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9 **IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

10 **CORNELE A. OVERSTREET,**
11 **Regional Director of the Twenty-Eighth**
12 **Region of the National Labor Relations**
13 **Board, for and on behalf of the**
National Labor Relations Board,

14 **Petitioner,**

15 **v.**

16 **OMNI HOTELS MANAGEMENT**
17 **CORPORATION, d/b/a OMNI**
18 **SCOTTSDALE RESORT & SPA AT**
MONTELUCCIA,

19 **Respondent.**

) **Case No.**

) **PETITION FOR TEMPORARY**
) **INJUNCTION UNDER SECTION 10(j)**
) **OF THE NATIONAL LABOR**
) **RELATIONS ACT, AS AMENDED**
) **[29 U.S.C. § 160(j)]**

) **(Oral argument requested)**

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21 Cornele A. Overstreet, Regional Director of Region 28 (Regional
22 Director) of the National Labor Relations Board (Board), petitions this Court, for and on
23 behalf of the Board, pursuant to Section 10(j) of the National Labor Relations Act, as
24 amended [29 U.S.C. § 160(j)] (the Act), for appropriate injunctive relief pending the
25 final disposition of the matters involved herein pending a decision by the Board, on a
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1 complaint issued by the General Counsel of the Board (General Counsel), alleging, inter
2 alia, that Omni Hotels Management Corp. d/b/a Omni Scottsdale Resort & Spa at
3 Montelucia (Respondent) has engaged in, and is engaging in, acts and conduct in
4 violation of Section 8(a)(1) and (3) of the Act [29 U.S.C. § 158(a)(1) and (3)]. In
5 support of this petition, Petitioner respectfully shows the following:
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7 1. Petitioner is the Regional Director of Region 28 of the Board, an agency
8 of the United States, and files this petition for and on behalf of the Board.

9 2. This Court has jurisdiction pursuant to Section 10(j) of the Act [29 U.S.C.
10 § 160(j)], which provides, inter alia, that the Board shall have the power, upon issuance
11 of a complaint charging that any person has engaged in unfair labor practices, to petition
12 this Court for appropriate temporary injunctive relief or a restraining order pending final
13 disposition of the matter by the Board.
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15 3. (a) On March 3, 2017, Aaron Michael Schneider, an Individual
16 (Schneider), filed a charge with the Board, in Board Case 28-CA-194262, alleging, inter
17 alia, that Respondent has engaged in, and is engaging in, unfair labor practices within
18 the meaning of Section 8(a)(1) and (3) of the Act [29 U.S.C. § 158(a)(1) and (3)]. PX
19 1.¹ .

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21 (c) On March 29, 2017, Schneider filed a first amended charge with
22 the Board, in Case 28-CA-194262, alleging, inter alia, that Respondent has engaged in,
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24 ¹ Petitioner has filed evidence in support of this Petition, contained within an Appendix
25 of Exhibits, which includes the affidavits and supplemental exhibits. References to the
26 Appendix of Exhibits will be designated as “PX” followed by the appropriate exhibit
number, and, as appropriate, the page and line number(s) of the respective exhibit.

1 and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) and (3)
2 of the Act [29 U.S.C. § 158(a)(1) and (3)]. PX 2.

3 4. (a) The aforesaid charges were referred to Petitioner as Regional
4 Director for Region 28 of the Board.

5 (b) Upon receipt of the charges described above in paragraph 3, and
6 after the investigation of the charges in which Respondent was given the opportunity to
7 present evidence and legal argument, the General Counsel, on behalf of the Board,
8 pursuant to Section 10(b) of the Act [29 U.S.C. § 160(b)], issued a Complaint and
9 Notice of Hearing on May 24, 2017 (Complaint), alleging that Respondent engaged in,
10 and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) and (3)
11 of the Act [29 U.S.C. § 158(a)(1) and (3)]. PX 5.

12 (c) On June 6, 2017, Respondent filed an Answer to the Complaint and
13 Notice of Hearing. PX 6.

14 (f) A hearing before an administrative law judge of the Board has been
15 scheduled to commence on July 18, 2017, in Phoenix, Arizona.

