UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 20, SUBREGION 37

AQUA-ASTON HOSPITALITY, LLC f/k/a
ASTON HOTELS AND RESORTS, LLC d/b/a
ASTON WAIKIKI BEACH HOTEL and
HOTEL RENEW

Respondent

and

Cases 20-CA-145717
20-CA-145720
20-CA-145725
20-CA-146582
20-CA-146583
20-CA-148013

UNITE HERE! LOCAL 5

Charging Party

COUNSEL FOR THE GENERAL COUNSEL'S MOTION TO CONSOLIDATE CASES, TO TRANSFER CASES TO THE BOARD, AND FOR DEFAULT JUDGMENT PURSUANT TO BREACH OF SETTLEMENT AGREEMENT

COMES NOW, Trent K. Kakuda, Counsel for the General Counsel (General Counsel) of the National Labor Relations Board (Board), pursuant to Sections 102.20, 102.24 and 102.50 of the Board's Rules and Regulations, Series 8, as amended, and respectfully files this Motion to Consolidate Cases, to Transfer Cases to the Board, and for Default Judgment Pursuant to Breach of Settlement Agreement (Motion). This Motion is made upon assertions that the General Counsel is entitled to judgment pursuant to Section 102.20 of the Board's Rules and Regulations, inasmuch as Respondent Aqua-

Aston Hospitality, LLC f/k/a Aston Hotels and Resorts, LLC d/b/a Aston Waikiki Beach Hotel and Hotel Renew[1] has failed to comply with the terms of the Settlement Agreement entered into and approved by Joseph F. Frankl, Regional Director for Region 20, on April 29, 2015.

FURTHER, General Counsel respectfully requests that Cases 20-CA-145717, 20-CA-145720, 20-CA-145725, 20-CA-146582, 20-CA-146583, and 20-CA-148013 be consolidated with Cases 20-CA-154749, 20-CA-157769, 20-CA-160516, and 20-CA-160517, which are currently pending before the Board on exceptions filed by Respondent to the Decision issued by Administrative Law Judge Mara-Louise Anzalone (ALJ Anzalone) on May 31, 2016, and amended by an errata dated June 17, 2016. All cases involve the same parties and the Board's decision in Cases 20-CA-154749, et al. will impact the outcome of General Counsel's request for default judgment in Cases 20-CA-145717, et al.

True and correct copies of the documents upon which this Motion is based are attached hereto as Exhibits and are made a part hereof. By the documents, General Counsel respectfully shows as follows:

1. The charge in Case 20-CA-145717 was filed by UNITE HERE! Local 5 (Charging Party or Union) on February 3, 2015, and a copy was served by regular mail

[1] The charges initially named both Interval Leisure Group, Inc. and Aston Hotels and Resorts, LLC as the Charged Parties. On April 29, 2015, the Regional Director approved Charging Party's request to partially withdraw the charges as to Interval Leisure Group, Inc. Accordingly, Aston Hotels and Resorts, LLC remained as the Charged Party. By letters dated August 31 and September 18, 2015, Respondent subsequently notified the Region that, effective July 31, 2015, Aston Hotels and Resorts, LLC changed its name to Aqua-Aston Hospitality, LLC.

upon Respondent on February 4, 2015.[2] A copy of the charge is attached as Motion Exhibit 1.

2. The charge in Case 20-CA-145720 was filed by the Charging Party on February 3, 2015, and a copy was served by regular mail upon Respondent on February 4, 2015.[3] A copy of the charge is attached as Motion Exhibit 2.

3. The charge in Case 20-CA-145725 was filed by the Charging Party on February 3, 2015, and a copy was served by regular mail upon Respondent on February 4, 2015.[4] A copy of the charge is attached as Motion Exhibit 3.

4. The charge in Case 20-CA-146582 was filed by the Charging Party on February 18, 2015, and a copy was served by regular mail upon Respondent on February 18, 2015. A copy of the charge is attached as Motion Exhibit 4.

5. The charge in Case 20-CA-146583 was filed by the Charging Party on February 18, 2015, and a copy was served by regular mail upon Respondent on February 18, 2015. A copy of the charge is attached as Motion Exhibit 5.

6. The charge in Case 20-CA-148013 was filed by the Charging Party on March 11, 2015, and a copy was served by regular mail upon Respondent on March 12, 2015. A copy of the charge is attached as Motion Exhibit 6.

7. On April 29, 2015, Respondent and the Charging Party entered into a Settlement Agreement (Settlement) prior to the issuance of a consolidated complaint,

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[2] On April 8, 2015, the Regional Director approved Charging Party's request to partially withdraw the allegations that Respondent violated Section 8(a)(3) of the Act.
[3] On April 8, 2015, the Regional Director approved Charging Party's request to partially withdraw the allegations that Respondent violated Section 8(a)(3) of the Act.
[4] On April 8, 2015, the Regional Director approved Charging Party's request to partially withdraw the allegations that Respondent violated Section 8(a)(3) of the Act.

which was approved by the Regional Director for Region 20 on April 29, 2015. A copy of the Settlement is attached as Motion Exhibit 7.

8. The Settlement required Respondent to post a Notice to Employees (Notice), which was attached to the Settlement, for sixty consecutive days.

9. The Settlement required Respondent to comply with all the terms and provisions of the Notice.

10. The Notice stated, in relevant part: "**WE WILL NOT** impliedly threaten to discipline or terminate off-duty employees for engaging in activities protected by Section 7 of the Act in nonwork areas of our premises."

11. The Notice stated, in relevant part: "**WE WILL NOT** threaten you with adverse consequences if you engage in union or other protected concerted activities."

12. The Notice stated, in relevant part: "**WE WILL NOT** in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act."

13. On May 7, 2015, Respondent submitted Certificates of Posting, signed by General Manager Mark DeMello, indicating that the Notice had been posted at the Aston Waikiki Beach Hotel and Hotel Renew on May 5, 2015. A copy of these Certificates is attached as Motion Exhibit 8.

14. Respondent submitted a letter signed by its Associate General Counsel Liane Kelly, dated July 30, 2015, indicating that Respondent had ceased posting the Notice on July 28, 2015. A copy of this letter, without enclosures, is attached as Motion Exhibit 9.

15. The Settlement contains a paragraph entitled "Performance" that provides, in relevant part:

> The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue a Complaint that includes the allegations covered by the Notice to Employees, as identified above in the Scope of Agreement section, as well as filing and service of the charge(s), commerce facts necessary to establish Board jurisdiction, labor organization status, appropriate bargaining unit (if applicable), and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices. Thereafter, the General Counsel may file a Motion for Default Judgment with the Board on the allegations of the Complaint. The Charged Party understands and agrees that all of the allegations of the Complaint will be deemed admitted and that it will have waived its right to file an Answer to such Complaint. The only issue that the Charged Party may raise before the Board will be whether it defaulted on the terms of this Settlement Agreement. The General Counsel may seek, and the Board may impose, a full remedy for each unfair labor practice identified in the Notice to Employees. The Board may then, without the necessity of trial or any other proceeding, find all allegations of the Complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an Order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board Order ex parte, after service or attempted service upon Charged Party at the last address provided to the General Counsel.
>
> Enforcement of this provision of the Agreement shall be limited to only the Aston Waikiki Beach Hotel, 2570 Kalakaua Avenue, Honolulu, Hawaii 96815, and Hotel Renew, 129 Paoakalani Avenue, Honolulu, Hawaii 96815.
>
> Notwithstanding the provisions of this paragraph, no default shall be asserted based on this paragraph after six (6) months from the date of the Regional Director's approval of the Settlement Agreement assuming that the Charging Party has entered into the Agreement.

16. On June 23, 2015, the Charging Party filed the charge in Case 20-CA-154749, which was amended on October 20, 2015, alleging that Respondent "interfered with, restrained and coerced employees in the exercise of their rights guaranteed in

Section 7 of the Act by unlawfully threatening and coercing workers during a meeting." A copy of the charge and first-amended charge can be found as Counsel for the General Counsel's Exhibits 1(a) and 1(c) in the record before the Board in Cases 20-CA-154749, et al. and they are incorporated by reference herein.[5]

17. On August 11, 2015, the Charging Party filed the charge in Case 20-CA-157769, which was amended on September 24, 2015, alleging that Respondent, "through Security Supervisor Andrew, interfered with, restrained and coerced employees in the exercise of their rights guaranteed in Section 7 of the Act by unlawfully threatening to trespass off-duty workers leafleting in non-work areas on property." A copy of the charge and first-amended charge can be found as GC Exhs.1(j) and 1(l) in the record before the Board in Cases 20-CA-154749, et al. and they are incorporated by reference herein.

18. By letter dated October 15, 2015, within six months of the Regional Director's approval of the Settlement, the Acting Regional Director for Region 20 advised Respondent that the Region

> determined that complaint shall issue in several charges, including the above-referenced charges [20-CA-154749 and 20-CA-157769]. Since the conduct alleged in the above-referenced charges constitutes the same or similar types of conduct which were encompassed by the informal Board settlement in Cases 20-CA-145717, 145720, 145725, 145772, 146582, 146583, 148013 and 149639, approved on April 29, 2015 (Settled Cases), the alleged new conduct constitutes a breach of the cease and desist terms of the April Settlement Agreement. Therefore, I am informing you of our intention to seek default judgment in the Settled Cases after we successfully prove the Section 8(a)(1) violations alleged in the above captioned charged.

A copy of this letter is attached as Motion Exhibit 10.

[5] Reference is made to the record in Cases 20-CA-154749, et al. in light of General Counsel's request to consolidate Cases 20-CA-145717, et al. with Cases 20-CA-154749, et al. All references to Counsel for the General Counsel's exhibits in Cases 20-CA-154749, et al. will be referenced as "GC Exh." followed by the exhibit number.

19. On October 28, 2015, within six months of the Regional Director's approval of the Settlement, the Regional Director for Region 20 issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing (2015 Consolidated Complaint). A copy of the 2015 Consolidated Complaint can be found as GC Exh. 1(w) in the record before the Board in Cases 20-CA-154749, et al. and it is incorporated by reference herein.

20. Pursuant to the allegations made in Case 20-CA-154749, paragraph six of the 2015 Consolidated Complaint alleged, *inter alia*, that about May 19, 2015, Respondent "[i]mpliedly threatened employees with the loss of their jobs for engaging in Union and/or protected concerted activities by telling them that they were lucky to have jobs[.]"

21. The unlawful conduct alleged in paragraph six of the 2015 Consolidated Complaint and referenced above occurred at the Aston Waikiki Beach Hotel within six months of the Regional Director's approval of the Settlement.

22. Pursuant to the allegations made in Case 20-CA-157769, paragraph seven of the 2015 Consolidated Complaint alleged that "[a]bout August 11, 2015, Respondent, by Andrew T. Smith, in the lower lobby of the Aston Waikiki Beach Hotel, impliedly threatened off-duty employees with discipline for engaging in Union and/or protected concerted activities in non-work areas."

23. The unlawful conduct alleged in paragraph seven of the 2015 Consolidated Complaint and referenced above occurred at the Aston Waikiki Beach Hotel within six months of the Regional Director's approval of the Settlement.

24. From February 2 through February 5, 2016, General Counsel and Respondent litigated the allegations of the 2015 Consolidated Complaint[6] before ALJ Anzalone.

25. On May 31, 2016, ALJ Anzalone issued a Decision regarding the allegations in the 2015 Consolidated Complaint, and on June 17, 2016, issued an errata to that Decision and an amended Decision incorporating the modifications. A copy of ALJ Anzalone's errata and Decision incorporating the corrections is attached as Motion Exhibit 11.

26. ALJ Anzalone concluded, on page 20 of the Decision, that "Respondent has violated Section 8(a)(1) of the Act: (a) threatening employees with discharge for engaging in union and/or protected activity[.]"

27. ALJ Anzalone's conclusion that Respondent violated Section 8(a)(1) of the Act by "threatening employees with discharge for engaging in union and/or protected activity" is based on factual circumstances that occurred at the Aston Waikiki Beach Hotel within six months of the Regional Director's approval of the Settlement.

28. ALJ Anzalone concluded, on page 19 of the Decision, that " I find that the entrance area, as I have defined it above, constitutes a nonwork area of the Hotel, and therefore find that Respondent, by Smith, unlawfully threatened Ching and Wolfgramm with unspecified reprisals if they handbilled there."

29. ALJ Anzalone's conclusion that Respondent unlawfully threatened off-duty employees Jonathan Ching and Lakai Wolfgramm with "unspecified reprisals" for

[6] After issuance of the 2015 Consolidated Complaint, but prior to the hearing, the Regional Director approved the Charging Party's request to withdraw Case 20-CA-155678. By order dated January 20, 2016, the Regional Director also withdrew all portions of the 2015 Consolidated Complaint which had been based on Case 20-CA-155678. See GC Exh. 1(z) in Cases 20-CA-154749, et al.

handbilling in a nonwork area is based on factual circumstances that occurred at the Aston Waikiki Beach Hotel within six months of the Regional Director's approval of the Settlement.

30. Based on ALJ Anzalone's findings and conclusions in her Decision, Respondent did not comply with the terms of the Settlement during the six-month period following the Regional Director's approval of the Settlement.

31. At no point since the Acting Regional Director issued his October 15, 2015 letter to Respondent (see Motion Exhibit 10), has Respondent remedied the asserted breach of the Settlement's cease-and-desist provisions.

32. In accordance with the Acting Regional Director's October 15, 2015 letter to Respondent (see Motion Exhibit 10), the Regional Director for Region 20 issued an Order Consolidating Cases and Consolidated Complaint Based on Breach of Cease and Desist Provisions of Settlement Agreement (2016 Consolidated Complaint), dated June 16, 2016, in Cases 20-CA-145717, 20-CA-145720, 20-CA-145725, 20-CA-146582, 20-CA-146583, and 20-CA-148013. A copy of the 2016 Consolidated Complaint is attached as Motion Exhibit 12.

ARGUMENT

The Board has granted motions for default judgment in cases where respondents have violated settlement agreements containing terms similar to those in the instant Settlement. See *Midwestern Video Personnel, Inc.*, 363 NLRB No. 120 (2016); *National Union United Security & Police Officers of America*, 362 NLRB No. 37 (2015); *Conagra Foods, Inc.*, 361 NLRB No. 113 (2014), enf. denied and remanded in relevant part 813 F.3d 1079 (8th Cir. 2016); *Key Handling Systems, Inc.*, 361 NLRB No. 2 (2014); *New*

Jersey State Opera, 360 NLRB No. 5 (2013). In this case, no material factual or legal issue exists. Pursuant to the Settlement itself, Respondent waived its right to file an Answer to the 2016 Consolidated Complaint and all allegations are deemed admitted. Consequently, the only issue is whether Respondent defaulted on the terms of the Settlement. ALJ Anzalone's Decision clearly establishes that Respondent's actions following settlement violated at least three cease-and-desist provisions of the Notice with which Respondent was required to comply.

ALJ Anzalone concluded that on May 19, 2015, Respondent violated Section 8(a)(1) by threatening employees with discharge for engaging in union and/or protected activity. By threatening employees, Respondent violated the provisions of the Settlement's Notice which stated, "**WE WILL NOT** threaten you with adverse consequences if you engage in union or other protected concerted activities" and "**WE WILL NOT** in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act."

ALJ Anzalone also concluded that on August 11, 2015, Respondent violated Section 8(a)(1) by threatening off-duty employees Jonathan Ching (Ching) and Lakai Wolfgramm with unspecified reprisals (i.e., being "trespassed") for handbilling in a nonwork area of the Aston Waikiki Beach Hotel's lower lobby/porte cochere. This action by the Respondent violated the Notice's provisions which stated, "**WE WILL NOT** impliedly threaten to discipline or terminate off-duty employees for engaging in activities protected by Section 7 of the Act in nonwork areas of our premises" and "**WE WILL NOT** in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act." Respondent's doggedness

is underscored by the fact that the August 11 incident involved the same security guard, the same off-duty employee, the same protected conduct, and the same nonwork areas that were at issue in the previous matter Respondent had agreed to settle just months earlier. (Motion Exhibit 6; Motion Exhibit 12, ¶13; GC Exh. 1(j) & 1(l); GC Exh. 1(w), ¶7).

The "Performance" provision of the Settlement contains two limitations on default judgment. Neither applies in this case. One provision limited the assertion of default judgment to a breach based on conduct involving the Aston Waikiki Beach Hotel or Hotel Renew. It is undisputed that the May 19, 2015 meeting where Respondent made the alleged threat to employees in breach of the Settlement occurred at the Aston Waikiki Beach Hotel. (Motion Exhibit 11, pp. 10-15; GC Exh. 1(w), ¶6). The August 11, 2015 incident between Respondent's security guard and off-duty employees engaged in handbilling also occurred at the Aston Waikiki Beach Hotel. (Motion Exhibit 11, pp. 15-19; GC Exh. 1(w), ¶7).

