

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

Mattos Hospitality, LLC and
Tourbillion, Joint Employers d/b/a Lodi

and

Restaurant Workers Union, Local 1

and

Juan Carlos Velazco

Cases 02-CA-312392
02-CA-312420
02-CA-321258
02-CA-328168
02-CA-338642
02-RC-310927

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DECISION

STATEMENT OF THE CASE

MICHAEL A. ROSAS, Administrative Law Judge. This matter was tried in New York, New York over 11 days between November 12 and December 10, 2024. On July 19, 2024, based on timely filed charges by Juan Carlos Velazco and the Restaurant Workers Union, Local (the Union or Petitioner), the Regional Director consolidated Cases 02-CA-312392, 02-CA-312420, 02-CA-32158, 02-CA-328168, 02-CA-338642 (the complaint). On July 22, 2024, the Regional Director issued a Report on Objections and Order Directing Hearing in Case 02-RC-310927 regarding the February 27-28 representation election, and consolidated it with the above cases.

The complaint, as amended at hearing, alleges that Mattos Hospitality, LLC (Mattos Hospitality) and Tourbillion1, d/b/a Lodi (Tourbillion1)¹ (collectively Respondents), acting as joint employers, violated Section 8(a)(1) of the National Labor Relations Act (the Act)² by: (1) requiring their employees to attend mandatory group or individual meetings to listen to management's positions regarding union activity on various dates between January 26 and

¹ The legal name of Lodi is "Tourbillion1 LLC, d/b/a Lodi."

² 29 U.S.C. §§ 151-169.

February 25, 2023 (¶ 8);³ (2) requiring employees to participate in one-on-one conversations conducted for the purpose of discouraging employees from supporting the Union (¶ 9); (3) subjecting employees to closer supervision in the restaurant during working hours by heightening managerial presence in the workplace (¶ 10); (4) soliciting employee complaints and grievances (¶¶ 11, 12(a), (12(b), 12(d), 14(b)(ii)); (5) threatening employees with restaurant closure if employees unionized (¶ 12(c)); (6) promising improved terms and conditions of employment including promoting opportunities if employees did not join or support the Union (¶ 14 (a)(ii)); (7) threatened employees with unspecified reprisals if employees unionized (¶ 14(b)(i)); (8) directed employees not to engage in Union and/or protected concerted activities (¶ 14(c)); (9) interrogated employees about their Union sympathies and support (¶ 15(b)(i)); (10) directed employees to oppose the Union (¶ 15(b)(ii); and (11) informed employees that they were discussing them by text messages, thus giving employees the impression that their union activities were under surveillance.⁴

The complaint further alleges at ¶¶ 17-20 that the Respondents violated Section 8(a)(5) by refusing to recognize the Union on January 25 and provide it with notice of and an opportunity to bargain over the decision to change the following terms and conditions of employment or the effects thereof: closing the bakery; new tip policy; and employee handbook revisions to employee discount policy, reasonable accommodations policy, investigations policy regarding sexual harassment or discrimination, employee classifications, attendance policy, personal appearance policy, paid time off for newly added temporary/casual employees, and family meal policy. As a remedy for the alleged Section 8(a)(5) allegations, the complaint requests issuance of a bargaining order pursuant to *Cemex Construction Materials Pacific, LLC*, 372 NLRB No. 130 (2023).

The Respondents deny the material allegations and contend that the Union lost the election because it: (1) made immigration status an issue; (2) coerced employees into signing union authorization cards; (3) misrepresented information relating to the wage rate for paid time off; and (4) failed to provide employees with meaningful information about the Union. Additionally, the Respondents raised numerous affirmative defenses alleging the unconstitutionality of: statutory removal protections for the Members of the National Labor Relations Board (the Board) and administrative law judges; the Board Members' exercise of prosecutorial, legislative, and adjudicatory authority within the same proceeding; and the Board's award of monetary awards in a nonjury proceeding.⁵

³ All dates are in 2023 unless stated otherwise.

⁴ Counsel for the Acting General Counsel's (General Counsel) motion to amend the complaint at the hearing was granted, resulting in a change in the date in paragraph 13(a) from February 9 to February 21; adding paragraph 13(e), withdrawing paragraph 8, and modifying paragraphs that referenced paragraph 8. (GC Exh. 37; Tr. 824-827.)

⁵ The Respondents' affirmative defenses based on constitutional and due process arguments are beyond the purview of the administrative law judge and are not addressed. The administrative law judge's basic duty is "to inquire fully into the facts . . . whether the Respondent has engaged in or is engaging in an unfair labor practice affecting commerce as set forth in the complaint or amended complaint." See Section 102.35(a) of the Board's Rules and Regulations. In carrying out that duty, administrative law judges must follow and apply Board precedent, notwithstanding contrary decisions by courts of appeals, unless and until the Board precedent is overruled by the Supreme Court or the Board itself. See, e.g., *Western Cab Co.*, 365 NLRB 761, n. 4 (2017); and *Pathmark Stores, Inc.*, 342 NLRB 378 n. 1 (2004).

On the entire record,⁶ including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Respondents, and Charging Party, I make the following

FINDINGS OF FACT

I. JURISDICTION

Tourbillion1, a limited liability company with an office and restaurant called Lodi in New York, New York selling food and beverages, annually derives gross revenues in excess of \$500,000, and receives products and goods valued in excess of \$5,000 directly from points outside of the State of New York. Mattos Hospitality is a New York limited liability company with an office and place of business in New York, New York, has been engaged in the operation of restaurants, including Lodi, where it annually derives gross revenues in excess of \$500,000, and purchases and receives products and goods valued in excess of \$5,000 directly from points outside of the State of New York. The Respondents admit, and I find, that they are joint employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Respondent's Operations*

Mattos Hospitality manages and operates various restaurants in New York City, one of which is Lodi, a café restaurant located in Rockefeller Center.⁷ Ignacio Mattos, an accomplished chef, is the founder and Chief Executive Officer of Lodi. He opened Lodi in 2021 as the third restaurant operating under the company that bears his name. The three restaurants have the same senior leadership, but operate independently and have their own managerial and hourly staff. In January and February 2023, senior management included Mattos, Vice President of Operations Andrea Czachor (currently President),⁸ Director of Operations Lauren Miller, Human Resources Director Melissa Termyna, and Lodi's General Manager, Sophie Fitzpatrick.⁹ All were supervisors and agents of the Respondents within the meaning of Section 2(11) and Section 2(13) of the Act, respectively.

Fitzpatrick reported to Mattos, Czachor, and Lauren Miller. She oversaw Lodi's operations, inventory, and payroll, looked after the floor, ran the front of the house including scheduling servers, and managed the back-of-house managers. Lodi's Head Chef, Maxine Pradie, managed the back-of-house, i.e., the kitchen, staff. Pradie had the power to hire and fire. Stephen Coy, also a chef, supervised the dishwashers.

⁶ The parties' "Joint Stipulated Motion to Correct Transcript," dated March 12, 2025, is granted.

⁷ The other restaurants that Mattos Hospitality LLC operates are Altro Paradiso, Estella, Corner Bar and Swan Room.

⁸ Termyna was relatively new as Human Resources Director, having joined the company three months earlier. (GC Exh. 12; Tr. 918-919.)

⁹ Fitzpatrick's employment as General Manager ended on March 8, 2023.

B. The Organizing Campaign

Since April 2021, the Union has been involved in efforts to organize restaurant employees in New York City.¹⁰ Beginning in August 2022, Lodi employees, led by Eric Schmidt, a server, began meeting on a weekly basis with the Union’s representatives in the Starbucks café located in a nearby Barnes and Noble store. The meetings continued over the next five months. Attendance fluctuated between 5 to 12 employees at each meeting, which usually occurred on Wednesdays and Sundays. In addition to the meetings, 10-12 employees formed a “Core Committee” and communicated through text messages in the “Core Committee Chat” on the WhatsApp social media platform. They included Schmidt, Molly Thomas, Heather Duffer, Yi Cao, Osvaldo Martinez, and Juan Carlos Velazco. The “Lodi Chat” was open to all employees. About 20 employees eventually joined the Lodi Chat.¹¹

Between the Fall of 2022 and January 25, Schmidt and three other employees—Molly Thomas, Yi Cao, and Luis Hernandez—solicited coworkers to sign cards authorizing the Union to represent them in collective bargaining with Lodi. They inquired as to whether employees supported the Union. If so, they asked them to express their support by signing the cards. However, the solicitors did not inform employees about the applicability of union dues, an omission that subsequently required Schmidt to quell employees’ concerns with elaborate explanations.¹² Nor were employees told that they could revoke their authorization cards.¹³ A total of 37 union

¹⁰ At the time of the hearing, the Union had not yet been recognized by any employer as a bargaining agent. (GC Exh. 4; 51.)

¹¹ While the Core Committee was limited to the organizers, the Lodi Chat was open to all employees interested in hearing more about the Union. (Tr. 53-57, 265, 275-277, 329-330, 519-522, 665, 795; GC Exhs. 5 and 31.)

¹² The credible evidence indicates that employees were not told about union dues when they were asked to sign authorization cards. When pressed on this point, Schmidt equivocated with a vague response: “we always talked about dues. But I don’t know with certainty that every single person was aware.” (Tr. 354-355.) That conclusion is reinforced by Schmidt’s subsequent posts in the Core Committee Chat: (1) January 30—“I would explain union dues to our coworkers as follows: dues are part of a contract that we must democratically approve.” (GC Exh. 5 at 1/30/23, 18:23:17.); (2) February 12—referring to a slideshow suggesting that the cost of union dues would be offset by the benefits resulting from a union contract. (Id. at 22/12/23, 12:33:17.); and February 18—referring to the release of a video about dues in order to “reach people better.” (Id. at 2/18/23, 20:21:16.). Although I did not credit Fitzpatrick’s vague and uncorroborated hearsay testimony that employees shared their concerns about being given false information about dues by the Union (Tr. 990-991.), the aforementioned evidence corroborated Mattos’ hearsay testimony that some employees came to him seeking “clarity on dues.” (Tr. 1163.)

¹³ Schmidt, Thomas, and Cao did not tell any of the employees that they could revoke their authorization cards. (Tr. 344, 527, 676.),

authorization cards were collected by the Lodi employees.¹⁴ At the time, there were approximately 52 employees at Lodi.¹⁵

During the course of the Fall 2022 organizing campaign, Schmidt acknowledged that undocumented workers might have concerns about joining a union. On November 3, 2022, he posted a message on the Lodi Chat that an “RWU article brought up the “right of undocumented restaurant to unionize (Spanish and English version). It has information that might be useful when we talk with our coworkers.”¹⁶ On December 15, 2022, Schmidt provided instructions regarding the signing of authorization cards by undocumented employees.¹⁷

We also need to make sure that all undocumented coworkers are signing cards under the names they are working under, not their real names. Basically, the National Labor Relations Board will ask Lodi for a list of workers, and then match the cards with names on the list. So the names must match.

At one point prior to January 25, the subject of Union membership by undocumented workers came up during a conversation between servers Francisco Salas and Guillermo Cesar Carino. Salas asked Carino what he thought about the Union. Carino, who had a longstanding relationship with Mattos, having worked for him at other restaurants and successfully referred numerous job applicants, said he was not against the Union. He added that “the Union would be nice, but he would have to quit because illegals cannot be part of the Union.”¹⁸

C. The Respondents Decline Employees’ Request for Voluntary Recognition of the Union

On January 25, Thomas asked to meet with Mattos in his office. Mattos agreed and asked Stephen Coy, the executive chef, to join them. Thomas arrived with approximately 15 employees

¹⁴ Schmidt, Thomas, Cao, Osvaldo Martinez, Artemio Reyes, and Juan Carlos Velazco each testified regarding the process by which they solicited or were solicited to sign union authorization cards and delivered them to Schmidt. In doing so, however, they did not tell their coworkers that they had a right to rescind their signed authorizations. (GC Exhs. 7(a)-7(x), 7(aa)-7(ll), and 8(a)-8(c); Tr. 65-89, 94, 97-98, 193-194, 432-434, 469, 483-488, 549-552, 638-639, 665-669, 675-677.) Their testimony was not refuted, although Mattos testified vaguely that “staff was [misled]” and reached out to him “with fear of what this meant, not knowing what they were doing about the whole situation.” (Tr. 1156.) With the exception of the following, I credited the testimony of the General Counsel’s witnesses regarding the authentication of all but three of the cards. In the case of the undated card purportedly signed by Saul Plaza on January 24, Schmidt’s testimony conflicted with his Jencks statement. (Tr. 70, 1208-1209, 1214, 1231-1241; GC Exhs. 7(f) and 57.) Of the remaining four cards purportedly authenticated solely through signature comparison, only the cards signed by Neftali Romero and Jose Bautista are consistent with a business record; the cards signed by Bernabe Reyes and Jorge Chavez were significantly different. (GC Exh. 42(a)-(e).) See *Novelis*, 364 NLRB 1452, 1454-1455 (2016), enf. denied in part 885 F.3d 100, 107 fn. 7 (2d Cir. 2018); *Traction Wholesale Center Co., Inc.*, 328 NLRB 1058, 1059 (1999), enf. 216 F.3d 92, 105 (DC. Cir. 2000). Thus, I find that 34, not 37, employees signed authorization cards reflecting their support for the Union prior to the petition being filed.

¹⁵ Jt. Exh. 1.

¹⁶ GC Exh. 31 at 11/3/22, 10:27:15 a.m.

¹⁷ Id. at 12/15/22, 1:54:24 p.m.

¹⁸ This finding is based on Salas’ past recollection recorded in his Jencks affidavit. (Tr. Tr. 254, 256-265.) He resigned in November 2023. (Tr. 192.)

and handed Mattos a letter signed by 23 employees informing him that they had chosen the Union as their labor representative. The letter requested voluntary recognition of and bargaining with the Union because “a 2/3 supermajority (66%) of Lodi workers have already signed union cards.”¹⁹

5 In pertinent part, the January 25 letter laid out numerous reasons why the employees wanted to unionize: wage increases and improved benefits; cost-of-living adjustments (COLA); wage transparency for tipped workers; consistent and advance-notice scheduling; adequate staffing; adequate training; provision of work tools; worker safety and health; grievance and disciplinary procedures; “just cause” termination; and limiting management prerogatives. The letter, which the Union posted on social media, also asserted that Lodi only paid certain workers at the rate of \$10 per hour for paid time off.²⁰

15 Later, it was noted in the Lodi Chat that the January 25 letter’s reference to the \$10 pay rate was incorrect and that Lodi paid its employees \$15 per hour for paid time off. That afternoon, the Union replaced the letter on its Instagram page with a revised version stating that Lodi had been paying its employees \$15 per hour for paid time off. The revised letter remained available to Lodi employees on the Union’s Instagram site during the entire time prior to the election.²¹

20 The Respondents did not agree to voluntarily recognize the Union. On January 26, Schmidt filed a representation petition in Case 02-RC-310927. Within days, Mattos informed employees of the reasons why he denied the request to voluntarily recognize the Union:²²

25 As you likely know, I recently received a letter from a union asking Lodi to "voluntarily recognize" it as your representative as it relates to your employment at the restaurant. I decided not to accept the invitation because I believe that each of you should have the opportunity to fully understand the circumstances, and decide whether or not you want this group to represent you going forward. We want all of you to vote, and to weigh in on this important decision for you and your families. It is entirely safe to do so.

