a copy of an Instagram post announcing the June 25 rally (Boonpiem meant to send the Instagram post to the chat that did not include managers or owner Palaart). Vanderhoof then posted on the group chat "That's what you guys want it to happen??" None of the employees replied to Vanderhoof's post and Boonpiem deleted her (Boonpiem's) message on the Mom's Siam group chat. (GC Exh. 24; Tr. 94–95, 191–193, 239–241, 258; see also GC Exh. 14 (p. 8) (Instagram post that Boonpiem erroneously sent to the Mom's Siam group chat).)

June 24 Vanderhoof telephoned bartender Lemus and expressed concern that the rally would not end well for the people doing the rally and would not end the way that employees wanted. Vanderhoof also asked who was responsible for organizing the demand letter. Lemus did not disclose any information to Vanderhoof in response to the question about the demand letter.<sup>16</sup> (Tr. 93–95.)

June 25 Vanderhoof telephoned server Emily Cuison in the morning and stated that she (Vanderhoof) was concerned that the restaurant might close or lose business because of the rally. Vanderhoof added that Palaart was considering closing the restaurant. (Tr. 116–117, 122; see also GC Exhs. 25 (p. 1) (June 25 "Moms No Ree" group chat message from Cuison,<sup>17</sup>

shown in the article; and the article, standing alone, is a hearsay document that is not sufficient proof that Palaart made the statements therein. (See Tr. 675–680 (Palaart testimony that she did not remember being interviewed by the Richmond Times-Dispatch).)

<sup>16</sup> During cross-examination, Lemus agreed that Vanderhoof was worried about the impact of the rally on the restaurant and how it would impact employees' ability to earn money if the restaurant did not have as many customers. Lemus, however, did not testify that Vanderhoof stated (during the June 24 telephone call) that the rally would impact employees' ability to earn money. (Tr. 108–109.)

<sup>17</sup> After the telephone call from Vanderhoof, Cuison sent a message to the "Mom's No Ree" group chat and stated, in pertinent part: "[Vanderhoof] called me this morning because she is very distressed about the rally planned for this afternoon and how it may affect all of us, including the kitchen staff. She mentioned that [Palaart] is considering closing the restaurant and that would definitely hurt the kitchen staff who are not involved in this." (GC Exh. 25 (p. 1); see also Tr. 118–121, 124; GC Exh. 25 (p. 2) (at

noting that Vanderhoof called her in the morning on June 25 about the rally planned for the afternoon), 27 (p. 2) (server Boonpiem’s “Ultimate Workers Power” group chat message at 10:41 a.m. on June 25, referring to the message that Cuison sent to employees on the “Mom’s No Ree” group chat).)

June 25 Vanderhoof telephoned server/host Eccleston in the morning and said that the rally would not look good on the restaurant and that the restaurant might have to shut down. (Tr. 278–279, 282, 289–290, 310; see also Tr. 92 (Lemus testimony that the restaurant opened at around 11 a.m. on June 25), 289 (Eccleston testimony that it wasn’t really clear what Vanderhoof was saying in the telephone call); GC Exh. 27 (p. 2) (Eccleston’s June 25 “Ultimate Workers Power” group chat message sent shortly after 10:41 a.m., noting that Vanderhoof just called her).)<sup>18</sup>

#### *H. June 25, 2023: Employee Rally Regarding Mom’s Siam; Restaurant Closes*

On June 25, 2023, the following employees participated in a rally across the street from Mom’s Siam: server Boonpiem; food runner Britt; server Corum; bartender Khammungskun; bartender Newlin; server O’Brien; and bartender Pang. Using a microphone and speaker in the cargo bed of a pickup truck, Pang served as the emcee for the rally. Boonpiem, Britt, and Newlin also spoke at the rally, as did a handful of additional people from the community. (GC Exh. 23; Jt. Exh. 4 (par. 22); Tr. 95–96, 187–188, 193–194, 196–201, 238, 241–242, 277–278, 354–356, 389–390, 456–458, 488; see also GC Exhs. 14 (pp. 9–10) (photographs of the rally), 22 (same); Tr. 164–165, 195–196, 388–389, 412–413, 457–458, 488.) As part of his remarks during the rally, Pang stated as follows, in pertinent part:

So a little bit of context on this but we had a meeting with [owner Palaart] on Wednesday and this is after weeks if not months of asking for that meeting and her dodging us over and over again. So we finally were able to meet. She spoke to us mad disrespectful, which is why we’re out here today and we’re also urging her, because she did threaten

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the end of her message, Cuison asked employees to reconsider participating in the rally “as I fear it will not have the outcome that you truly desire”). Other employees saw and commented on Cuison’s message before the rally. (GC Exh. 27 (p. 2); Tr. 243–245.)

During trial, Cuison testified that the message she sent to the group chat did not fully reflect what Vanderhoof said to Cuison in the telephone call, including the portion of the message that addressed the potential impact that the rally could have on kitchen staff. (Tr. 119–122.) Based on Cuison’s testimony, I have only given limited weight to the group chat message as evidence of what Vanderhoof said to Cuison in the June 25 telephone call.

<sup>18</sup> Later in the morning on June 25, Eccleston sent a message to the “Ultimate Workers Power” group chat and reported that Vanderhoof called her (Eccleston sent her message after employees began chatting about Cuison’s June 25 message). Eccleston stated as follows on the chat: “yeah ree [just] called me abt it too . . . and said the restaurants gonna get shut down if we do it lol bc moms doesn’t make as much money and that [Palaart is] getting ready to retire anyways or something like that.” (GC Exh. 27 (p. 2); see also *id.* (p. 5)). Based on Eccleston’s trial testimony that Vanderhoof’s remarks during the June 25 telephone call were not clear, I have given limited weight to Eccleston’s group chat message as evidence of what Vanderhoof said to Eccleston on June 25.

basically to fire half of her staff. We've heard rumors that she's threatening to shut down the restaurant completely. And we just want to remind her, if she's listening out there, that shit is illegal. You cannot retaliate. We have protection under national labor laws to organize.

They were trying to shut this down today. They were calling up individual coworkers and saying that they might have to shut down the restaurant. That it's a small business when she's a multimillionaire making money off of our backs and we're just here to say that ain't right and we'll continue to fight and organize and we will not be intimidated.

(GC Exh. 23 at 5:52–6:50.) Owner Palaart came to Mom's Siam while the rally was in progress. Employees who were working at Mom's Siam could see and hear the rally from inside the restaurant and from the restaurant patio, and in addition, Palaart watched a video of the rally later in the evening on June 25. (Tr. 40–44, 95–97, 126, 201, 242, 277–278, 283, 356, 390, 413, 458; see also Tr. 284–285 (noting that Sarayute was at the restaurant during the rally).)

During the rally, Mom's Siam was open for business but lost its internet connection, which meant that the restaurant could only serve customers who were paying in cash. Palaart decided to close the restaurant early, citing the slow business due to the internet outage and forthcoming renovations to the restaurant. Server/host Eccleston, who was on duty at the time, sent a message in the Mom's Siam group chat at 2:07 p.m. to notify employees that the restaurant would be closing for an indefinite period of time (up to a month) due to the internet problem and renovations. Server Cuison, meanwhile, stated in the Mom's Siam group chat that the restaurant would probably be closed until June 27 due to the internet being down, and later asked all employees to send their availability for the next two weeks because the schedule was delayed due to the internet outage and because Palaart was considering repairing the restaurant floor. (Jt. Exh. 4 (par. 23); GC Exhs. 14 (p. 11) (photo of handwritten sign stating "Temporarily Closed" that was placed on the Mom's Siam front door), 26 (pp. 1–7) (showing that in response to Cuison's message, various employees sent their availability in the group chat), 27 (pp. 3–4); Tr. 40–41, 44–46, 73–74, 78–79, 92–93, 97–98, 106–107, 125–130, 165, 202–205, 213, 242–243, 245–246, 258, 277, 282–286, 306–309, 313, 321–324, 356–359, 369–370, 390–392, 413–415, 425–427, 458–460, 488–489, 523–525, 654; see also Tr. 502–503 and R. Exh. 10 (kitchen staff member communicating with server Corum on June 25 and noting that the restaurant was closing for remodeling).)

Later in the afternoon on June 25, employees posted on the Workers.Roar Instagram page that Palaart temporarily closed the restaurant during the rally. Employees asserted in the post that the restaurant closure was "an obvious retaliation response to our organizing efforts." (GC Exh. 14 (pp. 12–13).) Bartender Newlin texted Palaart directly to ask how long the restaurant would be closed for and under what circumstances but did not receive a response. (GC Exh. 31; Tr. 357, 369.)

### *I. Late June 2023: Developments During Restaurant Closure*

On June 26, 2023, Vanderhoof resigned from her position as manager for Mom's Siam. Vanderhoof sent the following message in the Mom's Siam group chat regarding her departure:

Hello, everyone! I love Mom's Siam, my customers, and all of you guys that is why I have been trying to help out as much as I can. I cannot continue doing this and no longer want to be involved with anything at Mom's Siam. It has become too much of a headache and is wasting lots of my time and energy. It's time for me to move on and have someone new to take over. I have a full-time job that I need to focus on. I wish everyone all the best!

(GC Exh. 26 (p. 8); Tr. 29, 72-73, 214, 258, 471, 499, 544; see also Tr. 49, 117-118, 137-138, 420, 435, 510-511, 544-545 (noting that earlier in 2023, Vanderhoof was spending less time at Mom's Siam because she was in school for and, later, starting a medical career; as a result, Sarayute was handling more manager duties).)

