

1 UNITED STATES OF AMERICA
2 BEFORE THE
3 NATIONAL LABOR RELATIONS BOARD
4

5 CL FRANK MANAGEMENT, LLC, CL
6 METROPOLIS MANAGEMENT, LLC, AND
7 CL VERTIGO MANAGEMENT, LLC, A
8 SINGLE EMPLOYER D/B/A HOTEL
9 PROJECT GROUP D/B/A HOTEL FRANK,

10 and

11 CL FRANK MANAGEMENT, LLC, CL
12 METROPOLIS MANAGEMENT, LLC, AND
13 CL VERTIGO MANAGEMENT, LLC, A
14 SINGLE EMPLOYER D/B/A HOTEL
15 PROJECT GROUP D/B/A HOTEL
16 METROPOLIS

17 and

18 UNITE HERE! Local 2

Case Nos. 20-CA-35123

20-CA-35223

20-CA-35238

20-CA-35253

(Consolidated)

19 **EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION**

20 Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board
21 ("Board"), CL Frank Management, LLC d/b/a Hotel Frank, LLC and CL Metropolis Management LLC
22 d/b/a Hotel Metropolis, LLC (collectively "Employer" or "Hotel"), by and through its undersigned
23 counsel, hereby files Exceptions to the Decision of the Administrative Law Judge Schmidt ("ALJ") in
24 the above-captioned matters as follows:

25 1. To the ALJ's failure to find that the Employer issued employees an at-will policy
26 on May 12, 2010. (D. 4:25-5:22)¹
27

28 ¹ "(D.)" references the ALJ's Decision by page and line numbers.

1 2. To the ALJ's failure to find that the Employer issued employees job requirements,
2 including job requirements for Bellman. (D. 4:25-5:22)

3 3. To the ALJ's failure to find that the Employer provided employees 72-hours to
4 sign the new policies, handbook, and other job requirements. (D. 4:25-5:22, 5:53-55 FN6)

5 4. To the ALJ's failure to find that mystery shopper reports stated that Norton failed
6 to meet job performance requirements for bellman (D. 5:24-35)

7 5. To the ALJ's failure to find that that Wali offered the union and employees during
8 June 10 negotiations an opportunity to go to the status quo regarding the wearing of union buttons. (D.
9 6:10-14)

10 6. To the ALJ's failure to find that on June 11, nearly all of the bargaining unit
11 employees were wearing union buttons. (D. 6:10-14)

12 7. To the ALJ's finding that the predecessor employer required housekeeping
13 employees to only clean 13 rooms per day and his failure to find that the predecessor employer required
14 housekeeping employees to clean only 14 rooms per day. (D. 6:55-7:6)

15 8. To the ALJ's finding that on June 10 Mike Casey requested that the Employer
16 return housekeepers return to previous room cleaning levels and that Bashar Wali refused on the
17 grounds that he was unwilling to make a piecemeal agreement. (D. 7:16-18)

18 9. To the ALJ's failure to find that on July 3 during negotiations, Wali proposed to
19 Casey that the Employer return to the status quo regarding housekeepers required rooms from 15 to 14.
20 (D. 7:16-18)

21 10. To the ALJ's finding that the change in the number of required rooms to be
22 cleaned by the housekeepers was a "bone of contention between the room cleaners and management."
23 (D. 7:20-23)

1 11. To the ALJ's failure to find that the housekeepers intentionally did not clean their
2 required 15 rooms by slowing down their work. (D. 7:20-47)

3 12. To the ALJ's finding the Employer issued "written warnings" to six room
4 cleaners on June 29. (D. 7:49-8:6)

5 13. To the ALJ's general finding that the employees were not engaged in a slowdown.
6 (D. 8:23-30)

7 14. To the ALJ's finding "the evidence of a slowdown as that term is traditionally
8 used in labor relations law is weak." (D. 8:23-24)

9 15. To the ALJ's finding "those participating in the job action simply ceased working
10 at approximately 4 p.m. after cleaning only 13 rooms." (D. 8:25-27)

11 16. To the ALJ's finding "any conclusion that a slowdown occurred throughout the
12 day unlikely" because "the room cleaners frequently had to forgo their break periods to complete their
13 work on time." (D. 8:27-30)

