City and County of Denver

201 West Colfax Avenue, #705 • Denver, Colorado 80202
(720) 913-WAGE (9243) • Denvergov.org/DenverLabor

Glenarm Dining Services d/b/a Diamond Cabaret
c/o [redacted]

WAGE DETERMINATION

Re: Glenarm Dining Services, Inc. d/b/a Diamond Cabaret

And imposing liability on Big Sky Hospitality Holdings, Inc. and RCI Hospitality Holdings, Inc.

February 26, 2025

I. INTRODUCTION AND SUMMARY OF DETERMINATION AND PENALTIES

Glenarm Dining Services owns and operates Diamond Cabaret (the "Diamond" or the "Club"), a popular strip club located in Denver, Colorado. The Diamond depends on the hard work of its entertainers, servers, bartenders, and other workers who create the hospitality experience which attracts clients—and the Club's operations involve widespread wage theft against those very workers who make the business successful.

The Denver Labor division of the Denver Auditor's Office ("Denver Labor" or the "Division") is tasked with finding, fixing, and stopping wage theft. Wage theft happens any time an employer fails to pay or provide workers all wages to which they are entitled. It is one of the most prevalent crimes in Colorado, and every year it results in hundreds of millions of dollars in losses to affected workers. Many of the victims of wage theft earn a modest income, live paycheck to paycheck, and struggle when they do not receive the wages they have earned.

While wage theft is extremely damaging to the people who suffer it, its harms reverberate far beyond the individual. It keeps families and communities poorer than they would and should be. Law-abiding employers are unable to fairly compete against other businesses using illegal practices to profit from stolen wages, and crucial government programs go underfunded by employers who misclassify workers, underpay wages, and evade paying their fair share of taxes. Government action is necessary to defend the public interest, protect high-road employers who follow the law, ensure a level playing field, and guarantee that all may prosper from a shared economy.

On May 4, 2023, Denver Labor proactively opened a wage investigation into the Diamond. The Division did so based on research establishing that bars and restaurants, and especially strip clubs, are at high risk for wage and hour violations.[1] This investigation bore fruit and revealed that wage theft is part and parcel of the Diamond's business model. Over the course of years, the Club has stolen millions of dollars from its workers, including bartenders, servers, DJs, and entertainers.

This Determination addresses two groups of workers, all of whom have suffered violations of their fundamental wage rights on every shift for more than two years:

1. Workers classified by the Diamond as tipped employees, including bartenders, servers, barbacks, and DJs. And,

2. Entertainers (also called strippers or dancers), whom the Diamond misclassifies, pays nothing to, and steals money from.

For the first group, the Diamond violates Denver's Minimum Wage Ordinance (MWO) and Civil Wage Theft Ordinance (CWTO) (together, the "Ordinances") in two primary ways. First, managers illegally take a share of employees' tips. Under applicable law, managers cannot keep any portion of the tips in question, which belong to and are earned by bartenders, servers, and entertainers.

Second, the Diamond pays less than the required minimum wage to many of its employees. Under normal circumstances, businesses may pay a sub-minimum wage to qualified food and beverage workers who regularly receive tips from customers. But because it requires employees to share tips with managers, the Club has lost the privilege of the sub-minimum wage. The Diamond has underpaid every tipped employee by $3.02 per hour for every hour worked for more than two years.

During the time period covered by the Division's investigation, the Diamond stole millions of dollars from its tipped workers. These violations are no accident, nor do they reflect a good faith misunderstanding of the law. They are the result of a system designed to depress staff income and divert money to managers and the Club itself.

This tip theft pales in comparison to the Club's treatment of its entertainers, however. The Diamond misclassifies these women, pays them nothing, takes gratuities they earned for their work, and claims they have no workplace rights. When the Diamond is open and dozens

[1] *See, e.g.*, Daniel Galvin, *Deterring Wage Theft: Alt-Labor, State Politics, and the Policy Determinants of Minimum Wage Compliance*, 14 Persp. on Pol. 324, 331 (2016) (finding a minimum wage violation rate of 22% in "food services and drinking places"); Erin Mulvaney and Andrew Wallender, *Strippers Winning Employee Status Challenge Gig Economy's Norms*, Bloomberg Law (Oct. 21, 2019) (detailing hundreds of lawsuits against strip clubs for misclassification and wage theft). In addition, dozens of courts have found that strip clubs commit wage theft, particularly in the form of misclassification and minimum wage violations. *See, e.g.*, *Shaw v. Set Enterprises*, 241 F. Supp. 3d 1318, 1323 n. 5 (S.D. Fla. Mar. 17, 2017) (citing more than 30 cases).

of dancers perform labor for the Club's profit and benefit, subject to its rules and oversight, they do so while being paid $0 per hour by the Club.

But as a matter of law, entertainers are **workers** who are entitled to the fundamental protections of Denver's Minimum Wage and Civil Wage Theft Ordinances.

Beyond the Club's failure to pay these workers any wage at all, it also forces entertainers to pay money to work. These fees put entertainers' earnings into the red and drive their hourly rates **below** $0. Specifically:

1. Before beginning work, all entertainers must pay a "house fee" of up to $85, based on when they clock in for work;

2. Before beginning work, all entertainers must pay a "promo fee" of $8; and

3. The Diamond imposes fines against entertainers who violate certain rules.

Businesses cannot require workers to pay for the privilege of working. Nor can they force workers into mandatory, non-revocable fines and fees, especially when those fees reduce hourly wages below minimum wage. *See* C.R.S. § 8-4-105; Denver Labor Civil Wage Theft Rule 5.8.

To be clear, Denver Labor **does not** find that entertainers are employees under Colorado law. The Division concludes only that they are "workers" pursuant to the Ordinances. **This Determination, therefore, does not require changes in the working conditions of entertainers except in one crucial regard: the Diamond may no longer commit wage theft against them.**

To remedy these violations, Denver Labor:

1. **Orders the Diamond to pay $4,800,746.58 in restitution, inclusive of stolen tips, unpaid minimum wages, 300% damages, and 12% annual interest from the date the wages were first owed.** Within 14 days of the date of this Determination, the Club shall remit payment via check made out to the City and County of Denver, c/o the Auditor's Office, which shall dispense these funds to all affected workers.

   This is an initial calculation, because for more than a year the Diamond has illegally withheld records of hours worked, wages earned, and fees paid by entertainers. The Club is ordered to produce such records. Once it does so, the Division will calculate full restitution owed.

2. **Orders the Diamond to pay wage theft fines to the City and County of Denver equal to 100% of unpaid and stolen wages.** As of today, that fine is **$1,148,470.48.** However, because the Diamond has unlawfully withheld records for entertainers, the Division is unable to fully calculate the scope of the Club's wage theft. When Denver Labor receives those records, applicable wage theft fines will increase proportionally.

   These fines will increase in two additional circumstances. First, if the responsible

parties do not ensure payment of restitution as required within 14 days, fines shall increase to 150% of unpaid wages. Second, if the responsible parties do not pay restitution and produce withheld records within 30 days, fines shall increase by $5,000 per affected worker—including absent entertainers.

Fines shall decrease to 50% of unpaid wages if the responsible parties agree to fully comply within 14 days of the date of this Determination.

3. **Imposes liability on Big Sky Hospitality Holdings, Inc. ("Big Sky") and RCI Hospitality Holdings, Inc. ("RCI") pursuant to D.R.M.C. § 58-24.** These entities directly and indirectly benefit from the labor of all workers encompassed in this Determination. In addition, RCI—itself, through its officers, and through its wholly-owned and controlled subsidiaries—exerts significant control over the working conditions of the Club, and is the entity that is truly responsible and legally liable.
4. **Orders the Diamond to produce records reflecting hours worked, wages paid, and all financial transactions between it and all entertainers during the time-period encompassed by the Division's investigation.** And,
5. **Orders the Diamond, Big Sky, and RCI to cease violating the Ordinances and the fundamental wage rights of workers at the Club, including entertainers, servers, and bartenders.**

II. BACKGROUND

A. Denver Labor and Applicable Legal Standards

Denver Labor is tasked with enforcing Denver's Prevailing Wage, Minimum Wage, and Civil Wage Theft Ordinances. Wage theft occurs whenever a worker does not receive the wages to which they are legally entitled, as promised and required by law, including applicable local, state, and federal law, under contract, or based on any other enforceable standard. Civil Wage Theft Rule 1.3.

Since January 1, 2020, Denver has had its own enforceable minimum wage requirements. The MWO both incorporates and supplements the protections of Colorado law. *See* D.R.M.C. §§ 58-14 through 58-16.

As relevant to this Determination, employers in the City and County of Denver are required to pay all workers at least the following rate per hour of work based on the year the work is occurring:

- 2021: $14.77
- 2022: $15.87
- 2023: $17.29
- 2024: $18.29
- 2025: $18.81

D.R.M.C. § 58-15(c); Civil Wage Theft Rule 5.2.

In appropriate circumstances, employers may reduce their minimum wage obligations by applying a "tip credit" of up to $3.02 per hour to qualified food and beverage workers. D.R.M.C. § 58-15(c)(3). Put another way, this allows them to pay a sub-minimum wage to certain workers. To be eligible for the sub-minimum wage, a person must work in the food and beverage industry and perform significant customer-service functions in contact with patrons related to food and beverage work. Workers who do not perform tipped work are ineligible. Finally, "tips" are defined as a "gratuity" or "gift given by a customer for services provided." Rule 7.2B; *see also* Informative Notice and Formal Opinion (INFO) #3C, p. 1.

Tips belong to workers the moment they are given, and no supervisor, manager, or owner of a business may "assert a claim to, or right of ownership in, or control over gratuities." C.R.S. § 8-4-103(6); 7 CCR 1103-1, Rule 6.1; INFO #3C, p. 4 n. 19. Managers and supervisors may receive tips only in a very limited circumstance: where a customer tips them **directly** based on services they **directly and solely** provide. 29 C.F.R. § 531.52(b)(2); INFO #3C, p. 4 n. 19 (incorporating this standard).

Under Denver and Colorado law, the privilege of the sub-minimum wage is lost if there is "employer-required sharing of tips with workers who do not customarily receive tips, such as managers." Civil Wage Theft Rule 7.2E; 7 CCR 1103-1, Rule 1.10(B). When supervisors or managers receive a portion of the tips paid by customers for labor or services performed by workers, the business commits two forms of wage theft, and must both a) return to employees any tips unlawfully kept, and b) pay the full, untipped minimum wage.