30 In the coming weeks, a federal government agency called the National Labor Relations Board will host a confidential election for you to decide if you want to be represented by this organization. Nobody will know how you vote. As required by law, we will cooperate with the government in the election process, and will be back to you soon with more details.

35 Until then, my goal is to provide you with the information necessary to ensure that you are making an educated decision based on facts-no matter how you choose to vote.

¹⁹ It is not disputed that this was the first time the Respondents learned about the employees’ organizational activities. (GC Exh. 6A-6B; Tr. 63-64, 278, 345-347, 483, 554, 1154-1156.)

²⁰ The Respondents asserts that a \$10 hourly rate for paid time off would have violated the legal minimum wage requirement of \$15 per hour. (Id.; Tr. 347-348, 528.)

²¹ Thomas testified that the mistake was corrected in the Lodi Chat but did not state when. (Tr. 529.) Schmidt testified that some hourly employees became aware of the correction, but did not know how many. (Tr. 352.) Neither Schmidt, Thomas nor Osvaldo Martinez explained why the revised January 25 letter was not provided to Mattos. (GC Exh. 25; R. Exh. 2; Tr. 350-352, 417-419, 421-422, 528-529, 641-644, 646, 1221-1223.)

²² The exact date that Mattos sent the letters was not established. (R. Exhs. 12A-12B; Tr. 1154-1167.)

The last few weeks have been difficult and bewildering for the whole team, as it feels like there's been a breakdown in communication. We strive to build a positive culture and genuine camaraderie. I have tried to create a workplace where the talented and caring individuals who make up our team feel supported. I have always done my best to be helpful, respectful and fair.

The pandemic was an incredibly difficult time for all of us. But because of the commitment and dedication of this team, we managed to open during an incredibly challenging time. I am not exaggerating when I say that knowing you and watching you grow and advance within the restaurant gives meaning to my trade; it is what many of us love about this noble profession to which we have dedicated so much of our lives. As an immigrant, I, like many of you, have worked hard to build something we're proud of.

From the bottom of my heart, I thank each and every one of you for your continued hard work and dedication to Lodi.

On February 14, the Respondents and the Union entered into a stipulated election agreement to hold a representation election in the Morrell Room at Lodi on February 27 and February 28. The appropriate unit was defined as follows:²³

Included: All full-time and regular part-time employees working at the Employer's facility at 1 Rockefeller Plaza, in the following job classifications: dishwashers, bakers, prep cooks, line cooks, baristas, cashiers, barbacks, hosts, servers, and server assistants.

Excluded: All other employees, guards, professional employees, managers and supervisors as defined by the Act.

D. The Parties Activities During the Critical Period

1. The Union's Campaign

Immediately after the January 25 letter was delivered to Mattos, between 12-14 employees began wearing Union insignia consisting of hats, bracelets, and pins. That number would eventually rise to about 25.²⁴ Union supporters also continued to communicate through the Core Committee and Lodi Chats.

Over the next several weeks, some Core Committee members used strong language in referring to anti-Union employees as "traitors," "rats," "snakes," and "chicken shits."²⁵ The harsh language also extended to the larger Lodi Chat, with some expressing concerns to Fitzpatrick that they felt threatened. On January 29, Schmidt wrote that an employee was "spreading false information" and "was against the union and working for the other side." His comment was followed by a supporter who threatened to physically injure the anti-Union employee:

²³ GC Exh. 1(d).

²⁴ The testimony of Schmidt and Thomas estimating the number of Union supporters at the time was unrefuted. (Tr. 330-331, 523-524.)

²⁵ GC Exh. 5 at 1/30/23, 23:01:03 and 23:19:20, 2/15/23, 09:47:05, and 2/28/23, 17:37:29.

”But I hope that rat that’s working for [Mattos] can guarantee him safety because I’m from the hood and people like that we beat the fuck out of it so as soon as you get that name [I’m going to] need that.”

5

A message that followed stated that “these people are cracking” because “we applied pressure.”²⁶ The harsh language in the Lodi Chat continued throughout the critical period, even as the election concluded on February 28, with Cao reporting that “[a]t least 3-4 people who trusted to vote yes betrayed.” They were referred to as chicken shits and snakes, and one supporter asked that their names be posted on the chat.²⁷ Another Union supporter concluded that “26 [votes against the Union] means multiple snakes are slithering around/How was our math THAT far off.”²⁸

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On February 12, employees posted about their efforts to find out the real name for Luis Alvarez, the Respondents’ labor relations consultant. One employee asked: “Should I give him a call and tell him we found him?” Someone followed up on that suggestion and placed several calls to Alvarez in the middle of the night.²⁹

15

During the critical period, Union supporters convened two weekly meetings at nearby locations—Delis 48 on 48th Street between Fifth Avenue and Sixth Avenue, Sean’s Bar on 48th Street, or Starbucks above Barnes & Noble at 555 Fifth Avenue. Between 8 to 12 employees attended the weekly union meetings.³⁰

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2. The Increased Presence of Management

Lodi management soon became aware of employees’ expressions of support for the Union, as evidenced by messages between manager Emily Roy and Director of Operations Miller stating that Yi Cao and Heather Duffer were wearing pins that said, “back our union.” Roy added that Duffer “has a second button that I am trying to get a better look at. Same thing, just in Spanish.”³¹

25

The Respondents also moved swiftly to increase the presence of managers at Lodi. On January 26, Human Resources Director Termyna emailed a “First draft Lodi Plan” to Mattos and Vice President of Operations Czachor:³²

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Thursday 1/26, Friday 1/27, Saturday 1/28 Lodi: Leadership presence on-site all day.

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Week of 1/30 Leadership presence: DO, HR, Leadership presence at all pre-shift meetings.

²⁶ These comments corroborated Fitzpatrick’s hearsay testimony that several employees expressed their concerns about being “harassed” by Union supporters. (GC Exh. 31 at 1/29/23, 3:20:32, 5:44:12, 5:49:36; Tr. 1002-1003.)

²⁷ Id. at 2/28/23, 5:43:35-5:46:19.

²⁸ Id. at 2/28/23, 17:35:23.

²⁹ GC Exh. 5 at 2/12/23, 16:36:15-16:36:32; Tr. 1057.

³⁰ Id. at 1/29/23, 2:47 p.m.; Tr. 523.

³¹ GC Exh. 38 at 7.

³² Id. at 5.

On January 29, Termyna emailed all employees at the four Mattos Hospitality locations (Lodi, Alto Paradiso, Estela, Nine Orchard) informing them that she and Czachor would be holding weekly “Office Hours” in each location because “[w]e want to hear more about your experiences with Mattos Hospitality. During this time we will be dedicated to meeting with you and hope that you will take some time to share with us your ideas, things that you are excited about, or what you are worried or confused about. Please feel free to just approach us, or schedule some time with us here[.]” The Lodi Office Hours were scheduled for Thursdays between 3:00 and 4:30 p.m.³³

That plan continued throughout the critical period, as Mattos, Czachor, and Miller spent more time than usual at Lodi because of the election. Termyna was there three to four times a week to support the managers.³⁴ On several occasions, Czachor worked at Seat 15, which was at a counter next to the inside bakery window.³⁵ Additionally, Fitzpatrick and Roy, the assistant manager, spent more time than usual on the floor. Other than the increased managerial presence during this period, there was no discernable change in the management or supervision of the restaurant.³⁶

³³ It is undisputed that employees never received an email “like this” prior to January 29 or after the Union election. (Tr. 140-141, 279; GC Exh. 12.) Nevertheless, the email was generic in nature and, as Heather Duffer acknowledged, was Termyna’s request to “hear about our experiences working.” At the time, there were no representation petitions filed at Mattos Hospitality’s other three restaurants. (Tr. 302-303.)

³⁴ It undisputed that Mattos and senior management increased their presence at Lodi after the January 25 letter was delivered. However, the testimony of the General Counsel’s witnesses regarding the frequency with which Czachor and Termyna were present at Lodi prior to and after January 25 was inconsistent and, thus, unreliable. As to Czachor: Schmidt—once every six weeks before, but 4-5 times a week after; Salas—once or twice a week, but 3-4 times a week after; and Thomas—“probably once a month or so” before, but about once a week after. (Tr. 99-100, 110-111, 211-212, 492, 923-925, 1144-1145, 1186.)

³⁵ Asked why she set herself to work at a counter next to the bakery’s window, Czachor’s responded that she did not have an office at the time and regularly visited Mattos Hospitality restaurants to connect with managers and employees. There was a corporate office at 131 Varick Street, but it was not established that Czachor had office space there at the time. (Tr. 1144, 1149-1150.) In any event, the Respondents had already notified employees that corporate staff would be present at Lodi during the critical period to answer employees’ questions. (GC Exh. 12.)

³⁶ Although there was an increase in managerial presence on the floor, the testimony of the General Counsel’s witnesses fell short of establishing an increase in the intensity or quality of supervision during the critical period. Schmidt’s testimony as to how much time Fitzpatrick and Roy spent on the floor or in the office before and after January 25 was vague and, thus, unreliable:

Before, they would sometimes be in the office for extended periods of time. And on the floor, they had a fairly relaxed character and they seemed concerned with things that were going on regarding food service. And afterwards it felt like they were in the office less, and they were watching us. Asked to explain the measurable difference in the time Fitzpatrick spent on the floor, Schmidt was unable to do so, instead citing an instance when he saw Fitzpatrick in the area “grimacing shaking her head and typing furiously on her phone” after he spoke with an employee about supporting the Union. (Tr. 99-100.) Union supporter Francisco Salas was also unable to establish a discernable change in management presence: “Not necessarily. It was just like - - not as may jokes going around say that probably there’s a little bit more tension around the room, but nothing out of the ordinary.” (Tr. 207-208.) Thomas testified that Emily Roy, on one occasion in early February, interrupted Thomas’ conversation with Juan Carlos Velazco, who had just clocked out, and told her to get back to work. Thomas said that was “unusual” because she worked under the sous chefs, not the “floor supervisor.” (Tr. 502-503.) However, Roy was also the assistant manager, Thomas was on the clock but was not working at her station in the bakery, and there is no evidence

The additional floor presence resulted in conversations between several managers and employees about the Union. Mattos approached and was approached by certain employees regarding the election, including concerns over union dues.³⁷ Fitzpatrick also had discussions with employees about the Union, including some who shared concerns about the pressure being applied by Union supporters.³⁸ Fitzpatrick also brought in “Matthew [Landry] from HR,” placed him in the office, and made him available to speak with employees.

On January 31, Fitzpatrick reported to Lauren Miller that prep cook Gladis Lopez and another employee spoke to Landry about the Union.³⁹

Got Matthew from HR here and both Gladis and Juanito came to talk to him about how the BOH ppl feel they got the wrong information and that they don't want to sign or vote anymore.⁴⁰

Gladis didn't sign but is concerned for others. Juanito didn't know what it was really for and wants to take his name off. Matthew was so great at being neutral and saying that it's ultimately up to them and they have to do what's best for them.

I love winning.

As the election drew closer, managers increased their floor presence. On February 21, Miller emailed managers regarding “Manager Presence @ Lodi.”⁴¹

I hope everyone is having a nice week, we are officially in the final stretch before the vote on Monday. Big thank you to Sophie who has been working incredibly hard to coordinate the 1:1's with Luis [Alvarez] and another huge thanks to all of the managers who have provided coverage in order for our hourly teammates to gain as much knowledge as possible.

that nonwork conversation in those situations during worktime was usually condoned by supervisors.

³⁷ I credited Mattos' hearsay testimony to the extent that employees spoke to him about dues since that issue was mentioned in his letter to the employees expressing concerns about union dues and confirmed as a concern by Schmidt in Core Chat posts. (Tr. 1156-1166; R. Exhs. 12A-12B; GC Exh. 5 at 1/30/23, 18:23:17, 2/12/23, 12:33:17, 2/18/23, 20:21:16.)

³⁸ I credited Fitzpatrick's hearsay testimony regarding employees who complained to her about “harassment” by Union supporters, as it was corroborated by the harsh language used in the chats. See e.g., the post that “people were cracking” because “we applied pressure.” (Tr. 988-993, 1002-1005, 1009-1016; GC Exh. 31 at 1/29/23, 5:44:12; GC Exh. 5 at 1/30/23, 23:01:03 and 23:19:20, 2/15/23, 09:47:05, and 2/28/23, 17:37:29.)

³⁹ Although it was double hearsay about an employee who wanted to revoke his authorization, I gave weight to Fitzpatrick's message to the extent that it was corroborated by documented concerns about the lack of information over dues. (R. Exh. 5; Tr. 988-993.)

⁴⁰ “Juanito” is Juan Sosa Jimenez. (GC Exh. 38 at 37.)

⁴¹ Schmidt and Salas confirmed the accuracy of the recording. (GC Exh. 38 at 10; Tr. 116-140, 191-192, 194-195.)

Over the next two weeks, it is extremely important that there is floor presence at Lodi during all hours of operation. While this should always be the practice, everyone needs to limit office time, be extra present in their respective areas and help the teams during the busy points of service. If there is a pertinent task that can only be done in the office (like counting cash or printing menus), make sure there is another manager present in order to watch the floor. We have lots of extra hands around this week and next!

3. The January 26 Pre-Shift Meeting

The mandatory pre-shift meetings at Lodi were typically attended by: the front and back of house managers; Fitzpatrick or Roy; servers, waiters, server assistants, bussers, bartenders, baristas, and cashiers. The usual topics discussed by the managers were the day's menu items, what to expect in terms of the number of customers who were coming in, when the last reservation was, and any prominent guests that were expected. Failure to attend a pre-shift meeting would result in discipline.

On January 26, Mattos, Czachor, Miller, and Termyna attended the 4:00 p.m. pre-shift meeting. With the exception of Miller, who would fill in on occasion as General Manager, none of the others had ever been present at a pre-shift meeting.⁴² Five to eight front of house employees were present, including Schmidt and Salas. Schmidt recorded the meeting.⁴³

Termyna opened by "acknowledge[ing] that this happened. And to let you know that we hear you." (00:00:37). Czachor followed:

What's important to us now is that you have all the information. And that you feel comfortable coming to us to talk about it. If people have questions or if you'd like to set up meetings with us in groups or however you see fit, you're more than welcome. But the most important thing, obviously, is that no one is saying anything wrong, you know? And we want to make sure that we listen to everything that everyone has to say, and you know that we want to make sure that again, everyone here feels valued and we're able to give the guests a great experience. And as soon as we have more information, we are happy to share. Otherwise there's open door policy here. (00:01:20).

You're welcome to reach out to me or Melissa or any of the managers here or whoever you feel most comfortable with. If you don't have our e-mail addresses, we can share them and we'll be on site. And even if it's a last minute thing, it doesn't need to be planned. Just please approach us. Otherwise, I think for the moment that's all I have. (00:01:56).

There was no employee feedback, as none of the employees spoke. Neither did Mattos or Miller. Mattos stood behind Schmidt during the meeting.⁴⁴ Later that day, Schmidt posted on the Lodi Chat, "So HR spoke to some workers in pre-shift, saying "the door is open" to talk with

⁴² It is undisputed that senior management did not normally attend pre-shift meetings. (Tr. 113-115, 194-197.)