16 5. There is reasonable cause to believe that the allegations set forth in the
17 Complaint are true and Respondent has engaged in, and is engaging in, unfair labor
18 practices within the meaning of Section 8(a)(1) and (3) of the Act [29 U.S.C. §
19 158(a)(1) and (3)], which are affecting commerce within the meaning of Section 2(6)
20 and (7) of the Act [29 U.S.C. § 152 (6) and (7)], for which a remedy will be ordered by
21 the Board, but that the Board's order for such remedy will be frustrated without the
22 temporary injunctive relief sought herein. Petitioner asserts that there is a substantial
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1 likelihood of success in prevailing in the underlying administrative proceedings in Case
2 28-CA-194262, and establishing that Respondent has engaged in, and is engaging in,
3 unfair labor practices in violation of Section 8(a)(1) and (3) of the Act [29 U.S.C. §
4 158(a)(1) and (3)] by, inter alia, threatening employees with unspecified reprisals;
5 soliciting employees' grievances and thereby implying a promise of benefits in response
6 to union activity; explicitly promising employees benefits in response to union activity;
7 granting substantial benefits during a union organizing effort; and discriminatorily
8 enforcing previously unenforced work rules and disciplining, suspending, and
9 discharging the employee who initiated the union campaign because of his activities
10 protected under Section 7 of the Act [29 U.S.C. § 157], including his activities in
11 support of the Union. In support thereof, and of the request for temporary injunctive
12 relief, Petitioner, upon information and belief, shows the following:
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14
15 (a) (1) At all material times, Respondent has been a Delaware
16 corporation with an office and place of business in Paradise Valley, Arizona
17 (Respondent's facility), and has been operating a hotel and providing food and lodging.

18 (2) During the 12-month period ending March 6, 2017,
19 Respondent in conducting its operations described above in paragraph 2(a), purchased
20 and received at Respondent's facility goods valued in excess of \$50,000 directly from
21 points outside the State of Arizona.
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23 (3) In conducting its operations during the 12-month period
24 ending March 6, 2017, Respondent derived gross revenues in excess of \$500,000.
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1 (4) At all material times, Respondent has been an employer
2 engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act [29
3 U.S.C. § 152(2), (6), and (7)].

4 (b) At all material times, UNITEHERE Local 631 (the Union) has
5 been a labor organization within the meaning of Section 2(5) of the Act.
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7 (c) At all material times, the following individuals held the positions
8 set forth opposite their respective names and have been supervisors of Respondent
9 within the meaning of Section 2(11) of the Act [29 U.S.C. § 152(11)] and agents of
10 Respondent within the meaning of Section 2(13) of the Act [29 U.S.C. § 152(13)]:
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12	Frank Ashmore	-	General Manager
13	Kathleen Kelly	-	Human Resources Director
14	Daniel Piña	-	Rooms Division Manager
15	Paul Zamudio	-	Director of Guest Services
16	Isidro Barraza	-	Bell Captain

17 (d) (1) About January 23, 2017, Respondent, by Frank Ashmore
18 (Ashmore), at Respondent's facility:

19 (i) by stating that it was disappointed that its employees
20 felt they had to go to a Union, threatened its employees with unspecified reprisals for
21 engaging in union and protected concerted activities; and

22 (ii) by soliciting employee complaints and grievances,
23 promised its employees increased benefits and improved terms and conditions of
24 employment if they refrained from engaging in union and protected concerted activities.

25 (2) About February 2, 2017, Respondent granted its employees
26 benefits by revising its standard group sales contract to encourage and support its sales

1 team in negotiating a portage service charge from groups booking Respondent's
2 facility for events, in order to discourage its employees from engaging in union and
3 protected concerted activities.

4 (e) (1) About February 1, 2017, Respondent began enforcing a
5 previously unenforced policy requiring its employees to clock out for breaks and meal
6 periods.
7

8 (2) About February 1, 2017, Respondent verbally warned its
9 employee Schneider

10 (3) About February 20, 2017, Respondent suspended its
11 employee Schneider.

12 (4) About February 22, 2017, Respondent discharged its
13 employee Schneider.
14

15 (5) Respondent engaged in the conduct described above in
16 paragraphs 5(e)(1) through (4) because the named employee of Respondent assisted the
17 Union and engaged in concerted activities, and to discourage employees from engaging
18 in these activities.