The other Settlement provision states that "no default shall be asserted based on this paragraph after six (6) months from the date of the Regional Director's approval of the Settlement Agreement " The Regional Director approved the final Settlement on April 29, 2015. All incidents constituting breach of the Settlement occurred within the six-month period after the Regional Director approved the Settlement. Within six months of the Regional Director's approval of the Settlement, Respondent was notified that two post-Settlement charges contained meritorious allegations and these would constitute breach of the Settlement's cease-and-desist provisions. At that time, the Acting Regional Director also asserted that he would seek default judgment in the settled cases after

successfully proving the basis for the alleged breach. (See Motion Exhibit 10). Consequently, and still within the six-month period following the Regional Director's approval of the Settlement, the Regional Director issued the 2015 Consolidated Complaint setting forth the allegations which, if proven, would constitute breach of the Settlement. (See GC Exh. 1(w)). Accordingly, the Regional Director informed Respondent that it had breached the Settlement and asserted within the six-month period that default judgment would be sought.

For the foregoing reasons, it is clear that Respondent breached the cease-and-desist terms of the Settlement based on ALJ Anzalone's finding that Respondent violated Section 8(a)(1) on May 19 and August 11, 2015, at the Aston Waikiki Beach Hotel. As a result, the Board should also grant default judgment against Respondent in Cases 20-CA-145717, et al. if the Board affirms ALJ Anzalone's findings on these matters in Cases 20-CA-154749, et al.

To the extent the General Counsel's request for default judgment in this case is contingent upon the Board's ultimate decision in Cases 20-CA-154749, et al., General Counsel also respectfully requests that the Board consolidate Cases 20-CA-154749, 20-CA-157769, 20-CA-160516, and 20-CA-160517 with Cases 20-CA-145717, 20-CA-145720, 20-CA-145725, 20-CA-146582, 20-CA-146583, and 20-CA-148013.

REQUESTED RELIEF

The Settlement states that if Respondent does not comply with the Settlement, the "Regional Director will issue a Complaint that includes the allegations covered by the Notice to Employees, as identified in the Scope of the Agreement Section." The Settlement also states that the "General Counsel may seek, and the Board may impose, a

full remedy for each unfair labor practice identified in the Notice to Employees." Accordingly, if the Board affirms ALJ Anzalone's findings in Cases 20-CA-154749, et al. and determines that Respondent's conduct in that matter breached the terms of the Settlement in these cases, General Counsel requests that the Board issue a Decision and Order based on the allegations in the 2016 Consolidated Complaint (Cases 20-CA-145717, 20-CA-145720, 20-CA-145725, 20-CA-146582, 20-CA-146583, and 20-CA-148013):

(1) Transferring Cases 20-CA-145717, et al. and continuing proceedings;

(2) Consolidating Cases 20-CA-145717, et al. with Cases 20-CA-154749, et al.;

(3) Finding all of the allegations in the 2016 Consolidated Complaint to be true (see Motion Exhibit 12);

(4) Granting default judgment against Respondent in Cases 20-CA-145717, et al.;

(5) Ordering Respondent to post a Notice to Employees for sixty days in all places at the Aston Waikiki Beach Hotel and Hotel Renew where such notices are routinely posted. Assuming that Cases 20-CA-145717, et al. and Cases 20-CA-154749, et al. are consolidated by the Board, a proposed Notice to Employees, incorporating language to remedy the unfair labor practices in the consolidated cases, is attached as Motion Exhibit 13;

(6) Ordering Respondent to cease and desist from engaging in the unlawful conduct covered by the Notice to Employees and from engaging in any like or related unlawful conduct. Assuming that Cases 20-CA-145717, et al. and Cases 20-CA-154749, et al. are consolidated by the Board, a proposed Order,

incorporating language to remedy the unfair labor practices in the consolidated cases, is attached as Motion Exhibit 14; and

(7) Ordering such other relief as the Board deems necessary and proper.

General Counsel seeks default judgment and full remedies for all allegations covered by the Settlement, except for those in Cases 20-CA-145772 and 20-CA-149639.[7] Although Respondent did not breach all of the Notice's cease-and-desist provisions, General Counsel's request for a full remedy for all the allegations (with the exception of 20-CA-145772 and 20-CA-149639) is warranted. Respondent has demonstrated a disturbing predilection for engaging in the same types of unfair labor practices that it initially agreed to settle, as evidenced by the findings of ALJ Anzalone. Accordingly, General Counsel seeks a full-remedy for all the allegations covered by the Settlement (except Cases 20-CA-145772 and 20-CA-149639) so he may obtain a court-enforced order, pursuant to the Settlement, to deter Respondent from engaging in the same or similar misconduct in the future.

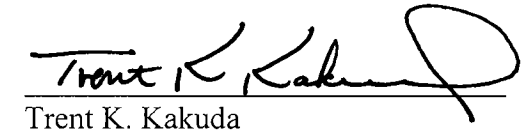
CONCLUSION

NOW, THEREFORE, in view of all the matters set forth above, and in consideration of the documents attached hereto and incorporated with this Motion, and as there are no issues of fact or law requiring a hearing in this proceeding, Counsel for the General Counsel prays that the Board: (1) issue a Decision and Order finding all allegations of the 2016 Consolidated Complaint to be true and that Respondent has

[7] General Counsel is not seeking default judgment in two cases which were initially a part of the Settlement. Cases 20-CA-145772 and 20-CA-149639 alleged that Respondent promulgated and/or maintained unlawful rules in violation of Section 8(a)(1). Unlike the other allegations for which General Counsel seeks full remedies, Respondent complied with additional affirmative requirements apart from merely posting the Notice. Accordingly, seeking full remedies for these two cases appears redundant in light of Respondent's additional affirmative acts to effectuate compliance with the Settlement.

violated Section 8(a)(1) as alleged, (2) consolidate Cases 20-CA-145717, et al. with 20-CA-154749, et al. and (3) provide for a full remedy for all violations found in Cases 20-CA-145717, et al. in addition to any full remedies ordered for violations found in Cases 20-CA-154749, et al.

DATED AT Honolulu, Hawaii, this 15th day of July, 2016



Trent K. Kakuda
Counsel for the General Counsel
National Labor Relations Board
Subregion 37
300 Ala Moana Boulevard, Room 7-245
P.O. Box 50208
Honolulu, Hawaii 96850

CERTIFICATE OF SERVICE

The undersigned hereby certifies that Counsel for the General Counsel's Motion to Consolidate Cases, to Transfer Cases to the Board, and for Default Judgment Pursuant to Breach of Settlement Agreement in Cases 20-CA-145717, et al. has this day been electronically filed with the National Labor Relations Board's Office of the Executive Secretary and a copy served upon the following persons by e-mail pursuant to Section 102.114(i) of the National Labor Relations Board's Rules and Regulations:

Robert S. Katz, Esq. (RSK@torkildson.com)
Jeffrey S. Harris, Esq. (JSH@torkildson.com)
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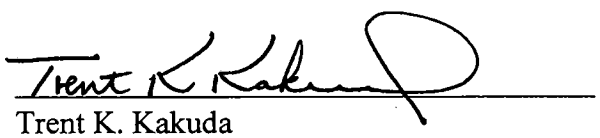
Jennifer Cynn, Esq. (jcynn@unitehere5.org)
UNITE HERE! Local 5
1516 South King Street
Honolulu, HI 96826

Dated at Honolulu, Hawaii, this 15th day of July, 2016.



Trent K. Kakuda
Counsel for the General Counsel
National Labor Relations Board, Subregion 37
300 Ala Moana Boulevard, Room 7-245
P.O. Box 50208
Honolulu, HI 96850

FORM NLRB-501

FORM EXEMPT UNDER 44 U.S.C. 3512

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
20-CA-145717	February 3, 2015

INSTRUCTIONS
File an original and 4 copies of this charge with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer		b. Number of workers employed
Interval Leisure Group, Inc. & its subsidiary Aston Hotels & Resorts, LLC dba Hotel Renew		approx. 24
c. Address (street, city, state, ZIP code)	**d. Employer Representative**	**e. Telephone No.**
2155 Kalakaua Avenue Honolulu, Hawaii 96815	Kelvin Bloom, President & CEO	808-931-1400 808-931-1409 (fax)
f. Type of Establishment (factory, mine, wholesaler, etc.)	**g. Identify principal product or service**	
Hotel	Lodging, food service and recreation	

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsection (1) and Section (8)(3) of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

Within the past six months and continuing thereafter, the above named employer has interfered with, restrained and coerced employees in the exercise of their rights guaranteed in Section 7 of the Act by unlawfully interrogating employees.

RECEIVED 2015 FEB -3 PM 3:42 NLRB HAWAII

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

UNITE HERE! LOCAL 5

4a. Address (street and number, city, state and ZIP code)	4b. Telephone No.
1516 South King Street Honolulu, Hawaii 96826	Phone: (808) 941-2141 Fax: (808) 941-2166

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization.

UNITE HERE!

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By _____ Jennifer Cynn In-House Counsel
Signature of representative or person making charge (Title, if any)

Address	Telephone No.	Date
1516 South King Street Honolulu, Hawaii 96826	(808) 941-2141	2/3/2015

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT
(U.S. CODE, TITLE 18, SECTION 1001)

EXHIBIT 1

FORM NLRB-501

FORM EXEMPT UNDER 44 U.S.C. 3512

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
20-CA-145720	February 3, 2015

INSTRUCTIONS
File an original and 4 copies of this charge with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer		b. Number of workers employed
Interval Leisure Group, Inc. & its subsidiary Aston Hotels & Resorts, LLC dba Aston Waikiki Beach Hotel		approx. 140
c. Address (street, city, state, ZIP code)	**d. Employer Representative**	**e. Telephone No.**
2155 Kalakaua Avenue Honolulu, Hawaii 96815	Kelvin Bloom, President & CEO	808-931-1400 808-931-1409 (fax)
f. Type of Establishment (factory, mine, wholesaler, etc.)	**g. Identify principal product or service**	
Hotel	Lodging, food service and recreation	

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsection (1) and Section (8)(3) of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

Within the past six months and continuing thereafter, the above named employer has interfered with, restrained and coerced employees in the exercise of their rights guaranteed in Section 7 of the Act by unlawfully interrogating employees.

RECEIVED 2015 FEB -3 PM 3:40 HONOLULU HAWAII

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

UNITE HERE! LOCAL 5

4a. Address (street and number, city, state and ZIP code)	4b. Telephone No.
1516 South King Street Honolulu, Hawaii 96826	Phone: (808) 941-2141 Fax: (808) 941-2166

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization.

UNITE HERE!

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By _____ Jennifer Cynn In-House Counsel
Signature of representative or person making charge (Title, if any)

Address	Telephone No.	Date
1516 South King Street Honolulu, Hawaii 96826	(808) 941-2141	2/3/2015

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT
(U.S. CODE, TITLE 18, SECTION 1001)

EXHIBIT 2

FORM NLRB-501

FORM EXEMPT UNDER 44 U.S.C. 3512

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
20-CA-145725	February 3, 2015

INSTRUCTIONS
File an original and 4 copies of this charge with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer		b. Number of workers employed
Interval Leisure Group, Inc. & its subsidiary Aston Hotels & Resorts, LLC dba Aston Waikiki Beach Hotel & Hotel Renew		approx. 170
c. Address (street, city, state, ZIP code)	d. Employer Representative	e. Telephone No.
2155 Kalakaua Avenue Honolulu, Hawaii 96815	Kelvin Bloom, President & CEO	808-931-1400 808-931-1409 (fax)
f. Type of Establishment (factory, mine, wholesaler, etc.)	g. Identify principal product or service	
Hotel	Lodging, food service and recreation	

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsection (1) and Section (8)(3) of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

Within the past six months and continuing thereafter, the above named employer through Housekeeping managers Marisa Cacacho and Elvira Rivera, VP of operations Gary Eddington, Front Desk managers Joanne and Lilian, Manager Bernie, and Security, has interfered with, restrained and coerced employees in the exercise of their rights guaranteed in Section 7 of the Act by unlawfully surveilling employees engaging in protected and concerted activity.

RECEIVED FEB -3 PM 3:40 HONOLULU, HAWAII

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full name of party filing charge (If labor organization, give full name, including local name and number)

UNITE HERE! LOCAL 5

4a. Address (street and number, city, state and ZIP code)	4b. Telephone No.
1516 South King Street Honolulu, Hawaii 96826	Phone: (808) 941-2141 Fax: (808) 941-2166

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization.

UNITE HERE!

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By _____ Jennifer Cynn In-House Counsel
Signature of representative or person making charge (Title, if any)

Address	Telephone No.	Date
1516 South King Street Honolulu, Hawaii 96826	(808) 941-2141	2/3/2015

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

EXHIBIT 3

FORM NLRB-501

FORM EXEMPT UNDER 44 U.S.C. 3512

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
20-CA-146582	February 18, 2015

INSTRUCTIONS
File an original and 4 copies of this charge with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer		b. Number of workers employed
Interval Leisure Group, Inc. & its subsidiary Aston Hotels & Resorts, LLC dba Aston Waikiki Beach Hotel & Hotel Renew		approx. 170
c. Address (street, city, state, ZIP code)	d. Employer Representative	e. Telephone No.
2155 Kalakaua Avenue Honolulu, Hawaii 96815	Kelvin Bloom, President & CEO	808-931-1400 808-931-1409 (fax)
f. Type of Establishment (factory, mine, wholesaler, etc.)	g. Identify principal product or service	
Hotel	Lodging, food service and recreation	

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsection (1) and _____ of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

Within the past six months and continuing thereafter, the above named employer through managers Marisa Caracho, Elvira Rivera and Connie Quibilan has interfered with, restrained and coerced employees in the exercise of their rights guaranteed in Section 7 of the Act by interrogating employees, threatening them with unspecified reprisals, including potential termination and imposing overbroad confidentiality rules by holding meetings with employees and coercing their signatures.

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2015 FEB 18 AM 11:32
HONOLULU, HAWAII

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)
UNITE HERE! LOCAL 5

4a. Address (street and number, city, state and ZIP code)	4b. Telephone No.
1516 South King Street Honolulu, Hawaii 96826	Phone: (808) 941-2141 Fax: (808) 941-2166

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization.
UNITE HERE!

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By _____ Jennifer Cynn In-House Counsel
Signature of representative or person making charge (Title, If any)

Address	Telephone No.	Date
1516 South King Street Honolulu, Hawaii 96826	(808) 941-2141	2/18/2015

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT
(U.S. CODE, TITLE 18, SECTION 1001)

EXHIBIT 4

FORM NLRB-501

FORM EXEMPT UNDER 44 U.S.C. 3512

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
20-CA-146583	February 18, 2015

INSTRUCTIONS
File an original and 4 copies of this charge with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer		b. Number of workers employed
Interval Leisure Group, Inc. & its subsidiary Aston Hotels & Resorts, LLC dba Aston Waikiki Beach Hotel and Hotel Renew		approx. 170
c. Address (street, city, state, ZIP code)	d. Employer Representative	e. Telephone No.
2155 Kalakaua Avenue Honolulu, Hawaii 96815	Kelvin Bloom, President & CEO	808-931-1400 808-931-1409 (fax)
f. Type of Establishment (factory, mine, wholesaler, etc.)	g. Identify principal product or service	
Hotel	Lodging, food service and recreation	

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsection (1) and _____ of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

Within the past six months and continuing thereafter, the above named employer through Manager Connie Quibilan and Inocelda Ilamas has interfered with, restrained and coerced employees in the exercise of their rights guaranteed in Section 7 of the Act by threatening workers with discipline for wearing Union buttons while working.

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NLRB REGION 37
2015 FEB 18 AM 9:35
HONOLULU, HAWAII

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)
UNITE HERE! LOCAL 5

4a. Address (street and number, city, state and ZIP code)	4b. Telephone No.
1516 South King Street Honolulu, Hawaii 96826	Phone: (808) 941-2141 Fax: (808) 941-2166

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization.
UNITE HERE!

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By _____ Jennifer Cynn In-House Counsel
Signature of representative or person making charge (Title, if any)

Address	Telephone No.	Date
1516 South King Street Honolulu, Hawaii 96826	(808) 941-2141	2/18/2015

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT
(U.S. CODE, TITLE 18, SECTION 1001)

EXHIBIT 5

FORM NLRB-501

FORM EXEMPT UNDER 44 U.S.C. 3512

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
20-CA-148013	March 11, 2015

INSTRUCTIONS
File an original and 4 copies of this charge with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer		b. Number of workers employed
Interval Leisure Group, Inc. & its subsidiary Aston Hotels & Resorts, LLC dba Aston Waikiki Beach Hotel & Hotel Renew		approx. 170
c. Address (street, city, state, ZIP code)	d. Employer Representative	e. Telephone No.
2155 Kalakaua Avenue Honolulu, Hawaii 96815	Kelvin Bloom, President & CEO	808-931-1400 808-931-1409 (fax)
f. Type of Establishment (factory, mine, wholesaler, etc.)	g. Identify principal product or service	
Hotel	Lodging, food service and recreation	

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsection (1) and _____ of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

Within the past six months and continuing thereafter, the above named employer through Security Guard Andrew has interfered with, restrained and coerced employees in the exercise of their rights guaranteed in Section 7 of the Act by unlawfully surveilling and threatening to trespass off-duty workers for leafleting in non-work areas.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)
UNITE HERE! LOCAL 5

4a. Address (street and number, city, state and ZIP code)	4b. Telephone No.
1516 South King Street Honolulu, Hawaii 96826	Phone: (808) 941-2141 Fax: (808) 941-2166

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization.
UNITE HERE!