On about June 27, 2023, Sarayute contacted server/host Eccleston and invited her to a lunch at Mom's Siam 2 with him, owner Palaart, former manager Vanderhoof, and server/food runner J.. At the lunch, Palaart said that Eccleston and J. could work at one of Palaart's other restaurants while Mom's Siam was closed. In addition, Palaart said that Eccleston would work at Mom's Siam when it reopened and confirmed that Eccleston would be able to work three or four shifts per week at that location. (Tr. 293-297, 304-305; see also GC Exh. 26 (p. 25) (July 6, 2023 Mom's Siam group chat message from Eccleston regarding being told that she would be able to work after Mom's Siam reopened), 34 (showing that Mom's Siam scheduled both Eccleston and J. to work during the July 10-16, 2023 time period after the restaurant resumed serving customers).)

*J. July 2, 2023: Kay's Telephone Conversation with Palaart*

On about July 2, 2023, bartender Kay was at a gathering with some other Mom's Siam employees when Kay received a telephone call from owner Palaart (who was returning Kay's call). Kay activated the speaker on their (Kay's) phone to enable server Boonpiem to listen to the call, and Boonpiem used her phone to record the conversation. (Tr. 249-252, 526-529.)

During the call, Kay sought to confirm that some employees would not be returning to Mom's Siam. Palaart agreed that she wanted to have full-time employees at the restaurant (instead of employees working only one or two shifts per week), and that Mom's Siam needed to cut down on the number of servers. Palaart also noted that it was good for her to have Sarayute work five or six days a week at Mom's Siam because Sarayute could keep an eye on things for Palaart after Vanderhoof's departure. (GC Exh. 28 at 0:29-2:05; see also Tr. 530-531.)

Regarding whether Mom's Siam would bring back employees who participated in the June 25 rally, Palaart and Kay stated as follows, in pertinent part:

Kay: I'll ask just for the sake of like, clarity, I'm sure, I know you're mad at the people who were at that rally, at the protest

Palaart: Yeah

Kay: So I will say that a lot of our best people were there. I'm just more asking so that I know what I'm working with when I come back, right. Some of our good bar people were there. Are they coming back or is that a "no?"

5 Palaart: No.

Kay: So the folks who were, the folks who were at that rally, they're not getting invited back?

10 Palaart: No.

Kay: Just cause, they were there?

15 Palaart: Yeah because you know . . . everybody, especially you know, Kai [Pang], he call my name, okay, he been working Mom's Siam for 2 years, "Sukanya Palaart," you know, like "a multi-millionaire," you know. [Palaart then explained that she opened her first restaurant as a small business and cooked in the kitchen, and that Mom's Siam is not part of a big corporation or a franchise.]

20 I'm willing to pay people money because I used to work before, I used to work hard, I know how people work, okay, so I know. Not like they can come work for a couple of years and make me rich. No. Like they're going to speak out my name, you know, I don't like that.

25 (GC Exh. 28 at 2:09-4:10; see also Tr. 253-254, 531-533, 665-666, 669-670, 681-682.) Kay indicated that they understood where Palaart was coming from and said that they would come back to work at Mom's Siam as soon as Palaart let them know that the restaurant was reopened. Palaart replied, "OK, yes." (GC Exh. 28 at 5:20-6:05; see also Tr. 535.) Kay subsequently told  
30 at least one other employee about what Palaart said in the telephone call. (Tr. 430.)

#### *K. July 5, 2023: Kay Briefly Resumes Working at Mom's Siam*

35 At some point after the July 2 telephone conversation, owner Palaart called bartender Kay about coming in to work at Mom's Siam. Kay agreed, and on July 5 reported to Mom's Siam and began setting up the bar. A while later, Edwin Zuniga (he/him) arrived and introduced himself to Kay. When Kay mentioned that Kay was working as the bar manager, Zuniga corrected Kay and stated that he (Zuniga) was the bar manager. (Tr. 525-526, 535-538, 547-551, 570-571, 578-579, 590-591, 668, 682-684; see also Tr. 576-577, 581 (explaining that  
40 Palaart moved Zuniga from the Mom's Siam 2 location to the Mom's Siam location as bar manager).)

After about 15-20 minutes of additional work, Kay received a telephone call from their wife and advised Zuniga and the new manager, Laura James (she/her), that they (Kay) had to



leave due to an emergency and would return the next day.<sup>19</sup> Kay then left the restaurant. (Tr. 538, 548, 550–551, 571, 586–587, 592; see also Tr. 668–669.)

After leaving the restaurant on July 5, Kay never heard back from Palaart, James, or  
 5 Zuniga about coming to work at Mom’s Siam. Kay, meanwhile, did not attempt to contact  
 Palaart or James about coming back to work. (Tr. 538, 549–550, 553, 591–592, 601, 636, 640  
 (noting that Kay did not have phone numbers for James or Zuniga, but did for Palaart).)

*L. July 5/6, 2023: Respondent Decides Which Employees to Retain*

10 On about July 5, 2023, server Cuison visited Mom’s Siam to see how things were going  
 with renovations. Upon seeing Palaart, who was at the restaurant assisting with the post-  
 renovation cleanup, Cuison indicated that she wanted to resume working. Palaart agreed, and  
 Cuison subsequently resumed working at Mom’s Siam as a server after the restaurant reopened  
 15 to customers. (Tr. 127–128; see also Tr. 127, 589–590 (noting that new manager James was  
 present for her first day of work at Mom’s Siam when Cuison visited); GC Exh. 34 (schedule for  
 July 10–16, 2023, which included shifts for Cuison).)

Also on about July 5 or 6, new manager James met with Sarayute to discuss which  
 20 employees to retain. Since James was not familiar with Mom’s Siam employees, James relied on  
 Sarayute to identify which employees Respondent should keep. Respondent, through James and  
 Sarayute, then notified (e.g., via text message or telephone call) selected employees about  
 reporting to work because Mom’s Siam was reopening.<sup>20</sup> James noted that Mom’s Siam brought  
 back fewer employees in part because there were too many employees at the restaurant and  
 25 Respondent was trying to cut out the people that had other jobs and other priorities. (Tr. 29, 50,  
 589–590, 593–598, 605, 638–639; see also Tr. 73, 609–610 (Palaart asked James to move from  
 Mom’s Siam 2, where James was the manager, to Mom’s Siam).)<sup>21</sup>

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<sup>19</sup> Kay testified that they provided their cell phone number to Zuniga and James and requested a phone call whenever Zuniga and/or James wanted Kay to come in the next day to finish setting up the bar. Zuniga, however, testified that Kay said they would return the next day and did not request a phone call. (Compare Tr. 538, 548, 551–553 with Tr. 571–572; see also Tr. 591 (James testimony that she did not observe Kay providing a phone number to her or Zuniga).) Since the testimony on this point was equally credible, I have given the benefit of the doubt to Respondent since the General Counsel bears the burden of proof.

<sup>20</sup> James testified that she believed that Sarayute contacted all employees in the Mom’s Siam group chat to come in on July 6 and introduce themselves to the new manager (James). (Tr. 592–593, 595–596, 605–606; see also Tr. 124, 592, 606 (explaining that James was not part of the Mom’s Siam group chat and created her own group chat after she started working at the restaurant).) There is no evidence that Sarayute in fact sent such a message or that anyone else for Respondent reached out to all employees about coming back to work.

<sup>21</sup> Palaart testified that, after speaking with an attorney, she decided that she would not participate in deciding which employees to bring back to Mom’s Siam. James also testified that Palaart did not give any directives about which employees to bring back (apart from bringing back Kay on July 5). (Tr. 67–68, 595, 600–601, 640, 667–671.) I do not credit that testimony. First, the evidentiary record shows that Palaart invited multiple employees to return to work, including Cuison, Eccleston, J., and Kay. Indeed, Palaart attempted to clarify her testimony about her involvement (by acknowledging that she invited Kay to return to work), but still understated the extent of her involvement. (FOF, sec. II(I), (K–(L); see also Tr. 668–669.) Second, the evidentiary record shows that Palaart’s trusted assistant manager Sarayute

James and Sarayute did not contact the following employees about returning to work in July 2023: server Boonpiem; food runner Britt; server Corum; bartender Kay; bartender Khammungkun; bartender Newlin; server O'Brien; bartender O'Briant; and bartender Pang. (Tr. 100–101, 368–369, 375, 635–637, 583–584; see also Tr. 376–377, 529, 627–629 (explaining that customarily Respondent did not send formal termination letters or tell employees that they were fired, but instead terminated employees by removing them from the work schedule).) It is also undisputed that Respondent did not pay wages to any of the front-of-the-house employees (i.e., bartenders, food runners, hosts, and servers) for work time that they missed while the restaurant was closed from June 25 through July 5, 2023.<sup>22</sup> (Tr. 686–687.)