19 (6) Respondent engaged in the conduct described above in
20 paragraphs 5(e)(2) through (4) pursuant to the policy described above in paragraph
21 (e)(1).
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23 6. By the conduct described above in paragraph 5(d), Respondent has been
24 interfering with, restraining, and coercing employees in the exercise of the rights
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1 guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act [29 U.S.C. §
2 158(a)(1)].

3 7. By the conduct described above in paragraph 5(e), the Respondent has
4 been discriminating in regard to the hire or tenure or terms or conditions of employment
5 of its employees, thereby discouraging membership in a labor organization in violation
6 of Section 8(a)(1) and (3) of the Act [29 U.S.C. § 158(a)(1) and (3)].

8 8. The unfair labor practices of Respondent described above affect
9 commerce within the meaning of Section 2(6) and (7) of the Act [29 U.S.C. § 152(6)
10 and (7)].

11 9. The unfair labor practices of Respondent described above have taken
12 place within this judicial district.

13 10. Upon information and belief, unless injunctive relief is immediately
14 obtained, it can fairly be anticipated that employees will permanently and irreversibly
15 lose the benefits of the Board's processes and the exercise of statutory rights for the
16 entire period required for the Board adjudication of this matter, a harm which cannot be
17 remedied in due course by the Board.

18 11. There is no adequate remedy at law for the irreparable harm being caused
19 by Respondent's unfair labor practices, as described above in paragraphs 5 through 7.
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21 13. Granting the temporary injunctive relief requested by Petitioner will cause
22 no undue hardship to Respondent.

23 14. In balancing the equities in this matter, if injunctive relief as requested is
24 not granted, the harm to the employees involved herein, to the public interest, and to the
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1 purposes of the Act, would clearly outweigh any harm that the grant of such injunctive
2 relief will work on Respondent.

3 15. Upon information and belief, it may fairly be anticipated that unless
4 Respondent's conduct of the unfair labor practices described above in paragraph 5 is
5 immediately enjoined and restrained, Respondent will continue to engage in those acts
6 and conduct, or similar acts and conduct constituting unfair labor practices, during the
7 proceedings before the Board and during any subsequent proceedings before a United
8 States Court of Appeals, with the predictable result of continued interference with the
9 rights of employees to engage in activities protected by Section 7 of the Act [29 U.S.C.
10 § 157], with the result that employees will be deprived of their rights under Section 7
11 the Act [29 U.S.C. § 157], inter alia, to form, join, or assist a labor organization or to
12 refrain from any and all such activities, and will be denied their statutory right to engage
13 in other concerted activities for the purpose of collective bargaining or other mutual aid
14 or protection, all to the detriment of the policies of the Act, the public interest, the
15 interest of the employees involved, and the interest of the Union.

16 16. Upon information and belief, to avoid the serious consequences set forth
17 above, it is essential, just, proper, and appropriate for the purposes of effectuating the
18 policies of the Act and the public interest, and to avoid substantial, irreparable, and
19 immediate injury to such policies and interest, and in accordance with the purposes of
20 Section 10(j) of the Act [29 U.S.C. § 160(j)] that, pending final disposition of the
21 matters now before the Board, Respondent be enjoined and restrained from committing
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1 the acts and conduct alleged above, similar acts and conduct, or repetitions thereof, and
2 also be ordered to take the affirmative action set forth below in paragraph 2.

3 WHEREFORE, Petitioner prays:

4 1. That the Court issue an order directing Respondent to appear
5 before this Court, at a time and place fixed by the Court, and show cause why an
6 injunction should not issue and, after consideration, issue an injunction directing,
7 enjoining, and restraining Respondent, its officers, agents, servants, representatives,
8 successors, and assigns, and all persons acting in concert or participation with them,
9 pending the final disposition of the matters herein now pending before the Board, to
10 cease and desist from:

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12 (a) threatening employees with reprisals for engaging in union and
13 protected concerted activities;

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15 (b) promising employees increased benefits and improved terms and
16 conditions of employment if they refrain from engaging in union and protected
17 concerted activities;

18 (c) granting employees benefits in order to discourage its employees
19 from engaging in union and protected concerted activities;

20 (d) enforcing previously unenforced policies in response to union and
21 protected concerted activities;

