

***Dep't of Consumer & Worker Protection v.
Boston Market Corp.***

OATH Index No. 620/24 (July 30, 2026)

Petitioner established that respondent Boston Market Corporation violated the Fair Workweek Law by failing to provide new employees with estimates of work schedules, failing to provide employees with 14-days' written notice of work schedules, failing to obtain written consent for schedule changes, failing to pay schedule change premiums, requiring employees to work "clopening" shifts without written consent or payment of premiums, and failing to notify employees of available shifts before hiring new employees. Petitioner failed to establish liability of respondent Jignesh Pandya. Relief to employees, civil penalties, and restitution of \$70,465,870 recommended.

**New York City Office of
Administrative Trials and Hearings**

In the Matter of

Department of Consumer and Worker Protection

Petitioner

-against-

**Boston Market Corporation and
Jignesh Pandya a/k/a Jay Pandya**

Respondents

Report and Recommendation

Jonathan Fogel, Administrative Law Judge

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Petitioner, the Department of Consumer and Worker Protection (“DCWP”), brought this proceeding under the New York City Fair Workweek Law (“FWL”), Title 20, Chapter 12 of the New York City Administrative Code. Petitioner alleges that between February 1, 2018 and May 26, 2021, respondent Boston Market Corporation (“Boston Market”): 1) failed to provide its fast food employees with a good faith estimate of the hours they would work each week; 2) failed to provide written work schedules to employees with 14 days’ notice; 3) failed to obtain written consent for adding work hours to employees’ schedules; 4) failed to pay employees schedule change premiums; 5) required employees to work “clopenings” without written consent;¹ and 6) failed to notify employees of available shifts before hiring new employees, in violation of the FWL (ALJ Ex. 1). Petitioner also alleges that respondent Jignesh Pandya, the managing member of the entity that owns Boston Market, is liable for violations that occurred between April 27, 2020 and May 26, 2021.²

By email dated October 4, 2023, ALJ Julia Lee set an October 31, 2023 deadline for Mr. Pandya to obtain an attorney for these proceedings (ALJ Ex. 3).³ On November 15, 2023, ALJ Lee emailed Mr. Pandya and instructed him that if Boston Market did not retain an attorney by November 24, 2023, it would be presumed to be proceeding in this matter without one (*Id.*). On March 28, 2024, I emailed Mr. Pandya and reminded him of his right to counsel (ALJ Ex. 4).

¹ “Clopening” means two shifts with fewer than 11 hours between the end of the first shift and the beginning of the second shift when the first shift ends the previous calendar day or spans two calendar days.” 6 RCNY § 7-601(a).

² The second amended petition is also captioned against respondents Engage Brands LLC, Rohan Restaurant Group LLC, and Boston Market Holding Corp. By email dated January 5, 2026, petitioner withdrew all claims against respondents Engage Brands and Rohan Restaurant Group. The email is made part of the record as ALJ Exhibit 24. Additionally, as petitioner did not request a finding of liability against Boston Market Holding Corp. in its summation and presented no evidence for liability, the charges against that respondent should be dismissed (Pet. Br. at 22).

³ Emails with the parties on the following dates are made part of the record as ALJ Exhibits: October 4 and November 15, 2023 (ALJ Ex. 3), March 28, 2024 (ALJ Ex. 4), September 6 and 9, 2024 (ALJ Ex. 5), September 10 and 11, 2024 (ALJ Ex. 6), September 16, 2024 (ALJ Ex. 7), May 6, 2025 (ALJ Ex. 8), June 26, 2025 (ALJ Ex. 9), August 4, 2025 (ALJ Ex. 10), September 10, 2025 (ALJ Ex. 11), September 25, 2025 (ALJ Ex. 12), October 17, 2025 (ALJ Ex. 13), October 24, 2025 (ALJ Ex. 14), November 6 and 12, 2025 (ALJ Ex. 15), December 30 and 31, 2025 (ALJ Ex. 16), January 13, 2026 (ALJ Ex. 17), February 3, 2026 (ALJ Ex. 18).

On April 16, 2024, Mr. Pandya appeared at trial without an attorney and requested an adjournment for additional time to obtain counsel, which I granted (4/16/24 Conference: Tr. 4, 11). I reminded Mr. Pandya of his right to counsel and urged him to make efforts to obtain an attorney (4/16/24 Conference: Tr. 21). On May 3, 2024, Douglas Rowe, Esq., filed a notice of appearance with this tribunal on behalf of Boston Market. Mr. Rowe submitted a September 5, 2024 affirmation clarifying that he also represented Mr. Pandya on this matter.⁴

Mr. Rowe's September 5, 2024 affirmation was submitted in support of his motion to withdraw as counsel for Boston Market and Mr. Pandya (ALJ Ex. 20). On September 6, 2024, following a conference with the parties the day before, I emailed the parties and granted Mr. Rowe's motion to withdraw as counsel over Mr. Pandya's objection (ALJ Ex. 5). By email dated September 11, 2024, I granted Mr. Pandya's request to vacate trial dates scheduled for September 16, 17, and 18, 2024, and to adjourn the trial for respondents to obtain new counsel (ALJ Ex. 6). By email dated September 16, 2024, I set an October 17, 2024 deadline for Mr. Pandya to obtain a new attorney and instructed him that if he had not hired an attorney by that date he would need to be prepared to proceed to trial without one (ALJ Ex. 7).

On October 18, 2024, Mr. Pandya appeared at trial without counsel. Mr. Pandya asserted that he had been speaking with an attorney about representing him, but the attorney did not have the "capability to handle" this matter (Tr. 15). I asked Mr. Pandya to call the attorney to see if he would join the proceedings (Tr. 18). After a brief break, Mr. Pandya said that he spoke with the attorney, who informed him that he does not want to be "involved with this whole case" (Tr. 19). I explained the nature and procedural aspects of the trial and Mr. Pandya proceeded with the trial without counsel. Mr. Pandya testified that he was also appearing at the trial on behalf of Boston Market (Tr. 1455), and on all trial dates except the first date, he stated he was appearing for Boston Market.

At a 21-day trial, held by videoconference from October 2024 through July 2025, petitioner relied on documentary evidence and the testimony of seven witnesses. Mr. Pandya, who appeared at the trial from India due to a family member's medical condition, testified on

⁴ Mr. Rowe's May 3, 2024 notice of appearance is made part of the record as ALJ Exhibit 19. Mr. Rowe's September 5, 2024 affirmation is made part of the record as ALJ Exhibit 20.

his own behalf, called one witness, and introduced documentary evidence. The record was closed following petitioner's submission of its summation and respondents' failure to timely submit their summation.

For the reasons set forth below, I find that petitioner proved most of the charges against Boston Market but did not establish liability against Mr. Pandya. I recommend respondent Boston Market pay \$70,465,870, reflecting \$48,111,500 in civil penalties, \$21,380,100 in relief to employees, and \$974,270 in restitution to employees for unpaid premiums.

Preliminary Matter

At trial on June 26, 2025, I instructed the parties to submit their summations in writing by 5 p.m. on August 22, 2025 (Tr. 1931-32).⁵ By email on the same day, I informed the parties that "If either party does not submit their written closing argument by 5 p.m. on August 22, 2025, I will close the record without that party having an opportunity to submit their written closing arguments" (ALJ Ex. 9). At petitioner's request, without objection, the deadline was extended to September 12, 2025.

On September 10, 2025, Mr. Pandya emailed to request an extension for closing arguments until September 26, 2025 (ALJ Ex. 11). I granted Mr. Pandya's request for the extension and wrote that "The failure to submit written closing arguments by September 26, 2025 will result in my not considering the argument and not making it part of the record" (*Id.*). On September 25, 2025, I received an email from a person identifying themselves as "Rushi Shah" requesting an adjournment for Mr. Pandya to submit closing arguments due to medical issues that required him to rest for two weeks (ALJ Ex. 12). The email was sent from Mr. Pandya's email address. I granted the request and extended the deadline for closing arguments to Friday, October 17, 2025, informing the parties that "If either party does not submit their written closing argument by 5 p.m. on October 17, 2025, I will close the record without that party having an opportunity to submit their written closing argument" (*Id.*).

⁵ Mr. Pandya requested to also deliver an oral closing argument, which I scheduled for August 22, 2025. He subsequently requested to adjourn the argument but failed to confirm a date to reschedule. I denied his request to reschedule the oral argument and directed the parties to submit their closing arguments in writing (ALJ Ex. 12).

On October 17, 2025, petitioner submitted its closing argument, but respondents did not submit their closing argument or request an extension. On October 22, 2025, I emailed Mr. Pandya inquiring whether he still intended to submit a closing argument (ALJ Ex. 13). On October 24, 2025, an individual identifying themselves as “Soham” sent an email from Mr. Pandya’s email address and requested an extension for Mr. Pandya to submit his closing argument due to continued medical issues (ALJ Ex. 14). On November 6, 2025, “Soham” emailed that Mr. Pandya had continued health issues and attached a doctor’s note indicating that Mr. Pandya was to rest for four weeks (ALJ Ex. 15). By email dated November 12, 2025, I extended the deadline for Mr. Pandya to submit closing arguments to December 12, 2025, and marked that deadline final (*Id.*). Noting this was the third extension for Mr. Pandya to submit closing arguments, I instructed Mr. Pandya that “if you do not submit your written closing argument by 5 p.m. on December 12, 2025, I will close the record without you having an opportunity to submit your written closing argument” (*Id.*).

Mr. Pandya did not submit closing arguments by December 12, 2025, as directed. By email dated December 31, 2025, I extended the deadline for closing arguments to January 9, 2026, instructing Mr. Pandya that “if you do not submit your written closing argument . . . by 5 p.m. on January 9, 2026, I will close the record without you having an opportunity to submit your written closing argument” (ALJ Ex. 16). On January 13, 2026, an individual sent an email from Mr. Pandya’s email address and wrote that Mr. Pandya and his mother continued to have health issues and had not been “doing well” without further clarification or documentation (ALJ Ex. 17). As Mr. Pandya did not provide good cause for extending the deadline again, I closed the record on February 3, 2026 (ALJ Ex. 18). *See Mayor’s Office of Media & Entertainment v. Brik*, OATH Index No. 1679/24 at 3-4 (July 30, 2025) (closing the record after respondent did not timely submit his summation).

Analysis

The FWL was enacted to establish “general provisions governing fair work practices and requiring certain fast food employers to provide advance notice of work schedules to employees and to provide a schedule change premium when hours are changed after required notices.” NYC Local Law 107 of 2017. A “fast food employer” is any employer which employs a

fast food employee at a fast food establishment. Admin. Code § 20-1201 (Lexis 2026).⁶ Under the FWL, fast food employers must provide their employees with written copies of their expected work schedules, provide written notice of work schedules at least 14 days before the first day of any new schedule, obtain employees' written consent to work additional hours not included in their initial work schedules, pay premiums in addition to the employees' regular pay when employees' schedules are changed under certain circumstances, and offer current employees available shifts before hiring new employees to fill those shifts. Admin. Code §§ 20-1221(a), (b), (d), 20-1222, 20-1241(b). Employers are also prohibited from requiring employees to work clopening shifts, and if an employee requests or consents to such a shift, it must be in writing. Admin. Code § 20-1231; 6 RCNY § 7-601(a). Employers covered by the FWL must maintain records documenting their compliance with the FWL for three years and provide petitioner with access to those documents upon request. Admin. Code §§ 20-1205, 20-1206; 6 RCNY § 7-609(a).⁷

Background

On May 26, 2021, Alex Moran, an investigator with petitioner's Office of Labor Policy and Standards, served Boston Market with a Notice of Investigation ("NOI") to produce documents and information (Pet. Ex. 1; Tr. 1107-09). The requested documents included employee rosters, payroll records, time and attendance records, good faith estimates provided to employees, employee work schedules, premiums paid to employees, any documented exceptions to premium pay requirements, written employee consents to schedule changes or clopenings, and notices of available shifts (Pet. Ex. 1). The NOI covered approximately three and a half years from February 1, 2018 through May 26, 2021 (the "investigation period"). Boston Market responded and produced records for thousands of employees at its restaurants

⁶ A fast food employee is broadly defined as "any person employed or permitted to work at or for a fast food establishment by any employer that is located within the city where such person's job duties include at least one of the following: customer service, cooking, food or drink preparation, delivery, security, stocking supplies or equipment, cleaning or routine maintenance." Admin. Code § 20-1201.

⁷ DCWP's rules were renumbered and amended effective June 23, 2022. References to DCWP's rules in this decision are to the version of the rules in effect when the alleged violations occurred.

in New York City during the investigation period (Tr. 1111-15; Pet. Exs. 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 14).

In its response to the NOI, Boston Market did not dispute that it is a corporation which owns and operates Boston Market restaurants within New York City or that its restaurants qualify as fast food establishments within the meaning of the FWL (Pet. Exs. 1, 2). Admin. Code § 20-1201 (defining a fast food establishment as an entity that primarily serves food or drink items, offers limited service, and is part of a franchise chain involving 30 or more establishments nationally). Mr. Moran testified that he conducted an “online search” during the investigation which indicated that Boston Market had 23 locations within New York City and more throughout the rest of the country (Tr. 1106). Boston Market also produced an employee roster and acknowledged that none of the employees on the roster were exempt from the FWL (Pet. Exs. 2, 3). Accordingly, Boston Market is bound by the FWL and its rules as delineated in the Administrative Code and Title 6, Chapter 7 of the Rules of the City of New York (the “Rules”) regarding covered employees.