*M. July 6, 2023: Mom's Siam Reopens to Customers*

On July 6, 2023, Mom's Siam resumed serving customers with a "soft" reopening. With the recent renovations, the restaurant had (among other changes) a new laminate floor, a new dishwasher and refrigerator behind the bar, and an expanded outdoor patio with a new canopy. (Jt. Exh. 4 (par. 23); Tr. 46, 75, 539, 590, 604, 643–644, 646, 669; see also R. Exhs. 12 (pp. 3–7) (photographs of restaurant floor and patio while renovations were in progress), 13 (architectural plans for outdoor patio and canopy); Tr. 645–646, 649, 672–673.)<sup>23</sup>

was directly involved in deciding which employees to retain at Mom's Siam. Given that Palaart openly told Kay on about July 2 that she did not want to bring back any employees who attended the June 25 rally, it stands to reason that Palaart shared that same perspective with Sarayute before he met with James to identify the employees that should be retained. (FOF, sec. II(A), (J), (L).) And third, I do not believe it is a coincidence that James sought to cut the number of front-of-the-house staff. Respondent did not object to the size of the front-of-the-house staff until Palaart, in response to employees' protected concerted activities during the June 21 meeting, said that she wanted to cut the number of staff in half. I find that Palaart communicated that plan to James when Palaart selected James as the new manager of the restaurant. (FOF, sec. II(E), (L).)

On a related point, I also do not credit James' testimony that she and Sarayute used employees' availability to work at least four shifts per week to decide which employees to retain. James and Sarayute did not give all employees an opportunity to indicate how many shifts they could work; instead, Sarayute selected specific employees to talk to about coming back to work, and in making those selections excluded all seven of the employees who attended the June 25 rally. (Tr. 593–598, 605, 638–639; FOF, sec. II(L).) In addition, even if James and Sarayute considered employees' ability to work at least four shifts per week, that would have constituted a new rule that Respondent adopted in response to employees' protected concerted activities. Indeed, Mom's Siam did not require employees to work a minimum number of shifts before the June 21 meeting or the June 25 rally. (See, e.g., R. Exh. 9 (May 2023 text messages in which manager Vanderhoof did not object to server/host Corum limiting her availability to three days per week, and only to work as a server); Tr. 344, 373, 378 (bartender Newlin initially worked three or four shifts per week, but by June 2023 was only working one shift per week because Newlin did not want to work with Sarayute; there is no evidence that manager Vanderhoof objected to the decrease in Newlin's availability); Tr. 134–136, 211 and FOF, sec. II(D) (Pang usually worked two scheduled shifts per week and occasionally picked up one or two additional shifts; notwithstanding Pang's limited schedule, Vanderhoof told Pang on June 16, 2023, that he was receiving a raise because Palaart appreciated his great performance and consistency).)

<sup>22</sup> Respondent did not pay bartender Kay for the work that they performed at the restaurant on July 5, 2023, but Kay admitted that they forgot to clock in that day. (Tr. 539.)

<sup>23</sup> The evidentiary record is unclear as to whether the plans for the patio and canopy were drafted and approved before, during, or after the renovations that took place between June 25 and July 6, 2023. (See

Bartender Lemus reported to work on July 6 because he received a telephone call from Sarayute late at night on July 5 in which Sarayute asked Lemus to work the next day. Shortly after starting his shift on July 6, Lemus sent a message in the Mom's Siam group chat to advise that restaurant renovations had been completed and that the restaurant was open and serving customers. (GC Exh. 26 (p. 22); Tr. 98-99, 104, 359-360.)

Lemus' group chat message sparked curiosity and confusion among several employees about their employment status. Employees subsequently posted the following messages in the Mom's Siam group chat:

Boonpiem: Is it open? Could I grab my check?

Lemus: Big Tony is here  
Yeah it's open  
People are eating

O'Brien: Who's working?

Eccleston: Can I work this weekend?

Kay: Bella, I think this is where we find out none of us are on the new schedule

Eccleston: I was asked for my availability though I'm so [confused]

Lemus: [regarding who is working] [Sarayute]  
And at least one new person  
Big Tony is here  
...

Lemus: [Sarayute] called me last night at midnight  
And asked me to come in  
That's the only reason I'm here [right now]  
...

Eccleston: Would love for someone to at least tell me if I'm fired rather than have to wait around and find out  
...

Palaart: Laura James is new manager  
She works at moms 2 now she work[s] here  
...

O'Brien: Mom, you still haven't told us when we can return to our jobs. Have we been fired?

Britt: Have we been fired?  
Mom

5 O'Brien: Mom We'd just like some clarity.  
...

10 Eccleston: I was told I would be able to work after you reopen after the fourth and  
haven't [received] a schedule and am relying on this job so would at least  
like some clarity and I'm sure others are in the same boat  
...

Boonpiem: Or if we're fired we would like for that to be clear as well

15 (GC Exh. 26 (pp. 22–26); Tr. 63–64, 247–248, 416–417, 427, 461–462, 471–473, 499.) Palaart  
did not respond further to the questions that employees posted in the Mom's Siam group chat.  
(Tr. 63–65, 248, 417.) On July 7, 2023, the Richmond Times-Dispatch published an article that  
included a quote from bartender Newlin about not being scheduled to work after Mom's Siam  
reopened. (GC Exh. 21; Tr. 353–354; see also GC Exh. 14 (pp. 19–30) (showing that employees  
20 continued to post on the Workers.Roar Instagram page in 2023, including posts on July 7,  
August 11, August 19, and November 29).)

*N. July 9, 2023: New Mom's Siam Schedule Excludes Several Employees*

25 On July 9, 2023, employees on a new group chat for Mom's Siam received a copy of the  
schedule for July 10–16. The schedule, which manager James and Sarayute created, did not  
include the following employees: server Boonpiem; food runner Britt; server Corum; bartender  
Kay; bartender Khammungkun; bartender Newlin; server O'Brien; bartender O'Briant; and  
30 bartender Pang. Server/host Eccleston notified employees on the Ultimate Workers Power group  
chat that employees who attended the June 25 rally were not on the new schedule, and employee  
C.S. posted a copy of the new schedule in that same group chat. (GC Exhs. 27 (pp. 6–7), 34; Tr.  
46–47, 50, 54, 246, 287–288, 290–293, 583, 587, 596–597, 619–620.)

35 On about July 11, bartender O'Briant went to Mom's Siam and spoke with manager  
James and bar manager Zuniga about returning to work.<sup>24</sup> O'Briant noted that she had worked at  
Mom's Siam before and had experience with the cocktail menu and regular menu. Initially,  
James responded that the restaurant was fully staffed but offered to take down O'Briant's name  
and telephone number so James could contact O'Briant if anything opened up. James then asked  
if O'Briant if she (O'Briant) was "involved with everything." When O'Briant said "yes," James

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<sup>24</sup> In addition to O'Briant's visit, on about July 10 or 11, the following employees visited Mom's Siam: server Boonpiem; bartender Khammungkun; bartender Pang; and bartender Newlin. During their visit, the employees sat at a table and asked their server, David Nguyen, about speaking to the manager regarding returning to work. Manager James was aware of the employees' visit but did not speak with the employees. (Tr. 205–206, 208, 215, 246–247, 301, 360, 462–463, 474–476, 490–491; see also Findings of Fact (FOF), sec. II(A), *supra* (explaining that Nguyen worked as a server at Mom's Siam from July 10–16, and then became assistant manager on July 17, 2023, after Sarayute moved from Mom's Siam to Mom's Siam 2).)

declined to take O'Briant's contact information, explaining that she (James) knew Palaart did not want anyone working at the restaurant that was "involved with that." (Tr. 324-325; see also GC Exh. 27 (p. 8) (O'Briant's July 11 posting to the Ultimate Workers Power group chat, in which O'Briant described her conversation with James); Tr. 101-102 (bartender Lemus testimony that James mentioned that a woman had come in asking for her job back and that Mom's Siam would not hire her because the woman was part of the rally/organizing), 463-464.)<sup>25</sup>

Although Mom's Siam has hired additional employees for the front of the house since July 9, 2023, at the time of the trial Mom's Siam had not brought or offered to bring Boonpiem, Britt, Corum, Khammungskun, Newlin, O'Brien, O'Briant, or Pang back to work since June 25, 2023, and had not brought or offered to bring Kay back to work since July 6, 2023. (Tr. 56, 100-101, 133, 247, 298-299, 360, 392, 417, 461, 491, 463, 540, 629-633; Jt. Exhs. 3 (July 31-August 6, 2023 work schedule, which did not include any of the employees listed in this paragraph), 4 (par. 25).)

## DISCUSSION AND ANALYSIS

### A. Credibility Findings

A credibility determination may rely on a variety of factors, including the context of the witness' testimony, the witness' demeanor, the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences that may be drawn from the record as a whole. Credibility findings need not be all-or-nothing propositions — indeed, nothing is more common in all kinds of judicial decisions than to believe some, but not all, of a witness' testimony. *Farm Fresh Co., Target One, LLC*, 361 NLRB 848, 860 (2014) (noting that an administrative law judge may draw an adverse inference from a party's failure to call a witness who may reasonably be assumed to be favorably disposed to a party, and who could reasonably be expected to corroborate its version of events, particularly when the witness is the party's agent). To the extent that credibility issues arose in this case, I have stated my credibility findings in the Findings of Fact above.

### B. Did Respondent Make any Statements that Violated Section 8(a)(1) of the Act?

#### 1. Complaint allegations

The General Counsel alleges that Respondent violated Section 8(1) of the Act by making the following statements and/or engaging in the following conduct:

(a) on about June 16, 2023, via text message, coercing employees by telling them not to discuss their wages with other employees;

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<sup>25</sup> James denied meeting or talking with O'Briant, and also denied making any of the statements that O'Briant described. (Tr. 599-601; see also Tr. 639 (James' testimony, denying making a comment in front of Lemus about not hiring someone because they were involved in organizing).) I do not credit James' testimony on these points, as the weight of the evidence supports O'Briant's testimony, and James was inconsistent in her testimony insofar she initially denied that O'Briant visited the restaurant, but later said that two women came in looking for their jobs back and that she (James) told them there were no positions available. (Compare Tr. 600 with Tr. 637.)