14 17. To the ALJ's finding "the room cleaners involved ceased working altogether prior
15 to the end of their shift." (D. 8:32-33)

16 18. To the ALJ's finding the Employer did not rebut the "the presumptively lawful
17 action by the six room cleaners on June 28." (D. 8:39-40)

18 19. To the ALJ's finding the work stoppage was the "direct result of the room
19 cleaners' frustration over HPG's increase in the room cleaning assignments." (D. 8:40-41)

20 20. To the ALJ's finding prior to the work stoppage the room cleaners "complained
21 repeatedly to their immediate supervisor" about the change in room cleaning assignments. (D. 8:41-42)

1 21. To the ALJ's finding the room cleaners "pressured Local 2 to do something
2 about" the change in room cleaning assignments. (D. 8:42-43)

3 22. To the ALJ's finding that during the June 10 meeting, Casey made his demands to
4 the Employer in response to the failure to clean the rooms. (D. 8:43-44)

5 23. To the ALJ's finding "[n]o evidence of a plan or pattern is present." (D. 8:44-
6 45)

7 24. To the ALJ's finding "that this brief work stoppage in protest of the increased
8 room cleaning workload constituted protected concerted activity within the meaning of Section 7, and
9 for this reason the June 29 warnings of potential discipline violated Section 8(a)(1)." (D. 8:49-51)

10 25. To the ALJ's failure to refer to, recognize or weigh the uncontroverted record
11 evidence that the six memoranda issued to the room cleaners did not constitute disciplinary action. (D.
12 8:10-8:51)

13 26. To the ALJ's failure to refer to, recognize or weigh the uncontroverted record
14 evidence that the housekeepers never complained they have been unable to clean the required number of
15 rooms before or after the June 28 incident. (D. 8:10-8:51)

16 27. To the ALJ's failure to refer to, recognize or consider the Employer's argument
17 that the room cleaners attempted to usurp the Employer's prerogative to assign work while expecting to
18 be paid for the work they remained able to perform. (D. 8:10-51)

19 28. To the ALJ's distinguishing of Audubon Health Care Center, 268 NLRB 135
20 (1983) from the facts of this case. (D. 8:10-51)

21 29. To the ALJ's finding that Polytech, Inc., 195 NLRB 695, 696 (1972) is applicable
22 to the facts of this case. (D. 8:10-51)

1 30. To the ALJ's failure to find that the 45-day extension was applied to the Hotel
2 Metropolis and Hotel Vertigo. (D. 9:36-45)

3 31. To the ALJ's general finding that the 45-day extension did not materially affect
4 employee's terms and conditions of employment. (D. 10:15-24)

5 32. To the ALJ's general failure to find that employee's terms and conditions of
6 employment were not materially affected by the 45-day extension because they received the same
7 benefits as others and because they were at-will employees. (D. 10:15-24)

8 33. To the ALJ's finding the extension of the probationary period materially affected
9 the employees' terms and conditions of employment. (D. 10:15-17)

10 34. To the ALJ's finding that the "very nature of a probationary period implies a
11 conditional employment status." (D. 10:17-18)

12 35. To the ALJ's finding that "the 45-day extension prolonger their unsettled
13 employment status." (D. 10:20).

14 36. To the ALJ's finding Fresno Bee, 339 NLRB 1214 (2003) should be distinguished
15 from this case. (D. 10:20-24)

16 37. To the ALJ's finding that the employee manual/handbook went beyond the terms
17 set forth in their May 12 employment letters. (D. 10:30-32, 10:34-36)

18 38. To the ALJ's finding the employee manual/handbook "gave notice to the
19 employees that, as to their probationary period, their employer retained complete discretion to expand
20 the probationary period as they saw fit." (D. 10:32-34)

1 39. To the ALJ's finding the employee manual/handbook "provided Employers with
2 the ability to expand the probationary period by 6 days or 6 months for any reason it 'deemed
3 appropriate.' (D. 10:34-36)

4 40. To the ALJ's finding Monterey Newspapers, 334 NLRB 1019 (2001) should be
5 distinguished from this case and that the employer went beyond the scope of discretion permitted in that
6 case. (D. 10:38-44)

