

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22**

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<b>1621 ROUTE 22 WEST OPERATING COMPANY, LLC D/B/A SOMERSET VALLEY REHABILITATION AND NURSING CENTER</b>	)	
	)	
	)	
	)	Case Nos. 22-CA-29599
	)	22-CA-29628
and	)	22-CA-29868
	)	
<b>1199 SEIU UNITED HEALTHCARE WORKERS EAST, NEW JERSEY REGION</b>	)	

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**EMPLOYER’S REQUEST FOR SPECIAL PERMISSION TO APPEAL  
ADMINISTRATIVE LAW JUDGE’S RULING DENYING EMPLOYER’S PETITION TO  
PARTIALLY REVOKE SUBPOENA DUCES TECUM NO B-612019 AS IT APPLIES  
TO ITEM 36 OF SAID SUBPOENA**

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The Employer, 1621 Route 22 West Operating Company, LLC d/b/a Somerset Valley Rehabilitation & Nursing Center (“Employer” or “Respondent”), pursuant to Rule 102.26 of the Board’s Rules and Regulations, files this Request for Special Permission to Appeal the Administrative Law Judge’s Rulings on April 22, 2011 and April 28, 2011, in which the Administrative Law Judge (“ALJ”) denied the Employer’s Petition to Partially Revoke Subpoena Duces Tecum No. B-612019. Specifically, the ALJ should have granted the Employer’s petition to quash subpoenaed item 36. In support of this Request and Special Appeal, the Employer states as follows:

1. On April 8, 2011, the Counsel for the Acting General Counsel issued Subpoena B-612019 to the Employer in advance of an unfair labor practice hearing. As it pertains to this appeal, the Subpoena seeks production of the following documents:

36. For the same period in paragraph 35 [July 1, 2010 to October 31, 2010], documents reflecting all correspondence and communication

between and among **Somerset Valley** and **Care One** regarding the union organizing drive and the National Labor Relations Board charges filed by the Union.

A copy of the Subpoena is attached as Exhibit A.

2. The Board's Regional Office sought this same information in an *investigative* subpoena (Subpoena Duces Tecum B-612289) issued to the Employer on November 24, 2010. A copy of the Board's investigative subpoena is attached as Exhibit B. In its investigative subpoena, the Board sought the precise same information requested in Paragraph 36 of the subpoena currently at issue. (Exhibit B at ¶ 10). The Employer refused to provide the requested information. The Board never sought to enforce the investigative subpoena and issued the Consolidated Complaint<sup>1</sup> months later without the information currently requested in subpoenaed item 36. Thus, assuming the Region issued the Consolidated Complaint in "good faith," it clearly did not believe that these subpoenaed documents were essential to meet its burden of proof regarding the allegations set out in the Complaint.

3. On April 19, 2011, the Employer filed a Petition to Partially Revoke the Subpoena Duces Tecum (attached as Exhibit D), and the General Counsel filed an Opposition on April 22, 2011 (attached as Exhibit E).

4. In his Order on the Petition to Revoke issued April 22, 2010, the ALJ reserved his ruling on the documents sought in subpoenaed item 36. The ALJ's written Order is attached as Exhibit F. On April 28, 2011, on the record at the hearing in this case, the ALJ denied the Petition to Revoke as it pertained to subpoenaed item 36. The ALJ found that evidence had been presented that CareOne was involved in the Employer's response to the Union's organizational efforts and concluded that the

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<sup>1</sup> The Consolidated Complaint is attached as Exhibit C.

subpoenaed information was relevant. (Hearing Tr. Vol. 2, 436:13–438:22, April 28, 2011, attached as Exhibit G.)

5. On May 5, 2011, the General Counsel and the Union rested their case and the hearing was recessed until May 31, 2011. (Hearing Tr. Vol. 7, 1367:4–1367:11, May 5, 2011, attached as Exhibit H.)

6. The Board's failure to seek enforcement of its investigative subpoena, seeking the precise same information now at issue, and the evidence submitted at the hearing in support of the General Counsel's case in chief, demonstrates that subpoenaed item 36 is irrelevant because it is not the subject of any issued raised by the Consolidated Complaint.

7. Specifically, the information sought in subpoenaed item 36 is wholly irrelevant and immaterial to any issue raised in the Consolidated Complaint. Section 102.31 of the NLRB's Rules and Regulations provides that the ALJ "*shall* revoke the subpoena if in its opinion the evidence whose production is required does not relate to any matter . . . in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpoena is otherwise invalid." To enforce a subpoena, the Board must demonstrate that: (1) its investigation is for a legitimate purpose; (2) the inquiry is relevant to that purpose; (3) the agency does not already possess the information requested; (4) all administrative requirements have been complied with; and (5) the demand is not unreasonably broad or burdensome. *EEOC v. Kronos, Inc.*, 620 F.3d 287, 298 n.4 (3d Cir. 2010); *see also United States v. Powell*, 379 U.S. 48, 57–58 (1964); *NLRB v. Champagne Drywall, Inc.*, 502 F. Supp. 2d 179 (2007) (applying

standard to NLRB subpoena); *NLRB v. G. Rabine & Sons, Inc.*, No. 00-C-5965, 2001 U.S. Dist. LEXIS 15511, at \* 7 (N.D. Ill. 2001) (applying investigative standard to NLRB subpoena issued in preparation for unfair labor practice hearing).

8. Subpoenaed item 36 is an attempt by Counsel for the Acting General Counsel to engage in broad discovery and a “fishing expedition” that in no way relates to any issue raised by the Consolidated Complaint. For example, the internal communications between Somerset Valley and CareOne are not the subject of any allegation in the Consolidated Complaint. In accordance with the NLRB’s Rules and Regulations, discovery is prohibited in unfair labor practice cases, and “fishing” for possible new evidence is an improper use of the NLRB’s subpoena mechanism.

9. Moreover, complying with subpoenaed item 36 will be unduly burdensome for the Employer. Thus, the information broadly described in subpoenaed item 36 will produce voluminous documents and require the Employer to conduct a sweeping search through all of its internal and external communications, both electronic and handwritten, simply to determine which documents may be responsive. When analyzing such a large scale request for information, the ALJ must balance the potential relevancy of any of the requested information against the burdensomeness and costs of producing such voluminous information. *CNN America, Inc.* 352 NLRB 675, 676 (2008).

