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	)	Case Nos. 22-CA-29599
	)	22-CA-29628
and	)	22-CA-29868
1199 SEIU UNITED HEALTHCARE WORKERS EAST, NEW JERSEY REGION	)	

EMPLOYER'S REQUEST FOR SPECIAL PERMISSION TO APPEAL ADMINISTRATIVE LAW JUDGE'S RULING DENYING EMPLOYER'S PETITION TO PARTIALLY REVOKE SUBPOENA DUCES TECUM B-612019 AS IT APPLIES TO ITEMS 35 AND 38 OF SAID SUBPOENA

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 items 35 and 38. 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:

> 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.
>
> 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.

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 Paragraphs 35 and 38 of the subpoena currently at issue. (Exhibit B at ¶¶ 9, 12). The Employer refused to provide the requested information. The Board never sought to enforce the investigative subpoena and issued the Consolidated Complaint[1] months later without the information currently requested in subpoenaed items 35 and 38. 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 items 35 and 38. The ALJ's written Order is attached as Exhibit F. On April 28, 2011, on the record at the

[1] The Consolidated Complaint is attached as Exhibit C.

hearing in this case, the ALJ denied the Petition to Revoke as it pertained to subpoenaed items 35 and 38.

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

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 items 35 and 38 are irrelevant because they are not the subject of any issued raised by the Consolidated Complaint.

7. Specifically, the information sought in subpoenaed items 35 and 38 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) the subpoena 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. The information sought in subpoenaed items 35 and 38 is irrelevant because it is not the subject of any issue raised by the Consolidated Complaint. Subpoenaed items 35 and 38 pertain to materials which 1) were gathered or generated by the Employer that refer to either the Union or the Union's organizational efforts, and 2) materials which summarize or were utilized by the Employer during presentations at meetings with bargaining unit employees. There is no allegation, however, in the Consolidated Complaint or in the record testimony, that any documents requested by this subpoena give rise to an unfair labor practice. To the contrary, any lawful communication by the Employer to its employees is protected by Section 8(c), and as "protected activity," cannot be used to establish anti-union animus. In this case, there has been *no allegation* that any communications to employees through any *campaign* documents, presentations, meeting texts, or scripts were unprotected speech. Such allegations are not raised in the Consolidated Complaint, and the Board and the Charging Party have closed their proof and rested their case without raising any issue that the Employer's communications with employees during or after the campaign through presentations or campaign materials sought by subpoenaed items 35 and 38 of this subpoena were unprotected speech.

9. Because the Employer's communications were not in violation of Section 8(a)(1), they are protected speech, which cannot be considered as evidence of anti-union animus. The Employer freely admits that it conducted a vigorous communication

campaign with bargaining unit employees during which it expressed its opposition to the Union's organizing efforts and attempted to persuade the eligible voters to vote "No" in the election. However, the Employer states, and the General Counsel (and Charging Party) has not contended otherwise, that such communications were lawful and protected by Section 8(c) of the Act. The Second Circuit has denied enforcement of an NLRB order "[b]ecause the Board improperly inferred anti-union animus from statements made by Company officials opposing unionization of the employees -- statements that are protected under the Act." *Holo-Krome Co. v. NLRB*, 907 F.2d 1343, 1344 (2d Cir. 1990), *rev.'d on other grounds by Holo-Krome Co. v. NLRB*, 947 F.2d 588 (2d Cir. 1991); *see NLRB v. Rockwell Mfg. Co.*, 271 F.2d 109, 118 (3d Cir. 1959) (Because Section 8(c) provides that privileged communications "shall not be evidence of an unfair labor practice," the Third Circuit denied the Board's petition for enforcement of its order, noting that the Board's "attempt to hoist by its own boot-straps, so to say, its findings that the statements were violative of the Act by reason of the respondent's hostility to the union as evidenced by the general manager's speech must be assessed in view of its holding that the speech was 'privileged' and not violative of the Act").

10. In determining the relevance of subpoenaed items 35 and 38, the Board should consider the fact that the Regional Office first requested these documents 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 clearly

believed it had sufficient evidence to support the Complaint allegations. Accordingly, by the Board's own actions, nothing in the documents sought by subpoenaed items 35 and 38 is essential to the Board's ability to try to prove its case.

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 items 35 and 38 and submits that the Employer should not be required to produce subpoenaed items 35 and 38 of Subpoena Duces Tecum B-612019.

Respectfully submitted,

Jay W. Kiesewetter
Tanja L. Thompson
KIESEWETTER WISE KAPLAN PRATHER, PLC
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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
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New York, New York 10036
Steven.Davis@nlrb.gov

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Counsel for the Acting General Counsel
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MAILED FROM ZIP CODE

EXHIBIT

A

FORM NLRB-31
(12-07)

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 – 5th Floor

in the City of Newark, NJ 07102-3115

on the 26th 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.

B - 612019

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

Issued at Newark, New Jersey

this 8th day of April 20 11

Lester A. Heltzer

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.

FORM NLRB-31
(12-07)

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 (Street) Newark (City) NJ (State) 07102 (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, 5th Floor

in the City of Newark, NJ 07102

on the 3rd day of December 20 10 at 1:00 (a.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.

B - 612289

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is issued at Newark, New Jersey

this 24th day of November 2010

Lester A. Heltzer

EXHIBIT B

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena ar at whose request the witness is subpoenaed. A witness appearing at the request of the General Co 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

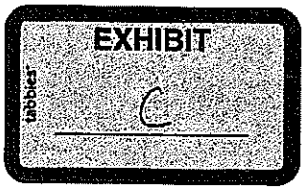
Cases 22-CA-29599
22-CA-29628
22-CA-29868

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 26th 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, 5th 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

described in the attached Form NLRB–4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB–4338.

ANSWER REQUIREMENT

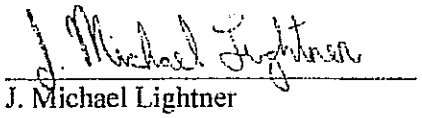
Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the amended consolidated complaint. The answer must be received by this office on or before April 20, 2011, or postmarked on or before April 19, 2011. Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at http://www.nlrb.gov, click on E-Gov, then click on the E-Filing link on the pull-down menu. Click on the "File Documents" button under "Regional, Subregional and Resident Offices" and then follow the directions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Sections 102.21. If an answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer needs to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the

required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the answer on each of the other parties must still be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

Issued at Newark, New Jersey this 6th day of April, 2011.



J. Michael Lightner
Regional Director
National Labor Relations Board
Region 22
20 Washington Place, 5th Floor
Newark, New Jersey 07102-3110

Attachments

FORM NLRB-4668
(4-06)

(C CASES)

SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD BEFORE THE NATIONAL LABOR RELATIONS BOARD IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT

The hearing will be conducted by an administrative law judge of the National Labor Relations Board who will preside at the hearing as an independent, impartial finder of the facts and applicable law whose decision in due time will be served on the parties. The offices of the administrative law judges are located in Washington, DC; San Francisco, California; New York, N.Y.; and Atlanta, Georgia.