B. How the Diamond manages tips

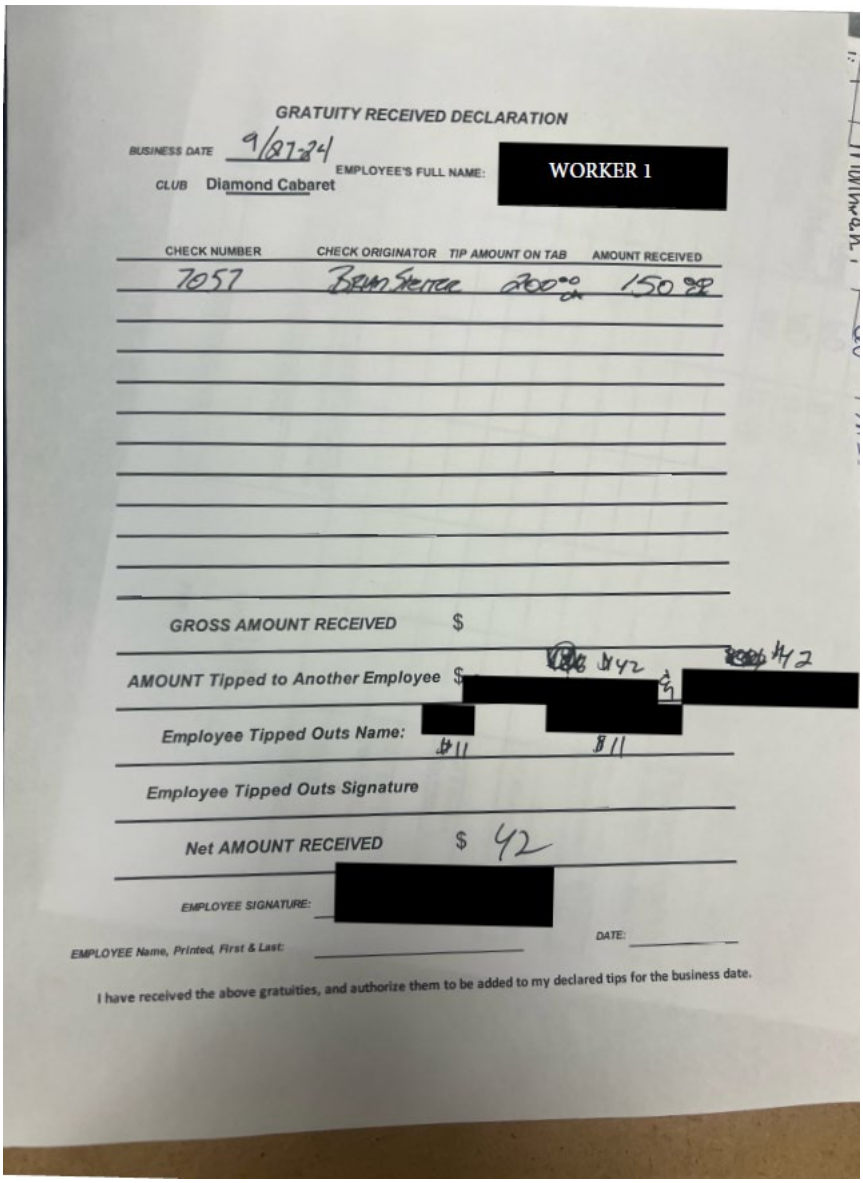
The Division opened its investigation into the Diamond on May 4, 2023. Ex. A, DL0001. As relevant to workers classified as tipped employees, the Division sought records reflecting hours worked, wages paid, and deductions imposed against all workers; any applicable employee/work handbooks or written policies; and any tip pooling policy, including what and how workers contribute to the tip-pool and how tips are paid. *Id.* at DL0001-2, 4-5. The Diamond provided wage and hour records, including records for its barbacks, bartenders, DJs, house mom, servers, and managers. It falsely told the Division, however, that "there are no written . . . policies for any employees." *Id.* at DL0008, 29. It maintained this position for more than a year, only for Denver Labor to discover the misdirection in December of 2024. *See id.* at DL0147, 158, 210-11. In addition, the Diamond asserted that managers do not receive 25% of tips on Diamond Dollars transactions and "do not participate in tip pools." Ex. A, DL0091, 93, 112-13. These statements are also false.

On September 17, 2024, to test the Diamond's claim that managers do not share in gratuities with tipped employees, the Division also requested all "Gratuity Received Declaration" (GRD) forms for the time-period encompassed by its investigation into the Diamond. *Id.* at DL0084-86. The Club has tipped employees review and sign GRDs at the end of each shift. These forms reflect tip splits, both between workers (such as bartenders and servers) and between workers and managers. *See* Ex. B (sampling of 5 GRDs, which the Division shared with the Clubs on October 2, 2024). The Club did not provide any completed

GRD forms during the applicable time-period. It explained that "[a]ny forms used for a particular day are not saved." Ex. A, DL0115-16. The Club continued to destroy these forms even after the Division made additional requests for GRDs. *Id.* at DL0133-34.

These GRDs are highly relevant. They are the **only** business record reflecting specific tip splits between workers and management.

Despite the Club's decision to destroy these records, two workers at the Diamond ("Worker 1," or "D.D," and "Worker 2," or "K.G.") provided the Division with more than 80 photographs of GRDs. Two typical examples are included:


GRATUITY RECEIVED DECLARATION

BUSINESS DATE 9/27/24

CLUB Diamond Cabaret

EMPLOYEE'S FULL NAME: WORKER 1

CHECK NUMBER	CHECK ORIGINATOR	TIP AMOUNT ON TAB	AMOUNT RECEIVED
7057	[redacted]	200.00	150.58

GROSS AMOUNT RECEIVED $

AMOUNT Tipped to Another Employee $ [redacted] 42 [redacted] 42

Employee Tipped Outs Name: [redacted] 11 [redacted] 11

Employee Tipped Outs Signature

Net AMOUNT RECEIVED $ 42

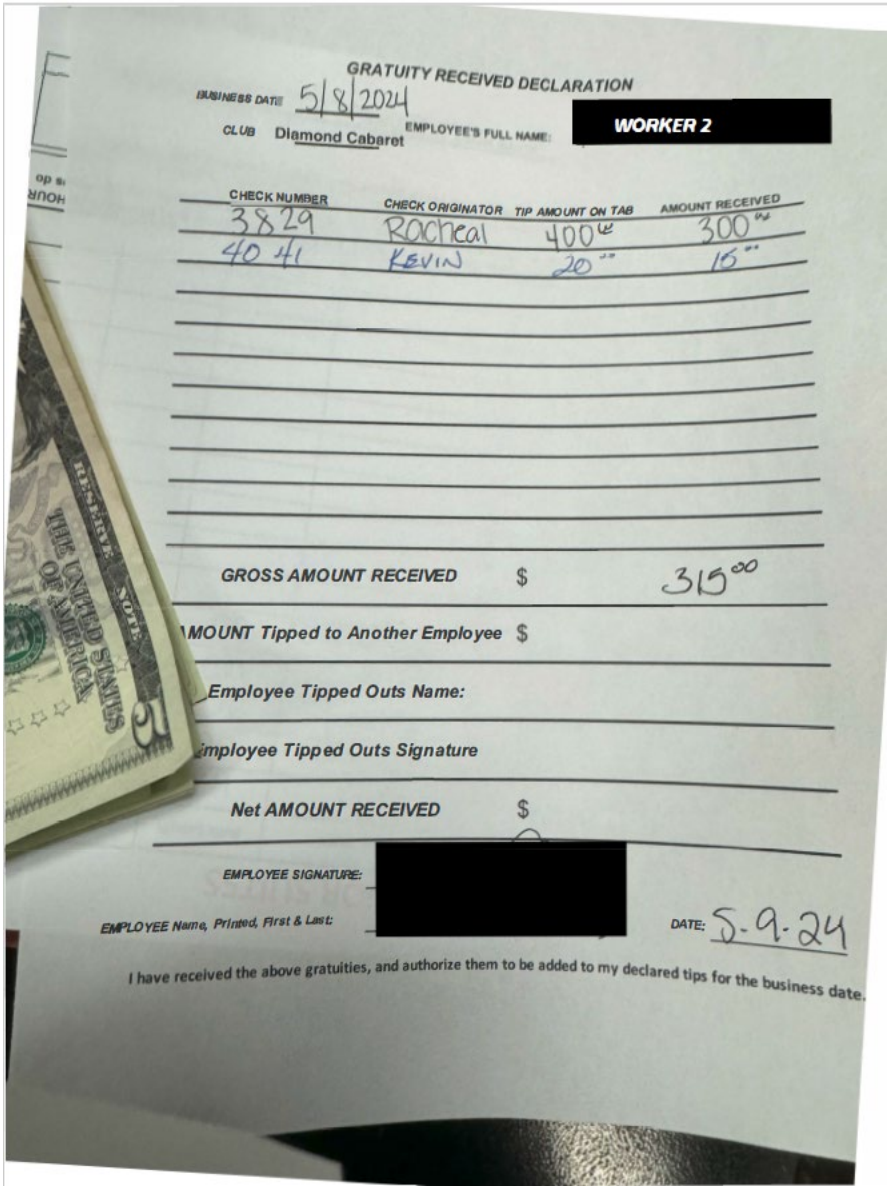
EMPLOYEE SIGNATURE: [redacted]

EMPLOYEE Name, Printed, First & Last: _____ DATE: _____

I have received the above gratuities, and authorize them to be added to my declared tips for the business date.

Figure 1: Image of Gratuity Received Declaration (GRD) dated September 27, 2024, for Worker 1.

The first GRD example, from September 27, 2024, includes [redacted], a manager at the Club. That shift, a customer tipped $200 on check number 7057. Worker 1 (among others) provided the actual hospitality services for which this customer paid. However, her manager kept $50 of the $200 tip and remitted $150 to Worker 1. Worker 1 then split the tip further (by prior, lawful agreement) with a certain number of her coworkers. In the end, Worker 1 received $42 of the $200 tip from check number 7057. Worker 1 received less money from the tip than her manager, who did not perform any relevant tipped work and was not eligible to receive any gratuities.


GRATUITY RECEIVED DECLARATION

BUSINESS DATE 5/8/2024

CLUB Diamond Cabaret

EMPLOYEE'S FULL NAME: WORKER 2

CHECK NUMBER	CHECK ORIGINATOR	TIP AMOUNT ON TAB	AMOUNT RECEIVED
3829	Racheal	400.00	300.00
4041	KEVIN	20.00	15.00

GROSS AMOUNT RECEIVED $ 315.00

AMOUNT Tipped to Another Employee $

Employee Tipped Outs Name:

Employee Tipped Outs Signature

Net AMOUNT RECEIVED $

EMPLOYEE SIGNATURE: [redacted]

EMPLOYEE Name, Printed, First & Last:

DATE: 5-9-24

I have received the above gratuities, and authorize them to be added to my declared tips for the business date.

Figure 2: Image of Gratuity Received Declaration (GRD) dated May 9, 2024, for Worker 2.

The second GRD example documents a manager named [redacted] and the Club's General Manager, [redacted] taking portions of Worker 2's tips. Around May 8, 2024 one or more customers tipped $400 on check number 3829 and $20 on check number 4041. Again, Worker 2 (among others) provided the actual hospitality services in question. However, [redacted] kept $100 of the $400 tip, and [redacted] kept $5 of the $20 tip. They remitted $315 of the $420 total tip on these tabs to Worker 2.

Since 2022, managers have reported significant gratuities. In most pay periods, each manager at the Diamond reported hundreds, sometimes thousands, of dollars in tips. These reported dollar amounts reflect the gratuities taken from the Diamond workers. The payroll, for the pay period ending February 22, 2023, reflects the following tips for managers:

- [redacted]: $700
- [redacted]: $700
- [redacted]: $700
- [redacted]: $700

Payroll for the pay period ending April 5, 2023 reflects the following tips for managers:

- [redacted]: $1,000
- [redacted]: $1,000
- [redacted]: $1,000
- [redacted]: $1,000

These examples reflect a pattern that persists in every pay period dating back more than two years. Even as managers were reporting significant tips, the Club was paying DJs, the house mom, bartenders, servers, and barbacks only the sub-minimum wage.

Managers at the Diamond receive tips on at least two kinds of transactions:

Dance Dollar transactions: Customers have the option to purchase Dance Dollars, including with a credit card. Dance Dollars function as the Club's internal currency. This process effectively allows customers to bypass ATM withdrawal limits; given this, Dance Dollar transactions are often high-dollar transactions. Dance Dollars are of significant value to the Club. Frequently, Dance Dollars are used to pay for costlier services provided by the Club, such as suite rentals (see below).

The Diamond charges a 20% service charge/markup on all Dance Dollar transactions. Customers may also add a tip to the Dance Dollar transaction. Crucially, **non-management workers** provide the key hospitality services before, during, and after Dance Dollar transactions. In addition, entertainers typically provide customers with relevant information about Dance Dollars and set up the sale, although servers and bartenders do so as well. Pursuant to Club policy, however, none of these entertainers or tipped employees can actually complete Dance Dollar transactions. Only managers may. If there is a tip on that transaction, managers keep 25% of it—even though the transaction is almost entirely due to the work of entertainers and tipped employees, and even though Dance Dollars are used to pay for services provided by those same workers.

Workers 1 and 2 provided a typical example of how such transactions play out: A customer may enter the Club, take a seat at a table, and spend time with one or more entertainers. The entertainers engage the customer in conversation and help them have an enjoyable experience. Meanwhile, tipped employees, like servers and bartenders, provide hospitality services such as greeting the customer, taking orders, serving food, preparing drinks, and clearing dishes.

At some point, a customer may wish to purchase Dance Dollars. Workers get the attention of a manager, either by signaling them or calling for help on a radio. A manager comes over, runs the transaction via the Club's system, and the server or bartender presents the transaction to the customer to review. The server or bartender then takes the customer's credit card, presents it to the manager to run, and returns to the customer for a signature on the transaction. The customer can use the Dance Dollars to either pay for or tip for services and time already received (e.g., the entertainer's company over the past several hours), or to purchase services (e.g., a liquor suite).