(b) on about June 21, 2023, inviting employees to quit their jobs with Respondent in response to the employees' protected concerted activities;

5 (c) on about June 23, 2023, in an article in the Richmond Times-Dispatch, inviting employees to quit their jobs with Respondent in response to the employees' protected concerted activities;

10 (d) on about June 24, 2023, via text message and orally, interrogating employees about their protected concerted activities;

(e) on about June 24, 2023, threatening employees with layoffs and business closure in response to employees' protected concerted activities; and

15 (f) on about June 25, 2023, threatening employees with layoffs and business closure in response to employees' protected concerted activities.

(GC Exh. 1(qq) (pars. 7, 9-13); Tr. 563-563.)

## 20 2. Applicable legal standard

"The Board has long held that the standard to be used in analyzing statements alleged to violate Section 8(a)(1) is whether they have a reasonable tendency to coerce employees in the exercise of their Section 7 rights. Intent is immaterial. The Board considers the totality of  
25 circumstances in assessing the reasonable tendency of an ambiguous statement or a veiled threat to coerce. Whether or not the employee changed their behavior in response is not dispositive, nor is the employee's subjective interpretation of the statement. The Board therefore considers the total context of the alleged unlawful conduct from the viewpoint of its impact on employees' free exercise of their rights under the Act." *Lush Cosmetics, LLC*, 372 NLRB No. 54, slip op. at  
30 3 (2023) (quotation marks and citations omitted); see also *NCRNC, LLC d/b/a Northeast Center for Rehabilitation*, 372 NLRB No. 35, slip op. at 10 (2022) (explaining that when analyzing alleged threats, the Board asks whether the threat would reasonably tend to interfere with, restrain, or coerce an employee in the exercise of the employee's Section 7 rights, and noting that the test is an objective one, not based on subjective coerciveness), *enfd.* 94 F.4th 67 (D.C. Cir.  
35 2024).

## 3. Analysis – Respondent's general arguments

Initially, I address two general arguments that Respondent set forth in its posttrial brief  
40 about the complaint allegations. I do not find either of the arguments to be persuasive.

First, Respondent contends that the statements that it made do not violate Section 8(a)(1) of the Act because the statements do not rise to the level of an adverse employment action such as a discipline or discharge. (See, e.g., R. Posttrial Br. at 13-14, 16-17, 19, 23, 43.) It suffices  
45 to say that Section 8(a)(1) of the Act not only prohibits adverse employment actions motivated by employees' protected concerted activities, but also prohibits statements or conduct that have a reasonable tendency to interfere with, restrain, or coerce employees in the exercise of their

Section 7 rights. (Compare Discussion and Analysis sec. B(2), *supra* (legal standard for statements that are alleged to violate Section 8(a)(1) of the Act) with Discussion and Analysis, sec. C(2), *infra* (legal standard for adverse employment actions that are alleged to violate Section 8(a)(1) of the Act).

Second, Respondent argues that I should give weight to manager Vanderhoof's and owner Palaart's subjective intent when they made statements that the General Counsel alleges are unlawful. (See, e.g., R. Posttrial Br. at 13, 15.) Under the applicable legal standard, Respondent's subjective intent is not material. I will consider the statements at issue here based on the objective test set forth above. (See Discussion and Analysis, sec. B(2), *supra*.)

#### 4. Analysis – June 16, 2023 text message

The evidentiary record establishes that on June 16, 2023, manager Vanderhoof texted bartender Pang to advise that owner Palaart was “ok to up your hourly pay.” In the same message, Vanderhoof also stated “[p]lease don't tell other[s] yet” because Vanderhoof could not get the (higher) rate for all the bartenders yet. (Findings of Fact (FOF), sec. II(D).)

It is well established that employees engage in protected concerted activity when they discuss wages and other terms and conditions of employment, and that an employer violates Section 8(a)(1) of the Act when it instructs an employee not to do so. *Alternative Energy Applications, Inc.*, 361 NLRB 1203, 1203 (2014); see also *SW Design School, LLC*, 370 NLRB No. 77, slip op. at 2 (2021); *Cordua Restaurants, Inc.*, 368 NLRB No. 43, slip op. at 4 (2019), *enfd.* 985 F.3d 415 (5th Cir. 2021); *Automatic Screw Products Co.*, 306 NLRB 1072, 1072 (1992), *enfd.* 977 F.2d 582 (6th Cir. 1992).

Through her June 16 text message to Pang, Vanderhoof explicitly asked Pang to refrain from communicating with his coworkers about his wages. I find that Vanderhoof's request to Pang had a reasonable tendency to restrain, coerce, or interfere with Pang's exercise of his section 7 rights, specifically by putting subtle pressure on Pang to refrain from sharing information with other bartenders about the change to his hourly wages only a few weeks after employees expressed concern about wages in their May 24 demand letter and in their May 24 meeting with Vanderhoof. (See FOF, sec. II(C).) Accordingly, I find that Respondent, through Vanderhoof's statement to Pang, violated Section 8(a)(1) of the Act.

#### 5. Analysis – June 21, 2023 invitation to quit

During the June 21, 2023 meeting with employees, Palaart responded to employee concerns about their hourly wages by saying “You not happy, right? Then find another job. Yes, find another job.” (FOF, sec. II(E) (noting that Palaart made similar remarks at other points during the meeting).)

The Board has long held that an employer violates the Act when it states that employees who are dissatisfied with their working conditions should quit rather than trying to improve working conditions through protected concerted activity. *Starbucks Corporation*, 373 NLRB No. 123, slip op. at 1–2 (2024) (collecting cases). Palaart's statement to employees during the

June 21 meeting is squarely covered by this precedent, and I accordingly find that the statement violated Section 8(a)(1) of the Act.

#### 6. Analysis – June 23, 2023 invitation to quit

On June 24, 2023, the Richmond Times-Dispatch published an article that attributed various statements to Palaart, including “If they [employees] don’t like it, why not work somewhere else?” The General Counsel did not establish that Palaart made the statements set forth in the article. (FOF, sec. II(F).)

Since the General Counsel did not meet its burden of proving that Respondent (through Palaart in the June 24 article) invited employees to quit instead of seeking to address their concerns at the restaurant, I recommend that this complaint allegation be dismissed.

#### 7. Analysis – June 24, 2023 interrogation

As set forth in the Findings of Fact, on June 24, manager Vanderhoof communicated with various employees about the rally scheduled for June 25. Specifically: (1) Vanderhoof texted bartender Khammungskun two screenshots of a Richmond Times-Dispatch Instagram post about the rally, and then texted “Do you know about this?” Khammungskun answered that he saw the Instagram post that morning; (2) after server Boonpiem accidentally sent a copy of an Instagram post about the rally to the Mom’s Siam group chat, Vanderhoof posted “That’s what you guys want it to happen? None of the employees on the group chat replied to Vanderhoof’s post; and (3) Vanderhoof telephoned bartender Lemus and, after expressing concern about the rally, asked who was responsible for organizing the May 24 demand letter that employees submitted. Lemus did not disclose any information in response to Vanderhoof’s question. (FOF, sec. II(G).)

When deciding unlawful interrogation allegations, the Board applies a totality of the circumstances analysis in determining whether the interrogation was coercive. That analysis includes consideration of the following factors: whether the employer has a history of hostility toward or discrimination against union or protected concerted activity; the nature of the information sought; the identity of the interrogator and the interrogator’s placement in the employer’s hierarchy; the place and method of the questioning; and the truthfulness of the employee’s reply to the questioning. *Garten Trucking LC*, 373 NLRB No. 94, slip op. at 1 (2024); see also *Rossmore House*, 269 NLRB 1176, 1178 & fn. 20 (1984), *affd. sub nom HERE, Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985).

Here, the first factor (history of hostility towards protected activity) weighs in favor of finding a violation, as only a few days earlier, owner Palaart indicated that she was not open to compromising on most of the issues that employees raised in the June 21 meeting, and unlawfully invited employees to quit if they were not happy working at the restaurant. The second and third factors (nature of information sought and identity of the interrogator) also weigh in favor of finding a violation, as Vanderhoof was the restaurant manager and sought information about whether employees knew about and/or supported the rally planned for June 25 and, in the call with Lemus, sought information about which employees were behind the May 24 demand letter. The fourth and fifth factors do not carry as much weight here, but are neutral or weigh in favor of finding a violation because Vanderhoof singled out Khammungskun and Lemus



for her inquiries (by text and telephone, respectively), and because the employees generally avoided disclosing any information to Vanderhoof in response to her questions. See *Garten Trucking LC*, 373 NLRB No. 94, slip op. at 1–2 (explaining that an employee’s refusal to provide information in response to interrogation can be an indicator that the interrogation was coercive).

Considering the totality of the circumstances, I find that Respondent, through Vanderhoof, violated Section 8(a)(1) of the Act by unlawfully interrogating employees on June 24 as described above. Each of Vanderhoof’s interrogations was coercive because Vanderhoof sought to gather information about the upcoming rally and other protected concerted activities in a context where Respondent had already demonstrated its hostility to employees’ efforts to improve their working conditions.