7
8 41. To the ALJ's finding "the type of discretion retained by Employers in their
9 employee manuals is so broad as to give rise to the duty to bargain under NLRB v. Katz, 369 U.S. 736
10 (1962)." (D. 10:42-43)

11
12 42. To the ALJ's finding "there are no limits on the Employers' discretion with
13 respect to the probationary period." (D. 10:43-44)

14 43. To the ALJ's finding that Employer violated Section 8(a)(5) of the Act by "failing
15 to give Local 2 notice and an opportunity to bargain about the extension." (D. 10:44-46)

16
17 44. To the ALJ's failure to refer to, recognize or consider Employer's argument that
18 the introductory period for new hires was tightly circumscribed. (D. 9:49-10:46)

19 45. To the ALJ's failure to refer to, recognize or weigh the uncontroverted record
20 evidence that Employer extended the introductory period for the sole purpose of providing it adequate
21 time to further train employees and conduct further mystery guest reports. (D. 9:49-10:46)

22
23 46. To the ALJ's failure to refer to, recognize or weigh the uncontroverted record
24 evidence that the extended employees maintained the exact same rates of pay, job duties, and
25 performance standards as those who were offered full time employment. (D. 9:49-10:46)

1 47. To the ALJ's failure to refer to, recognize, or weight the uncontroverted record
2 evidence that the extended employees were employees-at-will and the extended period did not leave
3 their status unsettled. (D. 9:49-10:46)

4 48. To the ALJ's finding that Norton continued to wear a button and Peter Kim, on
5 the instructions of Olmeda, asked him to remove it. (D. 11:14-17)

6 49. To the ALJ's finding that "[a]fter Employer took over the operation, many of the
7 employees discontinued wearing their union buttons." (D. 11:11-12)

8 50. To the ALJ's finding that "Respondent Frank's nametage-only policy is
9 tantamount to barring employees from wearing union insignia as they had done for year." (D. 11:22-23)

10 51. To the ALJ's failure to credit the uncontroverted testimony that Bashar Wali
11 "informed employees during the June 10 meeting that they would be permitted to wear union buttons."
12 (D. 11:46-11:55 FN 8, 12:14)

13 52. To the ALJ's general finding that the Employer did not meet the test under
14 Republic Aviation Corp. v. NLRB, 324 U.S. 793 (1945) permitting it to prohibit employees from
15 wearing union buttons. (D. 12:19-26)

16 53. To the ALJ's general finding that the Employer did not "effectively repudiate[]"
17 the interference with employees rights caused by Kott's notice" under the Passavant repudiation
18 doctrine. (D. 12:28-43)

19 54. To the ALJ's finding Bashar Wali's testimony "strongly suggests a lack of
20 appreciation of the legal principles involved." (D. 12:36-37)

21 55. To the ALJ's finding that "[t]he fact that Kott's notice remained posted for
22 several weeks and Wali's assertion that the rulebook provision at issue would be retained for use at non-
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1 union locations precludes a finding that this unlawful conduct has been effectively repudiated.” (D.
2 12:40-43)

3 56. To the ALJ’s finding Agri-International Inc., 271 NLRB 925 (1984) should be
4 distinguished from and are not applicable to this case. (D. 12:45-13:6)

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6 57. To the ALJ’s finding “the evidence shows only that Employer notified the
7 Union’s president employees would be permitted to wear union buttons at the represented hotels.” (D.
8 13:8-9)

9
10 58. To the ALJ’s finding that Employer “gave no straightforward notice to employees
11 that they could wear union insignia if they chose to do so.” (D. 13:9-10)

12 59. To the ALJ’s finding that Employer violated Section 8(a)(1) of the Act “by
13 prohibiting employees from wearing union insignia. (D. 13:11-12)

14
15 60. To the ALJ’s failure to refer to, recognize or consider Employer’s argument that
16 Employer’s negotiation of the dress code policy, the vagueness of the memorandum, or Casey’s
17 statements regarding the memorandum, eliminated any coercive effect of the June 4 memorandum. (D.
18 12:8-13:12)

19
20 61. To the ALJ’s failure to refer to, recognize or weigh the uncontroverted record
21 evidence that nearly all of the bargaining unit employees wore Union insignia the day after the June 10
22 meeting. (D. 12:8-13:12)