10. To determine which electronic documents and communications may be responsive to subpoenaed item 36, the Employer must review the email accounts of supervisors and managers at CareOne and Somerset Valley who use email throughout the day to communicate as a regular function of their job not just on an hourly, but often on a minute-by-minute basis, resulting in potentially hundreds of emails per person per

day. Because of the way the Employer's email system is set up and maintained, the Employer will have to utilize outside IT experts to engage in a multi-step process to restore and process email boxes belonging to its supervisors and managers.

11. First, the Employer must restore the email boxes of the identified supervisors and managers. The Employer currently engages a third-party provider to create tape drives, which are data storage devices that back up electronic information including the Employer's email system. After five weeks, backup tapes are only retained on a monthly basis and reflect a user's email mailbox as of the first weekend following the first day in the month. The tape drives backup a user's email mailbox as it existed when the backup was performed. To access a single user's email history for the period July 1, 2010 to October 31, 2010, IT consultants must restore from the tape drives all backups that exist for the user during that period, approximately 4 backups for the four-month period requested. Each individual "restore" costs \$400.00, so to restore *one* employee's mailbox for the requisite time period it will cost approximately \$1,600.00. The Employer estimates that anywhere from approximately 8 to 25 individuals' email accounts must be restored to comply with the General Counsel's subpoena depending on the limits established for the universe of supervisors and managers to be included in the document retrieval process. Therefore, minimum estimates simply to *restore* the requested information range from \$12,800.00 to \$40,000.00.

12. Moreover, the Employer's IT consultants have advised that on average only *three* restores can be performed per week. If only 8 email accounts (for a four-month period) need be produced, then 32 restores must be performed and it will take

over 10 weeks simply to *restore* those email accounts. If 25 email accounts need to be produced, then 100 restores must be performed and it will take over 34 weeks to restore the information requested in the Board's subpoena.

13. After the email history has been restored, the extensive number of emails must be processed, i.e., IT consultants must run keyword searches on the restored email accounts. Applying a reasonable estimate that 400,000 emails may be generated in a restoration of one user account during the requested four-month period, IT consultants estimate that the total size of files will be approximately 9GB, which can be processed, indexed and de-duplicated (redundant information is eliminated) by their email investigation software in roughly ten hours for approximately \$1,500.00 per user account. For eight users, the cost of processing, indexing, and de-duplication, therefore, is estimated to be at least \$12,000.00. For twenty-five users, the costs of processing, indexing, and de-duplication is estimated at \$37,500.00.

14. Furthermore, it will take approximately 80 hours (2 work-weeks) to complete the processing, indexing, and de-duplication stage if emails from 8 user accounts are produced. If 25 user accounts must be produced, then the processing, indexing, and de-duplication stage will take approximately 250 hours (over six work-weeks) to complete.

15. Once the emails have been processed, indexed, and de-duplicated, they must still be sorted by keywords. IT consultants estimate that it will take approximately five hours per user account to sort the emails, and it will cost approximately an additional \$1,500.00 per user account. Sorting the emails for 8 user accounts, therefore, will take another 40 hours of time (one work-week) and will cost an estimated

additional \$12,000.00. If 25 email accounts must be produced, sorting the emails for those 25 user accounts will take 125 hours of time (approximately 3 work-weeks) and is estimated to cost over \$37,500.00

16. In the event that a data source is corrupt, processing and sorting will take additional time and will increase costs. Additional fees of \$1,000.00 to \$3,000.00 are also estimated to cover expenses such as hard drives needed to export keyword hits and the cost of creating backup copies.

17. The total estimated cost, therefore, of restoring only 8 user email accounts for the four-month period from July 1, 2010 until October 31, 2010, is more than \$36,800.00 (assuming no corrupted files). If the Employer must restore and process 25 user email accounts, the estimated cost soars to over \$115,000.00.

	<b>8 Employees</b>	<b>25 Employees</b>
<b>Restore Costs</b>	\$12,800	\$40,000
<b>Processing Costs</b>	\$12,000	\$37,500
<b>Keyword Search Costs</b>	\$12,000	\$37,500
<b>Total Costs</b>	<b>\$36,800</b>	<b>\$115,000</b>

18. Moreover, the total estimated time of restoring and processing 8 user email accounts is 3 months (13 weeks). If the Employer must restore and process 25 user email accounts, it is estimated that it will take approximately 11 months (43 weeks).

	<b>8 Employees</b>	<b>25 Employees</b>
<b>Restore Time</b>	10+ weeks	34+ weeks
<b>Processing Time</b>	2+ weeks	6+ weeks
<b>Keyword Search Time</b>	1 week	3+ weeks
<b>Total Time<sup>2</sup></b>	<b>13+ weeks (appx. 3 months)</b>	<b>43+ weeks (appx. 11 months)</b>

19. On the record, the Board's Counsel for the Acting General Counsel argued that responding to its subpoena would be a simple process:

And I'm not quite sure what system they use, but from looking at some of the documents, it looks like it's an Outlook system. In an Outlook system, if there is a find query and all you have to do is plug in, in the find query, what exactly you are looking for. Jason Huchens, emails that have come from Doreen to Jason Huchens, and it lists all of the Jason Huchens emails. And you go through as quickly as a few minutes to find which ones are relevant and which ones aren't.

(Hearing Tr. Vol. 4, 785:11–786:1, May 2, 2011, attached as Exhibit I).

20. From the above explanation it is apparent that the Board's Counsel misunderstands the complexity of the situation. The Board's subpoena does not seek emails sent today or yesterday. The Board issued its subpoena on April 26, 2011 seeking correspondence from July 1, 2010 to October 31, 2010. Because the majority of email users do not save emails for six to nine months, the Employer must utilize its backup tape drives to access any responsive information. Emails stored on the backup tapes, however, cannot simply be accessed using an Outlook email account. The backup tapes must first be restored from the backup tape drives into an accessible .pst form.

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<sup>2</sup> The total time indicated is the combined estimated time needed to restore, process, and search the email accounts. To the extent that the three phases could overlap, the total estimate time could be slightly less than the time indicated here.

21. Thus, although the General Counsel's subpoena only requests documents for a four-month period, the subpoena requires a costly and time consuming restoration of 8 to 25 email accounts. Only after the user's entire email account has been restored and processed, can the emails be searched to determine which, if any, may be responsive to the Board's subpoena request. Of the voluminous documents that must be restored and processed, very few, if any, documents are likely to be responsive to subpoenaed item 36.