David Rauch, a senior data scientist employed by petitioner, analyzed Boston Market’s records for potential violations of the FWL (Tr. 21, 23, 28, 395). He used a coding software, “R,” to write code that searched for violations through records covering thousands of employees over several years (Tr. 23-26, 28). The code “automate[d]” the analysis to avoid counting individual violations manually (Tr. 23). Mr. Rauch wrote the code using standards provided by petitioner’s attorneys and managers and the FWL (Tr. 383-84, 390-91). Mr. Rauch and his manager, Elizabeth Major, “sample check[ed]” a number of violations manually to confirm that the code correctly identified FWL violations (Tr. 27, 383). His entire analysis can be manually checked against Boston Market’s original records (Tr. 27, 378).

I credited Mr. Rauch’s analysis of Boston Market’s records. The records fell within the “voluminous writings” rule, which permits the “admission of summaries of voluminous records or entries where, if requested, the party against whom it is offered can have access to the original data.” See *Ed Guth Realty, Inc. v. Gingold*, 34 N.Y.2d 440, 452 (1974). Here, Boston Market’s scheduling and payroll records were business records, Mr. Rauch compiled his analysis from those records, and respondents had ample opportunity to review Mr. Rauch’s

compilation. Additionally, respondents failed to present any evidence challenging Mr. Rauch's compilation.

Because Boston Market informed petitioner that no one on its employee roster was exempt from the FWL, Mr. Rauch testified that he considered all employees on the roster subject to the law's requirements (Tr. 218-22, 413; Pet. Ex. 2). At trial, Mr. Pandya asserted that Mr. Rauch failed to exclude salaried employees who are not covered by the FWL (Tr. 221-23, 350-52, 428-29, 458-61, 465). Mr. Rauch then reviewed Boston Market's records again to exclude possible salaried employees from his analysis, whom he identified as receiving consistent hours or pay, not appearing in timekeeping records, or holding the title of assistant manager or general manager (Tr. 247-49, 413-14, 1187-89, 1194-96; Pet. Exs. 51, 58).⁸

Several former Boston Market fast food employees recounted FWL violations during their employment: Stacey Stahley, a cashier from 2011 through 2019 and assistant general manager from 2019 through 2023; Samantha Santos, a server, cashier, and cook in 2020 and 2021; Kevin McDonald, a cook and hourly shift manager from 2015 to 2020; Francis Robles, a cashier in 2017 and 2018; and Rachel Cuevas, a shift supervisor, from 2018 to 2023 (Tr. 267, 501, 520, 567-68, 726-27). The employees maintained that Boston Market provided them with unpredictable work schedules, including last-minute notice of work shifts or schedule changes; that Boston Market did not request or receive written consent to work additional hours not included in original schedules; did not pay them scheduling premiums when appropriate; and failed to offer them newly available shifts prior to offering the shifts to new employees. Because of the schedule changes, the former employees were inconvenienced, suffered unnecessary stress, and did not have a consistent schedule or income (Stahley: Tr. 305-06; Santos: Tr. 511; McDonald: Tr. 528-29; Robles: Tr. 576; Cuevas: Tr. 743).

⁸ Mr. Rauch did not identify the specific salaried employees whom he excluded from his revised analysis. After petitioner submitted its post-trial memorandum, I directed petitioner to provide an affidavit from Mr. Rauch identifying the salaried employees whom he excluded and a list of all alleged violations that Mr. Rauch identified in chronological order, which I deem Petitioner's Exhibit 58 along with accompanying exhibits M-AA. Respondents were given an opportunity to respond to Mr. Rauch's affidavit and accompanying exhibits but failed to do so (ALJ Exs. 16, 18).

Petitioner bears “the burden of proving its case by a fair preponderance of the credible evidence.” *Dep’t of Correction v. Hall*, OATH Index No. 400/08 at 2 (Oct. 18, 2007), *adopted*, Comm’r Dec. (Nov. 5, 2007), *aff’d*, NYC Civ. Serv. Comm’n Item No. CD 08-33-SA (May 30, 2008). Preponderance has been defined as “the burden of persuading the trier[] of fact that the existence of [a] fact is more probable than its non-existence.” *Prince, Richardson on Evidence* § 3-206 (Lexis 2008); *see also Dep’t of Sanitation v. Figueroa*, OATH Index No. 940/10 at 11 (Apr. 26, 2010), *aff’d*, NYC Civ. Serv. Comm’n Item No. CD 11-47-A (July 12, 2011). In determining credibility, factors to be considered include “witness demeanor, consistency of a witness’ testimony, supporting or corroborating evidence, witness motivation, bias or prejudice, and the degree to which a witness’ testimony comports with common sense and human experience.” *Dep’t of Sanitation v. Menzies*, OATH Index No. 678/98 at 2-3 (Feb. 5, 1998), *aff’d*, NYC Civ. Serv. Comm’n Item No. CD 98-101-A (Sept. 9, 1998).

Petitioner met its burden as to most of the allegations in the six charges against Boston Market. Petitioner did not meet its burden to prove the allegations against Mr. Pandya.

Rebuttable Presumption Applicable to the Charges

Petitioner contends that Boston Market failed to maintain and produce certain records in response to its investigative request, creating a rebuttable presumption that Boston Market failed to comply with the FWL (Pet. Br. at 3-4). Section 20-1206 of the FWL requires that employers retain records documenting their compliance with the law for three years and allow petitioner access to such records in furtherance of an investigation conducted under the law. Admin. Code § 20-1206(a). It further provides that an “employer’s failure to maintain, retain, or produce a record or other information required to be maintained by this chapter and requested by the department in furtherance of an investigation conducted pursuant to this chapter that is relevant to a material fact alleged by the department in a notice of violation issued pursuant to this subchapter creates a rebuttable presumption that such fact is true.” Admin. Code § 20-1206(b). Petitioner’s rules specifically require that employers maintain records with respect to the FWL. 6 RCNY § 7-609(a); *see Dep’t of Consumer & Worker Protection v. 557 Burger Corp.*, OATH Index No. 2384/19 at 7-8, 11, 17 (Jan. 20, 2022) (failure to maintain records pursuant to DCWP’s rules created a rebuttable presumption that material

facts alleged in the petition were true).

Petitioner concedes that Boston Market was only required to maintain records documenting compliance with the FWL for three years, but also argues that Boston Market is liable for alleged violations during the entire investigation period, which exceeds three years (Pet. Br. at 5, 7, 10, 14-15). Yet section 20-1206 provides for the rebuttable presumption where an employer has failed to keep records “required to be maintained by this chapter,” which is a period of three years. Admin. Code § 20-1206(b). At trial and in its post-trial memorandum, petitioner never explained how it established most of the alleged violations occurring more than three years prior to the NOI without relying on the rebuttable presumption, which is only applicable to the three years where an employer must maintain records.

Although Boston Market failed to produce records documenting compliance with the FWL between February 1, 2018 and May 26, 2018, petitioner did not establish a rebuttable presumption based on the absence of such records because that period is more than three years prior to the NOI. Accordingly, where the rebuttable presumption was required to establish alleged violations during that period, those violations are not sustained. By contrast, for the period between May 27, 2018 and May 26, 2021, Boston Market’s failure to maintain and produce records relevant to material facts alleged in the petition creates a rebuttable presumption that those facts are true. Admin. Code § 20-1206(b). Boston Market failed to rebut the presumption for any alleged violations between May 27, 2018 and May 26, 2021.

Boston Market’s Defenses

Mr. Pandya testified that he purchased Boston Market in April 2020 through Engage Brands, which he owns and is the managing member (Tr. 1286). He later became president of Boston Market in 2022 or 2023 (Tr. 1240).

Throughout the trial, Mr. Pandya asserted that petitioner based its analysis on incomplete records from Boston Market and that additional records from Boston Market’s third-party payroll and scheduling company, Ceridian, would exonerate the company (Tr. 44, 54, 56, 134, 144-45, 152-53, 160-63, 170, 173, 178, 180-81, 310, 386-89, 395-96, 398, 419-25, 434-35, 606, 845, 1024-25, 1043, 1080-90). Mr. Pandya maintained that Ceridian had a contractual responsibility to ensure that Boston Market followed all laws and that all Boston

Market employees used Ceridian's online portal, Dayforce, for payroll and scheduling (Tr. 710, 1014, 1238, 1244-47, 1256, 1258, 1280-81, 1635-36, 1673).

According to Mr. Pandya, Ceridian's "online portal" required employees to follow "proper procedure" in accordance with legal requirements (Tr. 1238, 1256, 1258, 1635-36). Dayforce, which managed all of Boston Market's payroll, timekeeping, and employee scheduling records, would "tell [general managers] all the prompts to do things, and they would believe that whatever they were doing was following [the] law" (Tr. 1255, 1632, 1635-36, 1640). Mr. Pandya did not provide any screenshots from Ceridian or Dayforce. Additionally, Mr. Pandya testified that Boston Market's human resources department is held "accountable" to "stay compliant with every law" and that there was a "system already in place" which ensured that "everybody stays compliant" (Tr. 1239-40, 1243-45, 1634-36). He claimed that Boston Market complied with the FWL because they used a "reputable" company for doing so (Tr. 1259, 1262-63). He also maintained that he had emails demonstrating Boston Market's compliance (Tr. 958, 962, 1019-20, 1621).

Mr. Pandya did not introduce any evidence to support his claims that petitioner relied on incomplete records, that Ceridian ensured Boston Market's compliance with the FWL, or that Boston Market's emails or Ceridian's records were exculpatory. Mr. Pandya was given several opportunities to present such evidence. On January 3, 2025, in the middle of trial, Mr. Pandya requested that I sign subpoenas to obtain Ceridian's records and Boston Market's emails (Tr. 995-96, 1000, 1021-52). Though discovery had concluded, I signed the subpoenas and adjourned the trial for two months to give Mr. Pandya time to obtain and review the records (Tr. 1067-70). I also signed an additional subpoena after Mr. Pandya asserted that a different third-party held Boston Market's emails (Tr. 1123-28).⁹ Mr. Pandya asserted that he never received a response to the subpoenas (Tr. 1877-82). Petitioner concluded its case-in-chief on May 15, 2025, but I held the record open until August 11, 2025, for respondents to present documentary evidence or call witnesses corroborating Mr. Pandya's claims (Tr. 2005-

⁹ The subpoena to Ceridian for its records is made part of the record as ALJ Exhibit 21. The subpoenas to two third-party custodians (Fusion Connect and Microsoft) for Boston Market's emails are made part of the record as ALJ Exhibits 22 and 23, respectively.

06; ALJ Ex. 10). Respondents presented no documentary evidence or testimony from Ceridian's employees to support the claim that Ceridian ensured Boston Market's compliance with the FWL.¹⁰ Respondents also presented no evidence that Boston Market's records were incomplete or inaccurate.

Accordingly, Mr. Pandya's arguments that Boston Market's records were incomplete or that Ceridian ensured its compliance with the FWL were insufficient to refute petitioner's evidence of FWL violations. In addition, Boston Market's obligation to comply with the FWL cannot be outsourced, as the statute imposes liability on the employer to comply with the law. Admin. Code §§ 20-1201-1290.

Count One: Failure to Provide Good Faith Estimates

Section 20-1221(a) of the Administrative Code requires that fast food employers provide their employees with "a written copy of their regular schedule including the number of hours a fast food employee can expect to work per week for the duration of the employee's employment and the expected days, times and locations of those hours" ("good faith estimate"). Admin. Code § 20-1221(a). The schedule must be provided "no later than when a new fast food employee receives such employee's first work schedule." *Id.* Petitioner alleges that Boston Market violated this provision by failing to provide 1,041 new employees with good faith estimates between February 1, 2018 and May 26, 2021 (Pet. Br. at 1).

¹⁰ Mr. Pandya sought to call several Ceridian and Boston Market employees to support his defense. I stated that I would sign subpoenas for any prospective witnesses (Tr. 1692-94; ALJ Ex. 8). Several trial dates were scheduled during May, June, and July 2025 for Mr. Pandya to call witnesses. Mr. Pandya failed to meet multiple deadlines to confirm whether he had witnesses, then appeared on those trial dates and said he had no available witnesses, and on one occasion did not appear at a trial date at all (Tr. 1603-04, 1688-91, 1750-51, 1875-77, 1959-65). Ultimately, Mr. Pandya only called one witness, Krupa Patel, Boston Market's former treasurer, who did not complete her testimony because Mr. Pandya had to leave before petitioner concluded its cross-examination (Tr. 1862-64). Mr. Pandya was given several opportunities to have Ms. Patel complete her testimony on a different day but she did not return to conclude her testimony (Tr. 1949-51, 1957-58, 1998-2000). Ms. Patel's testimony had little weight because petitioner did not have an opportunity to complete its cross-examination and because her testimony in support of Mr. Pandya's defense, that Ceridian ensured Boston Market followed all laws, was conclusory and not corroborated by witnesses from Ceridian or documentary evidence (Tr. 1816-20).

Mr. Rauch testified that Boston Market committed a violation each time it hired a new fast food employee during the investigation period who did not receive a good faith estimate (Tr. 29). Mr. Rauch identified 1,067 new hires during the investigation period as reflected on Boston Market's employee roster (Tr. 28, 50; Pet. Exs. 3, 13). Boston Market produced only 23 good faith estimates for those employees (Tr. 47; Pet. Exs. 4, 14).¹¹ Mr. Rauch subtracted the 23 good faith estimates that Boston Market produced from the 1,067 hired employees and concluded that 1,044 new fast food employees did not receive the required good faith estimates (Tr. 30, 50; Pet. Exs. 4, 14, 15).¹² Mr. Rauch subsequently removed three possible salaried employees and revised his total to 1,041 new employees who did not receive good faith estimates (Pet. Ex. 51; Pet. Ex. 58 at Ex. T).