⁴³ Parenthetical references that follow reflect the time in the recording. (GC Exhs. 11(a)-11(b).)

⁴⁴ I did not credit Schmidt's uncorroborated hearsay testimony, denied by Mattos, that he received a text message from a coworker stating that Mattos was trying to read Schmidt's notes. (Tr. 140, 1187.)

them.”⁴⁵ On January 27, Schmidt posted a transcript of the recording on the Core Committee Chat.⁴⁶

4. Termyna’s January 27 Meeting with Bakery Staff

On January 27, Termyna walked into the bakery and introduced herself to employees Molly Thomas and Marlee Rosario. After the employees introduced themselves, Termyna stated that she wanted to get to know them, and asked if they had any big ideas and wanted to meet with her separately. Thomas declined the offer and told Termyna that she supported the Union. Termyna replied that she supported Thomas and Rosario as employees. Later that day, Thomas posted a message about the incident:⁴⁷

Melissa just came into the bakery to ask how Marlee and I are feeling and if we ever want to talk she wants to hear our big ideas. She also thought I was a new hire and then when I said I [wasn’t] a new hire she thought I was Anna so that really tells you how much she cares. I told her I [don’t] want to talk about it and I support our efforts and she was like “[I] support you guys too always” lots of BS keep an eye out.

5. Termyna’s Statement Regarding the Impact of the Union

On January 28, Termyna stopped by the Lodi prep kitchen to meet Kareem Mitchell, a new employee. Another line cook, Jacob Greenberg, was also present. Mitchell told Termyna about his previous work experience at a steakhouse. He also told Termyna that he was excited to hear that the Union was coming in and asked what she thought about that. Termyna replied that she had worked for unionized restaurants in the past and had a positive experience. She noted, however, that although a union might be beneficial for a larger organization, it may not have the same impact for the business or workers of other organizations. Francisco Salas passed by as they spoke but managed to hear only part of the conversation.⁴⁸

Later that evening, Thomas reported Termyna’s remarks to the line cooks in the Lodi Chat and asked coworkers to report if they heard similar comments:

Melissa the head of HR spoke to some of the line cooks about the union and said “we can’t afford the union, it will hurt the restaurant.” This is a BIG unfair labor practice and is

⁴⁵ GC Exh. 31 at 1/26/23, 11:30 a.m. (English), 11:31:34 a.m. (Spanish).

⁴⁶ GC Exh. 5 at 01/27/23, 09:53:47 a.m.

⁴⁷ Thomas conceded that Termyna did not inquire about the demands made to management or the Union campaign. (GC Exh. 31(a) at 1/27/23, 9:14:22 a.m.; Tr. 489-491, 532.)

⁴⁸ I credited Termyna’s somewhat vague testimony regarding this interaction and, thus, her denial that she mentioned Lodi’s closure if the Union came in, which was mostly consistent with Molly Thomas’ January 28 post on the Lodi Chat. Salas’ version, on the other hand, was not credible. It became evident from his testimony that he had only partial and selective recollection of that event, purportedly hearing only what Termyna said but not what Mitchell or Greenberg said because they were speaking in a “soft tone” and “using their inside voices” as he passed by on the way to his locker. (Tr. 197-204, 221-222, 224, 244-246, 925-928; GC Exhs. 9-10.) Moreover, as evidenced by the recording of the Termyna-Duffer conversation, *infra* at page 19, the kitchen was a busy and noisy work environment. (GC Exh. 24(b).)

ILLEGAL. If anyone from management says anything like this let one of us know ASAP.”⁴⁹

On February 26, Schmidt posted on the Core Committee Chat that a group of diners said, “[t]ell management that if you unionize, we’ll come twice as often.” In response, Duffer said, “Lmfao literally boosting business. There goes their argument of them having to shut down!!” The same was posted to the Lodi Chat but Schmidt deleted Duffer’s comment because he “[didn’t] want to scare people today.!!!”⁵⁰

6. Fitzpatrick’s Appearance at Delis 48 on February 1

On January 29, organizers informed Union supporters on the Lodi Chat that the Core Committee would meet at 5:00 p.m. on February 1 at Delis 48, a delicatessen that was a four-minute walk from Lodi, followed by a meeting open to all Union supporters at 6:00 p.m.⁵¹

On February 1, the Core Committee met in the balcony area towards the back of the store. At about 5:01 p.m., Schmidt saw Fitzpatrick enter the store. He immediately proceeded to take four photographs that showed Fitzpatrick facing the front of the store as she made a purchase and then walked out. At no point is she seen looking towards the back of the store.⁵² At 5:03 p.m., a front-of-house employee posted the following message:

Sophie going to the Bodega does anyone want anything?? Lmaoo [laugh my ass off] is what closing FOH is told.⁵³

On February 5, the Core Committee met again at Delis 48.⁵⁴ When he arrived, Schmidt found server assistant Bryan Carino, son of server Guillermo Cesar Carino, seated where the Core Committee meeting was to be held. At 5:04 pm, believing that Bryan Carino was opposed to the Union, Schmidt switched the meeting to the nearby Starbucks. Francisco Salas, who Schmidt expected to attend, changed his mind and did not attend. At 6:08 p.m., Mattos messaged Termyna:

Mattos: “They meeting on the deli. Trying to understand how many they are, really cra[z]y we going through this kind of thing.”

⁴⁹ GC Exh. 31(a) at 1/28/23, 3:29:10 p.m.

⁵⁰ Id. at 2/26/23, 13:18:08-13:24:20, and 1:20:10 p.m., 1:20:13 p.m., 1:21:20 p.m.

⁵¹ GC Exh. 5 at 1/29/23, 14:47:05-15:09:43; GC Exh. 31 at 2/1/23, 03:10:18 p.m.

⁵² I credited Fitzpatrick’s testimony that she occasionally left Lodi’s during her shift during busy times to get emergency milk or a Red Bull energy drink, which was unavailable at Lodi. Schmidt’s testimony on this point was inconsistent. Although he testified that it was unprecedented for Fitzpatrick to leave during her shift to buy a beverage elsewhere, he conceded that managers would step out during their shifts, including Fitzpatrick, who would step out to vape. (Tr. 858-864, 870, 882-883, 887, 1214-1215, 1021-1022; GC Exh. 39.) Moreover, there is no credible evidence that Fitzpatrick knew that Union supporters were meeting at Delis 48.

⁵³ GC Exh. 31 at 2/1/23, 05:03:28 p.m.

⁵⁴ GC Exh. 5 at 2/5/23, 17:04:23 and 17:05:16.

Termyna: “Try not to spy. Remember, Luis said they’re going to do that but we can get in trouble if they see us. I know spy sounds aggressive. Only word I can come up with. They’re feeling it.”⁵⁵

5 7. Luis Alvarez

10 After January 25, the Respondents retained Luis Alvarez, a labor relations consultant.⁵⁶ On February 2, Schmidt was working his shift when Fitzpatrick told him and another server that a friend of Czachor was dining and referred to him as a “PX-3,” which meant that he had the highest VIP destination. Alvarez, who often went under a pseudonym while acting as a labor relations consultant, was listed as “Luis Medina PX3-FO-AC.” At one point, Charde Sapp, the host that night, mentioned something to Schmidt. Schmidt then looked in Alvarez’s direction. He saw Alvarez holding his cell phone in a vertical position facing him. At that point, Schmidt stared at Alvarez. Alvarez, however, continued to raise his phone as Schmidt passed by.⁵⁷

15 On February 4, Miller text messaged Alvarez and Termyna a screenshot of a Lodi Chat posted by Schmidt that morning:

20 !!!!!!! VERY VERY IMPORTANT Mattos Hospitality has hired a union-busting to try to top us, and they are starting “captive audience meetings” in the back area in which they will force us to listen to anti-union LIES in order to confuse us and break our unity. The presentations are being organized by Luis Medina, who was caught illegally photographing some of us on Saturday. PLEASE RECORD THE MEETING ON YOUR PHONE. Start recording before you get in, there. Also: once you are in the back room, ASK in front of everyone how much \$\$\$\$\$ he is getting paid to give the presentation.⁵⁸

25 Alvarez replied, “Good I’ll bring this up in the meetings.”⁵⁹

30 On February 5, Alvarez began scheduled daily meetings with employees. “The Lodi Plan 2023” listed meeting times for employees at Lodi from February 5 through February 23.⁶⁰ It

⁵⁵ Schmidt testified that “we universally considered [Bryan Carino] to be an agent of management.” However, that assertion was not supported by credible evidence. Nor was there proof of a connection between Mattos’ message that he wanted to know “how many there are” and Bryan Carino’s appearance at Delis 48. Moreover, Schmidt was unaware of any information that Bryan Carino was asked by anyone in management to attend the meeting. (Tr. 870-874, 878, 884-886; GC Exhs. 38 at 2, and 40.)

⁵⁶ Threatening posts by Union supporters corroborated Alvarez’s credible concerns about his safety as the reasons why he often used a pseudonym during union campaigns. (Tr. 1056-1057; GC Exh. 5 at 2/12/23, 16:36:15, and 2/14/23, 13:08-16 and 09:39:46-10:07:12.) He is stipulated to have been an agent of the Respondents within the meaning of Section 2(13) of the Act for the period from January 25, 2023 through December 2, 2024. (Jt. Exh. 1; GC Exhs. 53-54; Tr. 1142-1143.) A labor consultant since 2018, Alvarez was required to file Department of Labor Forms LM-20 and LM-21 for his work on behalf of the Respondents. There is no proof that he did that. (GC Exh. 48, 52; Tr. 1074-1075, 1080, 1088-1089.)

⁵⁷ Alvarez did not dispute Schmidt’s version of this event, which was not alleged as an unfair labor practice. (Tr. 25-26, 29-30, 406; GC Exhs. 2, and 38 at 51-52.)

⁵⁸ GC Exh. 31 at 2/4/23, 10:34:40.

⁵⁹ GC Exh. 38 at 52.

⁶⁰ Id. at 38-49.

contained a color-coded “Master List” of all hourly employees.⁶¹ The names of open Union supporters were labeled red and not invited to the Alvarez meetings.⁶² The names of employees that the Respondents perceived to be anti-Union including Gladis Lopez, Francisco Salas,⁶³ Guillermo Cesar Carino, and Bryan Carino, were labeled green. The names of employees whose view was not known, including Artemio Reyes and Jacob Greenberg, were labeled pink and yellow.

Alvarez’s February 8 meeting was recorded by Osvaldo Martinez.⁶⁴ Termyna was also present along with five other employees. At that meeting, Alvarez addressed Schmidt’s accusations and referred to certain non-English speaking employees as “bobo”—a Spanish term—because they were susceptible to being taken advantage of by the Union.

(07:02-07:36) Very good. Well, my name is Luis. What’s my job here? I know texts have been sent about some guy going around trying to tell you how to vote, that some bad guy is coming and he’s doing [unintelligible]. I want to explain exactly who I am. Many times, most of the time, when companies find out that the employees are thinking of being part of a union is trying to . . . enter.

(07:02-07:37-11:36). . . I go around the United States and I talk to people like you and tell them “this is the law, this is what the [unintelligible] can and cannot do, what other companies cannot do and those are your rights.” I’m not here to tell you how I think you should vote. Okay? . . . All I want in my work is to make sure you end up saying “Luis, thank you for the information. I now understand the law. I now know understand all my rights. I now know what the union can and cannot do. I now know what [unintelligible] can and cannot do. Now I’m going to [unintelligible].” Why does this happen to most of us? In fact, usually our people, when we don’t speak much English, they play us for suckers.

(11:44-15:12) . . . I will speak in general terms. In general, why? Because we have been doing this for many years and almost everyone, us here in this meeting, I’m not going to, because I don’t, the unions say “this guy is going to speak ill of the union, he’s going to try

⁶¹ Id. at 37.

⁶² I credit Schmidt’s testimony, corroborated by the color-coded spreadsheet, that management was selective as to who it asked to attend the Alvarez meetings. However, I do not credit his hearsay and uncorroborated testimony that the Alvarez meetings were mandatory for any employees: “My understanding is that it was required for some workers and other workers who were known Union supporters were told it was optional.” (Tr. 142, 419-421.) But it was clear that known Union supporters like Schmidt were not invited to the meetings. Another employee wrote on the Lodi Chat: “still haven’t even been to a “Medina”/Alvarez meeting lol. They’re cherry picking.” (GC Exh. 31(a) at 2/17/23, 2:57:09 p.m.). Artemio Reyes, an employee who openly told management that he “supports no one,” was asked to attend Alvarez’s meetings. Reyes started wearing a union button one week before the election. (Tr. 444-449, 451.)

⁶³ Salas signed an authorization card but declined to reveal his support for the Union. (Tr. 258.)

⁶⁴ Osvaldo Martinez authenticated the recording but the voices were often muddled and he identified several speakers different from those listed on the transcript. E.g., at 2:39-2:57 of the transcript, he identified Luis Alvarez as the speaker, but it was a female voice. (GC Exhs. 33(a)-33(b); Tr. 564-565, 589-620.) Nevertheless, having heard the tape, Alvarez acknowledged the quoted language, which he alluded to rumors among Lodi employees. Moreover, he was already aware of the accusations from Miller’s February 4 text message and stated then that he would “bring this up in the meetings.” (Tr. 1065-1101.)

to . . .” No, I’m not here for that. I’m, here explaining the law, which [unintelligible]. I’m not interested in speaking ill of the union, or of the people in the union or any of that.

(15:13-21:17) . . . One of the things also is that this meeting is only to clarify why [unintelligible]. I came to have dinner the first day because [unintelligible] to work, right? And I was recording. Recording is like [unintelligible] I will tell the managers what they can’t [unintelligible] to the employees, they can’t infringe on their rights. They’re telling me, I have my cellphone with me, I’m having dinner and everything, what am I going to do? [Unintelligible] I’m not going to disrespect the employees that are working [unintelligible] recording people in the area [unintelligible]. But their tactics they use to try to harm none other than the employees. That is what makes us worry.”

8. The Rights of Undocumented Workers to Join the Union

On January 29, after Union organizers learned that Guillermo Cesar Carino was telling employees that it is illegal for undocumented workers to unionize, organizers posted the following in the Core Committee Chat:⁶⁵

Schmidt: KEEP THIS WITHIN THIS GROUP. DO NOT TALK ABOUT THIS. Cesar appears to be working for Ignacio to undermine the union. While what he is doing would be illegal for management, a worker can say whatever they want, even if it is a lie. In order to charge management with a major Unfair Labor Practice, we would have to prove that management has explicitly given directions to a worker to spy on coworkers and spread disinformation about unions.

- He is gathering information on who supports the union, who can still be won over to their side. He is repeating everything he finds out to management.
- He approached many undocumented workers yesterday and lied to them, telling them that he has "information" that it is illegal for undocumented workers to be in a union. The other day, I showed him the US government document that says it is legal for undocumented workers to unionize.
- He is promising workers who vote 'no' that they will receive protection from Ignacio.

If somehow we can get Cesar to admit on a recording that he is doing this at the request of management (1/29/23, 10:46:10)

Schmidt: RWU-STR is working on a flyer warning people about what is going on and showing the law allows undocumented workers to join unions. (1/29/23, 11:04:24)

Schmidt: I'm glad we didn't tell him ahead of time! How long we debated that haha (1/29/23, 11:46:35)

Duffer: Gut feeling doesn't lie ([1/29/23, 11:50:34)

Schmidt: I know! We were 100% CORRECT on Marisa and Cesar (1/29/23, 11:50:57)

⁶⁵ GC Exh. 5.