22. In weighing the burdensomeness of production against the potential relevancy, the Board should consider the fact that the Regional Office first requested these emails during its investigation of the underlying charges. The Employer refused to produce these documents then for the same reasons set forth in this Special Appeal. The Region made no effort to enforce its subpoena. Instead, the Region issued the instant Consolidated Complaint months later based on what was in its investigative file at the time. Assuming the Region acted in good faith when issuing the Complaint, it believed it had sufficient evidence to support the Complaint allegations. Accordingly, by the Board's own actions, nothing in the documents sought by subpoenaed item 36 is essential to the Board's ability to try to prove its case. The speculative relevancy of this request has to be balanced against the extremely burdensome process of producing these documents.

23. Furthermore, many of the responsive documents will not be discoverable. Because most of the documents and communications responsive to subpoenaed item 36 are internal communications pertaining to the Union's organizing campaign, these documents and communications will be, in large part, protected by attorney-client

privilege and/or the work-product doctrine. Thus, of those restored documents actually responsive to the Subpoena, very little, if any, of that information will likely be discoverable by General Counsel.

24. To protect the attorney-client and work-product privileges, the Employer and its attorneys must carefully review all of the potentially responsive documents to determine whether a privilege applies. As discussed above, the number of emails that must be reviewed to determine their privilege status may be voluminous and, thus, the process of reviewing each and every email will be very time-consuming. The Employer's attorneys will further have to create a privilege log of privileged material not produced, which will require more time to comply with the General Counsel's subpoena. This process of identifying and segregating privileged documents and creating a privilege log will likely add thousands of dollars and weeks of time to the already burdensome aspects of producing these documents.

25. In summary, the production of the information sought in subpoenaed item 36 of the General Counsel's subpoena is disruptive to the Employer's business operations, unduly expensive and time-consuming, and the Board must strike a balance between the relevancy of the requested information and the burdensomeness and costs of production. Because the information is irrelevant, is not essential to the General Counsel's case, is a blatant "fishing expedition," and would be extremely burdensome and costly, subpoenaed item 36 of General Counsel's Subpoena B-612019 should be revoked.

WHEREFORE, for the foregoing reasons, the Employer respectfully requests special permission to appeal the Administrative Law Judge's Order denying the

Employer's Petition to Partially Revoke the Subpoena Duces Tecum B-612019 with regard to item 36 and submits that the Employer should not be required to produce the documents described in subpoenaed item 36 of Subpoena B-612019.

Respectfully submitted,



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Tanja L. Thompson  
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Memphis, Tennessee 38125  
Telephone: (901) 795-6695

Attorneys for 1621 Route 22 West Operating  
Company, LLC d/b/a Somerset Valley  
Rehabilitation and Nursing Center

## CERTIFICATE OF SERVICE

The undersigned certifies that on the 31st day of May 2011, the foregoing pleading was filed via electronic filing with the Office of the Executive Secretary and served via e-mail upon:

Steven Davis, Administrative Law Judge  
National Labor Relations Board, Division of Administrative Law Judges  
120 West 45<sup>th</sup> Street  
New York, New York 10036  
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UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
REGION 23  
20 WASHINGTON PLACE, 5TH FLOOR  
NEWARK, NEW JERSEY 07102  
An Equal Opportunity Employer

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NEWARK, NJ  
1774 SHERMAN STREET, SUITE 200  
NEWARK, NJ 07102  
1001 YORK ST. 23 WEST  
NEW YORK, N.Y. 10011

EXHIBIT  
A

SUBPOENA DUCES TECUM

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

To Custodian of the Records, 1621 Route 22 West Operating Company, LLC d/b/a

Somerset Valley Rehabilitation and Nursing Center

As requested by Michael Silverstein & Saulo Santiago, Counsel for the Acting General Counsel

whose address is

(Street)

(City)

(State)

(ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE An Administrative Law Judge

of the National Labor Relations Board

at Veterans Administration Building, 20 Washington Place - 5<sup>th</sup> Floor

in the City of Newark, NJ 07102-3115

on the 26<sup>th</sup> day of April 20 11 at 9:30 am (a.m.) (p.m.) or any adjourned

or rescheduled date to testify in 1621 Route 22 West Operating Company, LLC d/b/a Somerset Valley Rehabilitation and Nursing Center, Cases 22-CA-29599, 22-CA-29628, 22-CA-29868

(Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

SEE ATTACHED RIDER

In accordance with the Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(c) (representation proceedings), objections to the subpoena must be made by a petition to revoke and must be filed as set forth therein. Petitions to revoke must be received within five days of your having received the subpoena. 29 C.F.R. Section 102.111(b) (3). Failure to follow these regulations may result in the loss of any ability to raise such objections in court.

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

**B - 612019**

Issued at Newark, New Jersey

this 8<sup>th</sup> day of April 20 11



*Lesfer A. Neltzer*

**NOTICE TO WITNESS.** Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

## RIDER

Subpoena No. B-612019

Re: Somerset Valley Rehabilitation & Nursing Center  
Cases 22-CA-29599, 22-CA-29628, and 22-CA-29868

### DEFINITIONS AND INSTRUCTIONS

- 1) The word "document" or "documents" are used in the broadest permissible sense, including but not limited to:
- (a) All material in written or printed format of any kind, such as letters, correspondence, facsimiles, memoranda, records, telegrams, teletypes, cablegrams, reports, notes, books, papers, minutes, schedules, tabulations, computations, lists, ledgers, journals, purchase orders, contracts, invoices, agreements, vouchers, accounts, checks, affidavits, diaries, calendars, desk pads, drawings, sketches, charges, graphs, or any other written or printed matter or tangible thing on which any words, phrases or symbols are affixed;
  - (b) All electronic or digital information of any kind (translated, if necessary, into reasonably usable form) contained in any kind of electronic, or digital format, such as (1) electronic mail or "email"; (2) any information maintained on any kind of server or mainframe system, including (e.g. Internet protocol addresses) that is accessible by the internet (with, if necessary, usernames and passwords that will allow such access), (3) any word processing, spreadsheets or similar documents; (4) voice mail stored electronically; (5) information stored on Palm Pilots, Blackberrys, Iphones and/or similar devices; (6) digital pictures, video, and audio; (7) any information maintained on any kind of computer, computer disk, diskette, floppy disk, "zip" drive, "zip" file, or CD-ROM disk, tape drive, external hard drive, USB drive (also known as flash, thumb or key drives) or digital memory storage device; (8) any information maintained in an office or home personal computer or laptop computer; and (9) any other possible sources or active or inactive electronic or digital data or information.
  - (c) All sound or picture recordings of any kind, such as tape recordings, photographs, videotapes, Photostats, motion pictures, or slides; and
  - (d) All copies of drafts or any such documents, including for electronic or digital information, any kind of data that has been archived, backed-up, resides on obsolete hardware, or is information that is residual or otherwise may have been deleted but is or may be present or residing in any way within computer systems or retrievable in any way.