23 62. To the ALJ’s failure to find that there were approximately 10-20 non-employees
24 in the employer’s lobby during the Union’s demonstration. (18:22-26)

25
26 63. To the ALJ’s finding that Infusino “willingly engaged the group, said nothing to
27 indicate that they were trespassing or doing anything unlawful, and made no demand that they leave.”
28 (D. 18:33-35)

1 64. To the ALJ's general failure to find that the Employer had a reasonable basis for
2 taking a picture of the Union's demonstration in its lobby on September 8 because the Union was
3 engaged in unlawful trespass. (D. 19:8-18)

4 65. To the ALJ's finding Employer "lacked a reasonable basis for the picture taking
5 that occurred" on September 8. (D. 19:8-9)

6 66. To the ALJ's finding the group's presence in Employer's lobby did not amount to
7 trespass because "most were hotel employees or union agents authorized to visit the hotel and Infusino
8 failed to object to anyone's presence." (D. 19:9-11)

9 67. To the ALJ's finding the group's presence did not "interfere[] with the comings
10 and goings of hotel guests." (D. 19:11-12)

11 68. To the ALJ's finding the group's presence "remained peaceful, orderly, and
12 respectful throughout." (D. 19:14-15)

13 69. To the ALJ's finding Employer violated Section 8(a)(1) of the Act because
14 the "Employer lacked sufficient justification for the picture taking" that occurred on September 8. (D.
15 19:16-18)

16 70. To the ALJ's failure to credit Local 2 Agent Josephine Rivera's testimony that
17 Norton was the only Hotel Frank employee present for the picture taking that occurred on September 8.
18 (D. 18:49-54)

19 71. To the ALJ's failure to distinguish Berrton Kirshner, Inc., 209 NLRB 1081
20 (1974), from the facts of this case. (D. 18:46-19:19)

21 72. To the ALJ's failure to find that Norton read and signed the Employer's job-
22 related documents. (D. 19:41-20:6)

1 73. To the ALJ's finding that Claudio Simic confronted Norton about appearing upset
2 at the initial meeting. (D. 19:55-20:6)

3 74. To the ALJ's finding that Norton engaged in and the Employer was aware that
4 Norton engaged in the listed union and/or protected, concerted activities. (D. 20:8-36)

5 75. To the ALJ's crediting of Norton over Kott regarding statements made during the
6 June 19 meeting. (D. 20:50-21:22)

7 76. To the ALJ's finding that Kott told Norton "he should not have talked about the
8 union during the training session, that his remarks were disruptive and negative, and would likely have a
9 negative influence on other employees." (D. 21:28-30)

10 77. To the ALJ's crediting and finding that Olmeda told Norton, "You know, Marc,
11 everybody here is still on probation. And we are going to be making some decisions at the end of that
12 probation about who to keep on hand. (W)hen we make those decisions it's going to be important to us
13 whether or not workers are on the same page with us." (D. 21:31-34)

14 78. To the ALJ's failure to credit Olmeda's and Kott's testimony that Olmeda never
15 told Norton that if he was not on the "same page" as the Hotel, the Employer would not offer him
16 employment. (D. 21:31-34, 21:50-55 FN12)

17 79. To the ALJ's failure to refer to, recognize or consider Saltzberg's Board affidavit,
18 is inconsistent with his testimony that Olmeda made the "same page" comment. (D. 21:52-53)

19 80. To the ALJ's finding that "[a]s time went on, Norton became highly critical of the
20 mystery guest reports." (D. 22:10)

21 81. To the ALJ's failure to find that Norton was aware that the guest he was assisting
22 was a mystery guest. (D. 22:15-31)

1 82. To the ALJ's finding that Norton assumed that Zeitlin was arriving to work as she
2 had in the past and did not see her carrying any luggage. (D. 22:41-44)

3 83. To the ALJ's failure to find that Norton failed to assist Zeitlin into the building
4 when he saw her struggling with bags in her arms. (D. 22:40-46)

5 84. To the ALJ's failure to find it was unnecessary for Kott to question Norton
6 regarding the incident with Zeitlin because Zeitlin was a manager and had already observed Norton's
7 violation of the Employer's policy. (D. 23:8-10)