Boston Market's former employees corroborated Mr. Rauch's testimony. Ms. Stahley testified that as assistant general manager she was responsible for "new hire paperwork" but did not receive training on good faith estimates for new employees (Tr. 268-70). Ms. Santos and Ms. Robles never received a written estimate of their expected work hours (Santos: Tr. 501-03; Robles: Tr. 568-70).

Mr. Pandya's uncorroborated assertion that Ceridian ensured Boston Market's FWL compliance with the good faith estimate requirement (Tr. 44-46, 56) did not refute petitioner's evidence, which were Boston Market's own records, that only 23 good faith estimates were produced for the new hires during the investigation period. Mr. Pandya also failed to present any evidence to support the assertion that Boston Market's records were incomplete.

The credible evidence established that Boston Market did not provide good faith estimates to 938 of the 1,067 employees hired during the investigation period (Pet. Ex. 13). One hundred and three of the 1,067 employees were hired before May 27, 2018, more than three years before petitioner's May 26, 2021 NOI (*Id.*). Boston Market's failure to produce estimates to petitioner for those 103 employees does not create a presumption that they failed to provide them to employees. Admin. Code § 20-1206(b). Petitioner also provided insufficient

¹¹ Investigator Moran testified that data scientists have access to all documents that are produced to petitioner and nothing is withheld from them (Tr. 1102).

¹² According to petitioner, eight of the good faith estimates had illegible dates (Pet. Ex. 4).

evidence to establish these alleged violations, as none of the former employees who testified were hired between February 1, 2018 and May 26, 2018 (Pet. Exs. 3, 13). Accordingly, count one is not sustained as to those 103 employees.

For the 964 employees hired between May 27, 2018 and May 26, 2021 (1,067 employees hired during the investigation period minus 103 employees hired more than three years before May 26, 2021), Boston Market only provided 23 good faith estimates and failed to produce additional estimates in response to petitioner's investigative request. Boston Market's failure to maintain and produce records of good faith estimates creates a rebuttable presumption that they did not provide the estimates to those employees, which they failed to rebut. Admin. Code § 20-1206(b). Additionally, petitioner excluded three possible salaried employees from its analysis. Subtracting the 23 good faith estimates and three salaried employees results in 938 employees to whom Boston Market did not provide good faith estimates.

Accordingly, count one is sustained for the failure to provide good faith estimates to the 938 employees hired between May 27, 2018 and May 26, 2021.

Count Two: Failure to Provide Written Notice of Work Schedules

Section 20-1221(b) of the Administrative Code requires that fast food employers provide their employees "with written notice of a work schedule containing regular shifts and on-call shifts . . . no later than 14 days before the first day of any new schedule." The schedule must span at least seven days and contain all anticipated regular shifts and on-call shifts that the employee will work or be required to be available to work. Admin. Code § 20-1221(b). Petitioner alleges that Boston Market violated this provision by failing to timely provide its employees with a written work schedule on 37,124 occasions during the investigation period (Pet. Br. at 1).

Mr. Rauch concluded that Boston Market violated section 21-1221(b) each time it provided employees with notice of their work schedules less than 13 days before the first day on the work schedule (Tr. 51-52). The 13 days gave Boston Market a one day "grace period" from the 14-day notice required by the FWL (Tr. 51). Violations were identified by comparing the first day of the work week printed on an employee's work schedule with a record showing

the “publish date” for the schedule (Tr. 28, 59-62, 69, 77; Pet. Exs. 6, 7). Mr. Rauch used the “publish date” as the date that work schedules were shared with employees because Boston Market did not produce other evidence establishing when it gave its employees notice of their work schedules (Tr. 28, 59-62, 69, 77; Pet. Exs. 6, 7).

Mr. Rauch identified 38,932 occasions during the investigation period where Boston Market employees did not receive at least 13 days’ notice before the first day of the work week on their work schedule (Tr. 62, 70-71, 77; Pet. Exs. 6, 7, 16). Each occasion when an employee received a late work schedule was considered a violation, excluding the employee’s first two weeks of employment (Tr. 50-51). For instance, Ms. Stahley was scheduled to work on May 14, 2018, but the schedule had a “publish date” of May 11, 2018, only three days earlier (Tr. 62; Pet. Exs. 6, 7). After removing possible salaried employees, Mr. Rauch reduced the violations from 38,932 to 37,124 (Pet. Ex. 51; Pet. Ex. 58 at Ex. U).

Boston Market’s former employees corroborated these findings. Ms. Robles, Mr. McDonald, and Ms. Cuevas testified that employees only had a few days’ notice of their work schedules, and in some cases only received one day’s notice (Stahley: Tr. 273, 276-79; Santos: Tr. 504-05; McDonald: Tr. 522-23; Cuevas: Tr. 731-34, 845-46). Store managers were responsible for creating work schedules and providing them to employees (Stahley: Tr. 273, 280-81; Santos: Tr. 505; McDonald: Tr. 523; Robles: Tr. 570-72; Cuevas: Tr. 734-35). Schedules were posted on the wall in restaurants or employees accessed them through Dayforce (Stahley: Tr. 276-30; Santos: Tr. 502; McDonald: Tr. 522, 537; Cuevas: Tr. 844-45). Dayforce showed the following week’s schedule with occasional updates (McDonald: Tr. 538). Ms. Robles testified that work schedules were “inconsistent” or “old” and never “on time” (Tr. 578-80, 582, 611). Ms. Cuevas asserted that employees could not check work schedules and they were not always posted at the same times (Tr. 728-30).¹³ Ms. Stahley received “pushback” when she discussed insufficient schedule notices with supervisors (Tr. 279-81).

¹³ Mr. Pandya sought to undermine Ms. Cuevas’s credibility by introducing emails that she sent to supervisors and managers outside the “chain of command” expressing frustration over unpaid wages (Resp. Exs. A1-A7; Tr. 871). However, Boston Market’s own records corroborated Ms. Cuevas’s testimony that she did not receive sufficient notice of her work schedules and experienced other FWL violations.

Mr. Pandya's assertion that Ceridian automatically created work schedules two to three weeks in advance and saved them "indefinitely" was contrary to Boston Market's own records and testimony from its former employees (Tr. 162, 329, 332, 421, 1024-25, 1256-57). Mr. Rauch's explanation for why he used the "publish date" to identify when employees received notice of work schedules was reasonable (Tr. 61). Mr. Pandya provided no evidence to support his claim that employees would receive sufficient notice of work schedules, such as testimony from Ceridian or Boston Market employees or screenshots from Ceridian or Dayforce showing FWL compliance.

The credible evidence, based on Mr. Rauch's testimony and Boston Market's own records, established 37,124 instances during the investigation period where Boston Market failed to give its employees at least 14 days' advance notice of their work schedule. Boston Market provided no evidence to refute Mr. Rauch's analysis. Accordingly, count two is sustained as to 37,124 violations.

Count Four: Failure to Pay Schedule Change Premiums

The FWL requires that in addition to an employee's regular pay, fast food employers pay a schedule change premium of \$15 for each change to the work schedule that adds hours or shifts, or changes the date or start or end time of a shift, with no loss of hours, with less than seven days' notice to the employee, and when notice is provided at least seven days, but less than 14 days before the shift change, the schedule change premium due to the employee is \$10. See Admin. Code § 20-1222(a)(1), (a)(3). The FWL further provides for payment of a premium of \$75 for each change to an employee's work schedule that subtracts hours from a shift or where the shift is cancelled with less than 24 hours' notice. Admin. Code § 20-1222(a)(5). When the notice provided to the employee is at least 24 hours, but less than seven days before the subtraction or cancellation, the schedule change premium due to the employee is \$45; and when notice is provided at least seven days, but less than 14 days before the shift change, the schedule change premium due to the employee is \$20. Admin. Code § 20-1222(a)(2), (a)(4).

Fast food employers are not required to pay such premiums where their operations cannot begin or continue because the business closed for enumerated reasons; where the

employee requests the shift change in writing; where two employees voluntarily trade shifts; where employers are required to pay the employee overtime pay for the changed shift; or where the change to a regularly scheduled shift is 15 minutes or less. Admin. Code § 20-1222(c); 6 RCNY § 7-606(b). Fast food employers must maintain records of their payment of premiums to their employees, including documents that show dates and amounts of premium payments, and instances where employees requested the shift change in writing. Admin. Code § 20-1206(a). The failure to maintain or produce such records creates a rebuttable presumption that they did not pay such premiums or failed to obtain written consent. See Admin. Code § 20-1206(b).

Petitioner alleges that employees did not receive schedule change premiums on thousands of occasions where Boston Market cancelled, shortened, rescheduled, lengthened, or added shifts without sufficient notice (ALJ Ex. 1; Tr. 154, 196-97). Boston Market contends that petitioner failed to establish that employees were entitled to premiums for those schedule changes because the changes may have been initiated at the request of the employees.

Mr. Rauch compared employee work schedules with time records showing the actual hours that employees worked and found 86,713 schedule changes where premium payments were owed to employees (Tr. 149-50, 154-56; Pet. Exs. 6, 8, 21, 23). These schedule changes required premium payments because they were made less than 14 days after the beginning of the scheduled work week (Tr. 148, 154-55). Employees should have received premium pay for shifts that were lengthened, shortened, rescheduled, cancelled, or added (Tr. 147-50, 154, 196-97; Pet. Ex. 23). Mr. Rauch testified that a lengthened shift is one where the timekeeping records show an employee worked 15 minutes or more over their scheduled shift (Tr. 155-57). A shortened shift occurs when the timekeeping records show an employee worked 15 minutes or less than their scheduled shift (Tr. 155-57). A rescheduled shift is one where the start and end times in the timekeeping records differ from the start and end times in the scheduling records, but the overall work hours are unchanged by more than 15 minutes (Tr. 156). A “deleted” (or cancelled) shift is one where an employee was scheduled to work, but ultimately did not (Tr. 156). An added shift is when employees clocked into work on a date they were not scheduled to work (Tr. 155-56).

To calculate civil penalties and monetary relief, Mr. Rauch treated all schedule changes where an employee did not receive premium payments within a two-week pay period as a single violation, even if an employee was affected by more than one schedule change (Tr. 198-201; Pet. Ex. 23). For instance, employee J. Garcia had three schedule changes during the pay period ending March 25, 2018, which Mr. Rauch counted as only one violation (Pet. Ex. 23 at 1). Mr. Rauch identified 23,107 pay periods where an employee was affected by at least one schedule change requiring a premium payment (Pet. Exs. 21, 24; Tr. 198-201). Mr. Rauch then reduced that number to account for 4,791 occasions where Boston Market actually paid the schedule change premiums to its employees and 1,819 occasions where it produced a record reflecting exceptions to the premium payment requirement because the changes were initiated by the employee or out of Boston Market's control (Pet. Exs. 9, 11, 12, 19, 22, 24; Tr. 82, 123-24, 171, 187-90, 192-93, 196-99).¹⁴ Admin. Code § 20-1222(c). Boston Market did not produce records showing that employees gave written consent to the schedule changes (Tr. 123-24, 127-28). Admin. Code § 20-1222(c)(2).

Subtracting the 4,791 premium payments and 1,819 exceptions to the premium payment requirement resulted in 16,497 pay periods where Boston Market failed to make required schedule change premium payments to affected employees (Pet. Exs. 19, 22, 23). Mr. Rauch reduced the number of violations to 16,446 after removing pay periods involving possible salaried employees (Pet. Ex. 51; Pet. Ex. 58 at Exs. W, X). By email dated December 30, 2025, petitioner acknowledged that the premiums Boston Market paid to employees and the exceptions to the premium pay requirement should also be subtracted from the total amount in premium payments owed for all (86,713) schedule changes (ALJ Ex. 16; Pet. Br. at 9).

Mr. Rauch's analysis was supported by credible testimony from Boston Market employees, who often had to work before the scheduled start of their shift, remain after their shift while the restaurants closed, or work shifts that were not scheduled (Santos: Tr. 506-08, 515; McDonald: Tr. 541-42; Robles: Tr. 572-73; Cuevas: Tr. 736-41). Ms. Santos testified that

¹⁴ Mr. Rauch did not credit Boston Market with an exemption to a schedule change where its records indicated the change was "payable," because that suggested instances where a premium payment was required (Tr. 127-28, 132, 192-93; Pet. Exs. 9, 19).

schedules were “constantly changing” (Tr. 515). When Ms. Santos declined extra hours, she had fewer work hours the following week (Tr. 507). Ms. Robles noted that her manager required her to stay late “plenty of times” and informed employees that refusal to do so would lead to termination (Tr. 573-74). Ms. Santos and Ms. Cuevas were never asked to consent to schedule changes in writing (Tr. 507-08, 739; Pet. Ex. 10). Employees also testified that they did not receive premium pay for schedule changes or were unsure whether they received it (Stahley: Tr. 707-09; Santos: Tr. 509, 514-15; McDonald: Tr. 527; Robles: Tr. 574, 595; Cuevas: Tr. 741-42, 898-99).