- 2) The "Custodian of the Records and Information" shall be a person or persons who are responsible for keeping the requested documents and information in the ordinary course of business, including documents and information that are kept in electronic, digital or data form.
- 3) The word "person" or "persons" means natural persons, corporation(s), partnership(s), sole proprietorship(s), association(s), or any other kind of entity.
- 4) The "**Employer**" means Somerset Valley Rehabilitation and Nursing Center, herein "Somerset Valley" or Care One, A Senior Care Company, herein "Care One."
- 5) Documents responsive to this subpoena include those that are in the possession, custody and/or control of the Employer.
- 6) To the extent documents are maintained by both **Somerset Valley and Care One**, multiple copies need not be produced if the party in possession of the documents in question, or a copy thereof, is identified.
- 7) Unless otherwise stated, each item requested in this subpoena covers the period from **January 1, 2010 to December 31, 2010**.
- 8) The "**Union**" refers to SEIU 1199 United Health Care Workers Union East.
- 9) The word "**employees**" refers to all employees of Somerset Valley in the classifications specified in the stipulated election agreement in Case 22-RC-13139, which was approved on August 10, 2010, and all other individuals who perform the same work and/or have the same classification or title as these employees, and shall include employees referred, employed and/or paid by a person or agency other than **Somerset Valley**.
- 10) Whenever used herein, the singular shall be deemed to include the plural and vice versa; the present tense shall be deemed to include the past tense and vice versa; references to the parties shall be deemed to refer to any and all of their owners, officers, representatives and agents; and the masculine shall be deemed to include the feminine and vice versa; the disjunctive "or" shall be deemed to include the conjunctive "and" vice versa; and the words "each", "every", "any", and "all" shall be deemed to include each of the other words.
- 11) This subpoena is intended to cover all documents that are in your possession, custody or control, as well as your present or former agents, attorneys, accountants, advisors, investigators, and any other persons or companies directly or indirectly employed by, or connected with you.
- 12) This subpoena does not contemplate the production of privileged attorney-client communications or privileged attorney work product. If any document responsive to any request herein was withheld from production on the asserted ground that it is privileged, identify and describe:
  - (a) the author(s) and the author's (s') business title or position;

- (b) the recipient(s) and the recipient's (s') business title or position;
- (c) the date of the original document;
- (d) the subject matter of the document;
- (e) its number of pages;
- (f) the legal basis upon which you claim privilege; and
- (g) the specific portion of the request to which the document is responsive

13) As to any documents not produced in compliance with this subpoena on any ground or if any document requested was, through inadvertence or otherwise, destroyed or is no longer in your possession, please state:

- a) the author;
- b) the recipient;
- c) the name of each person to whom the original or a copy was sent;
- d) the date of the document;
- e) the subject matter of the document; and
- f) the circumstances under which the document was destroyed, withheld or is no longer in your possession.

14) This request is continuing in character and if additional responsive documents come to your attention following the date of production, such documents must be promptly produced.

15) This request seeks production of all documents described, including all drafts and non-identical or distribution copies.

16) This request contemplates production of responsive documents in their entirety, without abbreviation, redaction, deletion or expurgation. The sole exception to this request pertains to information protected under HIPAA. This request does not contemplate the production of documents protected under HIPAA, including patient identifiers like names, addresses, social security numbers, and birth dates). For documents that require partial or complete redaction, please bring unredacted originals or copies of these documents to the hearing in case the need arises for an in-camera inspection of said documents.

17) All documents produced pursuant to this subpoena are to be organized by what subpoena paragraph each documents or documents are responsive to, and labels referring to that subpoena paragraph are to be affixed to each document or set of documents.

#### **DOCUMENTS SUBJECT TO SUBPOENA NO. B-612019**

1. Name of each per diem registered nurse, licensed practical nurse and certified nurses' aide employed by Somerset Valley.

2. For the period July 1, 2010 to December 31, 2010, documents showing the names and positions of all employees whose status was changed or converted from per diem to part-time and/or full-time employment status, or from part-time to per diem status.

3. Documents that refer and/or relate in any way to Somerset Valley's elimination or reduction in the use of per diem employees.

4. Documents that refer and/or relate in any way to Somerset Valley's replacement of per diem employees.

5. Payroll records, daily staffing sheets, schedules and other documents of Somerset Valley that show who worked as per diem employees for each pay period, including the following information:

- (a) Name(s);
- (b) Dates employed; and
- (c) Position held, rate of pay and hours worked.
- (d) Full and complete personnel files for all individuals covered by paragraph 5.

6. Payroll records, daily staffing sheets, schedules and other documents of Somerset Valley that show which employees are now working the hours previously worked by per diem employees, including the following information:

- (a) Name(s);
- (b) Dates employed;
- (c) Position held, rate of pay and hours worked; and
- (d) For each shift involved, the name of the per diem employee that previously worked that shift.

7. For the period July 1, 2010 to December 31, 2010, all advertisements placed by the Employer in any forum or medium soliciting employees and/or applications for employment at Somerset Valley as a per diem, part-time or full-time employee, along with the date that such advertisements were placed and for how long they were in place.

8. For the period July 1, 2010 to December 31, 2010, the names of all staffing agencies the Employer used to obtain temporary workers to perform work at Somerset Valley as registered nurses, licensed practical nurses, or certified nurses' aides, and the names and dates of referral for any workers referred to work at Somerset Valley in these classifications.