If the customer includes a gratuity while signing the receipt for the Dance Dollar transaction, managers retain a portion of the tip – typically 25%.

Suite rentals: Customers can also rent "suites" and "liquor suites." These are private rooms that are used to spend time alone with one or more entertainers. The Diamond sets the prices for these rooms and splits the revenue with entertainers. A worker submitted the following photograph establishing prices, which the Division shared with the Club:

Figure 3: A photograph of a sign outlining suite pricing.

As with Dance Dollars, only managers may process suite transactions. When a customer wishes to rent a suite, workers signal or call a manager, who then inputs the transaction into the Diamond's internal system. The server or bartender presents a record of the transaction to the customer to review. The server or bartender takes the customer's payment, provides it to the manager to finalize, and returns to the customer for a signature. If a customer provides a tip at the point of sale, managers retain 25% of the tip.

Again, non-management workers perform the relevant work and provide the hospitality services that customers receive. Bartenders and servers keep time on the rental, take orders, serve food and drinks, and check on entertainers and customers. Entertainers keep customers company and, often, do the business of selling the suite experience.

In response to the Division raising these issues and sharing GRDs, the Diamond provided legal argument. The Club also submitted a sworn declaration from [redacted], the Diamond's General Manager, dated October 23, 2024. Ex. A, DL0111-114. [redacted] admitted that managers (operating as "VIP Hosts") "are responsible for processing Dance Dollar transactions"; "might receive a direct tip from a customer"; and "sometimes . . . decide to give some of their tips to other staff members, including servers and bartenders." *Id.* at DL0112-13. Put another way, when managers receive gratuities, they "voluntarily shar[e] their tip." *Id.* at DL0114.

Neither the Diamond nor [redacted], however, contested the allegation that **non-management workers** provide the bulk of hospitality services associated with Dance Dollar transactions and suite rentals. On October 2, 2024, the Division wrote:

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

Id. at DL0095. The Division repeated this factual allegation on October 21, 2024. *Id.* at DL0110. The Club has never contested the essential facts.

Finally, these tips are further split with [redacted] a regional manager who works for RCI or one of its subsidiaries, and oversees operations at Denver-based strip clubs, including the Diamond and Rick's Cabaret. Former employees explained that cash is placed into an envelope, which [redacted] periodically shows up to collect. This scheme repeats at Rick's Cabaret, where former employees provided the Division with text messages and photographs supporting their claims. Although the Division raised these allegations with the Diamond, the Club declined to contest them or provide any of the information the Division requested. *See* Ex. A, DL0206-207 (request for information regarding [redacted] receiving cash payouts from Diamond Cabaret, Rick's Cabaret, PT's Centerfold, and PT's Showclub); *see also* Ex. T (attachment sent with RFI regarding [redacted], with documentary evidence establishing payouts to [redacted] from Rick's Cabaret).

C. <u>How the Diamond manages entertainers, their wages, and the deductions imposed against those wages.</u>

i. *Auditioning, Contracting, and Pole Position*

Entertainers must submit an audition request to work at the Club. To do this, the entertainer must first go to the app store on their phone and download the "Pole Position" app. New entertainers must request an invite code to be able to create a profile in the app. An entertainer must disclose the following information to request an invite code: stage name, email, phone number, current city, current state, other clubs the entertainer is affiliated with, and how the entertainer heard about Pole Position. Pole Position's website indicates it can take 24-48 hours to receive a code. The last question, "How did you hear about Police Position?" includes the prompt to "Please be specific."

Entertainers use Pole Position to research clubs, search for auditions, message clubs, and book auditions/work shifts. On the app, entertainers can see the club features, such as if it is a full nude club or topless only; minimum age of entry, kitchen and bar information, and types of music played. Pole Position advertises that it allows clubs to "Manage from the palm of your hand."

Once the entertainer receives an invite code and creates a profile, they may submit audition requests for various clubs. When the Club receives the audition request, its account manager(s) can see the entertainer's profile, which includes pictures, experience, and performance styles (e.g., "topless," "hip hop," "smoking," and more). If the Club wishes to allow an entertainer to audition, it schedules that audition via Pole Position. The entertainer must be "stage ready" for the audition, which means that her makeup and hair must be done; she must be wearing an appropriate outfit, according to the Club's standards; and she must be wearing heels. The audition consists of the entertainer dancing onstage for management. If her presentation and performance are acceptable according to their standards, she will be allowed to sign a contract and work at the Club.

This contract is non-negotiable, uniform, and created and controlled by the Club. *See* Exs. C (Blank contract produced by the Club), D (Blank agreements, including contract and other forms, produced by anonymous entertainer). It consists of 10 pages of substance, with space for an entertainer to write her initials on each page. In addition, the Diamond requires entertainers to complete the following forms/agreements:

1. A federal W-9 form, typically filled out by independent contractors.

2. An "Entertainer Information" form, which includes the entertainer's name, stage name, address, phone number(s), e-mail address, Social Security number, birth date, driver's license number, driver's license state, driver's license expiration date, and emergency contact information.

3. A federal I-9 form, typically filled out by employees. As part of this, entertainers must provide the appropriate identification required by that form.

4. A "Model Release," which grants the Club an "irrevocable, worldwide and perpetual" right to use photographs, videos, and audio or other recordings "in any media for any purposes (except pornographic or defamatory) which may include, among others, advertising, promotion, and marketing."

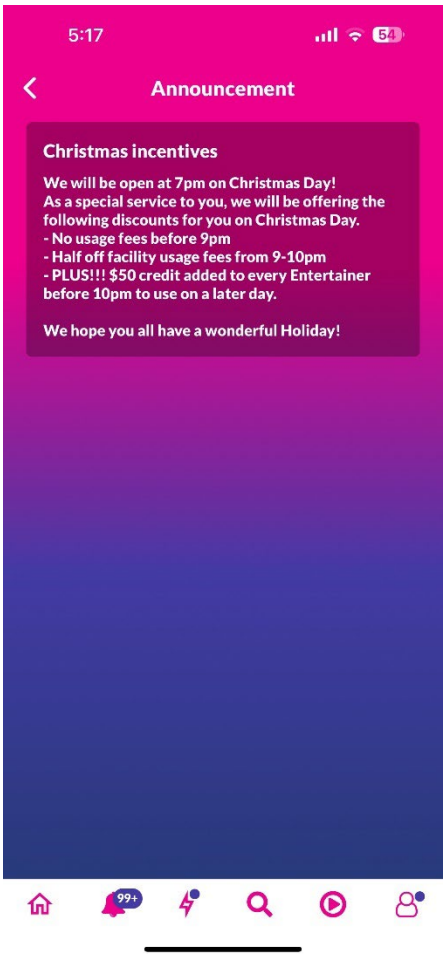
5. An "Entertainer Biometric Information Privacy Policy," which authorizes the Diamond to "collect, retain, and use biometric data for the purpose of verifying entertainer identity and recording time entries." In practice, this biometric data is used during the Club's mandatory sign-in/sign-out process, during which entertainers use their fingerprints to log in and out of the Diamond's internal point of sale and timekeeping system, called ClubTrax.

See Ex. D.

Typically, the Club refuses to give copies of these signed agreements to entertainers. None of the entertainers interviewed by Denver Labor had a signed copy of their contracts. In addition, one attempted to get a copy of her signed agreements when she renewed her contract in late 2024; in response, the Club informed her that it would not share them absent a subpoena.

ii. *Staffing and Timekeeping*

Pole Position is used not only as a general recruitment and scheduling tool for entertainers, but also is means to ensure the Club has adequate entertainer staffing. The Club uses the app to send notifications that entertainers are needed and to communicate that fees may be reduced for anyone coming in to work. In addition, the Club may use Pole Position to flag special events which may draw a higher volume of customers to the Club. For example, the Diamond sent the following message through Pole Position regarding Christmas Day, 2023:



Entertainer staffing varies by the day and based on events happening around downtown Denver. For example, Monday may generally be a slow night, requiring less staffing. However, if the Broncos have a home game on Monday Night, the Club could be very busy and require significantly more staff than an average Monday.

The Diamond closely tracks how many entertainers work on any given day. Each night, its managers remit this information, as well as information about attendance and sales, to higher-ups at RCI Hospitality Holdings and its subsidiary, RCI Management Services.

The Club can track this information because of its strict sign in/sign out policy. Before they're allowed to work, entertainers are required to sign in for their shift via the Pole Position app. In addition, they also must clock in, using their fingerprint, via the Diamond's internal system, ClubTrax.

ClubTrax is a sophisticated timekeeping and POS system that RCI-owned or controlled strip clubs around the country have used for at least a decade. *See Hart v. Rick's Cabaret Int'l*, 60 F. Supp. 3d 447 (S.D.N.Y. Nov. 14, 2014) (discussing ClubTrax's functionality); *Rogers et al. v. 12291 CWB, LLC et al.*, No. 1:19-CV-00266 (E.D. Tex.) (class action lawsuit against two RCI-controlled strip clubs, both of which used ClubTrax).

When the Diamond hires an entertainer, a manager creates a personalized account for her. This account is connected to her fingerprint, stage name, entertainer ID (consisting of the last four digits of her Social Security Number), and actual name. This process allows the Club to track extensive historical data, including days and hours worked; times logged in and out; and fees paid (see below). On any given night, the system keeps a running list of who is logged in, when they last logged in, and whether they paid their fees.

ClubTrax can generate a variety of highly customizable reports. This includes:

1. A log-in and log-out report reflecting the time each dancer clocked in and out;
2. A "Dance Dollar" report, reflecting the timing and amount of Dance Dollars exchanged by entertainers; and
3. A charge summary report, reflecting the amounts paid by entertainers to the Diamond in fines and fees.

Hart, 60 F. Supp. 3d at 463.

For more than a year, Denver Labor has sought from the Diamond, in any form or format, records reflecting hours worked by, wages paid to, and deductions imposed against entertainers. Denver Labor has also and alternatively sought records reflecting entertainers' schedules. The Club admits it pays entertainers nothing. But for more than a year, the Diamond and its attorneys claimed that it has no records of hours worked. For example, on June 21, 2024, the Diamond's attorney wrote:

> Furthermore, request for [entertainers'] work hours, wages, and tax deductions do not exist in the Company's possession or control. [Entertainers] are not paid any wages or compensation for their services by the Company. [Entertainers] pay a site rental fee to the Company. They are paid directly by those they entertain, not by the Company. **Consequently, no Company records of work hours, wages, or tax deductions exist.**

Ex. A, DL0031 (emphasis added).

These statements were and remain false. The Diamond has voluminous records reflecting work hours and deductions. It also has records reflecting earnings by entertainers. The Diamond has largely refused to provide them. Even as the Club and its representatives have refused to rectify their false statements, Denver Labor has received examples of ClubTrax reports from both entertainers and, in a very limited manner, the Diamond itself.

These examples confirm that the Club can readily access and provide records establishing hours worked, fines and fees paid by entertainers.

iii. *How the Diamond benefits from entertainers*

The Club benefits twofold from entertainer staffing. First, the entertainers are the Club's main attraction. There is no strip club without entertainers. A surplus of entertainers working each night ensures guests who enter the club will spend money. Second, the Diamond forces entertainers to pay two mandatory fees to work. These fees are called a "house fee" and a "promo fee." The promo fee is $8.00 per shift per entertainer. The Diamond cannot, or will not, explain what this fee covers. Entertainers do not apparently benefit from paying it, however. In fact, the contracts the Diamond requires entertainers to sign state that the Club will pay, at its own expense, for advertising and promotions.

Generally, the house fee increases as the night goes on. Thus, if an entertainer shows up to work at 6:00 p.m., the fee to work is significantly less than if an entertainer shows up to work at 11:00 p.m. An entertainer's house fee to work may be as high as $85.00 per shift. Together with the promo fee, an entertainer may have to pay as much as $93 in order to work. In addition, entertainers must pay an extra $30 to work Diamond After Dark, the Club's late-night area that is open until 4 AM.

These fees quickly add up. One entertainer, D.D.H., provided the Division with ClubTrax records covering her work between January 1, 2024 and December 28, 2024. In this span of time, she worked 461.66 hours, logged in 98 times, and paid $7,135 in fees—an average of $72.81 per shift. Because of this fee structure, entertainers sometimes leave work with less money than they paid.