The un rebutted, credible evidence established 86,713 schedule changes during the investigation period where the actual hours that employees worked were lengthened, shortened, cancelled, added, or rescheduled. Petitioner argues that the schedule changes required premium payments because they occurred within 14 days of the first day shown on the employees’ work schedules (Pet. Br. at 7-8; Pet. Exs. 21, 23). However, the FWL requires an employer to provide a premium payment if a change is made with less than 14 days’ notice to the employee, which is different from whether the change occurred within 14 days of the first day shown on the schedule. Admin. Code § 20-1222. Here, the “publish” dates, which reflect when workdays on a weekly schedule were shared with employees, show that in some cases employees received their schedules at least seven days before the first day on their work schedule, meaning that employees could also have been notified of schedule changes at least seven days before the first day on the schedule (Pet. Ex. 7). Since the schedules cover a period of seven days, employees notified of schedule changes at least seven days before the first day on the schedule may have received at least 14 days’ notice of some schedule changes, in which case premium payments would not be required. Moreover, in some instances employees received their schedules at least 14 days before the first day shown on the schedule (*Id.*).

Petitioner also argues that its current rules provide for a presumption that the schedule changes were made with insufficient notice because Boston Market failed to memorialize the changes on its work schedules. 6 RCNY § 7-622(a) (Lexis 2026) (“Any schedule change that is not documented on a revised written schedule provided to the affected employees or re-posted as required by § 20-1221(c)(2) is presumed to be a change made with less than 24

hours' notice"). Petitioner cannot rely on rule 7-622 to establish the alleged FWL violations. Petitioner's rules were amended as of June 23, 2022 and rule 7-622 was not in effect during the investigation period. Petitioner has held that its applicable rules are those in effect when the alleged conduct occurred and did not explain the basis for applying its rules retroactively in this case. *See Dep't of Consumer and Worker Protection v. 557 Burger Corp.*, Comm'r Dec. at 2 (Aug. 25, 2023), *adopting*, OATH Index No. 2384/19 (Apr. 21, 2023) ("This decision applies the now-repealed language of section 7-606(b) because the relevant conduct pre-dated the rule change").

Nevertheless, petitioner met its burden to establish that most schedule changes occurred with less than 14 days' notice to employees, based on the rebuttable presumption in section 20-1206 of the FWL. As described above, the rebuttable presumption applies to records documenting compliance with the FWL maintained for three years that petitioner has requested and an employer fails to produce. Admin. Code § 20-1206(b). Petitioner's NOI sought Boston Market's work schedules and revisions to the schedules, specifically: 1) "posted schedules," defined as "work schedules that were posted at respondent's NYC locations"; 2) "shift history," defined as "the record history of every shift maintained in any software or application you used to schedule employees"; and 3) "transmitted schedules," defined as "all documents reflecting work schedules transmitted to each employee, including the date and time of transmission" (Pet. Ex. 1).

In response, Boston Market did not produce any documents showing any revisions to its work schedules. The work schedules that Boston Market produced and that petitioner introduced into evidence contain no revisions or schedule changes (Pet. Ex. 6; Tr. 57). With respect to "shift history," Boston Market sent petitioner letter responses detailing the categories of documents it produced but did not identify any documents in that category (Pet. Ex. 2). As a result, I found that Boston Market failed to produce documents related to "shift history." With respect to "transmitted schedules," Boston Market's letter responses appear to indicate that the documents it produced relate to communication with employees, not revisions to schedules, because it commented that it was "only required to retain each written schedule, not the date and time of the transmission of schedules" (Pet. Ex. 2 at 5). Boston

Market noted that it produced 117 pages of “transmitted schedules,” which petitioner did not introduce into evidence. However, I found it improbable that these documents contained evidence of schedule changes based on the comment in Boston Market’s letter and because the limited number of such documents was unlikely to contain revisions to more than 9,000 pages of work schedules that petitioner introduced into evidence (Pet. Ex. 6).

Under these circumstances, I found that Boston Market failed to produce records showing revisions to work schedules in response to petitioner’s request for such information. The failure to produce such records creates a rebuttable presumption that the schedule changes between May 27, 2018 and May 26, 2021, the period within three years of the NOI, occurred with less than 14 days’ notice to employees. Admin. Code § 20-1206(b). That amounts to 78,363 schedule changes in 20,919 employee pay periods. Boston Market failed to rebut the presumption.

6,664 of these schedule changes were rescheduled shifts. Such changes raised questions about whether Boston Market initiated them. In the vast majority of the rescheduled shifts, employees clocked into work within 45 minutes of their scheduled shift start times, and on these same dates, their shifts ended within 45 minutes after the end of their scheduled shift (Pet. Ex. 21). Petitioner bears the burden of proving that these shifts were rescheduled, not shifts where employees started work late and worked later so that their actual working hours were largely unchanged. The shifts could represent employee-initiated changes in specific cases. However, given the significant number of rescheduled shifts during the investigation period and the absence of any evidence rebutting petitioner’s allegations, petitioner met its burden to establish that Boston Market rescheduled the shifts.

Boston Market unpersuasively argued that Mr. Rauch failed to account for mealtimes in calculating schedule changes (Tr. 87-88, 97-98, 117-19). The FWL requires premium pay for changes to the start or end times of scheduled shifts, which are unaffected by meal breaks during the shift. Admin. Code § 20-1222.

Boston Market also maintained that schedule changes were initiated at the employees’ request or when employees forgot to punch out after a shift, which would not require it to make premium payments (Tr. 93-95, 144-45, 202, 227). Admin. Code § 20-1222(c)(2). But a

fast food employer is obligated to maintain records of schedule changes that are requested by the employee. Boston Market did not produce any evidence, such as written requests from employees or any specific instances, with dates or other details, where employees requested schedule changes. The failure to provide such records creates a rebuttable presumption that Boston Market failed to obtain written consent for schedule changes for the three years prior to the NOI, indicating that the changes were initiated by the employer. Admin. Code § 20-1206(b). Additionally, employees testified that they could not begin working a shift earlier than scheduled or stay late without management approval (Stahley: Tr. 282; Santos: Tr. 506, McDonald: Tr. 524-25; Cuevas: Tr. 735).

Accordingly, for the 78,363 schedule changes in 20,919 pay periods between May 27, 2018 and May 26, 2021, Boston Market's failure to maintain and produce records of employee consent creates a rebuttable presumption that the employees did not initiate the schedule changes (Pet. Ex. 1). Admin. Code § 20-1206(b). Boston Market failed to rebut the presumption, and there was no evidence that another exception applied, indicating that the changes required premium payments. The number of schedule changes must then be reduced by the 4,064 premium payments Boston Market made to employees (reduced from 4,791), the 1,508 exceptions to the premium pay requirement (reduced from 1,819), and the 159 schedule changes involving possible salaried employees (reduced from 215) in 40 pay periods (reduced from 51) occurring between May 27, 2018 and May 26, 2021 (Pet. Exs. 19, 22; Pet. Ex. 58 at Ex. W). The reductions yield 72,632 schedule changes in 15,307 employee pay periods. Accordingly, count five is sustained for the 72,632 schedule changes in 15,307 pay periods where Boston Market failed to make required premium payments between May 27, 2018 and May 26, 2021.

As to schedule changes before May 27, 2018, Boston Market's failure to produce records does not create a presumption that the changes occurred with less than 14 days' notice or that employees did not consent to schedule changes. Additionally, the testimony from Boston Market's former employees was too vague concerning specific dates to establish that their shifts prior to May 27, 2018 were changed with less than 14 days' notice or without their consent. Accordingly, count four is not sustained for the 8,350 schedule changes in 2,188 pay

periods between February 1, 2018 and May 26, 2018.

Count Three: Failure to Obtain Written Consent to Work Additional Time

Petitioner contends that employees worked additional time that was not included on their initial work schedules without written consent, in violation of section 20-1221(d) of the FWL. As described above, Boston Market failed to produce any evidence that employees provided written consent to lengthen their shifts or add work shifts.

Section 20-1221(d) of the FWL provides that a fast food employee may decline to work or be available for additional hours not included in their initial written work schedules and, where employees agree to such additional hours, their consent must be obtained in writing, either electronically or otherwise, at or before the start of the shift. Petitioner's rules further require that "such written consent must be provided in reference to a specific schedule change; general or ongoing consent is insufficient to meet such requirements." 6 RCNY § 7-606(a).

According to Mr. Rauch, a comparison of employees' written work schedules with timekeeping records showing actual hours worked reflects 44,237 occasions during the investigation period where employees' shifts were lengthened or added (Tr. 81-82, 85-86, 118-19; Pet. Exs. 6, 8, 18).¹⁵ Boston Market failed to produce records that employees gave written consent to work these additional hours (Tr. 123-24, 127-28).

As described above, Boston Market produced a record showing 1,819 instances where an employee requested the schedule change or premium pay was otherwise not required (Tr. 123-24, 127-28, 139-40; Pet. Exs. 9, 19). Mr. Rauch accepted that record in lieu of written consent (Tr. 127). After subtracting these 1,819 exceptions, Mr. Rauch concluded that Boston Market added hours to employee work schedules without employee consent on 42,418 occasions (Tr. 146; Pet. Ex. 20). Mr. Rauch removed possible salaried employees and reduced that figure to 41,200 (Pet. Ex. 51; Pet. Ex. 58 at Ex. V).

¹⁵ The 44,237 occasions where petitioner alleges employees worked lengthened or added shifts exceeds the number of occasions charged in count four where employees worked lengthened or added shifts. Petitioner did not explain why there were additional violations alleged in count three.

Boston Market's former employees testified that they were called into work earlier than their scheduled start time, required to work late, or had unscheduled shifts added to their schedules (Stahley: Tr. 282-85; Santos: Tr. 506-07; McDonald: Tr. 524-27; Cuevas: Tr. 736-38). They believed that their managers would reduce their shifts if they did not work additional hours (Stahley: Tr. 283-84; Santos: Tr. 507; Cuevas: Tr. 738-39). Ms. Stahley testified that she often had other employees stay later than their scheduled end time (Tr. 284-85). Employees also testified that they did not give their written consent for these schedule changes, although Mr. McDonald gave written consent "two or three times" (Stahley: Tr. 285-86; McDonald: Tr. 544-45, 563; Robles: Tr. 574). Ms. Stahley was unaware that written consent was required (Tr. 285-86).

Boston Market argued that any additions to the schedule were initiated at the employees' request or did not require consent because employees forgot to punch out (Tr. 93-95, 144-45, 227). Boston Market provided no evidence to support its arguments. Employees testified that they could not begin working a shift earlier than scheduled or stay late without management approval (Stahley: Tr. 282; Santos: Tr. 506; McDonald: Tr. 524-25; Cuevas: Tr. 735).

The unrebutted evidence establishes that employees worked additional hours on 44,237 occasions during the investigation period. However, Boston Market's failure to produce records of employees' written consent to working additional hours before May 27, 2018 does not create a presumption that employees did not consent to those changes. The testimony from former employees was too vague concerning specific dates to sustain the allegations that those employees worked additional hours without consent prior to May 27, 2018. Accordingly, count three is not sustained for the 2,671 alleged violations between February 1, 2018 and May 26, 2018.

For the 41,566 occasions where employees worked shifts with additional hours between May 27, 2018 and May 26, 2021, Boston Market's failure to maintain and produce records of employee written consent creates a rebuttable presumption that the employees worked those additional hours without consent. Admin. Code § 20-1206(b). Boston Market failed to rebut the presumption. Those occasions must then be reduced by 1,508 exceptions to the premium

pay requirement (reduced from 1,819) and 1,125 alleged violations involving possible salaried employees (reduced from 1,218) between May 27, 2018 and May 26, 2021. This results in 38,933 occasions when Boston Market failed to obtain written consent for adding hours to employee work schedules. Those violations are sustained.

Count Five: Requiring Employees to Work “Clopening” Shifts Without Written Consent

Section 20-1231 of the FWL provides that “[u]nless the fast food employee requests or consents to work such hours in writing, no fast food employer shall require any fast food employee to work two shifts with fewer than 11 hours between the end of the first shift and the beginning of the second shift when the first shift ends the previous calendar day or spans two calendar days.” Employees who work such a shift, referred to as a “clopening,” must be paid a \$100 premium for each instance. Admin. Code § 20-1231; 6 RCNY § 7-601(a).

Mr. Rauch found 2,192 instances of employees working clopening shifts without consent during the investigation period (Tr. 229-31, 252, 353; Pet. Exs. 8, 26, 28). For instance, employee A. Lujan worked from 8:32 p.m. to 10:34 p.m. on November 26, 2019 and from 7:43 a.m. to 9:30 p.m. on November 27, 2019 (Tr. 226; Pet. Ex. 25 at 1). Less than 11 hours elapsed between that employee completing their shift on November 26, 2019 at 10:34 p.m. and then returning for another shift at 7:43 a.m. the following day (Tr. 226-27). Boston Market did not produce evidence that employees gave written consent to work any clopening shifts (Tr. 212, 229).

Mr. Rauch subtracted occasions where Boston Market made clopening premium payments to employees. Boston Market’s records reflect \$196,000 disbursed in premium payments (Pet. Exs. 11, 12, 27, 28; Tr. 252-56, 347-48, 353). Mr. Rauch divided the \$196,000 payments by \$100, the statutory amount owed for each clopening premium, and concluded that Boston Market paid 1,960 clopening premiums (Tr. 353). Subtracting the 1,960 premiums paid from 2,192 clopening shifts worked resulted in 232 unpaid clopening premiums (Tr. 353-354; Pet. Ex. 28). After removing shifts involving possible salaried employees from his analysis, he reduced the instances of unpaid premiums from 232 to 25 (Pet. Exs. 27, 51; Pet. Ex. 58 at Ex. Z).