9. For the period September 1, 2010 to September 30, 2010, all documents that reflect or concern SMTLX system history of audit trail of changes, including time, action type, shift, unit, hours, absence, user, application for Cabe Guerlin.
10. For the same period as paragraph 9, all documents that reflect or concern additions and/or deletions made on the SMTLX system by Doreen Illis.
11. For the period June 1, 2010 to August 9, 2010, all documents that reflect or concern additions and/or deletions made on the SMTLX system by Elizabeth Heedles.
12. For the period August 15, 2010 to December 31, 2010, all documents that reflect or concern additions and/or deletions made on the SMTLX system by Inez Konjoh.
13. For the period June 1, 2010 to December 31, 2010, the SMTLX system user names for all authorized personnel, including, but not limited to, Elizabeth Heedles, Eileen Meyer, Doreen Illis, Inez Konjoh, Claudia Sanchez, and Somerset Valley's staffing coordinator(s).
14. All Internet Protocol ("IP") addresses for the Administrator's, Director of Nursing's, Unit Manager's, MDS Coordinator's, Director of Maintenance's, Social Worker's, Human Resources's and other designated computers maintained at Somerset Valley and accessed by Somerset Valley employees.
15. For the period September 22, 2010 to the present, the name(s) of all staffing coordinators, or persons performing staffing coordinator work, and all documents showing all disciplinary action issued to such individuals in their capacity as staffing coordinator, including written or verbal warnings, suspensions or discharges and the reasons therefore.
16. All notices of disciplinary action issued to Somerset Valley employees, including written or verbal warnings, suspensions or discharges and the reasons therefore. For those employees discharged, please furnish their personnel files.
17. Regarding Shannon Napolitano, documents showing and/or relating in any way to:
  - (a) Date of termination of employee;
  - (b) Name of the person(s) who made, recommended or were otherwise involved in the decision to terminate the employee;
  - (c) Reason(s) for the decision to terminate the employee;
  - (d) Notice of separation provided to employee along with the date thereof;
  - (e) Documents from investigations conducted by the Employer regarding allegations of employee misconduct, events, circumstances or matters that led or is related to

the separation of the employee(s), including audio recordings, images or any other mechanical recordings;

- (f) Documents that concern or relate to the discharge of Shannon Napolitano, including internal memorandum and e-mail regarding her misconduct or discharge, notes of meetings/telephone calls regarding her misconduct or discharge, notes of meetings with Napolitano, and all work rules or policies that were allegedly violated by Napolitano;
- (g) Full and complete personnel file of named employee; and
- (h) Documents submitted to the State of New Jersey Department of Labor, Unemployment Insurance by the Employer regarding the termination or separation of employment of Napolitano.

18. Regarding Sheena Claudio, documents showing and/or relating in any way to:

- (a) Date of termination of employee;
- (b) Name of the person(s) who made, recommended or were otherwise involved in the decision to terminate the employee;
- (c) Reason(s) for the decision to terminate the employee;
- (d) Notice of separation provided to employee along with the date thereof;
- (e) Documents from investigations conducted by the Employer regarding allegations of employee misconduct, events, circumstances or matters that led or is related to the separation of the employee(s), including audio recordings, images or any other mechanical recordings;
- (f) Documents that concern or relate to the discharge of Sheena Claudio, including internal memorandum and e-mail regarding her misconduct or discharge, notes of meetings/telephone calls regarding her misconduct or discharge, notes of meetings with Claudio, and all work rules or policies that were allegedly violated by Claudio;
- (g) Full and complete personnel file of named employee; and
- (h) Documents submitted to the State of New Jersey Department of Labor, Unemployment Insurance by the Employer regarding the termination or separation of employment of Claudio.

19. Regarding Valerie Wells, documents showing and/or relating in any way to:

- (a) Date of termination of employee;
  - (b) Name of the person(s) who made, recommended or were otherwise involved in the decision to terminate the employee;
  - (c) Reason(s) for the decision to terminate the employee;
  - (d) Notice of separation provided to employee along with the date thereof;
  - (e) Documents from all investigations conducted by the Employer regarding allegations of employee misconduct, events, circumstances or matters that led or is related to the separation of the employee(s), including audio recordings, images or any other mechanical recordings;
  - (f) Documents that concern or relate to the discharge of Valerie Wells, including internal memorandum and e-mail regarding her misconduct or discharge, notes of meetings/telephone calls regarding her misconduct or discharge, notes of meetings with Wells, and all work rules or policies that were allegedly violated by Wells;
  - (g) Full and complete personnel file of named employee; and
  - (h) Records or other documents submitted to the State of New Jersey Department of Labor, Unemployment Insurance by the Employer regarding the termination or separation of employment of Wells.
20. Regarding Lynette Tyler, documents showing and/or relating in any way to:
- (a) Date of termination of employee;
  - (b) Name of the person(s) who made, recommended or were otherwise involved in the decision to terminate the employee;
  - (c) Reason(s) for the decision to terminate the employee;
  - (d) Notice of separation provided to employee along with the date thereof;
  - (e) Any investigation conducted by the Employer regarding allegations of employee misconduct, events, circumstances or matters that led or is related to the separation of the employee(s), including audio recordings, images or any other mechanical recordings;
  - (f) Documents that concern or relate to the discharge of Lynette Tyler, including internal memorandum and e-mail regarding her misconduct or discharge, notes of meetings/telephone calls regarding her misconduct or discharge, notes of meetings with Tyler, and all work rules or policies that were allegedly violated by Tyler;

- (g) Full and complete personnel file of named employee; and
  - (h) Documents submitted to the State of New Jersey Department of Labor, Unemployment Insurance by the Employer regarding the termination or separation of employment of Tyler.
21. All disciplinary actions issued to Shannon Napolitano, including written or verbal warnings, suspensions or discharges and the reasons therefore.
  22. All disciplinary actions issued to Sheena Claudio, including written or verbal warnings, suspensions or discharges and the reasons therefore.
  23. All disciplinary actions issued to Valerie Wells, including written or verbal warnings, suspensions or discharges and the reasons therefore.
  24. All disciplinary actions issued to Lynette Tyler, including written or verbal warnings, suspensions or discharges and the reasons therefore.
  25. All disciplinary actions issued to Jillian Jacques, through February 2011, including written or verbal warnings, suspensions or discharges and the reasons therefore.
  26. All performance appraisals and/or evaluations issued to Shannon Napolitano in 2009 and 2010.
  27. All performance appraisals and/or evaluations issued to Sheena Claudio.
  28. All performance appraisals and/or evaluations issued to Valerie Wells in 2007, 2008, 2009, and 2010.
  29. All performance appraisals and/or evaluations issued to Lynette Tyler.
  30. All performance appraisals and/or evaluations issued to Jillian Jacques in 2007, 2008, 2009, and 2010.
  31. All written communication between Valerie Wells and Doreen Illis in September 2010 including, but not limited to, e-mails and text messages.
  32. A copy of the resignation letter submitted by Lynette Tyler to Somerset Valley on September 9, 2010.
  33. Documents that reflect or concern Lynette Tyler's resignation, including, but not limited to, Somerset Valley's Personnel Action Form dated September 9, 2010.