Schmidt: Cesar is another story: he is very close to Ignacio and we should not tell him any information beyond generally describing what is already public. We should be nice to him and try to convince him to join us, but not tell any specifics. (/27/23, 10:58:18)

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In an Instagram post that day entitled, “The anti-union side is starting to hit back,” the Union stated, “Lies are being spread among the workers that undocumented workers can’t belong to unions. This is FALSE.” Attached was the Board’s flyer on “Immigrant Employee Rights Under the National Labor Relations Act,” with the following highlighted: “Regardless of immigration status, you have the same rights under the National Labor Relations Act (NLRA) as all covered employees including the right to: Organize with a union to negotiate with your employer concerning your wages, hours, benefits, and other working conditions.”⁶⁶ About a week later, the Union also distributed flyers to Lodi workers entitled, “UNIONIZATION IS A BASIC DEMOCRATIC RIGHT.” Informing employees that “[t]his is why, as workers, we must know that the laws apply to **ALL workers, regardless of whether they are documented OR UNDOCUMENTED.**” (emphasis in original)⁶⁷

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Guillermo Cesar Carino had a longstanding relationship with Mattos. On January 30, Molly Thomas observed Mattos talking to Guillermo Cesar Carino for over 20 minutes in the restaurant. That was unusual because Mattos did not usually engage in extended conversation with employees on the floor.⁶⁸ Guillermo Cesar Carino’s efforts to promote anti-Union sentiment among coworkers were confirmed in February 13 text messages between Termyna and Alvarez. That morning, Alvarez messaged Termyna, “I’m here.” A few hours later, Termyna asked, “Hi, Let me know if you want to discuss [next] steps for Cesar and Marisa.” Alvarez replied that he “should be back in a few minutes getting a quick bite.”⁶⁹

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On February 5, the Union produced a two-minute campaign video in which four employees—Caroline Hamrick, Luis Hernandez, Osvaldo Martinez, and Juan Carlos Velazco — spoke about the intimidation of immigrant employees during the Union campaign. On February 11, the Union posted the video on TikTok and Instagram.⁷⁰

On February 14, Saul Plaza, Laura Contra and Miguel Angel Bazan came to Schmidt and told him that they thought the tone of one speaker in the video was too harsh and he should not

⁶⁶ GC Exh. 27.

⁶⁷ GC Exh, 28; Tr. 416.

⁶⁸ These findings are based on the credible testimony of Molly Thomas and Francisco Salas (Tr. 262-265, 496-499.)

⁶⁹ Alvarez authenticated the messages but claimed not to know who Cesar and Marisa were. (Tr. 1092-1096, GC Exh. 49.) However, based on Molly Thomas’ credible testimony regarding Mattos’ extended conversation on January 30, it is clear that “Cesar” was a reference to Guillermo Cesar Carino.

⁷⁰ Although I struck a portion of Alvarez’s testimony consisting of double hearsay testimony, I credited his previous answer, which was not objected to, that employees shared their concerns about the video—“that the company might do something to those that, according to them, that didn’t have the legal papers to work.” (Tr. 1062.) However, I did not credit Fitzpatrick’s speculative and uncorroborated hearsay testimony regarding alleged concerns expressed by employees about the video’s reference to undocumented workers—an assertion at odds with the Respondents’ contention it complies with all I-9 documentation processes when onboarding employees. (R. Exhs. 11-13; Tr. 150-151, 335, 373, .554-555. 1014-1016.)

have named Mattos personally.⁷¹ The issue of immigration was not mentioned, although the three employees did find the Union's February 15 video humorous about Alvarez's real name and his company website. In response, Schmidt had the February 11 video deleted from the Union's Instagram site on February 24 because it contained immigration status-related information about an hourly employee. That employee was not one of the participants in the video.⁷²

9. The Union Files Charges

On February 16, the Union filed an unfair labor practice charge alleging that: managers and/or agents made statements of union futility; solicited employee grievances and made promises; warned employees that undocumented workers may not legally join a union; engaged in extensive polling, interrogation, and surveillance of Union supporters; threatened loss of promotional opportunities if they supported the Union; and told them that the company would protect them if they opposed the Union. The charge listed General Manager Sophie Fitzpatrick as the Employer Representative and was served on the Respondents on February 17.

10. Mattos' Statements to Employees

On February 11, Osvaldo Hernandez text messaged Schmidt that "[Mattos] is talking to my father about the video and the talk he had with Alvarez." His father is Luis Hernandez.⁷³

About a week after the February 11 video appeared on the Union's Instagram site, Osvaldo Martinez was working at his dishwasher station. Mattos approached Hernandez and spoke to him about the video. Prior to that interaction, Mattos rarely spoke to Martinez except to greet him as he passed by.⁷⁴

⁷¹ Union supporters referred to Mattos as having a "New York golden boy reputation" (GC Exh. 5 at 2/3/23, 20:17:04.), and commended coworkers who asked him questions about his letter "and [made] him look stupid." (Id. at 14:36:44.) As other examples of "badmouthing Chef Mattos," the Respondents cite references in the chat to him as "weird" and "an immigrant boss from Latin America." However, the "weird" comment was in response to his behavior in slamming his hands on the bar, leaning over the bar, and locking eyes with the bartender and asking, "how are you?" He then snuck up very close to another employee, causing her to jump. (Id. at 2/12/23, 18:05:06.) The latter comment was actually an effort to paint Mattos' background in a positive light for the immigrant workers—"as an immigrant worker I am glad to work for an immigrant chef from Latin America. (Id. at 2/3/23, 09:31:37.) However, Union supporters recognized that criticism of Mattos could alienate employees: "I don't think we should make too much fun of [Mattos] since a lot of people on the fence like him." (Id. at 2/10/23, 11:15:04.)

⁷² I credited Schmidt's hearsay testimony regarding his conversation with Plaza, Contra and Bazan, as it was initially elicited by the Respondents on cross-examination. (Tr. 151, 373-375, 378, 380-381, 1223-1225; GC Exh. 3(a)-(b).)

⁷³ Although the text message was received in evidence, I do not give any weight to the uncorroborated hearsay therein as to what Mattos told Luis Hernandez. Moreover, I do not credit the hearsay testimony that Luis Hernandez told Schmidt that he no longer supported the Union. (GC Exh. 14; Tr. 148-151, 334-336.)

⁷⁴ I credited Mattos' general denials regarding this encounter, as Martinez's credibility was severely diminished by false and inconsistent testimony. Accordingly, I did not credit Martinez's testimony that Mattos, standing three feet away, told him "that should not be done" and wagged his finger to emphasize his point. (Tr. 556, 559-561, 1178-1179, 1182-1184.) First, Martinez testified that he filled in the entire authorization card, signed it, and gave to Schmidt. In fact, Schmidt had already filled-in the top of the card, and Martinez gave it to Luis Hernandez, who then gave it to Schmidt. (Tr. 79, 550-552.) Second, Martinez

11. Fitzpatrick's Statements to Schmidt and Duffer

On February 21, Schmidt was at the server station on the Terraza when Fitzpatrick
 5 approached him and said that "this is my career ending week and you don't seem to realize I'm on
 a green card." Schmidt did not say much in response. The following morning, he messaged Molly
 Thomas about Fitzpatrick's statement.⁷⁵

On February 21, Fitzpatrick also expressed her concern about having received the Board
 10 letter to Heather Duffer. Duffer was clocking out in the second floor locker room, right next to the
 office. At that point, Fitzpatrick walked out of the office. Duffer asked Fitzpatrick "how's life"
 and "how it was going?" Fitzpatrick replied, "you know, here." She then showed Duffer the Board
 letter with her name on it and said, "Thanks to your union, I could get my green card revoked"...
 So thanks for making my wife cry."⁷⁶

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12. Termyna's Statements to Duffer

On February 21, Termyna asked Duffer to come speak with her when Duffer had some
 free time. Duffer went to Termyna's office in the afternoon. Unbeknown to Termyna, Duffer
 20 recorded the discussion. Termyna started by saying that she had "been avoiding this conversation
 like the plague" because she respected their relationship." She told Duffer that she "just wanted
 to make see if there's anything at all that you kind of want." (00:01:43-00:01:46) Termyna
 explained that she was "so surprised by the things" that she was hearing and "just wanted to hear
 if there was anything that you had to say to me." (00:02:04) About two minutes later, Termyna
 25 said, "So that's all, I think. I'm just trying to really just hear from you. I feel like you've always
 been very honest with me. So that's where I am at." (00:04:27) Near the end of the conversation,
 Termyna told Duffer to let her know "if there's anything that like does come up over the next few
 days that like I can help with from, you know, kind of, from where we are." (00:06:37).⁷⁷

lied when he testified that the video did not refer to undocumented workers, as well as not being instructed
 about what to say on the February 11 video. (Tr. 759-761, 763, 770-772, 774; R. Exh. 13.) Lastly, Martinez
 lied about the extent of his fluency in English. Examples included his interview in English by a reporter
 during a break, his correction of the Spanish language interpreter, his occasional answering of questions in
 English before the interpreter could speak, and his ability to understand English speaking supervisors. (Tr.
 550, 561, 586, 609-615, 621-622, 626, 629.)

⁷⁵ Fitzpatrick confirmed having this conversation with Schmidt, which is corroborated by his text to
 Thomas. There is no evidence, however, that Thomas shared that information with other employees. (Tr
 878-879, 1014-1015, 1019-1020; GC Exh. 41.) The record also established that Fitzpatrick found it
 "worrying" after learning on February 17 that she was named in the complaint. Informed by Miller about
 Fitzpatrick's concerns, Luis Alvarez replied that "I spoke to her she is ok." (Tr. 1021-1022, 1039-1051; GC
 Exhs. 47, 51.)

⁷⁶ Fitzpatrick essentially confirmed Duffer's version of the incident. She insisted that she was worried
 about the renewal of her green card, but conceded that she made the statement in "a freakout moment,
 saying, you know, this - - this might affect me personally. Why is it in my name?" (Tr. 285-287, 304, 1020-
 1021, 1037-1039.)

⁷⁷ I credited Duffer's undisputed testimony about Termyna's statements, including her characterization
 that Termyna was talking "in circles" and "trying to get me to give her some sort of information" and "tell
 her whatever I had on my mind about the Union." (GC Exhs. 24(a)-24(b); Tr. 279-282, 285, 297, 301, 323-
 324.)

13. Gladis Lopez's Statements to Employees About the Election

Gladis Lopez works in the kitchen in food preparation. Sometime between August and November 2022, she became the kitchen prep team leader. In addition to performing food prep, Lopez was also responsible for making sure the kitchen had the necessary ingredients for service. After receiving the food lists from Pradie, she assigned daily tasks based on those lists to the kitchen prep staff. The tasks included cutting bread and vegetables, and preparing ricotta and salads. Lopez also approved kitchen staff's leave requests, told them when to take breaks, sent them home early on occasion, was contacted when employees called out, and criticized them for deficient performance. She also recommended discipline, including termination, to Pradie. However, Lopez did not have the authority to hire, transfer, suspend, lay off, recall, promote, discharge, or discipline employees.⁷⁸

Lopez actively urged employees to reject the Union.⁷⁹ She asked dishwasher Artemio Reyes whether he supported the "boss" or the Union. Reyes replied, "I answered to no one." Lopez told Reyes to think about it and support the boss because he was a good person and gave them work. The conversation ended when Reyes told Lopez that he was "going to think about it."⁸⁰ Several days later, Reyes was leaving the kitchen when he saw Lopez speaking to "Juanito" by the elevator. Reyes, about six feet away from Lopez, heard Lopez tell Juanito that all the employees would be replaced if the Union came into Lodi.⁸¹

Around the same time, on February 10, Lopez presented a letter to the Respondents containing a list signed by 11 employees stating they were "united in [our] efforts and we are totally against bringing in a union into the Lodi Restaurant." Four of those eleven signatories—

⁷⁸ There is no evidence to refute Fitzpatrick's testimony that Lopez did not attend managers meetings or have the authority to hire, transfer, suspend, lay off, recall, promote, or discipline employees. (Tr. 980-982.) Fitzpatrick also denied that Lopez was given the role of "lead prep cook" and a February 24 chat post by Velazco recounted that "Chef Steve" explained to a complaining employee about Lopez: "she's not your boss, she's just another worker." (GC Exh. 5 at 2/24/23, 05:59:18.) I did not credit the testimony of Terminated prep cook Gabriela Galvez that Pradie referred to Lopez as her "prepping supervisor;" given her shifting explanations regarding her retention of a text exchange between her and Lopez. (Tr. 696-702, 708-716, 726-728, 732-734; GC Exh. 35.) Nevertheless, it is clear from the credible and undisputed evidence as to what Lopez's activities were and her role as the prep team's leader. I base that finding on the detailed testimony of dishwasher Artemio Reyes, (Tr. 426-432, 473-476.) which was corroborated by Osvaldo Martinez (Tr. 546-548.), as well as others who interacted with the kitchen staff, including baker Molly Thomas and Duffer. (Tr. 269-275, 293-296, 321-322, 327, 478-482, 525, 538-549, 631-636, 696-697.)

⁷⁹ As early as January 27, Union supporters considered Lopez to be part of the bargaining unit, but considered her to be part of the "anti-union team of traitors." (GC Exh. 5 at 1/27/23, 11:54:40, and 1/30/23 at 23:01:03.)

⁸⁰ The General Counsel's "motion to amend requested in this brief," is essentially a concession that "only one occasion of a threat of termination is alleged instead of three" at complaint paragraph 15(a).

⁸¹ I credited Reyes' detailed, spontaneous, and uncontroverted rendition of these two events; Lopez did not testify. However, Reyes was also unaware of any Lodi manager instructing Lopez to persuade or intimidate any employee to oppose the Union. (Tr. 434-437, 439-440, 443-444., 462-464; GC Exh. 9.)

Lizbeth Marmolejo, Fabian Tacuri, Jorge Chavez, and Jose Bautista—previously signed authorization cards.⁸²

14. The February 24 Meetings

At 2:30 and 5:00 p.m. on February 24, the Respondents convened unprecedented employee meetings in the Morrell Room.⁸³ The management representatives included Mattos, Fitzpatrick, Termyna, Czachor, Miller, Emily Roy, Matthew Landry, and Louis Alvarez. Schmidt attended and recorded both meetings. Thomas attended and recorded the 2:30 p.m. meeting. Neither employee had been invited to the meetings. Approximately 20 employees attended the 2:30 p.m. meeting, while 12 to 15 employees attended the 5:00 p.m. meeting. Mattos, Termyna, Alvarez, and Fitzpatrick spoke, while Landry interpreted to Spanish. Employees were not permitted to speak or ask questions.⁸⁴

At both meetings, Mattos spoke first in English, then in Spanish, and was followed by the others. Relevant portions of the 2:30 p.m. meeting follow:⁸⁵

00:04:15 (Mattos) I think we all agree that this is a pretty good place to work? Right, Molly?