To calculate liability for civil penalties and monetary relief, Mr. Rauch only considered clopenings where the two shifts were less than 10.5 hours apart, to exclude time at the beginning or end of a shift (Tr. 225-26; Pet. Exs. 25, 28, 51). He identified 1,235 instances where Boston Market's employees worked two shifts on consecutive days less than 10.5 hours apart (Tr. 228-29; Pet. Exs. 8, 25, 28; Pet. Br. at 13). After Mr. Rauch removed shifts with anyone who appeared to be a salaried employee, he reduced the number of clopenings worked without consent from 1,235 to 1,129 (Pet. Ex. 51; Pet. Ex. 58 at Ex. Y).

Boston Market's employees corroborated Mr. Rauch's analysis. Ms. Stahley testified that she closed her restaurant at 11 p.m. and reopened it less than 11 hours later approximately once a month, and more frequently during busy seasons (Tr. 297-98). She did not consent to work clopenings and believed that her managers would reduce her hours if she refused (Tr. 298). She asked other employees to work clopenings without obtaining their written consent (Tr. 300). Mr. McDonald recalled approximately five instances where he had only eight or ten hours between shifts (Tr. 547-48). Ms. Cuevas worked clopening shifts twice and Boston Market's records indicate she was paid premiums on both occasions (Tr. 911; Pet. Ex. 26 at 14; Pet. Ex. 27 at 7).

Mr. Pandya's assertion that Ceridian ensured that Boston Market complied with its FWL obligations had no support in the record (Tr. 162, 329, 332, 421, 1024-25). His claim that the clopenings might have resulted from employees forgetting to clock out of work rather than working was contrary to the former employees' testimony.

The credible evidence established 2,192 occasions during the investigation period where an employee's first shift spanned two calendar days and fewer than 11 hours elapsed between the end of the first shift and the start of the second shift. The evidence also established 1,235 occasions where an employee's first shift spanned two calendar days and fewer than 10.5 hours elapsed between the end of the first shift and the start of the second shift. The FWL required that Boston Market provide evidence that it obtained employees' written consent for those clopening shifts. Boston Market did not provide any written consents signed by employees to work the clopening shifts (Tr. 229).

Boston Market's failure to produce written consents for 11-hour clopenings (360

occasions) and 10.5-hour clopenings (67 occasions) before May 27, 2018 does not create a presumption that employees worked those clopenings without consent (Pet. Exs. 25, 26). The testimony from former employees was not sufficiently specific about dates to establish that those employees worked clopenings without consent prior to May 27, 2018. Accordingly, count five is not sustained for these alleged violations.

Count five is sustained for the 1,066 10.5-hour clopenings worked between May 27, 2018 and May 26, 2021, which excludes the 102 shifts with possible salaried employees during that period (Pet. Ex. 25; Pet. Ex. 58 at Ex. Y). Boston Market's failure to maintain and produce records of employees consenting to work clopening shifts creates a rebuttable presumption that employees did not consent to work those shifts, which Boston Market did not rebut. Additionally, petitioner established that 24 employees are entitled to restitution for unpaid clopening premiums (1,832 11-hour clopenings between May 27, 2018 and May 26, 2018, minus 1,618 premium payments paid and 190 shifts with salaried employees during that period) (Pet. Exs. 26, 27; Pet. Ex. 58 at Ex. Z).

Count Six: Failure to Offer Current Employees Newly Available Shifts Before Hiring New Employees

Before hiring new fast food employees, fast food employers must offer any newly available shifts to their current fast food employees. Admin. Code § 20-1241(a)(2). The employer must offer current employees the opportunity to fill all newly available shifts and post a notice stating the number of shifts being offered, their schedule, including whether the shifts will occur at the same time, for how long the shifts will be available, and other pertinent information. Admin. Code § 20-1241(b). Employers are required to post the notice for three consecutive calendar days in a conspicuous and accessible location where other notices to employees are posted and notify each fast food worker in writing electronically. Admin. Code § 20-1241(b). Petitioner contends that Boston Market failed to comply with the FWL for 3,104 shifts offered to new employees hired during the investigation period instead of current employees (Pet. Br. at 2).

Mr. Rauch identified FWL violations by counting the number of shifts that new hires worked in their first full work week that were not offered to current employees (Pet. Exs. 6, 29;

Tr. 354-55, 358, 361-62, 365-66). 6 RCNY § 7-624(i). He determined the shifts that new employees worked in their first full work week by comparing their hire dates with their work schedules (Pet. Exs. 3, 6). For instance, H. Lantigua was hired on March 3, 2018, and worked five shifts during their first full week beginning March 12, 2018 (Tr. 366; Pet. Exs. 3, 6). Mr. Rauch identified 3,119 shifts offered to newly hired employees during the investigation period (Tr. 366; Pet. Ex. 29). Because Boston Market did not produce any records indicating that it offered those shifts to current employees, Mr. Rauch concluded that Boston Market did not do so (Tr. 366-69). After removing shifts involving possible salaried employees, he reduced the number of shifts not offered to current employees from 3,119 to 3,104 (Pet. Ex. 51; Pet. Ex. 58 at Ex. AA).

Boston Market's former employees testified that they asked their supervisors for more shifts, but newly available shifts were not posted at the store or offered to them (Stahley: Tr. 300-01; Santos: Tr. 510-11; Robles: Tr. 575; Cuevas: Tr. 742-43, 933-34). For example, Mr. McDonald said that his supervisors initially offered him more shifts but his manager eventually told him that no shifts were available, even though new employees were hired (Tr. 527-28). Ms. Stahley had responsibility for employee scheduling but never posted newly available shifts in her restaurant (Tr. 300-01).

The FWL requires Boston Market to post newly available shifts and offer them to current employees before offering them to new employees. Boston Market offered no evidence to establish that newly available shifts were posted and offered to any of the incumbent fast food workers. The failure to maintain records of offering newly available shifts to current employees creates a rebuttable presumption that Boston Market did not do so for the 2,855 shifts assigned to new employees between May 27, 2018 and May 26, 2021, which excludes 15 shifts with possible salaried employees during that period (Pet. Ex. 29; Pet. Ex. 58 at Ex. AA). As Boston Market failed to rebut the presumption, those counts are sustained. The presumption does not apply to alleged violations before May 26, 2018, and the testimony from former employees was not sufficiently specific about dates to establish that Boston Market failed to offer shifts to current employees prior to May 27, 2018. Accordingly, count six is not sustained as to the 249 alleged violations between February 1, 2018 and May 26, 2018.

Petitioner Failed to Establish that Mr. Pandya is Personally Liable for the FWL Violations Sustained Against Boston Market

Petitioner contends that Mr. Pandya is personally liable for the violations sustained against Boston Market from April 27, 2020 to May 26, 2021 because he is a FWL “employer” who is subject to the law’s requirements (Pet. Br. at 16-22). Petitioner does not seek liability against Mr. Pandya for violations prior to April 27, 2020, the date that Mr. Pandya testified Engage Brands purchased Boston Market (Pet. Br. at 1-16; Tr. 1286). The credible evidence, however, failed to establish that Mr. Pandya is liable for violations after April 27, 2020 because petitioner did not satisfy its burden to prove that Mr. Pandya meets the FWL’s definition of “employer.”

The FWL provides that an employer is “any person or entity covered by the definition of ‘employer’ set forth in subdivision 6 of section 651 of the labor law [the New York State Labor Law Minimum Wage Act (“NYLL”)] or any person or entity covered by the definition of ‘employer’ set forth in subsection (d) of section 203 of title 29 of the United States code [the Fair Labor Standards Act (“FLSA”).”¹⁶ Admin. Code § 20-1201. The remedial nature of the FLSA warrants an expansive interpretation of its provisions, and thus the definition of “employer.” *See Irizarry v. Catsimatidis*, 722 F.3d 99, 104-05 (2d Cir. 2013) (noting that the Supreme Court has consistently construed the FLSA liberally because broad coverage is essential to accomplish the statute’s goal); *Keun-Jae Moon v. Joon Gab Kwon*, 248 F. Supp. 2d 201, 236 n.17 (S.D.N.Y. 2002) (noting that New York’s labor law adopts a broad definition of employer similar to the FLSA); *Carter v. Dutchess Community College*, 735 F.2d 8, 12 (2d Cir. 1984).

The courts have held that whether an employee-employer relationship exists under the NYLL or FLSA depends on the “economic reality” of the relationship, to be determined “on a case-by-case basis by review of the totality of the circumstances.” *See Catsimatidis*, 722 F.3d at 104-05 (quoting *Barfield v. NYC Health and Hospitals Corp.*, 537 F.3d 132, 141-42 (2d Cir.

¹⁶ The FLSA defines an employer as “any person acting directly or indirectly in the interest of an employer in relation to an employee. . . .” 29 U.S.C. § 203(d) (Lexis 2026). The NYLL defines an employer as “any individual, partnership, association, corporation, limited liability company, business trust, legal representative, or any organized group of persons acting as employer.” Labor Law § 651(6) (Lexis 2026).

2008)); *Bonito v. Avalon Partners, Inc.*, 106 A.D.3d 625, 626 (1st Dep't 2013) (applying economic realities test to the NYLL). The Second Circuit has identified four factors likely to be relevant to determining the economic reality of a whether an individual is an “employer”: whether the individual: (1) “had the power to hire and fire the employees”; (2) “supervised and controlled employee work schedules or conditions of employment”; (3) “determined the rate and method of payment”; and (4) “maintained employment records.” *Carter*, 735 F.2d at 12. Not all of the *Carter* factors must be met to establish personal liability. *See Catsimatidis*, 722 F.3d at 116-17 (concluding that the chair and CEO of supermarket chain was an employer even though plaintiff only established the first and third *Carter* factors). The factors do not comprise a “rigid rule for the identification of an FLSA employer . . . [and instead] provide ‘a nonexclusive and overlapping set of factors’ to ensure that the economic realities test . . . is sufficiently comprehensive and flexible.” *Id.* at 105 (quoting *Zheng v. Liberty Apparel Co.*, 355 F.3d 61, 75 (2d Cir. 2003)).

In addition to the *Carter* factors, the Second Circuit has also considered whether a person exerts “operational control” over employees. *Catsimatidis*, 722 F.3d at 110. A person exercises operational control over employees “if his or her role within the company, and the decisions it entails, directly affect the nature or conditions of the employees' employment.” *Id.* Ownership in a company, serving as a corporate officer, or otherwise making corporate decisions that have nothing to do with an employee's function is insufficient to establish that an individual is an “employer,” without some control over operations that relates to employment such as workplace conditions, operations, personnel, or compensation. *See id.* at 111; *see also Ammar v. Carbone*, 237 A.D.3d 883, 885 (2d Dep't 2025) (complaint against restaurant manager for labor law violations was insufficient because there were no allegations that he supervised and controlled work schedules or conditions of employment, determined the rate and method of payment, or maintained employment records). Operational control “need not be exercised constantly” and does not require continuous monitoring of employees. *Catsimatidis*, 722 F.3d at 110.

Petitioner's Evidence

Petitioner called Mr. Pandya as a witness and primarily relied on his testimony in support of its arguments for personal liability. Petitioner did not call any of Boston Market's corporate officers or general managers as witnesses to clarify Mr. Pandya's role within the corporate structure or the control he exerted over employees. In particular, petitioner did not present testimony from Boston Market's former president, Randy Miller, despite arguing that Mr. Pandya controlled employees through a chain of command that involved Mr. Miller (Pet. Br. at 18). Petitioner also did not explain what efforts it made to have Mr. Miller appear at the trial. Ms. Stahley, an assistant general manager, provided some testimony about Mr. Pandya's authority over employees in 2023 but did not testify about his control over employees during the investigation period (Tr. 302-04). Other than records showing that Mr. Pandya served on Boston Market's board of directors ("Board"), petitioner introduced no documentary evidence from Boston Market's own records during the investigation period, such as emails, minutes from Board meetings, or other business records, to clarify the scope of Mr. Pandya's authority within the company.

Mr. Pandya testified that he had no managerial responsibilities, did not control payment of wages, did not hire or promote anyone, and did not otherwise exercise "operational control" over employees (Tr. 1637). Mr. Pandya is the "managing member" for Engage Brands, the entity that purchased Boston Market, but he did not recall the other members (Tr. 1360-61, 1454, 1458).

Mr. Pandya served on Boston Market's Board in 2020 and 2021, whose role is to ensure that company officers and employees are "doing everything correctly and their jobs" (Tr. 1398-99; Pet. Exs. 52-57). The Board had five or six members (Tr. 1308). He did not recall who served on the Board except for Valentino DiGiorgio, the general counsel for various companies that Mr. Pandya owned, though Mr. Pandya gave conflicting testimony as to whether Mr. DiGiorgio also served as general counsel for Boston Market (Tr. 1308, 1313, 1346-47, 1377, 1485; Pet. Exs. 52-57). Mr. Pandya testified that he did not know who employed Mr. DiGiorgio (Tr. 1390-91, 1501). The Board held quarterly meetings where Mr. Pandya may have asked questions (Tr. 1307-08, 1398-99, 1447). It also voted to hire executive officers such as the

president, chief operations officer, and chief financial officer (Tr. 1308, 1396-97, 1402-04). The Board may have had authority to fire executive officers, but Mr. Pandya claimed that he did “not personally” have the authority to fire anyone (Tr. 1396, 1555-60, 1563-64). He “assume[d]” that Board members had authority to review Boston Market’s employment records (Tr. 1450-52). Mr. Pandya did not recall his own responsibilities on the Board (Tr. 1406, 1560).