Although Denver Labor repeatedly sought the schedule of house fees, the Club ignored every request. Some facts are crystal clear, though: fees paid by entertainers are significant, place entertainer earnings in the red before they ever start work, and provide an extraordinary amount of revenue for the Diamond—both on an individual basis and in the aggregate.

iv. *How the Diamond controls entertainers*

Through its ownership of the premises and a system of rules, requirements, and expectations, the Diamond exerts significant control over the working conditions of entertainers.

As described, the Club requires entertainers to sign a variety of adhesive, non-negotiable agreements. In addition, the Diamond does not contest the following facts, which have been established by entertainers, current and former employees, and with documentary evidence:

- The Diamond requires that entertainers be "stage ready" before starting to work. If an entertainer is not stage ready, she is not allowed to clock in and start work. For

example, Entertainers have been denied if they attempt to clock in without wearing heels.

- The Diamond requires entertainers to follow the mandatory clock-in and clock-out process set by the Club.
- Entertainers must pay the house and promo fees to work.
- The Diamond controls and sets house and promo fees, including whether, when, and to what extent fees are reduced for special events or as a reward or incentive. Entertainers have no meaningful ability to negotiate these fees. Additionally, entertainers received no advance notice of the promo fee.
- Before being hired, entertainers must audition and meet the standards and expectations of management.
- The Club has complete, or near-complete, control over the following:
    - The kind of music played. Two entertainers informed the Division that the Club's General Manager prohibits hip hop, for example.
    - What cover charge customers must pay, if any.
    - The ambiance of the Club.
    - The décor of the Club.
    - The furniture in the Club.
    - The lighting in the Club.
    - The hours that the Club is open.
    - The dress code at the Club.
    - The drinks and food served at the Club, and the prices charged for drinks and food.
    - The prices charged for private dances, and how that money gets split between entertainers and the Club. The Diamond has a posted sign stating:

      ATTENTION ENTERTAINERS!!!
      PRIVATE DANCES WILL NOW BE $40 PER SONG!
      $35 to the Entertainer
      $5 for Room Charge
      -Thank You

      Ex. E.
    - Who is allowed in the Club, who is not allowed in the Club, and who gets ejected from the Club for bad behavior. One entertainer told Denver Labor about instances in which customers had assaulted her, including by choking or slapping her. She requested they be ejected from the club and management refused. Another entertainer told Denver Labor that she had repeatedly caught customers photographing or filming her without her consent, in violation of Diamond Cabaret's own apparent policies. Managers, however, consistently refused to eject those customers.

- The Club, through the DJ, chooses which entertainers get called onstage to perform, and when.
- Entertainers are automatically placed "on rotation." This means they are available and expected to perform a "set" consisting of three songs on one of the Diamond's stages when the DJ calls their name.
- Entertainers are required to be topless by the end of the second song in their set. If they are not, they may be disciplined or chastised by management.
- If an entertainer does not show up for her set, she is subject to a $25 fine, payable to the Club. The contract is silent on this fine, which is instead set unilaterally by the Club.
- If an entertainer does not show up for her set, the entertainer who preceded her is required to stay on stage and continue performing so that the Club's stage is not left empty.
- The Diamond sets the prices of private suites and dictates how that money is split between entertainers and the Club.
- Entertainers are not allowed to receive payment from customers via Venmo, Zelle, the Cash app, or similar programs. If they do, they are subject to discipline. Entertainers have been suspended for violating this rule.
- The Diamond decides when and if special events, like pay-per-view fight nights or themed parties, will happen.

In brief, the Diamond exerts significant control over the environment, prices, and working conditions at the Club.

III. DISCUSSION AND SPECIFIC FINDINGS OF LAW

The Diamond has violated nearly every applicable provision of the Ordinances. It has:

1. Unlawfully taken tips earned by and belonging to its workers, including servers, bartenders, and entertainers.
2. Failed to pay employees the applicable minimum wage by taking advantage of the sub-minimum wage—a privilege the Club lost when it began to require its workers to share gratuities with managers.
3. Misclassified DJs and the house mom as food and beverage workers eligible for the sub-minimum wage.
4. Misclassified entertainers as exempt from the Ordinances.
5. Failed to pay entertainers minimum wage.
6. Stolen money from entertainers by a) requiring them to pay fees for the privilege of working, and b) imposing fines against them for various rule violations.

These violations reflect more than an incidental or accidental violation of workers' rights. The Diamond created a highly profitable pattern and practice out of wage theft. Considered as a whole, the Club has almost certainly stolen millions of dollars from hundreds of individuals, all of whom worked for the Club's benefit and according to the Club's direction and rules. Notwithstanding the Diamond's near-complete repudiation of its workers' wage-based civil rights, these workers are protected by the Ordinances.

A. In violation of Denver, Colorado, and federal law, the Diamond stole tips for work performed by line employees.

As explained above, managers at the Diamond receive a share of employee tips in two circumstances. This practice violates the prohibition—under both Denver and Colorado law—against managers taking tips for work performed by employees.

These legal requirements are clearly described in the Ordinances; Denver Labor's Civil Wage Theft Rules; the Colorado Department of Labor and Employment's Colorado Overtime and Minimum Pay Standards (COMPS) Order; and applicable regulations under the federal Fair Labor Standards Act.

In any given instance, employers in Denver are required to adhere to the most protective wage and hour requirements. Both the MWO and the DCWTO make this explicit. The MWO states that:

> The intent of this article is to ensure the payment of at least the Denver minimum wage to as many workers as possible in accordance with limitations imposed by Colorado law. It is not the intent of this article to apply the Denver minimum wage to work performed by independent contractors, or reduce any differing wage requirements established by federal or state law or that arise from or in connection with federal or state funding. Any greater wage requirements shall be controlling in the event of a conflict between a federal or state wage requirement and the requirements of this article.

D.R.M.C. § 58-14.

The DCWTO contains substantively identical language. *Id.* at § 58-22. Similarly, Denver Labor's Civil Wage Theft Rules incorporate state and federal standards where those provide greater protections. The Rules define "Denver labor law" to include not only Chapter 58, but "any other promulgated, in-effect rules applicable to work in Denver." Rule 5.2 emphasizes that "Denver Labor shall enforce the highest of the applicable minimum wage requirements, including Denver minimum wage" and "state or federal minimum wage." Similar or identical language has existed in every iteration of Denver Labor's wage rules.

Binding authority is clear about the consequences of managers stealing tips from tipped workers. Since at least January 1, 2020, the CDLE's regulations have stated that:

> Employer-required sharing of tips with employees who do not customarily and regularly receive tips, such as management or food preparers, or deduction of credit card processing fees from tipped employees, shall nullify allowable tip credits towards the minimum wage authorized in section 3(c).

7 CCR 1103-1, Rule 1.10. Denver Labor expressly incorporates this standard into its Civil Wage Theft Rule 7.2E.

If there is employer-required sharing of tips with managers, the entire business loses the privilege of the sub-minimum wage. Here, managers at the Diamond routinely take a portion of tips belonging to workers. Wage theft is a nightly occurrence.

The Division applies these standards and finds that the Diamond committed wage theft by a) stealing workers' tips and b) failing to pay the full minimum wage during relevant pay periods.

In its defense, the Diamond raises three arguments. None of these arguments are persuasive, and all are flawed or misleading.

First, the Club argues that its tipping scheme is "voluntary." Ex. A, DL0092-93. No evidence supports this claim, and significant evidence disputes it. Workers have no say in whether managers take 25% of gratuities on Diamond Dollar and suite transactions. Workers are required to notify managers when customers want to purchase Dance Dollars or a suite, and only managers may run the tabs. Former bartenders and servers credibly assert that they had no meaningful ability to avoid sharing tips with managers on Dance Dollar and suite transactions.

In at least one instance, a server ("J.G.") attempted to share less than 25% of her tips with management. She was not allowed to do so. A manager forced her to share the full 25%; became abrasive; and approximately one month later the Diamond summarily removed her from the schedule, without notice or explanation. In a November 2024 determination, the Division found that this employee suffered both wage theft and retaliation, and ordered the Diamond to pay restitution, reinstate her, and provide back pay. *See generally* Ex. F.

Second, the Diamond claims that it is not workers who "share" their tips with managers, but the opposite. The Club claims that managers share up to 75% of **their** tips with workers. Ex. A, DL0104-105, 113. This flawed reasoning is related to the Employer's third argument: That nothing about its tip-sharing practice is unlawful because managers are "working directly with the guests," "providing a variety of customer services," and the law allows managers to keep tips that they receive "directly from customers based on the service that he or she directly and solely provides." *Id.* at DL105.

The problem with the Club's position is that managers at the Diamond have no entitlement to these gratuities. They do not "directly and solely provide" the relevant labor. Non-management workers do. In many or most cases, customers do not even tip managers "directly" because servers or bartenders present the tab.

Because the tips belong to the workers who perform the work, it is not possible for the managers to "share" them. The law explicitly precludes them from any entitlement to or control over these gratuities. C.R.S. § 8-4-103(6); 7 CCR 1103-1, Rule 6.1.

To rectify this wage theft, the Division orders the following:

1. The Club must cease its practice of taking tips from or otherwise earned by employees. All gratuities paid on Dance Dollar and suite transactions must go to workers, without any manager interference of any kind.

2. The Club must pay restitution to workers, care of the Denver Auditor's Office, as described in Section I of this Determination. This restitution consists of two parts.

    a. Stolen tips: Between December 2021 and October 2024, the Diamond illegally diverted more than $800,000 in gratuities to its managers. And,

    b. Minimum wage violations: Because the Diamond required sharing of tips with managers, it lost the privilege of being allowed to pay the sub-minimum wage. It therefore violated the minimum wage rights of its tipped workers, underpaying these people by $3.02 for every hour worked. In total, the Club's minimum wage violations cost affected workers more than $290,000.

    Because the Diamond destroyed all Gratuity Received Declaration forms, it is not possible for the Division to precisely calculate how much was taken from each worker. Instead, the Division finds it fair and reasonable to allocate this restitution on a proportional basis to affected workers based on hours worked during each pay period. The Diamond must provide this restitution to Denver Labor, which will remit it to workers in accordance with these calculations.

3. The Club must also pay fines to the City and County of Denver as a penalty for these acts of wage theft, as described in Section 1.

Based on consideration of all relevant facts, Denver Labor finds that imposing treble damages and significant fines is appropriate here. The Club violated longstanding law. In particular, the Club broke requirements designed to protect minimum wage workers, who are especially vulnerable to wage theft and the harms of economic insecurity. The Diamond did so deliberately, creating a comprehensive scheme that both empowered and encouraged managers to commit frequent wage theft. This system was incredibly profitable for the Club. By granting managers a share of gratuities on the highest-dollar transactions, the Diamond was able to inflate the managers' modest salaries. At the same time, because the Club wrongly paid the sub-minimum wage, it saved hundreds of thousands of dollars (or more) in employee wages, associated taxes, insurance premiums, and other wage-related expenses.

Furthermore, the Diamond's behavior during and in response to the Division's investigation defies any argument that this was an inadvertent mistake. The Club continued to steal tips even after receiving clear notice that Denver Labor viewed its practices as illegal. Most troubling, it also set out to silence witnesses. In early November of 2024, the Club promulgated a new policy prohibiting workers from taking any photos or videos on premises. It did so only after D.D. and K.G., among others, had provided Denver Labor with photographic and videographic evidence that supported their claims of wage theft. In mid-December of 2024, the Club fired D.D. and K.G. On January 20, 2025, Denver Labor issued determinations finding that the new policy was unlawfully retaliatory and that the Club had

illegally retaliated against these individuals, who had done nothing more than assert their basic wage rights under Denver law.

Furthermore, the Diamond was uncooperative. It repeatedly refused to provide relevant information and documents without justification. For example, and as stated, the Club destroyed all Gratuity Received Declaration forms. It continued to destroy these forms even after the Division requested them on September 17, 2024 and again on October 30, 2024. During an ongoing information request for relevant records, the Diamond made the continuing decision to daily destroy requested evidence.