8 85. To the ALJ's finding that during the September 5 meeting Kott told Norton he
9 was not an MVP and that Blosser acknowledged that the employees were being blind-sided by the
10 report. (D. 23:25-28)

11 86. To the ALJ's failure to find that the Employer made its decision to terminate
12 Norton days before the expiration of Norton's probationary period. (D. 24:40-47)

13 87. To the ALJ's failure to find that the Employer decided to terminate Norton's
14 performance based, in part, on its managers' observations of his numerous performance deficiencies. (D.
15 24:40-25:40)

16 88. To the ALJ's general finding that the Employer orally warned Norton because of
17 his union and/or protected concerted activity. (D. 26:19-28:14)

18 89. To the ALJ's failure to apply the applicable legal standard that an employee's
19 actions "may be concerted for the purposes of the NLRB only if the action is engaged in with or on the
20 authority of other employees, and not solely by and on behalf of the employee himself." Prill v. NLRB,
21 835 F.2d 1481 (D.C. Cir. 1987). (D. 26:25-32)

22 90. To the ALJ's finding that "[e]ven assuming that Norton acted alone, he engaged
23 directly and unmistakably in Section 7 union activity." (D. 26:34-37)

1 91. To the ALJ's finding "Norton's statements at the June 19 meeting supported
2 Local 2's efforts to bargain about employee working conditions." (D. 26:38-42)

3 92. To the ALJ's finding "Norton spoke out to 'assist' Local 2, as that term is used
4 within the meaning of Section 7, with its representational duties." (D. 26:42-43)

5 93. To the ALJ's finding that Norton's interruption at the June 19 meeting was not an
6 "unprotected disruption." (D. 26:45-46)

7 94. To the ALJ's application of Prescott Industrial Products, 205 NLRB 51 (1973) to
8 the facts in this matter. (D. 26:45-27:13)

9 95. To the ALJ's finding Norton's remarks at the June 19 meeting were "relevant
10 statement[s] concerning a subject plainly protected by Section 7." (D. 27:15-17)

11 96. To the ALJ's finding Norton's remarks at the June 19 meeting were "brief,
12 respectful, and restrained." (D. 27:17-20)

13 97. To the ALJ's finding that any holding that Norton's remarks "disrupted the
14 meeting would be tantamount...to applying the Lingston Shirt theory advanced by the dissenters" in
15 Prescott Industrial Products, 205 NLRB 51 (1973) and would "eviscerate an employee's right to engage
16 in protected activity at a mandatory meeting absent the employer's approval." (D. 27:17-24)

17 98. To the ALJ's failure to apply the applicable legal standard under Atlantic Steel,
18 245 NLRB 814 (1979). (D. 27:27-:28:7)

19 99. To the ALJ's finding Norton "made very temperate remarks designed to point out
20 to the speaker that the subject matter just addressed would be better taken up at the bargaining table
21 between the hotel management and Local 2." (D. 27:28-31)

1 100. To the ALJ's finding that "[a]lthough Kott and another employee sought to
2 discourage any discussion of labor-management issues at that time, no evidence shows that he engaged
3 either of them in argument or made any rejoinder of any kind." (D. 27:32-34)

4 101. To the ALJ's finding Norton engaged in "no impulsive or unwise conduct" or
5 "outburst" at the June 19 meeting. (D. 28:5-7)

6 102. To the ALJ's finding that the Employer orally warned Norton on June 23. (D.
7 28:9-14)

8 103. To the ALJ's finding that Kott and Olmeda engaged in unlawful coercion in
9 violation of Section 8(a)(1) and (3) of the Act "by warning that similar conduct or anything else not 'on
10 the same page' with management might be considered when deciding if he should be retained at the
11 completion of his probationary period." (D. 28:9-14)

12 104. To the ALJ's failure to refer to, recognize or consider Employer's argument that
13 Norton's remarks at the June 19 meeting were completely out of context and had no relevancy to the
14 training session. (D. 26:19-28:15)

15 105. To the ALJ's failure to distinguish Carrier Transicold, 331 NLRB 126 (2000),
16 from the facts of this case. (D. 26:19-28:15)