Boston Market’s president, Randy Miller, was appointed to that position shortly after Mr. Pandya purchased the company but he did not recall the exact appointment date (Tr. 1386-87). Mr. Pandya later became president of Boston Market in 2022 or 2023 (Tr. 1240). While Mr. Miller was president, he “report[ed]” to Mr. DiGiorgio, and Mr. DiGiorgio reported to Mr. Pandya (Tr. 1312-13, 1362, 1372). “Everybody” who worked at Boston Market reported to Mr. Miller (Tr. 1313). Mr. Pandya thought that the Board made the decision to have Mr. Miller report to Mr. DiGiorgio (Tr. 1515-16, 1519, 1522-24). Mr. DiGiorgio was responsible for “oversight” and “governance” meaning that Mr. Miller could contact him if he had questions, to obtain “an approval,” to schedule a Board meeting, or to “send” [anything] to the company” (Tr. 1515-16, 1519, 1522-24). Mr. DiGiorgio also communicated with Mr. Miller to answer questions, to ensure “everything was running properly,” to “resolve the issues,” and to have Mr. Miller advise the Board on various concerns (Tr. 1362-63, 1641-42). However, Mr. Pandya also asserted that Mr. DiGiorgio did not have any “particular responsibilities” in engaging with Mr. Miller or any other responsibilities related to the business except as a Board member (Tr. 1520-23, 1528, 1541).

Mr. DiGiorgio met with Mr. Pandya “numerous times” and “possibly” spoke to him “weekly” to discuss the company (Tr. 1377-78). They worked together in Mr. Pandya’s office in Pennsylvania (Tr. 1445-46). Mr. Pandya did not recall which of his companies employed Mr. DiGiorgio, whether Boston Market or another company paid him, or how he first met Mr. DiGiorgio (Tr. 1501, 1503-09, 1511-12, 1549-50).

Mr. Pandya attended Boston Market’s quarterly Board meetings at its corporate headquarters in Colorado (Tr. 1307-09). At the Board meetings, Boston Market’s president, Randy Miller, gave presentations about “every aspect [of the business]” including company

performance, human resources, operations, logistics, and information technology, and had to answer Mr. Pandya's questions (Tr. 1309-12). Mr. Miller had authority over the company, and its divisions directly reported to him (Tr. 1313-14). The chief operating officer, Eric Wyatt, also gave presentations at Board meetings where he "probably" spoke about Boston Market's operations, payroll and sales metrics, and customers (Tr. 1297-1304). The chief financial officer gave Board presentations and was obligated to respond to Mr. Pandya's questions (Tr. 1321-23).

Mr. Pandya visited Boston Market restaurants in New York and around the country to "see how we were able to grow the brand into the next level" and because "you would like to see what you bought" (Tr. 1409-10, 1421-22, 1430-32). He did not recall how often he visited restaurants (Tr. 1416, 1419). Describing one such visit, he testified about meeting with the restaurant's manager, the regional director, and the chief operating officer (Tr. 1410-11). They showed him around the restaurant, provided details about the area, and he had "general conversation" with employees. He also saw food being prepared and spoke to customers (Tr. 1411-12, 1424-25).

Based on those visits, Mr. Pandya concluded that reducing restaurant size would financially benefit Boston Market by lowering labor, utilities, taxes, and other costs (Tr. 1417-19). He told Mr. Wyatt that the restaurants were old, "bulky," and needed a "smaller footprint" (Tr. 1412, 1417-18, 1433-36). Mr. Wyatt and Mr. Miller discussed Mr. Pandya's idea for smaller restaurants during Board meetings (Tr. 1435). The Board decided to "adapt[] to the market," assigned Mr. Miller to oversee reducing restaurant size, and approved new real estate purchases (Tr. 1413-14, 1436). Mr. Pandya believed the company began building smaller restaurants as he proposed and he visited one of the new locations (Tr. 1428).

Additionally, Mr. Pandya's real estate companies leased land to Boston Market to build restaurants (Tr. 1440-42). Mr. Pandya forwarded the proposal to lease land to Boston Market's real estate department (Tr. 1438, 1442). Mr. Pandya's real estate companies set the rental amounts and Mr. Miller spoke with Mr. DiGiorgio about pricing (Tr. 1439, 1443-44). Mr. Miller had the final decision over whether to lease the land (Tr. 1437-40).

Mr. Pandya claimed he did not know about the FWL or Ceridian's role at Boston Market until 2024 (Tr. 1236-39, 1251-52). Boston Market's employees and Ceridian's general counsel told him about how Dayforce keeps Boston Market compliant with the FWL (Tr. 1253-54, 1270-71, 1654). He also reviewed Ceridian's website but did not know which portion led him to believe that Dayforce ensures Boston Market's compliance with the FWL (Tr. 1655-57, 1661, 1667-68, 1671-72). He believed Boston Market complied with the FWL because they used a "reputable" company for doing so (Tr. 1259, 1262-63).

Directly addressing petitioner's allegations about his involvement in Boston Market's affairs, Mr. Pandya asserted that the corporate office, the department heads, and Boston Market's general counsel handled company decisions (Tr. 1640-42). He did not draw a salary from Boston Market or have "substantial power" in the company's day-to-day operations (Tr. 1637). He claimed that he was "completely isolated" from Mr. Miller's conversations with Mr. DiGiorgio, that Mr. Miller was accountable for running Boston Market, and that holding him personally liable as a Board director is "beyond wrong" (Tr. 1642).

Petitioner also presented testimony from Ms. Stahley and Ms. Cuevas to establish Mr. Pandya's operational control over employees. Ms. Stahley testified that Mr. Pandya attended a May 2023 conference call between general managers and staff where he "call[ed] out" one of the general managers for not increasing sales (Tr. 302-03). Ms. Stahley believed Mr. Pandya was "CEO" or "COO" of Boston Market prior to the conference call (Tr. 303). She often saw him copied on emails addressed to restaurants (Tr. 303). The emails included conversations about "Pandya Distributions," a company Mr. Pandya owned that supplied Boston Market with food (Tr. 303-04).

Ms. Cuevas testified that she received emails from Mr. Pandya about her paycheck and her eventual termination from Boston Market (Tr. 744). In May 2023, Ms. Cuevas emailed Mr. Pandya about an issue with her paycheck and Mr. Pandya responded, "It should all be resolved by tomorrow" (Pet. Ex. 33; Tr. 744). Mr. Pandya testified that human resources had told him they would resolve Ms. Cuevas's paycheck issue but he did not remember if he did anything to resolve it (Tr. 1571-72).

In November 2023, Ms. Cuevas emailed Mr. Pandya at her supervisor's suggestion,

copying several managers, to inquire about using sick leave that she had accrued (Tr. 751, 757; Pet. Ex. 32). Mr. Pandya replied to Ms. Cuevas that she was “disrupt[ing]” others and should wait for a reply from her manager (Pet. Ex. 32). After Ms. Cuevas replied to his email, Mr. Pandya fired her, writing that she was “relieved from [her] position” because she “disrupted everyone” with her “constant badgering” (Pet. Ex. 32; Tr. 1567-69). Ms. Cuevas also concluded that Mr. Pandya was involved with Boston Market’s daily operations because her general managers told her they had “debrief meetings” with Mr. Pandya, though she did not clarify whether those meetings occurred during the investigation period (Tr. 750).

Certified state records from Colorado, West Virginia, and Illinois reflect two directors on Boston Market’s Board, Mr. Pandya and Mr. DiGiorgio (Pet. Exs. 52-57). There are no other directors listed (*Id.*). The records also list three officers: a president, secretary, and treasurer (*Id.*).

I credited Mr. Pandya’s testimony about Boston Market’s corporate structure and the identity of its corporate officers. However, some of Mr. Pandya’s testimony concerning his and Mr. DiGiorgio’s responsibilities at Boston Market was not credible. For instance, he claimed not to remember significant details such as the scope of the Board’s powers or his own authority on the Board, the identity of Boston Market’s other Board members, the other members of Engage Brands, and the companies that employed Mr. DiGiorgio. He gave me the impression that he was trying to minimize his role and responsibilities within Boston Market’s daily operations to avoid liability. Despite these credibility issues, however, petitioner still bears the burden to establish the elements of its case. *See Dep’t of Education v. Fleischmann*, OATH Index No. 1528/05 at 11 (July 26, 2006) (noting that petitioner cannot “rely on the vagueness or arguable credibility of respondent’s explanations as to how he came to be in possession of the [fake] bids to fill in the gap in its required proof”); *Fire Dep’t v. Loscuito*, OATH Index No. 509/06 at 20-21 (June 14, 2006), *adopted*, Comm’r Dec. (June 28, 2006), *aff’d*, 50 A.D.3d 905 (2d Dep’t 2008), *motion for leave to appeal denied*, 13 N.Y.3d 716 (2010) (“This tribunal has long held that ‘where an agency fails to establish essential elements of its case, it may not rely upon inconsistencies in a respondent’s testimony, or even a lack of credibility, to substitute for proof.’”).

The evidence established that Mr. Pandya was the managing member of the entity that owned Boston Market, that he served on its corporate board, and that he had some involvement with Boston Market's business during the investigation period, raising the possibility that Mr. Pandya had more control over Boston Market's employees than he claimed. Ultimately, however, petitioner failed to meet its burden to establish that Mr. Pandya exercised operational control over Boston Market's employees, that he met any of the *Carter* factors, or that he was an "employer" under the totality of the circumstances.

Operational Control Over Boston Market Employees

In support of its argument that Mr. Pandya had operational control over Boston Market employees, petitioner relied heavily on comparisons between his involvement with Boston Market and the Second Circuit's findings in *Catsimatidis*, where the Court found the CEO of a supermarket chain, who also served as its chairman and president, personally liable under the FLSA. *Catsimatidis*, 722 F.3d at 116-18. Petitioner's reliance on *Catsimatidis* is misplaced.

In *Catsimatidis*, the Court concluded that the company's CEO was "active in running [the business], including contact with individual stores, employees, vendors, and customers. . . . [and] [h]is decisions affected not only the bottom line, but individual stores, and the personnel and products therein." *Id.* at 116. The CEO's oversight extended over banking, merchandising, and real estate decisions. *Id.* He regularly reviewed store finances and made recommendations for how to increase profits such as product displays to drive sales. *Id.* at 113. He made occasional visits to stores to assess improvements to merchandising. *Id.* Witnesses testified that if the CEO made decisions, there was "no reason to believe . . . [that] anybody there has the power to override him." *Id.* at 112.

That is not the situation here. Petitioner presented no evidence that Mr. Pandya actively ran Boston Market restaurants or had the final authority on business decisions. Mr. Pandya occasionally visited stores and met with corporate officers about business performance during Board meetings, but there is no evidence that he made decisions affecting personnel, finances, or the "bottom line" during the investigation period. Petitioner also did not identify any specific decisions that Mr. Pandya personally made or had the authority to make during the investigation period, to establish the scope of his authority over employees. In contrast to

Catsimatidis, where the court based its conclusion in part on testimony from corporate executives and store managers, petitioner presented no testimony from such witnesses concerning events during the investigation period.¹⁷ Petitioner also failed to present any business records or emails, other than records showing that Mr. Pandya serves on the Board to establish that Mr. Pandya was an employer.

Petitioner asserted that Mr. Pandya exercised control over Boston Market's operations and employees through a chain of command where Mr. Miller, who supervised all aspects of the company, reported to Mr. DiGiorgio, and Mr. DiGiorgio reported to Mr. Pandya (Pet. Br. at 17-19). Petitioner maintains the arrangement resembles the hierarchy in *Catsimatidis*, where the CEO exercised control through his chief of operations, who in turn supervised the company's vice president (*Id.*). See *Catsimatidis*, 722 F.3d at 112. Petitioner failed to establish, however, that Mr. Pandya exercised control over Mr. DiGiorgio. Mr. Pandya's vague testimony that Mr. DiGiorgio reported to him was insufficient to demonstrate the scope of Mr. Pandya's authority over Mr. DiGiorgio, or that Mr. Pandya supervised or controlled him. Petitioner failed to sufficiently clarify that authority when it questioned Mr. Pandya. It also failed to present evidence of any specific decisions that Mr. Pandya made or had the authority to make to exercise control over Mr. DiGiorgio.

Additionally, the evidence was unclear as to Mr. DiGiorgio's role and responsibilities with Mr. Miller. Mr. Pandya's testimony that Mr. Miller reported to Mr. DiGiorgio to approve matters or resolve issues and that Mr. DiGiorgio ensured that things were "running properly" was not specific enough to establish that Mr. DiGiorgio exercised control over Mr. Miller or Boston Market's employees. There was insufficient proof of any particular decisions that Mr. DiGiorgio made or had the authority to make to exercise control over Mr. Miller. Petitioner did not call Mr. Miller as a witness or detail its efforts to secure his testimony, though he could

¹⁷ Petitioner cross examined Mr. Pandya's witness, Ms. Patel, who was Boston Market's former treasurer, and argued that Mr. Pandya supervised her (Pet. Br. at 19). Ms. Patel testified that she directly reported to Mr. Pandya as an employee for another company that Mr. Pandya owns, Pandya Management, and worked at Pandya Management when she was Boston Market's treasurer (Tr. 1841-44). It was not clear, however, what authority Mr. Pandya exerted over Ms. Patel at Boston Market.

have supplied important details about Mr. DiGiorgio's and Mr. Pandya's role within Boston Market's corporate structure.