At the date, hour, and place for which the hearing is set, the administrative law judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to ensure that the issues are clear and sharpened or the administrative law judge may independently conduct such a conference. The administrative law judge will preside at such conference, but may, if the occasion exists, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evidenced in the ultimate record, for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the administrative law judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or assist stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues. All parties appearing before this hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.603, should notify the Regional Director as soon as possible and request the necessary assistance.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the administrative law judge for approval.

All matter that is spoken in the hearing room while the hearing is in session will be reported by the official reporter unless the administrative law judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the administrative law judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The administrative law judge will allow an automatic exception to all adverse rulings and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies of exhibits should be supplied to the administrative law judge and other parties at the time the exhibits are offered in evidence. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the administrative law judge before the close of hearing. In the event such copy is not submitted, and the filing has not been waived by the administrative law judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. In the absence of a request, the administrative law judge may ask for oral argument if, at the close of the hearing, it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

(OVER)

In the discretion of the administrative law judge, any party may, on request made before the close of the hearing, file a brief or proposed findings and conclusions, or both, with the administrative law judge who will fix the time for such filing. Any such filing submitted shall be double-spaced on 8½ by 11 inch paper.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations, with respect to the procedure to be followed before the proceeding is transferred to the Board:

No request for an extension of time within which to submit briefs or proposed findings to the administrative law judge will be considered unless received by the Chief Administrative Law Judge in Washington, DC (or, in cases under the branch offices in San Francisco, California; New York, New York; and Atlanta, Georgia, the Associate Chief Administrative Law Judge) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously on all other parties, and proof of such service furnished to the Chief Administrative Law Judge or the Associate Chief Administrative Law Judge, as the case may be. A quicker response is assured if the moving party secures the positions of the other parties and includes such in the request. All briefs or proposed findings filed with the administrative law judge must be submitted in triplicate, and may be printed or otherwise legibly duplicated with service on the other parties.

In due course the administrative law judge will prepare and file with the Board a decision in this proceeding, and will cause a copy thereof to be served on each of the parties. Upon filing of this decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, on all parties. At that point, the administrative law judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the administrative law judge's decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be served on the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations. If adjustment appears possible, the administrative law judge may suggest discussions between the parties or, on request, will afford reasonable opportunity during the hearing for such discussions.

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

1199 SEIU UNITED HEATLHCARE WORKERS EAST, NEW JERSEY REGION

Case No. 22-CA-29599
22-CA-29628
22-CA-29868

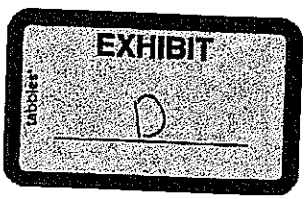
1621 ROUTE 22 WEST OPERATING COMPANY, LLC D/B/A SOMERSET VALLEY REHABILITATION AND NURSING CENTER'S PETITION TO PARTIALLY REVOKE SUBPOENA DUCES TECUM

The Employer, 1621 Route 22 West Operating Company, LLC d/b/a Somerset Valley Rehabilitation and Nursing Center ("Somerset Valley" or the "Employer"), hereby files, pursuant to Rule 102.31 of the Board's Rules and Regulations, its Petition to Partially Revoke Subpoena Duces Tecum No. B-612019 (the "Subpoena"), served on the Custodian of Records for Somerset Valley on April 12, 2011.[1] In support of its Petition, Somerset Valley states as follows:

A. Somerset Valley is the employer. Accordingly, Somerset Valley seeks to revoke the Subpoena to the extent that it defines the "Employer" as "Somerset Valley or Care One, a Senior Care Company," and thus seeks documents from CareOne.

B. The Subpoena seeks certain documents and information which may be may contain or constitute confidential health information protected by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). Accordingly, and in furtherance of the

[1] A copy of the Subpoena is attached hereto as Exhibit A.



Subpoena's exception regarding information and documents protected under HIPAA, Somerset Valley will only produce documents which have redacted such patient identifying information.

C. The Subpoena seeks information that is wholly irrelevant and immaterial to any issue raised in the Consolidated Complaint. The Board, to enforce a subpoena, 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). While relevance in this context is defined broadly, its definition is not unlimited. Indeed, for a subpoena request to be relevant, it must reasonably relate to or "touch" a matter under investigation or in question. *NLRB v. Rohlen*, 385 F.2d 52, 55-56 (7th Cir. 1965). Accordingly, to the extent the Subpoena is an attempt by Counsel for the Acting General Counsel to engage in broad discovery and/or requests information which in no way relates to any issue raised by the Consolidated Complaint, it should be revoked.

D. Indeed, inasmuch as the Subpoena is not narrowly tailored to request information which reasonably relates to matters that touch the issues raised by the Consolidated Complaint, it constitutes an improper "fishing expedition" and should be revoked. *See United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry*, 325 NLRB 1235, 1236 (1999).

E. Furthermore, the Subpoena similarly is unreasonably broad and must be revoked to the extent that it fails to describe the items and documents sought with sufficient particularity to allow Somerset Valley to discern the information or documents requested.

F. The Subpoena also seeks information which previously has been produced by Somerset Valley. Inasmuch as the information requested previously was produced, the Subpoena should be revoked. *See Kronos, Inc.*, 623 F.3d at 298 n.4.

G. The Subpoena seeks information and documents involving Somerset Valley's business operations and other confidential and proprietary information. Accordingly, Somerset Valley seeks to revoke the Subpoena to the extent it seeks any such document.

H. The Subpoena seeks information that is not in the form of documents, including lists and other instructions for production of documents.

I. Finally, certain documents and information responsive to the Subpoena may be protected from disclosure by the attorney-client privilege and/or attorney work-product doctrine, including, but not limited to, any documents that might tend to disclose or reveal the strategies, theories, mental impressions, opinions, or conclusions of counsel for Somerset Valley. Somerset Valley thus seeks to revoke the Subpoena to the extent it seeks any such document.

G. In light and in furtherance of, but without limiting, the objections set forth above, Somerset Valley states as follows with respect to the individual numbered requests in the Rider attached to the Subpoena:

1. This subpoena item is overly broad and seeks information contained in documents previously produced by Somerset Valley.

2. This subpoena item is overly broad insofar as it seeks all "documents showing the names and positions" of certain employees or groups of

employees. Furthermore, this subpoena item seeks documents that previously have been produced by Somerset Valley. To the extent not produced previously, and without waiving or in any way limiting any objection to this subpoena item, Somerset Valley will produce relevant documents, if any, that show a change or conversion in employees' status from per diem to part-time and/or full-time employment or from part-time to per diem status during the relevant time period.

3. This subpoena item is vague, ambiguous, and overly broad to the extent that it seeks "documents that refer and/or relate in any way" to the elimination or reduction in use of per diem employees. Without waiving or in any way limiting any objection to this subpoena item, Somerset Valley asserts that it did not eliminate the use of per diem employees, and to the extent there are documents responsive to this request, they previously have been produced by Somerset Valley.