17 106. To the ALJ's failure to distinguish Goodyear Tire & Rubber Co., 269 NLRB 881
18 (1984), from the facts of this case. (D. 26:19-28:15)

19 107. To the ALJ's failure to refer to, recognize or consider Employer's argument that
20 Kott's June 23 "Record of Conversation" was not a disciplinary action and constituted nothing more
21 than Kott's record of his communication with Norton. (D. 26:19-28:15)

1 108. To the ALJ's failure to refer to, recognize or weigh the uncontroverted record
2 evidence that Norton only received a copy of the June 23 "Record of Conversation" after he requested to
3 review his personnel file. (D. 26:19-28:15)

4 109. To the ALJ's failure to refer to, recognize, or weight the uncontroverted record
5 evidence that Olmeda and Kott were simply telling Norton that he needed to meet the Employer job
6 performance standards for a bellman. (D. 26:19-28:15)

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8 110. To the ALJ's failure to refer to, recognize or weigh the uncontroverted record
9 evidence that at least two employees disavowed Norton's statements. (D. 26:19-28:15)

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11 111. To the ALJ's failure to refer to, recognize or consider Employer's argument that
12 without the support of his fellow employees, Norton was acting solely on his own behalf and not
13 engaging in concerted activity. (D. 26:19-28:15)

14 112. To the ALJ's finding that "[b]ased on this record, it would be fair to infer that
15 after the HPG commenced operating the Hotel Frank, Norton was the most ardent and outspoken
16 supporter of Local 2 at the Hotel Frank." (D. 28:33-35)

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18 113. To the ALJ's finding that the employer had ample knowledge of Norton's
19 considerable support for and activities on behalf of the union. (D. 28:35-37)

20 114. To the ALJ's finding "the evidence establishes that Employer disapproved of
21 [Norton's] open and persistent support for the Union." (D. 28:37-38)

22
23 115. To the ALJ's finding "Olmeda singled Norton out for wearing a union button on
24 his work uniform." (D. 28:38-39)

25 116. To the ALJ's finding Olmeda "warned Norton that his protected training session
26 comments could threaten his employment." (D. 28:39-40)

1 117. To the ALJ's finding that Norton openly assisted union representatives during
2 negotiations, by charging that management-inspired mystery guest reports contained inaccurate and
3 offensive descriptions, and by participating in the Union's demonstration on July 22. (D. 28:40-45)

4 118. To the ALJ's finding Employer "isolated Norton along with the experienced
5 union stewards from the main group of employees when it conducted the August 16 training session."
6 (D. 28:45-47)

7
8 119. To the ALJ's finding that "Kott's citation to Norton's earlier oral warning as
9 reflective of an unacceptable 'attitude' and 'teamwork' conveys hostility toward Norton because of his
10 protected conduct in that earlier context." (D. 28:50-52)

11
12 120. To the ALJ's failure to credit Dayna Zeitlin's testimony regarding the August 30
13 incident. (D. 29:5-26, 29:50-55)

14 121. To the ALJ's finding Norton did not intentionally refuse to assist Zeitlin with her
15 bags. (D. 29:50-55)

16
17 122. To the ALJ's finding that the August 31 discipline was "pretextual" and "taken by
18 Employer as a preliminary step to [] eventually terminating Norton." (D. 29:17-23)

19 123. To the ALJ's finding that Employer's actions warrant an inference that the Hotel
20 desired to conceal an unlawful motive. (D. 29:17-24)

21
22 124. To the ALJ's finding that the August 31 written warning violated Section 8(a)(3)
23 of the Act "because it was substantially motivated by Employer's hostility toward Norton's numerous
24 activities in support of Local 2." (D. 29:24-26)

25
26 125. To the ALJ's failure to refer to, recognize or weigh the uncontroverted record
27 evidence that prior to the August 30 incident, Kott advised all team members—including Norton—about
28

1 the importance of assisting co-workers and treating internal guests as well as external ones. (D. 28:18-
2 29:26)

3 126. To the ALJ's failure to refer to, recognize or consider Employer's argument that
4 Employer did not need to investigate the August 30 incident further because a senior manager –who
5 requested Norton be disciplined –witnessed Norton's conduct. (D. 28:18-29:26)
6