00:04:34 Mattos: I think – I think that's what we strive for, right? Um, and I'm pretty . . . I have to say I'm pretty proud of the culture that we have. And honestly speaking, like, whatever is going on, it has nothing to do with culture that we stand for. I, I, I truly believe that the way of addressing things, Chris and, uh, Cesar, Luis, everybody, this, communicate, talking now. That's how -- that's how things get solved -- as human beings, right? Basic.

00:05:58 And we all have an opportunity to talk to Luis, uh, and hear about what this whole process is about. I'm including myself, I have no idea at all about this whole process. It's completely new to me.

00:06:15 And the reasons why I am opposed to the Union – and why we're opposing to the Union - - is, you know, I have certain concerns about creating a hostile atmosphere of work and workplace, which is so far my experience has been very hostile, and I can speak for myself, OK?

00:06:51 Um, those ones in the Union have been pretty aggressive with the coworkers. And this is how we're treating, and this is how we're treating you now.

⁸² The letter was received in evidence, but only because it was authenticated as a document given to management by Lopez. (R. Exh. 11-12; GC Exh. 38 at 52; GC-7dd, 7ee, 7jj, 7kk; Tr. 1118-1258-1262.) However, other than reflecting that Lopez opposed the Union, it merited little weight. The letter consists entirely of double hearsay as none of the individuals listed testified and were subjected to cross-examination.

⁸³ GC Exh. 38 at 35.

⁸⁴ Schmidt and Thomas testified credibly regarding these meetings and authenticated the recordings and transcripts. (Tr. 116-117, 142-145, 503-512, 627, 631.)

⁸⁵ GC Exh. 30(a)-(b).

00:07:07 Uh, can you imagine how it will be – uh, how, can you imagine how this will be later? Honestly, how we've been going? I, I'm a person- a very personable person. You know what I mean? I think - You know, you see me coming and going, saying, “hi” every day, shaking hands, right? . . . Giving space to everybody, but also, you know, helping whatever I need to help.

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0:08:09 And it's very unfortunate. It's very unfortunate that you know what I mean, like walking on eggshells, watching over your shoulder. I want everybody come forward here, honestly. You know, and this is the truth.

10

00:08:09 And it's very unfortunate. It's very unfortunate that you know what I mean, like walking on eggshells, watching over your shoulder. I want everybody come forward here, honestly. You know, and this is the truth.

15

00:08:23 Um, and I'm concerned about putting your families and yourself in the hands of a group that has no experience at all in operating – and also have no idea what our culture is as a restaurant – at all. And that's where I -- I draw the line. You know, I've been doing this for long -- long enough, and I take a lot of pride on what we have, and I go to sleep very comfortable and with a clear mind that we look after people.

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00:08:57 Um, I'm also concerned about that things have come badmouth this restaurant. In my personal, I think we are all pretty proud of where we work. It's something I could, I could read out of absolutely everyone. I think everybody takes pride and it's something that I do appreciate that.

25

30 But we have to look after what we have, ah, you know? There's not a family – a perfect family, as far as I know. You know? Some better than others. But, and portraying the restaurant negatively is not going to help business or anyone. Hi Eric, how are you?

00:09:43 If you want I start all over. Um, and I just don't get how the Union's attempt to portray the restaurant negatively will help at all, as I say. If anything, it just drives away customers and that will really hurt our job security, honestly speaking.

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00:10:08 Um, and what, really, this election comes down, ah, to is whether you have more faith in the management team and to address your concerns and your family concerns or whether you think that collectively bargaining will solve your problems.

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00:10:36 Once again, concerns you might have cannot be automatically fixed by the Union through the collective-bargaining process. Good faith negotiations could take days, weeks, months, or years, and nobody knows for sure, and that's a fact.

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Um, and during the bargaining process with the – sorry, during bargaining, bargaining process, Lodi will have the legal right to say “no” to any demands we felt wasn't in the best interest of the restaurant. Once again, Lodi is a very small business, OK? And there is a lot of misinformation. Ah, honestly speaking, it's been rough. I think it's been rough for everyone, but I can speak from my persona, right? It's been challenging and the only thing that I can do myself is to put out, right, on a day-to-day basis, figure it out how to make it work and to have, you know, amazing product, making sure that people are getting a fair, a fair fair . . . Once again, I understand that it's not easy. OK? But we keep up and we will be doing the best that we can.

Ah. And the truth is, like the, you know, what I'm laughing is, Eric, you just get here. But, you know, I think you know me. You know how I feel, how much I hate this, right? You know or no?

00:12:16 Um, and the truth is that this is going to just add a huge layer of bureaucracy, like a serious level, sorry for my language, of bullshit. In terms of, once again, we're human beings. Things get addressed by humans discussing and talking, right? It's the first time I hear from you, Eric.

00:19:48 (Termyna) . . . However, I want to make sure that all of you know that, you know, the best decision to help me help the group is for all of us to vote “no,” right? I support you, no matter what, I want to make sure that you're making the best decision for you and your families. Um, and through all of that, I'm here for you--100%-- um, but I think that we can do this together, right? I've had some really good conversations with everybody over the past couple of weeks. And those immediate conversations, that's how we get results done. Um, I don't think that we need anyone else to come between that on a day-to-day basis. You know how to access us. You know how to call us. You know how to reach us. And we'll always be there, but I think that we can do it, face to face, one-on-one and together.

00:23:05 (Fitzpatrick) Just this week I was handed two charges from the National Labor Relations Board – a federal document with my name on it. Not only will this thing affect my career I have spent fifteen years building, but as many of you may not know, I am a green card holder and when I go through renewals, they may look at federal documents such as these. So it's not just my career, they could also affect – affect my family. I know this is an emotional decision, as I'm crying. And it's not meant to be a reflection or a reaction to the [unintelligible] to the restaurant, but I'd be lying, if I said it didn't hurt.⁸⁶

⁸⁶ Fitzpatrick was visibly upset and cried during both meetings when she read this statement about her immigration status. (Tr. 505-506, 664, 673, 681-683; GC Exh. 13(a) at 00:13:37, 00:15:36.) Contrary to Cao's testimony, Fitzpatrick never mentioned deportation.

00:24:29 You can call, chat, or text to me about anything, um, like I've worked with you all on scheduling, time off, PTO, family emergencies. I've never denied; I've always tried to work around. And I just feel like a big Union contract like this is not gonna allow me the same flexibility that I currently have to change schedules or be there when you need to handle personal matters. No, it's just not the way it works.⁸⁷ So, um, I suppose, I am emotionally asking you guys to obviously vote "No." And like I said, it's, it's a shame that the federal document thing happened, something that's now a document that is public that can last forever, um, so even if this place was not even Union that doesn't go away. And that's a pity. It's my wife and my life here.

As he did at the 2:30 p.m. meeting, Mattos also relied on a script at the 5:00 p.m. meeting, but deviated from it at times. Relevant portions include the following statements:⁸⁸

00:00:00 (Mattos) It's been - personally, I can speak, it's been very rough, it's been very rough. I think each one of you - I know it's been very tough for management - and people. Yeah, it's been very hard - hurtful, like the whole situation. And I think we all really know that. It's been very aggressive, the approach. I think like, people have been intimidated and scared of, you know, like in the way that they've been [inaudible] imposed to listen to propaganda. We've just been trying to be open, as I said, like I've been trying to learn how to go about things and the implications.

Uh, and we wanted to have direct communication with everybody, you know, I honestly, I, I, I, I have worked in many places. And I'm, I'm proud of what we have. I know, I know that I have created a place that are a lot better than places I have worked on.

00:02:44 Why are we trust inexperienced people that, that hasn't been transparent from the beginning? I'm also concerned about the approach - there's been a lot of attacks, right? Like, to the restaurant, to the restaurant culture, to myself personally, I, you know, I don't think I deserve it. I think I treat everybody with respect and, and try to be available, you know? Say "hi" to everybody, "bye" to everybody. I help when I can. Um. And um, what this election really comes - what this - uhh - what this election really comes down is whether you have more faith on your management team or in the union. Who's the union? I don't know, you guys . . .

⁸⁷ Fitzpatrick's remarks about her continued ability to be flexible with employees was an empty gesture. As her January 26 and February 23 messages to Miller indicated, Fitzpatrick had already given her notice of resignation and was "happy to be used as a pawn . . . if and when y'all see fit." (GC Exh. 38 at 16-17.) Nevertheless, the Union's January 25 letter had already taken issue with the Respondent's flexibility in scheduling: "We suffer when our schedules are unpredictable and sent out at the last minute. *We demand consistent schedules, provided well in advance, regardless of the level of sales.*" (emphasis in original) (R. Exh. 2 at 2.)

⁸⁸ GC Exh. 13(a)-(b).

00:04:31 Um. And you know, let's face it, this whole thing would take months, weeks, years, until we come to agreement. And this is all gonna impact every single one of you. And that's a reality also nobody's really safe, you know. You know, you are not gonna get more money, because you ask for more money. You know, it's a business. It's a very small business in a big place and, you know, everybody's like blah, blah, blah, money rains from the sky.

00:08:20 Know that even if you sign – knowing that even if you sign the Union card, you still can vote "no," OK? So that's something that you need to know. It is a secret ballot. No one would know how you vote. Also does it, like – it's a safe environment. And, and that's one of the main concerns. I just want to make sure that it's safe. It's really unfortunate – and I know that it's been scary for a lot of people. And I talk to everyone, and I'm just trying to make sure that we all understand that it's safe, above all.

00:11:48 (Termyna) So, through all of this I want to make it very clear to everyone. Right, like I will continue to be an active part. I will continue to be part of your team. I will continue to be part of the Mattos Hospitality Team, and I will do whatever it takes to build future successes for all of us together. I'm going to keep going so, um...

So for all of us, right, it's important that you vote. That's really, just what Ignacio said, right, like, vote for yourself. Obviously we would like you to vote in a very specific way. But no matter what, know that we support you. We want to always make sure that you have all of the information that you need, you're making the right decision for yourselves, for your families, for your own careers, right? And through it all, I'll be here, right? And I think that's just the presence that I here is just to be here, to support you, to talk to you, to listen to you.

Um, I think you know, through this relationship that we're building, that's what it is, right? We are people that work with people. We can do this together, right? I, I know that I can do this for and with you. I don't think we need someone to get into it.

00:16:34 (Fitzpatrick) You can call or chat, or text me about anything. And I've worked with you on scheduling PTO, time off, family emergencies. And my fear is that with a union contract, that this may not allow me the same flexibility that I currently have to change schedules and be there for you guys and handle these personal matters and just be one on one with y'all. And this is how my management style is.

00:22:16 (Mattos) Uh? concerns? How do you say concerns, I have concerns in relation to the way? Right? In which they have approached us so far? I think it's been quite ...

00:22:30 Aggressive? And unfortunately? It has created a very bad work environment that has nothing to do with the reality that we have created? And I think we all? We can all speak personally that it has not been very pleasant? Right?

5 00:22:59 And if this is the beginning now? I mean? Then what's going to be next? Right? What will the dynamic be like between us? Right? I mean? How are we going to be communicating? How are we going to treat each other.

10 00:28:21 Having an intermediary seems to me to be a totally inefficient way to reach any type of solution.

00:29:08 The other thing. If you signed? If you signed the union cards? Uh?

15 00:29:16 You have to understand that? Because you signed? If you did not understand what you were signing? You can still vote? And again? It's safe to vote.

15. Mattos' February 24 Conversation with Velazco

20 On February 24, Juan Carlos Velazco, a barista, was on his break—but still on the clock—when Mattos called him over and talked to him in the hallway between the kitchen and the employee changing area for about 45 minutes. He did not tell Velazco that the meeting was voluntary. They proceeded to discuss several topics, including Velazco's work history and his interest in working more hours. At one point, Mattos told Velazco, whose position toward the Union was unknown to the Respondents (coded pink on their chart), that the Union was not good
25 for him and suggested that he “could grow more within the industry without the Union.” As the conversation ended, Schmidt passed in front of them without incident. After his conversation with Mattos, Velazco reported the encounter on the Core Committee Chat:⁸⁹

30 He was telling me that the UNION is not the right way to do things. He found out that I know Daniela Soto-Ines and Enrique Olivera (Mexican [celebrity] chefs) so he asked me about them. I told him that Daniela [is] my friend. Then he asked me [if] I was happy at Lodi, I answered NO! I like what I do but who's going to survive working only two days a week? And being treated in a disrespectful way.

35 *E. The February 2023 Election*

By the time the February 27 election rolled around, only eight employees were still displaying their Union insignia—Eric Schmidt, Molly Thomas, Yi Cao, Juan Carlos Velazco,

⁸⁹ I credited Mattos' denial over Velazco's inconsistent and unreliable testimony that Mattos pointed at Schmidt, referred to him as a pinche guero (Spanish for “fucking white person”) and told Velazco not to talk to him. First, Velazco's follow-up post detailing their conversation omitted any mention of such commentary by Mattos. Second, Velazco initially testified that he “did not reveal the contents of the conversation” to his coworkers. Then, confronted with the post of his conversation with Mattos, Velazco became evasive and insisted that “[i]t did happen.” (Tr. 795-796, 799-801, 806-807, 809-816, 1177-1178; GC Exh. 5 at 2/24/23:17:06:45; GC Exh. 38 at 37.) Finally, I did not consider Velazco's testimony about a tee shirt that he gave Schmidt two months later to be reliable proof that Mattos uttered the derogatory remark about Schmidt. (Tr. 813-816.)

Anna Weinstein, Carol Hamrick, Heather Duffer, and Osvaldo Martinez. At least 16 employees stopped wearing union pins, including Brenda Garcia, Lara Concha, Jacqueline Rosario, Osvaldo Hernandez, Luis Hernandez, Annie Cabrera, Gabriel Nobre, Carlos Carattini, Gustavo Perez, Jacob Greenberg, Karim Mitchell, Naftali Romero, Chirs Mazella, Artemio Reyes, Thomas Hawke, and Jordan Griffin. Moreover, at the union meeting just before the election, there were only five to six workers present.⁹⁰

The election was conducted on February 27 and 28. The tally of ballots listed 52 eligible employees.⁹¹ At the time, however, there were only 51 eligible employees, as one previously eligible employee resigned in early February. The election resulted in 21 votes cast in favor of the Union and 26 votes cast against the Union, with one non-deTermynative challenged ballot. Four eligible employees did not vote.⁹²

On March 6, the Union petitioned to set aside the results of the election by filing timely objections. The Respondents did not respond to the objections. On July 22, 2024, the Regional Director issued a Report on Objections and Order Directing Hearing. The Report on Objections concluded that the following objections raised substantial and material issues of facts to be resolved at by hearing.⁹³

Objection 3: The Employer made threats of job loss.

Objection 4: The Employer has incited racial prejudice to prevent a free election.

Objection 6: The Employer has said that the job conditions would be worse with a union.

Objection 7: The General Manager of the Restaurant told employees, within the 72 hours before voting began, that she would lose her Green Card because the Union listed her as the business contact in a ULP charge against the Employer.

Objection 11: Labor consultant Luis Alvarez made threats and misstatements of the law when telling assembled workers that they would no longer be able to communicate directly with their managers if the union was certified at the Restaurant.

F. Post-Election Developments

1. Fitzpatrick Announces That She is Leaving

At a pre-shift meeting on March 3, Fitzpatrick informed the employees that she was resigning and said a few words. She then turned abruptly and, quoting from posts by Yi Cao and

⁹⁰ Schmidt's identification of the open supporters before and after the meetings began on February 4 is undisputed. (Tr. 329-334.) He conceded, however, that he did not know why many employees stopped wearing Union insignia. (Tr. 341-342.)