5. This subpoena item seeks documents that are wholly irrelevant and immaterial to any issue raised by the Consolidated Complaint and have no bearing on the disputed issues. Furthermore, this subpoena item is overly broad and not narrowly tailored insofar as it seeks "other documents" of Somerset Valley that show who worked as per diem employees for each pay period. This subpoena item also is a fishing expedition to the extent that it improperly seeks the confidential employee records of numerous past and present per diem employees of Somerset Valley, which improperly invades the privacy of these employees and is overly

burdensome to produce. Finally, this subpoena item seeks documents that previously have been produced by Somerset Valley. To the extent not produced previously, and without waiving or in any way limiting any objection to this subpoena item, Somerset Valley will produce weekly payroll records, daily staffing sheets, and daily schedules for the relevant time period not previously produced.

6. This subpoena item seeks documents that are wholly irrelevant and immaterial to any issue raised by the Consolidated Complaint. Furthermore, this subpoena item is overly broad and not narrowly tailored insofar as it seeks "other documents" of Somerset Valley that show which employees are now working the hours previously worked by per diem employees. Finally, this subpoena item seeks documents that previously have been produced by Somerset Valley. To the extent not produced previously, and without waiving or in any way limiting any objection to this subpoena item, Somerset Valley will produce weekly payroll records, daily staffing sheets, and daily schedules for the relevant time period not previously produced.

9. This subpoena item seeks documents that are wholly irrelevant and immaterial to any issue raised by the Consolidated Complaint.

10. This subpoena item is overly broad and seeks documents that are wholly irrelevant and immaterial to any issue raised by the Consolidated Complaint.

11. This subpoena item is overly broad and seeks documents that are wholly irrelevant and immaterial to any issue raised by the Consolidated Complaint.

12. This subpoena item is overly broad and seeks documents that are wholly irrelevant and immaterial to any issue raised by the Consolidated Complaint. This subpoena item is an improper attempt at discovery and a fishing expedition.

13. This subpoena item seeks documents that are wholly irrelevant and immaterial to any issue raised by the Consolidated Complaint. Furthermore, this subpoena item is overly broad. This subpoena item is an improper attempt at discovery and a fishing expedition.

14. This subpoena item seeks documents that are wholly irrelevant and immaterial to any issue raised by the Consolidated Complaint. This subpoena item is an improper attempt at discovery and a fishing expedition.

16. This subpoena item, to the extent it seeks "all notices of disciplinary action issued to Somerset Valley employees," is overly broad and seeks information that is wholly irrelevant and immaterial to any issue raised by these charges or any related investigation. Furthermore, in light of the identified time period, this subpoena item seeks information that previously has been produced by Somerset Valley. To the extent not produced previously, and without waiving or in any way limiting any

objection to this subpoena item, Somerset Valley will produce notices of disciplinary action.

17. This subpoena item seeks documents that previously been produced by Somerset Valley. To the extent not previously produced, and without waiving or in any way limiting any objection to this subpoena item, Somerset Valley will produce documents responsive to this subpoena item subject to redaction of confidential health information and employee and dependent social security numbers.

18. This subpoena item seeks documents that have previously been produced by Somerset Valley. To the extent not previously produced, and without waiving or in any way limiting any objection to this subpoena item, Somerset Valley will produce documents responsive to this subpoena item subject to redaction of confidential health information and employee and dependent social security numbers.

19. This subpoena item seeks documents that have previously been produced by Somerset Valley. To the extent not previously produced, and without waiving or in any way limiting any objection to this subpoena item, Somerset Valley will produce documents responsive to this subpoena item subject to redaction of confidential health information and employee and dependent social security numbers.

20. This subpoena item seeks documents that have previously been produced by Somerset Valley. To the extent not previously produced, and without waiving or in any way limiting any objection to this subpoena item,

Somerset Valley will produce documents responsive to this subpoena item subject to redaction of confidential health information and employee and dependent social security numbers.

21. This subpoena item seeks documents and information previously produced by Somerset Valley. To the extent not previously produced, and without waiving or in any way limiting any objection to this subpoena item, Somerset Valley will produce documents responsive to this subpoena item subject to redaction of confidential health information and employee and dependent social security numbers.

22. This subpoena item seeks documents and information previously produced by Somerset Valley. To the extent not previously produced, and without waiving or in any way limiting any objection to this subpoena item, Somerset Valley will produce documents responsive to this subpoena item subject to redaction of confidential health information and employee and dependent social security numbers.

23. This subpoena item seeks documents and information previously produced by Somerset Valley. To the extent not previously produced, and without waiving or in any way limiting any objection to this subpoena item, Somerset Valley will produce documents responsive to this subpoena item subject to redaction of confidential health information and employee and dependent social security numbers.

24. This subpoena item seeks documents and information previously produced by Somerset Valley. To the extent not previously produced, and without

waiving or in any way limiting any objection to this subpoena item, Somerset Valley will produce documents responsive to this subpoena item subject to redaction of confidential health information and employee and dependent social security numbers.

25. This subpoena item seeks documents and information previously produced by Somerset Valley. To the extent not previously produced, and without waiving or in any way limiting any objection to this subpoena item, Somerset Valley will produce documents responsive to this subpoena item subject to redaction of confidential health information and employee and dependent social security numbers.

26. This subpoena item seeks documents and information previously produced by Somerset Valley. To the extent not previously produced, and without waiving or in any way limiting any objection to this subpoena item, Somerset Valley will produce documents responsive to this subpoena item subject to redaction of confidential health information and employee and dependent social security numbers.

27. This subpoena item seeks documents and information previously produced by Somerset Valley. To the extent not previously produced, and without waiving or in any way limiting any objection to this subpoena item, Somerset Valley will produce documents responsive to this subpoena item subject to redaction of confidential health information and employee and dependent social security numbers.

28. This subpoena item seeks documents and information previously produced by Somerset Valley. To the extent not previously produced, and without waiving or in any way limiting any objection to this subpoena item, Somerset Valley will produce documents responsive to this subpoena item subject to redaction of confidential health information and employee and dependent social security numbers.

29. This subpoena item seeks documents and information previously produced by Somerset Valley. To the extent not previously produced, and without waiving or in any way limiting any objection to this subpoena item, Somerset Valley will produce documents responsive to this subpoena item subject to redaction of confidential health information and employee and dependent social security numbers.

30. This subpoena item seeks documents and information previously produced by Somerset Valley. To the extent not previously produced, and without waiving or in any way limiting any objection to this subpoena item, Somerset Valley will produce documents responsive to this subpoena item subject to redaction of confidential health information and employee and dependent social security numbers.

32. This subpoena item seeks a document previously produced by Somerset Valley.

33. This subpoena item seeks documents previously produced by Somerset Valley.

35. This subpoena item seeks documents that are wholly irrelevant and immaterial to any issue raised by the Consolidated Complaint. This subpoena item is overly broad and an improper attempt at discovery and a fishing expedition.

36. This subpoena item seeks documents that are wholly irrelevant and immaterial to any issue raised by the Consolidated Complaint. This subpoena item is an improper attempt at discovery and a fishing expedition.

37. This subpoena item seeks information and/or documents and tangible things that are wholly irrelevant and immaterial to any issue raised by the Consolidated Complaint. This subpoena item is an improper attempt at discovery and a fishing expedition.