34. Payroll records that show the Employer paid Lynette Tyler for the resignation period between September 9, 2010 and September 22, 2010.

35. For the period July 1, 2010 to October 31, 2010, documents gathered or generated by the Employer that refer and/or in any way relate to the Union or the Union's campaign to organize Somerset Valley's employees.

36. For the same period in paragraph 35, documents reflecting all correspondence and communication between and among **Somerset Valley** and **Care One** regarding the union organizing drive and the National Labor Relations Board charges filed by the Union.

37. For the same period in paragraph 35, all videotapes, films, audio recordings, pictures and other mechanical recordings made by/or provided to the Employer of meetings or other activity related to the Union's organizing drive.

38. For the period July 1, 2010 to September 2, 2010, summaries or materials utilized by the Employer during presentations at mandatory or individual meetings with unit employee(s) regarding the Union's organizing drive, and contemporaneous notes taken (whether electronic or handwritten) by Jason Hutchens, Andrea Lee, Inez Konjoh and Doreen Illis as to the discussions at such meetings.

39. Documents, including employee handbooks and other human resources materials, that reflect all work rules, policies, practices and procedures that are applicable to employees, including conversion of employment status of employees and the date(s) of issuance.

40. A copy of the Employer's uniform policy applicable to Somerset Valley employees and the date(s) of issuance.

41. Copies of the Department of Health and Senior Services' state inspection reports regarding Somerset Valley for FY 2008, 2009 and 2010. If such reports are not available for any of the fiscal years requested, the Acting General Counsel should be notified immediately and an alternative way for acquiring the state inspection reports should be discussed, if necessary.

42. Regarding Jillian Jacques, documents showing and/or relating in any way to:

- (a) Date of Termination of employee;
- (b) Name of the person(s) who made, recommended or were otherwise involved in the decision to terminate the employee;
- (c) Reason(s) for the decision to terminate the employee;
- (d) Notice of separation provided to employee along with the date thereof;

- (e) Any investigation, conducted by the Employer regarding allegations of employee misconduct, events, circumstances or matters that led or is related to the separation of the employee, including audio recordings, images or any other mechanical recordings;
- (f) Documents that concern or relate to the discharge of Jillian Jacques, including internal memorandum and e-mail regarding her misconduct or discharge, notes of meetings/telephone calls regarding her misconduct or discharge, notes of meetings with Jacques, and all work rules or policies that were allegedly violated by Jacques.
- (g) Full and complete personnel file of named employee; and
- (h) Documents submitted to the State of New Jersey Department of Labor, Unemployment Insurance by the Employer regarding the termination or separation of employment of Jacques.

43. A list specifying what documents are being produced pursuant to each paragraph above.

44. All of the above documents shall be segregated by the above paragraph number to which the documents are responsive and shall not be commingled with documents that are responsive to other paragraphs of the Rider. Documents shall also be arranged chronologically within each segregated packet.

SUBPOENA DUCES TECUM

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

To Doreen Illis or The Custodian of the Records, Somerset Valley Rehabilitation & Nursing Center  
1621 Route 22 West, Bound Brook, NJ 08805

As requested by J. Michael Lightner, Regional Director

whose address is 20 Washington Place Newark NJ 07102  
(Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE Saulo Santiago, An Agent  
of the Regional Director

\_\_\_\_\_ of the National Labor Relations Board  
at The Veteran's Administration Building, 20 Washington Place, 5<sup>th</sup> Floor

in the City of Newark, NJ 07102

on the 3<sup>rd</sup> day of December 20 10 at 1:00 ~~(p.m.)~~ (p.m.) or any adjourned  
or rescheduled date to testify in \_\_\_\_\_

Somerset Valley Rehabilitation & Nursing Center

(Case Name and Number)

Cases 22-CA-29599 and 22-CA-29628

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

SEE ATTACHED RIDER

In accordance with the Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(c) (representation proceedings), objections to the subpoena must be made by a petition to revoke and must be filed as set forth therein. Petitions to revoke must be received within five days of your having received the subpoena. 29 C.F.R. Section 102.111(b) (3). Failure to follow these regulations may result in the loss of any ability to raise such objections in court.

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

**B - 612289**

Issued at Newark, New Jersey

this 24<sup>th</sup> day of November 2010



*Saulo Santiago*



**NOTICE TO WITNESS.** Witness fees for attendance, subsistence, and mileage under this subpoena are at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

**RIDER**

Subpoena No. B-612289

Re: Somerset Valley Rehabilitation & Nursing Center  
Cases 22-CA-29599 and 22-CA-29628

**DEFINITIONS AND INSTRUCTIONS**

- 1) The word "document" or "documents" means, without limitation, the following items, whether printed or recorded or reproduced by any other mechanical process, or written or produced by hand, or any existing printed, typewritten, handwritten or otherwise recorded material of whatever kind and/or character, including, but not limited to: agreements, communications, correspondence, telegrams, letters, memoranda, facsimile transmissions, minutes, notes of any character, diaries, calendars, statements, affidavits, photographs, microfilm or microfiche, audio and/or video tapes, statistics, pamphlets, newsletters, press releases, bulletins, transcripts, summaries or records of telephone conversations, summaries or records or personal conversations or interviews, conferences, transcripts or summaries or reports of investigations and/or negotiations, drafts, internal or inter-office memoranda or correspondence, lists, data contained in computers, computer printouts, computer discs and/or files and all data contained therein, **E-mail, internet sites and web pages**, any marginal or "post-it" or "sticky pad" comments appearing on or with documents, and all other writings, figures or symbols of any kind, including but not limited to carbon, photographic or other duplicative copies of any such material in the possession of, control of or available to the subpoenaed party, or any agent, representative, or other persons acting in cooperation with, in concert with, or on behalf of said subpoenaed party.
- 2) The word "**person**" or "**persons**" means natural persons, corporation(s), partnership(s), sole proprietorship(s), association(s), or any other kind of entity.
- 3) The "**Employer**" means Somerset Valley Rehabilitation and Nursing Center, herein "Somerset Valley" or Care One, A Senior Care, herein "Care One."
- 4) Documents responsive to this subpoena include those that are in the possession, custody and/or control of the Employer.
- 5) To the extent documents are maintained by **the Employer and Care One**, multiple copies need not be produced **only if** those in possession of the documents in question or a copy thereof are identified.
- 6) Unless otherwise stated, each item requested in this subpoena covers the period from **January 1, 2010** to the present.
- 7) The "**Union**" refers to SEIU 1199 United Health Care Workers Union East.