⁹¹ GC Exh. 1(i).

⁹² There was no testimony as to how many of the 51 employees eligible to vote in the election were still employed by Lodi at the time of the hearing. However, Schmidt testified that "[c]urrently around 40 employees work at Lodi." (Tr. 22.)

⁹³ GC Exh. 1(gg).

Duffer in the Lodi Chat on February 25 and 28, respectively, said, “let me stop before I cry ‘fake tears.’” Schmidt reported Fitzpatrick’s comment on the organizing committee’s New Lodi Chat immediately after the March 3 pre-shift meeting ended at 5:22:46 p.m.: “Crazy developments here. Sophie quit at lineup and quoted our chat – “let me stop before I cry ‘fake tears’”⁹⁴

Yi Cao’s February 25 post stated the following: “not only she lied but also made her speech in tears is fake as well, I didn’t expect she pretended to cry in the second meeting as well.”⁹⁵ Four minutes later, Jacob Greenberg sent Fitzpatrick screenshots of the post.⁹⁶ In fact, Greenberg had been sending Fitzpatrick screenshots of the Union supporters comments on the Lodi Chat since February 4. Fitzpatrick, in turn, forwarded the screenshots to Director of Operations Miller.⁹⁷

Duffer’s February 28 post immediately after the Union lost the election on February 28 stated: “Wouldn’t be surprised if Sophie’s fake tears got to them.”⁹⁸

2. Lopez’s Statements to Velazco

On March 10, Juan Carlos Velazco was working at his barista station when Gladis Lopez asked him why he kept wearing a Union button. Velazco replied that he wore it because he liked the design. Lopez did not respond and left. The conversation lasted less than one minute.⁹⁹

On May 26, Velazco attended a Union meeting at Bryant Park. Flyers publicizing the meeting had been distributed to many employees. Later that day, Velazco was in the hallway between the kitchen and the employee changing area when Lopez asked him “how was the meeting in the Park.” Velazco replied that “[i]t was okay.” The conversation lasted about one minute.¹⁰⁰

3. The Respondents Close the Bakery

On September 5, the Respondents closed the bakery section of Lodi. The five bargaining unit employees working there at the time were given a two-week severance. The Respondents did not provide the Union with advance notice of this development and an opportunity to bargain over its effects.¹⁰¹

4. Respondents Implement a New Tip Policy

⁹⁴ This finding is based on the credible and testimony of Yi Cao and Schmidt which were corroborated by the posts.(Tr. 158-159, 674; GC Exh. 32.)

⁹⁵ GC Exh. 31(a) at 2/25/23 at 12:32:51 p.m.; GC Exh. 34.

⁹⁶ Fitzpatrick conceded that Greenberg sent her (Tr. 1033-1036; GC Exh. 38 at 20-28.)

⁹⁷ GC Exh. 38 at 19.

⁹⁸ GC Exh. 31(a) at 2/28/23, 5:47:53 p.m.

⁹⁹ Although he could not recall the date and had his recollection refreshed by his Jencks affidavit, I credited Velazco’s uncontroverted testimony regarding his conversation with Lopez. (Tr. 801-803.)

¹⁰⁰ I also credited Velazco’s recollection of this event, again refreshed by his affidavit, because it was uncontroverted. (Tr. 804-805.)

¹⁰¹ The Respondents admitted that they closed the bakery on September 5, but insist they did not have an obligation to bargain over the effects of that action. (Tr. 159-160.)

At a pre-shift meeting during the week of September 16, Director of Operations Miller distributed to employees a new “Tip Pool Policy (For All Tipped Food Service Employees).” The new policy permitted sommeliers, previously excluded, to participate in the tip pool. The employees were provided with the written policy and were instructed to sign and return it. The Respondents did not provide the Union with advance notice of this development and an opportunity to bargain over the decision or its effects.¹⁰²

5. Respondents Revise the Employee Handbook

On January 26, 2024 the Respondents emailed employees the 2024 Mattos Hospitality Handbook, applicable to all Mattos Hospitality employees. The Respondents did not provide the Union with advance notice of this development and an opportunity to bargain over the decision or its effects. Employees were directed to review and sign the handbook receipt acknowledgment by February 12, 2024.¹⁰³

The new handbook included numerous changes to the employees terms and conditions of employment contained in the March 2022 version of the handbook:¹⁰⁴

(a) Employee Discount Policy

The 2022 handbook provided employees with a food discount of “50% discount at [their] home restaurant” and “25% all restaurants within the Mattos Hospitality group.” The 2024 handbook eliminated the employee food discount benefit. On March 25, 2024, employees were informed that effective April 1, 2024, the new food discount: “25% discount at all restaurants within the Mattos Hospitality group” and “50% at all restaurants within the Mattos Hospitality group on [their] birthday or work anniversary.”¹⁰⁵

(b) Reasonable Accommodations

The following sections of the Respondent’s reasonable accommodations policy at page 15 of the 2022 handbook were omitted from the 2024 handbook:

Where a reasonable accommodation is being granted, written notice to the individual will indicate that either Mattos Hospitality:

- 1) will be able to offer and provide a reasonable accommodation as requested, or
- 2) will be able to offer and provide an alternative reasonable accommodation.

Where a reasonable accommodation is being denied, written notice to the individual will indicate one or more of the following:

- 1) an accommodation would not meet the requested need,

¹⁰² Schmidt credibly explained that adding sommeliers to the tip pool would effectively lower the share of tips that fell to each employee. (GC Exh. 16; Tr. 160.)

¹⁰³ GC Exhs. 18 and 20.

¹⁰⁴ The Respondents admit that the 2024 handbook effectuated all the alleged changes to the 2022 handbook. (GC Exh. 19.)

¹⁰⁵ GC Exh. 22.

- 2) an accommodation would cause an undue hardship on Mattos Hospitality's operations,
- 3) documentation of the need for the accommodation was inadequate,
- 4) an accommodation would require removal of an essential requisite of the job,
- 5) an accommodation would pose a direct threat, and/or
- 6) any other basis for denying an accommodation

(c) Investigations

The 2022 handbook stated at page 5 that "All employees, including managers and supervisors, are required to cooperate with any internal investigation of sexual harassment." At page 8, the policy stated that "Any employee may be required to cooperate as needed in an investigation of suspected sexual harassment."

The 2024 handbook expanded on the investigations policy under the section on "Complaint and Investigation of Sexual or Protected Class Harassment or Discrimination" at page 11: "All employees of the Restaurant are required to cooperate in any investigation conducted by the Restaurant concerning complaints or allegations related to this policy. Refusal to cooperate may result in disciplinary action."

(d) Employee Classifications

The 2022 handbook listed the following employee categories at page 25: full-time employees, part-time employees; non-exempt employees, and exempt employees. At page 25 of the 2024 handbook, an additional category was added: temporary or casual employees.

(e) Attendance Policy

The 2022 handbook's section attendance policy at page 27 subjected employees to termination if they "[failed] to report to a scheduled shift and [failed] to contact a manager prior to the start of the shift (No Call, No Show)." The 2024 handbook's attendance section at page 27 stated that "an employee who on more than one occasion is absent or late (by more than one hour) for work without properly notifying the Company (i.e., no-call/no-show) per the protocol set forth above will be considered to have voluntarily resigned their employment and will be separated from the Company accordingly."

(f) Personal Appearance Policy

The 2024 handbook added a personal appearance policy specifying standards for employees' hair and facial hair, personal hygiene and grooming, dress, jewelry, perfume/cologne, and makeup. Repeated violation of the policy subjected employees to "disciplinary action, up to and including termination."

(g) Paid Time Off

The 2024 handbook added a category of paid time off for newly added temporary/casual employees. In contrast to the annual accumulation of paid time off available to regular hourly

employees (96 hours) and salaried employees (176 to 280 hours), the maximum annual paid time off a temporary/casual employee could accrue was 56 hours.

(h) Family Meal Policy

The 2022 handbook at page 29, offered food service workers one family meal per shift, for which Lodi deducted \$3.60. The 2024 handbook at page 31 raised the price of the family meal to \$3.85.

LEGAL ANALYSIS

I. ALLEGED CLOSER SUPERVISION OF EMPLOYEES DURING THE CRITICAL PERIOD [¶ 10]

The complaint alleges that from “January 26 through February 28, 2023, the Respondents subjected Lodi’s employees to closer supervision during working hours by heightening managerial presence at the workplace. The Respondents concede that they increased the presence of managers during the critical period but insist it was solely for the purpose of ensuring adequate coverage and availability to answer employees’ questions about the February 27 election.

Employees should be free to participate in union activities without fear that members of management are “peering over their shoulders, taking note of who is involved in union activities, and in what particular ways.” *Flexsteel Industries*, 311 NLRB 257 (1993). While “management officials may observe public union activity,” those officials may violate the Act if their observation of the union activity is “out of the ordinary.” *Arrow Automotive Industries*, 258 NLRB 860, 860-861 (1981), enfd. 679 F.2d 875 (4th Cir. 1982); see also *Durham School Services*, 361 NLRB 407, 407 (2014) (observation of union activities in a public area was unlawful surveillance when manager “was observing employees in a way that was out of the ordinary”).

The testimony of the General Counsel’s witnesses regarding the frequency with which Miller, Termyna, and Czachor were present at Lodi prior to and after January 25 was inconsistent and, thus, unreliable. It is undisputed, however, that the amount of time that Miller, Termyna, and Czachor normally spent at Lodi increased after January 25. On January 26, Human Resources Director Termyna confirmed as much when she distributed the Respondents’ initial plan—the “First draft Lodi Plan”—for “Leadership presence on-site all day” on January 26, 27, and 28, as well as the presence of “DO [Miller], HR, Leadership . . . at all pre-shift meetings” during the week of January 30.” On January 29, Termyna informed employees at the four Mattos Hospitality locations that she and Czachor would be holding “Office Hours” at each location “to hear more about your experiences with Mattos Hospitality. During this time we will be dedicated to meeting with you and hope that you will take some time to share with us your ideas, things that you are excited about, or what you are worried or confused about.”

During the critical period, Fitzpatrick and Emily Roy, the floor manager, also spent more time than usual on the floor instead of the office. Again, how much time Fitzpatrick and Roy spent on the floor or in the office before and after January 25 was not clear from the inconsistent testimony of the General Counsel’s witnesses.

As a result of the additional “floor presence,” leadership engaged in conversations with some employees regarding the Union and/or the election. Mattos approached and was approached by certain employees regarding the election, including concerns over union dues. Fitzpatrick also had discussions with employees about the Union, including some who shared concerns about the pressure being applied by Union supporters. Fitzpatrick also brought in HR employee Matthew Landry, placed him in the office, and made him available to speak with employees who had questions. Additionally, on February 21, Miller instructed managers to ensure that there would be a continuous “floor presence” in their “respective areas” over the next two weeks to in order to “help the teams during the busy points of service” and “watch the floor.”

The increase in managerial presence alone is not enough to establish that employees were being more closely supervised during the critical period. See *Aladdin Gaming, LLC*, 345 NLRB 585, 585-86 (2005) (the “presence of respondent’s officials in the dining room was routine and their observation of employees engaged in solicitations was unaccompanied by coercive conduct”). As the Board noted in *Arrow Automotive Industries*, supra, management officials may observe public union activity, provided they do so in a way that is not “out of the ordinary.” Cf. *Shamrock Foods Company*, 366 NLRB No. 107 (2018) (managers emailing each other about the whereabouts of an employee who had engaged in protected concerted activities, and raising issue about the employee not taking breaks as scheduled when that was not done before the employee’s protected concerted activities is unlawful closer supervision).

As conceded by Union supporter Francisco Salas when asked if he noticed any change in management after January 25: “Not necessarily. It was just like - - not as many jokes going around say that probably there’s a little bit more tension around the room, but nothing out of the ordinary.” Schmidt’s vague and speculative testimony on this issue failed to prove otherwise: “afterwards it felt like they were in the office less, and they were watching us.” Nor was it established that Assistant Manager Emily Roy’s interruption of Thomas’ conversation with Velazco constituted closer supervision since there was an absence of proof that it was unusual for managers to instruct employees to get back to work if they were engaged in nonwork conversation during work time outside of their work areas.

In the circumstances, the proof fell short of establishing that the increased presence of managers at Lodi during the five weeks prior to the election was so “out of the ordinary” as to tend to unreasonably interfere with employees’ exercise of Section 7 rights. The allegation at Paragraph 10 of the complaint is dismissed.

II. ALLEGED SOLICITATION OF GRIEVANCES

The complaint alleges the following instances of unlawful solicitation of grievances during the critical period by managers: (1) Czachor solicited employee complaints and grievances and impliedly promised to resolve them on January 26 (¶ 11); (2) Termyna engaged in similar conduct on January 27 and 29, and February 21 (¶ 12(a), 12(b), and 12(d); and (3) Mattos engaged in similar conduct on February 24 (¶ 14(b)(ii)). The Respondents deny the allegations, insisting managers merely made themselves available to answer any questions employees had about the election and to hear their ideas.

Under the law, for a solicitation to be unlawful, “it must be accompanied by a promise to fix grievances.” *Uarco Inc.*, 216 NLRB 1, 2 (1974) (“[I]t is not the solicitation of grievances itself that is coercive . . . but the promise to correct grievances . . . that is unlawful.”). See *Maple Grove Health Center*, 330 NLRB 775, 776 (2000) (“[T]he solicitation of grievances during an organizational campaign accompanied by a promise, expressed or implied, to remedy such grievances violates the Act.”). An employer may, however, “rebut the inference of an implied promise by . . . establishing that it had a past practice of soliciting grievances in a like manner prior to the critical period, or by [showing] . . . that the statements at issue were not promises.” *Mandalay Bay Resort & Casino*, 355 NLRB 529, 529 (2010); cf. *Wal-Mart Stores, Inc.*, 339 NLRB 1187, 1187 (2003) (employer cannot rely on past practice to justify soliciting grievances during critical period where it “significantly alters its past manner and methods of solicitation”).

On January 26, Czachor told employees at a pre-shift meeting stated that it was “important to us” that employees “have all the information,” and felt “comfortable coming to us to talk about it.” She welcomed employees with “questions” to meet with her or any of the managers “in groups or however you see fit.” Referring to management’s “open door policy,” Czachor said, “even if it’s a last minute thing, it doesn’t need to be planned. Just please approach us.”

The Respondents’ sudden implementation of an “open door” policy was unprecedented. Nevertheless, Termyna’s offer to meet with employees to answer any questions on the day after they presented Mattos with the January 25 letter was premised on ensuring that employees “have all the information.” Such a statement would have been reasonably construed by employees as relating to the election and the claims raised in the January 25 letter. It was not a solicitation of grievances with an offer to remedy them.

On January 27, Termyna introduced herself to bakery employees Molly Thomas and Marlee Rosario, stated that she wanted to get to know them, and asked if they had any big ideas and wanted to meet with her separately. While there was no prior practice of management soliciting “big ideas” from employees, Termyna’s statement fell short of soliciting grievances, much less implying a promise to remedy any of the issues that prompted the organizing drive.