#### 8. Analysis – June 25, 2023<sup>26</sup> threats of layoffs and business closure

Before the rally began on June 25, manager Vanderhoof telephoned server Cuison and stated that she (Vanderhoof) was concerned that the restaurant might close or lose business because of the rally. Vanderhoof added that Palaart was considering closing the restaurant. In a separate June 25 call to server/host Eccleston that also was before the rally, Vanderhoof said that the rally would not look good on the restaurant and that the restaurant might have to shut down. (FOF, sec. II(G).)

It is well established that threats to employees of job loss (including threats of layoffs and/or business closure) are coercive and violate the Act. See, e.g., *Kumho Tires Georgia*, 370 NLRB No. 32, slip op. at 2 (2020) (employer unlawfully threatened plant closure if employees selected the union as their bargaining representative); *Sysco Grand Rapids, LLC*, 367 NLRB No. 111, slip op. at 1–2, 24 (2019) (employer unlawfully forecast layoffs and job loss if the company unionized), enfd. 825 Fed. Appx. 348 (6th Cir. 2020). Here, Vanderhoof’s statements that the restaurant might close or lose business due to the rally constituted a threat to employees (including Cuison and Eccleston) that their protected concerted activities would lead to job loss. It does not matter that Vanderhoof used tentative language in making her prediction (e.g., by saying the restaurant “might” close instead of “would” close). The Board has held that tentative language about adverse consequences can nonetheless be coercive, particularly where the employer’s prediction is not based on objective facts or the nature of the collective-bargaining process. *Daikichi Sushi*, 335 NLRB 622, 623–624 (2001) (holding that it was not a defense that the employer phrased its prediction that the plant could close if employees unionized “as a possibility rather than a certainty”), enfd. 56 Fed. Appx. 516 (D.C. Cir. 2003); see also *Holy Cross Health d/b/a Holy Cross Hospital*, 370 NLRB No. 16, slip op. at 1 fn. 3 (2020) (employer unlawfully threatened that if employees unionized the employer’s leave policies might become less generous and its shift scheduling might become less flexible); *Metro One Loss Prevention Services Group*, 356 NLRB 89, 89 (2010) (employer unlawfully threatened that an employee’s pay rate could get worse if the union came in); compare *Jefferson Smurfit Corp.*, 325 NLRB 280,

<sup>26</sup> Although the complaint alleges that Respondent made these threats on both June 24 and 25 (to server Cuison and server/host Eccleston, respectively – see GC Posttrial Br. at 44–45), the evidentiary record shows that Vanderhoof spoke with Cuison and Eccleston in the morning on June 25, 2023. (FOF, sec. II(G).)

280 fn. 3 (1998) (employer’s statement that benefits “could go either way as a result of collective bargaining” was lawful). An employer may lawfully communicate to its employees carefully phrased predictions about “demonstrably probable consequences beyond [the employer’s] control” that unionization will have on the company, provided that the predictions are based on objective facts. However, if the employer predicts, without any supporting objective facts, that it may or may not take action solely on its own initiative for reasons unrelated to economic necessities and known only by the employer, then the employer’s prediction is a threat of retaliation that violates Section 8(a)(1) of the Act. *Daikichi Sushi*, 335 NLRB at 623–624. Vanderhoof’s statements to Cuison and Eccleston that the restaurant might close due to the rally were not based on objective facts beyond Respondent’s control, and thus violated Section 8(a)(1) of the Act.

*C. Did Respondent Violate Section 8(a)(1) of the Act When It Temporarily Closed the Restaurant and Did Not Assign Work to Front-of-the-House Employees?*

1. Complaint allegations

The General Counsel alleges that Respondent violated Section 8(a)(1) of the Act by, on about June 25, 2023, temporarily closing Respondent’s facility, laying off the charging parties and similarly situated employees, and discharging the charging parties because the charging parties engaged in protected concerted activities and to discourage employees from engaging in those or other concerted activities.

2. Applicable legal standard

To prove that an adverse employment action violates Section 8(a)(1) of the Act, the General Counsel must demonstrate that: the employee engaged in activity that is “concerted” within the meaning of Section 7 of the Act; Respondent knew of the concerted nature of the employee’s activity; the concerted activity was protected by the Act; and Respondent’s adverse action against the employee was motivated by the employee’s protected, concerted activity. *Mitsubishi Hitachi Power Systems Americas, Inc.*, 366 NLRB No. 108, slip op. at 15 (2018); *Lou’s Transport, Inc.*, 361 NLRB 1446, 1447 (2014), enfd. 644 Fed. Appx. 690 (6th Cir. 2016); *Correctional Medical Services*, 356 NLRB 277, 278 (2010). Proof of discriminatory motivation (animus) can be based on direct evidence or can be inferred from circumstantial evidence based on the record as a whole. Circumstantial evidence of discriminatory motivation may include, among other factors: the timing of the action in relation to the union or other protected conduct; contemporaneous unfair labor practices; shifting, false, or exaggerated reasons offered for the action; failure to conduct a meaningful investigation; departures from past practices; and disparate treatment of the employee. *Intertape Polymer Corp.*, 372 NLRB No. 133, slip op. at 6–7 (2023), enfd. 2024 WL 2764160 (6th Cir. 2024); *Medic One, Inc.*, 331 NLRB 464, 475 (2000). If the General Counsel satisfies the initial burden of showing of discrimination, then the burden shifts to Respondent to present evidence, as an affirmative defense, demonstrating that it would have taken the same action even in the absence of the employee’s protected activity. See

*Mitsubishi Hitachi Power Systems Americas, Inc.*, 366 NLRB No. 108, slip op. at 15; *Timekeeping Systems, Inc.*, 323 NLRB 244, 244 (1997).

### 3. Analysis

The evidentiary record shows that on June 25, 2023, while several employees were across the street and engaging in a rally for better working conditions, Respondent closed the restaurant. In deciding to close the restaurant, Respondent cited the fact that: business was slow at the restaurant due to an internet outage that limited the restaurant to only serving customers who could pay in cash; and Respondent planned to renovate the restaurant. The restaurant remained closed to customers through July 5, 2023, and Respondent did not schedule front-of-the-house employees for work during the temporary closure or pay them for work time that they missed during the temporary closure. (FOF, sec. II(H), (L)–(M).)

I find that the General Counsel made an initial showing that Respondent temporarily closed the restaurant from June 25 through July 5, 2023, in retaliation for employees' protected concerted activities. There is no dispute that front-of-the-house employees engaged in protected concerted activities and that Respondent was aware of those activities when it decided to close the store on June 25, as by that time employees had (among other activities) submitted their May 24 demand letter, raised concerns about working conditions in the May 24 and June 21 meetings with management, and were conducting a public rally across the street from the restaurant to build public support for employees' efforts to address their working conditions. The General Counsel also presented evidence that Respondent's decision to close the store was motivated by employees' protected concerted activities, as (among other evidence) manager Vanderhoof warned employees before the rally that owner Palaart might close the restaurant if employees held the rally, and a few days after the rally, Palaart explicitly stated that she was upset by some of the comments that bartender Pang made during the rally, and confirmed that when the restaurant reopened Respondent would not bring back any of the employees who participated in the rally. (FOF, sec. II(C)–(H), (J), (L).)

As its affirmative defense, Respondent maintains that it would have closed the restaurant even in the absence of employees' protected concerted activities because of the internet outage and the forthcoming restaurant renovations. (See R. Posttrial Br. at 23–25.) I do not find that defense to be persuasive. First, when Vanderhoof warned employees in the morning on June 25 that Palaart might close the restaurant if the rally occurred, Vanderhoof did so before she was aware of any issues with the restaurant's internet service (indeed, the restaurant did not open until around 11 a.m., and Vanderhoof warned server Cuison and server/host Eccleston about a potential closure before then). Second, Respondent did not announce any plans to renovate the restaurant (let alone immediate plans) until Palaart did so while the June 25 rally was in progress. (See FOF, sec. II(G)–(H).) Those facts demonstrate that it was the rally that prompted Respondent to close the restaurant, and that Respondent offered up the internet outage and renovations as pretextual explanations for the closure. Accordingly, Respondent's affirmative defense fails.

Since the General Counsel made an initial showing of discrimination and Respondent's affirmative defense was not successful, I find that Respondent violated Section 8(a)(1) of the Act

by, from June 25 through July 5, 2023,<sup>27</sup> temporarily closing the restaurant and not assigning work to the charging parties and similarly situated front-of-the-house employees because the charging parties and other employees engaged in protected concerted activities and to discourage employees from engaging in those or other concerted activities. See *New York Paving, Inc.*, 371 NLRB No. 139, slip op. at 3–6 (2022) (employer violated the Act by shutting down its asphalt operations and laying off employees in retaliation for union activity), enfd. 2023 WL 7544999 (D.C. Cir. 2023).

*D. Did Respondent Violate Section 8(a)(1) of the Act When It Did not Retain the Alleged Discriminatees after the Restaurant Reopened?*

1. Complaint allegations

The General Counsel alleges that Respondent violated Section 8(a)(1) of the Act by, since about July 6, 2023, refusing to recall, rehire, or reinstate the charging parties because the charging parties engaged in protected concerted activities and to discourage employees from engaging in those or other concerted activities.

2. Applicable legal standard

The complaint allegations in this section are covered by the same legal standard that is set forth in Discussion and Analysis Section C(2), above.