6. DECLARATION
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By _____ Jennifer Cynn In-House Counsel
Signature of representative or person making charge (Title, if any)

Address	Telephone No.	Date
1516 South King Street Honolulu, Hawaii 96826	(808) 941-2141	3/11/2015

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT
(U.S. CODE, TITLE 18, SECTION 1001)

EXHIBIT 6

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NLRB SUB-REGION 37
2015 APR 29 AM 11: 09
HONOLULU, HAWAII

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
SETTLEMENT AGREEMENT

IN THE MATTER OF

Aston Hotels & Resorts, LLC d/b/a Aston Waikiki Beach Hotel and Hotel Renew	**Cases 20-CA-145717** **20-CA-145720** **20-CA-145725** **20-CA-145772** **20-CA-146582** **20-CA-146583** **20-CA-148013** **20-CA-149639**

Subject to the approval of the Regional Director for the National Labor Relations Board, the Charged Party and the Charging Party **HEREBY AGREE TO SETTLE THE ABOVE MATTER AS FOLLOWS:**

POSTING OF NOTICE — After the Regional Director has approved this Agreement, the Regional Office will send copies of the approved Notice to the Charged Party in English and in additional languages if the Regional Director decides that it is appropriate to do so. A responsible official of the Charged Party will then sign and date those Notices and immediately post them in prominent places around both its facilities located at 2570 Kalakaua Avenue, Honolulu, Hawaii 96815 and 129 Paoakalani Avenue, Honolulu, Hawaii 96815, including all places where the Charged Party normally posts notices to employees. The Charged Party will keep all Notices posted for 60 consecutive days after the initial posting.

COMPLIANCE WITH NOTICE — The Charged Party will comply with all the terms and provisions of said Notice.

NON-ADMISSION CLAUSE – By entering into this Settlement Agreement, the Charged Party does not admit that it has violated the National Labor Relations Act.

SCOPE OF THE AGREEMENT — This Agreement settles only the allegations in the above-captioned case(s), including all allegations covered by the attached Notice to Employees made part of this agreement, and does not settle any other case(s) or matters. It does not prevent persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters that happened before this Agreement was approved regardless of whether General Counsel knew of those matters or could have easily found them out. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned case(s) for any relevant purpose in the litigation of this or any other case(s), and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to said evidence.

PARTIES TO THE AGREEMENT — If the Charging Party fails or refuses to become a party to this Agreement and the Regional Director determines that it will promote the policies of the National Labor Relations Act, the Regional Director may approve the settlement agreement and decline to issue or reissue a Complaint in this matter. If that occurs, this Agreement shall be between the Charged Party and the undersigned Regional Director. In that case, a Charging Party may request review of the decision to approve the Agreement. If the General Counsel does not sustain the Regional Director's approval, this Agreement shall be null and void.

AUTHORIZATION TO PROVIDE COMPLIANCE INFORMATION AND NOTICES DIRECTLY TO CHARGED PARTY — Counsel for the Charged Party authorizes the Regional Office to forward the cover letter describing the general expectations and instructions to achieve compliance, a conformed settlement, original

EXHIBIT 7

RK

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HONOLULU, HAWAII

notices and a certification of posting directly to the Charged Party. If such authorization is granted, Counsel will be simultaneously served with a courtesy copy of these documents.

Yes _____ Initials No RK Initials

PERFORMANCE — Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of notice that no review has been requested or that the General Counsel has sustained the Regional Director.

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue a Complaint that includes the allegations covered by the Notice to Employees, as identified above in the Scope of Agreement section, as well as filing and service of the charge(s), commerce facts necessary to establish Board jurisdiction, labor organization status, appropriate bargaining unit (if applicable), and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices. Thereafter, the General Counsel may file a Motion for Default Judgment with the Board on the allegations of the Complaint. The Charged Party understands and agrees that all of the allegations of the Complaint will be deemed admitted and that it will have waived its right to file an Answer to such Complaint. The only issue that the Charged Party may raise before the Board will be whether it defaulted on the terms of this Settlement Agreement. The General Counsel may seek, and the Board may impose, a full remedy for each unfair labor practice identified in the Notice to Employees. The Board may then, without necessity of trial or any other proceeding, find all allegations of the Complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an Order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board Order ex parte, after service or attempted service upon Charged Party at the last address provided to the General Counsel.

Enforcement of this provision of the Agreement shall be limited to only the Aston Waikiki Beach Hotel, 2570 Kalakaua Avenue, Honolulu, Hawaii 96815, and Hotel Renew, 129 Paoakalani Avenue, Honolulu, Hawaii 96815.

Notwithstanding the provisions of this paragraph, no default shall be asserted based on this paragraph after six (6) months from the date of the Regional Director's approval of the Settlement Agreement assuming that the Charging Party has entered into the Agreement. If the Charging Party does not enter into this Agreement, no default shall be asserted based on this paragraph after six (6) months from either: (1) the deadline for the Charging Party to appeal the Regional Director's approval of the Settlement Agreement has lapsed and no appeal has been filed, or (2) the date the General Counsel sustains the Regional Director's approval of this agreement following an appeal by the Charging Party.

NOTIFICATION OF COMPLIANCE — Each party to this Agreement will notify the Regional Director in writing what steps the Charged Party has taken to comply with the Agreement. This notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. If the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that the Charging Party did not request review or that the General Counsel sustained the Regional Director's approval of this agreement. No further action shall be taken in the above captioned case(s)

RK

provided that the Charged Party complies with the terms and conditions of this Settlement Agreement and Notice.

Charged Party **Aston Hotels & Resorts, LLC d/b/a Aston Waikiki Beach Hotel and Hotel Renew**		**Charging Party** **UNITE HERE! Local 5**	
By: Name and Title Robert D Katz attorney	Date 4/29/15	By: Name and Title	Date
Recommended By: Trent K Kakuda Trent K. Kakuda, Field Attorney	Date 4/29/15	Approved By: [signature] Regional Director, Region 20	Date 4/29/15

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2015 APR 29 AM 11:09
HONOLULU, HAWAII

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NLRB SUB-REGION 37

2015 APR 29 AM 11: 09
HONOLULU, HAWAII

(To be printed and posted on official Board notice form)

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT interrogate you about your union membership, activities, and sympathies, and **WE WILL NOT** place you under surveillance while you engage in union or other protected concerted activities.

WE WILL NOT unlawfully direct you to remove union buttons from your uniforms.

WE WILL NOT encourage or solicit you to sign any documents withdrawing support from a union.

WE WILL NOT threaten you with adverse job consequences if you engage in union or other protected concerted activities.

WE WILL NOT impliedly threaten to discipline or terminate off-duty employees for engaging in activities protected by Section 7 of the Act in nonwork areas of our premises.

WE WILL NOT promulgate and maintain: (1) an overly broad "Computer Use Policy" that unlawfully interferes with your use of our email system for Section 7 activities; (2) an overly broad provision in our "Non-Interference and Confidentiality Agreement" that you would reasonably construe to interfere with your right to engage in a boycott or other public demonstration in support of a labor dispute; and (3) overly broad rules in our employee handbook that: (a) bar you from our entire premises 30 minutes before your shift or requires you to leave within 30 minutes after your shift, enforced by a property pass rule; (b) forbid you from "[l]oitering or unauthorized presence while on the job or anywhere on Hotel premises"; (c) prohibit you from discussing or otherwise disclosing information regarding wages, benefits, and other terms and conditions of employment; (d) prohibit or restrict, in an unlawful manner, your wearing of union buttons; (e) forbid solicitation or distribution of materials during nonworking time in "areas open to the public" without exception; and (f) prohibit "[d]iscourtesy in any form or disrespect to employees"

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind the overly broad employee handbook rules referenced above, overly broad "Computer Use Policy," and overly broad provision of our "Non-Interference and Confidentiality Agreement," and **WE WILL** either (1) furnish all of you with inserts for the current edition of the employee handbook, "Computer Use Policy," and "Non-Interference and Confidentiality Agreement" that (a) advise that the unlawful provisions, above, have been

RSK

rescinded, or (b) provide the language of lawful provisions; or (2) publish and distribute to all current employees a revised employee handbook containing a revised "Computer Use Policy," and a "Non-Interference and Confidentiality Agreement" that (a) do not contain the unlawful provisions, or (b) provides the language of lawful provisions.

Aston Hotels & Resorts, LLC d/b/a Aston Waikiki Beach Hotel and Hotel Renew
(Employer)

Dated: April 29 2015 **By:** Robert Katz Attorney
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-866-667-NLRB (1-866-667-6572). Hearing impaired persons may contact the Agency's TTY service at 1-866-315-NLRB. You may also obtain information from the Board's website: www.nlrb.gov.

300 Ala Moana Boulevard, Rm. 7-245
Honolulu, Hawaii 96850

Telephone: (808) 541-2814
Hours of Operation: 8 a.m. to 4:30 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer.

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HONOLULU, HAWAII

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HONOLULU, HAWAII

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
SETTLEMENT AGREEMENT

IN THE MATTER OF

Aston Hotels & Resorts, LLC d/b/a Aston Waikiki Beach Hotel and Hotel Renew

Cases 20-CA-145717
20-CA-145720
20-CA-145725
20-CA-145772
20-CA-146582
20-CA-146583
20-CA-148013
20-CA-149639

Subject to the approval of the Regional Director for the National Labor Relations Board, the Charged Party and the Charging Party **HEREBY AGREE TO SETTLE THE ABOVE MATTER AS FOLLOWS:**

POSTING OF NOTICE — After the Regional Director has approved this Agreement, the Regional Office will send copies of the approved Notice to the Charged Party in English and in additional languages if the Regional Director decides that it is appropriate to do so. A responsible official of the Charged Party will then sign and date those Notices and immediately post them in prominent places around both its facilities located at 2570 Kalakaua Avenue, Honolulu, Hawaii 96815 and 129 Paoakalani Avenue, Honolulu, Hawaii 96815, including all places where the Charged Party normally posts notices to employees. The Charged Party will keep all Notices posted for 60 consecutive days after the initial posting.

COMPLIANCE WITH NOTICE — The Charged Party will comply with all the terms and provisions of said Notice.

NON-ADMISSION CLAUSE – By entering into this Settlement Agreement, the Charged Party does not admit that it has violated the National Labor Relations Act.

SCOPE OF THE AGREEMENT — This Agreement settles only the allegations in the above-captioned case(s), including all allegations covered by the attached Notice to Employees made part of this agreement, and does not settle any other case(s) or matters. It does not prevent persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters that happened before this Agreement was approved regardless of whether General Counsel knew of those matters or could have easily found them out. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned case(s) for any relevant purpose in the litigation of this or any other case(s), and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to said evidence.

PARTIES TO THE AGREEMENT — If the Charging Party fails or refuses to become a party to this Agreement and the Regional Director determines that it will promote the policies of the National Labor Relations Act, the Regional Director may approve the settlement agreement and decline to issue or reissue a Complaint in this matter. If that occurs, this Agreement shall be between the Charged Party and the undersigned Regional Director. In that case, a Charging Party may request review of the decision to approve the Agreement. If the General Counsel does not sustain the Regional Director's approval, this Agreement shall be null and void.

AUTHORIZATION TO PROVIDE COMPLIANCE INFORMATION AND NOTICES DIRECTLY TO CHARGED PARTY — Counsel for the Charged Party authorizes the Regional Office to forward the cover letter describing the general expectations and instructions to achieve compliance, a conformed settlement, original

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notices and a certification of posting directly to the Charged Party. If such authorization is granted, Counsel will be simultaneously served with a courtesy copy of these documents.

Yes _____ No _____
Initials Initials

PERFORMANCE — Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of notice that no review has been requested or that the General Counsel has sustained the Regional Director.

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue a Complaint that includes the allegations covered by the Notice to Employees, as identified above in the Scope of Agreement section, as well as filing and service of the charge(s), commerce facts necessary to establish Board jurisdiction, labor organization status, appropriate bargaining unit (if applicable), and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices. Thereafter, the General Counsel may file a Motion for Default Judgment with the Board on the allegations of the Complaint. The Charged Party understands and agrees that all of the allegations of the Complaint will be deemed admitted and that it will have waived its right to file an Answer to such Complaint. The only issue that the Charged Party may raise before the Board will be whether it defaulted on the terms of this Settlement Agreement. The General Counsel may seek, and the Board may impose, a full remedy for each unfair labor practice identified in the Notice to Employees. The Board may then, without necessity of trial or any other proceeding, find all allegations of the Complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an Order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board Order ex parte, after service or attempted service upon Charged Party at the last address provided to the General Counsel.

Enforcement of this provision of the Agreement shall be limited to only the Aston Waikiki Beach Hotel, 2570 Kalakaua Avenue, Honolulu, Hawaii 96815, and Hotel Renew, 129 Paoakalani Avenue, Honolulu, Hawaii 96815.

Notwithstanding the provisions of this paragraph, no default shall be asserted based on this paragraph after six (6) months from the date of the Regional Director's approval of the Settlement Agreement assuming that the Charging Party has entered into the Agreement. If the Charging Party does not enter into this Agreement, no default shall be asserted based on this paragraph after six (6) months from either: (1) the deadline for the Charging Party to appeal the Regional Director's approval of the Settlement Agreement has lapsed and no appeal has been filed, or (2) the date the General Counsel sustains the Regional Director's approval of this agreement following an appeal by the Charging Party.

NOTIFICATION OF COMPLIANCE — Each party to this Agreement will notify the Regional Director in writing what steps the Charged Party has taken to comply with the Agreement. This notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. If the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that the Charging Party did not request review or that the General Counsel sustained the Regional Director's approval of this agreement. No further action shall be taken in the above captioned case(s)

JC

provided that the Charged Party complies with the terms and conditions of this Settlement Agreement and Notice.

Charged Party **Aston Hotels & Resorts, LLC d/b/a Aston Waikiki Beach Hotel and Hotel Renew**		**Charging Party** **UNITE HERE! Local 5**	
By: Name and Title	Date	By: Name and Title JENNIFER CYNN In House Counsel	Date 4/29/15
Recommended By: Trent K Kakuda Trent K. Kakuda, Field Attorney	Date 4/29/15	Approved By: Joseph Fadler Regional Director, Region 20	Date 4/29/15

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NLRB REGION 37
2015 APR 29 PM 2:48
HONOLULU, HAWAII

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2015 APR 27 PM 2:48

HONOLULU, HAWAII

(To be printed and posted on official Board notice form)

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT interrogate you about your union membership, activities, and sympathies, and **WE WILL NOT** place you under surveillance while you engage in union or other protected concerted activities.

WE WILL NOT unlawfully direct you to remove union buttons from your uniforms.

WE WILL NOT encourage or solicit you to sign any documents withdrawing support from a union.

WE WILL NOT threaten you with adverse job consequences if you engage in union or other protected concerted activities.

WE WILL NOT impliedly threaten to discipline or terminate off-duty employees for engaging in activities protected by Section 7 of the Act in nonwork areas of our premises.

WE WILL NOT promulgate and maintain: (1) an overly broad "Computer Use Policy" that unlawfully interferes with your use of our email system for Section 7 activities; (2) an overly broad provision in our "Non-Interference and Confidentiality Agreement" that you would reasonably construe to interfere with your right to engage in a boycott or other public demonstration in support of a labor dispute; and (3) overly broad rules in our employee handbook that: (a) bar you from our entire premises 30 minutes before your shift or requires you to leave within 30 minutes after your shift, enforced by a property pass rule; (b) forbid you from "[l]oitering or unauthorized presence while on the job or anywhere on Hotel premises"; (c) prohibit you from discussing or otherwise disclosing information regarding wages, benefits, and other terms and conditions of employment; (d) prohibit or restrict, in an unlawful manner, your wearing of union buttons; (e) forbid solicitation or distribution of materials during nonworking time in "areas open to the public" without exception; and (f) prohibit "[d]iscourtesy in any form or disrespect to employees"

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind the overly broad employee handbook rules referenced above, overly broad "Computer Use Policy," and overly broad provision of our "Non-Interference and Confidentiality Agreement," and **WE WILL** either (1) furnish all of you with inserts for the current edition of the employee handbook, "Computer Use Policy," and "Non-Interference and Confidentiality Agreement" that (a) advise that the unlawful provisions, above, have been

JC

rescinded, or (b) provide the language of lawful provisions; or (2) publish and distribute to all current employees a revised employee handbook containing a revised "Computer Use Policy," and a "Non-Interference and Confidentiality Agreement" that (a) do not contain the unlawful provisions, or (b) provides the language of lawful provisions.