On January 29, Termyna emailed all employees at the four Mattos Hospitality locations, including Lodi, informing them that she and Czachor would be holding weekly “Office Hours” at each restaurant “to hear more about your experiences with Mattos Hospitality . . . and hope that you will take some time to share with us your ideas, things that you are excited about, or what you are worried or confused about. Please feel free to just approach us, or schedule some time with us here[.]” Here, Termyna again invited employees to share their ideas, but it went further by including their concerns (“what you are worried or confused about”). Although the statement amounted to a solicitation of grievances, it would not have been reasonably construed as a promise to remedy the issues detailed in the January 25 letter or other terms and conditions of employment.

On February 21, Termyna told Union supporter Duffer that she “just wanted to make see if there’s anything at all that you kind of want.” Termyna added that she was “so surprised by the things” that she was hearing and “just wanted to hear if there was anything that you had to say to me,” and to let her know “if there’s anything that like does come up over the next few days that like I can help with from, you know, kind of, from where we are.” Although Termyna started the conversation by asking Duffer if “there’s anything at all that you kind of want,” it soon became

evident that Termyna was seeking to respond to the assertions being made by the Union supporters. In any event, there was no implicit promise in Termyna's statement to remedy any grievances.

At the two February 24 group meetings, Mattos told about 35 employees "that the way of addressing things, Chris and, uh, Cesar, Luis, everybody, this, communicate, talking now. That's how – that's how things get solved – as human beings, right?" He then went on to say, "Giving space to everybody, but also, you know, helping whatever I need to help ... I want everybody to come forward here, honestly." Coming three days before the election, Mattos' statements at the employee group meeting would have been reasonably understood as soliciting concerns raised during the organizing campaign and offering to remedy them ("whatever I need to help").

In conclusion, Mattos' February 24 statement soliciting grievances and promising to help resolve them violated Section 8(a)(1) as alleged at ¶ 14(b)(ii). See *VT Hackney, Inc.*, 307 NLRB No. 15 (2018) (manager unlawfully solicited grievances with an implied promise to resolve them by asking employees what their concerns were, and said that he would bring their concerns back to management for resolution). However, the allegations of unlawful solicitation by Czachor and Termyna at ¶¶ 11, 12(a), 12(b), and 12(d) are dismissed. See *Butler Shoes N.Y., Inc.*, 263 NLRB 1031, 1032-33 (1982) (statement did not unlawfully solicit grievances where it was not coupled with the announcement of a new policy or implication that such grievances could be resolved; *Southern Monterey County Hospital*, 348 NLRB 327, 329 (2006) (respondent rebutted inference of solicitation by also stating he could not make any promises).

III. ALLEGED THREATS AND IMPLIED THREATS

A. Threat to Close the Restaurant

The complaint alleges at ¶ 12(c) that the Respondents, "[a]bout January 30, 2023, in the kitchen at Lodi, threatened employees with restaurant closure if employees unionized." That allegation was not proven. During the week of January 28, Termyna introduced herself to new line cook Kareen Mitchell, with Jacob Greenberg also present, and chatted briefly. It was Mitchell who mentioned his excitement about the Union campaign and then asked Termyna what she thought about that. Termyna replied that she had worked for unionized restaurants in the past and had a positive experience. She noted that, although a union might be beneficial for a larger organization, it may not have the same impact for the business or workers of other organizations. Termyna did not mention anything about a potential restaurant closure if the Union prevailed in the election. Thus, the statement failed to meet the threshold for establishing an unlawful threat to close the facility. *NLRB v. River Togs, Inc.*, 382 F.2d 198, 201 (2d Cir. 1967) (owner's statements as to the economic effects of unionization were not threats but protected speech predicting the likely economic consequences of unionization); cf. *Daikichi Sushi*, 335 NLRB 622, 623-624 (2001) (respondent violated the Act despite only indicating that closure is a possibility rather than a certainty). This allegation is dismissed. Additionally, Objection 3 (threats of job loss) is overruled.

B. Threats Regarding Employees' Immigration Status

The complaint alleges the following threats, implied threats or intimidation by the Respondents: (1) "About February 21, 2023, on the restaurant floor at Lodi, impliedly suggested to its employees that National Labor Relations Board (NLRB) proceedings can have negative

effects on their immigration status.” (§ 13(a)); (2) “About February 22, 2023, by the time clock at Lodi, impliedly suggested to its employees that NLRB proceedings can have negative effects on their immigration status.” (§ 13(b)); (3) “About February 24, 2023, impliedly suggested to its employees that the NLRB proceedings can have negative effects on their immigration status.” (§ 13(c)(i)); (4) “About February 25, 2023 threatened employees with loss of flexibility if they supported the Union.” (§ 13(c)(ii)); (5) “About February 25, 2023, in the Morrell Room, at Lodi, during the meeting threatened employees with unspecified reprisals if employees unionized.” (§ 14(b)(i)); and (6) “In about February 2023, in the kitchen at Lodi, directed employees not to engage in Union and/or protected concerted activities.” (§ 14(c)).

1. The Immigration-Related Remarks by Fitzpatrick

On February 21, Fitzpatrick told Schmidt, the leader of the organizing campaign, “this is my career ending week and you don’t seem to realize I’m on green card.” Schmidt did not say much in response. Also on February 21, Fitzpatrick was asked by Duffer, another leader of the organizing campaign, “how’s life” and “how it was going.” Fitzpatrick replied, “you know, here,” showed her the Board letter and said, “Thanks to your union, I could get my green card revoked.”

Finally, at the group meetings on February 24, Fitzpatrick complained that the unfair labor charges served on her that week would “affect my career I have spent fifteen years building, but as many of you may not know, I am a green card holder and when I go through renewals, they may look at federal documents such as these. So it's not just my career, they could also affect – affect my family. I know this is an emotional decision, as I'm crying. And it's not meant to be a reflection or a reaction to the [unintelligible] to the restaurant, but I'd be lying, if I said it didn't hurt.”

The General Counsel contends that a reasonable employee would have interpreted the above statements as threats with implied negative consequences on employees’ immigration status because they asserted their rights or were named in a federal document. I disagree. A reasonable employee would have interpreted Fitzpatrick’s statements as concerns for her immigration status because she was charged with having violated federal labor law, not because she asserted her legal rights or was named in a federal document. Moreover, the record indicates that the February 24 comments were limited to two of the Union’s supporters. The allegations at §§ 13(a), 13(b)), and 13(c)(i) are dismissed. Additionally, Objections 4 (employer inciting racial prejudice) and 7 (that Fitzpatrick would lose her Green Card because she was named in the charge) are overruled.

2. Threat of Loss of Flexibility and Unspecified Reprisals

The complaint alleges that the Respondents: (1) “About February 25, 2023 threatened employees with loss of flexibility if they supported the Union.” (§ 13(c)(ii)); and (2) “About February 25, 2023, in the Morrell Room, at Lodi, during the meeting threatened employees with unspecified reprisals if employees unionized.” (§ 14(b)(i)). The predicate for these allegations is Mattos’ statement to employees at the group meeting on February 24:

Uh, can you imagine how it will be – uh, how, can you imagine how this will be later? Honestly, how we’ve been going? I, I’m a person—am a very personable person. You know what I mean? I think—You know, you see me coming and going, saying, “hi” every day,

shaking hands, right? . . . Giving space to everybody, but also, you know, helping whatever need to help.

The General Counsel contends that Mattos' statement, coupled with the increased managerial presence and unfair labor practices that had been filed, would have been interpreted by a reasonable employee as a threat of negative changes if the Union won. I disagree. Mattos' statement suggested that his tendency to be personable and shake hands with employees might be affected if the Union came in. A reasonable employee, however, would not have interpreted that statement as impacting employees' terms and conditions, including the ability of supervisors and managers to be flexible. The complaint allegations at ¶ 13(c)(ii) and ¶ 14(b)(i) are dismissed.¹⁰⁶

3. Threatening Employees Not to Engage in Protected Concerted Activity

The complaint alleges at ¶ 14(c) that Mattos, "[i]n about February 2023, in the kitchen at Lodi, directed employees not to engage in Union and/or protected concerted activities." That allegation was not proven. Contrary to the General Counsel's assertion, Osvaldo Martinez's testimony that Mattos, standing three feet away, wagged a finger at him and said, "that should not be done," was not credible. This allegation is dismissed.

IV. ALLEGED SURVEILLANCE OR GIVING THE IMPRESSION OF SURVEILLANCE

The complaint alleges that Fitzpatrick, "[a]bout February 1, 2023, at Delis 48 located at 48 West 48th Street, New York, NY, engaged in surveillance of employees engaged in union activities." (¶ 13(e)). Additionally, the complaint alleges the following instances where the Respondents' representatives created an impression of surveillance: (1) about February 8, Luis Alvarez informed employees that he knew they were discussing him by text messages; (2) about March 2, at an employee meeting, Fitzpatrick quoted words from the Union's members' only WhatsApp chat. (¶ 13(d).); (3) Gladis Lopez, "[a]bout May 26, 2023, at Lodi, by asking employees about a specific union meeting, gave employees the impression that their union activities were under surveillance by Respondent. (¶ 15(d).).

1. Alleged Surveillance By Fitzpatrick

It is well established that managers may observe open and public union activity on or near the employer's premises, so long as they do not engage in behavior that is "out of the ordinary." *Arrow Automotive Industries*, supra at 860-861. See also *Milum Textile Servs.*, 357 NLRB 2047, 2072 (2011) (no unlawful surveillance where supervisor "in the course of her normal routine" regularly ate lunch parked on street next to the facility where she observed employees engaging in pro-union activities); cf. *Intertape Polymer Corp.*, 360 NLRB 957, 958 (2014) (respondent's supervisors engaged in unlawful surveillance when they "simultaneously distributed leaflets" at the plant gate along with union supporters and "there was no evidence that, prior to the campaign, it leafleted its own employees").

¹⁰⁶ The Union withdrew Objection 6 (job conditions would be worse with a union) due to the Board's decision in *Amazon.com Services, Inc.*, 373 NLRB No. 136 (2024).

There was no credible evidence that Fitzpatrick even observed—openly or discreetly—the Core Committee members as they met in Delis 48 on February 1. As demonstrated by Schmidt’s recording, the Core Committee was meeting on the second level in the back of the store as Fitzpatrick entered, purchased a beverage, and left. At no point did she turn in their direction. Nor was there sufficient evidence to refute Fitzpatrick’s testimony that she occasionally went to Delis 48 or other establishments for an energy drink or emergency milk for Lodi’s. Finally, the fact that Mattos and Termyna discussed and were aware of the Core Committee’s meeting four days later at Delis 48 has no bearing to Fitzpatrick’s patronage of that store on February 1. This allegation is dismissed. *Valmont Industries*, 328 NLRB 309, 318 (1999) (no unlawful surveillance where supervisor’s presence at motel, while union meeting was being conducted there, was coincidental and unrelated to union meeting).

2. Alvarez’s Statement Regarding Employees’ Text Messages¹⁰⁷

The “test for determining whether an employer engages in unlawful surveillance is an objective one and involves the determination of whether the employer’s conduct, under the circumstances, was such as would tend to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed under Section 7 of the Act.” *Greenbrier Rail Servs.*, 364 NLRB 279, 316 (2016); cf. *Metal Industries, Inc.*, 251 NLRB 1523, 1523 (1980) (employer’s visit to the employee parking lot was not unlawful surveillance because it was a longstanding practice).

On February 8, the Respondents’ labor consultant and statutory agent, Luis Alvarez, introduced himself to employees. In explaining his role, Alvarez stated, in pertinent part: “I know texts have been sent about some guy going around trying to tell you how to vote, that some bad guy is coming and he’s doing [unintelligible]. I want to explain exactly who I am.” He also alluded to the accusation that he was recording employees: “I came to have dinner the first day ... I have my cellphone with me, I’m having dinner and everything, what am I going to do? [] I am not going to disrespect the employees that are working [] recording people in the area.”

Alvarez was referring to the claims made by Schmidt in a February 4 Lodi Chat post, which he was made aware of and expressed his intention to address at his meetings with employees. Viewed from the perspective of a reasonable employee—certainly those members in the Lodi Chat group who would have been aware of Schmidt’s February 4 post about Alvarez—Alvarez’s February 8 comments created the impression that their Union-related chats were under surveillance in violation of Section 8(a)(1) of the Act. See *Starbucks Corp.*, 374 NLRB No. 8, slip op. at 4 (2024) (employer’s disclosure of its knowledge of employee chat messages created the impression that employee union activity was under surveillance); cf. *Bridgestone Firestone South Carolina*, 350 NLRB 526, 527 (2007) (employer did not give the impression that employee’s union activity was under surveillance because it merely informed employees that their coworkers have volunteered about ongoing union activity).

3. Fitzpatrick’s Statement Regarding Fake Tears

¹⁰⁷ The Union “conditionally” withdrew Objection 11 based on the Board’s decision in *Siren Retail Corp.*, 373 NLRB NO. 135 at 2 (2024) (Alvarez’s threats and misstatements of law regarding their ability to communicate directly with managers if the Union was certified).

At a pre-shift meeting on March 3, Fitzpatrick quoted critical language posted by Union supporters in the Lodi Chat about her emotional remarks at the February 24 employee meeting: “let me stop before I cry ‘fake tears.’” There is no credible evidence that Fitzpatrick learned of those comments through any other source. By specifically quoting language critical of her in the Lodi Chat, Fitzpatrick unlawfully created the impression that their union activities were being monitored by management in violation of Section 8(a)(1). See *Stevens Creek Chrysler Jeep Dodge*, 350 NLRB 1294, 1296 (employees would reasonably conclude that an employer is unlawfully monitoring their union activity where it tells them that it is aware of such activity without revealing the source of its information).

V. ALLEGED APPEAL TO RACIAL PREJUDICE TO DISCOURAGE UNION ACTIVITIES
AND PROMISES OF IMPROVED TERMS AND CONDITIONS OF EMPLOYMENT

The complaint alleges at ¶ 14(a) that Mattos, “[a]bout February 24, 2023 . . . (i) appealed to racial prejudice with purpose of discouraging employees to join or support the Union; and (ii) promised employees improved terms and conditions of employment including promotional opportunities if employees did not join or support the Union.”

On February 24, Mattos called barista Juan Carlos Velazco over and they proceeded to discuss Velazco’s work history and his interest in working more hours. At one point, Mattos told Velazco, whose position toward the Union was unknown to the Respondents (coded pink on their chart), that the Union was not good for him and suggested that he “could grow more within the industry without the Union.” After their conversation, Velazco shared on the Core Committee Chat that Mattos told him “the UNION is not the right way to do things,” and asked Velazco if he “was happy at Lodi.”

The credited evidence failed to establish that Mattos’ remarks to Velazco on February 24 included any appeal to racial prejudice or mention of promises to improve Velazco’s terms and conditions of employment or promotional opportunities if he opposed the Union. These allegations are dismissed.

The allegations at ¶ 14(a) overlap those in Objection 4 (inciting racial hatred to prevent free election). Additionally, the Union contends that the following statement by Alvarez to Spanish-speaking employees on February 8 was also highly inflammatory and invoked racial appeal to tilt Latin-American employees against the Union: “Why does this happen to most of us? In fact, usually, our people, when we don’t speak much English, they play us for suckers.” I disagree. Alvarez’s statement merely conveyed the fact that employees could be taken advantage of if they did not fully understand what the Union was telling them. Objection 4 is overruled.