Petitioner's contention that Mr. Pandya's Board membership gave him authority over company decisions is not supported by the credible evidence. The Board membership records show that Mr. Pandya and Mr. DiGiorgio served as directors. The officers are not listed as directors. However, if the Board only consisted of Mr. Pandya and Mr. DiGiorgio, Mr. Pandya did not have sole decision-making authority because he was not the only Board member. As described above, petitioner failed to establish that Mr. Pandya exercised control over Mr. DiGiorgio. Although Mr. DiGiorgio was general counsel at Mr. Pandya's other companies, raising questions about Mr. Pandya's influence over Mr. DiGiorgio, there was insufficient evidence that Mr. Pandya exerted such influence, had ultimate authority over Board decisions, or otherwise had operational control over employees.

Thus, petitioner's argument that Mr. Pandya exercised control over employees because he recommended reducing the size of restaurants is unpersuasive. Petitioner established that Mr. Pandya made a recommendation, not that he had ultimate authority to implement the recommendation. *Catsimatidis*, 722 F.3d at 111. Moreover, *Catsimatidis* makes clear that operational control must include control over employment. Petitioner argues that reducing store size would ultimately result in fewer hours for employees. However, that is a business decision too attenuated from direct control over work schedules or conditions of employment. *Cf. Ethelberth v. Choice Sec. Co.*, 91 F. Supp. 3d 339, 352-53 (E.D.N.Y. 2015) (finding defendant liable as an individual employer where defendant had authority to set a maximum number of hours employees were allowed to work each week, set employee compensation and sign tax returns).

The credible evidence also did not establish that Mr. Pandya exerted operational control over employees in receiving regular updates about Boston Market's operations, store metrics, labor, and sales, including at Board meetings with executive officers. Attending meetings to receive information is different from making decisions that exert control over employees. Unlike *Catsimatidis*, where the CEO attended daily meetings and had final authority over recommendations, petitioner failed to establish that the Board meetings were more than

informational or that Mr. Pandya had control over decisions.¹⁸

Finally, petitioner asserts that Mr. Pandya exercised “financial control” over Boston Market because his companies leased property to Boston Market and supplied food to its restaurants (Pet. Br. at 19). Mr. Pandya’s merging of his other business interests with Boston Market reflects some involvement with the business. *Catsimatidis*, however, makes clear that operational control must include control over employment. Without more, Mr. Pandya leasing land and supplying food to Boston Market through his other companies did not demonstrate that he had control over employment.

Carter factors

Petitioner failed to establish any of the four *Carter* factors used to evaluate the economic reality of an employer-employee relationship.

The first *Carter* factor considers whether an individual “had the power to hire and fire employees.” *Catsimatidis*, 722 F.3d at 114. Petitioner argued that Mr. Pandya had that power because he hired Boston Market’s president and chief operating officer and fired Ms. Cuevas (Pet. Br. at 20). The evidence did not establish that Mr. Pandya hired Boston Market’s president and chief operating officer. Mr. Pandya testified that the Board voted to hire them and he had a vote as a Board member (Tr. 1399-1403). Mr. Pandya’s testimony that the Board hired executive officers does not demonstrate that Mr. Pandya did so personally because the Board also included Mr. DiGiorgio. *See Orozco v. Plackis*, 757 F.3d 445, 449-50 (5th Cir. 2014) (franchisor owner did not have the power to hire or fire employee himself despite suggesting to the restaurant’s owner that she should fire the employee). Moreover, petitioner presented no evidence that the Board’s power to hire executive officers extended to hiring or firing other employees during the investigation period. *See Catsimatidis*, 722 F.3d at 114-15 (first *Carter* factor met because CEO possessed the power to hire or fire anyone at the company).

Petitioner otherwise presented no direct evidence of Mr. Pandya’s authority to hire or

¹⁸ Petitioner’s argument that Mr. Pandya reprimanded a general manager for failing to increase sales in early 2023 did not establish the scope of his authority as a Board member during the investigation period (Pet. Br. at 19). It was unclear if Mr. Pandya had already assumed the position of Boston Market’s president at the time of the conference call, which may have changed the scope of his authority.

fire employees during the investigation period. It was undisputed that Mr. Pandya terminated Ms. Cuevas's employment in November 2023. However, it cannot be reasonably inferred from his termination of Ms. Cuevas in 2023 that he previously had such authority given that Mr. Pandya replaced Mr. Miller as Boston Market's president in 2022 or 2023. His new position as a corporate officer of Boston Market is indicative of broader potential authority over the company, including employment decisions.

The second *Carter* factor considers whether an individual "supervised and controlled employee work schedules or conditions of employment." *Catsimatidis*, 722 F.3d at 115. Petitioner argued that Mr. Pandya supervised conditions of employment based on his unsworn statements throughout the proceeding about Boston Market's payment practices, scheduling decisions, and Ceridian's policies (Pet. Br. at 20-21; Tr. 74-75, 162, 274, 310, 323-27, 329, 332, 421, 503-04, 551, 802-03, 916-18, 1014-16, 1024-25). Petitioner also noted Mr. Pandya's recollection of a specific store where an employee worked and general requirements for employees to have food handling licenses (Pet. Br. at 20-21; Tr. 856, 860, 918). These arguments are unpersuasive. Mr. Pandya's knowledge of Boston Market's scheduling or payment practices does not establish that he controlled them. *See Orozco*, 757 F.3d at 450 ("The mere fact that Plackis reviewed the schedules fails to demonstrate that he actually had control over Orozco's schedule or employment conditions"); *see also Gray v. Powers*, 673 F.3d 352, 356 (5th Cir. 2012) (LLC member did not control employee work schedules despite hiring the manager, to whom he delegated hiring and firing duties). Petitioner presented no direct evidence that Mr. Pandya supervised work schedules or conditions of employment. It was also unclear whether Mr. Pandya learned about Boston Market's scheduling practices during the investigation period or afterward when he became Boston Market's president.

Petitioner asserted that Mr. Pandya tasked Mr. Miller with reducing the size of Boston Market stores, "impact[ing] employees' terms and conditions of employment" and labor costs by limiting available hours for employees to work (Pet. Br. at 20-21). As described above, the evidence did not establish that Mr. Pandya had control over Mr. Miller or authority over the Board, and thus that this was more than a recommendation. *See Orozco*, 757 F.3d at 450 (franchisor owner's suggestion to restaurant owner that she should change working conditions

did not mean the franchisor owner had the power to do so, as the franchisor owner did not supervise or control employee work schedules or conditions). Additionally, petitioner's argument that the consequence of reducing store size would result in fewer hours for employees is too attenuated from direct control over work schedules or conditions of employment.

The third *Carter* factor considers whether an individual "determined the rate and method of payment." *Catsimatidis*, 722 F.3d at 115. Petitioner's reliance on Mr. Pandya's unsworn statements about his familiarity with Boston Market's payment system did not establish that he had control over the rate and method of payment (Pet. Br. at 21; Tr. 151-53, 577, 748-49, 850, 1024-25). As described above, Mr. Pandya's familiarity with the system is different from having control over it. *See Orozco*, 757 F.3d at 451 (franchisor owner's awareness of employee's salary did not allow jury to reasonably infer that franchisor owner was in effect advising restaurant owner regarding employee's salary). It is also unclear whether Mr. Pandya knew about Boston Market's payment system during the investigation period or learned about it afterward when he became Boston Market's president.

Ms. Cuevas's emails with Mr. Pandya in May 2023, where he informed her that an issue with her paycheck "should all be resolved," was vague as to his role in resolving that issue. The emails did not establish that Mr. Pandya had authority over payment methods. Moreover, the 2023 emails concerning Ms. Cuevas's paycheck did not establish that Mr. Pandya determined the rate and method of payment during the investigation period. Mr. Pandya's new position as president of Boston Market in 2022 or 2023 is indicative of broader potential authority over employment decisions. Petitioner presented no direct evidence that Mr. Pandya had authority to determine the rate and method of payment during the investigation period.

The fourth *Carter* factor considers whether the individual "maintained employment records." *Catsimatidis*, 722 F.3d at 116. Petitioner maintained that Mr. Pandya maintained employment records in human resources through "control" over Mr. Miller and Mr. Pandya's significant knowledge of Ms. Cuevas's work history (Pet. Br. at 22; Tr. 771, 780-81, 793-94). As described above, petitioner did not establish that Mr. Pandya exercised control over Mr. Miller.

Nor did Mr. Pandya's familiarity with Ms. Cuevas's employment history establish that he had access to her records or other employees during the investigation period.

Petitioner also relied on Mr. Pandya's unsworn statements that Boston Market's emails and Ceridian's records were exculpatory to establish his control over the records (Tr. 180, 1004, 1043, 1047, 1123-25, 1130). Although Mr. Pandya testified that he had some of Boston Market's records in his own emails, he also claimed he did not have access to the email server (Tr. 1290).¹⁹ Mr. Pandya maintained at trial that he was unable to obtain the emails or other employment records, requested subpoenas for the emails and those records, and ultimately did not introduce them into evidence.

In sum, petitioner failed to establish any of the *Carter* factors, Mr. Pandya's operational control over Boston Market's employees, or his status as an "employer" under the "totality of the circumstances." See *Catsimatidis*, 722 F.3d at 104. Accordingly, it failed to establish Mr. Pandya's personal liability for the FWL violations. See *Kerr v. Marshall University Bd. of Governors*, 824 F.3d 62, 83-84 (4th Cir. 2016) (supervising teacher was not plaintiff's employer because none of the *Carter* factors applied; the supervisor could not fire her, did not control her work schedule, did not determine the rate or method of her payment because she was unpaid, and did not maintain her records); *Gray*, 673 F.3d at 357 ("While each element need not be present in every case, finding employer status when none of the [*Carter*] factors is present would make the test meaningless."); *Orozco*, 757 F.3d at 450-51 (the fact that the franchisor owner reviewed the work schedules, trained the employee in question, and set broad policies for the entire franchise did not make him an employer).

¹⁹ Petitioner argued that Mr. Pandya's unsworn statement that he spoke with Boston Market's "landlord for Colorado" to ship a server containing emails and employment records demonstrated his control over them (Pet. Br. at 22; Tr. 1144). See *Bayne v. Napw, Inc.*, 2024 U.S. Dist. LEXIS 52983 (E.D.N.Y. Mar. 25, 2024). In *Bayne*, however, the court did not determine whether a corporate entity maintained the records that were shipped to them, because other evidence raised a genuine issue of material fact over whether the entity maintained the records. See *Bayne*, 2024 U.S. Dist. at *36-37. There was also no evidence that the server here was actually shipped or that Mr. Pandya had access to it.

Findings and Conclusions

1. Petitioner established that between February 1, 2018 and May 26, 2021, Boston Market failed to provide good faith estimates to new fast food employees on 938 occasions, in violation of section 20-1221(a) of the FWL. Petitioner failed to prove 103 alleged violations.
2. Petitioner established that between February 1, 2018 and May 26, 2021, Boston Market failed to give employees at least 14 days' notice of their work schedules on 37,124 occasions, in violation of section 20-1221(b) of the FWL.
3. Petitioner established that between February 1, 2018 and May 26, 2021, Boston Market cancelled, shortened, lengthened, added, or rescheduled shifts for fast food employees and failed to pay schedule change premiums for those changes to their work schedules on 72,632 occasions in 15,307 pay periods, in violation of section 20-1222 of the FWL. Petitioner failed to prove violations on 8,350 occasions in 2,188 pay periods.
4. Petitioner established that between February 1, 2018 and May 26, 2021, Boston Market failed to obtain written consent from fast food employees to work additional hours, on 38,933 occasions, in violation of section 20-1221(d) of the Administrative Code. Petitioner failed to prove 2,671 alleged violations.
5. Petitioner established that between February 1, 2018 and May 26, 2021, Boston Market required fast food employees to work clopening shifts without consent on 1,066 occasions, in violation of section 20-1231 of the Administrative Code. Petitioner failed to prove 67 alleged violations. Petitioner also established that Boston Market failed to pay clopening premiums on 24 occasions.
6. Petitioner established that between February 1, 2018 and May 26, 2021, Boston Market failed to offer newly available shifts to current fast food employees before offering shifts to newly

hired fast food employees on 2,855 occasions, in violation of section 20-1241 of the FWL. Petitioner failed to prove 249 alleged violations.

7. Petitioner failed to establish that Mr. Pandya is personally liable for the FWL violations sustained against Boston Market between April 27, 2020 and May 26, 2021.

Recommendation

The FWL provides that petitioner may grant relief to employees or former employees for violations of the law as set forth in section 20-1208, and for payment of premiums due to the employees that remain unpaid. In addition, the FWL provides for civil penalties payable to the City for each violation of the FWL and for orders requiring compliance with certain provisions. See Admin. Code §§ 20-1208, 20-1209. The FWL provides that relief and penalties “shall be imposed on a per employee and per instance basis for each violation.” Admin. Code §§ 20-1208(c), 20-1209(b). Petitioner seeks a finding that Boston Market and Mr. Pandya are in violation of multiple provisions of the FWL as set forth in counts one, two, three, four, five, and six of the petition and a recommendation of total relief of \$76,392,137, including \$22,315,000 in relief to employees, \$4,042,637 in unpaid premiums, and \$50,034,500 in civil penalties (Pet. Br. at 1-2). As set forth below, petitioner’s requested penalties and relief should be granted for the most part against Boston Market. Petitioner’s requested penalties and relief against Mr. Pandya are denied as those violations have not been sustained.