38. This subpoena item seeks documents that are wholly irrelevant and immaterial to any issue raised by the Consolidated Complaint. This subpoena item is overly broad and an improper attempt at discovery and a fishing expedition.

39. This subpoena item overly broad and oppressive and seeks documents that are wholly irrelevant and immaterial to any issue raised by the Consolidated Complaint. For example, there are an abundance of clinical policies, practices, and standards that apply to employees in the clinical practice that are not relevant to the Consolidated Complaint allegations.

40. This subpoena item seeks documents that are wholly irrelevant and immaterial to any issue raised by these charges or any related

investigation. This subpoena item is an improper attempt at discovery and a fishing expedition.

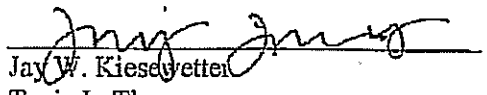
42. This subpoena item seeks information contained in documents previously produced by Somerset Valley. To the extent not previously produced, and without waiving or in any way limiting any objection to this subpoena item, Somerset Valley will produce documents responsive to this subpoena item subject to redaction of confidential health information and employee and dependent social security numbers.

43. This subpoena item is an improper attempt at discovery, does not seek documents, and seeks information readily obtainable from the documents produced in response to this Subpoena, which speak for themselves.

44. This subpoena item does not seek to require production of information, documents or other evidence and, therefore, requires no response.

For all the reasons fully set forth above, Subpoena Duces Tecum No. B-612019 is defective in part. The Subpoena, therefore, should be partially revoked.

Respectfully submitted,



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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 19th day of April, 2011, the foregoing Petition to Partially Revoke was electronically filed with:

J. Michael Lightner, Regional Director
National Labor Relations Board, Region 22
20 Washington Place, 6th Floor
Newark, NJ 07102-3115

and served via email upon the following:

Saulo Santiago
Counsel for the Acting General Counsel
National Labor Relations Board
Region 22
20 Washington Place, 5th Floor
Newark, NJ 07102
Saulo.Santiago@nlrb.gov

Ellen Dichner, Esq.
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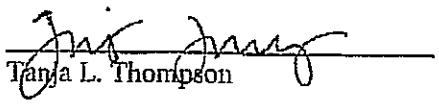


Tanja L. Thompson

FORM NLRB-31
(12-07)

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 – 5th Floor

in the City of Newark, NJ 07102-3115

on the 26th 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.

B - 612019

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

Issued at Newark, New Jersey

this 8th day of April 20 11

Lester A. Heltzer

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 princip assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will lim request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek in federal court.

EXHIBIT
A

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;

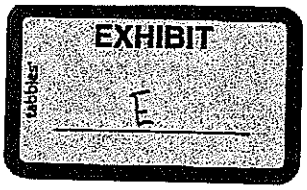
(f) Documents that concern or relate to the discharge of Jillian Jacques, including internal memorandum and e-mail regarding her misconduct or discharge, notes of meetings/telephone calls regarding her misconduct or discharge, notes of meetings with Jacques, and all work rules or policies that were allegedly 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.



UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

1621 ROUTE 22 WEST OPERATING COMPANY, LLC D/B/A SOMERSET VALLEY REHABILITATION AND NURSING CENTER	:	
AND	:	CASE NOS.: 22-CA-29599 22-CA-29628 22-CA-29868
1199 SEIU UNITED HEALTHCARE WORKERS EAST, NJ REGION	:	

MEMORANDUM IN OPPOSITION TO RESPONDENT'S PETITION TO REVOKE SUBPOENA DUCES TECUM

On April 8, 2011, pursuant to Section 11(l) of the Act, Counsel for the Acting General Counsel issued a Subpoena *Duces Tecum* (No. B-612019) for the production of documents relevant to the litigation of the above-captioned unfair labor practice cases.

The Subpoena at issue was served on 1621 Route 22 West Operating Company, LLC d/b/a Somerset Valley Rehabilitation and Nursing Center, herein ("Respondent") by certified mail on April 8, 2011. A copy was also faxed to Respondent's counsel the same day. On April 19, 2011, Respondent filed a Petition to revoke portions of the subpoena claiming that the subpoena is substantively defective as insufficiently particular, irrelevant, overly broad and unduly burdensome and seeks confidential patient information, proprietary information and privileged attorney-client communication and work product.

Counsel for the Acting General Counsel opposes Respondent's Petition on the following grounds: (1) the documents requested relate to issues being litigated; (2) the subpoena sufficiently describes the evidence being requested; (3) the subpoena is not

burdensome and does not seek confidential information; (4) Respondent failed to meet its burden to set forth specific evidence in support of its Petition.

STATEMENT OF THE FACTS

1199 SEIU United Healthcare Workers East, New Jersey Region ("the Union"), filed the underlying unfair labor practice charges alleging that, during its organizing campaign, Respondent engaged in violations of Section 8(a)(1) and (3) of the National Labor Relations Act ("the Act"). Based on the investigation of the allegations, a Consolidated Complaint issued on February 28, 2011 and was amended on April 8, 2011 to include additional allegations. More specifically, the Complaint alleged that Respondent violated Section 8(a)(3) of the Act by unlawfully discharging Lynette Tyler, Valarie Wells, Shannon Napolitano, Sheena Claudio and Jillian Jacques; by unlawfully issuing discipline to Union supporters; by unlawfully terminating per diem employees; and Section 8(a)(1) of the Act by interrogating employees regarding their union activities and 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.

Respondent filed an Answer to the Consolidated Complaint on March 14, 2011 and an Answer to the amended Consolidated Complaint on April 19, 2011 denying all of the allegations. Respondent's Petition seeks to partially revoke paragraphs 1, 2, 3, 5, 6, 9 through 14, and 16 through 44 of the Subpoena's Rider – each of which seeks the production of documents that directly relate to the matters and issues being litigated.

ARGUMENT

I. Legal Framework

Section 102.31 of the Board's Rules and Section 11(1) of the Act grant agents of the Board the authority to compel the production of evidence that relates to any matter

under investigation or in question. Under Section 11 of the Act and Section 102.31(b) of the Board's Rules and Regulations, the Board shall revoke the subpoena if:

(1) The evidence required to be provided does not relate to any matter under investigation or in question in the instant proceeding.

(2) The subpoena does not describe with sufficient particularity evidence of which production is required.

(3) There is any other reason sufficient in law that renders the subpoena invalid.

It is by this standard of relevance and particularity that the instant subpoena must be judged.

II. The Subpoena *Duces Tecum* Meets the Board's Standard of Relevance and Particularity

A. Respondent Fails to Meet its Burden to Set Forth Specific Evidence in Support of Its Objections

It is well settled that a subpoena will not be revoked based on a party's mere assertions. On the contrary, the law requires that Respondent "point out which specific documents and records... exceed the bounds of relevancy," the "production of which would create an undue burden." NLRB v. Dutch Boy, Inc., 98 LLRM 2396, 2399 (W.D. Okla. 1978), aff'd 606 F.2d 929, 102 LRRM 2528, 2530 (10th Cir. 1979). Absent such specific evidence, the documents must be produced. Id.