8) The word “**employees**” refers to Unit employees and all other individuals who perform the same work and/or have the same classification or title as a Unit employee, and shall include employees referred, employed and/or paid by a person or agency other than **Somerset Valley**.

9) Whenever used herein, the singular shall be deemed to include the plural and vice versa; the present tense shall be deemed to include the past tense and vice versa; references to the parties shall be deemed to refer to any and all of their owners, officers, representatives and agents; and the masculine shall be deemed to include the feminine and vice versa; the disjunctive “or” shall be deemed to include the conjunctive “and” vice versa; and the words “each”, “every”, “any”, and “all” shall be deemed to include each of the other words.

10) This subpoena is intended to cover all documents that are in your possession, custody or control, as well as your present or former agents, attorneys, accountants, advisors, investigators, and any other persons or companies directly or indirectly employed by, or connected with you.

11) As to any documents not produced in compliance with this subpoena on any ground or if any document requested was, through inadvertence or otherwise, destroyed or is no longer in your possession, please state:

- a) the author;
- b) the recipient;
- c) the name of each person to whom the original or a copy was sent;
- d) the date of the document;
- e) the subject matter of the document; and
- f) the circumstances under which the document was destroyed, withheld or is no longer in your possession.

12) This request is continuing in character and if additional responsive documents come to your attention following the date of production, such documents must be promptly produced.

13) This request seeks production of all documents described, including all drafts and non-identical or distribution copies.

14) This request contemplates production of responsive documents in their entirety, without abbreviation, redaction, deletion or expurgation.

15) All documents produced pursuant to this subpoena are to be organized by what subpoena paragraph each documents or documents are responsive to, and labels referring to that subpoena paragraph are to be affixed to each document or set of documents.

16) Unless otherwise noted, this subpoena does not supersede, revoke or cancel any other subpoena(s) previously issued in this proceeding.

**DOCUMENTS SUBJECT TO SUBPOENA NO. B-612289**

1. For the period September 2, 2010 to the present, records and other documents as will show the names and positions of all employees on the payroll of **Somerset Valley** whose status was changed or converted from per diem to part-time and/or full-time employment status.
2. Records and other documents of the Employer that refer and/or relate in way to the elimination or reduction in the use of per diem employees.
3. Records and other documents of the Employer that refer and/or relate in any way to the replacement of per diem employees.
4. Payroll records, daily staffing sheets, schedules and other documents of **Somerset Valley** as will show who worked as per diem employees for each pay period, including the following information:
  - (a) Name(s);
  - (b) Dates employed; and
  - (c) Position held, rate of pay and hours worked.
  - (d) Full and complete personnel file for all the individuals covered by paragraph 4.
5. Payroll records, daily staffing sheets, schedules and other documents of **Somerset Valley** as will show what employees are now working the hours previously worked by per diem employees, including the following information:
  - (a) Name(s);
  - (b) Dates employed; and
  - (c) Position held, rate of pay and hours worked.
6. For the period September 2, 2010 to present, all advertisements placed by the Employer in any forum or medium soliciting employees and/or applications for employment as a per diem, part-time or full-time employee, along with the date that such advertisements were placed and for how long.
7. Records and other documents, showing all disciplinary action issued to **Somerset Valley** employees, including written or verbal warnings, suspensions or discharges and the reasons therefore. For those discharged their personnel files.

8. Regarding Shannon Napolitano, Sheena Claudio, Lynette Tyler, Grace Lopez and Valarie Wells, records and other documents showing and/or relating in any way to:

- (a) Date of termination of employee(s);
- (b) Name of the person(s) who made, recommended or were otherwise involved in the decision to terminate the employee(s);
- (c) Reason(s) for the decision to terminate the employee(s);
- (d) Notice of separation provided to employee(s) along with the date thereof;
- (e) Any investigation conducted by the Employer regarding allegations of employee misconduct, events, circumstances or matters that lead or is related to the separation of the employee(s), including audio recordings, images or any other mechanical recordings;
- (f) Full and complete personnel file of each named employee; and
- (g) Records or other documents submitted to the State of New Jersey Department of Labor, Unemployment Insurance by the Employer regarding the matters that led to the termination or to the separation.

9. For the period July 1, 2010 to present, records and other documents gathered or generated by the Employer that refer and/or in any way relate to the Union or the Union's campaign to organize Somerset Valley's employees.

10. For the same period in paragraph 9, records or other documents reflecting all correspondence and communication between and among **Somerset Valley** and **Care One** regarding the union organizing drive and the National Labor Relations Board charges filed by the Union.

11. For the same period in paragraph 9, all videotapes, films, audio recordings, pictures and other mechanical recordings made by/or provided to the Employer of meetings or other activity related to the Union's organizing drive.

12. For the same period in paragraph 9, summaries or materials utilized by the Employer during presentations at mandatory or individual meetings with unit employee(s) regarding the Union's organizing drive.

13. Records and other documents, including employee handbooks and other human resources materials, that reflect all work rules, policies, practices and procedures that are applicable to employees, including conversion of employment status of employees.

14. Records and other documents that will show the managerial and organizational hierarchy and structure at **Somerset Valley**, including the name and position of all officers, directors, managers and supervisors and the units, departments and employees over whom they have authority.

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22

1621 ROUTE 22 WEST OPERATING  
COMPANY, LLC D/B/A SOMERSET  
VALLEY REHABILITATION AND  
NURSING CENTER

and

Cases 22-CA-29599  
22-CA-29628  
22-CA-29868

1199 SEIU UNITED HEALTHCARE  
WORKERS EAST, NEW JERSEY REGION

**SECOND ORDER CONSOLIDATING CASES,  
AMENDED CONSOLIDATED COMPLAINT AND NOTICE OF HEARING**

1199 SEIU United Healthcare Workers East, New Jersey Region, herein called the Union, has charged in Cases 22-CA-29599, 22-CA-29628, and 22-CA-29868 that 1621 Route 22 West Operating Company, LLC d/b/a Somerset Valley Rehabilitation and Nursing Center, herein called Respondent, has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C Sec. 151 et. seq., herein called the Act. Based thereon, and in order to avoid unnecessary costs or delay, the Acting General Counsel, by the undersigned, pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, ORDERS that these cases are consolidated.