22 (e) disciplining employees because they join and assist the Union and
23 engage in concerted activities, and to discourage employees from engaging in these
24 activities;
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1 (f) suspending employees because they join and assist the Union and
2 engage in concerted activities, and to discourage employees from engaging in these
3 activities;

4 (g) discharging or otherwise discriminating against employees because
5 they join and assist the Union and engage in concerted activities, and to discourage
6 employees from engaging in these activities;

7 (h) in any other manner interfering with, restraining, or coercing
8 employees in the exercise of the rights guaranteed them under Section 7 of the National
9 Labor Relations Act [29 U.S.C. § 157].
10

11 2. That the Court require Respondent to take the following affirmative
12 actions:

13 (a) Within 5 days of this Order, offer Aaron Michael Schneider, in
14 writing, immediate reinstatement to his former job, or if that jobs no longer exists, to a
15 substantially equivalent position of employment, without prejudice to his seniority and
16 other rights and privileges previously enjoyed, displacing if necessary any workers hired
17 or transferred to replace him;

18 (b) Within 5 days of this Order, on an interim basis, remove from its
19 files, any and all records of the suspension and discharge of Aaron Michael Schneider,
20 and within 3 days thereafter, notify him in writing that this was done, and that the
21 suspension or discharge will not be used against him in any way;

22 (c) Within 5 days of this Order, post copies of this Order, as well as
23 translations of this Order provided by the Regional Director of the Board in languages
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1 other than English as necessary to ensure effective communication to Respondent's
2 employees, at Respondent's facility located at 4949 E. Lincoln Dr. Scottsdale, Arizona,
3 and in all places where notices to its employees are normally posted; maintain these
4 postings during the pendency of the Board's administrative proceeding free from all
5 obstructions and defacements; grant all employees free and unrestricted access to said
6 postings; and grant to agents of the Board reasonable access to its facilities to monitor
7 compliance with this posting requirement;
8

9 (d) Within 10 days of the Court's issuance of this Order, hold a
10 mandatory meeting or meetings during working time at Respondent's facility located at
11 4949 E. Lincoln Dr. Scottsdale, Arizona, at which this Order is to be read aloud by a
12 responsible management official in the presence of an agent of the Board, or at
13 Respondent's option by an agent of the Board in that official's presence, translated into
14 languages other than English as necessary to ensure the effective communication with
15 Respondent's employees, to all employees employed at Respondent's facility located at
16 4949 E. Lincoln Dr. Scottsdale, Arizona,, including at multiple meetings as necessary to
17 ensure that the Order is read aloud to all employees;
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19 (e) Within 14 days of the Court's Order, Respondent must provide to
20 the Regional Director and the Union a list of the full names, work locations, shifts, job
21 classifications, and contact information (including home addresses, available personal
22 email addresses, and available personal home and cellular telephone numbers) of all bell
23 employees. The list must be filed in common everyday electronic file formats that can
24 be searched. Unless otherwise agreed to by the parties, the list must be provided in a
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1 table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft
2 Word (.doc or docx). The first column of the list must begin with each employee's last
3 name and the list must be alphabetized by last name. The font size of the list must be the
4 equivalent of Times New Roman 10 or larger. That font does not need to be used but
5 the font must be that size or larger;
6

7 (f) For a period of 3 months after the Court's Order, upon request,
8 grant the Union and its representatives reasonable access to post materials on its bulletin
9 boards and all places where notices to employees are customarily posted; and

10 (g) Within 21 days of this Order, file with the Court, and submit a copy
11 to the Regional Director for Region 28 of the Board, a sworn affidavit from a
12 responsible agent of Respondent stating, with specificity, the manner in which
13 Respondent has complied with the terms of the Injunction Order.
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15 3. That upon return of the Order to Show Cause, the Court issue an Order
16 Granting Temporary Injunction enjoining and restraining Respondent in the manner set
17 forth above.

18 4. That the Court grant such further and other relief as may be just and
19 proper.
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21 Dated at Phoenix, Arizona, this 9th day of June, 2017.

22 /s/ Judith E. Dávila _____
23 Judith E. Dávila, Esq.
24 On behalf of:
25 Cornele A. Overstreet, Regional Director
26 National Labor Relations Board, Region 28
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