Here, Respondent's Petition opposing paragraphs 1, 2, 3, 5, 6, 9 through 14, and 16 through 30, 32, 33, and 35 through 44 consists of little more than conclusory assertions. In this regard, Respondent merely declares that the information sought is irrelevant and overbroad and asserts, without legal authority, that the information is also confidential and proprietary, protected by attorney or work-product privileges.

Respondent further asserts that the information had been previously produced. However, Respondent fails to identify in any way the basis for its claims. The subpoena should not be revoked on these mere conclusory assertions. Even if Respondent's conclusory contentions are entertained, its Petition should not be granted because the information requested, as required, is narrowly tailored in time and geographic scope and clearly identify the nature and subjects or information sought.

In order to avoid further delays and unnecessary procedural discussions, Counsel for the Acting General Counsel rescinds its request for the production of Internet Protocol ("IP") addresses for several of Respondent's managers sought in paragraph 14. This clarification should satisfy Respondent's concerns regarding paragraph 14.

B. The Subpoenaed Information Relates Directly to the Issues Being Litigated.

The Federal Rules of Evidence are the rules used to govern relevancy of evidence in Board proceedings. Rule 401 of those rules defines relevant evidence as "evidence having any tendency to make the existence of *any* fact that is of consequence to the determination of the action more probable or less probable that it would be without the evidence." (Emphasis added). The Supreme Court has held that when the government or one of its agencies seeks documents by subpoena, production shall be ordered if the documents requested are not "plainly incompetent or irrelevant to any lawful purpose..." Endicott Johnson Corp. v. Perkins, 317 U.S. 501, 509 (1943). Information is relevant if it is "not plainly incompetent or irrelevant to any lawful purpose." EEOC v. Children's Hospital, 719 F.2d 1426, 1429 (9th Cir. 1983) (en banc) (quoting Endicott Johnson Corp. v. Perkins, 317 U.S. 501, 509 (1943)); see also NLRB v. Frederick Cowan & Co., Inc., 522 F.2d 26, 28 (2d Cir. 1975). Relevance is broadly construed to give the agency access to material that might cast light on the allegations. See NLRB v. Rohlen, 385 F.2d 52,

55-56 (7th Cir. 1967); see also NLRB v. Dutch Boy, Inc., 606 F.2d 929, 932 (10th Cir. 1979).

Respondent opposes paragraphs 2 through 6, 8 through 13, 16, and 35 through 40, claiming that the subpoenaed documents are irrelevant. Paragraphs 2 through 6 seek documentary evidence regarding the names and positions of part-time and per diem employees and payroll records before and after Respondent's decision to discontinue its extensive usage of such employees. This information will "shed light on" Respondent's decision regarding part-time and per diem employees and is relevant to the Complaint allegations that Respondent terminated part-time and per diem employees because of their support for the Union. Records showing the identity, position held, rates of pay, hours worked and dates of hire of part-time and per diem employees as well as full-time employees bear directly upon the allegations of disparate treatment. Although Respondent previously provided payroll, daily staffing sheets and schedules in response to paragraphs 5 and 6 those records failed to cover the remaining documents requested in paragraphs 2 through 6.

Paragraphs 9 through 13 seeking information regarding Respondent's payroll system including system history of audit trail of changes and additions and deletions made by authorized Respondent officials on the payroll system, is relevant to Respondent's decision to discharge Valerie Wells. Ms. Wells was Respondent's staffing coordinator until September 21, 2010. During the investigation, Respondent contended that it terminated Ms. Wells for making scheduling errors on the payroll system. As such, the subpoenaed documents relate directly to Respondent's knowledge and unlawful motivation in terminating Ms. Wells.

Paragraph 16 seeks the disciplinary action, including written and verbal warnings, suspensions or discharges issued to employees. The Complaint alleges that Respondent

issued disciplinary warnings to employees because of their support for the Union after the representation election on September 2, 2010. Thus, the documents are clearly relevant to the issue of whether Respondent treated Union supporters differently or in a disparate manner.

Paragraphs 17 through 30 and 32, 33 and 42, seeking the complete investigatory files for named discriminatees, including the reasons for the decision to terminate the employee, documents from all investigations and internal correspondence to the discharge, complete personnel files and other information, are clearly relevant. That Respondent previously produced some of the information does not obviate its obligation to produce the documents nor does it establish that the request is irrelevant and immaterial. If Respondent is willing to stipulate that the previously produced information is complete and the entirety of the records for the named discriminatees, in the interest of expediency, Acting General Counsel will accept such a representation. However, in regards to paragraphs 26 through 30, Acting General Counsel requests that Respondent produce the employee evaluations for the named discriminatees because such evaluations were incomplete when previously provided.

Paragraphs 35 and 36, seeking records or documents gathered or generated by Somerset Valley and Care One regarding the Union's campaign to organize Somerset Valley's employees or correspondence between the entities about the organizing drive or charges, are relevant to Respondent's motivation for its actions and the extent and timing of Respondent's knowledge of the protected activities of employees and the alleged discriminatees. Respondent's objection to the Acting General Counsel's request for information from Care One on the ground that Care One is not the employer must be rejected. Care One is Somerset Valley's parent company. It is undisputed that Care One's Senior Vice-President Richard Speas oversees Somerset Valley's facility,

providing operational and clinical support and that other Care One personnel actively participated in Respondent's organizing campaign. Thus, the correspondence and/or communication between Somerset Valley and Care One and by either entity regarding the organizing drive are clearly relevant.

It is undisputed that Respondent conducted mandatory meetings with employees. During those meetings, Respondent utilized written materials and those meetings were recorded. Paragraph 37, seeking videotapes, films, audio recordings, pictures or other mechanical recordings made by or provided to Respondent, and paragraph 38, seeking summaries and materials utilized by Respondent merely seeks such materials. Thus, this information is clearly relevant.

Paragraph 39 seeks documents regarding employee handbooks and other materials that reflect work rules and procedures applicable to employees, and paragraph 40 seeks a copy of Respondent's uniform policy applicable to employees. During the investigation, Respondent has asserted that it has disciplined employees consistent with its clinical practices; however, it now argues inexplicably that this information is irrelevant and cannot be produced. Contrary to Respondent's contentions, the information sought is relevant. Although Respondent has produced the employee handbook, it has failed to provide the remaining information requested in paragraph 39. Moreover, Respondent has asserted that it has an applicable uniform policy which it has enforced at its facility. Because Respondent has taken disciplinary actions against employees pursuant to such a policy, the production of the policy is clearly relevant.

C. <u>The Subpoena Sufficiently Describes the Evidence Being Requested</u>

Respondent further contends that the request made in paragraphs 1 through 6, 10, 11, 12, 13, and 16 of the subpoena is impermissibly overbroad and insufficiently particular. Such an argument is not valid. Contrary to Respondent's assertion, the

subpoena sufficiently describes what information is being sought in order to probe Respondent's contention that it has consistently disciplined employees in accordance with its policies and procedures; has legitimate business justifications for its decision to discontinue the usage of part-time and per diem employees; and was not motivated by animus or discriminatory motive when it took action against employees. The records sought in the subpoena are also limited in scope and are limited to the time period in question.

