

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

OAKTREE CAPITAL MANAGEMENT, LLC,
and TBR PROPERTY, LLC, a SINGLE
EMPLOYER, d/b/a TURTLE BAY RESORTS,
and BENCHMARK HOSPITALITY, INC.

and

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Cases 37-CA-6601-1
37-CA-6642-1
37-CA-6669-1
37-CA-6691-1
37-CA-6730-1
37-CA-6753-1
37-CA-6756-1
37-CA-6768-1
37-CA-6816-1
37-CA-6826-1
37-CA-6827-1
37-CA-6835-1
37-CA-6840-1
37-CA-6875-1
37-CA-6877-1
37-CA-6878-1

GENERAL COUNSEL'S RESPONSE IN OPPOSITION TO
RESPONDENTS' ADDENDUM TO BRIEF IN SUPPORT OF EXCEPTIONS TO THE
SUPPLEMENTAL DECISION OF THE ADMINISTRATIVE LAW JUDGE

On November 2, 2009, Respondents filed an Addendum to Brief in Support of Exceptions to the Supplemental Decision of the Administrative Law Judge (the "Addendum"). In their Addendum, Respondents request that the Board take judicial and administrative notice of their brief to the Fifth Circuit Court of Appeals regarding their appeal of the Board's decision in *Oaktree Capital Management, LLC*, 353 NLRB No. 127 (2009). Counsel for General Counsel hereby opposes Respondents' Addendum and request, which is not supported by any Board rule or case law, and which is improper.

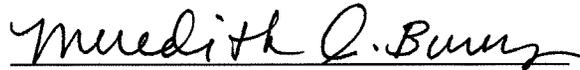
Respondents' brief to the Fifth Circuit Court of Appeals concerns issues that have already been determined by the Board in its decision and order in *Oaktree Capital Management, LLC*, 353 NLRB No. 127 (2009), and that are not at issue in the remand. The findings and conclusions set forth in the Board's decision are *res judicata* for purposes of the remanded proceeding. See *Tim Foley Plumbing Service*, 337 NLRB 598, 598 (2002). Respondents should not be permitted to submit any additional argument on the merits of issues already decided, especially in this case where the Board struck Respondents' brief in support of exceptions in the underlying matter for continued failure to comply with the Board's rules. *Oaktree Capital Management* at n.1.

Respondents apparently intend that the Board revisit the arguments set forth in its Fifth Circuit Appeals Brief in the remand. Not only is this improper for the reasons set forth above, but Respondents' submission violates the Board's rules. Under the Board's rules, a brief in support of exceptions should not exceed 50 pages in length. *NLRB Rules and Regulations* Section 102.46(j). Respondents' proposed Addendum, which is 71 pages long, far exceeds the page limitation set forth in the Board's rules. This is particularly true in light of the fact that Respondents' Brief in Support of Exceptions to the Supplemental Decision of the Administrative Law Judge is 18 pages long.

WHEREFORE, in consideration of the above, Counsel for General Counsel respectfully requests that the Board deny Respondents' request that the Board take judicial and administrative notice of its Fifth Circuit Court of Appeals brief and deny Respondents' Addendum.

Dated at Honolulu, Hawaii, this 4th day of November 2009.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of General Counsel's Response in Opposition to Respondents' Addendum to Brief in Support of Exceptions to the Supplemental Decision of the Administrative Law Judge has this day been served as described below upon the following persons at their last-known address:

1 copy	Daniel T. Berkley, Esq. Gordon & Rees LLP 275 Battery Street, Suite 2000 Embarcadero Center West San Francisco, CA 94111	Via U.S. Mail and e-mail
1 copy	Robert L. Murphy, Esq. Gordon & Rees LLP 101 W. Broadway Suite 2000 San Diego, CA 92101	Via U.S. Mail and e-mail
1 copy	Terrence B. Robinson Gordon & Rees LLP 3D/International Tower 900 West Loop South, Suite 1000 Houston, TX 77027	Via e-mail and U.S. Mail
1 copy	Jessie Faige In-House Counsel UNITE HERE! Local 5 1050 Queen Street, Suite 100 Honolulu, Hawaii 96814	Via U.S. Mail and e-mail
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DATED at Honolulu, Hawaii, this 4th day of November 2009.



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