3. Analysis – rally attendees

As described in the Findings of Fact, on about July 5 or 6, new manager James met with Sarayute to decide which employees to schedule for work when the restaurant reopened on July 6. Relying on Sarayute’s recommendations, James did not schedule the following employees for any shifts on or after July 6: server Boonpiem; food runner Britt; server Corum; bartender Khammungkun; bartender Newlin; server O’Brien; and bartender Pang. Those seven employees were the only employees who attended the June 25 rally. (FOF, sec. II(H), (J), (L)–(N).)

As a preliminary matter, I find that Respondent discharged Boonpiem, Britt, Corum, Khammungkun, Newlin, O’Brien, and Pang when it stopped scheduling them for shifts as of July 6, 2023. Respondent’s general practice for discharging employees was similar insofar as it customarily removed the employee in question from the schedule and did not send a formal

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<sup>27</sup> In connection with this timeframe of the temporary closure, I note that I have considered the fact that the evidentiary record does show that Respondent’s internet service needed repair after the restaurant lost its internet connection on June 25. The evidentiary record, however, does not show how long Respondent needed to close the restaurant solely for internet repairs (if closure was needed at all to restore the internet connection). (See FOF, sec. II(H) (showing that server Cuison posted, without correction from Respondent, that the internet outage would be resolved in two days); see also Tr. 74, 79 (Palaart testimony that she thought it would take a couple of days to fix the internet, but that the internet outage was not fixed until July 6 because Respondent did not call for repairs until that day).) Since the question about whether the internet outage standing alone warranted temporarily closing the store is an aspect of Respondent’s affirmative defense, I find that due to the ambiguity in the record, Respondent failed to prove this as a (partial) defense.

termination letter. That practice, coupled with Palaart's statement that employees who participated in the rally would not be returning to work and Palaart's refusal to respond to direct inquiries from employees about whether they had been fired, conveyed the reasonable impression that Respondent was discharging the seven employees who participated in the June 25 rally. See *American Federation for Children, Inc.*, 372 NLRB No. 137, slip op. at 9 fn. 26 (2023) (explaining that when determining whether an employer's statements or actions constitute an unlawful discharge, it is sufficient if the employer's words and their context conveyed the reasonable impression that the employee's employment had been terminated); FOF, sec. II(J), (L)–(M); see also FOF, sec. II(N) (employees were also aware that James indicated to O'Briant that Respondent did not want to retain anyone who was involved with organizing.).

For many of the same reasons that I set forth in considering whether Respondent unlawfully closed the restaurant on June 25, I find that the General Counsel made an initial showing that Respondent discharged the seven rally attendees in retaliation for their protected concerted activities. There is no dispute that the employees who attended the rally engaged in protected concerted activities and that Respondent was aware of those activities. As for discriminatory motivation, owner Palaart explicitly stated in early July that the seven rally attendees would not be coming back to work, and that is precisely what happened a few days later (through Sarayute's recommendations to James).<sup>28</sup> (Discussion and Analysis, sec. C(3), supra; FOF, sec. II(J), (L).)

As its affirmative defense, Respondent contends that it retained employees on a first-come-first-served basis (provided that the employees could each be available to work at least four shifts per week), and that Boonpiem, Britt, Corum, Khammungskun, Newlin, O'Brien, Pang did not make an effort to contact James about being scheduled to work. (R. Posttrial Br. at 30–33, 37–42.) The evidentiary record does not support this defense. Among other shortcomings to the defense: the requirement that employees be available to work four shifts per week was a new requirement that Respondent impermissibly created in response to employees' protected concerted activities; there is no evidence that James and Sarayute afforded an opportunity to all employees to communicate their availability to work more shifts when the restaurant reopened (instead, Sarayute and/or Palaart handpicked specific employees to contact and retain); and Palaart's statement in early July made it clear that Respondent would not be retaining the seven rally attendees. (FOF, sec. II(J), (L).) Accordingly, I do not find merit to the affirmative defense and I find that Respondent's explanations for why it did not retain the seven rally attendees are pretexts for discrimination.

In sum, I find that Respondent violated Section 8(a)(1) of the Act by, on about July 6, 2023, discharging Boonpiem, Britt, Corum, Khammungskun, Newlin, O'Brien, and Pang because they engaged in protected concerted activities (including the June 25 rally) and to discourage employees from engaging in those or other concerted activities.

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<sup>28</sup> Respondent points out that it did retain other employees who engaged in protected concerted activity (e.g., by signing the May 24 demand letter and attending the May 24 and/or June 21 meetings with management), but that argument misses the mark. (See R. Posttrial Br. at 30, 33–34.) Palaart explicitly indicated that the June 25 rally was the last straw and singled out employees who attended the rally as those who would not be retained at the restaurant.

#### 4. Analysis – Gabriella O’Briant

Like other front-of-the-house employees, O’Briant was not scheduled to work during the timeframe of the unlawful restaurant closure. When Respondent selected employees to retain after the restaurant reopened on July 6, Respondent did not retain O’Briant. O’Briant subsequently visited the restaurant on July 11 to ask about returning to work, but was told by manager James that the restaurant was fully staffed and that in any event Palaart did not want to retain any employees who were involved with everything. (FOF, sec. II(H), (L), (N).)

Initially, I find that Respondent discharged O’Briant when it stopped scheduling her for shifts as of July 6, 2023. As previously noted, Respondent’s general practice was to discharge an unwanted employee by removing them from the schedule (and not sending a termination letter). Respondent’s treatment of O’Briant was consistent with that practice, and to the extent that any question about O’Briant’s status remained, James cleared it up on July 11 when she directly told O’Briant that the restaurant was fully staffed and that Palaart did not wish to retain any employees who were involved with everything (i.e., the protected concerted activities of the preceding two months). (FOF, sec. II(L), (N).) Those facts conveyed the reasonable impression that Respondent discharged O’Briant from her bartender position. See *American Federation for Children, Inc.*, 372 NLRB No. 137, slip op. at 9 fn. 26.

Turning to the question of whether Respondent discharged O’Briant for unlawful reasons, I find that Respondent’s discharge of O’Briant (and any similarly situated front-of-the-house employee) was unlawful because the discharge resulted from Respondent’s unlawful decision to temporarily close the restaurant on June 25. Simply put, Respondent compounded the harm of the unlawful temporary closure by, upon reopening, cutting several employees from the schedule based on pretextual and/or unlawful reasons, including but not limited to a new rule about having fewer front-of-the-house staff that Respondent implemented in response to employees’ protected concerted activities.<sup>29</sup> (See Discussion and Analysis, sec. (C)(3), (D)(3), *supra*; FOF, sec. II(L).) For that reason alone, I find that O’Briant’s discharge (and the discharges of any similarly situated front-of-the-house employees) violated the Act.

I also find, however, that O’Briant’s discharge (and the discharges of any similarly situated employees) was unlawful under the burden-shifting framework. Once again, there is no dispute that O’Briant engaged in protected concerted activity, including signing the May 24 demand letter and attending both the May 24 and June 21 meetings with management (though O’Briant was only present for the last 10 minutes of the May 24 meeting). Respondent was aware of O’Briant’s activities, and Respondent demonstrated its discriminatory motivation towards those activities when it discharged O’Briant and when James subsequently told O’Briant

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<sup>29</sup> It is, of course, unlawful and discriminatory for an employer to make changes to working conditions or work rules in retaliation for employees’ protected concerted activities. See, e.g., *Gavilon Grain, LLC*, 371 NLRB No. 79, slip op. at 13 (2022) (collecting cases); *Nieves Construction Corp.*, 365 NLRB No. 129, slip op. at 1–3 & fns. 5–6 (2017); *Hyatt Regency Memphis*, 296 NLRB 259, 262–263 (1989), *enfd.* 944 F.2d 904 (6th Cir. 1991); *Dynamics Corp. of America*, 286 NLRB 920, 921 (1987), *enfd.* 928 F.2d 609 (2d Cir. 1991).

that Respondent did not want to retain any employees who were involved in employees' organizing. (FOF, sec. II(C), (E), (L), (N).)

Respondent's affirmative defense regarding O'Briant is that she approached James too late about returning to work and thus missed the opportunity because the restaurant was fully staffed. (R. Posttrial Br. at 36-37.) As explained above, that defense fails because it is a pretext for discrimination, as I have found that Respondent did not give all front-of-the-house employees an equal opportunity to return to work, as it instead chose to hand pick which employees to retain with a bias against employees who were involved in the organizing effort. See Discussion and Analysis, sec. (D)(3), *supra*.

Based on the foregoing analysis, I find that Respondent violated Section 8(a)(1) of the Act by, on about July 6, 2023, discharging O'Briant and any similarly situated employees because the charging parties and other employees engaged in protected concerted activities and to discourage employees from engaging in those or other concerted activities.

#### 5. Analysis – John Henry Kay

Unlike the other charging parties, bartender Kay received an invitation from owner Palaart to return to work while the restaurant was temporarily closed. When Kay was at the restaurant on July 5 to assist with setting up the bar, Kay met manager James and also had a brief exchange with Edwin Zuniga about who was the bar manager (Zuniga informed Kay that Zuniga, and not Kay, was the bar manager). About 15-20 minutes later, Kay advised James and Zuniga that Kay needed to leave due to an emergency but would return the next day. Kay did not come to the restaurant on July 6, and Respondent did not schedule Kay to work on that day or any subsequent day. (FOF, sec. II(K)-(L), (N).)