In this regard, Respondent makes self-serving assertions that the Acting General Counsel uses sweeping or generalized language, such as "other documents" or "other documents that refer or relate to" to establish its contention that the subpoena is overbroad and insufficiently particular. Contrary to Respondent's assertions, in no way may the Acting General Counsel's request be considered vague or ambiguous particularly when his subpoena clearly indicates which records it is seeking. Such assertion without further proof fails to meet Respondent's burden in the instant matter. Hence, this subpoena clearly satisfies the specificity requirement.

D. The Subpoena Is Not Burdensome And Does Not Seek Confidential Information

Respondent asserts that paragraphs 5, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 42 of the subpoena seek confidential, privileged and proprietary information and that compliance with paragraphs 5, 12, 13, 14, 35, 36, 37, 38, 39, and 40 would be unduly burdensome. The burden of proof is on Respondent to establish legitimate and substantial confidentiality interests and to specify the interests of its employees it seeks to protect. A claim of confidentiality is an insufficient defense to a relevant claim for information where, as here, no evidence is presented to support such a claim. Woodland Clinic, 331 NLRB 735, 736-37 (2000). Although Respondent claims

that the subpoena seeks information in violation of HIPAA, the subpoena specifically indicates in the "Definition and Instructions" section in paragraph 16 that it does not seek confidential patient information rather it seeks information relevant to the allegations in the Complaint. Further, contrary to Respondent's assertion that the subpoena seeks information that infringes on the attorney-client and work product privileges, the subpoena specifically mentions in the "Definition and Instructions" section in paragraph 12 that such confidential attorney-client and work- product information is not being sought. Such self-serving assertions of confidentiality without proof do not obviate the obligation to furnish the information. Therefore, in the instant case, Respondent is obligated to provide such information. Hansen Aggregates BMC, Inc., 353 NLRB No. 28 (2008); Dynacorp/Dynair Services, Inc., 332 NLRB 602 (1996). Moreover, a party seeking to avoid compliance with a subpoena bears the burden of demonstrating that it is unduly burdensome or oppressive. CNN America, Inc., 352 NLRB 675, 676 (2008). A subpoena will not be revoked based on conclusory assertions. On the contrary, the law requires petitioners to "point out which specific documents and records... exceed the bounds of relevancy," or the "productions of which would create an undue burden. NLRB v. Dutch Boy, Inc., 98 LRRM 2396, 2399 (W.D. Okla 1978), aff'd 606 F.2d 929, 102 LRRM 2528, 2530 (10th Cir. 1979). In addition, to demonstrate undue burden, the subpoenaed party must show that compliance with the subpoena "would seriously disrupt its normal business operations." EEOC v. Maryland Cup Corp., 785 F.2d 471, 477 (4th Cir. 1986), cert. denied, 479 U.S. 815 (1986); Valley Industrial Services, Inc. v. EEOC, 570 F. Supp. 902, 907 (N.D. Cal. 1983) (disruption of business operations is the appropriate standard, since "[e]very employer investigated . . . may feel that compliance [with a subpoena] is burdensome"). Here, Respondent has failed to demonstrate undue burden. Thus, such arguments are not valid.

III. Conclusion

Based on the foregoing, it is evident that Respondent has not supported its burden of showing that the subpoenaed materials are not relevant, burdensome, overly broad or vague, confidential or that they are not described with sufficient particularity. Therefore, as the Subpoena *Duces Tecum* on its face meets the standard of specificity and relevancy of Section 11(1) of the Act, it should not be revoked. Accordingly, Counsel for the Acting General Counsel respectfully requests that the Respondent's Petition be denied in its entirety and that the subpoenaed document be produced.

Dated at Newark, New Jersey this 22nd day of April, 2011

Saulo Santiago
Counsel for the Acting General Counsel
National Labor Relations Board
Region 22
20 Washington Place, Fifth Floor
Newark, New Jersey 07102

FACSIMILE COVER SHEET

National Labor Relations Board
Division of Administrative Law Judges
120 West 45th Street
New York, New York 10036

To:	Saulo Santiago, Esq. Jay Kiesewetter, Esq. Ellen Dichner, Esq.
Organization:	NLRB – Region 22 Kiesewetter Wise Gladstein Reif
Fax:	973-645-3852 901-795-1646 212-228-7654
From:	NATIONAL LABOR RELATIONS BOARD DIVISION OF JUDGES Steven Davis, Administrative Law Judge
Phone:	212-944-2941
Fax:	212-944-4904
Date:	04/22/11
Pages:	8 (including cover sheet)
Comments:	Re: 1621 Route 22 West Operating Co. d/b/a Somerset Valley Rehabilitation Case No. 22-CA-29599

EXHIBIT
F

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

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

ORDER ON PETITION TO PARTIALLY REVOKE SUBPOENA DUCES TECUM

On April 6, 2011, a Second Order Consolidating Cases, Amended Consolidated Complaint and Notice of Hearing was issued against 1621 Route 22 West Operating Company, LLC d/b/a Somerset Valley Rehabilitation and Nursing Center (Respondent), to which the Respondent filed an answer.

The complaint alleges, essentially, that the Respondent committed certain violations of Section 8(a)(1) and (3) of the Act, including interrogating employees, soliciting their complaints, promising them increased benefits and improved terms of employment, issuing written warnings to employees, suspending employee Jillian Jacques, terminating employees Lynette Tyler, Shannon Napolitano, Valarie Wells, Sheena Claudio, and Jillian Jacques, and reducing the hours of certain per diem employees. The Respondent filed an answer to the complaint denying the material allegations thereof.

Thereafter, the General Counsel issued a Subpoena Duces Tecum to the Respondent, directing that it produce at the hearing, numerous documents for the period January 1, 2010 to December 31, 2010, unless otherwise stated. The Respondent filed a Petition to Revoke, and the General Counsel filed an Opposition.

I. The Respondent's General Objections

The Petition generally states that certain information sought (a) is irrelevant, and immaterial to the issues raised in the complaint (b) is unreasonably broad and failed to describe the items and documents sought with sufficient particularity to permit the Respondent to determine the information or documents requested (c) had been previously produced by the Respondent (d) seeks confidential and propriety information (d) is not in the form of documents and (e) are protected from disclosure by the attorney-client privilege and/or attorney work-product doctrine.

II. General Legal Principles

The Respondent argues that certain of the documents sought are irrelevant and immaterial to the issues set forth in the complaint. The Board's standard for determining whether a subpoena should be revoked is not high. A subpoena shall be revoked if the "evidence whose production is required does not relate to any matter under investigation or 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." Board's Rules and Regulations, Section 102.31. The Board's subpoena power is "indispensable to the carrying out of [the Board's] functions." *Pedersen v. NLRB*, 234 F.2nd 417, 420 (2nd Cir. 1956).

The courts have decided that administrative agencies have broad authority to demand documents. In *U.S. v. Morton Salt Co.*, 338 U.S. 632, 652 1950), the Supreme Court held that "it is sufficient if the inquiry is within the authority of the agency, the demand is not too indefinite and the information sought is reasonably relevant." That standard is the "accepted test for judicial enforcement of administrative subpoenas." *In Re McVane*, 44 F.3rd 1127, 1135 (2nd Cir. 1995).