Aston Hotels & Resorts, LLC d/b/a Aston Waikiki Beach Hotel and Hotel Renew
(Employer)

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

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-866-667-NLRB (1-866-667-6572). Hearing impaired persons may contact the Agency's TTY service at 1-866-315-NLRB. You may also obtain information from the Board's website: www.nlrb.gov.

300 Ala Moana Boulevard, Rm. 7-245
Honolulu, Hawaii 96850

Telephone: (808) 541-2814
Hours of Operation: 8 a.m. to 4:30 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer.

RECEIVED
NLRB REGION 37
2015 APR 29 PM 2:48
HONOLULU, HAWAII

JC

NATIONAL LABOR RELATIONS BOARD
SUBREGION 37

300 Ala Moana Boulevard, Room 7-245
Honolulu, HI 96850

CERTIFICATE OF POSTING

PLEASE RETURN THIS CERTIFICATE, DULY SIGNED AND EXECUTED, TO THE NATIONAL LABOR RELATIONS BOARD. ALSO, PLEASE RETURN **TWO** ORIGINAL EXECUTED NOTICES, **EACH** SIGNED AND DATED LIKE THE POSTED NOTICES.

Re: **ASTON HOTELS & RESORTS, LLC d/b/a ASTON WAIKIKI BEACH HOTEL AND HOTEL RENEW**

Case Nos: 20-CA-145717, 20-CA-145720, 20-CA-145725, 20-CA-145772, 20-CA-146582, 20-CA-146583, 20-CA-148013, 20-CA-149639

HOTEL RENEW

The undersigned hereby states that a copy or copies of the Notice required to be posted in the above-entitled case(s) were posted in the following places: *(List below the place or places where copies were posted.)*

Date posted: 9/5/15

1. TIME CLOCK - BASEMENT
2.
3.
4.
5.
6.
7.

RECEIVED
NLRB SUB-REGION 37
2015 MAY -7 AM 11:07
HONOLULU, HAWAII

MARK DEMELLO
*(Please **print** signers name)*

By: [signature] Title: GENERAL MANAGER

Address(es) where posted: 129 PAOAKALANI AVE.
(Number and Street)
HONOLULU, HI 96815
(City/State/Zip)

Telephone Number: 808.921.6288

EXHIBIT 8

NATIONAL LABOR RELATIONS BOARD
SUBREGION 37

300 Ala Moana Boulevard, Room 7-245
Honolulu, HI 96850

CERTIFICATE OF POSTING

PLEASE RETURN THIS CERTIFICATE, DULY SIGNED AND EXECUTED, TO THE NATIONAL LABOR RELATIONS BOARD. ALSO, PLEASE RETURN **TWO** ORIGINAL EXECUTED NOTICES, **EACH** SIGNED AND DATED LIKE THE POSTED NOTICES.

Re: **ASTON HOTELS & RESORTS, LLC d/b/a ASTON WAIKIKI BEACH HOTEL AND HOTEL RENEW**

Case Nos: 20-CA-145717, 20-CA-145720, 20-CA-145725, 20-CA-145772, 20-CA-146582, 20-CA-146583, 20-CA-148013, 20-CA-149639

ASTON WAIKIKI BEACH HOTEL

The undersigned hereby states that a copy or copies of the Notice required to be posted in the above-entitled case(s) were posted in the following places: *(List below the place or places where copies were posted.)*

Date posted: 5/5/15

1. TIME CLOCK - LOADING DOCK
2. LUNCHROOM - 3RD FLOOR
3.
4.
5.
6.
7.

RECEIVED
NLRB SUB-REGION 37
2015 MAY -7 AM 11:07
HONOLULU, HAWAII

MARK DEMELLO
*(Please **print** signers name)*

By: [signature] Title: GENERAL MANAGER

Address(es) where posted: 2570 KALAKAUA AVE
(Number and Street)
HONOLULU, HI 96815
(City/State/Zip)

Telephone Number: 808.921.6288

ASTON
Hotels & Resorts

RECEIVED
NLRB SUB-REGION 37

2015 AUG -3 AM 11: 06

HONOLULU, HAWAII

July 30, 2015

United States Government
National Labor Relations Board
SubRegion 37
P. O. Box 50208
Honolulu, Hawaii 96850-0001

Attn: Trent Kakuda

Re: Aston Hotels & Resorts, LLC d/b/a Aston Waikiki Beach Hotel and Hotel Renew
Case Nos. 20-CA-145717, 20-CA-145720, 20-CA-145725, 20-CA-145722, 20-CA-146582, 20-CA-146583, 20-CA-148013, and 20-CA-149639

Dear Mr. Kakuda:

In connection with the posting obligation established by the Settlement Agreement relating to the above-referenced Case Numbers, enclosed please find the original Notices which were prominently posted continuously where other government notices at the Aston Waikiki Beach Hotel and the Hotel Renew are posted from May 4, 2015 through July 28, 2015. The Notice was posted near the time clock on the Loading Dock and in the employee lunch room on the third floor at the Aston Waikiki Beach Hotel. The Notice was also posted near the time clock in the Basement at the Hotel Renew.

Sincerely,

Liane Kelly
Associate General Counsel

LK:krs
Enclosures

cc: Robert Katz, Esq. (w/o enclosures)

EXHIBIT 9

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
SUBREGION 37
300 Ala Moana Blvd Rm 7-245
Honolulu, HI 96850-7245

Agency Website: www.nlrb.gov
Telephone: (808)541-2814
Fax: (808)541-2818

October 15, 2015

VIA ELECTRONIC AND U.S. MAIL (rsk@torkildson.com)

ROBERT S. KATZ, ESQ., Attorney
TORKILDSON, KATZ, MOORE, HETHERINGTON & HARRIS
700 Bishop St Fl 15
Honolulu, HI 96813-4116

JEFFREY S. HARRIS, ESQ.
TORKILDSON, KATZ, MOORE, HETHERINGTON & HARRIS
700 Bishop St Fl 15
Honolulu, HI 96813-4116

JOHN KNOREK, ESQ.
TORKILDSON, KATZ, MOORE, HETHERINGTON & HARRIS
700 Bishop St Fl 15
Honolulu, HI 96813-4116

Re: Notice of Intent to Seek Default Judgment
Aqua-Aston Hospitality, LLC, dba
AstonWaikiki Beach Hotel & Hotel Renew
Cases 20-CA-154749, 20-CA-157769

Dear Messrs. Katz, Harris, and Knorek:

I am writing this letter to advise you that the Region has determined that complaint shall issue in several charges, including the above-referenced charges. Since the conduct alleged in the above-referenced charges constitutes the same or similar types of conduct which were encompassed by the informal Board settlement in Cases 20-CA-145717, 145720, 145725, 145772, 146582, 146583, 148013 and 149639, approved on April 29, 2015 (Settled Cases), the alleged new conduct constitutes a breach of the cease and desist terms of the April Settlement Agreement. Therefore, I am informing you of our intention to seek default judgment in the Settled Cases after we successfully prove the Section 8(a)(1) violations alleged in the above captioned charges.

EXHIBIT 10

Please feel free to contact Field Attorneys Trent Kakuda or Dale Yashiki at (808)541-2814, or by e-mail at, trent.kakuda@nlrb.gov, or dale.yashiki@nlrb.gov, should you have any questions.

Very truly yours,

Daniel Owens
Acting Regional Director

JD(SF)-24-16
Honolulu, HI

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE

AQUA-ASTON HOSPITALITY, LLC
d/b/a ASTON WAIKIKI BEACH
HOTEL AND HOTEL RENEW,
Respondent,

Cases 20-CA-154749
20-CA-157769
20-CA-160516
20-CA-160517

and

UNITE HERE! LOCAL 5
Charging Party.

ERRATA

On May 31, 2016, I issued my decision in the case referenced above (the Decision).

On June 10, 2016, the General Counsel filed an unopposed letter-motion requesting that paragraph 3(b) of the Decision's Conclusions of Law be modified to conform to paragraph 1(b) of the Decision's Order by replacing paragraph 3(b) of the Conclusions of Law with a paragraph that reads:

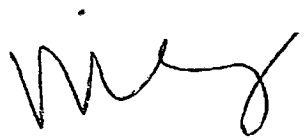
(b) ordering employees to cease engaging in union and/or protected activity; and

In addition, the General Counsel, by its letter-motion, requested that the spelling of an individual's name on page 16, line 16 of the Decision be corrected to reflect the name, "Jonathan Ching."

On June 13, 2016, Respondent Aqua-Aston Hospitality, LLC filed a letter-motion requesting the spelling of an additional individual's name on page 4, line 41 of the Decision be corrected to reflect the name, "Santos Ragunjan."

I find that the parties' letter motions request non-substantive errata and that good cause exists for granting both letter-motions. I therefore order modification of my Decision consistent with the terms contained in the parties' letter-motions as referenced above.

Dated: Washington, D.C. June 17, 2016



Mara-Louise Anzalone
Administrative Law Judge

EXHIBIT 11

JD(SF)-24-16
Honolulu, HI

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE

AQUA-ASTON HOSPITALITY, LLC
d/b/a ASTON WAIKIKI BEACH
HOTEL and HOTEL RENEW,
Respondent,

and

UNITE HERE! LOCAL 5
Charging Party.

Cases 20-CA-154749
20-CA-157769
20-CA-160516
20-CA-160517

Scott E. Hovey, Jr. and *Jeff F. Beerman, Esqs.*, for the General Counsel.

Robert S. Katz and *Christine K. David, Esqs.*
(Torkildson Katz Moore Hetherington & Harris) for the Respondent.

Jennifer Cynn, Esq. for the Charging Party.

DECISION

STATEMENT OF THE CASE

MARA-LOUISE ANZALONE, Administrative Law Judge. I heard this case on February 2 through February 5, 2016, in Honolulu, Hawaii. This case was tried following the issuance of an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing (the Complaint) by the Regional Director for Region 20 of the National Labor Relations Board (the Board) on October 28, 2015. The Complaint was based on a number of original and amended unfair labor practice charges, as captioned above, filed by UNITE HERE! Local 5 (Local 5, the Union or Charging Party). The General Counsel alleges that Respondent Aqua-Aston Hospitality, LLC d/b/a Aston Waikiki Beach Hotel and Hotel Renew (Respondent) violated Section 8(a)(3) and (1) of the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, et. seq. (the Act). The Respondent filed a timely answer to the Complaint denying the commission of the alleged unfair labor practices.

At trial, all parties were afforded the right to call, examine, and cross-examine witnesses, to present any relevant documentary evidence, to argue their respective legal positions orally, and to file post-hearing briefs.[1] Post-hearing briefs were filed by Respondent and the General Counsel, and each of these briefs has been carefully considered.[2] Accordingly, based upon the entire record herein, including the post-hearing briefs and my observation of the credibility of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

The complaint alleges and the evidence establishes that Respondent, a limited liability company, is engaged in the business of operating hotels, with a place of business in Honolulu, Hawaii, where it operates and manages the Aston Waikiki Beach Hotel and Hotel Renew. The evidence establishes, the parties admit, and I find that, in conducting its business operations, Respondent derived gross revenues in excess of $500,000, and also purchased and received at its Honolulu facility goods valued in excess of $5,000 directly from points located outside the State of Hawaii. It is alleged, Respondent admits, and I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and further that the Union is a labor organization within the meaning of Section 2(5) of the Act.

Based on the foregoing, I find that this dispute affects commerce and that the National Labor Relations Board (the Board) has jurisdiction of this case, pursuant to Section 10(a) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. Respondent's Operations and the Union Organizing Campaign

Respondent manages and operates two adjacent hotels – the Aston Waikiki Beach Hotel and Hotel Renew – in Waikiki, a popular tourist area in Honolulu. Respondent operates the properties as a single entity (the Hotel). Respondent's Executive Vice President of Operations Gary Ettinger (Ettinger) has overall responsibility for operations; the Hotel is managed by General Manager Mark DeMello (DeMello); reporting to DeMello is Rooms Division Manager Janine Webster (Webster). Until her retirement in October 2015, Valina Haines (Haines) served as Respondent's Senior Vice President of Human Resources.

It is undisputed that, beginning in February 2015,[3] Charging Party Local 5 began an organizing campaign at the Hotel, which involved numerous Union-sponsored rallies being held

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[1] Abbreviations used in this decision are as follows: "Tr." for transcript; "GC Exh.__" for General Counsel's Exhibit; "R. Exh. __" for Respondent's Exhibit; "GC Br. at __" for the General Counsel's post-hearing brief and "R. Br. at __" for Respondent's post-hearing brief.

[2] On February 29, 2016, I granted counsel for the General Counsel's unopposed motion to correct the transcript, which was filed the day prior. The record is therefore amended to reflect the proposed changes set forth in that motion.

[3] All dates are in 2015, unless otherwise indicated.

outside the two, adjacent Hotel properties. The allegations in this case concern Respondent's reaction to this campaign.

B. The Written Warnings

The General Counsel alleges that, on June 30, Respondent disciplined Maintenance Engineer Edgardo Guzman (Guzman) and Utility Housekeeper Santos "Sonny" Ragunjan (Ragunjan) for engaging in union activity. The discriminatees were each issued a written warning for their conduct in soliciting a third employee, Utility Housekeeper Dany Pajinag (Pajinag), to sign a union authorization card and requesting him to have his picture taken for a union flyer. Respondent maintains that it disciplined the discriminatees after making a good-faith – and ultimately correct – determination that they had engaged in serious misconduct. According to Respondent's witnesses, Pajinag complained that Guzman and Ragunjan had repeatedly interfered with his work. Respondent contends that its subsequent investigation disclosed that the two men had engaged in an ongoing campaign of harassment that had distracted Pajinag from his work, and that Ragunjan had physically threatened Pajinag.

While it is undisputed that the June 30 written warnings resulted from Pajinag's complaints, the testimony regarding the substance of these complaints, as well as Respondent's response, varied widely both in substance and relative credibility.[4] For the reasons stated below, I find that Respondent's managers and officials did not in fact hold an honest belief that Guzman and Ragunjan had engaged in serious misconduct and therefore find that the written warnings violated the Act.

1. Factual Background

a. Respondent's policies

Respondent's employee handbook sets forth various bases for discipline, including the following:

> (Rule #3) Interference with others in the performance of their jobs, horseplay, or disorderly conduct while on working time on Company premises.
>
> (Rule #8) Threatening, fighting or engaging in any act of physical aggression (as well as any attempt or threat to engage in a fight or to provide a fight), either by words or actions.

