



On June 28, 2016, Respondent Aqua-Aston Hospitality, LLC d/b/a Aston Waikiki Beach Hotel and Hotel Renew (“Respondent”) filed its Brief in Support of Exceptions to Administrative Law Judge’s Decision (“the Brief”). This Errata corrects the following errors in the Brief:

Page 2, paragraph 2 states: “A preponderance of the evidence does not support the ALJ’s conclusion that the “entrance area” to the lower lobby is a work area ....” It should read: “A preponderance of the evidence does not support the ALJ’s conclusion that the “entrance area” to the lower lobby is a non-work area ....”

Page 14, paragraph 2 states: “Whether a preponderance of evidence supports the ALJ’s conclusion that the “entrance area” to the lower lobby is a work area?” It should read: “Whether a preponderance of evidence supports the ALJ’s conclusion that the “entrance area” to the lower lobby is a non-work area?”

Page 18, paragraph 1 states: “The ALJ misstates the record that Pajinag testified “that the ‘watch your back’ threat” occurred *prior to* his first complaint on March 22.” *See* Decision at 5:33, 6:1-2; Exceptions 19 and 37.” It should read: “The ALJ misstates the record that Pajinag testified “that the ‘watch your back’ threat” occurred *prior to* his first complaint on March 22,” *see* Decision at 5:33, 6:1-2, based on the mischaracterization of Pajinag’s testimony that he “clearly testified, after being asked whether there was anything else he recalled about the May 21 incident, that there was ‘one thing before” and then described the watch your back incident,” *see* Decision at 6:2 n.11. Exceptions 19 and 37.”

Page 45, paragraph 1 states: “As stated in Respondent’s Post-Hearing Brief (pp. 28-29), the test the ALJ should have applied here is whether the generic, reasonable employee would have felt threatened by Ettinger’s under the totality of the relevant circumstances.” It should

read: “As stated in Respondent’s Post-Hearing Brief (pp. 28-29), the test the ALJ should have applied here is whether the generic, reasonable employee would have felt threatened by Ettinger’s comments under the totality of the relevant circumstances.”

Pages 5-6 of Appendix A state:

Exception 119

The following is the entirety of Smith’s testimony regarding what he actually told Ching and/or Wolfgramm:

- “I told [Ching] good morning and advised him – and gave him a verbal warning not to be passing out flyers on the property.” (Tr. at 70:20-23).
- “Good morning. I just wanted to advise you [Ching] that you’re not allowed to be passing out flyers in the lower lobby.” (Tr. at 71:14-15).
- “I advised him [Ching] that the hotel policy, I reminded him of the hotel policy stated that you cannot be passing out flyers or literature on property in the lower lobby.... I said on property [not lower lobby].” (Tr. at 71:23-25; 72:2).
- “I said essentially it was up to the both of them [Ching and Wolfgramm] to decide what they were going to do next. I gave the verbal warning and I stated it was up to you what you guys are going to do next.” (Tr. at 14-16).
- “I stated that I represent management and that I speak on their behalf.” (Tr. at 74:9-10).
- “Yes, sir. (Response to “Did you tell Ms. Wolfgramm or Mr. Ching that they would be trespassed if they didn’t leave?”).” (Tr. at 76:12-14).
- “When I spoke to Jonathan Ching, I told him I was giving him a verbal warning to stop passing out flyers in the lower lobby.” (Tr. at 106:17-19).
- Reading from Smith’s NLRB Affidavit: “I informed him [Ching] that he was allowed to be passing our [sic] pamphlets on property.”

Tr. at 108:17-18.

It should read:

Exception 119

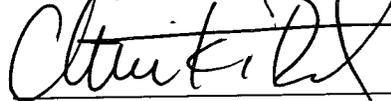
The following is the entirety of Smith’s testimony regarding what he actually told Ching and/or Wolfgramm:

- “I told [Ching] good morning and advised him – and gave him a verbal warning not to be passing out flyers on the property.” Tr. at 70:20-23.
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- “I said essentially it was up to the both of them [Ching and Wolfgramm] to decide what they were going to do next. I gave the verbal warning and I stated it was up to you what you guys are going to do next.” Tr. at 14-16.
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- “Yes, sir. (Response to “Did you tell Ms. Wolfgramm or Mr. Ching that they would be trespassed if they didn’t leave?”).” Tr. at 76:12-14.
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- Reading from Smith’s NLRB Affidavit: “I informed him [Ching] that he was allowed to be passing our [sic] pamphlets on property.” Tr. at 108:17-18.

DATED: Honolulu, Hawai`i, July 1, 2016.

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UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 20, SUBREGION 37

UNITE HERE LOCAL 5,  
Charging Party,

v.

AQUA-ASTON HOSPITALITY, LLC D/B/A  
ASTON WAIKIKI BEACH HOTEL AND  
HOTEL RENEW,

Respondent.

CASE NOS. 20-CA-154749  
20-CA-157769  
20-CA-160516  
20-CA-160517

**CERTIFICATE OF SERVICE**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this date a copy of the foregoing Errata To Aqua-Aston Hospitality, LLC D/B/A Aston Waikiki Beach Hotel And Hotel Renew's Brief In Support Of Exceptions To Administrative Law Judge's Decision Filed On June 28, 2016 was electronically filed with the National Labor Relations Board Division of Judges and served via e-mail upon:

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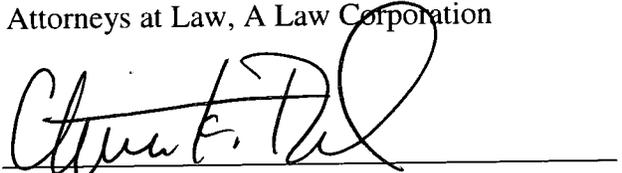
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A handwritten signature in black ink, appearing to read "Christine K. David", is written over a horizontal line.

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