In *NLRB v. American Medical Response, Inc.*, 438 F.3d 188, 192-193 (2006), the Second Circuit Court of Appeals stated that "an agency must show only "[1] that the investigation will be conducted pursuant to a legitimate purpose, [2] that the inquiry *may be* relevant to the purpose, [3] that the information sought is not already within [its] possession, and [4] that the administrative steps required ... have been followed ....' " *RNR Enters., Inc. v. SEC*, 122 F.3d 93, 96 (2d Cir. 1997) (emphasis added) quoting *United States v. Powell*, 379 U.S. 48, 57-58 (1964). A subpoena that satisfies these criteria will be enforced unless the party opposing enforcement demonstrates that the subpoena is unreasonable, or issued in bad faith or for other improper purposes, "or that compliance would be '*unnecessarily* burdensome.'" *RNR Enters., Inc.*, 122 F.3d at 97, quoting *SEC v. Brigadoon Scotch Distrib. Co.*, 480 F.2d 1047, 1056 (2d Cir. 1973).

The Respondent also asserts that certain documents sought in paragraph 5 of the subpoena are burdensome to produce. "A subpoena is not unduly burdensome merely because it requires the production of a large number of documents." *NLRB v. Carolina Food Processors, Inc.*, 81 F.3rd 507, 513 (4th Cir. 1996). "The burden of proving that an administrative subpoena is unduly burdensome is not easily met. The party subject to the subpoena must show that producing the documents would seriously disrupt its normal business operations." *EEOC v. Maryland Cup Corp.*, 785 F.2nd 471, 477 (4TH Cir. 1986); *CNN America, Inc.*, 353 NLRB 891, 894 (2009). No such showing has been made by the Respondent.

I further find no merit to the Respondent's objections that the documents sought are unreasonably broad and that the subpoena fails to describe the items and documents sought with sufficient particularity to permit it to determine the information or documents requested. I find that the documents sought are precisely described and limited in duration to one year or less. In addition, the Respondent has not provided any specific information as to what documents it claims are confidential or constitute propriety information.

III. The Claim of Attorney-Client Privilege

The Petition asserts that certain documents sought may be covered by the attorney-client privilege and/or attorney work-product doctrine. The Respondent did not provide any specifics in support of this claim.

Since, at this point, I cannot determine which documents sought may be claimed to be protected by the privilege, the Respondent is directed to supply a privilege log as to the documents it asserts are covered by the privilege. *CNN America, Inc.*, 353 NLRB 891, 899 (2009).

The log shall include an index identifying the allegedly privileged documents and the parties to each of the communications and providing sufficient detail to permit an informed decision as to whether the document was at least potentially privileged. Specifically, the index must include (a) a description of the document, including its subject matter and the purpose for which it was created (b) the date the document was created (c) the name and job title of the author of the document and (d) if applicable, the name and job title of the recipient(s) of the document. *CNN America*, above.

The Respondent shall serve the privilege log on the other parties and me. It shall also present to me for my examination *in camera* the documents it claims are privileged. I will then rule on whether the privilege applies to the documents presented.

IV. The Respondent's Specific Objections

What follows is a brief description of each numbered paragraph of the subpoena objected to, the Respondent's specific objection, the General Counsel's Opposition, and my ruling:

Paragraphs 1-6 of the Subpoena

1. The name of each per diem registered nurse, licensed practical nurse and certified nurses' aide employed by the Respondent.
Objection: Overly broad and seeks information previously produced.

2. For the period July 1, 2010 to December 1, 2010, documents showing the names and positions of all employees whose status was changed from per diem to part-time and/or full-time employment, or from part-time to per diem status.
Objection: Overly broad and seeks information previously produced. The Respondent will produce documents which show a change in employees' status from per diem to part-time and/or full-time employment or from part-time to per diem status to the extent not previously produced.

3. Documents that refer and/or relate in any way to the Respondent's elimination or reduction in the use of per diem employees.
Objection: Vague, ambiguous and overly broad. Respondent did not eliminate the use of per diem employees and it has previously produced the documents sought.

5. Payroll records, daily staffing sheets, schedules, and other documents which show who worked as per diem employees for each pay period including their name, dates employed, position held, rate of pay and hours worked, and personnel file.

Objection: Irrelevant, immaterial, overly broad as to "other documents"; seeks confidential employee records, and the records sought are burdensome to produce, and were previously produced. The Respondent will produce weekly payroll records, daily staffing sheets and daily schedules not previously produced.

6. The same documents are sought as in paragraph 5, but which show which employees are currently working the hours previously worked by per diem employees, including their names, dates employed, position held, rate of pay and hours worked, and for each shift, the name of the per diem employee who previously worked that shift.
Objection: Same objection as in paragraph 5, above.

The General Counsel's Opposition to the Petition
Paragraphs 1-6

General Counsel states that the documents sought in paragraphs 1-6 are relevant because they seek information regarding the individuals who held the positions of part-time and per diem workers before and after Respondent's decision to discontinue its extensive use of such employees, and will "shed light" on the Respondent's decision regarding such employees. The documents are also claimed to be relevant to the allegations that Respondent discharged such employees because of their support for the Union. Further, he claims that such evidence is relevant to the issue of disparate treatment. General Counsel concedes that certain, but not all documents were provided by Respondent previously.

Ruling

The documents sought in paragraphs 1-6 are relevant to the issues in this proceeding. They are not vague, ambiguous or overly broad. To the extent not previously produced, they must be produced by the Respondent.

Paragraphs 9-13 of the Subpoena

9-12. For various periods of time set forth in the subpoena, all documents that reflect or concern SMTLX system history of audit trail of changes, etc., for Cabe Guerlin, Doreen Illis, Elizabeth Heedles, and Inez Konjoh.
Objection: Irrelevant, immaterial and immaterial.

13. For the period June 1, 2010 to December 31, 2010, the SMTLX system user names for all authorized personnel, including certain named individuals.
Objection: Irrelevant, immaterial and overly broad.

14. In his Opposition, General Counsel withdrew his request for the documents set forth in paragraph 14.

The General Counsel's Opposition to the Petition
Paragraphs 9-13

General Counsel states that the information sought relates to the Respondent's payroll system which is relevant to its decision to discharge Valerie Wells. According to the General Counsel, the Respondent's defense is that it fired Wells for making scheduling errors on the payroll system.

Ruling

The documents sought in paragraph are relevant and not overly broad. They must be produced by the Respondent.

Paragraph 16 of the Subpoena

16. All notices of disciplinary action issued to the Respondent's employees, etc., and the reasons therefore. The personnel files of discharged employees.
Objection: Overly broad, irrelevant, immaterial, documents previously produced. Respondent will produce notices of disciplinary action not previously produced.

The General Counsel's Opposition to the Petition
Paragraph 16

General Counsel argues that the documents sought relate to the alleged disparate treatment accorded supporters of the Union.