7 127. To the ALJ's general finding that the record provides an ample basis for the
8 inference that Norton's termination was substantially motivated by his pro-union activities and
9 sympathies. (D. 29:30-39)
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11 128. To the ALJ's finding "Wali's reference to Norton's so-called disruption of a
12 training session on June 23 coupled with the write-ups in his file, which would include the one resulting
13 from that incident, shows the extreme sensitivity [of] Employer Frank's management toward employee
14 protected activity." (D. 29:41-43)
15

16 129. To the ALJ's general finding Norton's termination resulted from his aggressive
17 boycott activities as opposed to his occasional failure to seek out and use a guest's name or somehow
18 appear enthused while otherwise providing reliable and competent service as a bellman. (D. 29:44-30:6)
19

20 130. To the ALJ's finding that some mystery guest reports "clearly praised Norton for
21 certain aspects of his performance." (D. 30:17-19)
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23 131. To the ALJ's failure to refer to, recognize or weigh the uncontroverted record
24 evidence that Employer initiated corrective action directed at Norton specifically over the course of his
25 probationary period. (D. 30:17-23)
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27 132. To the ALJ's finding Employer used the mystery guest reports as a "shield to hide
28 its true motive for terminating" Norton. (D. 30:22-23)

1 133. To the ALJ's finding Employer "failed to take action against Norton prior to the
2 expiration of his probationary period." (D. 30:23-25)

3 134. To the ALJ's finding that as late as August 31, Kott said Norton "often set a great
4 example of guest service." (D. 30:23-26)

5 135. To the ALJ's finding that "the evidence in support of Employer Frank's
6 affirmative defense weak and insufficient to overcome the more persuasive evidence that Norton's
7 persistent, and increasingly strident, activities in support of Local 2 motivated his termination." (D.
8 30:26-29)

9 136. To the ALJ's finding that Norton's September 30 termination violated Section
10 8(a)(1) and (3) of the Act. (D. 30:29-30)

11 137. To the ALJ's failure to refer to, recognize or weigh the uncontroverted record
12 evidence that Norton's performance was sub-standard. (D. 29:30-30:30)

13 138. To the ALJ's failure to refer to, recognize or weigh the uncontroverted record
14 evidence that Norton's guest service was inconsistent, unfriendly, and minimalistic. (D. 29:30-30:30)

15 139. To the ALJ's failure to refer to, recognize or weigh the uncontroverted record
16 evidence that Norton failed to acknowledge guests in the lobby or open their doors. (D. 29:30-30:30)

17 140. To the ALJ's failure to refer to, recognize or weigh the uncontroverted record
18 evidence that Norton often stood with his arms crossed and appeared unwelcoming. (D. 29:30-30:30)

19 141. To the ALJ's failure to refer to, recognize or weigh the uncontroverted record
20 evidence that during the introductory period four mystery guests noted numerous deficiencies in
21 Norton's guest service. (D. 29:30-30:30)

1 142. To the ALJ's failure to refer to, recognize or weigh the uncontroverted record
2 evidence that Norton was the only one whose name repeatedly showed up in the mystery guest reports
3 as failing to meet the Hotel's service standards. (D. 29:30-30:30)

4 143. To the ALJ's failure to refer to, recognize or weigh the uncontroverted record
5 evidence that while other employees at all three hotels had improved or showed a willingness to
6 improve, Norton was the only who did not. (D. 29:30-30:30)

7
8 144. To the ALJ's failure to refer to, recognize or weigh the uncontroverted record
9 evidence that Employer engaged in extensive communications and negotiations with the Union, even
10 offering to implement prior CBA terms pending negotiations. (D. 29:30-30:30)

11
12 145. To the ALJ's failure to refer to, recognize or weigh the uncontroverted record
13 evidence that Employer maintained excellent relations with other Union supporters, including Alib
14 Abid, the Union's shop steward. (D. 29:30-30:30)

15 146. To the ALJ's failure to refer to, recognize or weigh the uncontroverted record
16 evidence that Employer thanked and responded to Norton when he raised concerns under the California
17 Labor Code and implemented a commuter benefits program after he complained employees were
18 entitled to one. (D. 29:30-30:30)