I find that the General Counsel fell short with making an initial showing that Respondent discharged Kay because they engaged in protected concerted activities. There is certainly evidence that Kay engaged in protected concerted activity that Respondent was aware of, including signing the May 24 demand letter and attending the May 24 meeting with manager Vanderhoof. The General Counsel did not demonstrate, however, that Respondent discharged Kay based on their protected concerted activities. To the contrary, whatever animus Palaart had towards employees' protected concerted activities, she still invited Kay to return to work on July 5. As for manager James not scheduling Kay to work after July 5, James could have made that decision for any number of reasons that do not relate to protected concerted activity, including: a belief that Kay broke their promise to return to work on July 6; frustration with Kay stating that they were the bar manager; frustration with Kay because they left the restaurant abruptly on July 5 (albeit due to an emergency); or a simple misunderstanding of whether James or Kay was responsible for communicating about when Kay should next come in to work. In short, there is insufficient evidence that Respondent (through James) discharged Kay because of Kay's protected concerted activities.<sup>30</sup> Due to that shortcoming in the General Counsel's case, I recommend that the complaint allegation regarding Kay's discharge be dismissed.

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<sup>30</sup> I do not rely on Respondent's affirmative defense that it did not take adverse action against Kay because Kay essentially quit his job when he left the restaurant on July 5. (See R. Posttrial Br. at 27-30.) Respondent concedes that Kay left the restaurant on July 5 due to an emergency, so it does not follow that

## CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2),  
5 (6), and (7) of the Act.

2. By, on June 16, 2023, telling employees not to discuss their wages with other  
employees, Respondent violated Section 8(a)(1) of the Act.

10 3. By, on June 21, 2023, inviting employees to quit their jobs with Respondent in  
response to employees' protected concerted activities, Respondent violated Section 8(a)(1) of the  
Act.

15 4. By, on June 24, 2023, interrogating employees about their protected concerted  
activities, Respondent violated Section 8(a)(1) of the Act.

5. By, on June 25, 2023, threatening employees with business closure in response to  
employees' protected concerted activities, Respondent violated Section 8(a)(1) of the Act.

20 6. By, from June 25 through July 5, 2023, temporarily closing the restaurant and not  
assigning work to the charging parties and similarly situated front-of-the-house employees  
because the charging parties and other employees engaged in protected concerted activities and  
to discourage employees from engaging in those or other concerted activities, Respondent  
violated Section 8(a)(1) of the Act.

25 7. By, on July 6, 2023, discharging employees Gittiyaporn Boonpiem, Tempest Britt,  
Margaret Corum, Sathaporn Khammungskun, Rachel Newlin, Madison O'Brien, and Kevin Pang  
because they participated in a June 25, 2023 rally about working conditions and participated in  
other protected concerted activities, and to discourage employees from engaging in those or other  
30 concerted activities, Respondent violated Section 8(a)(1) of the Act.

8. By, on July 6, 2023, discharging employee Gabriella O'Briant and similarly situated  
front-of-the-house employees because the charging parties and other employees engaged in

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Kay quit when he left the restaurant.

That said, the General Counsel still failed to demonstrate that Kay's protected concerted activities motivated Respondent to discharge Kay by not scheduling him for any more shifts. The General Counsel contends that Kay's situation is similar to O'Briant's, in that like O'Briant, Kay was discharged because Respondent did not want to retain employees who were involved with organizing. That argument fails because even with that sentiment, Respondent (through Palaart) picked Kay as someone to retain, and called Kay in to work on July 5. The General Counsel also points to bar manager Zuniga's testimony that when Palaart told him that he would be moving to Mom's Siam, Palaart said that she "needed somebody there trustworthy" to run the bar. (Tr. 577; see also GC Posttrial Br. at 54.) The General Counsel argues that Zuniga's testimony is indirect evidence of animus towards Kay's protected concerted activities, but I give the testimony little weight. It is not clear at all that Palaart was referencing Kay's activities when Palaart spoke to Zuniga about his reassignment (i.e., Palaart's statement is, at most, ambiguous), and the evidentiary record still shows that notwithstanding Kay's activities, Palaart invited Kay to return to work.



protected concerted activities and to discourage employees from engaging in those or other concerted activities, Respondent violated Section 8(a)(1) of the Act.

9. The unfair labor practices stated in Conclusions of Law 2–8, above, affect commerce within the meaning of Section 2(6) and (7) of the Act.

## REMEDY

### A. Standard Remedies

Having found that Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Regarding Respondent’s violation of Section 8(a)(1) of the Act through its unlawful temporary closure of the restaurant from June 25 through July 5, 2023, and resulting failure to assign work to front-of-the-house employees during that time period, I shall require Respondent to make Gittiyaporn Boonpiem, Tempest Britt,<sup>31</sup> Margaret Corum, John Henry Kay, Sathaporn Khammungkun, Rachel Newlin, Gabriella O’Briant, Madison O’Brien, Kevin Pang, and all similarly situated front-of-the-house employees whole for any loss of earnings and other benefits. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). Consistent with *Thryv, Inc.*, 372 NLRB No. 22, slip op. at 14 (2022), enf. denied in part on other grounds 102 F.4th 727 (5th Cir. 2024), Respondent shall also compensate the employees listed in this paragraph for any other direct or foreseeable pecuniary harms incurred as a result of the unlawful temporary restaurant closure, including reasonable search-for-work and interim employment expenses, if any, regardless of whether these expenses exceed interim earnings. Compensation for those harms shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

Regarding Respondent’s violation of Section 8(a)(1) of the Act through its discharges of Gittiyaporn Boonpiem, Tempest Britt, Margaret Corum, Sathaporn Khammungkun, Rachel Newlin, Gabriella O’Briant, Madison O’Brien, Kevin Pang, and all similarly situated front-of-the-house employees (collectively, the unlawfully discharged employees), I shall require Respondent to offer to reinstate them to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority and other rights and privileges they would have enjoyed absent the discrimination against them. Respondent must also make the unlawfully discharged employees whole for any loss of earnings and other benefits. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra. Consistent with *Thryv, Inc.*, supra,

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<sup>31</sup> For purposes of calculating backpay, interest, and any other amounts owed to Tempest Britt as part of the remedy ordered herein, I note that on Respondent’s payroll records Tempest Britt is known as “Charles Britt.” (See, e.g., Jt. Exh. 2 (p. 4).)

Respondent shall also compensate the unlawfully discharged employees for any other direct or foreseeable pecuniary harms incurred as a result of the unlawful discharges, including reasonable search-for-work and interim employment expenses, if any, regardless of whether these expenses exceed interim earnings. Compensation for those harms shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

Respondent shall also be required to remove from its files any references to Boonpiem's, Britt's, Corum's, Khammungkun's, Newlin's, O'Briant's, O'Brien's, Pang's, and all similarly situated front-of-the-house employees' unlawful discharges and to notify them in writing that this has been done and that the unlawful discharges will not be used against them in any way.

In addition, I shall require Respondent to compensate Boonpiem, Britt, Corum, Kay, Khammungkun, Newlin, O'Briant, O'Brien, Pang, and all similarly situated front-of-the-house employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 5, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years, in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016). In accordance with *Cascades Containerboard Packaging-Niagara*, 370 NLRB No. 76 (2021), as modified in 371 NLRB No. 25 (2021), Respondent shall also be required to file with the Regional Director for Region 5 a copy of each backpay recipient's corresponding W-2 form reflecting the backpay award.

### B. Special Remedies

#### 1. Notice reading and distribution

The General Counsel has requested, as a special remedy, that I require Respondent to have a responsible management official read the notice aloud to employees at a meeting or meetings in the presence of a Board agent. The General Counsel also requested that I require Respondent to: distribute the notice by text message to all current and former employees that Respondent employed at any time since June 19, 2023; and publish a copy of the notice in the Richmond Times-Dispatch print newspaper and website. (GC Posttrial Br. at 59.)

The Board has found a notice-reading remedy appropriate where the employer's violations are sufficiently numerous and serious that a reading of the notice is warranted to dissipate the chilling effect of the violations on employees' willingness to exercise their Section 7 rights. *Amerinox Processing, Inc.*, 371 NLRB No. 105, slip op. at 2 (2022), enfd. 2023 WL 2818503 (D.C. Cir. 2023); *Gavilon Grain, LLC*, 371 NLRB No. 79, slip op. at 1 (2022).

I agree that a notice reading is warranted in this case to reassure employees that their rights under the Act will not be violated. In particular, I find that a notice reading is appropriate because a high-ranking management official, owner Sukanya Palaart, participated in violating the Act, and the legal violations included discharging several employees who were at the forefront of the effort to address concerns about working conditions at the restaurant. Through the discharges, Respondent warned all of its employees of the risks that they could face if they engaged in protected concerted activities. A public reading of the remedial notice is necessary in

these circumstances “to allow the employees to fully perceive that the Respondent and its managers are bound by the requirements of the Act” and to ensure that if employees contemplate engaging in protected concerted activities in the future, they will be able to exercise a free choice. Respondent’s owner Palaart shall read the notice or, at Respondent’s option, be present for its reading by an agent of the Board. *Hiran Management, Inc.*, 373 NLRB No. 130, slip op. at 1–2 (2024) (ordering a notice reading, in part because the restaurant’s owner made the decision to discharge employees who engaged in a protected walkout and strike); *Gavilon Grain, LLC*, 371 NLRB No. 79, slip op. at 1–2.