Finally, the Club and its representatives have repeatedly misled the Division through false statements and claims. At various times, and sometimes on multiple occasions, the Diamond claimed:

- There are no written policies applicable to employees.
- Managers do not participate in tip pools with employees.
- Managers do not receive a percentage of tips on Dance Dollar/suite transactions.
- The Club does not collect any information regarding hours worked by entertainers.
- The Club has no records of entertainers' schedules.

None of these claims were ever true. Nor are they small misdirections; each false claim involves a material issue related to the Division's investigation. And even after being confronted with evidence that proved false its various claims, the Club and its representatives refused to correct them—and sometimes attempting cover ups by making additional false statements and firing those workers who aided Denver Labor's investigation.

The Ordinances recognize the significant harms caused by wage theft. When workers experience a loss in earnings, even relatively small losses, the consequences can be devastating. The losses to workers here are not small. They are enormous. The Diamond stole more than a quarter of a million dollars alone by paying its tipped employees less than minimum wage. The Diamond's lack of honesty underscores its recognition of the stakes here and reflects an employer who has violated the law without remorse.

In this case, treble damages are appropriate and necessary to recognize and redress the Club's deliberate acts. Those acts resulted in the extraction of more than a million dollars from workers who were forced to bear the burden of the Club's violations of their basic workplace rights.

Beyond damages, meaningful fines are necessary. The Civil Wage Theft Ordinance empowers the Division to impose fines of up to $25,000 for each instance of wage theft. Instances of wage theft are measured by:

- The violation type,
- The number of workers, and
- The number of pay periods in which the violation occurred.

Appropriate fines are based on all relevant circumstances and facts. In this case, the most relevant facts are that the Diamond frequently committed wage theft through a comprehensive, business-wide scheme; stole hundreds of thousands of dollars from its tipped workers; has demonstrated zero remorse; destroyed relevant documents; and repeatedly ignored, stonewalled, and misled the government. The Division finds it appropriate to impose fines equal to 100% of unpaid wages. Absent full payment within 14 days of the date of this Determination, these fines shall increase to 150% of owed wages. Absent full payment as required by D.R.M.C. § 58-26(e)(2), these fines shall additionally increase by $5,000 per worker.

B. <u>The DJs and house mom are not tipped workers eligible for the sub-minimum wage. The Diamond violated the law by paying these employees the sub-minimum wage.</u>

The Diamond also misclassifies its DJs and house mom as tipped employees and pays them the sub-minimum wage. In addition to finding that the Club has lost the privilege of paying the sub-minimum wage because of its wage theft, the Division also finds that the Diamond's DJs and house mom are ineligible to be paid the sub-minimum wage.

Under applicable law, employers in Denver may pay the sub-minimum wage to qualified workers. To qualify, workers must:

1. Perform tipped work, and regularly receive more than $1.64 per hour in tips,
2. Work in the food and beverage industry, and
3. Perform significant customer-service functions in contact with patrons.

7 CCR 1103-1, Rule 1.10; Civil Wage Theft Rule 7.2B. "Tips" are a "gratuity," or "a gift given by a customer for services provided." Civil Wage Theft Rule 7.2B; *see also* INFO #3C, p. 1.

The house mom is ineligible for the sub-minimum wage because she does not perform tipped work as to customers, nor perform significant customer-service functions in contact with patrons. She provides support of various kinds for entertainers. But unlike the entertainers, servers, and bartenders she does not spend meaningful time in the main area of the Club or in front-of-house areas where patrons are. She does not engage customers, serve them, or directly assist in serving them. She is a back-of-house employee, working behind the scenes.

Although the house mom reports tips, these are not from employees. **Other workers**, especially entertainers, tip her out. These are not true tips that qualify the house mom position for the sub-minimum wage because they are not a gratuity voluntarily given by customers for services provided.

Similarly, DJs at the Diamond are also not qualified food and beverage workers eligible for the sub-minimum wage. DJs play music, call entertainers on stage to dance, and make announcements. They do not perform significant customer-service functions in contact with patrons, nor do they perform food and beverage work or receive meaningful tips from customers. Other workers tip DJs, including entertainers.

For these additional reasons, the Diamond violated the MWO by paying DJs and the house mom less than the full minimum wage.

C. Entertainers are workers. They have rights, including the right to be paid minimum wage and to labor free of wage theft.

Denver's Minimum Wage and Civil Wage Theft Ordinances guarantee rights and protections for "workers" and impose obligations on "employers." The intent of Chapter 58 "is to ensure the payment of" all earned wages, including "at least the Denver minimum wage to as many workers as possible." D.R.M.C. § 58-14, 58-22.

The Ordinances' scope and protections are broad and encompassing. They extend beyond the minimums required by state law. Unlike most employment laws, Denver's ordinances do not **only** apply to protect "employees." The broader category of "workers" includes employees, but also covers at least some individuals who might arguably be independent contractors under state or federal law. A "worker" is defined as

> a natural person performing work, and includes, but is not limited to: full time employees, part-time employees, temporary workers, agents, and any other persons performing work on behalf of or for the benefit of an employer or other person.

D.R.M.C. § 58-1(11). Subsection 58-1(10) of the Ordinance clarifies that "work" includes "any services performed on behalf of or for the benefit of an employer or other person" for compensation. Both "employer" and "person" have broad definitions. An "employer" is defined as

> any corporation, proprietorship, partnership, nonprofit, joint venture, association, individual, limited liability company, business trust, or any person or group of persons, and any of the foregoing who employ a worker acting directly or indirectly in the interest of an employer in relation to a worker, and any successor thereof.

D.R.M.C. § 58-1(6). "Person" includes "a firm, corporation, association, or other organization acting as a group or unit as well as an individual." *Id.* § 1-2(12). The Diamond is an employer. The Club is also a person.

Given the broad scope and intent of the Ordinances, those who labor in Denver are presumed to be workers. Civil Wage Theft Rule 7.1. To that end, Chapter 58 and its incorporating rules "shall be liberally construed, with any exceptions or exemptions narrowly construed." Civil Wage Theft Rule 2.5. There are only limited exceptions—Denver's MWO does not apply to bona fide volunteers; workers outside of Denver; those who work less than four hours in Denver in a week; or those who only travel through Denver as part of their work. D.R.M.C. § 58-15(b). In addition, Denver's minimum wage does not apply to work "performed by independent contractors while acting **solely** in such capacity," although this same exemption does not apply to the DCWTO. *See id.* at § 58-15(b)(1) (emphasis added).

This final exemption is narrow. Denver City Council's use of the word "solely" may only be understood as a deliberate limitation on the breadth of this exclusion. Colorado law

"presume[s] that the legislature understands the legal import of the words it uses and does not use language idly, but rather intends that meaning should be given to each word. *Young v. Brighton Schl. Dist.*, 325 P.3d 571, 579 (Colo. 2014). This point is especially salient where a legislature deviates from the approach of other statutes; in this case, there are multiple workplace laws addressing the inclusion or exclusion of "independent contractors," including but not limited to the Fair Labor Standards Act, National Labor Relations Act, Colorado Wage Act, and Colorado's Workers Compensation, Employment Security, and Anti-Discrimination Acts. Each of these laws states that their core substantive protections apply to employees; they do not apply to independent contractors.

But unlike all these other laws, City Council did not limit Chapter 58's application to "employees." Chapter 58 applies to "workers." Nor did City Council generally or broadly exclude "independent contractors"; only those acting "solely in such capacity" are not entitled to minimum wage.

Chapter 58 does not define "solely," but "[w]ords shall be construed according to the context and approved usage of the language." D.R.M.C. § 1-3. To that end, the Division refers to common dictionary definitions. Merriam-Webster defines "solely" to mean "without another" or "to the exclusion of all else." *Merriam-Webster*, Solely, available at https://www.merriam-webster.com/dictionary/solely. Similarly, the Cambridge Dictionary defines solely to mean "only, and not involving anyone or anything else." *Cambridge*, Solely, available at https://dictionary.cambridge.org/us/dictionary/learner-english/solely.

The key question under Denver's Minimum Wage Ordinance is simple: Does a natural person perform work on behalf of or for the benefit of an employer or other person? And if the person is alleged to be an independent contractor, then were they acting "solely in such capacity"?

While this exemption should be explored through fact-specific scenarios, some facts and guidelines are worth noting: Historically, independent contractors have been specially-trained professionals or craftspeople who set their own prices, run their own business, operate free of the dictates of other, more powerful entities, and therefore have broad discretion to determine the time, place, manner, and conditions of their work. Classic examples include plumbers, architects, electricians, lawyers, and other highly trained individuals who have the power to negotiate at arms-length with clients and to set the terms of their own work-related destiny. These are people who work "solely" in their capacities as independent contractors and would be exempt from Denver's minimum wage. Even if a plumber's work benefits another (such as a restaurant with a leaky pipe) that benefit is ancillary to the fact that the plumber has near-total control over whether, when, how, and where to work. In other words, the primary beneficiary of a plumber's labor is the plumber.

This investigation does not present a close question on whether entertainers are workers. They are. They perform work for the Diamond's benefit, and they enjoy all rights promised under the Ordinances. While the facts support these findings, the Diamond also chose not to provide any facts or argument on the independent contractor exemption (or any other). Therefore, it is not met.

i. *Entertainers are presumptively workers. The Diamond has failed to establish any exemption because it has failed to provide any evidence at all.*

Without analysis, evidence, or legal support, the Diamond asserts that entertainers "are not 'workers'" under the Ordinances. Ex. A, DL0018, 31. Instead, it claims that entertainers are "licensees" who are categorically exempt from wage and hour protections. *See id.* The Club's assertion may be summed up in a single conclusory sentence:

> They are not employees or contractors of the [Diamond], do not follow schedules set by the [Diamond], create their own schedules through a third-party app, are not paid by the [Diamond], pay a site rental fee, and do not perform any work for the benefit of the [Diamond].

Ex. A, DL0018.

The Division rejects this assertion for many reasons. First, this claim is devoid of analysis. The Diamond asserts entertainers have no rights, but the Club does not address the core question of worker status, define "licensee," apply relevant facts, or explain its broad conclusion that entertainers "do not perform any work for the benefit of" the Club. In fact, the Club has made every effort to avoid addressing these issues.

Second, the idea that strip clubs do not benefit from entertainers' work defies common sense. Even in the narrower, more restrictive context of the Fair Labor Standards Act, courts have uniformly derided similar claims by strip clubs as "simply unconvincing," "absurd," and "flying in the face of logic," because "exotic dancers are obviously essential to the success of a topless nightclub." *Shaw v. Set Enterprises, LLC*, 241 F. Supp. 3d 1318, 1327 (S.D. Fla. 2017) (cleaned up). And, as discussed below, the facts here overwhelmingly establish that entertainers **do** perform labor and services for the Club's benefit—which is all that is required to establish coverage under Denver's Ordinances.

Third, the Diamond has never produced any evidence or law in support of its claim. It has been invited to do so on multiple occasions. Denver Labor's communications have frequently asked the Club to provide any evidence or argument establishing compliance with the law. *E.g.*, DL0001 ("You may provide additional records that demonstrate compliance with" the law); *id.* at DL0004 (same), 15 (same), 24 (same). It refused to make argument, present basic facts, **or contest the facts before Denver Labor supporting that entertainers are workers** even after the Division explicitly invited it to do so. *See* Ex. A, DL0122-28; *id.* at DL0218.

Additionally, the Diamond raised the argument that entertainers are not workers in challenging two subpoenas issued by the Division. The hearing officer overseeing its first challenge pointed out that the Club had not provided evidence supporting its conclusion, and invited the Diamond to do so. It did not. In the months since that hearing, it still has not. The hearing officer later rejected the Diamond's "bare assertions as to the legal status of" entertainers, noting the "transparent circularity of the argument."

And on October 24, Denver Labor sent the Diamond a 7-page request for information, explaining:

> You have asserted that Entertainers at the [Diamond] are not "workers" under Chapter 58 and, therefore, that Denver Labor has no jurisdiction to investigate whether they are suffering wage theft.
>
> [. . .]
>
> However, you have not provided a) a legal definition "licensee" as it relates to employment law, b) any legal authority supporting a conclusion that Entertainers are exempt from wage and hour law, or c) evidentiary support for your argument.