Ruling

The documents sought are relevant. To the extent not previously produced they must be produced by the Respondent.

Paragraphs 17-33, 42 of the Subpoena

17-20, 42. Regarding Shannon Napolitano, Sheena Claudio, Valerie Wells, Lynette Tyler, and Jillian Jacques, various documents concerning their terminations.
Objection: Documents were previously produced. Respondent will produce responsive documents not previously produced.

21-25. All disciplinary actions issued to Napolitano, Claudio, Wells, Tyler and Jillian Jacques (Jacques through February, 2011).
Objection: Documents were previously produced. Respondent will produce responsive documents not previously produced.

26-30. All performance appraisals and/or evaluations issued to Napolitano (2009 and 2010), Claudio, Wells (2007-2010), Tyler, Jacques (2007-2010).
Objection: Documents were previously produced. Respondent will produce responsive documents not previously produced.

32-33. Documents relating to Tyler's resignation, including her resignation letter, Respondent's Personnel Action Form.
Objection: Documents previously produced.

The General Counsel's Opposition to the Petition
Paragraphs 17-33, 42

The documents sought relate directly to the work history and the decision to terminate the alleged discriminatees. General Counsel offers to accept the documents previously submitted if the Respondent stipulates that such documentation is complete

and represents all of the records of the alleged discriminatees. However, despite any stipulation, the General Counsel demands the production of the employee evaluations set forth in paragraphs 26-30.

Ruling

To the extent not previously produced, the Respondent shall produce the documents demanded.

Paragraphs 35-38 of the Subpoena

35-38. For the period July 1, 2010 to October 31, 2010, documents gathered or generated by the Respondent which refer to the Union or the Union's campaign to organize the Respondent's employees; all correspondence and communication between and among the Respondent and Care One regarding the union organizing drive and the NLRB charges filed by the Union; all videotapes, etc., made by/or provided to the Respondent of meetings related to the Union's organizing drive; summaries or materials used by the Respondent during presentations at mandatory or individual meetings with unit employees regarding the Union's organizing drive, and contemporaneous notes taken by certain named persons as to the discussions at such meetings (period July 1, 2010 to September 2, 2010).

Objection: Somerset Valley is the Employer, not Care One; Irrelevant, overly broad.

The General Counsel's Opposition to the Petition
Paragraphs 35-38

The General Counsel states that the evidence establishes that Care One is the Respondent's parent company and that it oversees the Respondent's operations. Accordingly, he argues that communications between the Respondent and Care One is relevant. He further argues that materials relating to meetings concerning the Union are relevant.

Ruling

At this point in the proceeding, there is no record evidence before me that Care One is the Respondent's parent company. At this time, the only Respondent before me is Somerset Valley Rehabilitation and Nursing Center.

I will reserve decision as to the documents demanded between Respondent and Care One. All other documents are relevant and must be produced.

Paragraphs 39-40 of the Complaint

39. Documents which reflect work rules, policies, practices and procedures which are applicable to employees, including conversion of employment status of employees and date(s) of issuance.

Objection: Overly broad, oppressive, irrelevant and immaterial.

40. The Respondent's uniform policy applicable to its employees and the date(s) of issuance.

Objection: Irrelevant, immaterial.

The General Counsel's Opposition to the Petition
Paragraphs 39-40

General Counsel states that the information demanded is relevant because the Respondent disciplined employees pursuant to its written policies.

Ruling

The documents sought are relevant and must be produced.

Paragraphs 43 and 44 of the Subpoena

43. A list specifying what documents are being produced pursuant to each paragraph of the subpoena.
Objection: Improper attempt at discovery, does not seek documents, and seeks information readily obtainable from the documents produced in response to the subpoena.

44. All of the above documents shall be segregated by the paragraph number set forth in the subpoena and shall not be commingled with documents that are responsive to other paragraphs of the Rider. Documents shall be arranged chronologically within each segregated packet.
Objection: Does not seek to require production of information, documents or other evidence, and therefore requires no response.

General Counsel filed no Opposition to the Petition.

Ruling

The Petition to Revoke is granted as to paragraphs 43 and 44 of the subpoena.

Dated: New York, NY
April 22, 2011

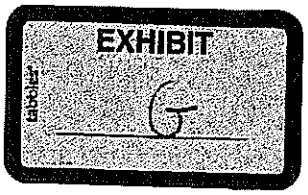
Steven Davis
Administrative Law Judge

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

In the Matter of: **1621 ROUTE 22 WEST OPERATING COMPANY, LLC, d/b/a SOMERSET VALLEY REHABILITATION AND NURSING CENTER,** Respondent, And **1199SEIU UNITED HEALTHCARE WORKERS EAST, NEW JERSEY REGION,** Charging Party.	**Case No.** 22-CA-29599 22-CA-29628 22-CA-29868

The above-entitled matter came on for hearing pursuant to notice, before **STEVEN DAVIS**, Administrative Law Judge, at the National Labor Relations Board, Region 22, Veterans Administration Building, 20 Washington Place, 5th Floor, Newark, New Jersey, 07102, on Thursday, May 5, 2011, 9:30 a.m.



1 going to receive evidence of just and proper issues/matters in
2 this case. And that's my ruling.
3 MR. SANTIAGO: Thank you, Your Honor.
4 JUDGE DAVIS: Okay. So are you resting at this point?
5 MR. SANTIAGO: We are resting.
6 JUDGE DAVIS: Subject to receiving any documents that may
7 have been subpoenaed, etc.?
8 MR. SANTIAGO: Yes. Your Honor --
9 JUDGE DAVIS: Just one other thing. I would assume that
10 the Charging Party is resting on the same basis, at this time?
11 MR. SANTIAGO: I am assuming so, yes. Just on the matter
12 of the subpoena, we are taking a three-week break between today
13 and when we resume this on May 31st. I would like if the
14 Respondent would produce the information that is still owed. I
15 believe, you know, it's a set of correspondence and emails that
16 went back and forth from Somerset Valley and CareOne. I believe
17 that you also, the instruction was for them to also go back and
18 check whether or not with the testimony that we have today, plus
19 some of the arguments that we made, to go back and check to see
20 whether or not there are documents that reflect or concern
21 additions and/or deletions made on the SmartLinks system by
22 Elizabeth Heedles between the period of June 1 and August 9.
23 As well, Your Honor, I believe the instruction was, and
24 we've had a couple of discussions, I know my co-counsel, Michael
25 Silverstein, has with Mr. Likens, about the dates in regards to

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C E R T I F I C A T E

This is to certify that the attached proceedings done before the NATIONAL LABOR RELATIONS BOARD REGION TWENTY-TWO

In the Matter of:

1621 ROUTE 22 WEST OPERATING COMPANY, LLC, d/b/a SOMERSET VALLEY REHABILITATION AND NURSING CENTER,

Respondent,

And

1099SEIU UNITED HEALTHCARE WORKERS EAST, NEW JERSEY REGION,

Charging Party.

Case No. 22-CA-29599, 22-CA-29628, 22-CA-29868

Date: May 5, 2011

Place: Newark, NJ

Were held as therein appears, and that this is the original transcript thereof for the files of the Board

Official Reporter