Regarding distributing the notice, I will follow the Board’s customary practice of requiring Respondent to (among other standard distribution methods) distribute the notice electronically by any methods that Respondent customarily uses/used to communicate with its employees, including by text message and group chat. I will also require Respondent to mail copies of the signed notice to each individual who was employed by Respondent at any time since June 16, 2023, the date that Respondent committed its first unfair labor practice. *Hiran Management, Inc.*, 373 NLRB No. 130, slip op. at 2. I decline the General Counsel’s request that I require Respondent to publish a copy of the notice with the Richmond Times-Dispatch, as the other notice distribution remedies that I am ordering are sufficient.

## 2. Additional special remedies

The General Counsel has also requested the following additional special remedies: that I require Respondent to write letters to the charging parties to apologize for the unlawful temporary store closure and discharges and any hardship or distress those actions caused; that I order Respondent to pay front pay for a reasonable period of time to any employee who declines a valid offer of reinstatement; that I order training of non-supervisory employees to inform them of their rights under the Act; and that I order training of Respondent’s supervisors and managers on their obligations under the Act. (GC Posttrial Br. at 58–63.)

I decline the General Counsel’s requests for these additional special remedies, as they are not warranted at this time and the standard remedies and notice reading/mailing remedy that I have set forth above are sufficient to address Respondent’s unfair labor practices in this case. See *Hiran Management, Inc.*, 373 NLRB No. 130, slip op. at 1–2 fn. 5 (denying a request for similar special remedies); *Starbucks Corporation*, 373 NLRB No. 44, slip op. at 1 fn. 4 (same); *Starbucks Corporation*, 373 NLRB No. 33, slip op. at 1 fn. 3 (2024) (same); *Starbucks Corporation*, 372 NLRB No. 122, slip op. at 1 fn. 3, 22–23 (same).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>32</sup>

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<sup>32</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

## ORDER

Respondent, Mom's Siam, Inc., Richmond, Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Telling employees not to discuss their wages with other employees.

(b) Inviting employees to quit their jobs with Respondent in response to employees' protected concerted activities.

(c) Interrogating employees about their protected concerted activities.

(d) Threatening employees with business closure in response to employees' protected concerted activities.

(e) Temporarily closing the restaurant and not assigning work to employees because they engaged in protected concerted activities and to discourage employees from engaging in those or other concerted activities.

(f) Discharging employees because they engaged in protected concerted activities and to discourage employees from engaging in those or other concerted activities.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make Gittiyaporn Boonpiem, Tempest Britt, Margaret Corum, John Henry Kay, Sathaporn Khammungkun, Rachel Newlin, Gabriella O'Briant, Madison O'Brien, Kevin Pang, and all similarly situated front-of-the-house employees whole for any loss of earnings and other benefits and for any other direct or foreseeable pecuniary harms suffered as a result of Respondent's unlawful temporary store closure and resulting failure to assign work to them from June 25 through July 5, 2023, in the manner set forth in the remedy section of this decision.

(b) Within 14 days of the Board's order, offer Gittiyaporn Boonpiem, Tempest Britt, Margaret Corum, Sathaporn Khammungkun, Rachel Newlin, Gabriella O'Briant, Madison O'Brien, Kevin Pang, and all similarly situated front-of-the-house employees full reinstatement to their former jobs or, if those no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights or privileges previously enjoyed.

(c) Make Boonpiem, Britt, Corum, Khammungkun, Newlin, O'Briant, O'Brien, Pang, and all similarly situated front-of-the-house employees whole for any loss of earnings and other benefits, and for any other direct or foreseeable pecuniary harms, suffered as a result of the unlawful discharges in the manner set forth in the remedy section of this decision.

(d) Within 14 days of the Board's Order, remove from its files any references to the unlawful discharges and, within 3 days thereafter, notify Boonpiem, Britt, Corum, Khammungskun, Newlin, O'Briant, O'Brien, Pang, and all similarly situated front-of-the-house employees in writing that this has been done and that the discharges will not be used against them in any way.

(e) Compensate Boonpiem, Britt, Corum, Kay, Khammungskun, Newlin, O'Briant, O'Brien, Pang, and all similarly situated front-of-the-house employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 5, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years.

(f) File with the Regional Director for Region 5, within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of Boonpiem's, Britt's, Corum's, Kay's, Khammungskun's, Newlin's, O'Briant's, O'Brien's, Pang's, and all similarly situated front-of-the-house employees' W-2 forms reflecting the backpay awards.

(g) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(h) Within 14 days after service by the Region, post at its facility copies of the attached notice marked "Appendix."<sup>33</sup> Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by Respondent's authorized representative, shall be posted by Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means (including text message and group chat posting), if Respondent customarily communicates with its employees by such means. Reasonable steps

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<sup>33</sup> If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notice must be posted within 14 days after service by the Region. If the facility is closed or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notice must be posted within 14 days after the facility reopens and a substantial complement of employees has returned to work. If, while closed or not staffed by a substantial complement of employees due to the pandemic, Respondent is communicating with its employees by electronic means, the notice must also be posted by such electronic means within 14 days after service by the Region. If the notice to be physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that "This notice is the same notice previously [sent or posted] electronically on [date]."

If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(i) Within 14 days after service by the Region, and after being signed by Respondent's authorized representative, duplicate and mail, at its own expense, copies of the attached notice marked "Appendix" to the last known home addresses of all current and former employees employed by Respondent at any time since June 16, 2023.

(j) Hold a meeting or meetings during work hours at its facility, scheduled to ensure the widest possible attendance of employees, at which the attached notice marked "Appendix" will be read to employees by owner Sukanya Palaart in the presence of a Board agent or, at Respondent's option, by a Board agent in the presence of Palaart.

(h) Within 21 days after service by the Region, file with the Regional Director for Region 5 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. December 17, 2024



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Geoffrey Carter  
Administrative Law Judge

## APPENDIX

### NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities.

WE WILL NOT tell employees not to discuss their wages with other employees.

WE WILL NOT invite employees to quit their jobs in response to employees' protected concerted activities.

WE WILL NOT interrogate employees about their protected concerted activities.

WE WILL NOT threaten employees with business closure in response to employees' protected concerted activities.

WE WILL NOT temporarily close the restaurant and fail to assign work to employees because they engaged in protected concerted activities and to discourage employees from engaging in those or other concerted activities.

WE WILL NOT discharge employees because they engaged in protected concerted activities and to discourage employees from engaging in those or other concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL make Gittiyaporn Boonpiem, Tempest Britt, Margaret Corum, John Henry Kay, Sathaporn Khammungskun, Rachel Newlin, Gabriella O'Briant, Madison O'Brien, Kevin Pang, and all similarly situated front-of-the-house employees whole for any loss of earnings and other benefits and for any other direct or foreseeable pecuniary harms, plus interest, suffered as a result of our unlawful temporary store closure and resulting failure to assign work to them from June 25 through July 5, 2023.

WE WILL, within 14 days of the Board's order, offer Gittiyaporn Boonpiem, Tempest Britt, Margaret Corum, Sathaporn Khammungkun, Rachel Newlin, Gabriella O'Briant, Madison O'Brien, Kevin Pang, and all similarly situated front-of-the-house employees full reinstatement to their former jobs or, if those no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights or privileges previously enjoyed.

WE WILL make Gittiyaporn Boonpiem, Tempest Britt, Margaret Corum, Sathaporn Khammungkun, Rachel Newlin, Gabriella O'Briant, Madison O'Brien, Kevin Pang, and all similarly situated front-of-the-house employees whole for any loss of earnings and other benefits resulting from their discharges less any net interim earnings, plus interest, and WE WILL also make them whole for any other direct or foreseeable pecuniary harms, suffered as a result of the unlawful discharges, including reasonable search-for-work and interim employment expenses, plus interest.

WE WILL, within 14 days of the Board's Order, remove from our files any references to the unlawful discharges of Gittiyaporn Boonpiem, Tempest Britt, Margaret Corum, Sathaporn Khammungkun, Rachel Newlin, Gabriella O'Briant, Madison O'Brien, Kevin Pang, and all similarly situated front-of-the-house employees, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the discharges will not be used against them in any way.

WE WILL compensate Gittiyaporn Boonpiem, Tempest Britt, Margaret Corum, John Henry Kay, Sathaporn Khammungkun, Rachel Newlin, Gabriella O'Briant, Madison O'Brien, Kevin Pang, and all similarly situated front-of-the-house employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 5, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years.

WE WILL file with the Regional Director for Region 5, within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of Gittiyaporn Boonpiem's, Tempest Britt's, Margaret Corum's, John Henry Kay's, Sathaporn Khammungkun's, Rachel Newlin's, Gabriella O'Briant's, Madison O'Brien's, Kevin Pang's, and all similarly situated front-of-the-house employees' W-2 form(s) reflecting the backpay awards.

WE WILL hold a meeting or meetings during work time and have this notice read to you and your fellow employees by owner Sukanya Palaart in the presence of a Board agent or, at our option, by a Board agent in the presence of Sukanya Palaart.

MOM'S SIAM, INC.

(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)



The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov)

Bank of America, Tower II, 100 S. Charles Street, Suite 600, Baltimore, MD 21201-2700  
(410) 962-2822, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at [www.nlr.gov/case/05-CA-321197](http://www.nlr.gov/case/05-CA-321197)  
Or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**  
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER (410) 962-2880.