19
20 147. To the ALJ's Conclusion of Law number 2 that Employer violated Section 8(a)(1)
21 of the Act "[b]y issuing written warnings to employees Souping Huynh, Amy Lum, Dinora Medrano,
22 and Monica Solis on June 29 for engaging in protected concerted activities; by prohibiting employees
23 from wearing union insignia; and by photographing employees on September 8 while engaged in
24 protected union activities..." (D. 32:10-14)

1 148. To the ALJ's Conclusion of Law number 3 that Employer violated Section 8(a)(1)
2 of the Act by "issuing written warnings to employees Julia De Leon and Vilma Perez on June 29 for
3 engaging in protected concerted activities..." (D. 32:16-18)

4 149. To the ALJ's Conclusion of Law number 4 that Employer violated Section 8(a)(1)
5 and (3) of the Act by "issuing an oral warning to Marc Norton on June 23; by issuing a written warning
6 to Marc Norton on August 31; and by terminating Marc Norton's employment on September 30..." (D.
7 32:20-23)

8 150. To the ALJ's Conclusion of Law number 5 that Employer violated Section 8(a)(1)
9 and (5) of the Act by "extending the probationary period of the front-of-the-house employees for an
10 additional 45-day period without notifying Local 2 and providing it with an opportunity to bargain over
11 this change..." (D. 32:25-28)

12 151. To the ALJ's Conclusion of Law number 6 that the aforementioned unfair labor
13 practice affect commerce within the meaning of Section 2(6) and (7) of the Act. (D. 32:29-30)

14 152. To the ALJ's Remedy. (D. 32:32-33:16)

15 153. To the ALJ's Order. (D. 33:18-34:39, 34:44-45, 35:6-44)

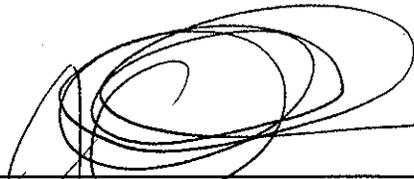
16 154. To the ALJ's Appendix A, Notice to Employees (D. 37:5-38:26)

17 155. To the ALJ's Appendix B, Notice to Employees (D. 39:5-40:19)

1 Accordingly, for the forgoing reasons, and the reasons set forth in Employer's Brief in
2 Support of Exceptions to the ALJ's Decision, Employer respectfully requests its
3 Exceptions be sustained.
4

5 Respectfully submitted,

6 Dated: August 26, 2011

7
8 By: 

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15

16 4826-3591-1946, v. 1
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**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20**

**CL FRANK MANAGEMENT, LLC
d/b/a HOTEL FRANK, and
CL METROPOLIS MANAGEMENT, LLC,
d/b/a HOTEL METROPOLIS**

and

UNITE HERE! Local 2

Case Nos. 20-CA-35123
20-CA-35223
20-CA-35238
20-CA-35253
(Consolidated)

PROOF OF SERVICE

Case Names: Providence/Hotel Project Group d/b/a Frank Hotel
Provenance d/b/a Hotel Frank
Provenance d/b/a Hotel Frank
Provenance d/b/a Hotel Metropolis

Case Nos.: 20-CA-35123
20-CA-35238
20-CA-35253
20-CA-35223

I, Jamie Fensterstock, declare that I am employed with the law firm of Jackson Lewis LLP, whose address is 1655 West Broadway, 9th Floor, San Diego, California 92101; I am over the age of eighteen (18) years and am not a party to this action.

On August 26, 2011, I served the attached *Exceptions to the Administrative Law Judge's*

Decision in this action as follows:

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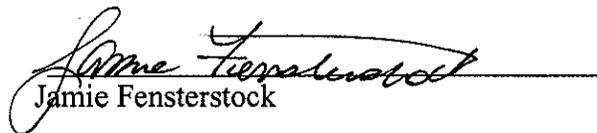
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[X] BY ELECTRONIC MAIL (EMAIL): I attached a full, virus-free pdf version of the document to electronic correspondence (e-mail) and transmitted the document from my own e-mail address, fensterj@jacksonlewis.com, to the persons at the e-mail addresses above. There was no report of any error or delay in the transmission of the e-mail.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 26, 2011 at San Diego, California.


Jamie Fensterstock