(R. Exh. 9 at 37–38) Respondent maintains a workplace violence policy whereby it pledges to "promptly and thoroughly investigate all reports of threats of (or actual) violence " and

[4] I have based my credibility resolutions on consideration of a witness' opportunity to be familiar with the subjects covered by the testimony given; established or admitted facts; the impact of bias on the witness' testimony; the quality of the witness' recollection; testimonial consistency; the presence or absence of corroboration; the strength of rebuttal evidence, if any; the weight of the evidence; and witness demeanor while testifying and the form of questions eliciting responses. Credibility findings need not be all-or-nothing propositions, and it is common for a fact finder to credit some, but not all, of a witness' testimony. *Daikichi Sushi*, 335 NLRB 622, 622 (2001).

explicitly retains the right to "suspend employees, either with or without pay, pending investigation." Id. at 50. Haines confirmed that Respondent takes workplace threats of physical harm seriously.

b. Pajinag's complaints

According to Respondent's witnesses, Pajinag initially complained to his supervisor, Executive Housekeeper Marissa Cacacho (Cacacho). She testified that, on May 22, he told her that Ragunjan had approached him the day before while he was working and invited him to have his picture taken and sign a union authorization card. According to Cacacho, Pajinag said that Ragunjan had bothered him several times previously and was interfering with his work. She further testified that, on June 9, Pajinag made similar complaints about Guzman, claiming that, on June 5 and June 9, Guzman had solicited him to sign a union authorization card and to have his picture taken and that he was having trouble concentrating on his job. Pajinag submitted handwritten statements regarding the events of May 21, June 5 and June 9. In each statement, he indicated that the incident he was reporting was not the first of its kind; Guzman, he wrote "always bother[ed]" him and on May 21, Ragunjan asked him to sign a Union authorization card "again." (GC Exh. 13, R. Exh. 13)

Pajinag's testimony regarding his May 22 and June 9 reports to Cacacho stood in stark contrast to Cacacho's version. First, he adamantly denied that he told her that his work was being interrupted or that he was unable to concentrate, due to being bothered or distracted by either Ragunjan or Guzman. Asked if he had told Cacacho that there had been other, prior incidents with Ragunjan, he initially stated unequivocally that he had not. After counsel pointed out that his written complaint dated May 22 referenced Ragunjan bothering him "again," he changed his story, stating, "I cannot remember what I told [Cacacho]." (Tr. 594) With respect to Guzman, Pajinag initially could not recall whether he told Cacacho about any prior incidents, and (referring to his written statement), merely stated, "[w]hatever is within there that's what I told her." When reminded that his statement said Guzman "always bothers me," he suddenly recalled, "I told [Cacacho] that Edgar [Guzman] has not just bothered me once or twice." Asked for specifics as to what he told Cacacho, his memory failed again, and he stated, "I don't know. I forgot already." (Id. at 598–600)

c. Respondent's investigation and the loading dock incident

Respondent's witnesses testified that, after each of Cacacho's meetings with Pajinag, Cacacho reported his concerns to her superiors Webster and DeMello. According to Respondent, Pajinag's June 9 complaint spurred it to investigate his complaints against Ragunjan and Guzman. General Manager DeMello and Rooms Division Manager Webster took charge. As Webster explained, the decision to investigate was based on their belief that Pajinag was explicitly complaining that Guzman and Santos Ragunjan's conduct was "distracting him from completing his assignments" and that this "harassment or interference" had occurred numerous times. (Tr. 805, 811)

(i) Guzman's June 10 interview

On June 10, Webster and DeMello interviewed Guzman for approximately 15 minutes. The testimony regarding this meeting was relatively consistent. DeMello asked Guzman if he had ever asked someone to take a picture for any non-work related purposes during work hours and work time, and Guzman denied doing so.[5] Guzman repeatedly asked who had complained about him, but DeMello responded that such information was confidential. According to Webster, DeMello then told Guzman, "you are not allowed to do non-work related things on company time during work time while employees are on property." (Tr. 815)

(ii) Pajinag's June 15 interview

Five days later, Webster and DeMello again interviewed Pajinag; according to Respondent, this interview was precipitated by a new complaint filed by Pajinag that very day.[6] Cacacho testified that Pajinag had approached her "very upset" and "shaking" and reported that, on the prior Saturday, Ragunjan had threatened him in the Ilocano language while they were on the loading dock. (Tr. 568–69) According to Cacacho, the words Ragunjan used literally translated into a warning to "watch your back all the time," but in Ilocano, is equivalent to a death threat. Cacacho typed up a written statement reciting Ragunjan's threat (in English) and provided it to Webster and DeMello, telling them that the statement was "more threatening" in Ilocano and Pajinag was afraid to leave his house. (Id. at 445, 571; R. Exh. 14)[7]

Webster and DeMello testified that Pajinag was highly distressed during his interview, and, besides reporting Ragunjan's alleged threat, also claimed to be "scared and intimidated" by one of his interactions with Guzman, which had taken place in a dimly lit laundry room.[8] According to DeMello, Pajinag also indicated that there had been additional incidents between him and the two men, but was so distraught and upset that he was unable to give details regarding those incidents. Once again, Pajinag's version of events differed significantly.[9] According to him, he simply reported what Ragunjan had said to him on May 21 and what Guzman had said to him on June 5 and June 9 (in his words, "[t]hat's all that I told them"), but did *not* indicate that there had been additional incidents he was too upset to recall. (Tr. 608) Moreover, his version of the interview did not include any specific mention of the alleged "death threat" Respondent claimed precipitated the meeting.[10] Indeed, in his testimony Pajinag

[5] The testimony is unclear as to whether, at this point, Guzman acknowledged his wrongdoing, referring to a workplace poster regarding non-solicitation. Regardless, there being evidence that Respondent relied on any such policy in disciplining Guzman, whether he made such an "admission" is irrelevant.
[6] See Tr. 812 ("we actually reached out to him immediately after we were notified on June 15th that a few days prior to that [] Ragunjan had approached him on the loading dock and threatened him").
[7] Cacacho's typewritten statement refers to the event occurring on June 12, not June 13.
[8] There is no evidence that Pajinag had previously reported being physically afraid of Guzman.
[9] Overall, Pajinag's demeanor while testifying about the meeting was relatively blasé, considering that, according to Respondent, he was describing reporting a then-recent death threat.
[10] What he told Webster and DeMello, Pajinag testified, was the information contained within his two handwritten statements (GC Exh. 13, R. Exh. 13), *not* Cacacho's typewritten notes.

indicated that the "watch your back" threat itself had occurred *prior to* his first complaint to Cacacho on March 22.[11]

While Pajinag's version of this interview is at odds with that of Webster and DeMello in several key aspects, it is undisputed that he did identify a potential employee-witness to at least one of the incidents he had reported, but expressed doubt that this individual had actually overheard the conversation in question.[12] Respondent never interviewed the housekeeper(s) in question. There is no credible evidence that, following this interview, Respondent took any interim steps to prevent a further confrontation between Pajinag and either Ragunjan or Guzman.[13]

(iii) The June 19 interviews

On June 19, DeMello and Webster briefly re-interviewed Guzman and interviewed Ragunjan for the first time regarding Pajinag's complaints. The facts of Guzman's interview are not significantly disputed. Guzman continued to ask for the identity of the person who had complained about him, but was again refused this information. Asked to provide a statement about the incident he maintained had never happened, Guzman wrote a summary of what Webster and DeMello had asked him during the prior interview and stated that he had no change in his response to their accusation. (R. Exh. 11)

The same day, Ragunjan was interviewed for the first time regarding his alleged misconduct.[14] DeMello testified that he first asked Ragunjan whether he had ever asked anyone to take a picture for a non-work related purpose during work time, which Ragunjan denied. Then, according to DeMello, he directly asked Ragunjan whether he had ever threatened anyone on the loading dock, and Ragunjan again said no, this time avoiding eye contact, appearing nervous and almost laughing. (Tr. 488) Webster's recollection of the interview was similar, except for one critical aspect: she made no mention of confronting Ragunjan with the alleged threat but instead testified he was simply asked was whether he had ever requested that someone take a picture for a non-work related purpose. (Id. at 812) I credit Webster's account of the exchange; it came across less forced and rehearsed than DeMello's testimony and also squares more accurately with the record as a whole.

---

[11] Pajinag 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. When Respondent's counsel asked Pajinag to confirm whether it had happened before "or after" the May 21 incident, he stated "after" and but then claimed he could not recall when, stating, "I need to look at the paper." (Tr. 590) I credit his original, uncoached testimony that the incident he described happened before May 22, not on the Saturday prior to June 15, as Respondent contends.

[12] According to DeMello, Pajinag identified a room attendant who was present in a guest room during one of the incidents he reported between him and Guzman in early June; Webster recalled that he reported a room attendant-witness to Pajinag's claimed May 21 incident with Ragunjan.

[13] DeMello testified that he and Webster instructed Cacacho at some point to "try to monitor [Pajinag] when he was working" and "keep a sort of a close eye on the whole situation." (Tr. 467) I do not credit this testimony, which went uncorroborated by either Webster or Cacacho, and had a self-serving ring to it.

[14] Ragunjan did not testify.

d. Respondent disciplines Guzman and Ragunjan on June 30

Respondent's witnesses testified that, at some point between June 19 and June 30, DeMello and Webster provided the results of their investigation to Haines, along with a draft corrective action for each man and their recommendation for discipline. They informed Haines that they believed that Guzman and Ragunjan, based on their demeanor when interviewed, were not being truthful and that Ragunjan in particular did not seem to want to discuss the accusations against him.

Haines concluded that Guzman and Ragunjan had repeatedly interfered with Pajinag being able to do his work, in violation of Respondent's non-interference rule (Rule #3, supra), and that Ragunjan had additionally violated Respondent's anti-threatening rule (Rule #8, supra) by warning Pajinag "about being careful and watching his back." (Tr. 712)[15] She decided that both Guzman and Ragunjan should receive a written warning for their conduct.[16] On June 30, management presented both Guzman and Ragunjan with their corrective action notices, which they refused to sign. The warning issued to Guzman makes reference to the alleged incidents on June 5 and June 9; Ragunjan's warning refers to the alleged incident on May 21 and the loading dock threat, which Respondent identified as having occurred on June 11. (GC Exh. 10, 11)

2. Applicable Legal Principles

a. The *Burnup & Sims* standard

Where the conduct for which an employee is disciplined is intertwined with the employee's otherwise protected activity, the employer's motivation is not at issue, and the proper analytical framework is that found in *NLRB v. Burnup & Sims,* 379 U.S. 21 (1964). Under this framework, an employer may lawfully discipline an employee for engaging in misconduct in the course of his otherwise protected activity, but only if it had a good-faith and correct belief that such misconduct occurred. *Burnup & Sims*, supra at 23–24; see also *La-Z-Boy Midwest*, 340 NLRB 80 (2003).

Under the *Burnup & Sims* framework, the initial burden is on the General Counsel to establish that the employee was disciplined or discharged for conduct occurring during the course of protected activity. The burden then shifts to the employer to show that it held an honest belief that the employee engaged in serious misconduct. *Burnup & Sims*, supra at 23. The test for "serious misconduct" is whether the employee's activity is such that, under the circumstances existing, it may reasonably tend to coerce or intimidate coworkers. *Clear Pine Mouldings*, 268 NLRB 1044 (1984); see also *Fresh and Easy Neighborhood Market, Inc.*, 361 NLRB No. 12, slip op. at 5 (2014) (employee's Section 7 activity does not lose protection merely because it makes fellow employee uncomfortable) (citing *Frazier Industrial Co.*, 328 NLRB 717, 719 (1999), enfd. 213 F.3d 750 (D.C. Cir. 2000)); *Consolidated Diesel Co.*, 332 NLRB

[15] It is unclear from the record whether Haines was informed (per DeMello's version of events) that Ragunjan had been confronted with and denied making the loading dock threat to Pajinag.
[16] Haines, whose typical policy was to review cases of similar transgressions to ensure fairness in meting out discipline in a particular case, could not recall whether she did so with respect to Guzman or Ragunjan's written warning.

1019, 1020 (2000) ("[l]egitimate managerial concerns to prevent harassment do not justify discipline on the basis of the subjective reactions of others to [employees'] protected activity").

Once the employer establishes that it held an honest belief in the employee's serious misconduct, the burden shifts to the General Counsel to affirmatively show that the misconduct did not in fact occur. *Rubin Bros. Footwear, Inc.*, 99 NLRB 610, 611 (1952), enf. denied on other grounds 203 F.2d 486 (5th Cir. 1953); see also *Akal Security, Inc.*, 354 NLRB 122, 124–25 (2009), reaff'd 355 NLRB 584 (2010); *Tracer Protection Service*, 328 NLRB 734, fn. 2 (1999); *Desert Inn Country Club*, 275 NLRB 790, 795 (1985). Thus, an employer who disciplines an employee for misconduct within the course of otherwise protected activity will be found to have violated the Act where the evidence discloses that: (a) it did not honestly believe the serious conduct occurred; or (b) even if it did so believe, it was mistaken.[17]

b. The June 30 written warnings violated Section 8(a)(3) and (1) of the Act

As a preliminary matter, I find that the existence or lack of unlawful animus is not relevant in this matter, as the June 30 written warning issued to Guzman and Ragunjan were admittedly motivated by their protected conduct, i.e., their effort to convince a third employee, Pajinag, to support the Union and its organizing effort at the Hotel. See *Burnup & Sims,* supra.[18] Next, I examine whether Respondent met its burden in establishing that, in issuing the discipline, it held a good-faith belief that Guzman and Ragunjan had engaged in serious misconduct in their interactions with Pajinag. I find that Respondent failed to meet this burden.

Frankly, much of the testimony offered by Respondent's witnesses regarding the events leading to the June 30 written warnings appeared rehearsed. Cacacho, Pajinag's direct supervisor, had trouble remembering which employee Pajinag had complained about and when, and both DeMello and Webster struggled to recite the convoluted questions they claim to have asked when interviewing the discriminatees. Cacacho, Webster and DeMello each parsed their answers in a manner that did not suggest forthrightness. Ultimately, Respondent's management witnesses could not agree on a consistent version of the facts and contradicted each other on significant details, such as whether Ragunjan had ever been confronted with the alleged death threat.

Regarding the complaints, I credit Pajinag's more unvarnished version of events, which departed from Respondent's script in key respects. First, I credit Pajinag's testimony that his specific complaints regarding Guzman were based on two conversations with Guzman four days apart. Likewise, he reported – at most – a single incident with Ragunjan on May 21 and an

[17] Holding an employer liable for a good-faith, but mistaken, belief in employee misconduct in the context of protected activity is necessary, "otherwise the protected activity would lose some of its immunity, since the example of employees who are discharged on false charges would or might have a deterrent effect on other employees A protected activity acquires a precarious status if innocent employees can be discharged while engaging in it, even though the employer acts in good faith." *Burnup & Sims*, supra at 23.

[18] Respondent's suggestion that this conduct was unprotected because it may have violated a lawful no-solicitation rule is unavailing, in that there is no evidence Respondent relied on any such rule in issuing the written warnings. (See R. Br. at 43, fn. 6, citing cases)

allegedly threatening comment by Ragunjan occurring some time before that.[19] In this regard, I find this case distinguishable from *BJ's Wholesale Club*, cited by Respondent. See 318 NLRB 684, 685 (1995). In that case, the Board upheld a discipline based, in part, on a coworker's report that the discriminatee had solicited her to sign a union authorization card three times in a single day and that she was "too busy" to be bothered. Moreover, while Respondent's management witnesses stressed, in lockstep fashion, that they were chiefly concerned about the fact that Pajinag had complained that Guzman and Ragunjan were interfering with him getting his work done, this is precisely what Pajinag *denied* complaining about; he clearly testified that he just wanted his coworkers to stop "bothering" him about the Union. See *Chartwells, Compass Group, USA,* 342 NLRB 1155, 1157 (2004) (employer may not lawfully discipline an employee for making pro-union (or antiunion) statements that merely cause another employee to feel uncomfortable) (citing *Consolidated Diesel Co.*, 332 NLRB at 1020 (2000)). This falls far short of the Board's standard for "serious misconduct" in the course of protected activity.

Respondent's investigation into Pajinag's complaints further suggests that it did not honestly believe that either Guzman or Ragunjan's solicitations for a photograph and/or union authorization card had actually interrupted Pajinag's work or otherwise lost the Act's protection. Instead of responding to Pajinag's complaints with interim action, Respondent's managers focused on amassing documentation of the alleged misconduct. Respondent's failure to interview an identified witness (based solely on Pajinag's speculation about that individual's hearing range) and refusal to inform Ragunjan or Guzman (despite the latter's repeated requests) of the identity of their accuser reflects prejudgment of the situation inconsistent with a good-faith investigation. *Arkema, Inc.*, 357 NLRB 1248, 1248–49 (2011) (failure to allow employee to refute allegation or identify accuser indicates lack of honest belief in misconduct); *Trailmobile Trailer, LLC*, 343 NLRB 95, 106 (2004) (failure to conduct meaningful investigation, including avoiding ignoring potential evidence, suggests that employer "seized upon" complaint to rid itself of union officers).

Likewise, Respondent's languid and tepid response to Pajinag's complaint that Ragunjan had recently physically threatened him was not consistent with the actions of a concerned employer seeking to ascertain the truth of the matter, or to otherwise respond to such a serious allegation. While Cacacho testified that Ragunjan's comment was tantamount to a death threat, and DeMello described Pajinag as "distraught" and "scared," Respondent did not contact law enforcement or take any other action to protect Pajinag, such as suspending Ragunjan pursuant to its workplace violence policy. (Tr. 439–40) Instead, DeMello and Webster inexplicably waited *four* days to interview Ragunjan and then failed to confront him about the loading dock incident. See *Remington Lodging & Hospitality, LLC (Sheraton Anchorage)*, 363 NLRB No. 6, 16 (2015) (failure to elicit accused employee's version of events is inconsistent with good-faith investigation) (citing *K & M Electronics*, 283 NLRB 279, 291 fn. 45 (1987)). Finally, while finding Ragunjan guilty of "threatening" pursuant to its policies, Respondent meted out exactly the same level of discipline it issued Guzman, who was found guilty of no such infraction.

[19] As noted, I am convinced, based on the testimony and demeanor of the witnesses, that Pajinag never reported that he had been seriously threatened the Saturday prior to June 15, as Respondent claims. While I do not reject Pajinag's testimony that he may, in fact, at some point in time, have felt threatened by Ragunjan, it appears to me that any threat reported by Pajinag was based on long-passed events repackaged by Cacacho to appear more imminent, allowing Respondent to seize upon it as a reason for discipline.

Accordingly, I find that Respondent failed to establish that it disciplined Guzman and Ragunjan based on an honestly held belief that they had engaged in serious misconduct in the course of protected activity; as such, I find that their written warnings violated the Act.

C. The Employee Meetings

The General Counsel alleges that, during meetings with Hotel employees in May 2015, Respondent's Executive Vice President of Operations Gary Ettinger made various statements in violation of Section 8(a)(1) of the Act. Specifically, according to the General Counsel, Ettinger: (a) directed employees to stop participating in union-organized rallies; (b) directed employees to stop visiting the homes of coworkers to engage in union and/or other protected concerted activities; (c) impliedly threatened employees with the loss of their jobs for engaging in union and/or protected concerted activities by telling them that they were lucky to have jobs; and (d) told employees to apologize to Respondent for engaging in union and/or protected concerted activities.