These cases having been consolidated, the Acting General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, issues this Second Order Consolidating Cases, Amended Consolidated Complaint and Notice of Hearing and alleges as follows:



1. (a) The charge in Case 22-CA-29599 was filed on August 31, 2010, and a copy was served by regular mail upon Respondent on September 2, 2010.

(b) The first amended charge in Case 22-CA-29599 was filed on September 10, 2010, and a copy was served by regular mail upon Respondent on September 13, 2010.

(c) The charge in Case 22-CA-29628 was filed on September 22, 2010 and a copy was served by regular mail upon Respondent on September 24, 2010.

(d) The first amended charge in Case 22-CA-29628 was filed on September 30, 2010 and a copy was served by regular mail upon Respondent on October 1, 2010.

(e) The second amended charge in Case 22-CA-29628 was filed on October 22, 2010 and a copy was served by regular mail upon Respondent on October 25, 2010.

(f) The third amended charge in Case 22-CA-29628 was filed on October 26, 2010 and a copy was served by regular mail upon Respondent on October 27, 2010.

(g) The fourth amended charge in Case 22-CA-29628 was filed on February 8, 2011 and a copy was served by regular mail upon Respondent on February 10, 2011.

(h) The fifth amended charge in Case 22-CA-29628 was filed on February 16, 2011 and a copy was served by regular mail upon Respondent on February 17, 2011.

(i) The charge in Case 22-CA-29868 was filed on March 1, 2011 and a copy was served by regular mail upon Respondent on March 3, 2011.

2. At all material times Respondent, a corporation with an office and place of business in West Bound Brook, New Jersey, herein called Respondent's West Bound Brook facility, has been engaged in the business of operating a nursing home and rehabilitation center providing health care and related services.

3. During the preceding twelve months, Respondent, in conducting its business operations described above in paragraph 2, derived gross revenues in excess of \$100,000 and.

during the same period of time, purchased and received at its West Bound Brook facility goods and services valued in excess of \$50,000 directly from suppliers located outside the State of New Jersey.

4. At all material times Respondent has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and has been a health care institution within the meaning of Section 2(14) of the Act.

5. At all material times the Union 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 within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Richard Speas	Senior Vice President, Operations-New Jersey
	Senior Vice President, Rehabilitation
Doreen Illis	Administrator (from August 3, 2010 to the present)
Inez Konjoh	Director of Nursing
Jackie Southgate	Unit Manager
Mary Apgar	MDS Coordinator
Zoraydee Near	Assistant MDS Coordinator
Jason Hutchens	Care One Regional Director Operations
Andrea Lee	Care One VP of Human Resources, New Jersey
Jessica Arroyo	Care One Clinical Services Consultant

7. Respondent, by Doreen Illis, at its West Bound Brook facility:

(a) On various unknown dates in August 2010, interrogated its employees about their Union membership, sympathies and/or activities.

(b) On various unknown dates in August 2010, by soliciting employee complaints and grievances, promised its employees increased benefits and improved terms and conditions of employment if employees refrained from union organizational activities.

8. Respondent, by Inez Konjoh, at its West Bound Brook facility:

(a) On various unknown dates in August 2010, interrogated its employees about their Union membership, sympathies and/or activities.

(c) On various unknown dates in August 2010, by soliciting employees' complaints and grievances, promised its employees increased benefits and improved terms and conditions of employment if employees refrained from union organizational activities.

9. On various unknown dates in late July or early August 2010, Respondent, by Jason Hutchens at its West Bound Brook facility, by soliciting employees' complaints and grievances, promised its employees increased benefits and improved terms and conditions of employment if employees refrained from union organizational activities.

10. On an unknown date in late July or early August 2010, Respondent, by Andrea Lee at its West Bound Brook facility, by soliciting employees' complaints and grievances, promised its employees increased benefits and improved terms and conditions of employment if employees refrained from union organizational activities.

11. On an unknown date in August 2010, Respondent, by Jessica Arroyo, at its West Bound Brook facility, interrogated employees about their Union membership, sympathies, and/or activities.

12. About September 13, 2010, Respondent issued a written warning to its employee Shannon Napolitano.

13. (a) About September 13, 2010, Respondent issued two written warnings to its employee Jillian Jacques.

(b) About September 28, 2010, Respondent issued a written warning to its employee Jillian Jacques.

(c) About November 5, 2010, Respondent issued a written warning to its employee Jillian Jacques.

(d) About February 9, 2010, Respondent suspended its employee Jillian Jacques.

14. (a) About September 14, 2010, Respondent issued two written warnings to its employee Sheena Claudio.

(b) About September 20, 2010, Respondent issued a written warning to its employee Sheena Claudio.

(c) About September 27, 2010, Respondent issued a written warning to its employee Sheena Claudio.

15. (a) About September 13, 2010, Respondent issued a written warning to its employee Valarie Wells.

(b) About September 16, 2010, Respondent issued a written warning to its employee Valarie Wells.

(c) About September 20, 2010, Respondent issued a written warning to its employee Valarie Wells.

16. About September 9, 2010, Respondent terminated its employee Lynette Tyler.

17. About September 17, 2010, Respondent terminated its employee Shannon Napolitano.

18. About September 21, 2010, Respondent terminated its employee Valarie Wells.

19. About October 9, 2010, Respondent terminated its employee Sheena Claudio.

20. About February 10, 2011, Respondent terminated its employee Jillian Jacques.

21. Since on or about September 18, 2010, Respondent has reduced the hours of per diem employees, including Daysi Aguilar, Annie Stubbs, Gertrudis Rodriguez, Dominique Joseph and Rita Onyeike.

22. Respondent engaged in the conduct described above in paragraphs 12 through 21 because the named employees of Respondent joined and assisted the Union, and engaged in union and other concerted activities, and to discourage employees from engaging in these activities.

23. By the conduct described above in paragraphs 7 through 11, 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.

24. By the conduct described above in paragraphs 12 through 22, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

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

#### **NOTICE OF HEARING**

PLEASE TAKE NOTICE THAT on the 26<sup>th</sup> day of April 2011, at 9:30 a.m. at Newark, New Jersey, and on consecutive days thereafter until concluded, a hearing will be conducted at the Veteran's Administration Building, 20 Washington Place, 5<sup>th</sup> Floor, Newark, New Jersey before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are