VI. ALLEGATIONS AGAINST GLADIS LOPEZ

The complaint alleges at ¶¶ 15(a)-(d) that Gladis Lopez, acting as a supervisor and agent of the Respondents within the meaning of Sections 2(11) and 2(13), respectively, engaged in the following coercive conduct against Union supporters: (a) “[o]n dates in February 2023 . . . , threatened employees with termination in response to their union activity and support; (b) “[a]bout February 23, 2023, at Lodi: (i) interrogated employees about their union sympathies and support;

and (ii) directed employees to oppose the Union; (c) “[a]bout March 10, 2023, at Lodi, interrogated employees about their union sympathies and support; (d) “[a]bout May 26, 2023, at Lodi, by asking employees about a specific union meeting, gave employees the impression that their union activities were under surveillance by Respondent[s].”

Based on the uncontroverted testimony of dishwashers Artemio Reyes and Juan Carlos Velazco, I found that Lopez engaged in the conduct alleged at the allegations at ¶¶ 15(a)-(d). About two weeks before the election, Lopez asked Reyes whether he supported the “boss” or the Union. When Reyes replied that he “answered to no one,” Lopez told him to think about it and support the boss because he was a good person and gave them work. Several days later, Reyes was leaving the kitchen when he heard Lopez tell Juan Sosa Jimenez (Juanito) that all the employees would be replaced if the Union came into Lodi. On March 10, Lopez asked Velazco why he kept wearing a Union button. On May 26, Lopez, alluding to a Union meeting that took place earlier that day, asked Velazco, “[h]ow was the meeting in the Park?”

Although Lopez engaged in the conduct alleged, her actions are not attributable to the Respondents as a supervisor or agent pursuant to Section 2(11) or 2(13) of the Act. Lopez did assign work to the prep cooks based on the head chef’s food instructions, recommended discipline to the head chef, and informed the head chef when employees called out or requested leave. However, she did not have any of the typical duties of a supervisor—the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline employees, or adjust grievances. See *NLRB v. Onyx Mgmt. Grp. LLC*, 614 F. App’x 40, 40 (2d Cir. 2015) (lead outside groundman was not a “supervisor” even though he met with the property manager every morning and relayed the property manager’s wishes to outside groundmen). Nor was it established that Lopez engaged in anti-Union activities at the direction of management. See *Poly-America, Inc.*, 328 NLRB 667, 667 (1999) (employees would have reasonably believed that the alleged agents were expressing management’s antiunion views acting on management’s behalf). The allegations at ¶¶ 15(a)-(d) are dismissed.

VI. ALLEGED REFUSAL TO RECOGNIZE AND BARGAIN WITH THE UNION

The complaint alleges at ¶¶ 17-20 that, since January 25, the Respondents have violated Section 8(a)(5) by refusing to recognize the Union and provide it with notice of and an opportunity to bargain over the decision to change the following terms and conditions of employment or the effects thereof: closing the bakery; new tip policy; and employee handbook revisions to employee discount policy, reasonable accommodations policy, investigations policy regarding sexual harassment or discrimination, employee classifications, attendance policy, personal appearance policy, paid-time off for newly added temporary/casual employees, and family meal policy.

Relying on the Board’s decision in *Cemex Construction Materials Pacific, LLC*, 372 NLRB No. 130 (2023), the Acting General Counsel contends that a bargaining order is warranted based on the Respondents’ failure to bargain and recognize the Union, or file an RM petition. after being presented with a representation petition signed by a majority of Lodi’s unit employees, and then committing unfair labor practices during the critical period. Based on that allegation, the General Counsel also seeks an order requiring the Respondents to pay backpay to employees affected by the Respondents’ closure of its bakery on September 6, 2023. See *Transmarine Navigation Corp.*, 170 NLRB 389 (1968).

In *Cemex*, slip op. at 25-27, the Board modified the approach approved by the Supreme Court in *Linden Lumber Div., Summer & Co. v. NLRB*, 419 U.S. 301, 309-310 (1974), which held that an employer does not violate Section 8(a)(5) “solely upon the basis of its refusal to accept evidence of majority status other than the results of a Board election.” Relying on the Supreme Court’s recognition of its “broad discretionary” authority to fashion remedies, the Board adopted a new framework—to be applied retroactively—finding a violation of Section 8(a)(5) if a respondent: (1) fails to accept or refuses “the union’s request to bargain;” (2) at a time when the union “has been designated as representative by a majority of employees;” (3) in an “appropriate unit;” (4) and commits “unfair labor practices requiring the election to be set aside.” *Id.* at 29.

Three of the four *Cemex* factors were proven by the General Counsel. On January 25, the Respondents rejected a letter signed by 15 employees requesting recognition of the Union as their exclusive bargaining representative. Shortly thereafter, an appropriate unit consisting of a majority of employees—34 out of 52—had signed the representation petition.

Regarding the final factor, the evidence established that the Respondents violated Section 8(a)(1) during the critical period in two instances: (1) Alvarez’s statements at the February 8 employee meeting that he knew of text messages “about some guy going around trying to tell you how to vote;”¹⁰⁸ and (2) Mattos’ solicitation of grievances and offer to remedy them—“whatever I need to help—on February 24.¹⁰⁹ However, the issue remains whether the two violations require that the February 27 election be set aside and subject the Respondents to a bargaining order.

In *Cemex*, the Board restated the long-established test for when to set aside an election in the face of an employer’s violation of Section 8(a)(1): “an election will be set aside based on an employer’s critical-period violation of Sec. 8(a)(1) unless the ‘violations . . . are so minimal or isolated that it is virtually impossible to conclude that the misconduct could have affected the election results.’” *Id.* at 26 n. 142, citing *Lucky Cab Co.*, 360 NLRB 271, 277 (2014)). The Board has applied this standard by considering “all relevant factors, including the number of violations, their severity, the extent of dissemination, the size of the unit, the closeness of the election (if one has been held), the proximity of the conduct to the election date, and the number of unit employees affected.” *Bon Appetit Mgmt. Co.*, 334 NLRB 1042, 1044 (2001).

In determining the severity of an employer’s unfair labor practices during the critical period prior to an election, the Board considers whether they amount to “hallmark violations.” Hallmark violations are considered the most serious forms of violations because they tend to have such a coercive and long-lasting impact on employees’ free choice in a potential rerun election that, absent “some significant mitigating circumstance,” they generally warrant a bargaining order “without extensive explication.” *Cemex*, supra at 14.

Hallmark violations include job loss, layoffs, discharge, discipline, reassignments, demotions, facility closure, changes to terms and conditions of employment, and related threats,

¹⁰⁸ Alvarez’s recording of employees while having dinner at Lodi was not alleged in the complaint.

¹⁰⁹ Fitzpatrick’s unlawful statement on March 3 regarding comments about her shedding “fake tears” regarding her immigration status gave employees the impression that their union-related communications were under surveillance. However, the comments did not occur during the critical period.

statements of futility, and granting or promising to grant increased wages and benefits, *Cemex*, supra at 14 (threats of plant closure and job loss, and discipline and discharge of union supporter); *Spike Enterprise, Inc.*, 373 NLRB No. 41, slip op. at 9-10 (2024) (discriminatory discharge of union supporters); *List Industries, Inc.*, 373 NLRB No. 146, slip op. at 4 (2024) (changes to employees' terms and conditions of employment, statements to all employees that it would be futile to select union representation, and the discriminatory suspensions and discharges of two union supporters); *Wendt Corp.*, 371 NLRB No. 159, slip op. at 3 (2022) (threat of job loss); *Stern Produce Co., Inc.*, 368 NLRB No. 31, slip op. at 2, 5 (2019) (job loss, layoffs, plant closure); *Hogan Transports, Inc.*, 363 NLRB 1980, 2005 (2016) (grant of wage increases and benefits); *In re Stevens Creek Chrysler Jeep Dodge, Inc.*, 357 NLRB 633, 638 (2011) (discriminatory discharge of union supporter); *Cardinal Home Products*, 338 NLRB 1004, 1011 (2003) (threats of plant closure and job loss); *General Fabrications Corp.*, 328 NLRB 1114 (1999) (discharge, layoff, and suspension of union supporters, threats of job loss, plant closure, and statement that it would be futile to bring in the union); *NLRB v. Jamaica Towing, Inc.*, 632 F.2d 208, 212-213 (2d Cir. 1980) (plant closure, and reassignment or demotion of union supporters).¹¹⁰

The Section 8(a)(1) violations found during the critical period—Alvarez's February 8 statement which gave employees the impression that their comments about him were under scrutiny and Mattos' February 24 statement soliciting complaints and promising to "help"—were not hallmark violations. See *Evergreen America Corp.*, 348 NLRB 178, 181 (2006) (classifying the following as non-hallmark violations: "13 separate instances of unlawful interrogations by 11 different supervisors; 15 instances of implied promises to remedy solicited grievances; eight instances of actual promises to do so; two instances to which employees were instructed not to attend union meetings, not to read union literature and to throw the literature away; and one instance of creating the impression that the union activities of employees were under surveillance.")

Given the absence of hallmark violations, a bargaining order is not warranted. The Respondents also contend such a remedy is inappropriate because Lodi has experienced a 74% turnover of employees since February 2023. Although that assertion is not supported in the record, Schmidt testified that there were "around 40 employees" at Lodi at the time of the hearing—a substantial decrease of 21.5% from the 51 employees eligible to vote in the election. See *Stern Produce*, 368 NLRB No. 31 (2019) (Board declined to issue a bargaining order because there were no hallmark violations and 3 1/2 year lapse of time was unlikely to be enforced). Accordingly, the Section 8(a)(5) allegations at ¶¶ 17-20 are dismissed.

The remaining question is whether the two Section 8(a)(1) violations justify a rerun election. I conclude that they do not. Generally, Board policy requires that an election be set aside based on an employer's critical period violations which have "resulted in substantial interference" with employees' "exercise of a free and untrammelled choice in an election." *Dal-Tex optical Co.*, 137 NLRB 1782, 1786 (1962). The exception to this policy is when the violations are so minimal

¹¹⁰ The General Counsel concedes that while immigration-related threats have not been designated as hallmark violations, they have been found serious enough to warrant *Gissel* relief. *Justak Brothers*, 253 NLRB 1054, 1084-1085 (1981), enf'd. 664 F.2d 1074 (7th Cir. 1981) (Gissel-level violations included threats that unionization could lead to deportation of undocumented workers). In any event, there is no finding that the Respondents engaged in such conduct.

or isolated that it is “virtually impossible to conclude that the misconduct could have affected the election results.” The factors to consider include “the number of violations, their severity, the extent of dissemination, the size of the unit and other relevant factors.” *Union Tank Car Company*, 369 NLRB No. 120, slip op. at 10 (2020), quoting *Clark Equipment Co.*, 278 NLRB 498, 505 (1986).

None of the Union’s objections to the election were sustained and there were only two Section 8(a)(1) violations during the critical period. Alvarez’s February 8 statement informed six employees that he was aware of employees’ comments in the Lodi Chat identifying him as Respondents’ labor consultant and accusing him of recording employees while he ate dinner at Lodi. There is no credited evidence that Alvarez’s statement was disseminated beyond that meeting. The second violation occurred at a meeting attended by about 20 employees on February 24, just three days before the election. During the course of a long statement presenting the Respondents’ reasons for opposing the Union, Mattos stated: “helping whatever I need to help ... I want everybody to come forward here, honestly.”

Both statements were made to a determinative number of employees given the five-vote difference in the election, although the February 8 group included a leading Union supporter. Alvarez’s February 8 statement was an isolated incident, occurred 19 days before the election, and merely communicated to employees what they were already cautioning each other about—that there were anti-Union employees on the Lodi Chat. Mattos’ February 24 statement amounted to a vague solicitation and offer to help employees by urging them to “come forward” at that meeting.

It is virtually impossible to conclude that the two violations resulted in “substantial interference” affecting the election results. Both statements amounted to minimal violations during an election campaign that was beset by the documented concerns of an indeterminate number of employees in the Lodi and Core Chats about: (1) the ramifications of joining a union because of their immigration status; and (2) union dues, which employees were not informed about when they signed their authorization cards. The record revealed that anti-Union employees Gladis Lopez and Guillermo Cesar Carino played a significant role in stoking concerns over those issues. However, there was insufficient evidence to establish that either of them acted at the behest of the Respondents. There was evidence of communications between Alvarez and Guillermo Cesar Carino regarding the Union. Prior to January 25, however, Carino had already warned a coworker that he would have to oppose the effort to unionize because undocumented employees were not lawfully entitled to join a Union.

CONCLUSIONS

1. The Respondents, Mattos Hospitality, LLC and Tourbillion1, d/b/a Lodi are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, Restaurant Workers Union, Local 1, is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondents violated Section 8(a)(1) of the Act on: (a) February 8, 2023, by telling employees that he knew about their text messages discussing his role as the Respondents’ labor representative and accusing him of recording employees at Lodi, Luis Alvarez, the Respondents

Section 2(13) agent, gave employees the impression that their union-related communications were being scrutinized; (b) on February 24, 2023, by asking employees to come forward at an election-related meeting with requests so he could help, Ignacio Mattos, Lodi's chief executive officer, solicited complaints and offered to help resolve them; and (c) March 3, by quoting critical language posted by Union supporters in the Lodi Chat about her "fake tears" at the February 24 employee meeting, Sophie Fitzpatrick created the impression that their union activities were being monitored by management.

4. The above unfair labor practices affected commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents have 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. The Respondents will also be ordered to post the standard Board notice at Lodi and distribute the notice electronically if the Respondents customarily communicate with their employees by such means.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹¹¹

ORDER

The Respondents, Mattos Hospitality, LLC and Tourbillion1, d/b/a Lodi, New York, New York, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Telling employees that they know about their text messages, social media posts, or other communications relating to union or other protected activities.

(b) Soliciting employees' complaints and offering to remedy them.

(c) In any like manner, interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

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

(a) Within 14 days after service by the Region, post at the Lodi restaurant in New York,

¹¹¹ If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

New York, the attached notice marked "Appendix."¹¹² Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondents' authorized representative, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted at Lodi. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or internet site, by text message and/or other electronic means, if the Respondents customarily communicates with their employees by such means.

(b) Within 21 days after service by the Region, file with the Regional Director for Region 2 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

It is further ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

In accordance with Section 102.69(c)(2) of the Board's Rules and Regulations, Case 02-RC-310927 is severed and transferred to the Regional Director for Region 2 for further processing.

Dated, Washington, D.C. April 30, 2025



Michael A. Rosas
Administrative Law Judge

¹¹² 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."

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 you that we know about or are aware of your text messages, social media posts, or other communications with other employees relating to the union or other protected activity.

WE WILL NOT solicit your complaints and offer to remedy them during the period of time between the filing of a union representation petition and the representation election.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your above stated rights guaranteed under Section 7 of the National Labor Relations Act.

_____Mattos Hospitality, LLC
(Employer)

Dated: _____ By: _____
(Representative) (Title)

_____Tourbillion1, d/b/a Lodi

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

26 Federal Plaza, Room 3614, New York, NY 10278-0104

(212) 264-0300, Hours: 8:45 a.m. to 5:15 p.m.



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 (212) 264-0300.