While Respondent concedes that Ettinger held the meetings in question, it sharply disputes the version of his comments testified to by the General Counsel's witnesses and further suggests that his remarks must be judged by a "reasonable employee" standard that assumes an English-speaking employee who understood his comments fully.

As set forth below, I find that Respondent, by Ettinger, violated the Act as alleged.

1. Factual Background

Beginning in February 2015, pro-union Hotel employees began holding early morning rallies outside the Hotel during which they chanted and banged pots and pans. Within a week of the first such rally, Respondent began holding meetings with employees to address the union campaign. The General Counsel's allegations concern statements made by Ettinger at two such meetings held on May 19, 2015 in the Aston Waikiki's Lokahi room.[20] Three current employees testified for the General Counsel regarding the meetings: inspector Faustino Fabro (Fabro), breakfast attendant Cecile Daniels (Daniels) and guest service agent Lotuseini Kava (Kava). Respondent presented the testimony of all of the management attendees, as well as Ettinger himself. A single employee, housekeeper Alona Afable (Afable), also testified for Respondent.[21]

The basic background facts regarding the meetings are undisputed. Ettinger addressed 30–35 Hotel employees seated in a circle around him. Webster, Haines and DeMello were seated among the employees. Ettinger spoke from prepared bullet points[22] and did not solicit questions from the attendees. Although the majority of employees attending these meetings did

[20] Respondent's management witnesses, who each attended both meetings, testified consistently that Ettinger's presentation was similar each time.

[21] Afable testified that attendance at the meetings was mandatory.

[22] Under Fed. R. Evid. 611(c) examination, Ettinger adopted his typed bullet points as an accurate reflection of what he said; his counsel's subsequent attempt to have him backtrack on this point was unconvincing. I find that, as he originally testified, he in fact addressed each of the bullet points. (Tr. 657; GC Exh. 16)

not speak English as a primary language, Ettinger spoke in English without the assistance of a translator. There is no evidence that any employee spoke during the meeting.

Ettinger began by expressing concern about how long the Union's organizing campaign had gone on. He said that guests were complaining about noise from the rallies, and that, going into the Hotel's busy season, he was concerned that this conduct would drive away business and reduce work opportunities. In his words, Ettinger said that the noisy rallies were "disturbing guests," creating an environment not "conducive" to guests enjoying their vacations and "having a deleterious impact on business." Next he said that certain employees had complained about being bothered, at home and at work, by pro-Union employees. This conduct, he said, was causing "acrimony" and "discomfort" among the employees. (Tr. 640–41, 644)[23] He then instructed the employees that they had the right to decide who entered their homes and that, if union supporters refused to leave when asked, the visited employee could contact the police.

General Counsel's witnesses, none of whom speak English as a primary language, testified, to the best of their ability, as to what Ettinger said in English. Not surprisingly, their recollection of his remarks did not include words such as "deleterious" and "acrimony." Instead, they testified that he affirmatively ordered the employees to cease engaging in certain conduct. Fabro and Daniels testified that Ettinger told the employees to stop banging pots and pans and to stop bothering their coworkers at home. Kava testified that Ettinger said the rallies needed to end, because they were waking people up at the Hotel. General Counsel's witnesses recalled a specific aspect of Ettinger's body language during the meeting: he was holding a plastic water bottle and "banging" it back and forth between his hands. Kava also testified that he appeared upset and spoke loudly.[24]

In markedly more plain-spoken language, Ettinger next talked about employees' negative experiences at unionized workplaces in the local area. He then told a story about his own mother being denied his father's union-funded pension benefits after his death, promising the assembled employees that, even if a union came in, they could rest assured that they would still be entitled to their 401(k) account balances. Referring to a pro-union Hotel employee who had recently been interviewed on local radio regarding his prior job at a unionized hotel, according to Ettinger's notes, he then asked the employees, if that employee's experience "was so great," why did he leave to work at the Hotel, a nonunion property? "Why," he asked them, "are there so many jobs posted for union properties? Why are union hotels struggling to keep people[?]" (GC Exh. 16)

[23] DeMello confirmed that Ettinger used terminology such as "discord," "in-fighting" and "dissention" when describing the atmosphere the Union had created. (Tr. 746; R. Exh. 17)

[24] Ettinger's manner during the meeting was described by DeMello as "intense." (Tr. 464)

In his closing remarks, Ettinger returned to the subject of the rallies, asking rhetorically why the Union had not called for a vote yet. Then he told the employees it was because the Union wanted to disrupt the Hotel's business. Ettinger then said that he was angry with the situation because it was "not necessary," that the Hotel was ready for an election and that the Union "should call for a vote, not do things via pots, pans and harassment." (R. Exh. 18, 19)[25] The General Counsel's witnesses testified that the meeting ended on a much heavier note. All three witnesses testified that Ettinger said – in simple English – they were lucky to have jobs. Finally, according to Fabro and Daniels, he then said they could stop by his office and apologize to him. These remarks – also delivered in easily understood English – were universally denied by Respondent's witnesses.

2. Analysis

a. Credibility

I credit the General Counsel's witnesses with respect to Ettinger's statements. I found Fabro to be especially credible, in that he listened carefully to questions and maintained the same demeanor regardless of who was examining him. Daniels, who mainly testified through a Tagalog interpreter and appeared somewhat nervous, was nonetheless certain of what she understood Ettinger to have said, which she recounted in English. While Kava's recollection was not as complete as the two others, her demeanor was composed and steady, and she struck me as committed to speaking the truth.[26] I attribute enhanced credibility to Fabro, Daniels and Kava, due to their status as current employees. *Flexsteel Industries*, 316 NLRB 745 (1995) (" the testimony of current employees which contradicts statements of their supervisors is likely to be particularly reliable because these witnesses are testifying adversely to their pecuniary interests") (citations omitted), affd. mem. 83 F.3d 419 (5th Cir. 1996).

By contrast, I found Ettinger's testimony less than fully credible. His dismissive denials, sometimes accompanied by laughter, struck me as a sign of nervousness and discomfort, particularly regarding the specific statements the General Counsel's witnesses attributed to him. Respondent's remaining witnesses gave guarded testimony that presented as less than forthright. Both DeMello and Afable appeared nervous while testifying, as if unsure which of Ettinger's remarks might damage Respondent's case. Haines, who was present for Ettinger's own testimony, nonetheless appeared uncomfortable testifying about the meetings; she was only to recall vague portions of the meeting and then simply stated denials in response to leading questions.[27] I found Webster to be slightly more credible; I note, however, that she was present

[25] I credit Webster's meeting notes regarding these remarks; Ettinger related a gentler version, in which he merely said that "the conduct of the people that were outside of the hotel banging pots and pans were creating an environment that wasn't suitable for, you know, the vacation experience." (Tr. 648)

[26] Respondent's spurious accusation that Kava committed "perjury" when she denied that her memory had been improperly refreshed at hearing is not well taken; it is quite common for a witness whose recollection is refreshed on one portion of a conversation to then recall subsequent portions.

[27] Especially concerning to me were Haines' typewritten notes of the meeting (R. Exh. 16), which substantially echo Ettinger's testimony and which she claimed to have typed based on her contemporaneous handwritten notes. When the handwritten notes were produced, they consisted of two short notations that could not have possibly served as the basis for the typewritten notes. (Tr. 781–83)

during the entire hearing and, as the final witness, had heard all of the other testimony regarding the meetings, which detracts from the reliability of her own testimony.

b. Ettinger's comments violated the Act

Section 8(a)(1) of the Act provides that it is an unfair labor practice to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7, which protects the right of employees to engage in "concerted activity" for, inter alia, their "mutual aid or protection." It is well settled that the Board assesses the objective tendency of a statement to interfere with the free exercise of employee rights rather than considering either the employer's motive or employees' actual subjective reactions regarding the statement. *Miller Electric Pump and Plumbing*, 334 NLRB 824, 825 (2001); *Joy Recovery Technology Corp.*, 320 NLRB 356, 365 (1995), enfd. 134 F.3d 1307 (7th Cir. 1998). The issue, then, is how a "reasonable employee" would interpret the statement considering all surrounding circumstances. *The Roomstore*, 357 NLRB 1690, 1690, fn. 3 (2011).

"The test of whether a statement is unlawful is whether the words could reasonably be construed as coercive, whether or not that is the only reasonable construction." *Double D Construction Group*, 339 NLRB 303, 303 (2003) (citation omitted). While certain employer statements, taken alone, may be considered noncoercive, they will violate the Act where they "take on the character and quality of coercive comments which accompany them. " *Oak Mfg. Co.*, 141 NLRB 1323, 1325 (1963). An employer will be held accountable for misleading or confusing statements that would reasonably tend to chill an employee's protected activity; as Chief Justice Warren stated in the *Gissel* case:

> [a]n employer, who has control over [the employment] relationship and therefore knows it best, cannot be heard to complain that he is without an adequate guide for his behavior. He can easily make his views known without engaging in "brinkmanship" when it becomes all too easy to "overstep and tumble [over] the brink."

NLRB v. Gissel Packing Co., 395 U.S. 575, 620 (1969) (citing *Wausau Steel Corp. v. NLRB*, 377 F.2d 369, 372 (7th Cir. 1967)).

The identity of the speaker and his position of relative power in the workplace are also given consideration; when an employer uses a high-level manager to voice its antiunion message, that message takes on an especially coercive quality and is unlikely to be forgotten. See *Electro-Voice*, 320 NLRB 1094, 1096 (1996); *America's Best Quality Coatings Corp.*, 313 NLRB 470, 472 (1993), enfd. 44 F.3d 516 (7th Cir. 1995), cert. denied, 515 U.S. 1158 (1995); see also *Aldworth Co.*, 338 NLRB 137, 149 (2002) (captive audience meetings convey a significant impact when conducted by high-level officials). A high ranking employer official who peppers his remarks with provocative phrases "skillfully chosen to obscure their definitive meaning or to create a double entendre" may violate the Act where those remarks effectively instill fear of economic jeopardy in the minds of the employees listening. *Brandenburg Tel. Co.*, 164 NLRB 825, 831–32 (1967) (citing *International Ass. of Machinists (Serrick Corp) v. NLRB*, 311 U.S. 72, 80 (1940) ("interference must be determined by careful scrutiny of all factors, often subtle, which restrain the employees' choice. ")).

In assessing the lawfulness of communications in a multilingual workplace, language barriers cannot be ignored. The Board has noted that "some imprecision inevitably arises" in such settings, particularly where the employer's communication "walk[s] the fine line between lawful descriptions and unlawful threats." *Labriola Baking*, 361 NLRB No. 41, 4 (2014). However, the Board has specifically rejected the argument that employers should be granted "greater latitude in addressing non-English speaking workers," instead finding that such statements "deserve careful scrutiny." Id. Thus, an employer will be held responsible for misunderstandings that result from a misunderstood English language statement, even where the coercion takes the form of a mistranslation it unwittingly sanctioned. Id. at 2; see also *Cream of the Crop*, 300 NLRB 914, 917 (1990) (citations omitted). Likewise, where the employer fails to take reasonable steps to ensure that its antiunion message is accurately understood by its multilingual workforce, it engages in the very "brinksmanship" Justice Warren cautioned against, and should be held accountable for the results.

Evaluated under these standards, I find that Ettinger's comments violated the Act. In a speech peppered with outmoded, bookish phraseology, such as "deleterious impact" and "acrimony," critical portions of Ettinger's remarks were virtually ensured to be understood in only the most basic terms by those in attendance.[28] According to the General Counsel's witnesses, those basic terms were: (a) stop the rallies or you will lose work, and (b) stop bothering your coworkers about the Union or the police will be involved.[29] Lest they misunderstand the consequences of failing to 'fall in line,' Ettinger closed his remarks in far more understandable English, including telling them they were "lucky to have jobs" and were welcome to "apologize" to him. The coercive nature of his remarks was exacerbated by Ettinger's status at the Hotel, as well as by his body language and "intense" demeanor.

Based on the above, I find that a reasonable employee attending Ettinger's meetings, while perhaps confused by certain of his phrases, would have reasonably understood that the Hotel's highest level of management was fed up and angry with their union organizing and noisy protests and was telling them to stop. See *Lancaster Fairfield Comm. Hosp.*, 311 NLRB 401, 401 (1993) (directing employee to "discontinue this disruptive behavior immediately," in reference to employee complaining about working conditions, constitutes an unlawful threat of future reprisal for engaging in such conduct); *American Tool & Engineering Co.*, 257 NLRB 608, 608 (1981) (ordering employees to stop wearing union insignia and distributing union literature violates Section 8(a)(1)). I also find that a reasonable employee ordered by top management to cease pro-union conduct would reasonably feel his job security threatened when then informed that he was lucky to have a job, especially considering that Ettinger had earlier suggested that local union hotels were losing money and not able to keep people employed.[30]

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[28] As Ettinger apparently considered the subtlety of his message to require the use of such ornate language, surely it would have made sense to have his comments translated or at least confirmed that those gathered had understood him by taking questions after his presentation.

[29] Frankly, mentally "editing" out Ettinger's antiquated verbiage from his own admitted account of the meeting leaves me with very much the same impression.

[30] Put in this context, Ettinger's remarks – which did not refer to the assembled employees' skill level or the overall job market – effectively linked the employees' ability to remain "lucky" (i.e., employed) with their compliance with his directive that they cease their protected conduct. Cf. *Children's Services Int'l*, 347 NLRB 67 (2006).

Finally, I find that Ettinger's invitation to employees to "apologize" to him constitutes an unlawful solicitation that they disclose their Union sentiments. Having been informed that some employees had already complained to management about the Union, a reasonable employee would feel pressured by Ettinger's invitation to disclose her union sentiments, one way or the other. The Board has found such solicitations to violate the Act. See, e.g., *Barton Nelson, Inc.*, 318 NLRB 712, 712 (1995) (asking employees to make an "observable choice" regarding their union sentiments violates the Act); *Capitol Records, Inc.*, 232 NLRB 228, 228 (1977) (soliciting employees to disclose their sentiments regarding the union violates the Act).

D. The Handbilling Incident

The General Counsel alleges that, on August 11, Respondent, by Security Guard Andrew Smith, unlawfully threatened employees with discipline for distributing union literature near the lower lobby of the Hotel.

1. Factual Background

a. The layout of the lower lobby

The lower lobby acts a main entrance for the Hotel, but is not where guests regularly check in.[31] The lobby is accessed via a porte-cochère (i.e., covered driveway), which is not uncommon among hotel properties. What does make the lower lobby somewhat distinctive is its open-air design; it lacks a structural façade fronting the driveway. Instead, an individual entering the lobby from the driveway would cross over a red-painted curb and walk onto a tiled area containing several red-painted pillars accented by potted plants. (See GC Exh. 5, R. Exh. 3) Approximately two feet beyond those pillars, the flooring converts to wood, and tables and chairs are arranged, along with televisions, in a lounge seating area. I will refer to the tiled area containing the pillars abutting the driveway as the lobby's "entrance area."

Despite its open-air design, the lower lobby offers no overhead or beach views, but instead looks over the covered Hotel driveway and the hotel across the street. The lobby is open to the public as well as Hotel guests.[32] Other than the televisions, the Hotel does not provide entertainment in the lower lobby. The lobby contains a convenience store, as well as two restaurants, none of which are operated by the Hotel. Although guests may "take out" food from these establishments and eat it in the lobby seating area, the Hotel itself does not serve food to guests in the lower lobby. By contrast, Respondent's main, *upper* lobby area – where guests regularly check in – contains a swimming pool and deck and a large restaurant run by the Hotel.

[31] While large groups may check in at the lower lobby, this is relatively uncommon, and no such group was present on August 11.

[32] There was limited testimony from Hotel security guard Andrew Smith that only Hotel guests – not members of the public – were permitted to actually *sit* in the lobby seating area. I found that his testimony lacked foundation, in that he merely claimed to inform anyone he *identified* as a non-guest that the seating was for Hotel guests only. (Tr. 115–16)

As of August 11, Respondent also hosted "breakfast on the beach" events where it served food to guests in its upper lobby.[33]

Certain Hotel employees perform work in the lower lobby, including the entrance area. From a bell and valet stand situated far to one side of the entrance area, Hotel employees provide concierge services and are dispatched to handle luggage and valet park vehicles. A "doorman" or "greeter" is also assigned to this operation; this employee greets guests and directs them to the Hotel's registration area on the floor above. A housekeeper lobby attendant is also assigned to the lower lobby and regularly empties trash bins in the entrance area. There was some evidence that maintenance employees sometimes work on repairs in the lower lobby, but are not regularly assigned there. Security guards employed by a third-party contractor routinely patrol the lower lobby.

b. The events of August 10

On August 10, Webster learned that Jonathan Ching (Ching), a Guest Service Agent at the Hotel, was planning to pass out pro-Union fliers in the lower lobby the next day. Along with DeMello and Front Services Manager Makana Kaanoi (Kaanoi), Webster met with Andrew Smith (Smith), who leads the Hotel's outside-contracted security team. Webster and DeMello instructed Smith to order Ching to leave the Hotel property and additionally warn him that he would be "trespassed" if he refused to leave. "Trespassing" means barring an unwanted person from the Hotel property for a year with the threat that, should they return within that year, they would risk arrest. Witnesses agreed that, prior to August 10, no Hotel employee had ever been "trespassed." Webster then instructed Smith that, should Ching fail to comply, he should in fact, be "trespassed." (Tr. 50) I credit Smith's testimony regarding this meeting; his recollection was concise, and his demeanor was businesslike and matter-of-fact.