The Division posed 34 inquiries regarding worker status and invited "**any argument or evidence of any kind that you would like Denver Labor to consider.**" Ex. A, DL0123 (emphasis in original). Among other requests, Denver Labor asked the Diamond to define "licensee" as a matter of employment law; provide any legal authority supporting the definition; and provide any legal authority supporting the idea that entertainers are categorically exempt from federal, state, and municipal wage and hour laws. *Id.* at DL0124. In addition, the Division invited the Club to assert that entertainers are exempt from the MWO because they act "solely" in the capacity of independent contractors. *Id.* at DL0125. The Division reiterated these requests on January 23, 2025. *Id.* at DL0218.

The Diamond declined on every count. It refused to address any of the Division's questions or contest any asserted facts. *See* Ex. A, DL0129-32, 224-25. Having failed to invoke any exemptions, much less present any legal authority, argument, or evidence, the Club has conceded the issue and failed to meet its burden to overcome the presumption that entertainers are workers. *See* Denver Labor Civil Wage Theft Rule 7.1(iii).

This is sufficient to find that entertainers are protected by the Ordinances, and to hold the Club liable for its wage theft against them.

Additionally, the facts overwhelmingly establish that entertainers **are** workers who fall under the broad umbrella of the Ordinances' protections. And yet, for years they have suffered frequent and unjustifiable wage theft.

ii. *Entertainers perform services for the Diamond's benefit because the Club directly and indirectly benefits from their work*

In evaluating the issue of worker status, the Division considers all relevant facts. In addition, it relies on persuasive authority addressing analogous situations, especially involving the application of other wage and hour laws, such as the Colorado Wage Act (CWA) and Fair Labor Standards Act (FLSA). Specifically, decisions under the CWA may provide useful guideposts. While the definition of "worker" is broader than that of "employee" under that state law, there are some similarities. The CWA defines "employee" to mean "any person . . . performing labor or services for the benefit of an employer," which is substantively identical to the core question of worker status. *Compare* D.R.M.C. § 58-1(11), C.R.S. § 8-4-101(5).

However, there are noteworthy differences between state law and Chapter 58. The CWA specifically calls out two "relevant factors" to aid in the analysis of whether a person is

an employee: the degree of control that an employer may or does exercise over them, and the extent to which the individual performs the primary work of the employer. *Id.* In addition, the CWA holds that a person is not an employee if they are both 1) primarily free from direction and control in the performance of the service, both under contract and in fact, and 2) customarily engaged in an independent trade, occupation, profession, or business related to the service. *Id.*

Chapter 58, on the other hand, is entirely missing this language. This can only have been deliberate. A legislature's decision to include some language and exclude other language reflects "a statement of legislative intent." *Specialty Restaurants Corp. v. Nelson*, 231 P.3d 393, 397 (Colo. 2010). And in debating and ultimately passing the Minimum Wage and Civil Wage Theft Ordinances, Denver's City Council compared the proposals to state law. In short, Council was aware of the CWA's definition and chose to adopt only part of it—specifically excluding key language around control, primary work, and whether individuals are customarily engaged in an independent trade, occupation, profession, or business.

These issues are still relevant. They are part of the analysis of who is an independent contractor. But City Council's decision to exclude this language, while limiting the exemption to the minimum wage to those who work "solely" as independent contractors, reflects a strong presumption of coverage under Chapter 58 that extends even beyond the presumption inherent in the CWA. Denver's City Council has placed a heavy thumb on the scale, and employers therefore have a proportionally heavy burden to prove that individuals are not workers or entitled to minimum wage and the other protections of Chapter 58.

With this context in mind, the Division finds that entertainers perform services for the Diamond's benefit. The Diamond benefits directly, indirectly, and overwhelmingly from their labor.

The Diamond benefits directly in a variety of ways:

1. Entertainers remit money to the Club. A single entertainer can pay thousands of dollars per year in house and promo fees.
2. The Diamond profits significantly from transactions related to entertainers' services. It takes $5 per private dance, Ex. E; charges a 20% markup on all Dance Dollar transactions, which are frequently used to pay for entertainer services; and charges hundreds of dollars—or more—for suite rentals, Ex. G.
3. Entertainers are one of the most significant and fundamental reasons why customers go to the Diamond.

Entertainers form the backbone of the Club's business. They are the key feature that sets the Diamond apart from hundreds of other bars and restaurants in and around Denver. As one entertainer succinctly explained, "there is no such thing as a strip club without the stripper." Entertainers are essential to the business and provide the biggest incentive for customers to go to the Diamond rather than any other bar or club.

And the Diamond knows it. It advertises itself as the "#1 Strip Club in Denver," Ex. H, and claims it has "the most beautiful women in the world featured daily," Ex. I. Its social

media is filled with photos of entertainers paired with captions tempting customers to come to the Club. “Over 150 stunningly beautiful entertainers await you at the Diamond Cabaret,” according to the Club’s Twitter/X page. Ex. J. Its social media posts make the point. “Join me tonight at Diamond for an unforgettable evening,” “Come find me at Diamond where the fun never stops,” and “Craving your company on this fun-filled night at Diamond” are all examples of the kinds of lines the Club pairs with photos of entertainers. *See generally* Ex. J.

According to the Club’s narrative to Denver Labor, entertainers are secondary to its business. The Club asserts that entertainers operate within the Club but “do not perform any work for the benefit of” the Diamond. But according to Eric Langan, the President, Secretary, Treasurer, and Director of the Diamond, entertainers are **the** core of a strip club’s business. In a December 2022 interview with Jussi Askola of Seeking Alpha, Mr. Langan explained how the business model of strip clubs has adapted over time:

> These young kids aren't married, they don't want to lie. They want to be up in front of the main stage. They want to throw thousands of $1 bills up in the air, making it rain, and want everybody to see them. When the bottle service comes, they want everybody to know that I've got a bottle on my table. And we just had to adapt to that. It's a nightclub now. It's more nightclub than what I consider to be an adult entertainer strip clubs. But it's super easy. It's not a different model. **At the end of the day, you're just repackaging the same product, which is the entertainers, and how you package and present is all that matters.** And this demographic wants their entertainment packaged in this way. So we just package it in their way and bring them in.

Jussi Askola, *My Largest Investment: Interview With Eric Langan, CEO of RCI Hospitality*, available at https://seekingalpha.com/article/4563571-my-largest-investment-interview-with-eric-langan-ceo-of-rci-hospitality (last visited Feb. 10, 2025) (Emphasis added).

Elsewhere, Mr. Langan has spoken at length about how critical the “product” is to his business. In a 2022 keynote address at the Annual Gentleman’s Club EXPO, he explained that strip club customers want “an experience out in the real world,” and come to his clubs to “have fun” and “escape.” Entertainers provide that escape: while “[a]t other clubs, guys must be the aggressor and talk to the girls,” at clubs like the Diamond, “entertainers want to talk to the guys and have fun with them.” Through entertainers, like “‘Alexis,’ the fun-loving party girl who’s ready to do shots with you,” these “clubs are in the business of bringing a taste of fantasy to life.” *RCI’s Eric Langan on present, future of adult club industry*, available at https://theedexpo.com/rcis-eric-langan-on-present-future-of-adult-club-industry/ (last visited Feb. 10, 2025).

Entertainers are the most crucial part of that fantasy. And, therefore, they are the most crucial part of the Diamond’s business model.

In short, Denver Labor reaches the same obvious conclusion that other decisionmakers have: entertainers are integral to the Diamond’s business. In fact, it appears as though “the sexual objectification of dancers is not just an aspect of [the Diamond’s] business model—it is the whole point of the enterprise.” *Burgos v. Emperor’s Tampa, Inc.*, 2024 WL 236886 at *7 (M.D. Fla. Jan. 22, 2024).

iii. *Other relevant facts support finding that entertainers are workers*

All that Chapter 58 requires is that an individual perform work on behalf of or for the benefit of another. That standard is readily met here. However, other facts also strongly support finding that entertainers are workers.

First: Denver Labor concludes that entertainers perform the primary work of Diamond Cabaret. They are essential to the Diamond's business, for the reasons discussed above.

Second: The Diamond exercises a significant amount of control over entertainers' working conditions. That the Diamond exercises so much power and authority also strongly supports the idea that they are workers.

That the Club has significant control is true from the beginning, when the Diamond requires entertainers to sign non-negotiable contracts. It holds true throughout the relationship, as the Diamond exercises total control over whether and how much entertainers pay in house and promo fees, how much may be charged for private dances and suite rentals, and whether entertainers earn an hourly rate. A person's inability to negotiate the fundamental wage-based terms and conditions of their work **at all** is powerful evidence of that they are laboring for another, more powerful entity.

Decisions issued under the Fair Labor Standards Act are useful, with the caveat that the FLSA provides narrower coverage than Chapter 58. In evaluating whether entertainers are entitled to the minimum wage under federal law, courts assess control by looking "not only to the guidelines set by the club regarding the entertainers' performances and behavior, but also to the club's control over the atmosphere and clientele." *Degidio v. Crazy Horse Saloon & Rest., Inc.*, 2015 WL 5834280, at *11 (D. S.C. Sept. 30, 2015) (quoting *Butler v. PP & G, Inc.*, 2013 WL 5964476, at *3 (D. Md. Nov. 7, 2013).

Here, the Diamond does set guidelines regarding entertainers' performances and behavior. Most significantly, it tells entertainers **when**, **where**, and **how** to perform onstage. Before they can dance, they must be "stage ready" according to the Club's standards. The Club dictates the length of each set. Entertainers must show up to dance when their names are called or be fined $25, even if they are with a customer performing a private dance. They must be topless before the end of the second song. They are supposed to stay onstage and continue performing if the next entertainer does not show up for her set.

But more broadly, and as described in Section II(C)(vi), the Diamond has absolute control over the working environment. Entertainers have no ability to set prices, determine specials, or dictate the Diamond's ambiance. *See Degidio*, 2015 WL 5834280, at *12 (finding dancers were employees by relying, in part, on the fact that the strip club controlled music, lighting, ambiance, layout, operating hours, admission, payment, and what it served); *McFeeley v. Jackson St. Entm't*, 47 F. Supp. 3d 260, 269 (D. Md. 2014) (control over "the clubs' atmospheres" weighed in favor of finding control). They must follow the Club's check-in and out process. *Thompson v. Linda and A, Inc.*, 779 F. Supp. 2d 139, 148 (D.D.C. 2011) (concluding entertainers were protected by wage and hour laws based, in part, on the fact that club

required dancers to follow sign in/sign out procedures). The Club is in the driver's seat over advertisement, hours of operations, dress code, who is allowed in, and what the rules of conduct are. *See Butler*, 2013 WL5964476, *4 (entertainer was covered by wage and hour protections, in part, because the club "alone [was] responsible for advertising and creating the atmosphere of the club," and the dancer was therefore "entirely dependent on the Defendant to provide her with customers . . ."); *McFeeley*, 47 F. Supp. 3d at 269 (defendants' control over the club's "advertising and day-to-day operations" weighed in favor of finding control). In fact, entertainers told Denver Labor of instances when they sought to have unruly or abusive customers ejected—only to have the Diamond's managers refuse.

The idea that entertainers are in business for themselves, separate and distinct from the Diamond, has no support. Their autonomy exists in choosing their own hours, but a modicum of flexibility over work hours does not render entertainers exempt from wage and hour laws when, set against all the facts, they are frontline workers performing jobs integral to the Diamond's business, subject to the Diamond's control, and are dependent upon the Club for their ability to work and earn. *See, e.g.*, *McLaughlin v. Seafood, Inc.*, 861 F.2d 450, 452-53 (5th Cir. 1988); *Mednick v. Albert Enterprises*, 508 F.2d 297, 302-03 (5th Cir. 1975); *Donovan v. DialAmerica Marketing, Inc.*, 757 F.2d 1376, 1380 (3rd Cir. 1985) (home researchers were employees even though they "were free to choose the weeks and hours they wanted to work" and the quantity of work); *Silent Woman, Ltd. v. Donovan*, 585 F. Supp. 447, 451 (E.D. Wis. 1984) (workers who did needlework in their homes for a corporation, set their own hours, but were paid at a rate set by the corporation were covered by the FLSA).