Count One

Petitioner established that Boston Market failed to provide employees with written good faith estimates, in violation of section 20-1221(a) of the Administrative Code. For the proven violations, petitioner seeks relief to employees of \$208,200 and a civil penalty of \$520,500 (Pet. Br. at 1).

Under section 20-1208(a)(3)(b) of the FWL, petitioner “may grant” relief to employees and former employees of \$200 for each violation of section 20-1221(a). Petitioner requests relief for 1,041 instances during the investigation period when Boston Market failed to provide its employees with a good faith estimate (Pet. Br. at 1). However, petitioner did not establish

103 of the alleged violations. Based upon the 938 sustained violations of section 20-1221 for instances where employees hired between May 27, 2018 and May 26, 2021 did not receive good faith estimates, I recommend relief in the amount of \$187,600, reflecting \$200 for each employee (Pet. Exs. 3, 13).

As a civil penalty, petitioner seeks \$500 per violation for 1,041 instances of failure to comply with section 20-1221. Under section 20-1209(a), "For each violation of this chapter, an employer is liable for a penalty of \$500 for the first violation and, for subsequent violations that occur within two years of any previous violation of this chapter, up to \$750 for the second violation and up to \$1,000 for each succeeding violation." Admin. Code § 20-1209(a). Based upon 938 sustained violations of section 20-1221, a civil penalty of \$469,000 should be imposed, reflecting \$500 per violation.

Count Two

Petitioner established that Boston Market failed to provide employees with written notice of their work schedules at least 14 days in advance of the start of that schedule on 37,124 occasions, in violation of section 20-1221(b) of the Administrative Code. For the proven violations, petitioner seeks relief to employees of \$7,424,800 and a civil penalty of \$18,562,000 (Pet. Br. at 1).

Section 20-1208(a)(3)(b) provides for relief to employees or former employees in the amount of \$200 for each violation of section 20-1221(b). Petitioner requests relief of \$200 per employee for 37,124 violations between February 1, 2018 and May 26, 2021, where Boston Market failed to provide employees with a written schedule 14 days in advance. As to civil penalties, petitioner seeks \$500 for each violation of section 20-1221(b). Admin. Code § 20-1209(a), (b).

Petitioner's request is appropriate. Accordingly, I recommend relief to employees in the amount of \$7,424,800, reflecting \$200 for each of the 37,124 sustained violations of section 20-1221(b). I recommend a civil penalty of \$18,562,000, reflecting \$500 for each of the sustained violations.

Count Three

Petitioner established that Boston Market added time to its employees' written work schedules without obtaining their written consent, in violation of section 20-1221(d) of the FWL. Petitioner seeks \$8,240,000 in relief to employees and \$20,600,000 in civil penalties (Pet. Br. at 1).

Section 20-1208(a)(3)(b) provides for relief to employees or former employees in the amount of \$200 for each violation of section 20-1221(d). Admin. Code § 20-1208(a)(3)(b). As to civil penalties, petitioner seeks \$500 for each violation of section 20-1221(d). Admin. Code § 20-1209(a), (b). Petitioner requests civil penalties and relief for 41,200 instances between February 1, 2018 and May 26, 2021, where Boston Market added hours to employee schedules without written consent (Pet. Br. at 1).

Petitioner established 38,933 violations from May 27, 2018 through May 26, 2021. Accordingly, I recommend relief to employees in the amount of \$7,786,600 (\$200 per employee for 38,933 violations). The employees to be awarded relief are reflected on Petitioner's Exhibit 18, excluding the instances involving exceptions to the premium payment requirement (Pet. Ex. 19) and possible salaried employees (Pet. Ex. 58 at Ex. V) during that period. I recommend a civil penalty of \$19,466,500 (38,933 violations).

Count Four

Petitioner seeks relief to employees of \$4,933,800 for 16,446 violations of section 20-1222, reflecting \$300 for each schedule change violation, \$8,223,000 in civil penalties, reflecting \$500 per violation, and unpaid premium payments of \$3,750,889, reflecting \$75 per violation where shifts were shortened or cancelled, and \$15 per violation where shifts were added, lengthened, or rescheduled (Pet. Br. at 1-2; Pet. Exs. 24, 51). Admin. Code §§ 20-1208(a)(3)(c), 20-1209(a), 20-1222. The amount petitioner seeks in unpaid premiums excludes the 4,791 premium payments Boston Market paid to employees, totaling \$132,123, and \$75 for each of the 1,819 exceptions where premium pay was not required, the maximum schedule change

premium due under the FWL, totaling \$136,425 (ALJ Ex. 16; Pet. Exs. 9, 11, 12, 19, 22).²⁰ Admin. Code § 20-1222(a)(5).

Under the FWL, when a scheduled shift is shortened or cancelled with less than 24-hours' notice to the employee, the fast food employer must pay the employee a schedule change premium of \$75 (section 20-1222(a)(5)); when notice is provided to the employee at least 24 hours, but less than seven days before the shift change, the schedule change premium due to the employee is \$45 (section 20-1222(a)(4)); and when notice is provided at least seven days, but less than 14 days before the shift change, the schedule change premium due to the employee is \$20 (section 20-1222(a)(2)). The FWL further provides for a schedule change premium of \$15 for each change to the work schedule that is added, lengthened, or rescheduled, with less than seven days' notice to the employee (section 20-1222(a)(3)), and when notice is provided at least seven days, but less than 14 days before the shift change, the schedule change premium due to the employee is \$10 (section 20-1222(a)(1)).

Petitioner contends that Boston Market gave employees less than 24-hours' notice of each schedule change (Pet. Br. at 9). Petitioner bases that contention on a presumption from Boston Market's failure to document the schedule changes on its employee work schedules, as provided in the current version of its rules. 6 RCNY § 7-622(a). As described above, however, rule 7-622 was not in effect when the violations occurred, and thus the presumption in that rule does not apply. Petitioner also argues that "the appearance of schedule changes only in time records, and not in any work schedule, indicates that [the changes] were last-minute, same-day changes" (Pet. Br. at 9). Petitioner's argument is unsupported by the evidence. Schedule changes not reflected on work schedules do not necessarily indicate they were same-day changes. Although petitioner proved that the schedule changes were made with less than 14 days' notice, there is insufficient evidence to establish how close in time they were made.

²⁰ In its post-trial memorandum, petitioner sought \$4,019,437 in unpaid premiums. By email dated December 30, 2025, petitioner reduced its request for unpaid premiums to \$3,750,889, to exclude the \$132,123 in premium payments that Boston Market made to its employees and \$136,425 for the 1,819 exemptions to the premium pay requirement (ALJ Ex. 16).

The evidence established that Boston Market added, lengthened, shortened, cancelled, or rescheduled 72,632 shifts for employees between May 27, 2018 and May 26, 2021 and failed to make required premium payments. Because petitioner failed to establish that the changes were made with less than 24 hours' notice, its request for \$75 per violation where shifts were shortened or cancelled and \$15 where shifts were added, lengthened, or rescheduled is not appropriate. Petitioner established the changes were made with less than 14 days' notice. The FWL provides that the appropriate premium here for schedule changes with less than 14 days' but at least 7 days' notice is \$20 per violation where shifts were shortened or cancelled and \$10 where shifts were added, lengthened, or rescheduled. Therefore, I recommend Boston Market pay \$971,870 for the schedule changes between May 27, 2018 and May 26, 2021, when Boston Market failed to make premium payments. The employees who should receive payments are reflected in Petitioner's Exhibit 21 (totaling \$1,199,240), excluding the 4,064 premium payments paid (totaling \$112,010) (Pet. Ex. 22) and the 1,508 exceptions to the premium pay requirement (totaling \$113,100) (Pet. Ex. 19) between May 27, 2018 and May 26, 2021,²¹ and the 159 schedule changes involving salaried employees that petitioner identified during that period (totaling \$2,260) (Pet. Ex. 58 at Ex. W).

Section 20-1208(a)(3)(c) provides for \$300 per violation in relief. In addition, a civil penalty of \$500 for each violation is provided for in section 20-1209(a) of the FWL. Although petitioner sought monetary relief and civil penalties for schedule change violations in 16,446 pay periods during the investigation period, it only established 15,307 violations between May 27, 2018 and May 26, 2021. Accordingly, petitioner established that relief to employees in the amount of \$4,592,100 (\$300 per violation) and civil penalties in the amount of \$7,653,500 (\$500 per violation) is appropriate. As section 20-1208(a)(3)(c) provides for \$300 in relief per violation, relief should be distributed to the employees reflected on Petitioner's Exhibit 23, for the violations (one per pay period) between May 27, 2018 and May 26, 2021, excluding the premium payments made to employees, exceptions to the premium pay requirement, and pay periods with salaried employees.

²¹ The amount deducted for the 1,508 exemptions should be \$75 per exemption, as petitioner indicated in its email dated December 30, 2025. (ALJ Ex. 16).

Count Five

Petitioner proved that Boston Market required employees to work clopening shifts without their written consent and failed to make required premium payments, in violation of section 20-1231 of the FWL and section 7-606(a) of petitioner's rules. Petitioner seeks \$564,500 in civil penalties and \$564,500 in monetary relief for 1,129 instances where Boston Market failed to obtain employees' written consent to work clopenings (Pet. Br. at 2, 12-14). Petitioner also seeks \$100 for each employee owed clopening premiums, totaling \$2,500 for 25 employees, and an additional \$12,500 in civil penalties and \$12,500 in monetary relief for those employees, based on the failure to pay premiums (Tr. 352-54; Pet. Br. at 2).

Section 20-1208(a)(3)(d) provides for relief in the form of "payment as required under section 20-1231," which requires payment of \$100 for each instance an employee works a clopening shift. Admin. Code § 20-1208(a)(3)(d). Petitioner established that Boston Market did not pay premium payments to its employees on 24 occasions. Thus, premium payments of \$2,400 are appropriate for Boston Market's failure to secure written consent to work clopening shifts and failure to pay the \$100 premium for those shifts. Petitioner did not specifically identify the names of the employees owed restitution and the amounts owed to each employee. However, the employees who did not receive premium payments are those who worked clopenings between May 27, 2018 and May 26, 2021 (Pet. Ex. 26), excluding the 1,618 premium payments made to employees (Pet. Ex. 27) and 190 shifts that petitioner identified with salaried employees (Pet. Ex. 58 at Ex. Z) during that period.

As for civil penalties and monetary relief, section 20-1209(a) provides for \$500 for each violation of 20-1231, and section 20-1208(a)(3)(d) provides for \$500 in monetary relief for each violation. Petitioner did not establish violations from February 1, 2018 through May 26, 2018. For the 1,066 proven violations from May 27, 2018 through May 26, 2021, I recommend relief in the amount of \$533,000 to the employees listed on Petitioner's Exhibit 25 (\$500 per employee), excluding the employees that petitioner identified as salaried (Pet. Ex. 58 at Ex. Y) during that period. I also recommend a civil penalty of \$533,000 (\$500 for each violation).

Petitioner's request for an additional \$12,500 in civil penalties and \$12,500 in monetary relief for the 24 employees who did not receive clopening premiums payments is duplicative.

Relief for those employees and civil penalties have already been recommended for Boston Market's failure to obtain their consent to work the clopenings. Section 20-1231 does not provide a separate subsection for additional relief and civil penalties where an employer fails to pay the clopening premiums.

Count Six

Petitioner seeks \$931,200 in relief to employees and \$1,552,000 in civil penalties for Boston Market's failure to offer available shifts to current fast food employees before offering them to new employees (Pet. Br. at 2). Section 20-1208(a)(3)(e) provides for relief to the employee of \$300 for each violation of section 20-1241 of the FWL. Boston Market violated section 20-1241 when it failed to offer newly available shifts to current employees before hiring new employees, and relief of \$300 per violation is appropriate. Further, the FWL provides for civil penalties of \$500 for each violation. Admin. Code § 20-1209(a), (b).

As petitioner only established 2,855 violations from May 27, 2018 through May 26, 2021, I recommend monetary relief of \$856,000 to the employees listed on Petitioner's Exhibit 29, excluding the employees that petitioner identified as salaried (Pet. Ex. 58 at Ex. AA) during that period. I also recommend a civil penalty of \$1,427,500 (2,855 violations).

In sum, the following relief to fast food employees, unpaid premiums, and civil penalties are recommended:

Count	Relief	Premiums Owed	Civil Penalty	Total Amount
Count One	\$187,600	n/a	\$469,000	\$656,600
Count Two	\$7,424,800	n/a	\$18,562,000	\$25,986,800
Count Three	\$7,786,600	n/a	\$19,466,500	\$27,253,100
Count Four	\$4,592,100	\$971,870	\$7,653,500	\$13,217,470
Count Five	\$533,000	\$2,400	\$533,000	\$1,068,400
Count Six	\$856,000	n/a	\$1,427,500	\$2,283,500
Total Amount	\$21,380,100	\$974,270	\$48,111,500	\$70,465,870

Jonathan Fogel
Administrative Law Judge

July 30, 2026

Submitted To:

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Commissioner

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