The following day, shortly after 7 a.m., Ching and another Hotel employee, Lakai Wolfgramm (Wolfgramm), each of whom were off duty, stationed themselves in the lobby's entrance area, each in front of a red pillar, and prepared to hand out flyers on behalf of the Union. Approximately three minutes later, Smith approached with another security guard and Front Office Manager Adam Miyasato (Miyasato), who supervises Ching and Wolfgramm. Smith told Ching he was being given a "verbal warning to stop passing out flyers in the lower lobby" and "you're not allowed to pass out pamphlets on property." He then told Ching that, if they refused to leave, they would be "trespassed." As Wolfgramm approached and joined the conversation, Ching insisted that they had the right to remain, to which Smith responded, "it doesn't matter. You guys can't be here. I'm going to ask you guys to leave." (Tr. 52–53, 106, 160)

Ching then addressed Miyasato, asking whether there was someone to direct him "other than an outside contractor." Miyasato gestured towards Smith and stated, "he'll do." Smith confirmed this, telling Ching, "I represent management and [] I speak on their behalf." Miyasato

[33] Ettinger testified that this event was held in the upper lobby; later, DeMello testified that, due to a lack of space, guests would "oftentimes" bring their breakfast meal down to the lower lobby and eat it in the lobby seating area. Frankly, I found this portion of DeMello's testimony less than convincing; it was apparent that he was quite focused on "selling" the open-air experience of the lower lobby.

remained silent. Smith again told Ching he would "trespass" him unless he refused to stop handbilling and left the property (which they did). (Id. at 72–74) Again, I credit Smith's version of events, as corroborated by Ching and Wolfgramm. Miyasato did not testify.

2. Analysis

a. Ching and Wolfgramm's conduct on August 11

It is well settled that, absent special circumstances, the Act guarantees employees the right to distribute union literature on their employer's premises during nonwork time in nonwork areas. *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 803–04 (1945). Here, there is no contention (and no evidence) that either Ching or Wolfgramm made any effort to impede ingress or egress of persons to or from the Hotel property, interfere with other employees performing their jobs or engage in any other conduct that would justify Smith's intervention for the purpose of maintaining security or discipline. Thus, Ching and Wolfgramm's attempt to handbill Hotel customers in furtherance of the Union's organizing effort, assuming it was carried out in a nonwork area, constituted protected activity.

b. Smith's agency status

The next issue is whether Smith acted as Respondent's agent. An employer may be held liable for unfair labor practices committed by security guards acting in their official capacity. *Saint Johns Health Center*, 357 NLRB 2078, 2096 (2011) (security guards acting under direct authority from upper management violated Section 8(a)(1) by threatening to have employees charged with trespassing for distributing pro-union literature) (citing *Opryland Hotel*, 323 NLRB 723 fn. 3 (1997); *Bakersfield Mem. Hosp.*, 315 NLRB 596 (1994); *Southern Maryland Hospital Center*, 293 NLRB 1209 (1989)). Here, the evidence establishes that DeMello and Webster explicitly delegated to Smith the authority to warn Ching that his handbilling would be handled as a trespass if he did not cease and leave the Hotel property. *Poly-America, Inc.*, 328 NLRB 667, 667–68 (1999) (security guards act as employer's agents where they act under employer's specific instructions in ejecting unwanted persons from its property).

Moreover, Smith's authority was confirmed by Miyasato, who, when asked whether there was a member of management in charge of the situation, told Ching that Smith would be sufficient to serve in that role. Based on this, a reasonable employee would understand that Smith was speaking and acting for Respondent; I therefore find that he had apparent authority to speak on behalf of Respondent on this occasion. See *Perdue Farms, Inc.*, 323 NLRB 345, 351 (1997) (security guards placed in a position to stop individuals from entering premises are cloaked with apparent authority); see also *Waterbed World*, 286 NLRB 425, 426–27 (1987) (test for apparent authority is, whether, under all the circumstances, the employees "would reasonably believe that the employee in question [the alleged agent] was reflecting company policy and speaking and acting for management"). I therefore find that Smith acted as Respondent's Section 2(13) agent.

c. Smith's alleged threat

I next examine whether Smith's words would reasonably tend to unlawfully coerce employees in Ching and Wolfgramm's position. Because Smith did not explicitly threaten to have them arrested and because no Hotel employee had previously been "trespassed," the potential repercussions to Ching and Wolfgramm for disobeying his directive were not clear. However, because Smith (as instructed) specifically invoked the "trespass" procedure – which was known to involve an automatic one-year penalty from the Hotel – I find that a reasonable employee would assume that some level of discipline or reprisal was at stake. In any event, Smith's statements also amounted to an *order* that the employees cease their handbilling conduct or face unspecified consequences. As such, if their activity was protected, this directive constituted an unlawful threat of future unspecified reprisals. See *Lancaster Fairfield Comm. Hosp.*, 311 NLRB 401, 401 (1993) (directing employees to cease engaging in protected conduct constitutes a threat of future unspecified reprisals for engaging in such activity); see also *Casino Pauma*, 363 NLRB No. 60, slip op. at 9 (2015) (order that employees cease lawful handbilling constitutes unlawful interference with protected activity in violation of 8(a)(1)).

d. The entrance area as a work vs. nonwork area

Whether Ching and Wolfgramm's conduct on August 11 was protected turns, of course, on whether it was conducted in a work or nonwork area of the Hotel. The Board law is clear that activities such as security, maintenance and valet parking, which typically occur in a hotel lobby, are incidental to a hotel's primary function, and thus insufficient to transform a hotel's front entrance area into a "work area" where an employer may lawfully ban employee distributions. *Casino Pauma*, supra; *Remington Lodging & Hospitality, LLC (Sheraton Anchorage)*, 363 NLRB No. 6 (2015); *Remington Lodging & Hospitality, LLC (Sheraton Anchorage)*, 362 NLRB No. 123 (2013); *Santa Fe Hotel, Inc.*, 331 NLRB 723 (2000). Respondent argues that, due to the lower lobby's open-air design, the refusal to allow Ching and Wolfgramm distribute handbills on August 11 should not be judged by this standard. Specifically, according to Respondent, the Hotel operation's primary function differs from that of a traditional hotel or casino hotel in that it includes providing "outdoor lounging and food and beverage services to its guests"; the lower lobby, Respondent asserts, is "essential" to this function, in that it provides a setting for guests to enjoy food as well as a tropical, outdoor lounging experience. (R. Br. at 37, 40)[34] Furthermore, Respondent argues that, unlike the handbillers in prior cases, Ching and Wolfgramm were not positioned "outside" a hotel entrance, but rather stood "inside" the Hotel; that is, beyond the red curb line.

I disagree with Respondent that the Board's prior hotel handbilling cases are inapplicable here. As a preliminary matter, I am not convinced that the lower lobby is significantly different from any other hotel lobby where departing guests wait with their luggage for the next stage of

[34] In this regard, Respondent has moved for administrative notice of certain facts, including the temperatures in Anchorage and Honolulu on the days handbilling occurred in this and the prior cases. (See R. Exh. 20) As neither the Board decisions nor the underlying administrative law judge decisions in the *Sheraton Anchorage* cases considered Anchorage's weather in finding that certain handbilling took place in a nonwork area, my taking notice of such facts would be inappropriate. Respondent's Motion to Take Administrative Notice, which additionally requests that I take notice of an unauthenticated photograph of the Sheraton Anchorage hotel, is hereby denied.

their travel. While Respondent's guests may enjoy the local climate while they wait, the lobby itself does not provide ocean or sky views, and the record evidence demonstrates that most of the waiting guests are either watching television, napping or engaging with their smartphones. Moreover, unlike the lobby area considered by the Division of Advice in *Hyatt Hotels Corp d/b/a Hyatt Regency Century*, Case 31-CA-088555, Advice Memorandum dated April 11, 2013, the Hotel operates no bar or restaurant in the lower lobby and provides no regular live entertainment there.[35] Under these circumstances, I cannot find that the maintenance of an open-air lobby that allows Hotel guests (along with the general public) to enjoy the agreeable local climate itself renders that space integral to Respondent's provision of lodging and guest services.

I also decline to find that Ching and Wolfgramm lost the Act's protection based on where they stood when Smith confronted them. As a preliminary matter, an area does not gain "nonwork" status based solely on its physical location but rather on the activity that is conducted there.[36] The photographic and testimonial evidence indicates that Ching and Wolfgramm stood in the entry area in front of large pillars and plants, which form the only physical barrier of any kind between the driveway and the lounge area. But for the lack of a structural façade, they were positioned similarly to the employees in the Board's prior hotel handbilling cases, and, as in those cases, in an area where the only operations carried out are incidental to the Hotel's main function.[37]

For the above reasons, I find that the entrance area, as I have defined it above, constitutes a nonwork area of the Hotel, and therefore find that Respondent, by Smith, unlawfully threatened Ching and Wolfgramm with unspecified reprisals if they handbilled there. Finally, I would note that, even were the area where Ching and Wolfgramm stood found to be a working area, Smith's order would be unlawful, in that – based on his explicit instructions from Hotel management – he threatened to "trespass" them if they did not leave the Hotel property, not just the lower lobby. As such, to the extent that his order acted to ban the employees from handbilling anywhere on Respondent's property, it was unlawful regardless of where they stood when Smith issued it.

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[35] In any event, an Advice Memorandum does not constitute Board law and has no binding effect on me. I therefore decline to give it any significant weight. See *Glendale Associates, Ltd.*, 335 NLRB 27, 33–34 (2001) (citations omitted).

[36] For this reason, I reject as irrelevant Respondent's claim that the employees stood "inside" the Hotel's "entrance" as demarcated by the red-painted curb line. (R. Br. at 35)

[37] Respondent's suggestion that it may declare its lobby a work area because it allows handbilling in alternative non-work areas misreads the Board law; where employee access is at issue, the employer's provision of alternative access is not a defense. See *Mazzara Trucking & Excavating Corp.*, 362 NLRB No. 79, slip op. at 4 (2015) (discussing differing standards governing lawful restrictions on employee versus nonemployee access for purposes of organizing).

CONCLUSIONS OF LAW

1. Respondent Aqua-Aston Hospitality, LLC d/b/a Aston Waikiki Beach Hotel and Hotel Renew is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. By issuing employees Edgardo Guzman and Santos "Sonny" Ragunjan written discipline for engaging in union and/or protected activity, Respondent has violated Section 8(a)(3) and (1) of the Act.

3. By the following acts and conduct, Respondent has violated Section 8(a)(1) of the Act:

(a) threatening employees with discharge for engaging in union and/or protected activity;
(b) ordering employees to cease engaging in union and/or protected activity; and
(c) soliciting employees to disclose their union sympathies.

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

REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[38]

ORDER

Respondent, Aqua-Aston Hospitality, LLC d/b/a Aston Waikiki Beach Hotel and Hotel Renew, its officers, agents, successors and assigns, shall

1. Cease and desist from:

(a) Disciplining employees because they engaged in union and/or protected activity;

(b) Ordering employees to cease engaging in union and/or protected activity;

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

(c) Threatening employees with discharge for engaging in union and/or protected activity;

(d) Soliciting employees to disclose their union sympathies; or

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

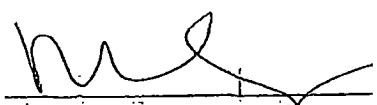
(a) Within 14 days from the date of this Order, remove from its files any reference to its unlawful discipline of Edgardo Guzman and Santos ("Sonny") Ragunjan, and within 3 days thereafter notify each of them in writing that this has been done and that this discipline will not be used against him in any way.

(b) Within 14 days after service by the Region, post at its facility in Honolulu, Hawaii copies of the attached notice marked "Appendix" in English, Ilocano and Tagalog.[39] Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by Respondent's authorized representative, shall be posted by Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 19, 2015.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 20 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

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

Dated: Washington, D.C. May 31, 2016



Mara-Louise Anzalone
Administrative Law Judge

[39] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefits and protection
Choose not to engage in any of these protected activities

WE WILL NOT do anything that interferes with these rights. Specifically:

WE WILL NOT discipline you for discussing UNITE HERE! Local 5 (the Union) with your coworkers, including asking them to take pictures for the Union and/or to sign authorization cards for the Union.

WE WILL NOT threaten you with unspecified reprisals for concertedly handbilling at the entrance to the Aston Waikiki Beach Hotel lower lobby or any other nonwork area at the Aston Waikiki Beach Hotel or Hotel Renew (the Hotel properties) seeking to publicize the Union's organizing campaign at the Hotel properties.

WE WILL NOT order you not to engage in rallies in support of the Union.

WE WILL NOT order you not to visit your coworkers' homes to discuss the Union.

WE WILL NOT threaten you with discharge by telling you that you are lucky to have jobs.

WE WILL NOT ask you to disclose your feelings about the Union by inviting you to "apologize" for engaging in conduct in support of the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, within 14 days of this Order, remove from our files any reference to the unlawful written warnings issued to Edgardo Guzman and Santos "Sonny" Ragunjan, and **WE WILL,** within 3 days thereafter, inform each of them in writing that this has been done and that those written warnings will not be used against them in any way.

AQUA-ASTON HOSPITALITY, LLC d/b/a ASTON WAIKIKI BEACH HOTEL and HOTEL RENEW

(Employer)

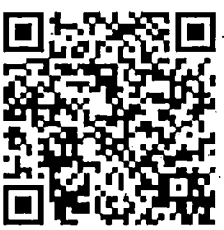
Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

NLRB Region 20
901 Market Street, Suite 400
San Francisco, CA 94103
Hours: 8:30 a.m. to 5 p.m.
415-356-5130

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/20-CA-154749 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 415-356-5130

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

AQUA-ASTON HOSPITALITY, LLC f/k/a ASTON HOTELS AND RESORTS, LLC d/b/a ASTON WAIKIKI BEACH HOTEL and HOTEL RENEW

and **Cases 20-CA-145717**
20-CA-145720
20-CA-145725
20-CA-146582
20-CA-146583
20-CA-148013

UNITE HERE! LOCAL 5

ORDER CONSOLIDATING CASES AND CONSOLIDATED COMPLAINT BASED ON BREACH OF CEASE AND DESIST PROVISIONS OF SETTLEMENT AGREEMENT

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, IT IS ORDERED THAT Cases 20-CA-145717, 20-CA-145720, 20-CA-145725, 20-CA-146582, 20-CA-146583, and 20-CA-148013, which are all based on charges filed by UNITE HERE! Local 5 (Charging Party or Union) against Aston Hotels and Resorts, LLC n/k/a Aqua-Aston Hospitality, LLC d/b/a Aston Waikiki Beach Hotel and Hotel Renew (Respondent), are consolidated.

Based upon these charges alleging that Respondent violated the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., by engaging in unfair labor practices, on April 29, 2015, a Settlement Agreement and Notice to Employees was approved (the Settlement), a copy of which is attached as Appendix A, and pursuant to which Respondent agreed to take certain actions to remedy the unfair labor practices specified in the Settlement and to cease and desist engaging in certain unfair labor practices. Respondent has failed to comply with the terms of the Settlement.

EXHIBIT 12

Accordingly, pursuant to the terms of the Settlement and Section 10(b) of the Act and Section 102.15 of the Rules and Regulations of the Board, the following Order Consolidating Cases and Consolidated Complaint Based on Breach of Cease and Desist Provisions of Settlement Agreement (Consolidated Complaint) is issued, and alleges Respondent has violated the Act as described below.

1. (a) The charge in 20-CA-145717 was filed by the Charging Party on February 3, 2015, and a copy was served on Respondent by regular mail on February 4, 2015.

(b) The charge in 20-CA-145720 was filed by the Charging Party on February 3, 2015, and a copy was served on Respondent by regular mail on February 4, 2015.

(c) The charge in 20-CA-145725 was filed by the Charging Party on February 3, 2015, and a copy was served on Respondent by regular mail on February 4, 2015.

(d) The charge in 20-CA-146582 was filed by the Charging Party on February 18, 2015, and a copy was served on Respondent by regular mail on February 18, 2015.

(e) The charge in 20-CA-146583 was filed by the Charging Party on February 18, 2015, and a copy was served on Respondent by regular mail on February 18, 2015.