Instead, courts have repeatedly held that a worker's "freedom to work when she wants and for whomever she wants" is not dispositive of the issue of wage and hour coverage. *Reich v. Priba Corp.*, 890 F. Supp. 586, 592 (N.D. Tex. 1995). "Even if the freedom to work for multiple employers may provide something of a safety net, unless a worker possesses specialized and widely-demanded skills, that freedom is hardly the same as true economic independence." *McLaughlin*, 861 F.2d at 452-53. Such "bare legal powers" do not deserve "undue reliance," *Mednick*, 508 F.2d at 302-03, because they "merely mask the economic reality of dependence," *Priba Corp.*, 890 F. Supp. at 592.

Third: Wage laws are intended to be remedial in nature. Their purpose is to protect people by creating a standard of workplace dignity through the guarantee of wages. This is true of the Colorado Wage Act, the FLSA and, most importantly, Denver's Minimum Wage and Civil Wage Theft Ordinances. Emphasizing the remedial nature of state wage laws, the Colorado legislature recognizes that:

> The welfare of the state of Colorado demands that workers be protected from conditions of labor that have a pernicious effect on their health and morals, and it is therefore declared, in the exercise of the police and sovereign power of the state of Colorado, that inadequate wages and unsanitary conditions of labor exert such pernicious effect.

C.R.S. § 8-6-101(a). It is, in fact, unlawful in Colorado to pay workers "wages which are inadequate to supply the necessary cost of living," "maintain the health of workers so

employed," and "under conditions of labor detrimental to their health and morals." *Id.* § 8-6-104. Echoing these sentiments, Denver's Civil Wage Theft Ordinance states that:

> It is the intent of this article to ensure the payment of earned wages to as many workers as possible, and to limit and redress wage theft involving workers in accordance with limitations imposed by Colorado law.

D.R.M.C. § 58-22.

Entertainers fit squarely in the group that wage laws are most intended to protect. They are not economically independent, rugged entrepreneurs building their own brand and business, operating as free entities with the power to set their terms of work. They are workers being paid less than minimum wage, subject to the direction and control of another, more powerful entity, restricted even from setting their own prices or using Venmo to get paid directly. Their "livelihood is dependent upon finding employment in the business of others," they are "least able in good times to make provisions for their needs when old age and unemployment cut off their earnings," and "as a matter of economic reality, are dependent upon the business to which they render service." *Mednick*, 508 F.2d at 300.

Based on the totality of the circumstances, the overwhelming weight of the evidence establishes that entertainers are the Diamond's workers. And the Diamond, therefore, violated their civil rights by paying them no money and instead putting its hand in entertainers' pockets, each and every time they worked.

D. The Diamond owes entertainers D.D.H. and H.R. more than $**110,000** in restitution for wage theft

Although the Diamond has refused to provide records reflecting hours worked for entertainers, wrongly and alternatively claiming that a) they are not workers and b) no such records exist, the Division does have limited records from two entertainers, D.D.H. and H.R.

D.D.H. provided ClubTrax records encompassing her work from January 1, 2024, at 7:00 AM until December 28, 2024, at 11:38 PM. In total, she logged in 98 times, paid $7,135 in fees to the Diamond, worked for 461.66 hours, and was paid $0 in wages.

H.R. provided her own list of hours worked. The Division shared these with the Diamond and offered it the opportunity to rebut H.R.'s claims by providing ClubTrax records. The Diamond simply refused. Because the Club has records and has failed to provide them, Denver Labor is required to presume that the Diamond committed wage theft. *See* D.R.M.C. § 58-4(d)(1).

And consistent with that finding, the Division finds H.R. to be credible. She reported that she worked approximately 387.60 hours between April 2022 and August 2023, and acknowledged this was a conservative accounting. On a tentative basis, the Division accepts her records as accurate for the purposes of calculating restitution. This is a "tentative" basis only because precise records do exist; once the Division receives them from the Diamond, it will assess whether the Club owes any additional restitution.

In addition, the Diamond has refused to provide either records reflecting fees paid by H.R. or applicable schedules of house fees. However, D.D.H.'s records establish average fees of $72.81 per shift. The Division applies this average to H.R. to estimate that she paid total fees of $5,606.07 across her 77 work shifts.

These fees—along with any fines imposed against entertainers—are illegal deductions. Every single fee and fine is, therefore, an act of wage theft in violation of Chapter 58.

Employers are strictly limited in what deductions they may impose against workers' wages. Any deductions under Chapter 58 "must comport with all requirements under Colorado and federal law," and "[n]o deduction . . . may bring workers below Denver minimum wage." Civil Wage Theft Rule 5.8(i). That these things are deductions is self-explanatory. They are charges imposed by an employer against entertainers, and they reduce entertainers' earnings significantly.

Entertainers "agree" to some of these deductions, but only some. Their (non-negotiable, mandatory) contracts incorporate house fees, but say nothing about fines and promo fees.[2] Nevertheless, even the house fees are illegal under applicable law. Other than a small category of lawful deductions (e.g., those for taxes or contributions to retirement plans), the CWA prohibits employers from imposing non-revocable deductions. C.R.S. § 8-4-105(1)(d). These fees, whether agreed to or not, are non-revocable by the entertainers. The Club has complete control over whether, when, and how much to impose, and entertainers are not allowed to work if they do not pay.

Furthermore, employers simply cannot force workers to pay money for the privilege of working for the employer's benefit. It is illegal for a business to shift basic operating costs onto workers, at least where the expense in question is primarily for the employer's benefit or convenience. *See generally* INFO #16 (Deductions From, and Credits Towards, Employee Pay). The Diamond forces entertainers to pay "rent," but does not actually transmit any property to them because the Club retains complete control over the premises. This circumstance is no different than if a fast food restaurant charged a worker $50 to "rent" a cash register, or if a factory forced employees to "rent" their space on an assembly line. Because entertainers labor for the benefit of the Diamond, the fees they pay to work are also for the Diamond's benefit.

Finally, these fees and fines all bring entertainer earnings below $0 per hour. This is below the applicable minimum wage, and therefore a violation.

Both D.D.H. and H.R. are entitled to compensation for a) unpaid minimum wages and b) paid house and/or promo fees, and any fines. In addition, for the reasons explained below, the Division orders the Diamond to pay restitution that includes treble damages and

[2] In fact, the contracts all state that the Club will pay for the costs of advertising and promotion. The promo fees are not only illegal under Denver and Colorado Law; they are also wage theft because they reflect a breach of contract.

12% interest from the date the wages were owed.[3] Based on the limited records before the Division, the Diamond owes D.D.H. **$63,314.93** and H.R. **$50,940.27**. When the Club finally provides full records of hours worked by these women, Denver Labor will calculate additional restitution owed using this same approach.

This analysis—and the logic of this Determination as a whole—**applies to every single entertainer who has worked at the Diamond since May 4, 2020**. All are workers entitled to minimum wage. All have the right to work free of wage theft. Every entertainer who has worked at the Club during the time period covered by the Division's investigation is owed restitution for unpaid minimum wages and unlawful deductions, in addition to treble damages and 12% interest from the date wages were first owed them. The Diamond—and its corporate parents—owes each and every entertainer restitution as ordered, and must provide the Division with adequate records to verify those payments. At a minimum, this will include complete ClubTrax or other records reflecting all time worked and fees paid by any entertainer since May 4, 2020.

E. This case requires meaningful damages and penalties

Finally, significant damages and penalties are appropriate to address the Diamond's wage theft against entertainers. The same reasoning discussed in Section III applies here. However, there are other facts that render the Club's violations of its entertainers' rights even more severe than those against its non-entertainer workers.

First, the Diamond's minimum wage violations against entertainers are simply more significant. Although the Club stole hundreds of thousands of dollars from its line employees, it at least paid them **something**. This is not true for the entertainers. Paying a person $0 per hour is quantitatively and qualitatively worse than paying less than minimum wage, but still something.

Second, the Diamond knew the risks of its model and chose to gamble. It prioritized profits and exploitation over the fundamental workplace rights of entertainers. RCI, which ultimately owns and controls the Diamond, has been sued in at least two class actions alleging that entertainers at clubs in New York and Texas were misclassified and entitled to minimum wage. *See Hart*, 60 F. Supp. 3d 447; *Rogers et al. v. 12291 CWB, LLC et al.*, No. 1:19-CV-00266 (E.D. Tex.). In addition, dozens of courts have held that wage and hour protections apply to entertainers. *See Shaw*, 241 F. Supp. 3d at 1323 n. 5 (collecting cases).

Evidence of the Diamond's specific awareness of the danger of its practices comes from its entertainer contracts. Section 8 promises to punish entertainers if any decisionmaker reclassifies them as employees, stating in relevant part:

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[3] Because the Diamond is generally on a bimonthly payment schedule, Denver Labor treats these unpaid wages as being owed 14 days after H.R. and D.D.H. clocked in for a particular shift. This approach actually undercalculates interest by giving the Diamond a two-week grace period.

LICENSOR AND LICENSEE EACH ACKNOWLEDGE AND AGREE THAT THE RELATIONSHIP OF THE PARTIES HERETO IS THAT OF LICENSOR AND LICENSEE AND IS NOT AN EMPLOYEE/EMPLOYER RELATIONSHIP. NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED SO AS TO CREATE AN EMPLOYEE/EMPLOYER RELATIONSHIP BETWEEN THE PARTIES HERETO.

[. . .]

IN ORDER TO COMPLY WITH APPLICABLE TAX LAWS AND TO ASSURE THAT THE CLUB IS NOT UNJUSTLY HARMED AND THAT LICENSEE IS NOT UNJUSTLY ENRICHED, THE CLUB AND LICENSEE AGREE THAT IF THERE IS ANY RULING OR DECISION OF AN ARBITRATOR, COURT OR OTHER TRIBUNAL WITH JURISDICTION OVER THE MATTER THAT THE RELATIONSHIP IS ONE OF EMPLOYER/EMPLOYEE, LICENSEE SHALL SURRENDER, REIMBURSE AND PAY TO THE CLUB, ALL PERFORMANCE FEES, IN EXCESS OF ANY MINIMUM WAGE OBLIGATIONS FOUND TO BE DUE AND OWING, THAT WERE RECEIVED BY LICENSEE AT ANY TIME SHE PERFORMED ON THE PREMISES - ALL OF WHICH WOULD OTHERWISE HAVE BEEN COLLECTED AND KEPT BY THE CLUB HAD THEY NOT BEEN RETAINED BY LICENSEE UNDER THE TERMS OF THIS LICENSE - AND SHALL IMMEDIATELY PROVIDE A FULL ACCOUNTING TO THE CLUB OF ALL TIP INCOME WHICH SHE RECEIVED DURING THAT TIME.

(Emphasis in original).

Having embarked on a journey to commit systemic wage theft, the Diamond also forced its workers to sign an agreement that would blunt the effect of any lawsuit or reclassification decision finding entertainers to be employees. **This provision does not apply here because the Division does not find that entertainers are employees**, but it reflects the Diamond's full understanding of the possible consequences of its scheme—and the full understanding of its parent entities, Big Sky and RCI. Notwithstanding that knowledge, the Club and its corporate parents chose to steal (by conservative estimates) millions in wages from its entertainers.

To address the Diamond's violations, Denver Labor:

1. **Orders the Diamond and/or all responsible parties to pay D.D.H. $63,314.93 in restitution for the minimum wage violations and illegal deductions she suffered in 2024, inclusive of treble damages and 12% interest.** In addition, the Diamond must produce records of hours worked and fees paid by D.D.H. for all time worked at the Diamond since May 4, 2020. She is entitled to restitution, including treble damages and 12% interest from the date the wages were first owed, for the entire period encompassed by the Division's investigation.

   As stated, the Diamond must remit this money to Denver Labor or pay D.D.H. as required by D.R.M.C. § 58-26(e)(2), or else it will incur an additional $5,000 fine, in addition to any other fines assessed in this Determination.

2. **Orders the Diamond and/or all responsible parties to pay H.R. $50,940.27 in restitution for the minimum wage violations and illegal deductions she suffered in 2022 and 2023, inclusive of treble damages and 12% interest.** In addition, the Diamond must produce records of hours worked and fees paid by H.R. for all time worked at the Diamond since May 4, 2020. She is entitled to restitution, including

treble damages and 12% interest, for the entire period encompassed by the Division's investigation.

As stated, the Diamond must remit this restitution to the Denver Auditor's Office or pay H.R. as required by D.R.M.C. § 58-26(e)(2), or else it will incur an additional $5,000 fine, in addition to any other fines assessed in this Determination.

3. **Orders the Diamond and/or all responsible parties to pay all entertainers who have worked any amount of time at the Diamond the applicable minimum wage for all time worked since May 4, 2020.** In addition, the Diamond must pay all entertainers restitution equal to three times unpaid wages and 12% interest. The Diamond must provide the Division with records of all hours worked during the covered time period, and the Division will calculate restitution owed.
4. **Orders the Diamond and/or all responsible parties to pay fines equal to 100% of the total wages owed to entertainers. The precise amount will be determined later once the Diamond remits to the Division the information it is required to under law.** *See* D.R.M.C. § 58-2(c).
5. **Orders the Diamond and/or all responsible parties to cease committing wage theft against entertainers:**
    a. Through the imposition of house and promo fees,
    b. By allowing managers to share in tips for work performed by entertainers, and
    c. By refusing to pay them minimum wage.

The Diamond and/or all other responsible parties must remit restitution as ordered to the Denver Auditor's Office or pay individuals, including absent entertainers for whom the Club has withheld records, as required by D.R.M.C. § 58-26(e)(2). If this does not occur, responsible parties will incur an additional $5,000 fine per affected worker. If responsible parties pay any individuals directly, it/they must provide proof of payment to the Division, along with records sufficient for the Division to calculate restitution owed and confirm proper amounts were actually paid to each worker.

F. Big Sky Hospitality Holdings, Inc. and RCI Hospitality Holdings, Inc. are jointly and severally liable for all violations

Finally, the Division imposes upstream liability on both Big Sky Hospitality Holdings and RCI Hospitality Holdings for all wage theft encompassed in this Determination. *See* D.R.M.C. §§ 58-24(a), (b). Within 14 days of notice of this Determination, these entities must reach an agreement with the Division to ensure payment of all unpaid wages described in this Determination. *See id.* This includes unpaid minimum wages to both entertainers and workers classified as employees at Diamond Cabaret, as well as any unlawfully retained tips. Absent full payment within 14 days, Big Sky and RCI they shall be liable for all assessed interest, damages, and fines.

The Ordinance establishes joint and several liability for wage theft among certain parties, even if those parties are not themselves the direct employer of the workers who suffer wage theft.[4] To be liable, the party must:

1. Be an employer or person who is regularly engaged in business or commercial activity.

2. Have directly or indirectly contracted with either or both a worker or an employer.

3. Have benefited, directly or indirectly, from the work for which a person was not properly paid.

D.R.M.C. §§ 58-24(a), (b).

The Diamond, Big Sky, and RCI do not contest any of the facts that follow, although they had a full and fair opportunity to do so. *See* Ex. A, DL0220-23 (Denver Labor posing inquiries regarding the relationship between the Diamond, Big Sky, and RCI); *id.* at DL0224-25 (the Diamond refusing to address or dispute any allegations). Big Sky and RCI did not respond at all.

Nevertheless, the evidence is clear: Big Sky and RCI meet the requirements necessary to be held liable under Section 58-24. Big Sky and RCI meet these requirements. First, they are employers or persons regularly engaged in business or commercial activity. Big Sky is a wholly-owned subsidiary of RCI with complete ownership stakes in several Denver-based strip clubs, including PT's Centerfold, Rick's Cabaret, and the Diamond. As discussed below, Big Sky was involved in the asset purchases of each of these clubs. RCI is a publicly-traded company that claims ownership, through subsidiaries like Big Sky, of "69 establishments in 13 states as of September 30, 2024." Ex. K, DL0292. This encompasses six establishments in Colorado, including the Diamond. *Id.* at DL0323-25. In both 2023 and 2024, revenues for RCI and its family of companies neared $300 million. *Id.* at DL0336.

Big Sky and RCI have also contracted in such a manner that they benefit from the work of the Diamond's entertainers and other workers. On July 23, 2021, a "purchaser group" consisting of the Diamond,[5] Big Sky, and RCI purchased Diamond Cabaret Denver from its prior owners. Ex. L, DL0483. In total, they paid $11,300,000 for the Diamond, which included about $3.9 million up front, a 10-year promissory note, a 20-year promissory note, and 59,895 shares of RCI stock. *Id.* at DL0487. On October 18, 2021, Big Sky issued a $1 million IP Promissory Note related to this purchase, and RCI "personally guaranteed all of the obligation" of Big Sky under the note. Ex. M. RCI also executed a non-compete and lock-up/leak-out agreement, and delivered those to the seller at closing. Ex. M, DL0518-19.

[4] The Division does not conclude that Big Sky and RCI do not qualify as employers of the Diamond's workers.

[5] Specifically, 1222 Glenarm, Inc., which changed its name to Glenarm Dining Services, Inc. in January of 2022.

This exchange was part of a much larger chain of transactions by which RCI and its subsidiaries obtained control of strip clubs around the country. In total, RCI and/or its subsidiaries paid $88,00,000 to purchase the Diamond and 10 other clubs, including several located in Denver. Ex. N.

As strong support for the idea that RCI benefits from the labor of the Diamond's workers, there is significant evidence that RCI exerts significant control over the Diamond's operations. Specifically:

1. The form contracts in use at the Diamond are substantively identical to the contracts in use at PT's Showclub, PT's Centerfold, and Rick's Cabaret—all of which also fall under RCI's umbrella. *See generally* Ex O (identical form contracts from these four clubs). In addition, these contracts are largely identical to those in use at other RCI clubs, including at least two in Texas.

2. The Diamond uses an internal timekeeping and point of sale system called ClubTrax. ClubTrax is also used in Denver at PT's Showclub, PT's Centerfold, and Rick's Cabaret. In addition, it is used at clubs around the country that fall under RCI's umbrella. After RCI purchased the Diamond (and other clubs), the Diamond switched over to ClubTrax.

3. The Diamond, Big Sky, and RCI have overlapping leadership. Eric Langan is the President, Secretary, Treasurer, and Director of the Diamond. Ex. P, DL0570-71. He is also the President and sole director and officer of Big Sky. *Id.* at DL0575, 576. Finally, he is the President of RCI. In these roles, Mr. Langan has significant authority over the operations and decisionmaking of all three entities. *See* Ex. L, DL0514 (Mr. Langan signing as "President" for all three entities).

4. During the time period in question, management at the Diamond submitted regular—including both nightly and, sometimes, hourly—updates to RCI leadership regarding attendance and revenue. On a typical night, this information included the number of entertainers who clocked in; number of guests who attended; revenue; and how this revenue compared to one year prior and to the Club's goals. *E.g.*, Ex. Q.

5. Managers at the Diamond have RCI e-mail addresses ending in @ricks.com. *See* Ex. Q (including @ricks.com e-mail addresses for four managers at the Diamond).

6. RCI and RCI-affiliated personnel have significant authority and control at the Diamond. For example:

    a. A regional manager named [redacted] oversees the operations of the Diamond, Rick's Cabaret, and other Denver-area clubs. Although the Diamond has withheld information about this individual, he works for RCI or RCI Management Services, Inc., another RCI subsidiary that exerts direct control over Club operations. This individual has the authority to approve

or disapprove of personnel decisions. On at least one occasion, he approved in writing a job change for an employee. In addition, before [redacted] fired D.D. in retaliation for her protected activity, he discussed the decision with [redacted]. At one point, when K.G. had work-related concerns, she was instructed to take those up with the regional manager, and she did so. In addition, he has and/or does receive regular cash payouts from the Diamond.

b. Scott Sherman, who serves as RCI's in-house counsel, played a key role in creating and implementing a new policy prohibiting recordings at the Diamond in November of 2024. When D.D. challenged this policy as an unlawful restriction of her rights, the Diamond's general manager instructed her to speak to Mr. Sherman. *See* Ex. R, DL0587.

c. Three former managers at Rick's Cabaret and one former manager at Diamond Cabaret informed the Division that RCI would hold a weekly meeting for all managers at all RCI clubs across the country. The Diamond's managers attended this meeting, during which RCI provided instructions to them and others.

d. Around early May of 2022, [redacted] texted [redacted]—among others—and explained that the Diamond would be "making adjustments to the way we are managing our suite program," which would include "ALL upstairs suites being run by management." [redacted] stated that "At any rate, this is a RCI mandate moving forward. This will start tomorrow and the schedule will reflect the moves we have made." Ex. S.

7. The Diamond's prior counsel admitted to the Division that prior to May 27, 2022, the Diamond "operated as RCI Hospitality Holdings, Inc." Ex. A, DL0008. In addition, RCI has access to payroll records from the Diamond. So too does RCI Management Services.

8. The Diamond utilizes a portal created, maintained, and run by RCI Internet Services, Inc., yet another RCI subsidiary. Management at the Club utilized this portal to download and upload necessary employment documents. For example, the various mandatory agreements that workers (including entertainers, bartenders, servers, and so on) are maintained on the portal, and when hiring a new worker, managers would download necessary documents.

   Managers also upload documents to the portal, including but not limited to: signed entertainer agreements, other documents signed by the Diamond's workers, incident reports, sales and attendance reports, and invoices. Invoices were paid centrally by RCI.

9. A former employee for RCI explained in detail to the Division that RCI would oversee and control liquor sales. Specifically, RCI would decide what types of liquor to serve, and had partnership agreements with various brands. This former employee explained that all RCI clubs were required to use an internal system called Barkeep; that he would review orders from each club, including RCI's Denver-based clubs, and correct those orders to a) serve RCI's preferred liquor brands and b) take advantage of rebates available through RCI's brand agreements; that uploaded invoices would be reviewed centrally by RCI—or, again, one of its many wholly-owned and controlled subsidiaries—and then paid; and that the décor, furniture, lighting, and ambiance at RCI's Denver-area clubs were dictated by leadership at RCI and/or RCI Management Services.

Finally, Big Sky and RCI benefit from the labor of workers at the Diamond. The corporate and financial entanglements described above proves this point. In addition, the Diamond is part of RCI's brand, and RCI frequently advertises and declares ownership over the Club. The work performed by bartenders, servers, entertainers and others helps burnish RCI's reputation as the entity that "pioneered elegant gentleman's clubs based on powerful brands, quality environments, beautiful entertainers, and excellent restaurants." *See The RCI Story*, available at https://www.rcihospitality.com/company/company-profile/. RCI's webpage advertises Diamond Cabaret as an "elegant gentleman's club[] with restaurants and cigar lounge," and in a press release announcing the acquisition of the Diamond (among other clubs), Mr. Langan explained, in his capacity as President and CEO of RCI:

> This is exactly the type of sizeable transaction for which we have been searching. All the clubs are well-established and proven cash generators. . . . We believe the quality of the clubs' licenses and locations enhance the value of the collective acquisition to us.

Ex. N, DL0527.

Based on its consideration of all relevant facts and factors, the Division concludes that this corporate structure is precisely the type encompassed within the scope of D.R.M.C. § 58-24. RCI and Big Sky have contracted in such a manner that they derive significant direct and indirect benefits from the labor of the Diamond's workers. These entities have a legal responsibility to ensure payment of all earned wages. D.R.M.C. § 58-24. They have failed in that duty. Worse, they have profited tremendously from that failure. If they do not ensure full payment of all owed wages (including for absent entertainers) within the earlier of a) 14 days' notice of this Determination or b) March 19, 2025, they shall be liable for all assessed wages, interest, damages, and penalties for any wage theft.

IV. CONCLUSION

The City and County of Denver has crafted a system of laws designed to ensure fair pay for honest work, reduce poverty, protect fair competition, and create an economy in which all may succeed.

The Diamond and its corporate parents have built a large and successful business centered around violating nearly every provision of the Ordinances. It has misclassified its

workers, stolen their wages, withheld information from the government, destroyed requested evidence, made false claims in response to an investigation, and retaliated against those who dared to speak up.

Because this Determination contains information and guidance that may be useful to other employers and workers in the City and County of Denver, Denver Labor will make it publicly available. This release does not otherwise waive privileges or protections that apply under the Colorado Open Records Act, Generally Accepted Government Auditing Standards, or any other applicable statute, standard, rule, regulation, code of conduct, or guideline.

February 26, 2025

Denver Labor

Denver Auditor's Office