(f) The charge in 20-CA-148013 was filed by the Charging Party on March 11, 2015, and a copy was served on Respondent by regular mail on March 12, 2015.

2. At all material times, Respondent has been a limited liability company with an office and place of business in Honolulu, Hawaii, and has been operating hotels providing food and lodging, including the Aston Waikiki Beach Hotel and Hotel Renew.

3. (a) In conducting its operations during the 12-month period ending May 31, 2016, Respondent derived gross revenues in excess of $500,000.

(b) During the period of time described above in subparagraph 3(a), Respondent purchased and received at its Honolulu, Hawaii facilities products, goods, and materials valued in excess of $5,000 directly from points outside the State of Hawaii.

4. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

5. At all material times, UNITE HERE! Local 5 has been a labor organization within the meaning of Section 2(5) of the Act.

6. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent with the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Marissa Cacacho	Executive Housekeeper
Mark DeMello	General Manager
Liane Kelly	Senior Vice President and Associate General Counsel
Inocencio Llamas	Housekeeping Supervisor
Lillian Mesiona	Front Office Supervisor
Connie Quibilan	Housekeeping Supervisor
Elvira Rivera	Housekeeping Supervisor

7. At all material times, Andrew Smith has been a security site supervisor, security guard, and an agent of Respondent within the meaning of Section 2(13) of the Act.

8. (a) About February 3, 2015, Respondent, by Andrew Smith, engaged in surveillance of its employees engaged in union and protected concerted activities on the sidewalk outside the Aston Waikiki Beach Hotel.

(b) About February 3, 2015, Respondent, by Lillian Mesiona, engaged in surveillance of its employees engaged in union and protected concerted activities on the sidewalk outside the Aston Waikiki Beach Hotel.

(c) About February 3, 2015, Respondent, by Elvira Rivera, engaged in surveillance of its employees engaged in union and protected concerted activities on the sidewalk outside the Aston Waikiki Beach Hotel.

9. (a) About February 3, 2015, Respondent, by Inocencio Llamas, interrogated its employees in the Hotel Renew's lunchroom about their union membership, activities, and sympathies.

(b) About February 3, 2015, Respondent, by Inocencio Llamas, interrogated its employees in Inocencio Llamas' office at the Hotel Renew about their union membership, activities, and sympathies.

(c) About February 3, 2015, Respondent, by Marissa Cacacho and Elvira Rivera, interrogated its employees in Marissa Cacacho's office at the Aston Waikiki Beach Hotel about their union membership, activities, and sympathies and the union membership, activities, and sympathies of other employees.

(d) About February 22, 2015, Respondent, by Elvira Rivera, interrogated its employees in a guest room at the Hotel Renew about their union membership, activities, and sympathies.

10. About February 14, 2015, Respondent, by Inocencio Llamas and Connie Quibilan, in the housekeeping department at the Aston Waikiki Beach Hotel, directed its employees to remove and/or not to wear union insignia.

11. (a) About February 19, 2015, Respondent, by Elvira Rivera, in the housekeeping department at the Aston Waikiki Beach Hotel, solicited employee signatures on a petition withdrawing support from the Union.

(b) About February 21, 2015, Respondent, by Elvira Rivera, in a guest room in the Aston Waikiki Beach Hotel, solicited employee signatures on a petition withdrawing support from the Union.

(c) About February 22, 2015, Respondent, by Elvira Rivera, in the housekeeping department at the Aston Waikiki Beach Hotel, solicited employee signatures on a petition withdrawing support from the Union.

12. (a) About February 21, 2015, Respondent, by Elvira Rivera, in a guest room in the Aston Waikiki Beach Hotel, threatened employees with adverse employment consequences and/or unspecified reprisals if employees did not sign a petition to withdraw support from the Union.

(b) About February 22, 2015, Respondent, by Elvira Rivera, in the housekeeping department at the Aston Waikiki Beach Hotel, threatened employees with adverse employment consequences and/or unspecified reprisals if employees did not sign a petition to withdraw support from the Union.

13. About March 7, 2015, Respondent, by Andrew Smith, in the lower lobby/porte-cochere area of the Aston Waikiki Beach Hotel, impliedly threatened its off-duty employees, including Jonathan Ching, with discipline, discharge, and/or unspecified reprisals by threatening to issue trespass notices to them for engaging in protected concerted handbilling in a nonwork area.

14. By the conduct described above in paragraphs 8, 9, 10, 11, 12, and 13, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

15. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

NO HEARING OR ANSWER

Because Respondent has previously agreed that all of the allegations of the Consolidated Complaint will be deemed admitted and that it will have waived its right to file an Answer to the Consolidated Complaint, no Answer is required and no hearing is necessary.

Dated at Honolulu, Hawaii, this 16th day of June, 2016

JOSEPH F. FRANKL
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 20, BY

DALE K. YASHIKI
OFFICER-IN-CHARGE
NATIONAL LABOR RELATIONS BOARD
SUBREGION 37
300 Ala Moana Boulevard, Rm. 7-245
P.O. Box 50208
Honolulu, Hawaii 96850

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
SETTLEMENT AGREEMENT

IN THE MATTER OF

Aston Hotels & Resorts, LLC d/b/a Aston Waikiki Beach Hotel and Hotel Renew	**Cases 20-CA-145717** **20-CA-145720** **20-CA-145725** **20-CA-145772** **20-CA-146582** **20-CA-146583** **20-CA-148013** **20-CA-149639**

Subject to the approval of the Regional Director for the National Labor Relations Board, the Charged Party and the Charging Party **HEREBY AGREE TO SETTLE THE ABOVE MATTER AS FOLLOWS**:

POSTING OF NOTICE — After the Regional Director has approved this Agreement, the Regional Office will send copies of the approved Notice to the Charged Party in English and in additional languages if the Regional Director decides that it is appropriate to do so. A responsible official of the Charged Party will then sign and date those Notices and immediately post them in prominent places around both its facilities located at 2570 Kalakaua Avenue, Honolulu, Hawaii 96815 and 129 Paoakalani Avenue, Honolulu, Hawaii 96815, including all places where the Charged Party normally posts notices to employees. The Charged Party will keep all Notices posted for 60 consecutive days after the initial posting.

COMPLIANCE WITH NOTICE — The Charged Party will comply with all the terms and provisions of said Notice.

NON-ADMISSION CLAUSE – By entering into this Settlement Agreement, the Charged Party does not admit that it has violated the National Labor Relations Act.

SCOPE OF THE AGREEMENT — This Agreement settles only the allegations in the above-captioned case(s), including all allegations covered by the attached Notice to Employees made part of this agreement, and does not settle any other case(s) or matters. It does not prevent persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters that happened before this Agreement was approved regardless of whether General Counsel knew of those matters or could have easily found them out. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned case(s) for any relevant purpose in the litigation of this or any other case(s), and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to said evidence.

PARTIES TO THE AGREEMENT — If the Charging Party fails or refuses to become a party to this Agreement and the Regional Director determines that it will promote the policies of the National Labor Relations Act, the Regional Director may approve the settlement agreement and decline to issue or reissue a Complaint in this matter. If that occurs, this Agreement shall be between the Charged Party and the undersigned Regional Director. In that case, a Charging Party may request review of the decision to approve the Agreement. If the General Counsel does not sustain the Regional Director's approval, this Agreement shall be null and void.

AUTHORIZATION TO PROVIDE COMPLIANCE INFORMATION AND NOTICES DIRECTLY TO CHARGED PARTY — Counsel for the Charged Party authorizes the Regional Office to forward the cover letter describing the general expectations and instructions to achieve compliance, a conformed settlement, original

Appendix A

notices and a certification of posting directly to the Charged Party. If such authorization is granted, Counsel will be simultaneously served with a courtesy copy of these documents.

Yes _____ No /s/ RSK
Initials Initials

PERFORMANCE — Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of notice that no review has been requested or that the General Counsel has sustained the Regional Director.

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue a Complaint that includes the allegations covered by the Notice to Employees, as identified above in the Scope of Agreement section, as well as filing and service of the charge(s), commerce facts necessary to establish Board jurisdiction, labor organization status, appropriate bargaining unit (if applicable), and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices. Thereafter, the General Counsel may file a Motion for Default Judgment with the Board on the allegations of the Complaint. The Charged Party understands and agrees that all of the allegations of the Complaint will be deemed admitted and that it will have waived its right to file an Answer to such Complaint. The only issue that the Charged Party may raise before the Board will be whether it defaulted on the terms of this Settlement Agreement. The General Counsel may seek, and the Board may impose, a full remedy for each unfair labor practice identified in the Notice to Employees. The Board may then, without necessity of trial or any other proceeding, find all allegations of the Complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an Order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board Order ex parte, after service or attempted service upon Charged Party at the last address provided to the General Counsel.

Enforcement of this provision of the Agreement shall be limited to only the Aston Waikiki Beach Hotel, 2570 Kalakaua Avenue, Honolulu, Hawaii 96815, and Hotel Renew, 129 Paoakalani Avenue, Honolulu, Hawaii 96815.

Notwithstanding the provisions of this paragraph, no default shall be asserted based on this paragraph after six (6) months from the date of the Regional Director's approval of the Settlement Agreement assuming that the Charging Party has entered into the Agreement. If the Charging Party does not enter into this Agreement, no default shall be asserted based on this paragraph after six (6) months from either: (1) the deadline for the Charging Party to appeal the Regional Director's approval of the Settlement Agreement has lapsed and no appeal has been filed, or (2) the date the General Counsel sustains the Regional Director's approval of this agreement following an appeal by the Charging Party.

NOTIFICATION OF COMPLIANCE — Each party to this Agreement will notify the Regional Director in writing what steps the Charged Party has taken to comply with the Agreement. This notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. If the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that the Charging Party did not request review or that the General Counsel sustained the Regional Director's approval of this agreement. No further action shall be taken in the above captioned case(s) provided that the Charged Party complies with the terms and conditions of this Settlement Agreement and Notice.

Charged Party **Aston Hotels & Resorts, LLC d/b/a Aston Waikiki Beach Hotel and Hotel Renew**		**Charging Party** **UNITE HERE! Local 5**	
By: Name and Title /s/ Robert S. Katz Attorney	Date 4/29/2015	By: Name and Title /s/ Jennifer Cynn In House Counsel	Date 4/29/2015
Recommended By: /s/ Trent K. Kakuda Trent K. Kakuda, Field Attorney	Date 4/29/2015	Approved By: /s/ Joseph F. Frankl Regional Director, Region 20	Date 4/29/2015

(To be printed and posted on official Board notice form)

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT interrogate you about your union membership, activities, and sympathies, and **WE WILL NOT** place you under surveillance while you engage in union or other protected concerted activities.

WE WILL NOT unlawfully direct you to remove union buttons from your uniforms.

WE WILL NOT encourage or solicit you to sign any documents withdrawing support from a union.

WE WILL NOT threaten you with adverse job consequences if you engage in union or other protected concerted activities.

WE WILL NOT impliedly threaten to discipline or terminate off-duty employees for engaging in activities protected by Section 7 of the Act in nonwork areas of our premises.

WE WILL NOT promulgate and maintain: (1) an overly broad "Computer Use Policy" that unlawfully interferes with your use of our email system for Section 7 activities; (2) an overly broad provision in our "Non-Interference and Confidentiality Agreement" that you would reasonably construe to interfere with your right to engage in a boycott or other public demonstration in support of a labor dispute; and (3) overly broad rules in our employee handbook that: (a) bar you from our entire premises 30 minutes before your shift or requires you to leave within 30 minutes after your shift, enforced by a property pass rule; (b) forbid you from "[l]oitering or unauthorized presence while on the job or anywhere on Hotel premises"; (c) prohibit you from discussing or otherwise disclosing information regarding wages, benefits, and other terms and conditions of employment; (d) prohibit or restrict, in an unlawful manner, your wearing of union buttons; (e) forbid solicitation or distribution of materials during nonworking time in "areas open to the public" without exception; and (f) prohibit "[d]iscourtesy in any form or disrespect to employees"

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind the overly broad employee handbook rules referenced above, overly broad "Computer Use Policy," and overly broad provision of our "Non-Interference and Confidentiality Agreement," and **WE WILL** either (1) furnish all of you with inserts for the current edition of the employee handbook, "Computer Use Policy," and "Non-Interference and Confidentiality Agreement" that (a) advise that the unlawful provisions, above, have been

rescinded, or (b) provide the language of lawful provisions; or (2) publish and distribute to all current employees a revised employee handbook containing a revised "Computer Use Policy," and a "Non-Interference and Confidentiality Agreement" that (a) do not contain the unlawful provisions, or (b) provides the language of lawful provisions.

Aston Hotels & Resorts, LLC d/b/a Aston Waikiki Beach Hotel and Hotel Renew
(Employer)

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

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-866-667-NLRB (1-866-667-6572). Hearing impaired persons may contact the Agency's TTY service at 1-866-315-NLRB. You may also obtain information from the Board's website: www.nlrb.gov.

300 Ala Moana Boulevard, Rm. 7-245
Honolulu, Hawaii 96850

Telephone: (808) 541-2814
Hours of Operation: 8 a.m. to 4:30 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer.

(To be printed and posted on official Board notice form)

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT do anything that interferes with these rights. Specifically:

WE WILL NOT discipline you for discussing UNITE HERE! Local 5 (the Union) with your coworkers, including asking them to take pictures for the Union and/or to sign authorization cards for the Union.

WE WILL NOT threaten you with unspecified reprisals for concertedly handbilling at the entrance to the Aston Waikiki Beach Hotel lower lobby or any other nonwork area at the Aston Waikiki Beach Hotel or Hotel Renew (the Hotel properties) seeking to publicize the Union's organizing campaign at the Hotel properties.

WE WILL NOT order you not to engage in rallies in support of the Union.

WE WILL NOT order you not to visit your coworkers' homes to discuss the Union.

WE WILL NOT threaten you with discharge by telling you that you are lucky to have jobs.

WE WILL NOT ask you to disclose your feelings about the Union by inviting you to "apologize" for engaging in conduct in support of the Union.

WE WILL NOT interrogate you about your union membership, activities, and sympathies or the union membership, activities, and sympathies of your fellow employees.

WE WILL NOT place you under surveillance while you engage in union or other protected concerted activities.

WE WILL NOT direct you to remove union buttons from your uniforms or other work clothing.

WE WILL NOT encourage or solicit you to sign any documents withdrawing support from the Union.

WE WILL NOT threaten you with adverse employment consequences or unspecified reprisals if you engage in union or other protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

EXHIBIT 13

WE WILL, within 14 days of this Order, remove from our files any reference to the unlawful written warnings issued to Edgardo Guzman and Santos "Sonny" Ragunjan, and **WE WILL**, within 3 days thereafter, inform each of them in writing that this has been done and that those written warnings will not be used against them in any way.

AQUA-ASTON HOSPITALITY, LLC f/k/a ASTON HOTELS AND RESORTS, LLC d/b/a ASTON WAIKIKI BEACH HOTEL and HOTEL RENEW
(Employer)

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

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-866-667-NLRB (1-866-667-6572). Hearing impaired persons may contact the Agency's TTY service at 1-866-315-NLRB. You may also obtain information from the Board's website: www.nlrb.gov.

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This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer.

The National Labor Relations Board orders that Respondent Aqua-Aston Hospitality, LLC f/k/a Aston Hotels and Resorts, LLC d/b/a Aston Waikiki Beach Hotel and Hotel Renew, its officers, agents, successors, and assigns, shall

1. Cease and desist from:
   (a) Disciplining employees because they engaged in union and/or protected activity;
   (b) Ordering employees to cease engaging in union and/or protected activity;
   (c) Threatening employees with discharge for engaging in union and/or protected activity;
   (d) Soliciting employees to disclose their union sympathies;
   (e) Interrogating employees about their union membership, activities, and sympathies or the union membership, activities, and sympathies of fellow employees;
   (f) Placing employees under surveillance while they engage in union or other protected concerted activities;
   (g) Directing employees to remove union buttons from their uniforms or other work clothing;
   (h) Encouraging or soliciting employees to sign a petition withdrawing support from a union;
   (i) Threatening employees with adverse employment consequences or unspecified reprisals for engaging in union or other protected concerted activities;
   (j) Threatening or impliedly threatening off-duty employees with adverse employment consequences or unspecified reprisals for handbilling in nonwork areas.
   (k) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.
   (a) Within 14 days from the date of this Order, remove from its files any reference to its unlawful discipline of Edgardo Guzman and Santos ("Sonny") Ragunjan, and within 3 days thereafter notify each of them in writing that this has been done and that this discipline will not be used against him in any way.
   (b) Within 14 days after service by the Region, post at its facility in Honolulu, Hawaii copies of the attached notice marked "Appendix" in English, Ilocano and Tagalog.[1] Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by Respondent's authorized representative, shall be posted by Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed

[1] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

EXHIBIT 14

electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 3, 2015.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 20 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.